

## CHAPTER IV.A

### THE USE OF FORCE

#### A. Introduction

1. The Inter-American Commission on Human Rights (hereinafter “Inter-American Commission, “Commission” or “IACHR”) learned that during 2015, due to the arbitrary and excessive use of force, hundreds of persons throughout the hemisphere have lost their lives, suffered violations of their integrity, or faced several obstacles to the exercise of other human rights and freedoms. This situation, which constitutes a cause of concern for the Commission, has also been the subject of pronouncements by international human rights organs such as the Human Rights Committee, the Committee against Torture, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (hereinafter “Special Rapporteur on extrajudicial executions”), the Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment (hereinafter “Special Rapporteur on torture”), the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as various international and domestic civil society organizations.<sup>1</sup>

2. In particular, from late 2014 to the date of the adoption of this report, the IACHR observes that force has often been used in a manner incompatible with international standards. The civilian police agents or their special groups, the armed forces, and private security agents have deployed their force in different contexts, such as social protests and public demonstrations, immigration and anti-crime operations, and evictions, among others, in which the lack of training, coordination, supervision, and control have caused irreparable harm to life and integrity. The intolerance of certain states in the face of dissent and public displays of social discontent and the historical practice of keeping certain groups invisible would appear to be related to the arbitrary and excessive use of force that has been observed to the detriment of protestors, human rights defenders, journalists and other media workers, LGBTI persons, migrants and others in human mobility, Afrodescendants, indigenous peoples and their members, and other vulnerable communities mired in poverty, including their children and adolescents. Of special concern to this Commission is the ever more common trend towards the use of force to contain social protests and public demonstrations that seek to give an outlet to discontent and demands that refer, *inter alia*, to the construction of large infrastructure works, exploitation of natural resources by private companies, and struggles to vindicate fundamental rights.

3. In addition, the IACHR notes with concern the tendency in some states of the region to delegate order and security tasks to the military forces, and even to declare states of emergency in response to scenarios of social protest or to address rising crime. The IACHR laments that the obligation to investigate, prosecute, and punish those responsible for the illegitimate use of force continues to be a task pending in some states. Despite the efforts made by certain states in the area of order and security, on occasion they

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<sup>1</sup> For example: Amnesty International (AI), and [Use of Force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) August 2015; Human Rights Watch (HRW), [Callous and Cruel: Use of force against inmates with mental disabilities in US jails and prisons](#), May 12, 2015; Robert F. Kennedy Human Rights, [On the Front Lines of Ferguson. A Year Later](#), August 12 2015; Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA), [Situación de los Derechos Humanos en Venezuela. Informe Anual Enero/Diciembre 2014](#); Centro de Estudios Legales y Sociales (CELS), [Derechos Humanos en Argentina, Informe anual 2015](#); Coordinadora Nacional de Derechos Humanos (CNDDHH), [La Criminalización de la Protesta Social, Informe Anual 2014-2015](#), Foro Penal Venezolano, [Detenciones por motivos políticos, torturas y otros crueles, inhumanos y degradantes. Asesinatos \(2014-2015\)](#); Commission for Memory of the Province of Buenos Aires (CPM), [El sistema de la crueldad IX sobre el sistema de encierro y las políticas de seguridad en la provincia de Buenos Aires, Informe Anual 2015](#); Coalition of non-governmental organizations of Venezuela, academic institutions, and organized civil society, [Informe alternativo al cuarto informe periódico de la República Bolivariana de Venezuela sobre el cumplimiento del Pacto Internacional de Derechos Civil y Políticos al Comité de Derechos Humanos de la Organización de la Naciones Unidas](#), June 2015.

have been insufficient to guarantee the rational use of force on an exceptional basis, as per international standards.

4. The methodology used for producing this report was to analyze the events that occurred in the region from late 2014 to December 2015; that information was obtained in the public hearings of this Commission held during its 153rd, 154<sup>th</sup>, and 156<sup>th</sup> regular periods of sessions, as well as from the requests for information in keeping with the powers conferred on this Commission by Article 41 of the American Convention on Human Rights (hereinafter, American Convention or ACHR) and Article 18 of its Statute. In addition, information has been garnered from various United Nations mechanisms whose mandate is related to the topic of this study, from reports by international and local civil society organizations, and from press reports. As part of the specific methodology used for this report, in late July 2015 the IACHR published a questionnaire about i) access to water and ii) use of force, that was sent to the member states of the OAS, civil society organizations, and other users of the inter-American human rights system. That questionnaire was answered by a total of 15 member states of the OAS<sup>2</sup> and by 26 civil society organizations, academics, and individuals.<sup>3</sup>

5. In addition, the Commission notes that the initiatives, practices, and events presented in this report are not exhaustive as regards the situation of any specific country, but rather are representative of an issue identified regionally. As for the structure of the information presented in this chapter of the Annual Report, this introduction is followed by five main sections. First is an analysis of the principles regarding use of force and how they have or have not been considered in the relevant legislative reforms and other regulatory provisions that have been adopted during the period under examination. Second is a discussion of the actors involved and the situations in which force is used, analyzing aspects related to the officers entrusted with the use of force, the means used, and the training those officers have received. Third is a discussion of the specific contexts that highlight the situation of insecurity brought about by the arbitrary and excessive use of force, and its impact on human rights. Such situations include, for example, the use of force in social protests and demonstrations, immigration control operations and evictions, and states of emergency. This report will also address the situation of especially vulnerable groups. In addition is a recounting of the aspects related to judicial oversight of the use of force, as regards administrative and judicial supervision and investigations carried out regarding human rights violations resulting from deployment of the use of force. Throughout this chapter the Commission provides examples of positive measures adopted by member states in this area. Finally, various recommendations are made to ensure that the use of force is in keeping with international human rights standards.

<sup>2</sup> The Commission wishes to express its gratitude for the information received from the following states: Argentina, Bolivia, Chile, Colombia, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Trinidad and Tobago, United States, Uruguay, and Venezuela.

<sup>3</sup> In addition, the Commission is grateful for the information received from civil society organizations, networks of civil society organizations, and other private actors, to wit: Argentina: Asociación Pensamiento Penal (APP), and Centro de Estudios Legales y Sociales (CELS); Brazil: Força Sindical, Universidade Federal da Paraíba (UFPB), Human Rights Clinic, Faculdade Damas; Chile: Observadores y Defensores de los Derechos Humanos; Colombia: Colombia Diversa, the Public Actions Group of the Universidad Icesi of Cali and the Law School at the Universidad de San Buenaventura, Medellín campus, Instituto de Victimología Bartolomé de las Casas of the city of Tunja, Corporación Jurídica Yira Castro (CJYC); Costa Rica: International Human Rights Clinic at Santa Clara University School of Law, Red Water Pond Road Community Association (RWPRCA), 22 students from the course on Principles of Public International Law at the Universidad de Costa Rica, Guanacaste campus, the Centro de Derecho Ambiental y de los Recursos Naturales (CEDARENA); Cuba: Directorio Cubano Democrático; Guatemala: Peace Brigades International –Guatemala Project, Unidad para la Protección de Defensoras y Defensores de Derechos Humanos Guatemala (UDEFEHUA); Honduras: Asociación para una Ciudadanía Participativa (ACI PARTICIPA); Paraguay: Coordinadora Derechos Humanos Paraguay (CODEHUPY); Peru: Instituto de Defensa Legal (IDL), Coordinadora Nacional de Derechos Humanos (CNDDHH); United States: *Latino Justice* PRLDEF, Philip D. Althouse, Attorney, International Human Rights Clinic at Santa Clara University School of Law, Red Water Pond Road Community Association (RWPRCA); Venezuela: Law Office allied with the Fundación Pro Bono Venezuela; Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (Centro Prodh).

## B. Applicable Standards on the Use of Force

6. Every state, particularly its law enforcement officials, has the obligation to guarantee security and safeguard public order.<sup>4</sup> From this general obligation arises the power of states to make use of force, a power that is limited by the observance of human rights, for: “While state agents may have recourse to the use of force, and in some circumstances this might require even the use of lethal force, the state’s power is not unlimited so as to attain its aims independent of the seriousness of certain actions and the culpability of their perpetrators.”<sup>5</sup> The fundamental rights to life and humane treatment set out in Article I of the American Declaration of the Rights and Duties of Man and in Articles 4 and 5 of the American Convention cover not only the State’s negative obligation of refraining from denying life or from causing suffering to people under its jurisdiction; they also demand that those rights be protected and preserved. Thus, the State’s actions in discharging its duties of security and law and order must ensure that any risk to those rights is minimized by conducting careful scrutiny in strict compliance with the international principles and standards set out below.<sup>6</sup>

7. Given the irreversible nature of the possible consequences of the use of force, the IACHR conceives of it 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.”<sup>7</sup> 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>8</sup> These principles are based on the international obligations contracted by the states in respect of human rights seen in light of international instruments such as the *Basic Principles on the Use of Force*<sup>9</sup> and the *Code of Conduct for Officials*<sup>10</sup>, which have helped give content to those obligations. The *Basic Principles on the Use of Force*, at paragraph 9, provide:

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.<sup>11</sup>

<sup>4</sup> IACHR, [2006 Annual Report, Chapter IV, Human Rights Developments in the Region, Venezuela](#), para. 208. See also: I/A Court HR. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 70.

<sup>5</sup> I/A Court HR, *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 262. See also: IACHR, [Report on Terrorism and Human Rights](#), October 22, 2002, para. 89.

<sup>6</sup> IACHR: Report No. 26/09, Case 12.440, Admissibility and Merits, Wallace de Almeida, Brazil, March 20, 2009, paras. 102-103, 105; Report No. 43/08, Merits, Leydi Dayán Sánchez, Colombia, July 23, 2008, paras. 51, 54-56; and Report No. 92/05, Merits, Michael Gayle, Jamaica, October 24, 2005, paras. 61-64.

<sup>7</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev. 1, adopted March 7, 2006, para. 64.

<sup>8</sup> IACHR: *Luis Jorge Valencia Hinojosa*, Ecuador, Report No. 90/14, Admissibility and Merits, November 4, 2014, para. 181; [Report on Terrorism and Human Rights](#), October 2, 2002, para. 87; [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 114. See also: I/A Court HR: *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 Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 275, para. 330; and *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>9</sup> United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

<sup>10</sup> United Nations, *Code of Conduct for Law Enforcement Officials*. Adopted by United Nations General Assembly resolution 34/169, of December 17, 1979.

<sup>11</sup> *Basic Principles on the Use of Force*, Principle No. 9.

8. As for the **principle of legality**, the Commission has referred to the state obligation “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>12</sup> For its part, the Inter-American Court, on referring to the principle of legality, has noted that the use of force “should be aimed at achieving a legitimate objective, and there should be a regulatory framework that considers how to act in that situation.”<sup>13</sup>

9. When it comes to the use of lethal force international human rights law has emphasized in particular that its exceptional use must be regulated by law in a sufficiently clear manner, and in addition it shall be interpreted narrowly so as to minimize its use in every circumstance.<sup>14</sup> In the words of the Special Rapporteur on extrajudicial executions: “The specific relevance of domestic law stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defence for the protection of the right to life,”<sup>15</sup> for it will be based on it that the question of its arbitrary or excessive use will be examined to determine possible liabilities. This is why Principle 11, enshrined in the *Principles on the Use of Force*, with a view to assisting the states in drawing up laws and regulations that regulate the use of force, states that the rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.<sup>16</sup>

10. The **principle of absolute necessity** refers to the possibility of having recourse to the “defensive and offensive security measures ... 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>17</sup> which is set forth in Principle 4 of the *Principles on the Use of Force*, when it establishes:

<sup>12</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 97.

<sup>13</sup> I/A Court HR, *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.

<sup>14</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 115. See also: I/A Court HR, *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, paras. 68, 75.

<sup>15</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, April 1, 2014, para. 29.

<sup>16</sup> *Basic Principles on the Use of Force*, Principle No. 11.

<sup>17</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 116.

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.<sup>18</sup>

11. In this respect, the Inter-American Court has indicated that based on the circumstances of each 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.”<sup>19</sup> Specifically, it has also established that one cannot show that this requirement has been met when the persons do not represent a direct danger, “even when the failure to use force results in the loss of the opportunity to capture them.”<sup>20</sup>

12. Finally is the **principle of proportionality**, which has been understood by the Commission 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>21</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>22</sup> are determinants when it comes to evaluating the proportionality of the interventions by the authorities. 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>23</sup> for the principle of proportionality requires law enforcement officials deploying force “to reduce to a minimum the harm or injuries caused to anyone...”<sup>24</sup> at all times.

13. The organs of the inter-American human rights system have also agreed when noting that the duty to engage in adequate preventive planning of the activities of law enforcement agents is intimately bound up with the principle of proportionality, on understanding that it necessarily entails minimizing the use of force. Such planning requires an evaluation of the situations that threaten the values that law enforcement officers are called on to safeguard, while also making it possible to weigh the use of less harmful alternative means to address them.<sup>25</sup>

### Means of Protection and Use of Force. Lethal and Less Lethal Weapons

14. To carry out this very lofty responsibility, the state, in addition to bringing its domestic regulations into line with international standards, also has the obligation to implement methods of selection

<sup>18</sup> *Basic Principles on the Use of Force*, Principle No. 4.

<sup>19</sup> I/A Court HR: *Case of Montero Aranguren et al. (Detention Center of Catia)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 67 and 68; and *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>20</sup> I/A Court HR: *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 134; *Case of Nadege Dorzema et al.* Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 85; and European Court of Human Rights, *Case of Kakoulli v. Turkey*, No. 38595/97. Judgment of November 22, 2005, para. 108.

<sup>21</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 119.

<sup>22</sup> *Basic Principles on the Use of Force*, Principle No. 9.

<sup>23</sup> I/A Court HR: *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 134; and *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>24</sup> I/A Court HR, *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 136.

<sup>25</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 187. See also: I/A Court HR, *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, paras. 86-87.

of individuals and to ensure they have the necessary and appropriate means for covering their obligations, offering constant training and education, and regularly evaluating their capabilities from an integral perspective.

15. To carry out its duty to uphold human rights, the states are obligated to outfit their agents of order with arms and munitions, including less lethal disabling arms<sup>26</sup>, “that would allow for a differentiated use of force and firearms.”<sup>27</sup> In addition, the states also have the obligation to provide their officers with protective equipment such as shields, helmets, gas masks, bulletproof vests, protective body suits, and bulletproof means of transportation.<sup>28</sup> It is understood that the appropriately equipped officer, both with weapons (lethal and less lethal) and protective equipment, will necessarily find a scenario that favors a graduated reaction to the threat sought to be repelled or contained, and respecting international standards.<sup>29</sup>

16. In view of the consequences that could result from the inappropriate and abusive use of less lethal weapons, the IACHR emphasizes the need to develop normative provisions, protocols, and manuals that consider absolute prohibitions of their use in contexts or with persons that may imply greater risk<sup>30</sup>. For example, tear gas should not be used in closed spaces or with persons who have no place to move away from the crowd or to evacuate.<sup>31</sup> The use of less lethal weapons should be preceded by formal notices so as to give persons the opportunity to evacuate the zone without provoking situations of panic or stampedes, and guidelines should be put in place for attributing responsibility for their incorrect use.

17. The states should also develop standards that regulate critical aspects of their use, such as the composition and concentration of the irritant chemical substances and of the water used in water cannon trucks<sup>32</sup>; the levels of discharge of electrical devices, the volume and frequency in the new acoustic arms, as well as the levels of precision required for projectiles.

18. In the face of the great expansion of industry in the manufacture and sale of less lethal weapons, and the variety of their characteristics, mechanisms for causing harm, and risks associated with their use, it is essential to have clear and appropriate international rules, for the lethality of the weapon will depend

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<sup>26</sup> The Special Rapporteur on extrajudicial executions understands that the expression “non-lethal incapacitating weapons” used in the basic principles resulted from “the relative lack of information on the risks associated with various weapons when the Basic Principles were drafted, [and so] it is not surprising that this reads almost like an unqualified endorsement of what today are commonly referred to in law enforcement as “less-lethal weapons.” United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, April 1, 2014, para. 101.

<sup>27</sup> *Basic Principles on the Use of Force*, Principle No. 2. See also: IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, paras. 115, 134.

<sup>28</sup> *Basic Principles on the Use of Force*, Principle No. 2.

<sup>29</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 115. See also: I/A Court HR: *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 126; and *Case of Nadege Dorzema et al.*, Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 80.

<sup>30</sup> One should include consideration of restrictions on the use of such weapons in the presence of children, pregnant women, persons with disabilities or compromised health, and the elderly. On this point, AI considers that officers authorized to use force should not be allowed to carry knives or other bladed weapons. See: AI, [Use of Force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). August 2015.

<sup>31</sup> United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note from the Secretary General, A/69/265, August 6, 2014, para. 71. In this respect, the ICRC has also held that the use of chemicals (tear gas) should be strictly limited to such as the control of disturbances by agents authorized by law for internal control activities. See: ICRC. Statement: ICRC position on the use of toxic chemicals as weapons for law enforcement. 2 June 2013. Available at: <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/2013-02-06-toxic-chemicals-weapons-law-enforcement.htm>

<sup>32</sup> On this point, the National Institute of Human Rights of Chile, in its 2014 annual report, highlighted the importance of making reference, in the *Protocols for the Maintenance of Public Order* of the Carabineros, to the composition of the gas in the deterrent chemical munitions and of the water used by the water cannon vehicles, so as to avoid negative health impacts in the demonstrators and in the personnel of the Carabineros. See: INDH. [Informe Anual Situación de los Derechos Humanos en Chile 2014](#). P. 66.

on its use, the context in which it is used, and the particular conditions of the person using it.<sup>33</sup> In many cases the negative impacts on physical integrity or life have been caused by the misuse of such weapons, for “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>34</sup> This is the case of rubber munitions shot from a short distance at the upper part of the body, tear gas fired at persons’ bodies, irritating gases used against children and the elderly, and pistols that fire an electric charge used against persons with heart conditions. Therefore, one should bear in mind not only the design or circumstances of the weapon, but also other factors related to their use and control.

19. As for lethal weapons, the IACHR wishes to recall that under international law their use is considered a measure of last resort, when less extreme measures would be insufficient.<sup>35</sup> As the Special Rapporteur on extrajudicial executions Christof Heyns stated during the hearing before the IACHR on *Social protest and human rights in the Americas*, the use of lethal force is governed by the principle of protection of life, since its use will be legitimate, proportional, and necessary only if it is the means of last resort available to protect another life, and, therefore, its use will not be justified when seeking, for example, to protect property, avoid non-serious injury, or re-establish public order.<sup>36</sup> In addition, it is reiterated that only those law enforcement officials who are authorized to carry lethal weapons, and have been properly trained in their use, may have access to them. In this regard, the Inter-American Court has noted that when there is an intent to use firearms, and in order to avoid confusion and insecurity, at every moment officers in charge of the use of force must identify themselves as such and give a clear warning of that intent.<sup>37</sup> According to the Court, this obligation takes on a special character in operations and in situations which by their nature endanger the fundamental rights of persons.<sup>38</sup>

20. The Commission wishes to note that only those officials authorized by law who have completed specialized training may carry firearms. And the training shall include clearly studying the legal provisions that regulate the use of lethal force, accompanied by adequate training so that in the exceptional case in which their use is merited they have sufficient criteria for doing so.<sup>39</sup>

<sup>33</sup> United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, April 1, 2014, paras. 103-106.

<sup>34</sup> United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary General, A/69/265, August 6, 2014, para. 69.

<sup>35</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 117. See also: *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 131; *Case of Montero Aranguren et al. (Detention Center of Catia)*, supra, para. 69, and *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 84; *Basic Principles on the Use of Force*, Principle No. 9; and United Nations, Human Rights Council, *The Promotion And Protection Of Human Rights In The Context Of Peaceful Protests*. Resolution A/HRC/RES/25/38, April 11, 2014.

<sup>36</sup> IACHR, [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>37</sup> I/A Court HR, *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 135.

<sup>38</sup> I/A Court HR, *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 135. In addition, the *Principles on the Use of Force* establish that the warning must be given with sufficient time for it to be taken into consideration, unless the law enforcement officers are unduly endangered or there is a risk of death or serious harm to other persons, or it is obviously inadequate or useless given the circumstances. See, *Basic Principles on the Use of Force*, Principle No. 1.

<sup>39</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 115. See also: I/A Court HR: *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, para. 126; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 81. *Cfr.* European Court of Human Rights (ECtHR) *Case of McCann et al. v. United Kingdom* [GS], No. 18984/91. Judgment of September 27, 1995, para. 151, and *Case of Kakoulli v. Turkey*, No. 38595/97. Judgment of November 22, 2005, paras. 109 and 110.

## Selection, Training and Evaluation of Law Enforcement Officials

21. Any effort would be for naught if in addition “the States do not educate and train the members of their armed forces and security agencies pursuant to the principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject.”<sup>40</sup> In order for the training and examination of law enforcement officials to be considered proper, the *Principles on the Use of Force* dictate the need to pay special attention to: (a) police ethics and human rights, especially in the investigative process; (b) technical means, with a view to limiting the use of force and firearms – such as peaceful settlement of conflicts, understanding crowd behavior, and (c) the methods of persuasion, negotiation, and mediation.<sup>41</sup> In this regard, according to information made available to this IACHR, several states have incorporated international standards in the training received by officers entrusted with the use of force.<sup>42</sup>

22. It is similarly important to have rigorous and transparent processes for selecting personnel, together with the offer of fair and competitive salaries and labor and social benefits that make it possible to identify persons who “have appropriate moral, psychological and physical qualities for the effective exercise of their functions.”<sup>43</sup>

23. The Commission highlights the need to continue making progress by enhancing rigorous selection processes, constant evaluations, technical trainings, and human rights trainings on issues ranging from negotiation and conflict resolution techniques to gradual escalation in force when so allowed to attain legitimate ends, in keeping with the principles of legality, absolute necessity, and proportionality mentioned

<sup>40</sup> I/A Court HR: *Case of Montero Aranguren et al. (Detention Center of Catia)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 77; and *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 87. See also: IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 115.

<sup>41</sup> *Basic Principles on the Use of Force*, Principle No. 20. Moreover, the IACHR notes that the Jamaica Constabulary Force Training Manual incorporates the standards contained in the Code of Conduct for Law Enforcement Officials regarding the principles of proportionality and necessity. Jamaica Constabulary Force (JCF) Training Manual, pp. 5-6. Available at: [http://www.oas.org/juridico/spanish/mesicic2\\_jam\\_extracts\\_from\\_JCF\\_manual\\_Vol1\\_part1.pdf](http://www.oas.org/juridico/spanish/mesicic2_jam_extracts_from_JCF_manual_Vol1_part1.pdf)

<sup>42</sup> Bolivia reported that, in coordination with the International Committee of the Red Cross (ICRC) has developed the *Manual of Basic Techniques of Police Intervention in the context of Human Rights* and conducted training courses in techniques and procedures for maintaining public order in the framework of international standards of use of force (Response of Bolivia to the consultation questionnaire on the use of force circulated by the IACHR. pp. 17, 23-24). The State of Honduras informed the Commission on “[...] the development of training programs and training for police and judicial officials to promote respect for the rights of all persons, regardless of sexual orientation or gender identity, in coordination with people of sexual diversity since 2015” (IACHR, *Human Rights Situation in Honduras*, December 31, 2015, para. 334). The Commission also welcomes the assistance and training by the ICRC for the Mexican security forces, both police and military, on the use of force<sup>42</sup>, as well as the signing in February 2013 of the ICRC’s cooperation agreement with the Ministry of Interior of Mexico so as to provide technical assistance in drafting a law on the legitimate use of force by the police and military authorities (Proceso. [Cruz Roja Internacional asesorará a militares sobre uso de la fuerza](#). April 8, 2015. The State of Mexico also mentioned this assistance in its response to the consultation questionnaire on the use of force issued by the IACHR, pag. 29; and IACHR, *Human Rights Situation in Mexico*, December 31, 2015, para. 168.) On the other hand, the IACHR welcomes trainings on “the provisions of international human rights law” by the International Committee of the Red Cross (ICRC) – organized by the Human Rights Department of the National Police of Paraguay – for the departmental commissioners in the country’s 17 departments, whose mission is to accompany large-scale police operations and provide advisory services on the treatment of vulnerable groups, applying a human rights perspective (IACHR. Hearing on [Reports of violence against peasants in Paraguay](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.) The IACHR also notes that Paraguay, in the 153<sup>rd</sup> regular period of sessions, reported that the women’s anti-riot squad was led by a commander who has had training in human rights with a gender perspective (IACHR. Hearing on [Reports of violence against peasants in Paraguay](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.)

<sup>43</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 91. See also: *Basic Principles on the Use of Force*, Principle No. 18. Thanks to the responses given by the states and civil society to the questionnaire on the use of force, the IACHR learned of interesting processes for selecting and training law enforcement officials, as in the district of General Pueyrredón in the province of Buenos Aires, where it was reported that a broad call had been issued to prospects from that locality, as well as selection processes that involved comprehensive evaluations entrusted to the Law School at the Universidad Nacional de Mar de Plata. See also: <http://www.mardelplata.gob.ar/policialocal>

above. The IACHR places itself at the states' disposal to provide technical support they may require in this regard.

### C. Legislative Initiatives and Other Regulatory Provisions

24. On the previous point, the Commission already referred to the principle of legality in the use of force and how it is related to the state obligation to bring domestic provisions into line with international principles and standards, and to set aside those provisions at odds with it. In this section the different legislative initiatives and other provisions aimed at regulating the use of force by law enforcement officials and adopted during the period covered by this report will be examined, based on information that has been made available to the IACHR. The information presented in this section does not reflect the totality of legislative initiatives and other measures that could be adopted in the hemisphere in 2015 but only reflects the information received through the questionnaire, pronouncements of international organizations, publications state entities, public information circulated in the media and a source close to the Commission through its various tools for monitoring the situation of human rights in the region.

25. In the responses from states and civil society, the Commission notes the wide-ranging consideration of the *Basic Principles on the Use of Force* and the *Code of Conduct for Law Enforcement Officials* in the various statutes, regulations, protocols, manuals, and other instruments that address the issue of the use of force by security forces in several countries of the hemisphere, although on occasion it may be merely declarative.

26. In the time frame covered by this report the Commission notes the adoption of several initiatives related to the use of force.<sup>44</sup> One example is in Argentina with the coming into force in September of this year (2015) of a protocol aimed at regulating the interventions of the Buenos Aires Province Prison Service (Servicio Penitenciario Bonaerense) in prison conflicts, called the *Principles for the Use of Force by the Buenos Aires Province Prison Service*. Those principles include important restrictions on the use of firearms, and sets forth principles such as “the duty to intervene and protect, exceptionality, legality, opportunity, moderation, proportionality, and accountability.”<sup>45</sup> According to the information provided to the IACHR, the protocol also includes the concept of the gradual intervention of prison officials, with a variety of conflict resolution methods.<sup>46</sup>

27. In Brazil, on December 22, 2014, Law No. 13,060-2014 was promulgated, the *Federal Law on discipline and use of instruments with less offensive potential by public security agents throughout the national territory*<sup>47</sup>; it regulates the use of instruments with less potential to inflict harm by public security agents. The Law provides that the use of such instruments should respect the principles of legality, necessity,

<sup>44</sup> For example in Chile the Protocols for the Maintenance of Public Order by the Carabineros de Chile ([Protocolos para el Mantenimiento del Orden Público por parte de Carabineros de Chile](#)), as referred to by the State in its response to the questionnaire on the use of force circulated by the IACHR. P. 25; in Colombia, the *Regulation for the use of force and the use of devices, munitions, and non-lethal arms in the National Police*, according to the Colombian State in its response to the questionnaire on the use of force circulated by the IACHR. P. 24; in Ecuador, the Regulation on the legal, appropriate, and proportional use of force by the National Police in Ecuador ([Reglamento de uso legal, adecuado y proporcional de la fuerza para la Policía Nacional del Ecuador](#)) R.O. No. 314/4472, August 19, 2014; in Mexico City, Mexico, Agreement 35/2014, Policing Protocol for the coverage and response to emergencies in the public thoroughfare by the rescue and medical emergencies squad of the Ministry of Public Security of the Federal District (SSPDF), August 20, 2014; Agreement 01/2015, Policing Protocol of SSPDF for the arrest of alleged perpetrators under the accusatory penal system ([Protocolo de Actuación Policial de la SSPDF para la detención de probables responsables en el marco del sistema penal acusatorio](#)); and Policing Protocol of SSPDF for the preservation of the crime scene or the findings and the chain of custody, January 14, 2015; as indicated by Mexico in its response to the consultation questionnaire on the use of force made by the Commission. P. 9.

<sup>45</sup> Response from CELS to the questionnaire on the use of force circulated by the IACHR. P. 3.

<sup>46</sup> Response from CELS to the questionnaire on the use of force circulated by the IACHR. P. 3.

<sup>47</sup> Law No. 13,060. Regulating the use of instruments with less offensive potential by the public security agents throughout the national territory ([Disciplina o uso dos instrumentos de menor potencial ofensivo pelos agentes de segurança pública, em todo o território nacional](#)). December 23, 2014.

reasonableness, and proportionality, and demands that contents on the instruments for making appropriate use of force must be included in the training of public security agents. The Law does not make reference to the special duties to use less lethal arms in the context of demonstrations and social protests; it only provides that the Executive branch shall issue the necessary regulations. On May 4, 2015, after serious acts of repression of teachers' protests in Paraná, the government of that state promulgated Decree 1,238-2015<sup>48</sup> for the purpose of regulating and standardizing the use of less lethal weapons by public security agents. The Decree establishes that the handling, storage, transport, and use of such weapons requires specialized training and should be conducted "exclusively by experts," who must know the "techniques, the risks, and the dangers stemming from their use." The IACHR welcomes the steps taken by the State to bring the use of firearms and less lethal instruments in protests into line with the relevant international standards, and it urges that such measures be reinforced to ensure their effectiveness.

28. The Commission received information from the Honduran government about changes that might have occurred in the regulatory framework, public policy design and creation of specialized units for protection of human rights of people deprived from their liberty<sup>49</sup>, wishing to emphasize on this occasion the approval of the new General Rules of the *National Penitentiary System Act*, Executive Agreement No. 322-2014, sanctioned by the Executive on December 2, 2014, and published in the Official Gazette on March 12, 2015<sup>50</sup>, which would regulate the National Penitentiary System Act by establishing the organization and regulation of the National Penitentiary Institute and the penitentiary centers "[...] to achieve its primary purpose of protecting society, rehabilitation, re-education and social reintegration [...]" of people in their custody. The Commission notes that under the Rules only the Director of the penitentiary facility, or in his absence the Deputy Director or the Chief of Penitentiary Security of highest rank, may authorize the use of force, which must comply with legislation and standards of the area.

29. For its part, Panama reported on the adoption of Draft Law No. 152, which modifies Law 18 of the National Police, as it restricts the use of pellets (whether plastic, lead, or rubber), or any type of arm whose main effect is to cause injury by fragments that cannot be located by X-ray in the human body, in peaceful demonstrations.<sup>51</sup> If approved by the Executive, the law would represent progress in carrying out the state obligation to regulate the use of less lethal force in the context of efforts to control social mobilizations.

30. On August 15, 2015, Peru enacted Legislative Decree No. 1186, which regulates the use of force by the National Police of Peru.<sup>52</sup> That same month, the National Police issued a directive establishing the rules and procedures for the use of nonlethal and lethal police-issue weapons in police actions.<sup>53</sup> Article 8.3<sup>54</sup>

<sup>48</sup> Official Gazette of the State of Paraná. [Decree No. 1,238](#). May 5, 2015. For purposes of the Decree, less lethal weapons are considered chemical gasses (tear gas and pepper spray), explosive grenades, high emission grenades, pistols for launching chemical munitions, pistols with controlled impact munitions, and incapacitating electronic darts, which could be use in crowd control or its equivalent ("tumultos or equivalentes").

<sup>49</sup> IACHR, *Report on Human Rights Situation in Honduras*, December 31, 2015, para. 304.

<sup>50</sup> Republic of Honduras, La Gaceta, [Reglamento General de la Ley del Sistema Penitenciario Nacional](#), Executive Agreement No. 322-2014, Publication No. 33,680, March 12, 2015.

<sup>51</sup> Response of Panama to the questionnaire on the use of force circulated by the IACHR. P. 11. See also: National Assembly of Panama. [Proposed law 152](#); El Nuevo Herald. [Parlamento de Panamá aprueba ley que prohíbe uso de perdigones en protestas](#). August 6, 2015.

<sup>52</sup> Office of the President of the Republic. [Legislative Decree No. 1186](#), "Regulating the use of force by the National Police of Peru." August 15, 2015.

<sup>53</sup> National Police of Peru. [DIRECTIVE DPNP No. 03-17-2015-DIRGEN-PNP/EMG-PNP-B](#). August 21, 2015.

<sup>54</sup> Article 8.3 of Legislative Decree No. 1186: Rules of Conduct for the exceptional use of lethal force. Personnel of the National Police of Peru, on an exceptional basis, may make use their firearms when strictly necessary, and only when less extreme measures would be insufficient or inadequate, in the following situations:

a. In self-defense or in defense of others in the event of real and imminent danger of death or serious injury.

of Legislative Decree No. 1186 provides that “personnel of the National Police of Peru, on an exceptional basis, may make use of their firearms when strictly necessary, and only when less extreme measures would be insufficient or inadequate, when there is a real or imminent threat to the lives of police personnel or other persons, through the actions of a participant in a violent mass assembly.” Similarly, the National Police directive states that “the use of force and lethal weapons during assemblies and demonstrations demands closer examination.” It provides that “in dispersing illicit but nonviolent assemblies, police officers shall avoid the use of force or, if that is not possible, they shall restrict it to the necessary minimum. In dispersing violent assemblies, law enforcement officials may use lethal weapons when they cannot use less dangerous means and solely to the minimum extent necessary.” It also states that “nonlethal weapons shall be used in different social conflicts (workers, trade unions, students, evictions, etc.) when the demonstrators resort to violence or aggression or make use of blunt weapons, endangering the physical integrity of the public or police personnel; if the demonstrators endanger the physical integrity of the public or police personnel, lethal weapons may be used.” In its reply to the questionnaire, the civil society organization IDL described Legislative Decree No. 1186 as a broadly positive instrument. Nevertheless, it said that the rules appear to establish “differentiated treatment for the use of lethal force during social conflicts” and, to avoid that, “more than 115,000 officers must be trained in the contents of those rules, taught techniques to avoid the escalation of violence, given target training, and provided with sufficient nonlethal weapons.”<sup>55</sup>

31. The IACHR has received information from other regulatory measures of the use of force which could be incompatible with international obligations of States in this matter. Great concern has been expressed by the civil society after the publication in Nicaragua’s gazette, on December 18, 2015, of Law No. 919, *Sovereign Security Act*, by which the National Sovereign Security System is created, under the direction of the President of the Republic, who, supported by the Army of Nicaragua, will coordinate actions taken by its members in order to face “[...] any risk, threat or conflict that threatens the sovereign security.”<sup>56</sup> The Act considers as a threat to sovereign security, for example, “any illegal act that goes against the Nicaraguan state or its institutions [...] any act tending to consummate [...] sabotage, rebellion, treason against the State [...] any other act or illegal activity or natural factor that threatens the integral development of individuals, families and the community.” The laxity with which some sovereign security objectives are addressed, or the definition of threat itself or other terms used in the wording, could facilitate military intervention in internal matters, particularly in the context of protests and public demonstrations.

32. According to information that is a matter of public knowledge, Mexico adopted a Manual on the Military Use of Force Applicable to the three Armed Forces (*Manual de uso militar de la fuerza, de aplicación común a las tres Fuerzas Armadas*) in which reference is made to the international principles that govern the use of force by law enforcement officials.<sup>57</sup> The Commission wishes to emphasize that the manual

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- b. When a situation arises that poses a serious threat to life during the commission of a particularly grave crime.
  - c. When a real and imminent danger of death or serious injury arises as a consequence of resistance offered by a person who is to be arrested.
  - d. When a person’s life is placed in real, imminent, and present danger by a person who is escaping.
  - e. When a real or imminent danger of death of police personnel or any other person arises from the action of a participant in a violent mass assembly. Available at: <http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-regula-el-uso-de-la-fuerza-por-parte-decreto-legislativo-n-1186-1275103-2/#sthash.Ip6IAoTq.dpuf>.

<sup>55</sup> Reply of the National Coordinator for Human Rights and the Legal Defense Institute (IDL) to the consultation questionnaire distributed to the States and civil society by the IACHR to prepare an annual overview of the situation of human rights in the hemisphere, Chapter IV.A of the 2015 Annual Report. See also: *El Peruano*, Legislative Decree No. 1186, August 15, 2015, available at: <http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-regula-el-uso-de-la-fuerza-por-parte-decreto-legislativo-n-1186-1275103-2/>

<sup>56</sup> Republic of Nicaragua, La Gaceta, Law No. 919, *Sovereign Security Act*, published on December 18, 2015. See: La Prensa: [Vigente ley de Seguridad Soberana que “militariza el Estado”](#), December 26, 2015; y [Ley de Seguridad Soberana: ¿Por qué es polémica?](#), October 28, 2015; El Nuevo Diario, [Entra en vigencia Ley de Seguridad Soberana](#), December 24, 2015.

<sup>57</sup>Excelsior. [Publican manual de uso militar de fuerza](#). May 31, 2014. See also: Diario Oficial de la Federación. [Manual de uso militar de la fuerza, de aplicación común a las tres Fuerzas Armadas](#), May 30, 2014.

in question does not fill the gaps already noted by the Special Rapporteur on extrajudicial executions<sup>58</sup>, and notes with concern that it regulates the intervention of the armed forces in contexts of internal order, which, as has already been said, must be restricted to exceptional situations.

33. In the case of Venezuela, the Commission observes with concern a new model of military control of public order that incorporates resolution 008610, *Rules on the Action of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations*, of the Ministry of Defense, published in the Official Gazette of January 27, 2015<sup>59</sup>, which seeks to regulate the actions of the armed forces “in functions involving controlling public order, social peace, and citizen co-existence in public assemblies and demonstrations,” which authorizes the use of chemical agents and lethal force in public assemblies and demonstrations. The Commission addressed what that resolution means in depth in chapter IV of this annual report<sup>60</sup>, in addition to having requested information from the State on February 27, 2015, pursuant to Article 18 of the Statute.<sup>61</sup> The IACHR did not receive any response. The pronouncement of the Office of the UN High Commissioner for Human Rights (OHCHR) was along similar lines when rejecting the authorization extended to the Venezuelan Armed Forces to participate in tasks of repressing demonstrations and especially the provision allowing the use of firearms in performing those tasks.<sup>62</sup>

34. The IACHR takes this opportunity to reiterate the states’ obligation to bring their domestic legislation into line with applicable international standards in the area of human rights, and to repeal or strike down such legislation that is at odds with such rules and standards. The Commission calls on the states, when undertaking such efforts, to adopt rules that clearly identify those occasions that would merit the participation of civilian law enforcement officials and the different degrees of intervention, governed by the above-referenced principles, and eliminating gaps that could allow for discretion. In designing the rules, special emphasis should be placed on the different scenarios in which the presence of law enforcement officers is required, and they should have clear parameters applicable, for example, to evictions, which must necessarily be different from those that apply to public demonstrations or prison riots, or confrontations with private persons or groups engaged in unlawful conduct, among other scenarios.

#### **D. Challenges in the Use Of Force by Different Actors**

35. In this section, the IACHR will make reference to the actors, whether by law or *de facto*, in the use of force: police agents, armed forces, and private agents, and the action observed during the time frame covered by this report. Other aspects that are crucial for the proper performance of their tasks will also be considered.

<sup>58</sup> After the visit by the Special Rapporteur on extrajudicial executions to the country from April 22 to May 2, 2013, it was reported that he had “... received a strong impression of the absence on the federal level and most state levels of a coherent and widely recognized legal framework for law enforcement officials on the use of force, including in arrests and demonstrations.” United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum: Mexico. April 28, 2014, para. 30.

<sup>59</sup> Ministry of People’s Power for Defense, *Rules on the Actions of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations*, Resolution No. 008610, Office Gazette No. 40,589, January 27, 2015. See also: Prodavinci. [Esta es la Gaceta Oficial que contiene la Resolución No.008610 del Ministerio de la Defensa](#). January 30, 2015.

<sup>60</sup> IACHR, 2015 Annual Report, Chapter IV, Venezuela, December 31, 2015 paras. 123-128.

<sup>61</sup> IACHR. Request for information, Article 18 of the Statute of the IACHR; Resolution No. 008610 of the Ministry of People’s Power for Defense. Venezuela. February 18, 2015.

<sup>62</sup> United Nations. [OACNUDH: sobre control de manifestaciones públicas en Venezuela](#), February 10, 2015.

## 1. As regards State Actors

### *Police Corps*

36. According to the IACHR, 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>63</sup> The Special Rapporteur on extrajudicial executions has said: “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 the police] play an important role in protecting society from violence, enforcing justice, and securing the rights of people.”<sup>64</sup>

37. 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 conflicts:

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>65</sup>

38. 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.

39. The Commission observes that many provisions, in addition to giving police officers responsibility for surveillance and for maintaining public order, establish specialized groups within the Police for managing public order. Accordingly, in Colombia the Anti-Disturbances Mobile Squadron (ESMAD: Escuadrón Móvil Antidisturbios), under the National Police<sup>66</sup>; in Ecuador, the Company for Maintenance of Order (CMO: Compañía del Mantenimiento del Orden)<sup>67</sup>; in El Salvador, the Unit for Maintenance of Order (UMO: Unidad de Mantenimiento del Orden), under the National Civilian Police<sup>68</sup>; in Nicaragua, the Antiriot Brigade of the National Police; in Paraguay, the antiriot women’s platoon<sup>69</sup>; in Peru the National Police has a Rapid Intervention Bureau (Dirinrap)<sup>70</sup>; and so on. In the section entitled *USE OF FORCE: Context and groups specially affected in their Fundamental Rights*, the IACHR will go into greater detail regarding the trend observed in how these actors respond in different scenarios. From the series of unfortunate events made

<sup>63</sup> IACHR: *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*, OAS/Ser. I/V/II., Doc.57, December 31, 2009, para. 77.

<sup>64</sup> UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/26/36, April 1, 2014, para. 22.

<sup>65</sup> IACHR, *Report on Citizen Security and Human Rights*, December 31, 2009, paras. 100-101.

<sup>66</sup> Established by Resolution 01363 of 1999, by which is added Resolution 0144 of 1999, as a deconcentrated entity of the Bureau of Citizen Security.

<sup>67</sup> National Police of Ecuador. [Company for Maintenance of Order](#)

<sup>68</sup> Response from El Salvador to the questionnaire on the use of force circulated by the IACHR. P. 8.

<sup>69</sup> IACHR. Hearing on [Reports of violence against peasants in Paraguay](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.

<sup>70</sup> Presidency of the Republic of Peru. [Presidente Humala presentó nueva fuerza policial de élite que reforzará seguridad ciudadana](#). May 27, 2014. See also: Pro&contra. [Se inauguró nueva dirección de intervención rápida de la PNP](#). May 27, 2014; Canaln.pe. [Ministerio del Interior presentó la nueva Dirección de Intervención Rápida](#). May 27, 2014.

known to the Commission, and briefly referred to throughout this report, one identifies a common denominator: the failure to observe the exceptional nature that should characterize the use of force generally, and even more so the use of lethal force.

40. Police bodies, in their interventions aimed at preserving internal order, would appear to have recourse to the use of force as a first resort, which is characteristic of military formations. As noted by the IACHR on 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>71</sup>

### **Military Forces**

41. On the other hand, the Commission observes that in several countries of the hemisphere military forces are allowed to participate in internal control activities. For example, in Brazil, the security force responsible for maintaining public order in contexts of protests and demonstrations is the Military Police, who administratively answer to the state governments.<sup>72</sup> In Chile we find that the Carabineros of Chile, which is defined as “a technical police institution military in nature [whose function] is to ensure and maintain public order and internal public security throughout the territory ... and to perform all other functions entrusted to it by the Constitution and the law.”<sup>73</sup> Guyana reported to the Commission that its police force is a “paramilitary entity.”<sup>74</sup> In Honduras, the IACHR noted, based on information received as a result of the on-site visit conducted from December 1 to 5, 2014, “the existence of a process of militarization to address insecurity and an ‘open fight against organized crime’ without a clear process for strengthening the national police”<sup>75</sup>, a trend which has been reflected, for example, in the broad participation of the armed forces in citizen security functions<sup>76</sup>; the recently-created Public Order Military Police (PMOP: *Policía Militar de Orden Público*) has among its functions “acting quickly in circumstances of insecurity that have a negative impact on public order that constitute emergency situations and/or that affect persons or property, forcing the [PMOP] to mobilize the effective cooperation of its personnel and resources to safeguard peace, public order, and the rule of the Constitution of the Republic.”<sup>77</sup>; the implementation of the program of education and indoctrination of children and adolescents, *Guardianes de la Patria*, in charge of the Armed Forces; among other legal and institutional reforms addressed in depth in the report on *Human Rights Situation in Honduras*.

42. In response to the questionnaire circulated by the IACHR, some actors of civil society expressed concern for the gradually increasing presence of military forces in tasks that fall outside the scope

<sup>71</sup> IACHR, Report on Violence, Children and Organized Crime. OAS/ Ser.L/V/II.Doc.40/15 November 2, 2015, para. 191.

<sup>72</sup> Constitution of the Federative Republic of Brazil. 1988. Article 144. §§ 5 and 6. The Commission has expressed concern about [t]he number of deaths occurring during military police operations, especially in cities like Sao Paulo and Rio de Janeiro, [which] is extremely high.” IACHR, Report on Violence, Children and Organized Crime. OAS/ Ser.L/V/II.Doc.40/15 November 2, 2015, para. 188. The action of the Military Police in Brazil has been scrutinized by Amnesty International in several of its reports, e.g. [You killed my son. Homicides by military police in the City of Rio de Janeiro](#). August 2015. AI states that the number of extrajudicial executions spurred by the practice known as “easy trigger” appears to be on the rise as the inauguration of the 2016 Olympic Games in Rio approaches, [Brazil: ‘Trigger happy’ military police kill hundreds as Rio prepares for Olympic countdown](#). August 3, 2015.

<sup>73</sup> Response from Chile to the questionnaire on the use of force circulated by the IACHR. P. 16. See also: Ministry of National Defense, [Law 18.961](#), Constitutional Organic Law on the Carabineros, published March 7, 1990.

<sup>74</sup> Response of Guyana to the questionnaire on the use of force circulated by the IACHR. P. 6.

<sup>75</sup> IACHR, *Report on Human Rights Situation in Honduras*, December 31, 2015, para. 201.

<sup>76</sup> IACHR, *Report on Human Rights Situation in Honduras*, December 31, 2015, para. 202.

<sup>77</sup> Republic of Honduras. Decree 168-2013. [Law of the Military Police of Public Order](#). August 24, 2013. See also: RT. [Policía militar desaloja protestas del partido opositor en el Congreso de Honduras](#). May 15, 2014. In its *Report on Human Rights Situation in Honduras*, carried out December 1 to 5, 2014, the IACHR carefully examines its creation and role in safeguarding citizen security, in light of the relevant human rights standards. IACHR, *Report on Human Rights Situation in Honduras*, December 31, 2015, paras. 148-161.

of their original authority. Even though no violent incidents were reported, in Argentina, CELS informed the Commission that military forces would be deployed for border control activities aimed at fighting drug trafficking, referring specifically to implementing operations such as Fortín I and II, in which military forces were mobilized to provide logistical support to the Argentine Border Police (Gendarmería) in its work of protecting the borders.<sup>78</sup>

43. In the case of Guatemala, the IACHR was also informed of the deployment of the armed forces to ensure security and internal order, which found expression in: (i) the increase in the number of military forces in police patrols and at police checkpoints; (ii) the establishment of citizen security squads in areas where “high levels of crime” had been detected; and (iii) the use of states of emergency as a means of controlling the population.<sup>79</sup> Similarly, the Commission was informed of Executive Decree 31-2015, which establishes the squads of the Special Reserve Corps for Citizen Security (CERSE: Cuerpo Especial de Reserva para la Seguridad Ciudadana), made up of armed forces officers, whose mission is “to support the Civilian Security Forces in their functions of preventing and fighting organized crime, common crime, and re-establishing or maintaining citizen security when the country’s security circumstances require assistance, or the ordinary means available to the civilian security forces are deemed insufficient.”<sup>80</sup>

44. Mexico reports that the military approach adopted by the executive branch to deal with security challenges is characterized by being exceptional, complementary, at the request of the civil authorities, and “solely when necessary.”<sup>81</sup> In its 2015 *Report on the Situation of Human Rights in Mexico*, the Commission addressed in-depth the Mexican experience of opting for greater military intervention in its “war on drug-trafficking” and violence, which has been accompanied by serious human rights violations as a result of the increase in the excessive use of force.<sup>82</sup> The IACHR noted that it did not observe any initiative that suggests the gradual withdrawal of the Mexican Armed Forces from the ordinary citizen security tasks, thus it considered it vital for the federal government to design specific plans for the devolution of that function to the civilian police forces.<sup>83</sup>

45. Paraguayan civil society organizations reported a similar trend in Paraguay with the amendment in August 2013 of Law 1337/99, *On National Defense and Internal Security*, by which the intervention of the armed forces is authorized in response to “extremely grave situations in which the internal security system prescribed in this law is manifestly insufficient,” without requiring that a state of emergency be declared, but instead that the President of the Republic, by decree, will define the reach scope of the measure in time and the territory covered.<sup>84</sup> It is indicated that since the granting of such broad authority to the National Executive, on August 24, 2013, by Decree No. 103, authorization was given for the intervention of the Armed Forces in the departments of Amambay, Concepción, and San Pedro, which is said

<sup>78</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 19.

<sup>79</sup> IACHR. Hearing on [Report on militarization in Guatemala](#). 153<sup>rd</sup> regular period of sessions. October 28, 2014.

<sup>80</sup> Response of the State of Guatemala and UDEFEGUA to the questionnaire on the use of force circulated by the IACHR. P. 14 and 4 respectively. See also: Ministry of National Defense. [Executive Decree No. 31-2015](#), Squadrons of the Special Reserve Corps for Citizen Security. January 20, 2015.

<sup>81</sup> Response of Mexico to the IACHR’s consultation questionnaire on the use of force, p. 12.

<sup>82</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, December 31, 2015, paras. 17-18, 20, 60-65. In this report the IACHR indicates that according to the Ministry of National Defense (SEDENA: Secretaría de la Defensa Nacional), as of July 2015 it was reported that there were 3,227 persons detained. It also cites a study by specialists at the Centro de Investigación y Docencia Económicas (CIDE) and from the Legal Research Institute of the Universidad Nacional Autónoma de México (UNAM) that shows the rate of lethality of the army as 7.7 civilians killed for every one injured in 2013, escalating to 11.6 in the first quarter of 2014.

<sup>83</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, December 31, 2015, para. 62.

<sup>84</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR. P. 3. See also: Congress of the Paraguayan Nation. [Law No. 5,036, which amends and expands articles 2, 3, and 56 of Law No. 1,337/99, On National Defense and Internal Security](#). August 22, 2013.

to continue as of this writing “despite the reports of human rights violations in the military-police operations in the zone.”<sup>85</sup>

46. During its 153<sup>rd</sup> regular period of sessions, in the hearing on *Human Rights and State of Emergency in Peru*, the IACHR was informed of the frequency with which the government turns to the Armed Forces of Peru to control internal order. It is authorized to do so by Decree-Law 1095.<sup>86</sup> The State informed the Commission that the shortcomings and insufficiencies of the PNP had made Army support necessary in various tasks.<sup>87</sup> In particular, according to information provided by the Peruvian State, in the context of opposition to the Tía María project authorization was given for the intervention of the armed forces in support of the PNP in the province of Islay, department of Arequipa, from May 9 to June 7, 2015.<sup>88</sup> Subsequently, according to information available to the Commission, the government authorized the intervention of the Armed Forces in support of the police in seven departments, from May 26 to June 24, 2015, “for the purpose of ensuring control and maintaining internal order and to avoid acts of violence,”<sup>89</sup> in response to protests scheduled for May 27 and 28.<sup>90</sup> There was also a military presence in the demonstrations led in August 2015 by the workers at the La Oroya Metallurgical Complex after Supreme Resolution No. 152-2015-IN was issued.<sup>91</sup> The outcome, including 60 persons injured and one deceased, led the Commission to request information from the State under Article 41 of the American Convention.<sup>92</sup> That request was answered by the Peruvian State on September 11, 2015, when it reported that the on the end of the public demonstrations after the efforts to pursue a dialogue made by the authorities and the representatives of the workers and authorities in La Oroya.<sup>93</sup>

47. The Commission then learned of the publication of Supreme Resolution 200-2015-IN, which authorized “the intervention of the Armed Forces in support of the National Police of Peru in the provinces of Grau and Cotabambas, department of Apurímac, and in the provinces of Chumbivilcas and Espinar, department of Cusco, from September 25 to October 24, 2015, with the aim of ensuring control and maintaining internal order and to avoid acts of violence or any unlawful act that might be committed on occasion of the mobilizations and any other type of vandalism”<sup>94</sup>; that may have contributed to escalating the violence observed September 28 and 29, when at least three persons were killed and dozens injured.<sup>95</sup> These most recent events were said to have been the basis for the adoption, on September 29, of Supreme Decree No. 068-2015-pcm by which the President of the Republic declared a state of emergency in the provinces of Cotabambas, Grau, Andahuaylas, and Chincheros, in the department of Apurímac, and in the provinces of Chumbivilcas and Espinar in the department of Cusco for 30 days, during which time

<sup>85</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR. P. 4. See also: President of the Republic of Paraguay, [Decree No. 103](#), August 24, 2013, which provides for the use of elements of combat of the Armed Forces of the Nation in internal defense operations in the departments of Concepción, San Pedro, and Amambay.

<sup>86</sup> IACHR. Hearing on [Human Rights and State of Emergency in Peru](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.

<sup>87</sup> IACHR. Hearing on [Human Rights and State of Emergency in Peru](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.

<sup>88</sup> Second report by the Peruvian State related to the request for information on the situation of confrontations between the police and demonstrators at the Tía María mining project, July 10, 2015.

<sup>89</sup> El Peruano. [Supreme Resolution No. 118-2015-IN](#), published May 26, 2015.

<sup>90</sup> Los Andes. [Gobierno autoriza a Fuerzas Armadas tomar control de 7 regiones del Perú](#). May 26, 2015.

<sup>91</sup> El Peruano. [Supreme Resolution No. 152-2015-IN](#), published August 11, 2015.

<sup>92</sup> IACHR. Request for information, Article 41 of the American Convention: Situation of confrontations between police and demonstrators at La Oroya. Peru. August 28, 2015.

<sup>93</sup> Report No. 145-2015-JUS/PPES of the Peruvian State, related to the request for information, Article 41 of the American Convention, on the Situation of confrontations between police and demonstrators in La Oroya, September 11, 2015.

<sup>94</sup> El Peruano. [Supreme Resolution No. 200-2015-IN](#), published September 25, 2015.

<sup>95</sup> AI. [Amnistía Internacional exige investigar muertes durante protestas por proyecto minero Las Bambas](#). September 29, 2015.

fundamental rights to personal liberty and personal security were suspended, as were the rights to inviolability of the home and the freedoms of assembly and movement.<sup>96</sup>

48. As already mentioned in paragraphs above, Venezuela adopted the Resolution 008610 of January 27, 2015, *Rules on the Actions of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations*, which allows for armed interventions in public assemblies and demonstrations.<sup>97</sup> In addition is the implementation, on July 13, 2015, of Operation Liberation and Protection of the People (OLP: Operación de Liberación y Protección del Pueblo)<sup>98</sup>, which includes the joint participation of the Bolivarian National Police Corps (CPNB: Cuerpo de Policía Nacional Bolivariana), the Scientific, Penal, and Criminal Investigative Corps (CICPC: Cuerpos de Investigaciones Científicas, Penales y Criminalísticas), the Bolivarian National Intelligence Service (SEBIN: Servicio Bolivariano de Inteligencia Nacional), and the Bolivarian National Guard (GNB: Guardia Nacional Bolivariana). There have been reports of excessive use of force, and even indiscriminate use of lethal force by the mixed (civilian-military) forces in the context of this operation.<sup>99</sup> On occasion of the crime-fighting operation carried out July 13, 2015, at Cota 905 of the city of Caracas by approximately 200 members of forces belonging to the SEBIN, the GNB, the CICPC, and the PNB in the context of the OLP, a total of 134 persons were arrested and at least 14 persons died, including a 14-year-old adolescent who was reportedly struck by a stray bullet.<sup>100</sup> The Commission requested information from the Venezuelan State under Article 18 of its Statute<sup>101</sup>, but received no response. The Commission has closely monitored the situation through its various mechanisms, as well as through publicly available information.<sup>102</sup> The worrisome numbers of persons killed, arrested, and violently evicted as a result of the deployment of such interventions reflects the inability of the militarized force to contain social discontent and tackle the problems of common crime and poverty, which need to be addressed comprehensively by other means.

49. Although the brief description exemplified the situation observed only in some States it could be expanded with concrete situations of all 35 member states of the OAS, and it corroborates the concern expressed by international human rights bodies with respect to interventions by the armed forces in functions involving internal order and control. In this regard, the IACHR would like to insist that the police bodies and armed forces are “two substantively different institutions, insofar as the purposes for which they

<sup>96</sup> El Peruano. [Supreme Decree No. 068-2015-pcm](#), published September 29, 2015.

<sup>97</sup> Ministry of People’s Power for Defense, Rules on the Actions of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations, Resolution No. 008610, Official Gazette No. 40.589, January 27, 2015. See also: Prodavinci. [Ésta es la Gaceta Oficial que contiene la Resolución No.008610 del Ministerio de la Defensa](#). January 30, 2015.

<sup>98</sup> Article from the institutional press at cpnb.gob.ve. [Operación de Liberación y Protección del Pueblo erradica paramilitarismo en cuatro zonas del país](#). See also: Venezolana de Televisión. [Presidente Maduro anuncia lanzamiento de Ley de la OLP para protección del pueblo](#). August 2015; Globovisión. [Ministro de Interior: “Las OLP nunca violarán los derechos humanos.”](#) July 29, 2015.

<sup>99</sup> IACHR. Hearing on [General situation of human rights in Venezuela](#). 156<sup>th</sup> regular period of sessions. October 19, 2015. Citing official figures, the civil society organizations reported that the OLP, in its first three months of implementation, has caused more than 160 deaths in 90 operations nationwide. See also: Provea. [Razzia contra los pobres: un mes de OLP](#). August 13, 2015; Provea. [OLP genera violaciones masivas de DDHH en zonas populares](#). July 28, 2015.

<sup>100</sup> Contrapunto.com. [Detenidos por la PNB en la Cota 905 fueron localizados muertos en la morgue de Bello Monte](#). July 14, 2015. See also: Ultimas Noticias. [Provea: Operativo en la Cota 905 sugiere “uso excesivo de la fuerza”](#). July 14, 2015; Noticias 24. [Toma de la Cota 905 deja 14 muertos, 134 detenidos y la recuperación de armas y vehículos](#). July 13, 2015; 2001.com.ve. [Operativo en la Cota 905 desarticuló 7 bandas delictivas](#). July 13, 2015.

<sup>101</sup> IACHR. Request for information, Article 18 of the Statute of the IACHR, Operación de Liberación y Protección del Pueblo. Venezuela. April 31, 2015.

<sup>102</sup> IACHR: 2015 Annual Report 2015. Chapter IV, Venezuela, December 31, 2015, paras. 45-53; Hearing on [General situation of human rights in Venezuela](#). 156<sup>th</sup> regular period of sessions, October 19, 2015; and Provea. [Provea denunció ante Defensoría del Pueblo desalojos y demoliciones de viviendas ocurridas en Brisas del Hipódromo](#). September 7, 2015. As indicated, on August 17, 2015, the OLP also included an eviction in the community “Brisas del Hipódromo,” in which officials of the GNB violently moved an estimated 200 families – including approximately 300 children and adolescents – destroyed their precarious dwellings, and detained some of the residents.

were created and their training and preparation are concerned.”<sup>103</sup> The police forces are constituted for civil protection and control, whereas the armed forces focus their training and preparation on a single objective, which is to swiftly defeat the “internal enemy”<sup>104</sup> with the fewest human casualties and economic losses.<sup>105</sup> Due to their national coverage and the variety of their functions, civilian police forces are the state institutions that relate the most with citizens, becoming “irreplaceable” for the proper functioning of democracy and for guaranteeing the security of the population.<sup>106</sup> Accordingly, the IACHR emphasizes forcefully that security and internal order should correspond “exclusively to civilian police forces that are properly organized and trained, and not to military armed forces.”<sup>107</sup>

50. In view of the foregoing, the Commission wishes to highlight the importance of having civilian police forces with exclusive competence for monitoring and preserving the security of all persons under their jurisdiction whose rules and training refer expressly to the exceptional nature of the use of force, including the principles of legality, proportionality, and absolute necessity.

## 2. Obligations of the State as regards Non-State Actors

51. Already in 2009, the Commission had noted the significant increase in the number of businesses offering private security services.<sup>108</sup> It has not slowed down over time, as the United Nations Development Program (UNDP) has indicated in its Regional Human Development Report 2013-2014 for Latin America, on Citizen Security with a Human Face: Evidence and Proposals for Latin America, on indicating that the hiring of private security agencies has grown 10% annually, which is attributed to “the growing perception of insecurity, the expansion of the middle classes, and the ‘shrinking’ of the State.”<sup>109</sup> In some cases, it notes, the existing imbalance between public law enforcement officers and private security agents results in the “hypertrophy” of private security; for example, it notes that compared to the 3,811,302 private security agents there are 2,616,753 police agents in Latin America.<sup>110</sup> The same study indicates that the most serious hypertrophy is reported by Guatemala, where there are 19,900 police for its 12.7 million inhabitants, while it has 120,000 private guards<sup>111</sup>, followed by Honduras<sup>112</sup>, Nicaragua<sup>113</sup>, Colombia<sup>114</sup>, and Argentina.<sup>115</sup>

<sup>103</sup> IACHR, *Report on the Situation of Human Rights in Venezuela*, 2003, chapter III, “State Security: The Armed Forces and the Police,” para. 272.

<sup>104</sup> I/A Court HR: *Case of Montero Aranguren et al. (Detention Center of Catia)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78; and *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 51.

<sup>105</sup> I/A Court HR, *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 85.

<sup>106</sup> As expressed during the Regional Consultation - Police function and human rights in Latin America: Progress and challenges, held November 12 and 13, 2015, in Panama City. See also: IACHR: [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](#), December 31, 2009, para. 77.

<sup>107</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. 145.

<sup>108</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 70.

<sup>109</sup> UNDP, Regional Human Development Report 2013-2014, [Citizen Security with a Human Face: Evidence and Proposals for Latin America](#). P. 150.

<sup>110</sup> UNDP, Regional Human Development Report 2013-2014, [Citizen Security with a Human Face: Evidence and Proposals for Latin America](#). P. 150.

<sup>111</sup> In the current year, the State of Guatemala informed the Commission that as of December 31, 2014, the General Bureau of Private Security Services reported that 52,837 members of private security units were operating in the territory, including administrative and operational staff. Report of the State of Guatemala regarding the “Draft General Report on Human Rights in Guatemala and the communication of August 14, 2015 of the IACHR,” October 6, 2015. In its response to the questionnaire on the use of force sent by the IACHR, in page 20 the State informed that the same agency had 43,338 security agents and reported and 33,373 PNC agents.

For its part, Bolivia reported that, as of September 2015, the National Department of Authorization and Control of Private Security Firms (DENAVEC) recorded 33 private security firms with operating licenses, 405 persons authorized to perform administrative and/or operational tasks on private security companies, and 1,113 people waiting for such authorization.<sup>116</sup> As of 2013, Brazil had an estimated 620,000 to 640,000 private security agents, most in the southeastern region.<sup>117</sup> El Salvador has an estimated 270 private security agencies, plus the associations of independent security guards, investigative agencies, and services for the protection of property, whose operations are regulated by the Law on Private Security Services.<sup>118</sup> Guyana, for its part, said it has 290 private security companies<sup>119</sup>, while Mexico indicated that the Private Security Personnel Register of the Secretariat of Public Security of the Federal District (SSPDF) lists 15,272 individuals and 714 private security companies in the Federal District alone,<sup>120</sup> and Uruguay reported 29,000 private security agents – 9,000 of whom have a license to carry arms, compared to 23,490 officials with state security agencies.<sup>121</sup>

52. This enormous increase in the number of private security companies, together with the lack of records and government regulation, has been the topic of repeated warnings by the Commission to the states. As the Commission has noted: “The privatization of the functions involved in citizen security is a departure from the concept of human rights ... [that] becomes a mere product to be bought on the market and, in most cases, is available only to those sectors of society with the means to buy it.”<sup>122</sup>

53. The IACHR has also noted that the operations of those companies should be duly regulated by the states; in particular, the domestic legal order should address the following aspects: (a) functions that may be performed by private security companies; (b) type of arms and material means they are authorized to use; (c) adequate mechanisms for oversight of their activities; (d) implementation of a public record; and (e) submission of regular reports on their contracts and the typing of activities they perform.<sup>123</sup> Similarly, the Commission has established that the public authorities should demand that the persons hired by private security companies meet selection and training requirements, regulating in detail which public institutions are in a position to extend certifications to their employees indicating that they are qualified.<sup>124</sup>

<sup>112</sup> With 12,301 police agents and 60,000 private guards. UNDP, Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America. P. 150. Available at: <http://www.latinamerica.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf>

<sup>113</sup> There are 2.1 private guards for every police officer. According to information offered by the Nicaraguan State, in response to the questionnaire circulated by the IACHR on the use of force, there were 13,000 police officers and 18,000 security guards. Response of the Republic of Nicaragua to the questionnaire circulated by the IACHR to the states and civil society for developing the annual overview of the human rights situation in the hemisphere, Chapter IV.A. of the 2015 Annual Report. P. 24.

<sup>114</sup> With 119,000 police officers and 119,146 private security guards (2005-2007). UNDP, Regional Human Development Report 2013-2014, [Citizen Security with a Human Face: Evidence and Proposals for Latin America](#).

<sup>115</sup> With 120,000 police officers and 150,000 private guards (2007). UNDP, Regional Human Development Report 2013-2014, [Citizen Security with a Human Face: Evidence and Proposals for Latin America](#).

<sup>116</sup> Response of Bolivia to the questionnaire on the use of force circulated by the IACHR. P. 20-21.

<sup>117</sup> Response of Força Sindical to the questionnaire on the use of force circulated by the IACHR. SN.

<sup>118</sup> Response of El Salvador to the questionnaire on the use of force circulated by the IACHR. P. 10.

<sup>119</sup> Response of Guyana to the questionnaire on the use of force circulated by the IACHR. P. 9.

<sup>120</sup> Response of Mexico to the IACHR's consultation questionnaire on the use of force, p. 16.

<sup>121</sup> Response of Uruguay to the questionnaire on the use of force circulated by the IACHR. P. 4.

<sup>122</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 72.

<sup>123</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 73.

<sup>124</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para 73. See: United Nations General Assembly, *Latin American and Caribbean regional consultation on the effects of the activities of private military and security companies on the enjoyment of human rights: regulation and monitoring*, A/HRC/7/7/Add.5, March 5, 2008

54. The Commission considers as positive the Bolivian government reported that Article 61 of the Law on the National Public Security System and Article 51 of Law No. 400, Control of Firearms, Ammunition, Explosives and Other Related Materials Act, "prohibit agents of Private Security Firms to carry and use of firearms", authorizing only the use of less-lethal weapons for the performance of their duties.<sup>125</sup>

55. On this point, Nicaragua informed the IACHR of the recent adoption of Law No. 903, *Law on Private Security Services*, published on July 29, 2015, whose purpose is "to regulate the private security services performed by natural or juridical persons in any of the modalities, whether for commercial purposes or for their own, the conditions of their facilities, oversight of their personnel, equipment, and actions, sanctioning any infractions of the provisions of this Law."<sup>126</sup> The State indicates that under the recently-passed law, for private security agents "it is prohibited to intervene in contexts of public disorder or that represent attacks on citizen and human security [their action being] limited exclusively to the physical protection of objectives, custody of valuables, protection of persons."<sup>127</sup> The Commission welcomes the adoption of the law, which seeks to control and limit the interventions of private agents in controlling public order.

56. In the case of federal states, designing citizen security policies and other related issues are up to the states or provinces. Argentina, for example, reported to the Commission that most of the provinces had their own legal frameworks, oversight bodies, and records of licenses. And at the federal level there are agencies that handle several of these aspects.<sup>128</sup> Mexico further indicates that "each federal state... has the authority to regulate matters pertaining to private security companies." As an example, it explains that in the Federal District, private security activities are governed by the Private Security Law for the Federal District, with the SSPDF responsible for oversight through its General Directorate of Private Security and Systematic Operating Procedures.<sup>129</sup>

57. The aspired separation of the state obligation to exercise police powers from the security services offered by private enterprises is not attained in all countries of the hemisphere. Guyana, for example, informed the Commission that private security companies, in addition to being responsible for the safe transport of valuables, was also tasked with assisting government agencies by providing security at key and vulnerable points, under the supervision of the police forces in the event of disturbances.<sup>130</sup> In Guatemala, as provided for in Article 4 of Decree No. 52-2010, *Law that Regulates Private Security Services*, it is prohibited for private security companies to perform public security tasks; yet the in same provision indicates that they are required "to provide assistance, when requested by the competent authority, in the cases provided for and in keeping with the provisions of the Law on Public Order, Decree Number 7 of the National Constituent Assembly,"<sup>131</sup> a highly questioned law that regulates states of emergency.

58. Another situation reported to the Commission was the provision of security services to private companies by government law enforcement officials. During the 154<sup>th</sup> regular period of sessions, the participants in the hearing on *Social protest and human rights in the Americas* noted that in the region of Cajamarca, Peru, in the context of strikes and regional conflicts, police privately hired by mining companies

<sup>125</sup> Response of Bolivia to the questionnaire on the use of force circulated by the IACHR. P. 20

<sup>126</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR. P. 23. See also: La Gaceta – Diario Oficial. [Law No. 903. Law on Private Security Services](#) (Article 1), published July 29, 2015.

<sup>127</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR. Pp. 23-24.

<sup>128</sup> Response of Argentina to the questionnaire on the use of force circulated by the IACHR.

<sup>129</sup> Response of Mexico to the IACHR's consultation questionnaire on the use of force, p. 16.

<sup>130</sup> Response of Guyana to the questionnaire on the use of force circulated by the IACHR. P. 7.

<sup>131</sup> Congress of the Republic of Guatemala. [Decree No. 52-2010. Law that Regulates Private Security Services](#). May 2, 2011.

repressed demonstrators who were blocking a crossing, which led to several persons being injured. In addition, they said that in Peru several mining and oil and gas centers have security services provided by the PNP, through the signing of security agreements.<sup>132</sup> Once again, civil society emphasized this phenomenon when answering the questionnaire on the use of force distributed by the Commission. The provision of private security services by PNP agents had to be regulated. The regulation is Supreme Decree No. 004-2009-IN, *Regulation of Special Services Complementary to the Police Function*; it authorized the institution to enter into contracts and agreements with private entities, or individually on behalf of its police officers.<sup>133</sup> As indicated, as of 2013, 485 members of the force were providing security services to 22 companies in the extractive industries in 10 regions of the country, in exchange for economic remuneration.<sup>134</sup>

## **E. Contexts and Groups Whose Fundamental Rights are Especially Impacted**

### **1. Social protests**

59. The events that occurred during the period covered by this report show that in our region it is common for the authorities 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. Even though some normative advances can be identified, the disproportionate use of force observed indicates that state authorities in the Americas are still inclined to quickly de-legitimate social protests because of the negative impact they may have on, for example, traffic, failing to acknowledge the importance of the rights to expression and petition that are at stake and how they are bound up with democracy.

60. The IACHR has used various mechanisms to closely monitor the exercise of the right to social protest in the region. In 2014 and 2015, there have been many protests and demonstrations in the Americas, with various political and social demands, expressing the high level of social conflict and the profound discontent on the part of those who report suffering human rights violations. Even though demonstrations and social protests continue to be one of the main vehicles for the most excluded groups in the hemisphere to put forward their demands, approaches based on dialogue and negotiation for managing protests and their demands continue to be the exception. Instead, based on the information received by the IACHR, there is a tendency to impede and repress social protest in the region, which is reflected in the large number of reports of the arbitrary and disproportionate use of state force against such protests and demonstrations.

61. In effect, demonstrations and social protests are regularly affected by the excessive and disproportionate deployment of force by the police or other state bodies, which has meant injuries and even death for demonstrators, in violation of the fundamental principles of international human rights law.<sup>135</sup> During the 154<sup>th</sup> regular period of sessions a group of 30 civil society organizations of the hemisphere<sup>136</sup>

<sup>132</sup> IACHR. [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>133</sup> Response of IDL to the questionnaire on the use of force circulated by the IACHR. Pp. 14-15.

<sup>134</sup> Response of IDL to the questionnaire on the use of force circulated by the IACHR. P. 18.

<sup>135</sup> IACHR: [2014 Annual Report. 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.149. Doc. 13. March 9, 2015; [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015; [Hearing on Human rights and social protest in Mexico](#). 153<sup>rd</sup> regular period of sessions. October 30, 2014; [Hearing on Reports of violence against peasants in Paraguay](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014; [Hearing on Situation of human rights and social protest in Brazil](#). 150<sup>th</sup> regular period of sessions. March 28, 2014; [Hearing on Situation of the right to freedom of expression and information in Venezuela](#). 150<sup>th</sup> regular period of sessions. March 28, 2014; [Hearing on Situation of human rights and labor conflicts in Venezuela](#). 150<sup>th</sup> regular period of sessions. March 28, 2014.

<sup>136</sup> American Civil Liberties Union, United States (ACLU); Article 19, Brazil; Article 19, Mexico; Asociación Pro Derechos Humanos, Peru (APRODEH); Canadian Civil Liberties Association (CCLA); Cauce Ciudadano A. C., Mexico; Centro de Derechos Humanos Fray Francisco de Vitoria, Mexico; Centro de Derechos Humanos Miguel Agustín Pro Juárez, Mexico (CentroProDH); Centro de Estudios

made a presentation on the widespread nature of the problem of the abusive use of force in handling social protest in the region. In particular, they presented information on incidents in which the security bodies made abusive use of force, did not have identification, and were bearing lethal weapons. They mentioned the indiscriminate use of tear gas, pepper spray, “bean bag” projectiles, tactical stun grenade, wooden, rubber, or glass bullets, “blunt objects,” bladed or pointed weapons, firearms, and electric shocks against demonstrators and journalists. Some countries have used armored vehicles and long-range acoustic devices (sound-based riot control gear also known as sound cannons) have been used to respond to protests. The organizations that requested the hearing noted that some countries have victims of various forms of sexual violence.<sup>137</sup> They also denounced cases in which the armed forces were directly authorized to participate in controlling order and social protests, as well as the trend to militarize the approach taken by police forces to social protest.<sup>138</sup>

62. In particular, the Inter-American Commission, through its Office of the Special Rapporteur on Freedom of Expression, has taken note of practices aimed at hindering journalists and other media workers from accompanying public demonstrations, using methods that regularly include physical repression of these professionals, the requirement of prior registration, and the practice of the security forces of establishing a police cordon to keep them from approaching the events being covered.

63. In light of the international standards in this area, in this section the IACHR evaluates implementation of the states’ obligations with respect to the use of force and the right to social protest.

- **Undue restrictions on the exercise of the right to social protest in the Americas and the use of force**

64. In democracies, states should act based on the legality of protests or public demonstrations and under the assumption that they do not constitute a threat to public order. This means an approach focused on building the highest levels of citizen participation, with the streets and plazas considered privileged places for public expression.<sup>139</sup> To that end, one must bear in mind that the participants in the public demonstrations have as much of a right to use such spaces during a reasonable time as anyone else.<sup>140</sup> The use of the public space for social protest should be considered as legitimate as its more habitual use for commerce or pedestrian and vehicular traffic.<sup>141</sup>

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Legales y Sociales, Argentina (CELS); Centro de Justicia para la Paz y el Desarrollo, Mexico (CEPAD); Centro Nacional de Comunicación Social (CENCOS), Mexico; 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, Brazil; Coordinadora Nacional de Derechos Humanos, Peru; Corporación Humanas, Chile; Espacio Público, Venezuela; Fundar Centro de Análisis e Investigación, Mexico; Instituto de Defensores de Direitos Humanos, Brazil (DDH); Instituto de Estudios Legales y Sociales (IELSUR), Uruguay; Instituto Mexicano de Derechos Humanos y Democracia, Mexico (IMDHD); Justiça Global, Brazil; Group Specialized in Citizenship and Human Rights from the Office of the Human Rights Ombudsperson for the State of São Paulo; Observatorio Ciudadano, Chile; Programa Venezolano de Educación-Acción en Derechos Humanos, Venezuela (PROVEA); Propuesta Cívica, Mexico; 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”, Mexico; Servicios y Asesoría para la Paz, A. C. (SERAPAZ), Mexico. IACHR. Hearing on [Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>137</sup> IACHR. Hearing on [Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>138</sup> IACHR. Hearing on [Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>139</sup> In that regard, the United Nations Human Rights Council recognized that protests “can make a positive contribution to the development, strengthening and effectiveness of democratic systems, and to democratic processes,” UN Human Rights Council, Resolution A/HRC/25/L.20, March 2014, preamble. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has underscored that the participation of societies through public demonstrations are important for consolidating democracy. IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression, 2005, ch. V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly.” Para. 91.

<sup>140</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, second edition (Warsaw/Strasbourg, 2010). Paragraph 19; A/HRC/20/27. United Nations General Assembly. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai. General distribution. May 21, 2012. Para. 41.

<sup>141</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression (2008), Ch. IV, A Hemispheric Agenda for the Defense of Freedom of Expression, para. 70; OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful*

65. The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.<sup>142</sup> The right to demonstrate should be permitted even when there is no statutory regulation, and one must not demand of those who want to demonstrate that they obtain authorization to do so. This presumption should be clearly established in the states' legal systems.<sup>143</sup>

66. As a result of this presumption in favor of the exercise of the right to social protest the state is also obligated to implement adequate mechanisms and procedures to ensure that the freedom to demonstrate can be exercised in practice and not be subject to undue bureaucratic regulation.<sup>144</sup> In those states in which notification or prior notice is called for one must recall that this does not mean that the states only have the positive obligation to facilitate and protect those assemblies notice of which is given. The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.<sup>145</sup>

67. Several countries of the region have laws that authorize police operations aimed at dispersing or restricting protests; such actions can often give rise to a series of human rights violations. The Commission has noted that breaking up a demonstration can only be justified by the duty to protect persons.<sup>146</sup> The Commission considers that merely breaking up a protest is not, in itself, a legitimate aim that justifies that use of force by the security forces.<sup>147</sup>

68. Whatever 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

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*Assembly*, second edition (Warsaw/Strasbourg, 2010), para. 20, taking up the case-law of the European Court of Human Rights in the cases *Patyi and Others v. Hungary* (2008), paras. 42-43; *Balcik v. Turkey* (2007), para. 52; and *Ashughyan v. Armenia* (2008), para. 90.

<sup>142</sup> In that sense the United Nations Human Rights Council 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 establish a presumption in favour of the exercise of these rights, and that they are effectively implemented." Resolution A/HRC/25/L.20, March 2014, Article 3. Emphasis added.

<sup>143</sup> "... the requirement of previous notification should not be transformed into a demand for the prior issuance of a permit by an agent with unlimited discretionary powers. That is to say that a demonstration may not be prevented because it is considered likely to jeopardize the peace or public security or order, without taking into account whether it is possible to prevent the threat to peace or the risk of disorder by altering the original conditions of the demonstration (time, place, etc). Restrictions on public demonstrations must be intended exclusively to prevent serious and imminent danger, and a future, generic danger would be insufficient." IACHR, Chapter IV, 2002 Annual Report, Vol. III "Report of the Office of the Special Rapporteur for the Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 34; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2005, ch. V, para. 95. See also the OSCE standard in relation to holding peaceful assemblies in: OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, second edition (Warsaw/Strasbourg, 2010), para. 2.1.

<sup>144</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, second edition (Warsaw/Strasbourg, 2010). Principle 2.2.

<sup>145</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai, A/HRC/23/39, April 24, 2013, para. 50.

<sup>146</sup> IACHR, *Report on Citizen Security and Human Rights*, December 31, 2009, para. 133.

<sup>147</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, second edition (Warsaw/Strasbourg, 2010). Section B, "Explanatory Notes" understands that the imprecision inherent in the concept of "public order" implies that this term cannot be used to justify dispersing demonstrators (para. 70) and that dispersing demonstrators should constitute an extreme measure regulated by express provisions in guidelines for the action of the security forces; these guidelines should establish the specific circumstances that authorize the dispersal and define which are the agents authorized to issue orders to disperse. Para. 165.

demonstrators.<sup>148</sup> 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>149</sup> 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. As already noted, 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>150</sup>

69. The IACHR has been able to verify that imposing this requirement – incompatible with international law and best practices – has made it possible to automatically dissolve, by the use of force, those public demonstrations for which permission has not been granted by the authorities.<sup>151</sup> According to the information received by the Inter-American Commission, the requirement to obtain authorization as a condition for holding assemblies and demonstrations in public places is found in countries such as Chile<sup>152</sup> and Venezuela.<sup>153</sup>

70. In Chile, the requirement of authorization is established in Supreme Decree 1086, which was adopted during the military dictatorship in 1983 and is still in force.<sup>154</sup> After his visit to Chile in September 2015, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, urged the State to derogate Supreme Decree 1086.<sup>155</sup> He indicated that under this law the exercise of the right of peaceful assembly is “unduly restricted” as it “allows local officials to prevent or dissolve assemblies that were not previously authorized by authorities, and to deny permission for assemblies deemed to disrupt public transit, among other things.”

71. In Venezuela, the requirement of prior authorization was adopted by the Supreme Court of Justice of Venezuela in April 2014, in the context of student protests.<sup>156</sup> Both the IACHR and the Human

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<sup>148</sup> As numerous experts in security and civil society organizations have indicated in recent years. 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*, p. 150.

<sup>149</sup> The Commission, in its Report on Citizen Security and Human Rights, has noted that “The competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly. This 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 activities involved to take place.” (Para. 193).

<sup>150</sup> AI, *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>151</sup> IACHR. Hearing on *Human rights and public demonstrations in Chile*. 143<sup>rd</sup> period of sessions. October 28, 2011. Video available at: <http://www.oas.org/es/cidh/actividades/sesiones.asp>; IACHR. Hearing on *Situation of the right to freedom of expression and information in Venezuela*. 150<sup>th</sup> regular period of sessions. March 28, 2014; IACHR. Hearing on *Situation of human rights and labor conflicts in Venezuela*. 150<sup>th</sup> regular period of sessions. March 28, 2014; Universidad Católica Andrés Bello. Center for Human Rights. *Licencia para protestar*. June 2014.

<sup>152</sup> Ministry of Interior of Chile. [Decree 1086](#). September 15, 1983. Reform of October 10, 1989.

<sup>153</sup> Supreme Court of Justice. [Case No. 14-0277](#). April 24, 2014.

<sup>154</sup> Ministry of Interior of Chile, [Decree 1086](#). September 15, 1983. Reform of October 10, 1989. Decree 1086 requires that organizers of the assembly or demonstration give prior notice, at least to the respective mayor or governor, who may deny the authorization “in streets with intense circulation and in streets in which public transit would be disturbed [as well as those] that take place in plazas and avenues during the hours when they are generally used for leisure or rest of the population and of those held in parks, plazas, gardens, and avenues with areas that are planted.” It also determines that the forces of order may dissolve the event if one does not abide by the provisions noted above.

<sup>155</sup> United Nations, September 30, 2015. [Communiqué by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of assembly and of association, at the conclusion of his visit to the Republic of Chile](#).

<sup>156</sup> Supreme Court of Justice. [Case No. 14-0277](#). April 24, 2014. In Venezuela, Article 53 of the Constitution establishes: “Everyone has the right to meet publicly or privately, without obtaining permission in advance, for lawful purposes and without weapons. Meetings in public places may be regulated by law.” Article 68 established that “citizens have the right to demonstrate peacefully and without weapons and following the requirements established by law.” The Supreme Court of Justice of Venezuela held in April 2014 that the authorization must be given by the lead civilian authority of the jurisdiction, “whose failure to do so limits absolutely

Rights Committee of the United Nations have expressed serious concern in response to the information that indicates that Venezuelan authorities have had recourse to the use of force and massive detentions in demonstrations considered to be unauthorized or illegitimate.<sup>157</sup> According to information provided by Venezuelan civil society, the Supreme Court's interpretation "laid a legal basis for repression."<sup>158</sup> According to a report from the Center for Human Rights at the Universidad Católica Andrés Bello, after the decision by the Supreme Court, there has been "a worsening of the repression of peaceful protest and an increase in the severity of the measures requested by the Public Ministry against demonstrators."<sup>159</sup> There were "more than three hundred fifty detentions is just two episodes" and also an "increase in the number of persons brought before the courts."

72. In other legal systems of the region prior notice of public demonstrations is required, but not authorization.<sup>160</sup> Nonetheless, the IACHR has learned that these legal systems – by establishing strict schedules for holding demonstrations and by imposing the obligation to indicate motive, place, itinerary, and approximate number of participants, the prohibition on the use of primary arteries, as well as the power of the authorities to dissolve the demonstration when there is an alteration of the public order or the public peace – throw up disproportionate obstacles to the free exercise of the right to social protest.<sup>161</sup> Considering the ambiguity of the terms and the broad reach of the restrictions imposed, some legal frameworks lay a foundation for the unjustified use of force that has affected the persons who exercise that right.

73. In Mexico, for example, the government of the Federal District adopted a Law on Mobility that conditions prior notice on the demonstrators having a "perfectly lawful" purpose; it prohibits the use of primary arteries and establishes that the Ministry of Public Security "shall take the measures necessary for avoiding any obstruction of the primary arteries with continuous circulation."<sup>162</sup> The group of organizations

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the right to peaceful demonstration, thereby impeding any type of assembly or demonstration." See also: El Universal. [El TSJ proscribe las manifestaciones pacíficas espontáneas](#). April 24, 2014; Notitarde. [TSJ prohíbe protestas pacíficas sin permisos](#). April 24, 2014; Espacio Público. [TSJ sentencia en contra del derecho a manifestar](#). April 25, 2014.

<sup>157</sup> IACHR. 2014 Annual Report. [Chapter IV \(Report on the Situation of Human Rights in Venezuela\)](#). See also: United Nations, Human Rights Committee. Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela. (Advanced unedited version). CCPR/C/VEN/CO/4. Para. 14.

<sup>158</sup> Universidad Católica Andrés Bello. Center for Human Rights. Licencia para protestar. June 2014. See also: IACHR: 2014 Annual Report 2014. [Chapter IV \(Report on the Situation of Human Rights in Venezuela\)](#); and Hearing on [General situation of human rights in Venezuela](#). 156<sup>th</sup> regular period of sessions. October 19, 2015.

<sup>159</sup> Universidad Católica Andrés Bello. Centro for Human Rights. Licencia para protestar. June 2014.

<sup>160</sup> For example, see Article 5 of the Constitution of the Federative Republic of Brazil; Article 33 of the Constitution of Guatemala; Article 38 of the Constitution of Panama; Article 2 of the Constitution of Peru; Article 32 of the Constitution of Paraguay.

<sup>161</sup> In Honduras, for example, the Law on Police and Social Coexistence provides that every person has the right to organize and participate in public demonstrations "without need for notice or special permission." Nonetheless, it determines that demonstrations "should be prohibited when it is considered that they will have a negative impact on the free circulation and rights of others." The Law also indicates that "every assembly or public march that degenerates into a tumultuous brawl or public disorder, shall be dissolved by the police." Legislative Branch of Honduras. [Law on Police and Social Co-existence](#). January 23, 2002. Similarly, the Law on Land Use Management, at Article 37, conditions the right to participate in demonstrations, marches, and other expressions involving collective and private participation, by the following language: "so long as it is held peacefully, and does not attack the constitutional rights of other citizens and not cause harm to public and private property." Legislative Branch of Honduras. [Law on Land Use Management](#). December 30, 2003.

<sup>162</sup> Legislative Assembly of the Federal District. [Law on Mobility of the Federal District](#). July 14, 2014. Articles 212-214. The law is facing two constitutional challenges actions against the articles related to public demonstrations, filed by the National Commission on Human Rights (CNDH) and the Commission on Human Rights of the Federal District (CDHDF), still pending resolution as of this writing (CNDH. [Demanda de acción de inconstitucionalidad, promovida por la Comisión Nacional de los Derechos Humanos](#). August 13, 2014; CDHDF. [Acción de Inconstitucionalidad](#). August 2014). In addition, on November 14 the First Court and Second District Court for Administrative Matters in the Federal District received three *amparo* actions brought against the Law on Mobility of the Federal District, in the context of which they found, *inter alia*, that the requirement to present the corresponding notice with 48 hours lead time "restricts the right to publicly demonstrate to a certain time frame," which is disproportional, since "where there is an event that moves public opinion or when there is social content due to some situation" there is an immediate need to demonstrate that does not allow for any delay; they also observed that "cutting off vehicular traffic by using primary traffic arteries for holding a public demonstration, though very important, cannot be a justification" sufficient to limit or restrict it. Based on the foregoing, they suspended, in favor of the

that make up the Frente Amplio por la Libertad de Expresión y la Protesta (Broad Front for Freedom of Expression and Protest) has stated that this law has allowed repression in the Federal District. It emphasized in 2015 that “far from carrying out their obligations, the authorities of the Federal District – those now it is common conduct among the governments of the states of Mexico generally<sup>163</sup> – frequently operated based on a logical of criminalization, tough policies, and zero tolerance based on restrictions on human rights and an increase in the discretionary powers of the agencies and public security bodies in relation to protests and social mobilizations.”<sup>164</sup>

74. In its reply to the questionnaire, the Mexican State indicates that “the Federal District (D.F.) is one of the places where most protests occur.” According to the information provided, the parameters for police action during public demonstrations in the D.F. are set out in the Federal District Law Regulating the Use of Force by Public Security Agencies and its Regulations, and in the Federal District Secretariat of Public Security’s Police Action Protocol for the Control of Crowds.

75. The State notes that the Federal District Law Regulating the Use of Force by Public Security Agencies prohibits the use of lethal weapons “in dispersing demonstrations.” “In the event that a demonstration turns violent,” it explains, Art. 25 of that law requires that the “preventive and complementary police shall: (i) entreat the demonstrators to discontinue their violent attitude; (ii) give clear warning that if the violent attitude does not cease, force will be used; (iii) should the demonstrators fail to obey, the police shall make use of force in accordance with the terms of the Law and its Regulations; (iv) exercise the different levels of the use of force, solely up to the use of nonlethal incapacitating weapons.” The IACHR notes with concern the vagueness and breadth of the language used by the legislation to define when a demonstration is to be considered “violent,” which occurs when “in a petition or protest made before the authorities, use is made of threats to intimidate or to force a favorable resolution, the commission of a crime is caused, or public peace and citizen security are disturbed.”

76. Similarly, the State described the Federal District’s Police Action Protocol for the Control of Crowds as “a source of technical support seeking to regulate police actions vis-à-vis specific events (marches, meetings, assemblies, rallies, roadblocks, occupations, caravans, and information gatherings).” It noted, however, that “the Protocol emphasizes dealing with riotous assemblies and not peaceful demonstrations.”

77. Finally, Mexico reported that on August 4, 2014, the Human Rights Commission of the Federal District issued a series of comments regarding the Protocol and recommended that the definitions of “disturbances” and “aggressive or violent attitude” be reviewed and that “the section stating that the police may use lethal weapons during demonstrations” be eliminated. Mexico stated that the Secretariat of Public

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petitioners, the application of articles 212 to 214 of the law (First District Court for Administrative Matters in the Federal District. [Amparo Proceeding Number 1689/2014](#), February 14, 2014; First District Court for Administrative Matters in the Federal District. [Amparo Proceeding Number 1690/2014](#), February 14, 2014; Second District Court for Administrative Matters in the Federal District. [Amparo Proceeding Number 1693/2014](#), February 14, 2014. See also: Red TDT. [Juzgados federales confirman que la ley de movilidad viola derechos humanos en un contexto de criminalización de la protesta social](#). November 30, 2014; Animal Político. [La Ley de Movilidad del DF es anticonstitucional](#). December 5, 2014; Servicios y Asesoría para la Paz (SERAPAZ). [Control del espacio público. informe sobre retrocesos en las libertades de expresión y reunión en el actual gobierno](#). April 9, 2014.

<sup>163</sup> The Congress of Quintana Roo adopted the Law on Civic Order (Ley de Ordenamiento Cívico) of the state of Quintana Roo. Its final version, published July 4, 2014, though allowing the use of public streets for demonstrations, determines that private persons “may not limit or restrict the transit of pedestrians or vehicles” and it prohibits blocking the public roads (Articles 15 and 29(XXXV)). Some of the infractions it considers are “performing acts that unlawfully have a negative impact on the normal functioning of the actions of the State, the municipalities, economic, touristic, and socio-political of the state of Quintana Roo” or that make excessive noise (Article 29(VI) and 29(XXXVII)). The Law indicates that the public administration “shall take the measures necessary” if during the demonstrations, marches, or sit-ins “public order or peace are altered, or the provision of a public service is impeded, thwarted, or blocked or if there are acts of violence” (Article 18). Legislative Branch of the state of Quintana Roo. [Law on Civic Order of the State of Quintana Roo](#), July 4, 2014.

<sup>164</sup> Frente Amplio por la Libertad de Expresión y la Protesta. Control del Espacio Público 3.0. Informe sobre Retrocesos en las Libertades de Expresión y Reunión en el actual gobierno, April 2015.

Security of the Federal District was analyzing and assessing the incorporation of that Commission's comments and was working alongside civil society organizations to "adapt the aforesaid Crowd Protocol to the demands of protecting human rights and guaranteeing the pursuit of journalism and the exercise of free expression." The Inter-American Commission urges the State to make progress with amending this protocol in order to bring it into line with the international standards described in this report.

78. The IACHR recommends to the states that still demand authorization or prior permission for holding demonstrations and protests in public spaces that they amend the national laws so as to eliminate that requirement and establish expressly the general presumption in favor of the exercise of this right. To be compatible with international human rights obligations, the national regulation of the right to social protest should meet the requirements of legality, necessity, and proportionality, and be especially careful when it comes to the terms and reach of the restrictions imposed for guaranteeing that the response of the security bodies is aimed at protecting and facilitating rights, and not repressing them.

- **Means of using force in public protests and demonstrations**

79. 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>165</sup> In the context of the positive obligations to guarantee the right and to safeguard those who exercise it and third persons, the states must establish the specific rules and protocols for action for the security forces deployed in situations of social protest and public demonstrations. These instructions should be aimed at ensuring that police agents 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>166</sup>

80. The decision to use or not use any type of force requires weighing the risks entailed in a situation of protest that may contribute to an escalation in the levels of tension.<sup>167</sup> Some local laws instruct the forces participating in contexts of protest to exercise the maximum level of tolerance in response to non-lethal aggressive conduct.<sup>168</sup>

81. The Commission already noted that the use of firearms is an extreme measure, and that they should not be used except on those occasions in which the police institutions cannot reduce or detain, by less lethal means, those who threaten their life and integrity, or the life and integrity of third persons.<sup>169</sup> This general principle, which governs the use of lethal force by the police, has a particular application to the sphere of social protest and public demonstrations.<sup>170</sup> One derives from the general principles on the use of force that there are no situations authorizing the use of lethal force to break up a protest or demonstration, or to shoot indiscriminately into the multitude.<sup>171</sup> The states should implement mechanisms for effectively prohibiting recourse to the use of lethal force in public demonstrations.<sup>172</sup>

<sup>165</sup> AI, [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>166</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 193.

<sup>167</sup> AI, [Use of force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), August 2015, Guideline 7(e). See also: IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 201(e) and (f).

<sup>168</sup> South Africa: Police Standing Order 262 on crowd management, 2004.

<sup>169</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 118.

<sup>170</sup> United Nations, 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. AI has also developed these principles in AI, [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. 148(i).

<sup>171</sup> The UN Human Rights Council, in its 25<sup>th</sup> session, has resolved as follows with respect to "The promotion and protection of human rights in the context of peaceful protests" (paras. 11 and 13): "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

82. Accordingly, the Commission wishes to make it clear that firearms must not be used by security forces used to control social protests.<sup>173</sup> The prohibition on officials who might have contact with demonstrators carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest.<sup>174</sup> The operations may include having firearms and lead munitions somewhere outside the radius of action of the demonstration for those exceptional cases in which there is a situation of actual, serious, and imminent risk to persons that makes their use warranted.<sup>175</sup> In such an extreme circumstance there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be documented.

83. In some cases, it has been found that police agents carry weapons and/or munitions of their own, without authorization or registration. The Commission considers that the states should clearly prohibit police agents from carrying arms and/or munitions of their own, which are not those provided as per the rules and regulations of the institution to which they belong, independent of such privately-owned weapons being duly registered for general use.<sup>176</sup>

84. The Commission notes the frequent indiscriminate impact of the less lethal weapons used 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.

85. In their responses to the questionnaire published by the IACHR some states reported on the normative framework that governs the use of force of the security forces in contexts of social protest and public demonstrations. Nonetheless, few indicated that they have specific protocols for action in this area. The statutory and regulatory frameworks referred to, though they recognize the principles of legality, necessity, and proportionality, are not sufficient for instructing and guiding police action. It is noted that with rare exceptions, the laws and regulations in the region do not expressly establish a presumption in favor of any protest or the states' obligations to protect and facilitate protest. To the contrary, protest continues to be treated in the statutes and regulations as a problem of public order and social peace that requires the intervention of the security forces to safeguard these interests. As described next, despite being prohibited or ill-advised, most of the laws and regulations examined continue to provide for the use of firearms, and the use of abusive less lethal weapons without putting in place procedures, all of which fails to respect the

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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." Human Rights Council, 25<sup>th</sup> Session, Resolution 25/... "The promotion and protection of human rights in the context of peaceful protests." A/HRC/25/L.20. March 24 2014. Paras. 11 and 13.

<sup>172</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, para. 201.

<sup>173</sup> UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, "Use of force during demonstrations," A/HRC/17/28. May 23, 2011. Para. 75. See also: AI. [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. 148(i).

<sup>174</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68(a).

<sup>175</sup> The UN 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, March 24, 2014. Para. 10.

<sup>176</sup> In this regard, see Article 10 of the "Minimum Criteria on the Action of the Police Corps Security Forces in Public Demonstrations" of the Ministry of Security of Argentina, which establishes: "The use of weapons or munitions not provided by the corresponding institution shall be considered a grave disciplinary breach." Resolution 210/2011 of the Ministry of Security of Argentina, "Minimum Criteria on the Action of the Police Corps Security Forces in Public Demonstrations," Article 10.

established principles and protocols. Throughout the region there continues to be indiscriminate shooting at the faces and torsos of demonstrators, and from short distances, without providing immediate assistance, and without investigations.

86. Argentina reported that in 2011 it adopted the “Minimum Criteria for developing the protocols for action of the police corps and federal security forces in public demonstrations in Argentina,”<sup>177</sup> which sets guidelines for police intervention in both scheduled and spontaneous demonstrations. Twenty-two provinces of Argentina have adhered to that instrument, which is all but the province of the Autonomous City of Buenos Aires, Neuquén, Santa Fe, Córdoba, and Corrientes. As the State indicated: “This protocol is set forth in the paradigm of democratic security, which implies deepening a practice that consists of promoting the action of the security forces in response to public demonstrations that guarantees respect and protection of rights of the participants and of the persons not involved in the demonstration.” It expressly states “that it is compulsory for all police and security forces personnel involved in operations to wear a clear identification that can be seen easily on the corresponding uniforms,” and that one must adopt “all safeguards and controls necessary for ensuring respect, at every stage of the operation, for what is established by the Law on National Intelligence No. 25,520, Regulatory Decree PEN 950/2002 and its amendments.”<sup>178</sup> In addition, Argentina stated that the Ministry of Security permanently monitors the conditions in which each province applies the protocol in force and also offers to improve the education and training of the forces used for handling public demonstrations.<sup>179</sup>

87. CELS, in its response to the questionnaire circulated by the IACHR, recognized the importance of the minimum criteria adopted and highlighted that they incorporate the prohibition on bearing firearms and the obligation to ensure that any intervention of the police forces is gradual, necessarily beginning with dialogue, and avoiding, to the extent possible, using means of physical coercion. It also indicated that there are experiences that show that “the Federal Police can deal with a massive demonstration that then gives way to isolated acts of violence by making progressive and proportional use of force.”<sup>180</sup> According to CELS, without prejudice to these gains the Minimum Criteria are implemented inconsistently by the various security forces and in the different situations faced, and, as already indicated, the Commission was informed that personnel the first lines of containment (i.e., in contact with the demonstrators) were bearing firearms<sup>181</sup>, and also learned of the inappropriate use of rubber bullets and tear gas by the civilian police agents who made up the first lines of contact in demonstrations, in violation of the regulation described.<sup>182</sup> Such irregularities were witnessed by the workers of *Diario Hoy* of La Plata during the public protest on October 8, 2014.<sup>183</sup> The police also repressed the demonstration in Tucumán, on occasion of the

<sup>177</sup> Argentine Republic. Ministry of Security. Resolution No. 210-11. [Minimum Criteria for developing the protocols for action of the police corps and federal security forces in public demonstrations](#). The Minimum Criteria provide that “the use of pistols for launching tear gas is prohibited. The use of weapons or munitions not provided by the corresponding institution shall be considered a grave disciplinary breach. Rubber pellets may only be used for defensive purposes in case of danger to the physical integrity of some member of the security institutions, demonstrators, or third persons. In no case may such munitions be used as a means of dispersing a demonstration. Aggressive chemical agents for riot control may only be used as a last resort and only after an order by the chief of the operation, who will be responsible for the undue use thereof. In such cases, force shall be used exclusively by the personnel specially trained and equipped for that purpose.” Response of the Argentine Republic to the questionnaire circulated by the IACHR to states and civil society to prepare the annual overview of the situation of human rights in the hemisphere, Chapter IV.A., 2015 Annual Report.

<sup>178</sup> Response of Argentina to the questionnaire on the use of force circulated by the IACHR.

<sup>179</sup> Response of Argentina to the questionnaire on the use of force circulated by the IACHR.

<sup>180</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 4.

<sup>181</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 7.

<sup>182</sup> Response of the CPM to the questionnaire on the use of force circulated by the IACHR. See also: *La Izquierda Diario*. [Así reprimieron a los trabajadores del Diario Hoy en La Plata](#). October 9, 2014; *La Tribuna* 69. [La Plata: brutal represión a trabajadores del diario hoy](#). October 9, 2014.

<sup>183</sup> Response of the CPM to the questionnaire on the use of force circulated by the IACHR. See also: *La Izquierda Diario*. [Así reprimieron a los trabajadores del Diario Hoy en La Plata](#). October 9, 2014; *La Tribuna* 69. [La Plata: brutal represión a trabajadores del diario hoy](#). October 9, 2014.

alleged irregularities in the provincial elections held August 23, 2015, with excessive force.<sup>184</sup> In Formosa, on September 30 a protest by members of the Nam Qom indigenous community, claiming the right to dignified housing, was repressed by the police of Formosa with bullets of lead and rubber. As a result, several persons were injured, including children and adolescents.<sup>185</sup> On October 19, Ángel Verón, a social activist of the MTD No al Desalojo (“Unemployed Workers’ Movement No to Eviction”), died after serious injuries allegedly caused by the police in the context of a protest in which roads were blocked as protestors demanded work and housing in the province of Chaco, Argentina.<sup>186</sup>

88. At the same time, according to the information received, the use of less lethal weapons in Argentina has been problematic in different respects. It was reported that undue use was made of shotguns loaded with rubber pellets and that can also be loaded with lead pellets and aggressive chemical agents. While the minimum criteria authorize the use of these weapons exclusively for defense of the integrity of the police, “they have been used to disperse demonstrations, shooting at the demonstrators’ bodies.”<sup>187</sup> According to the information received, neither the provincial police nor the federal forces have made progress drawing up protocols that bring their principles for action into line with the Minimum Criteria.<sup>188</sup> The process of designing protocols for the federal forces was at a standstill since 2013.<sup>189</sup> The IACHR observes that the lack of specific protocols on the progressive and proportional use of less lethal weapons is an obstacle for their appropriate use.

89. In Brazil, Resolution No. 6 adopted on June 18 2013 by the Council for the Defense of Human Rights of the Secretariat of Human Rights, Presidency of the Republic<sup>190</sup>, explicitly provides that “firearms should not be used in demonstrations or public acts.” In addition, it provides that “the use of weapons with low lethality is acceptable only when clearly necessary to protect the physical integrity of the government agent or third persons, or in extreme situations in which the use of force is no doubt the only possible way to contain the violent actions.”

90. With the adoption of Law No. 13,060-2014, *Federal Law on discipline and use of instruments with lesser offensive potential by the public security agents throughout the national territory*<sup>191</sup> and other legislative initiatives, the IACHR takes note of the State’s efforts to bring the use of firearms and less lethal weapons in protests into line with the international standards and urges that these measures be reinforced to achieve their efficacy, for their abusive and disproportionate use in Brazil continues to be one of the greatest obstacles to the exercise of the rights to freedom of expression, assembly, and protest.

91. In the context of the hearing on *Social Protest and Human Rights in the Americas*, held during the 154<sup>th</sup> regular period of sessions, the organizations of Brazilian society denounced that lethal weapons

<sup>184</sup> Article of August 25, 2015 in panampost.com: Dura represión a marcha contra fraude electoral en Tucumán. Available at: <http://es.panampost.com/belen-marty/2015/08/25/dura-represion-a-marcha-contrafraude-electoral-en-tucuman/>. See also: REDLAD, Anuncio: *Hechos de violencia e irregularidades Electorales en la Provincia de Tucumán, Argentina*. September 1, 2015. Available at: [http://issuu.com/red\\_lad/docs/alerta\\_argentina\\_26082015\\_g.docx](http://issuu.com/red_lad/docs/alerta_argentina_26082015_g.docx); Article of August 31, 2015 in clarín.com: *Amnistía Internacional condenó la represión en Tucumán*.

<sup>185</sup> <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1990>.

<sup>186</sup> CELS. October 20, 2015. *Chaco: comunicado por la muerte de Ángel Verón*, and Clarín. October 19, 2015. *Murió un dirigente al que reprimieron por reclamar viviendas en Chaco*.

<sup>187</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 5.

<sup>188</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 5.

<sup>189</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. P. 5.

<sup>190</sup> Brazil. Council of Defense of Human Rights. Resolution No. 06 of June 18, 2013. Available at: <http://www.sdh.gov.br/sobre/participacao-social/cddph/resolucoes/2013/resolucao-06-2013>.

<sup>191</sup> Law No. 13,060. Regulates the use of instruments with less offensive potential by the public security agents, throughout the national territory. December 23, 2014. Available at: [http://www.planalto.gov.br/ccivil\\_03/Atos2011-2014/2014/Lei/L13060.htm](http://www.planalto.gov.br/ccivil_03/Atos2011-2014/2014/Lei/L13060.htm)

continue to be used in the protests in open disregard of Resolution No. 6, and that their use is more common in poor communities that protest police brutality against the inhabitants, mainly in Rio de Janeiro, provoking injuries caused by rubber bullets and tear gas to the detriment of the demonstrators, journalists, and passersby, which in some cases caused irreversible lesions.<sup>192</sup> The Commission was also informed of the imposition of undue restrictions on by the public security agencies of Brazil on the right of access to information about demonstrations, such as the classification as a military secret of the *Uniform Operational Procedure of the Military Police of São Paulo*, which establishes the rules on the use of pistols that fire rubber bullets, which, when revealed by the non-governmental organization PONTE Jornalismo in October 2014, made it clear that it was not being complied with by the military police.<sup>193</sup> Due to the lack of transparency it was also impossible to access information on the law that allowed surveillance by capturing images and identifying demonstrators by camera.<sup>194</sup>

92. The situation raised by the Brazilian organizations is evidenced in the excesses in the use of force displayed on April 29, 2015, by the Military Police in Curitiba in response to the protests by teachers and sympathizers who opposed changes proposed in the system of state pensions, resulting in at least 200 demonstrators and 20 police injured; 50 demonstrators were said to have been taken to health centers to receive emergency medical assistance, eight persons were seriously injured, and seven demonstrators were arrested.<sup>195</sup> The IACHR monitored the situation through the powers conferred on it by Article 41 of the American Convention, requesting information in this respect; that request was answered by the Brazilian State on June 30, 2015.<sup>196</sup>

93. Chile reported that in 2012 the General Directorate of Carabineros de Chile ordered a review of the procedures of the Special Forces, for which it convened the civil society organizations, human rights organizations, and the ICRC. As indicated, the work culminated in 2013 with the “drafting of a series of protocols that defined the framework of the activity of the work of Carabineros officials in maintaining public order during public demonstrations. Among these is regulation of the sequence of steps expected in the planning and implementation of police operations, the differentiated and proportional use of force, as well as the principles of necessity, legality, and proportionality. It indicated that the protocols were published in June 2014.”<sup>197</sup>

94. The *Protocols for Maintaining Public Order* distinguish – in a worrisome way – the intervention of the forces in demonstrations depending on how legitimate they seem, namely: (a) in peaceful demonstrations held with authorization; (b) in peaceful demonstrations held without authorization; (c) in violent demonstrations; and, (d) in aggressive demonstrations. In peaceful demonstrations without authorization – understood as those that unfold in “public spaces peacefully, safely, and with respect for the mandates of the police authority” – it is ordered that one first pursue *processes of dialogue*, followed by *containment* of the first alterations, and *deterrence* using loudspeakers. If necessary, the personnel shall *clear* the place with the gradual use of force. *Dispersal* shall have the purpose of “allowing the entry of personnel who will arrest those persons identified as breaking the law,” and water cannon vehicles will be used to do so,

<sup>192</sup> IACHR: [Hearing on Social protest and human rights in the Americas](#). 154th regular period of sessions. March 16, 2015; and Hearing on [Situation of human rights and social protest in Brazil](#). 150th regular period of sessions. March 28, 2014. See also: Article 19. [As Ruas Sob Ataque: Protestos 2014 e 2015](#). 2015.

<sup>193</sup> PONTE. October 29, 2014. [Documento secreto: PM viola normas de uso para bala de borracha](#); Article 19. [As Ruas Sob Ataque: Protestos 2014 e 2015](#). 2015.

<sup>194</sup> Article 19. [As Ruas Sob Ataque: Protestos 2014 e 2015](#). 2015.

<sup>195</sup> Globo. [Professores e polícia entram em confronto durante votação na Alep](#). April 29, 2015.

<sup>196</sup> IACHR. Request for information, Article 41 of the American Convention: Violence and human rights violations during social protests in Curitiba, Paraná, Brazil, May 5, 2015.

<sup>197</sup> Response of Chile to the questionnaire on the use of force circulated by the IACHR. P. 25. See also: Carabineros de Chile, *Protocols for Maintaining Public Order*, 2014. Available at: [http://deptodhh.carabineros.cl/a1/Protocolos\\_mantenimiento\\_del\\_orden\\_publico.pdf](http://deptodhh.carabineros.cl/a1/Protocolos_mantenimiento_del_orden_publico.pdf).

and “if the water cannon vehicles do not succeed in completely attaining the objective, vehicles for launching gas will be used.” It is indicated that “once the police vehicles have entered, the personnel shall proceed to detain the persons identified as breaking the law (agitators, subversives, criminals). Massive and indiscriminate arrests should be avoided.”<sup>198</sup> In “violent demonstrations” – understood as those that “violate the instructions of the police authority” – the protocols do not call for dialogue but rather deterrence, clearing, and dispersal of the demonstrators and arrest of persons breaking the law.<sup>199</sup>

95. According to the protocols, “the use of firearms should be considered an extreme measure. They may only be used in exceptional circumstances that presuppose the existence of an imminent danger of death or serious injury to a Carabinero or any other person (legitimate self-defense). Once the situation of danger has ceased it is not appropriate to use firearms.”<sup>200</sup> The use of a shotgun for riot control “should be the consequence of a necessary, legal, proportional, and gradual application of the means and when the effect of other elements such as water, gasses, and others is insufficient.”<sup>201</sup> The official should be “duly qualified” and verify “that the type of cartridges to be used are those that are appropriate for use for riot control, as per both the law and the regulations, and they should have rubber munitions, and said officials shall be the one who should use, handle, load, and discharge said weapon.”<sup>202</sup> The use of a compressed air launcher or “paintball” gun<sup>203</sup> is authorized in demonstrations “in which serious attacks are committed against police personnel.”<sup>204</sup> The protocols provide: “The impacts of the compressed air launcher or ‘paintball’ gun may be directed at the body of the aggressor or at the ground when gasses are used inside the spheres,” and “if it is learned that a person has been injured, assistance shall be provided as soon as possible, immediately informing the commander so as to adopt the appropriate police procedure.”

96. In his preliminary conclusions, after its visit to Chile in September 2015, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, indicated that while the protocols of Carabineros de Chile for managing protests “contain some positive principles that seek to enable protests ... they should be improved.”<sup>205</sup> The Special Rapporteur also criticized, for example, that the protocols consider a protest violent if protestors disobey the instructions of the police, and that “there seems to be a lack of practical guidance as to how to implement and monitor the implementation of these protocols.” In this respect, he emphasized that “the police have the duty to distinguish between peaceful demonstrators and agents provocateurs. The presence of a few people engaging in violence in and around a protest does not authorize police to brand the entire protest violent. It does not give the State carte blanche to use force against or arrest everyone indiscriminately. Rather, the violent elements should be extracted from the protest and dealt with in accordance with the rule of law. In fact, the persistent failure in dealing with these few violent people raises questions about the reasons for inaction by the police as these violent protesters mar the image and effectiveness of public protests. Extracting these violent few requires skill, training, and dedication on the part of the police.”<sup>206</sup>

<sup>198</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Intervention in violent demonstrations. Protocol 2.2.

<sup>199</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Intervention in violent demonstrations. Protocol 2.3.

<sup>200</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Use of Firearms. Protocol 2.17.

<sup>201</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Use of Riot Control Shotgun. Protocol 2.16.

<sup>202</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Use of Riot Control Shotgun. Protocol 2.16.

<sup>203</sup> According to that protocol, this launching device “is a police instrument, non-lethal and essentially defensive in nature that shoots gelatin capsules that may contain paint, gas, rubber, or other elements.”

<sup>204</sup> Carabineros de Chile. [Protocols for Maintaining Public Order](#). Use of Compressed Air Launcher. Protocol 2.15.

<sup>205</sup> United Nations. September 30, 2015. [Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, at the conclusion of his visit to the Republic of Chile.](#)

<sup>206</sup> United Nations. September 30, 2015. [Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, at the conclusion of his visit to the Republic of Chile.](#)

97. The IACHR notes that in May 2015, Rodrigo Avilés, who participated in a student protest in Valparaíso, was seriously injured.<sup>207</sup> Initially, Carabineros reported that the injury was the result of an accident in which the youth had slipped. Videos publicized subsequently showed that the stream of the water cannon vehicle had been aimed directly at his body. According to the information available, Carabineros de Chile discharged the police official who was responsible.<sup>208</sup> On July 24, 2015 Nelson Quichillao, a subcontractor worker at the “El Salvador” mine of the Corporación Nacional del Cobre, Codelco, died when shot by a firearm discharged by the Special Forces of Carabineros de Chile during a protest over the working conditions and economic situation of the workers at the mine.<sup>209</sup> In the context of the 156<sup>th</sup> regular period of sessions, in the hearing on *Report of violence against Mapuche indigenous children and impunity in Chile*, the IACHR was informed of violent episodes that occurred in Mapuche territory from 2012 to 2015, mainly in Temuco, Temucucui, and Trapilwe, which negatively affected dozens of children and adolescents.<sup>210</sup>

98. Colombia reported that the actions of the Mobile Anti-Riot Squad (ESMAD: Escuadrón Móvil Antidisturbios) and the use of less lethal weapons are regulated by the *Manual for the Police Service in Attention, Management and Control of Crowds*, approved in 2009<sup>211</sup>, and the *Regulation for the use of force and use of devices, munitions, and non-lethal weapons by the National Police*, approved in 2015.<sup>212</sup> It indicated that the ESMAD is authorized to use force with less lethal weapons and that its members are trained for crowd management and control with respect to human rights.<sup>213</sup> That Manual provides that “one should do all possible to rule out the use of firearms, especially against children.”<sup>214</sup> The State also reported the existence of other provisions, directives, and comunicués that govern the action of its law enforcement officials in these contexts.<sup>215</sup>

99. The intervention of the ESMAD in demonstrations is preceded by the preparation of an intelligence report “making known the assessment of possible events that may arise as the demonstration

<sup>207</sup> BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés.](#)

<sup>208</sup> BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés.](#)

<sup>209</sup> El Mostrador. July 31, 2015. [Nelson Quichillao: el fatal destino de un eterno minero subcontratado](#); EMOL. July 24, 2015. [Contratista de Codelco muere baleado en protesta: trabajadores acusan a Carabineros](#), United Nations. September 30, 2015. [Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, at the conclusion of his visit to the Republic of Chile.](#)

<sup>210</sup> IACHR. Hearing on *Reports of violence against Mapuche indigenous children and impunity in Chile*. 156<sup>th</sup> regular period of sessions. October 22, 2015.

<sup>211</sup> National Police of Colombia. General Directorate. Resolution number 03514 of November 5, 2009, “[By which is issued the Manual for Police Service in Approaching, Handling, and Controlling Crowds.](#)”

<sup>212</sup> Response of Colombia to the questionnaire on the use of force circulated by the IACHR.

<sup>213</sup> The manual establishes the gradual use of force, for example it provides that the first step is only formations with tonfa batons, subsequently the use of smoke grenades, stun bombs, and pepper spray; as the alteration of public order continues, make use of water cannon tanks, and the weapons with the greatest impact such as controlled impact cartridges or non-lethal projectiles should be used as a last resort. The use of firearms for handling public demonstrations is authorized, though it is considered “an extreme measure.” (Colombian National Police. General Directorate. Resolution number 03514 of November 5, 2009, “[By which is issued the Manual for Police Service in Approaching, Handling, and Controlling Crowds.](#)”)

<sup>214</sup> Colombian National Police. General Directorate. Resolution number 03514 of November 5, 2009, “[By which is issued the Manual for Police Service in Approaching, Handling, and Controlling Crowds.](#)”

<sup>215</sup> Office communiqué No. 239639 INSGE ARDEH of August 20, 2013, on the role of the Human Rights Coordinators in the day of social protest; Instructive No. 09 DIPON OFPLA of April 9, 2013 “*Police action in response to Events of Impact that Generate Social Protest*”; Instructive No. 013 DIPON INSGE of August 28, 2013 “*Engagement: Imperative Institutional Provision in Days of Social Protest*,” projected based on Presidential Directive No. 012 of 2008, of the Office of the Procurator General of the Nation; Transitory Operational Directive No. 002 DIPON.DISEC January 9, 2014 “*Institutional parameters for Activating the System for Anticipating and Controlling Internal Disturbances in the National Territory*”; and Transitory Operational Directive No. 002 DIPON.DISEC 09/01/15 “*Institutional Parameters for Activating the System for Anticipating and Responding to Social Protests in the National Territory.*”

unfolds” and with the aim of “preventing possible criminal acts that also violate treaty obligations,” and by a meeting “with the authorities to establish strategic, logistic, and administrative planning for this activity. Determine its magnitude and the risks it may give rise to.” According to the Manual, the commander of ESMAD “should analyze the situation, identify the intentions of the leaders of the demonstration and the conduct of the participants, so as to make the best decision, exhausting the recourse of dialogue ... to guarantee ... the sound development of the demonstration if it is authorized, or to induce them not to carry it out if they lack authorization.” It further states: “Due to a change in conduct from peaceful to violent by those participating in the demonstration, it is the institutional duty to re-establish public order in those places where it is altered, for which reason one should execute the procedure for controlling disturbances, respecting human rights and seeking to re-establish the tranquility of the place where the demonstration is held.”<sup>216</sup>

100. Even though the Manual explicitly establishes that the use of force should be the last recourse and that the members of the police should turn to in order to reestablish public order, first pursuing a dialogue, civil society organizations have denounced excessive use of force and the disproportionate use of less lethal weapons, resulting in negative impacts for the population participating in demonstrations.<sup>217</sup> The use of such weapons in the context of demonstrations is said to have resulted in “hundreds of persons wounded, mutilated, or affected with permanent bodily lesions. Even so, there are no effective controls to limit the potential harmfulness of these weapons.”<sup>218</sup>

101. The Commission observes with concern the deployment of force by the ESMAD during the period under review in events such as: (a) the protest in the context of the judicial strike called by a union of judicial officers in Bogotá, on November 24, 2014<sup>219</sup>; (b) the protest at the Troncal del Caribe (Caribbean Highway) in the Colombian Caribbean region, in June 2015<sup>220</sup>; (c) the protest by students who are minors held at Calle 13 in Bogotá, on July 14, 2015<sup>221</sup>; and (d) the reaction in response to protests by inhabitants of Cartagena regarding the harm that tear gas –used to quell a fight between gangs – caused children and adolescents on March 24, 2015.<sup>222</sup> It was also denounced that some members of the ESMAD had used electric shocks.<sup>223</sup> This situation is consistent with what was noted by the Committee against Torture in its final observations on the fifth periodic report on referring to the “the number of persons who have been shot to death or wounded by gunshot during confrontations between demonstrators and security forces in the course of social protests [as well as] allegations of police mistreatment of demonstrators.”<sup>224</sup>

102. The IACHR received information on the excessive use of force by security forces and the arrests of hundreds of persons in the context of demonstrations held in several cities of the United States in

<sup>216</sup> Colombian National Police. General Directorate. Resolution number 03514 of November 5, 2009, “[By which is issued the Manual for Police Service in Approaching, Handling, and Controlling Crowds.](#)”

<sup>217</sup> IACHR. [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>218</sup> American Civil Liberties Union, United States (ACLU); Article 19, Brazil; Article 19, Mexico; Asociación Pro Derechos Humanos, Peru (APRODEH); Canadian Civil Liberties Association (CCLA); and others. Request for Hearing on *Social protest and human rights in the Americas*. 154<sup>th</sup> regular period of sessions. March 16, 2015. In Archive of the IACHR.

<sup>219</sup> El Espectador. [Denunciarán al Fiscal General por exceso de fuerza de agentes del Esmad](#). March 4, 2015.

<sup>220</sup> El Herald. [Investigan posible uso de fuerza excesiva del Esmad en Tasajera](#). June 11, 2015. See also: Hoy Diario del Magdalena. [Durante Audiencia Pública Comunidad ‘enfrentó’ a Electricaribe por deficiente servicio de luz](#). June 21, 2015.

<sup>221</sup> El Herald. [Esmad agrede a más de 20 alumnas de La Misericordia: Personero de Soledad](#). July 14, 2015.

<sup>222</sup> El Universal. [Denuncian abuso del Esmad de la Policía en el barrio Paseo Bolívar](#). March 24, 2015.

<sup>223</sup> American Civil Liberties Union, United States (ACLU); Article 19, Brazil; Article 19, Mexico; Asociación Pro Derechos Humanos, Peru (APRODEH); Canadian Civil Liberties Association (CCLA); and others. Request for Hearing. See also: IACHR. [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015.

<sup>224</sup> CAT. Concluding observations on the fifth periodic report of Colombia, 1323<sup>rd</sup> session. May 12, 2015. Para. 16.

protests in response to acts of police violence that caused the deaths of several persons of African descent in 2014 and 2015. The IACHR noted the indiscriminate use of tear gas and mass arrests.<sup>225</sup>

103. Guyana informed the IACHR that the use of firearms (shotguns, 9 mm pistols, and .38 revolvers) is authorized for the officials of the Guyana Police Force who intervene in social protests and public demonstrations “in keeping with the doctrine on the use of force.”<sup>226</sup>

104. Honduras reported that the control of social protests and public demonstrations is a responsibility of security agencies, specifically of the National Police. In order to exercise that control basic individual gear is used, “which is constituted by the standard-issue uniform, cudgel, protective helmet, bags for tear gas canisters, anti-riot vest, protective shield, rifle for launching tear gas canisters, and gas mask.”<sup>227</sup> In March 2015, tear gas bombs were launched inside the Instituto Central Vicente Cáceres (ICVC), where secondary school students were participating in a protest.<sup>228</sup>

105. The Commission learned that the Federal Police of Mexico have general guidelines for regulating the use of public force by the police institutions of the deconcentrated agencies of the Ministry of Public Security, issued in 2012<sup>229</sup>, and that the states of Nuevo León, Hidalgo, Morelos, Oaxaca, Puebla, San Luis Potosí, and the Federal District have specific legislation (statutes and regulations) regulating the use of force, while 15 states merely have general provisions on the use of force in their laws on public security. The information provided to the Commission did not indicate whether these forces have protocols that apply the principles of rational and proportional use of force to the contexts of demonstrations and social protests.

106. On September 11, 2014, the National Commission on Human Rights (CNDH: la Comisión Nacional de Derechos Humanos), in the context of an investigation into the use of force in the demonstrations in the community of Chalchihuapan, in the municipality of Ocoyucan, state of Puebla, indicated: “While it is true that there are institutions in Mexico that make use of isolated principles and criteria on the use of force, one observes an absence of a national protocol on the use of public force in keeping with international human rights standards that is applied by all the security bodies, the scant effectiveness of human rights training for the public security forces, and the impunity that has prevailed in certain events, as a result of which cases continue to be filed involving the disproportionate use of force for the purpose of repressing acts of social protest.”<sup>230</sup> The CNDH did not find evidence that the government of the state of Puebla “had implemented the actions needed to adequately address said demonstration, ensure that dialogue is pursued until of no further avail, and try to peacefully resolve a social conflict that got out of control and turned violent, resulting in the death of a 13-year-old child; and nine persons injured with varying degrees of harm.”<sup>231</sup> It also said that of the

<sup>225</sup> IACHR. [Hearing on Social protest and human rights in the Americas](#). 154<sup>th</sup> regular period of sessions. March 16, 2015. See also: CNN. [Who was arrested in Ferguson?](#) August 22, 2014; The New York Times. [Ferguson Protests Take New Edge. Months After Killing](#). October 13, 2014; LA Times. [Clergy among those arrested in Ferguson police station protest](#). October 13, 2014; Reuters. [More than 400 arrested as Ferguson protests spread to other U.S. cities](#). November 26, 2014; LA Times. [California unrest: Dozens arrested after Michael Brown decision](#). November 25, 2014; NBC Los Angeles. [Nearly 200 Arrested in LA on Second Day of Ferguson Demonstrations](#). November 25, 2014 (updated November 26, 2014); ABC News. [223 Arrested as Protesters, Police Clash in New York City Over Eric Garner Decision](#). December 5, 2014; Freedom of the Press Foundation. [Documenting the Arrests of Journalists in Ferguson](#). August 19, 2014 (updated November 26, 2014).

<sup>226</sup> Response of Guyana to the questionnaire on the use of force circulated by the IACHR. P. 7.

<sup>227</sup> Response of Honduras to the questionnaire on the use of force circulated by the IACHR.

<sup>228</sup> Honduprensa. [Estudiantes de secundaria reprimidos por ejercer derecho a protesta](#). March 16, 2015.

<sup>229</sup> Minister of Public Security. [DECREE 04/2012 by which are issued the general guidelines for regulation of the use of public force by the police institutions of the deconcentrated organs in the Ministry of Public Security](#). April 23, 2012.

<sup>230</sup> CNDH. [Recommendation No. 2vg/2014 on the investigation of grave human rights violations begun to look into the events of July 9, 2014, in the municipality of Ocoyucan, Puebla](#). September 11, 2014.

<sup>231</sup> CNDH. [Recommendation No. 2vg/2014 on the investigation of grave human rights violations begun to look into the events of July 9, 2014, in the municipality of Ocoyucan, Puebla](#). September 11, 2014.

360 devices inspected by the CNDH), 38 spent cartridges, and 41 aluminum cylinders had the characteristics of a 37/38 mm long-range irritant projectile. It emphasized that “if inadequate use is made of the equipment mentioned, projecting them directly at persons, considerable injuries can be caused, such as those of the victims.” It found that the police forces “were not duly trained or certified in the use of non-lethal public force.” It recommended to the authorities that they bring their actions into line with the constitutional mandate, and when the use of public force is inevitable for reestablishing order in the case of a public demonstration that became violent, that they bear in mind the duty they have to act with due diligence and to avoid serious harm to persons and to society as a whole.<sup>232</sup>

107. The publication, on April 19, 2015, of a report narrating the events of January 6, 2015, in Apatzingán, Michoacán, Mexico, in which at least 16 civilians were extrajudicially executed by federal agents, led to the request for information transmitted by the Commission to the Mexican State, under Article 41 of the American Convention.<sup>233</sup> In the note the IACHR expressed great concern over the alleged extrajudicial execution of the unarmed youths, who were demonstrating in front of the city hall of Apatzingán protesting the unjust dismissals without compensation that had been ordered by the former federal security commissioner for Michoacán, Alfredo Castillo Cervantes. That version contrasted with the version offered by the above-mentioned official, which would suggest a confrontation between two self-defense groups, and the State’s response to the Commission’s request when it referred to indicia tending to corroborate the hypothesis of a confrontation with firearms. Nonetheless, civil society organizations assert that the events at Apatzingán constitute another example of the arbitrary use of lethal force and the cover-up by the authorities to hinder the investigation, prosecution, and, as the case may be, punishment of the persons responsible. The Commission examines this event in more detail in its *Report on the Situation of Human Rights in Mexico*.<sup>234</sup>

108. Nicaragua indicated in its response that “in the police interventions [in social demonstrations], the police of Nicaragua are strictly prohibited from using firearms or other lethal weapons, thus they are only authorized to use non-lethal riot control techniques.”<sup>235</sup> Nicaragua reported that the police forces involved in reestablishing public order in social protests and demonstrations “have been equipped with personal protection equipment (helmet, mask, shield, and anti-trauma suit).” As a deterrent technique “they have tear gas, with a less intrusive and non-lethal irritant chemical component that does not put persons’ lives in danger. This technique is used to re-establish public order in response to grave alterations, and its purpose is to disperse the persons who are provoking the incident.”<sup>236</sup> The State did not report the existence of specific protocols for police action in such matters.

109. In the hearing on *The construction of the transoceanic canal and its impact on human rights in Nicaragua*, the civil society organizations denounced to the IACHR that since August 2014, 37 peaceful marches had been carried out expressing opposition to the canal project, which were subjected to a “process of intimidation and repression by the armed bodies of the State”<sup>237</sup> They indicated, as an example, that on December 23 “more than 200 police violently broke up the protest against the canal in Rivas, and they illegally arrested more than 50 persons.” In addition, in the town of Tule thousands of peasants protested for

<sup>232</sup> CNDH. [Recommendation No. 2/vg/2014 on the investigation of grave human rights violations begun to look into the events of July 9, 2014, in the municipality of Ocoyucan, Puebla](#). September 11, 2014.

<sup>233</sup> IACHR. Request for information, Article 41 of the American Convention: Reports of massacre in Apatzingán. Mexico. May 1, 2015.

<sup>234</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, December 31, 2015.

<sup>235</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR. P. 26.

<sup>236</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR. P. 23.

<sup>237</sup> IACHR. [Hearing on Construction of the transoceanic canal and its impact on human rights in Nicaragua](#). 154<sup>th</sup> regular period of sessions. March 16, 2015. See also: Reuters Mexico. [Al menos 21 heridos en Nicaragua en protesta contra proyecto de canal interoceanico](#). December 24, 2015; Martinoticias.com. [Exigen en Nicaragua libertad para detenidos en marchas anticanal](#). December 25, 2015.

eight days in a row, and on December 24, 2014 “; a contingent of hundreds of police and soldiers lashed out against the peasants, shooting rubber bullets and tear gas at them for the purpose of dissolving the demonstrations, resulting in more than 70 persons injured.” On that occasion Wilmer José Murillo and José María Calderón were wounded in the face with rubber bullets.

110. Panama reported in the last four-month period of 2014 and in the course of 2015, the security forces have not used force “in any demonstration in the country” and that there have not been any “victims due to civil demonstrations.”<sup>238</sup> It indicated that the circumstances in which force is used will depend on the “place of the events and accesses, number of demonstrators, cause and motive of the action taken, level of aggressiveness of the demonstrators, organizations, and groups that protest, and equipment or material used by the demonstrators as weapons.”<sup>239</sup> It said that “before turning to the use of force one must exhaust all possible means of persuasion, among them: dialogue with the demonstrators by a member of the Regular Police who is not involved in the intervention of the anti-riot elements, the intervention of the civilian authorities, persuasion using megaphones or loudspeakers regarding the possible intervention of the riot police and the legal basis for their action, allow a prudent time for observing whether the demonstrators are or are not persuaded.”<sup>240</sup> It also referred to the adoption of Proposed Law No. 152, which modifies Law 18 of the National Police, insofar as it would restrict the use of shot (of plastic, lead, and rubber), or any type of weapon whose main effect is to cause injuries with fragments that cannot be located by X-ray in the human body, by state security agents, in peaceful demonstrators.<sup>241</sup>

111. During the 153<sup>rd</sup> regular period of sessions, the IACHR learned of the acts of violence against peasant farmers in Paraguay, which were said to be a state response to social protests demanding access to the land and expressing opposition to the massive fumigations and to the undue use of agrotoxics. The civil society organizations that participated in the hearing held October 31, 2014, referred to the disproportionate and negligent use of firearms and less lethal weapons such as rubber ball bearings against peasants who participated in the protests, which have resulted in numerous persons injured and arrested. They said that the Paraguayan State “instead of creating public policies to democratize land tenure and to enforce the environmental laws, uses the police forces [and] at times military forces to violently repress people who mobilize to claim [these] right[s].”<sup>242</sup>

112. In the context of the questionnaire on the use of force, Paraguayan civil society actors insisted that civilian police agents use disproportionate force in the context of public demonstrations. They indicate that the police, using tear gas and bullets of rubber and lead, dispersed the protest organized by the residents of Brítez Kué, Curuguaty, on October 6, 2014, resulting in 23 persons injured, both civilians and police agents, including one adolescent, from whom a lead projectile was extracted.<sup>243</sup> The digital press indicates that there is a lack of clarity as to the circumstances that incited the confrontation.<sup>244</sup> Numerous persons injured, some seriously, and arrests, were also documented on February 16, 2015, in the “demonstration of passengers” in the zone of Villa Hayes, department of Presidente Hayes; on June 25, 2015, in the demonstration of airport workers, in front of the “Silvio Pettrossi” international airport; and on August 26, 2015, in the demonstration of trade union federations in the city of Asunción, as reported to the IACHR.<sup>245</sup>

<sup>238</sup> Response of Panama to the questionnaire on the use of force circulated by the IACHR.

<sup>239</sup> Response of Panama to the questionnaire on the use of force circulated by the IACHR.

<sup>240</sup> Response of Panama to the questionnaire on the use of force circulated by the IACHR.

<sup>241</sup> Response of the Republic of Panama to the questionnaire circulated by the IACHR. P. 11. See also: National Assembly of Panama. [Proposed Law 152](#); El Nuevo Herald. [Parlamento de Panamá aprueba ley que prohíbe uso de perdigones en protestas](#). August 6, 2015.

<sup>242</sup> IACHR. Hearing on [Reports on violence against peasants in Paraguay](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.

<sup>243</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR. P. 12.

<sup>244</sup> Ultimahora.com: [Campesinos y policías se enfrentan durante una protesta en Curuguaty](#). October 7, 2015.

<sup>245</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR. Pp. 13, 15-16.

113. According to data released by the Ombudsman of Peru, 2,216 "collective protest actions" in the country were registered in the period October 2014 - October 2015, some of which correspond to regional social conflicts of labor and environmental type.<sup>246</sup> Civil society organizations from that country have denounced a high number of persons injured and killed due to the excessive use of force in Peru in those contexts and continue to insist on the urgent need to bring the action of the Peruvian police into line with international standards. According to the records kept by the Coordinadora Nacional de Derechos Humanos<sup>247</sup>, in 2015 nine peasants died by gunshot wounds, during protests over the development of extractive industries projects in the southeast part of the country. On February 10, 2015, Ever Pérez Huaman died after receiving a gunshot wound in protests in the department of Junín; on April 22 Victoriano Huayna Nina also died of a gunshot wound in protests in the department of Arequipa; Hery Checcla died on May 5 after receiving two gunshot wounds to the back in the department of Arequipa; on May 22 Ramón Colque Vilca died due to firearms in the department of Arequipa; on May 25, Luis Seferino Quispe died after receiving a gunshot wound in the face in the department of Ica. Press reports indicate that in the month of September 2015 another four peasants died in Challhuahuacho in protests against the Las Bambas mining project.<sup>248</sup>

114. In August 2015, the Commission making use of its powers requested specific information from Peru, in the aftermath of the massive response of the anti-riot police to the August 2015 demonstrations led by workers from the La Oroya Metallurgical Complex, owned by the company Doe Run Perú, S.A., in the city of La Oroya, and which resulted in one person deceased by gunshot wound and approximately 60 persons injured<sup>249</sup>. In accordance with article 41 of the American Convention, the IACHR referred to the international standards on the use of force and the obligation to respect and ensure the rights to association, assembly, and freedom expression protected in the American Convention.<sup>250</sup> According to Peruvian civil society organizations, while the Government announced disciplinary procedures against those police who unduly used lethal force, "the cases of abuse are recurrent and have not stopped."<sup>251</sup>

115. The IACHR values the consideration by the states of measures that would prioritize the use of less lethal weapons when the use of force is necessary, as is the case of the Operating Plan of the Trinidad and Tobago Police Service, which has as one of its "key performance targets" for 2015 prioritizing the adoption of a continuous policy regarding the use of force that includes such weapons and munitions.<sup>252</sup>

116. The IACHR received with concern allegations about acts of intimidation and disproportionate use of force by agents of the Uruguayan security forces against secondary students on September 22, 2015, during the eviction of an occupation of the Central Directing Council of the National

<sup>246</sup> Defensoría del Pueblo del Perú. Adjuntía para la Prevención de Conflictos Sociales y Gobernabilidad. Reporte de Conflictos Sociales No. 140. Octubre 2015. Pág. 114.

<sup>247</sup> Coordinadora Nacional de Derechos Humanos. Informe Anual 2014-2015. Annex 1. Available at: [http://derechoshumanos.pe/informe2014\\_15/Anexo1\\_2014\\_15.pdf](http://derechoshumanos.pe/informe2014_15/Anexo1_2014_15.pdf). See also: Responses of CNDDHH and IDL to the questionnaire on the use of force circulated by the IACHR.

<sup>248</sup> ENDI. *Aumenta cifra de muertos en protesta de mineros*. September 29, 2015.; Alba movimientos. *Protesta contra minera deja 4 muertos en Perú: declaran estado de emergencia*. October 1, 2015.

<sup>249</sup> YouTube. August 12, 2015. Policía dispara a los pobladores de Tupac La Oroya. Available at: <https://www.youtube.com/watch?v=mXMFZT8AIGk>.

<sup>250</sup> IACHR. Request for information, Article 41 of the American Convention: Situation of confrontations between police and demonstrators in La Oroya. Peru. August 28, 2015. As previously mentioned, the Peruvian State reported, on September 11, 2015, on the end of the public demonstrations after the efforts to pursue a dialogue made by the authorities and the representatives of the workers and authorities in La Oroya. Report No. 145-2015-JUS/PPES of the Peruvian State, related to the request for information, Article 41 of the American Convention, on the Situation of confrontations between police and demonstrators in La Oroya, September 11, 2015.

<sup>251</sup> Responses of CNDDHH and IDL to the questionnaire on the use of force circulated by the IACHR.

<sup>252</sup> Trinidad and Tobago Police Service (TTPS), Operating Plan 2015, January 20, 2015, p. 36. Available at: <http://www.ttps.gov.tt/Portals/0/Documents/COMPLETE%20OPERATING%20PLAN%202015%20WEBSITE%20VERSION.pdf>.

Administration of Public Education (CODICEN), in the context of mass protests vindicating the right to education.<sup>253</sup>

117. The Venezuelan State reported that the action of the police bodies in public assemblies and demonstrations is regulated by Ministerial Resolution No. 113<sup>254</sup> of the Ministry of People's Power for Internal Relations and Justice, whose purpose is "to establish principles, guidelines, and procedures that are uniform, efficient, and transparent as to the action of the police bodies to guarantee public order, social peace, and citizen co-existence in assemblies and demonstrations." The resolution establishes that the use of force by the police is governed by the principles of legality, necessity, and proportionality, and expressly prohibited the "use of firearms for controlling public assemblies and peaceful demonstrations." It also determines that the police forces "shall take precautions for the use of chemical agents in strictly localized fashion so as to prevent their dissemination and extent" and that they "shall refrain from propelling them directly at persons, avoiding their lethal or harmful consequences." The resolution establishes that it is a duty of the Police to instruct its officials on the equipment and on its adequate use in protests and to coordinate and facilitate the work of the Office of the Human Rights Ombudsperson in these contexts. It also reported on the adoption of Resolution 008610, which establishes the provisions on the actions of the Bolivarian National Armed Forces in functions of controlling public order, social peace, and citizen co-existence in public assemblies and demonstrations, already addressed in the previous section.

118. The IACHR has used various mechanisms to monitor protests in Venezuela. As was reported, from February to June 2014, 43 persons died in the context of the demonstrations, and 878 were injured, 68% of them civilians. According to information collected by the Observatorio Venezolano de Conflictividad Social, in the first half of 2015 there were at least 2,836 protests in Venezuela, with an average of 470 per month, and a 50% increase in labor protests.<sup>255</sup> There were various demands, according to the report, on issues including labor situations (34%), housing and basic services (25%), scarcity of foods and medicines (18%), citizen security (11%), and opposition to the government administration (6%). Civil society organizations of Venezuela have reported that members of the Venezuelan security bodies continue to make disproportionate and abusive use of force, including lethal force, in these contexts. The Commission has taken note of the gunshot wounds, as well as lesions caused by rubber shot and high-pressure water cannons, at short distances from the persons or in closed or residential spaces.<sup>256</sup> In 2015, the Foro por la Vida, a coalition of Venezuelan human rights organizations, stated that "the thesis of the coup d'état, which in several regions was reinforced by the idea of the "internal enemy," was used to justify the use of disproportionate force against the demonstrators, most of them peaceful. The State has a tendency to characterize demonstrations

<sup>253</sup> You Tube (Video). September 25, 2015. Testimonies of students. Represión policial a estudiantes que ocupaban Codicen (parte 2). Available at: <https://www.youtube.com/watch?v=rfaVsevRNsc>; En Perspectiva/You Tube (Video) Entrevista con Benjamín Peulla sobre la desocupación de la sede del Codicen. Available at: <https://www.youtube.com/watch?v=DjqqzInvUA>.

<sup>254</sup> Ministry of People's Power for Internal Relations and Justice. [Resolution No. 113 of April 15, 2011](#). Official Gazette Mo. 39.658; Response of the Republic of Venezuela to the questionnaire circulated by the IACHR to the states and civil societies to prepare the annual overview on the human rights situation in the hemisphere, Chapter IV.A. of the 2015 Annual Report.

<sup>255</sup> Observatorio Venezolano de Conflictividad Social. Report First Six Months of 2015.

<sup>256</sup> Asociación Civil Fundación Justicia, Solidaridad y Paz (FUNPAZ), Asociación Civil Venezuela Diversa, Casa de la Mujer Juana Ramírez La Avanzadora" Maracay, the Human Rights Chair of the Universidad Centroccidental Lisandro Alvarado, Center for Human Rights of the Universidad de Margarita, "Padre Luis María Olaso" Center for Peace and Human Rights at the Universidad Central de Venezuela, Justice and Peace Human Rights Commission of the state of Aragua, Inter-Institutional Commission on Human Rights of the School of Legal and Political Sciences of the Universidad del Zulia, the School of Law at the Universidad Rafael Urdaneta, and the Commission on Human Rights of the bar association (Colegio de Abogados) of the state of Estado Zulia, Comité de Familiares de las Víctimas de los Sucesos de Febrero-Marzo de 1989 (COFAVIC), Comité de Familiares de Víctimas de Abusos Policiales y Militares del Estado Anzoátegui (COFIVANZ), Comité Paz y Vida por los Derechos Humanos state of Barinas, Comité Pro Defensa de los Derechos Humanos Familiares Víctimas del estado Falcón (COPRODEH), Comité Pro Defensa de Víctimas de Violaciones a los Derechos Humanos del Ciudadano Público (COPROVIDH), Nueva Esparta en Movimiento, Observatorio Venezolano de los Derechos Humanos de las Mujeres (OVDHM), Proyecto RedDes of the Universidad Centroccidental Lisandro Alvarado, Human Rights Vicariate of the Archdiocese of Caracas. [Alternative report to the fourth periodic report of the Bolivarian Republic of Venezuela on implementation of the International Covenant on Civil and Political Rights to the Human Rights Committee of the United Nations](#). June 2015.

that include blocking roads as violent, and has defined such conduct as a criminal offense in the 2005 reform to the Criminal Code.”<sup>257</sup>

119. According to the information obtained by the IACHR, on February 25, Kluberth Roa, a 14-year-old student, died from a gunshot wound to the head fired from a short distance by an agent of the Bolivarian National Police of Venezuela (PNB) at a protest outside the Universidad Católica del Táchira.<sup>258</sup>

120. Based on what is recounted in the foregoing paragraphs, one observes that in 2014-2015, the inadequate and excessive use of force by authorities in the handling of public demonstrations has caused serious injury to persons and has increased tension and social conflict in several countries of the region. The IACHR welcomes the initiatives taken in this period to more appropriately regulate the use of force in these contexts. Without prejudice to these positive initiatives, the Commission considers that one should make greater efforts to ensure that the use of force is effectively governed by the principles of legality, necessity, and proportionality. 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.

- **Mass arrests in the Context of Social Protests**

121. The Commission considers that any arrests made by the security forces in the context of social process must meet all the requirements set by domestic laws and international standards.<sup>259</sup> States should refrain from the practice of mass, collective, or indiscriminate arrests. In the case of *Bulacio v. Argentina*, the Inter-American Court held that the so-called *razzias* (collective detentions) practice at the time of the facts were incompatible with respect for fundamental rights, including the presumption of innocence, the need for a court order to make a detention –except in situations of flagrancy– and the obligation to notify the persons responsible for minors.<sup>260</sup> The Inter-American Court found 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>261</sup>

122. In keeping with that principle, the Commission has underscored the need for states to take all the necessary steps to ensure that detainees and their next of kin are given precise information about the reasons for the detention and where they are being held.<sup>262</sup> In that regard, the Inter-American Court has found 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

<sup>257</sup> Foro por la Vida. [Informe alternativo sobre la aplicación del Pacto de Derechos Civiles y Políticos](#). 2015.

<sup>258</sup> IACHR. Press release 22, [IACHR Laments the Death of a Student during Protests in Venezuela](#). March 3, 2015. See also: ABC. [Un policía mata a un adolescente en una protesta opositora en Venezuela](#). February 25, 2015; El Universal. [De un tiro en la cabeza asesinaron a estudiante en Táchira](#). February 24, 2015; and BBC. [Condenan a policía en Venezuela que mató a estudiante en protesta](#). May 8, 2015.

<sup>259</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 51, and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, par. 89; Second Report on the Situation of Human Rights Defenders in the Americas, par. 106.

<sup>260</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 137.

<sup>261</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 134.

<sup>262</sup> IACHR, [Report on Citizen Security and Human Rights](#), December 31, 2009, Chapter V.C “Right to personal liberty and security.”

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>263</sup>

123. In the 2014-2015 period, the IACHR received troubling information about the practice of mass detentions at protests in several countries in the region. In Cuba, public demonstrations regarded as contrary to government interests are silenced through "acts of repudiation," arbitrary summary arrests, and ill-treatment, as is described in Chapter IV, Cuba, of this report.<sup>264</sup> Such is the case of the *Damas de Blanco* (Ladies in White),<sup>265</sup> who are reportedly repressed and harassed in their demonstrations by security agents of the State and private individuals who operate with their acquiescence.<sup>266</sup> As a result, on October 28, 2013, the Commission adopted precautionary measure 264/13 in favor of the *Damas de Blanco*;<sup>267</sup> the measure was extended on May 12, 2014.<sup>268</sup> In spite of the precautionary measure, the Commission notes with concern that there has been an increase in incidents of violence targeting members of that organization.<sup>269</sup>

124. In the United States, for example, in August 2014, at least 212 people were reportedly detained while demonstrating in Ferguson, Missouri, about the killing by the local police of Michael Brown, an 18-year-old Afro-American man. Most of the detentions were made on refusal-to-disperse charges.<sup>270</sup> During the protests, the local police enforced a keep walking/five-second rule, according to which the demonstrators constantly had to keep moving during the protests or face arrest.<sup>271</sup> On October 6, the United States District Court for the Eastern District of Missouri ruled that the "keep walking/five-second" rule enforced by the Ferguson police in the month of August was unconstitutional. According to the decision, "The practice of requiring peaceful demonstrators and others to walk, rather than stand still, violates the Constitution."<sup>272</sup>

125. In November 2014, fresh protests broke out across the country at the decision of a grand jury not to indict the police officer responsible for Michael Brown's death. In California at least 180 people were reportedly arrested in those protests.<sup>273</sup> In December, the New York police reportedly arrested at least 200 people during demonstrations to protest against the decision of a grand jury not to indict the police

<sup>263</sup> I/A Court H.R. *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, par. 96.

<sup>264</sup> IACHR. Annual Report 2015. Chapter IV. Cuba, December 31, 2015, paras. 40-53.

<sup>265</sup> The Damas de Blanco movement is made up of wives, mothers, and children of men and women who have been jailed in Cuba for reasons they consider unjust. Created in 2003 following a "mass wave of arrests of peaceful dissidents," it demands the release of political prisoners. Damas de Blanco. April 1, 2003. [¿Quiénes son las Damas de Blanco?](http://www.damasdeblanco.org/)

<sup>266</sup> Thus, for example, there were mass detentions monthly in different provinces: 40 in January, 58 in February, 88 in March, 147 in April, 239 in May, 115 in June, 270 in July, 300 in August, and 293 in September. To consult the weekly reports of the Damas de Blanco movement, visit <http://damasdeblanco.org/index.php>.

<sup>267</sup> IACHR, *Precautionary Measure 264-13 – Ladies in White regarding the Republic of Cuba*, October 28, 2013.

<sup>268</sup> IACHR, *Precautionary Measure 264/13 – Ladies in White regarding the Republic of Cuba*, May 12, 2014.

<sup>269</sup> IACHR. Annual Report 2015. Chapter IV. Cuba, December 31, 2015 para. 43.

<sup>270</sup> CNN. [Who was arrested in Ferguson?](http://i2.cdn.turner.com/cnn/2014/images/08/22/arrest.data.from.8-10.to.8-22.pdf) August 22, 2014; Ferguson Crisis. Arrest Data. August 2014. Available at: <http://i2.cdn.turner.com/cnn/2014/images/08/22/arrest.data.from.8-10.to.8-22.pdf>; CNN. *What happened when Michael Brown met Officer Darren Wilson*. November 11, 2014.

<sup>271</sup> The Washington Post. [Federal Judges Tossed 5 second rule being used by Police in Ferguson Protests](http://www.washingtonpost.com/news/energy-environment/wp/2014/10/06/federal-judges-tossed-5-second-rule-being-used-by-police-in-ferguson-protests/). October 6, 2014; The New York Times. [Judge Blocks Rule for Ferguson Protesters](http://www.nytimes.com/2014/10/06/us/politics/judge-blocks-rule-for-ferguson-protesters.html). October 6, 2014; American Civil Liberties Union. [There is no 5-Second Rule for the First Amendment, Ferguson](http://www.aclu.org/blog/2014/8/21/there-is-no-5-second-rule-for-the-first-amendment-ferguson). August 21, 2014.

<sup>272</sup> The Washington Post. [Federal Judges Tossed 5 second rule being used by Police in Ferguson Protests](http://www.washingtonpost.com/news/energy-environment/wp/2014/10/06/federal-judges-tossed-5-second-rule-being-used-by-police-in-ferguson-protests/). October 6, 2014; The New York Times. [Judge Blocks Rule for Ferguson Protesters](http://www.nytimes.com/2014/10/06/us/politics/judge-blocks-rule-for-ferguson-protesters.html). October 6, 2014; American Civil Liberties Union. [There is no 5-Second Rule for the First Amendment, Ferguson](http://www.aclu.org/blog/2014/8/21/there-is-no-5-second-rule-for-the-first-amendment-ferguson). August 21, 2014; The Huffington Post. [Police violated constitutional rights of Ferguson Protesters. Federal Judge Rules](http://www.huffpost.com/2014/10/06/police-violated-constitutional-rights-of-ferguson-protesters-federal-judge-rules/). October 6, 2014; United States District Court for the Eastern District of Missouri. *Mustafa Abdullah vs. County of St. Louis, Missouri, et al.* Case No. 4:14CV1436 CDP. Order of October 6, 2014. Available at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/1310115/5-second-rule-injunction.pdf>.

<sup>273</sup> LA Times. [California unrest: Dozens arrested after Michael Brown decision](http://www.latimes.com/local/la-me-unrest-2014-11-25-story.html). November 25, 2014; NBC Los Angeles. [Nearly 200 Arrested in LA on Second Day of Ferguson Demonstrations](http://www.nbc.com/news/los-angeles/nearly-200-arrested-in-la-on-second-day-of-ferguson-demonstrations). November 25, 2014 (Updated on November 26, 2014).

officer responsible for the death of Eric Garner, an Afro-American man from Staten Island, New York. Most of the arrests of the demonstrators were made on charges of disorderly conduct and refusal to disperse.<sup>274</sup>

126. In April 2015 there was a spate of protests in the city of Baltimore following the killing of Freddie Gray while he was in the state's custody. At least 486 people were reportedly detained in the protests.<sup>275</sup> On April 27, 2015, the governor of Maryland declared a state of emergency and ordered the National Guard to be deployed. At least 100 people were arrested in New York in protests there over the death of Freddie Gray.<sup>276</sup>

127. In Venezuela, civil society organizations have denounced that, following a decision by the Supreme Court of Justice authorizing the security forces to break up any unauthorized demonstration, they have recorded an increase in mass detentions of individuals taking part in such protests.<sup>277</sup>

## 2. States of Emergency

128. The Commission is mindful that situations of crisis and instability bring about internal situations of violence, disturbances, tensions, and conflicts of various sorts. The Inter-American Court has understood that “the suspension of guarantees may be the only way to deal with emergency situations and, thereby, to preserve the highest values of a democratic society.”<sup>278</sup>

129. As states do not enjoy “unlimited discretion” in emergency situations, the American Convention and other international instruments demarcate their scope of action. First, the Commission has held that the act of government that suspends guarantees must be adopted by “a government that exercises public power legitimately, within the context of a democratic society.”<sup>279</sup> The Convention, at Article 27(1), sets out the circumstances in which it would be lawful for a state to restrict the enjoyment of the rights provided for in the Convention, establishing that it will only be admissible in “time of war, public danger, or other emergency that threatens the independence or security of a State Party.”<sup>280</sup> In this regard, for example, the organs of the inter-American human rights system have understood that suspending guarantees is “not ... a mean to fight common crime.”<sup>281</sup>

130. The same provision also states that those obligations that do not violate others assumed by a state party may be suspended “provided that such measures are not inconsistent with its other obligations

<sup>274</sup> ABC News. [223 Arrested as Protesters, Police Clash in New York City Over Eric Garner Decision](#). December 5, 2014; Daily News. [Protesters flood NYC in second night of demonstrations opposing ruling not to indict NYPD cop in Eric Garner's death](#). December 4, 2014; The New York Times. [Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case](#). December 3, 2014; CNN. [Protests after N.Y. cop not indicted in chokehold death; feds reviewing case](#). 4 December 2014.

<sup>275</sup> CNN. [Baltimore Curfew Lifted as National Guard Plans Exit, Officials Say](#). May 3, 2015; The Washington Post. [Accurately Charging People Arrested in Baltimore Proves to be Legal Challenge](#). May 4, 2015.

<sup>276</sup> Perú.com. [Nueva York: Decenas de detenidos en nueva protesta por Baltimore](#). April 29, 2015; NBC News. [Freddie Gray Protests Spread Beyond Baltimore, 100 Arrested in New York](#). April 30, 2015.

<sup>277</sup> Universidad Católica Andrés Bello. Centro de Derechos Humanos. Licencia para protestar. June 2014.

<sup>278</sup> I/A Court HR. *Habeas Corpus in Emergency Situations* (Articles 27(2), 25(1) and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 20.

<sup>279</sup> IACHR. *Honduras: Human Rights and Coup d'état*. December 30, 2009. OEA/Ser.L/V/II Doc. 55. Para. 212.

<sup>280</sup> American Convention on Human Rights: Article 27.- Suspension of Guarantees: 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.

<sup>281</sup> I/A Court HR. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Para. 52.

under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin” and that they are necessary for addressing “the exigencies of the situation.”<sup>282</sup> In exceptional situations states may adopt measures that restrict the full enjoyment of the rights and freedoms provided for in the American Convention, except for those expressly listed in Article 27(2) of the same instrument, which sets forth the non-derogable core of rights, including the rights to life and humane treatment.<sup>283</sup> The restriction on guarantees should never entail “a temporary suspension of the rule of law, nor does it authorize those in power to act in disregard of the principle of legality by which they are bound at all times.”<sup>284</sup> Yet at the same time one must understand that on decreeing a state of emergency – whatever the scale or the name by which it is considered in the domestic law – it must not entail the suppression or loss of the effective judicial guarantees that the states parties are obligated to establish, as per the same Convention, to protect those rights that cannot be suspended or that have not been suspended under the state of emergency.<sup>285</sup>

131. The Commission would also like to stress that every decree of a state of emergency should contain the rights whose enjoyment will be restricted and define the time limits and geographic scope of the measure.<sup>286</sup> The states parties to the American Convention have the duty to inform the Organization of American States of the terms in which the state of emergency was decreed.<sup>287</sup>

132. States are often observed suspending guarantees in response to expressions of social discontent or domestic conflict so as to authorize deployment of military forces to quickly repress the threat to order. In this respect, the Inter-American Court has already emphasized the extreme care states should observe on using the armed forces to control order.<sup>288</sup>

133. During the period covered by this report the IACHR has received information on the adoption of several states of emergency and the different practices followed in those contexts. As regards Argentina, in particular the province of Buenos Aires, civil society organizations reported a worrisome increase in the figures of persons deceased and arbitrarily arrested, mostly youths from vulnerable sectors, when an emergency was declared there. It was reported that based on the increase in crime, the provincial government had decreed an emergency due to the security situation for 12 months by Decree No. 220/14<sup>289</sup>

<sup>282</sup> American Convention on Human Rights: Article 27.- Suspension of Guarantees: 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. See also: I/A Court HR. *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. 19.

<sup>283</sup> I/A Court HR: *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 78; *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 63, and *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 82.

<sup>284</sup> I/A Court HR. *Habeas Corpus in Emergency Situations* (Articles 27(2), 25(1) and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 24

<sup>285</sup> I/A Court HR. *Habeas Corpus in Emergency Situations* (Articles 27(2), 25(1) and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 25.

<sup>286</sup> I/A Court HR. *Case of Zambrano Vélez Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 48.

<sup>287</sup> American Convention on Human Rights: Article 27. Suspension of Guarantees 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>288</sup> I/A Court HR: *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 51; and *Case of Montero Aranguren et al (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 78.

<sup>289</sup> Province of Buenos Aires. [Decree No. 220/14. On Emergency in respect of Public Security](#). April 4, 2014.

of April 4, 2014. On occasion of the emergency the government took the following steps: (a) it called up retired public security personnel; (b) it assigned private security companies the task of assisting the public security forces in their duties; and (c) it authorized the local governments to adopt measures aimed at restricting vehicular movement.<sup>290</sup> The provincial declaration of emergency was accompanied by Resolution 642/14, which authorized the refurbishing of the jail cells situated in police stations that had been closed in the past because they were seen to be in violation of human rights.<sup>291</sup> The declaration of emergency, along with the measures that accompany it, brought about a militarized scenario for fighting crime; the high figures for “criminals wounded” and “criminals killed” were cast in a positive light. Based on fragmented information, it is reported, for example, that of the 667 confrontations documented in 2005, 45 resulted in death (one person deceased in every 15 confrontations), whereas in 2014 (April-October), of the 598 confrontations there were 111 deaths (one person deceased every five confrontations).<sup>292</sup> In deploying “preventive and proactive” operations the security authorities often used stops to verify identity, a practice generally carried out in public transport units or among youths, including persons under 18 years of age.<sup>293</sup>

134. In the city of Baltimore, Maryland, United States, in view of the protests over the death of Freddie Gray, already mentioned, on April 27, 2015 the Governor of Maryland declared a state of emergency and called up the National Guard.<sup>294</sup>

135. Civil society actors told the IACHR that the states of emergency declared in Guatemala were “another of the measures characteristic of the militarization process” in the country, and that in this context the military forces were authorized to carry out social control tasks.<sup>295</sup> The organizations that participated in the hearing on *Report on militarization in Guatemala* said that in response to the growth in social movements resisting the exploitation of natural resources, the State has systematically expanded the scope of the states of emergency.<sup>296</sup> The Guatemalan State said that the military forces were supporting the civilian security forces not only in issues related to security, but also in reconstruction efforts, such as earthquake response.<sup>297</sup> The Commission was also informed of the current debate in the Congress on the reform to the Law on Public Order in Guatemala; it is the law that regulates states of emergency<sup>298</sup> and it is widely questioned by the international community and civil society organizations as it is considered incompatible with international standards.<sup>299</sup>

136. Regarding the states of emergency decreed in Peru, the Commission was informed in the hearing on *Human Rights and State of Emergency in Peru* of the duration and geographic reach of those measures.<sup>300</sup> In particular, in the context of social protest in opposition to the “Tía María” mining project as of

<sup>290</sup> Responses of the APP, CELS, and the CPM to the questionnaire on the use of force circulated by the IACHR.

<sup>291</sup> Response of CPM to the questionnaire on the use of force circulated by the IACHR.

<sup>292</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR, p. 14.

<sup>293</sup> Responses of the APP, CELS, and the CPM to the questionnaire on the use of force circulated by the IACHR.

<sup>294</sup> MSNBC. [Maryland governor declares state of emergency amid Baltimore violence](#). April 27, 2015. See also: CNN. [Baltimore riots: Looting, fires engulf city after Freddie Gray's funeral](#). April 28, 2015.

<sup>295</sup> IACHR. Hearing on [Report on militarization in Guatemala](#). 153<sup>rd</sup> regular period of sessions. October 28, 2014.

<sup>296</sup> IACHR. Hearing on [Report on militarization in Guatemala](#). 153<sup>rd</sup> regular period of sessions. October 28, 2014.

<sup>297</sup> IACHR. Hearing on [Report on militarization in Guatemala](#). 153<sup>rd</sup> regular period of sessions. October 28, 2014.

<sup>298</sup> Response of Peace Brigades International–Guatemala Project to the questionnaire on the use of force circulated by the IACHR. P. 1. See also: Institutional note from the Congress of Guatemala. [Mesa de seguridad y justicia analiza reformas a la ley de orden público](#). February 11, 2015.

<sup>299</sup> IACHR, Report on the *Human Rights Situation in Guatemala: Diversity, Inequality and Exclusion*, December 31, 2015, paras. 96-101. See also: OHCHR-Guatemala. [Report on the Activities of her Office in Guatemala](#), February 28, 2009, para. 97; UN, Special Rapporteur in the independence of judges and lawyers, Leandro Despouy, Addendum. Mission to Guatemala, October 1, 2008, para. 92.

<sup>300</sup> IACHR. Hearing on [Human Rights and State of Emergency in Peru](#). 153<sup>rd</sup> regular period of sessions. October 31, 2014.

April 22, 2015, and which unleashed major confrontations, on May 22, 2015, President Humala declared a state of emergency in the province of Islay by Supreme Decree No. 40-2015-PCM, for a term of 60 days.<sup>301</sup> The decree was amended a few days after a controversy erupted regarding the geographic scope of the measure.<sup>302</sup> In response, according to information available to the Commission, approximately 3,000 armed men – 2,000 police and 1,000 soldiers – were dispatched to the province of Islay until July 23, 2015.<sup>303</sup>

137. A similar scenario was observed by the Commission in the departments of Apurímac and Cusco, Peru, in which the demonstration by the residents against the Las Bambas mining project was repressed by the police, with the support of the military forces, after Supreme Resolution 200-2015-IN<sup>304</sup>, after which a state of emergency was declared on September 29, 2015, in the provinces of Cotabambas, Grau, Andahuaylas, and Chincheros in the department of Apurímac, and in the provinces of Chumbivilcas and Espinar in the department of Cusco, by Supreme Decree No. 068-2015-pcm.<sup>305</sup> According to publicly available information, the conflict resulted in four deaths and 21 persons arrested, three of whom were brought before the judicial authorities.<sup>306</sup>

138. As for Venezuela, the IACHR learned of the state of emergency decreed by President Nicolás Maduro in August 2015 in several municipalities of the state of Táchira in response to what the government described as a purported confrontation days earlier between members of the Venezuelan Army and purported Colombian smugglers or paramilitary forces, resulting in the deployment of an estimated 1,500 troops.<sup>307</sup> Days later, the state of emergency was extended to other municipalities in the states of Zulia and Apure.<sup>308</sup> The IACHR received extensive information on the deployment of the security forces, forced evictions, and collective and summary deportations of Colombian citizens. In this context, the Commission sought the consent of the states of Colombia and Venezuela to visit the region and meet with the persons affected. The request was accepted by Colombia; there was no response from Venezuela. In the visit September 10 to 12, 2015, to the Colombian border zone, the Commission had the opportunity to verify the humanitarian crisis affecting the persons deported, and those who returned for fear of the scenarios of violence and uncertainty prevailing in Venezuela; this group totaled 21,434 persons. The Commission received numerous reports of serious human rights violations such as violations of the rights to liberty, security, and integrity; to equality before the law; to the protection of honor, personal reputation, and privacy and family life; to the protection of motherhood; to the protection of the child; to residence and movement; to the preservation of health and well-being; to education; to work; to the inviolability of the home; to property; to protection from arbitrary arrest; to judicial protection and due process; to the prohibition on collective expulsions; to request and receive asylum; and to the principle of *non-refoulement*.<sup>309</sup> The situation described became a focus of international attention, including a pronouncement by the Office of the UN High Commissioner on Human Rights, expressing profound concern for human rights violations in the context of

<sup>301</sup> IACHR. Request for information, Article 41 of the American Convention: Situation of confrontations between police and demonstrators at the “Tía María” mining project. Peru. April 28, 2015.

<sup>302</sup> El Peruano, [Fe de Erratas. Supreme Decree No. 040-2015-PCM](#), published May 30, 2015. See also: El Comercio. [Decreto Supremo sobre emergencia en Islay contiene errores](#). May 24, 2015; Peru.com. [Tía María: Decreto sobre emergencia en Islay tiene severos errores](#). May 24, 2015.

<sup>303</sup> La Tercera. [Protesta contra millonario proyecto minero en Perú ya lleva cuatro muertos](#). May 22, 2015.

<sup>304</sup> El Peruano. [Supreme Resolution No. 200-2015-IN](#), published September 25, 2015.

<sup>305</sup> El Peruano. [Supreme Decree No. 068-2015-pcm](#), published September 29, 2015.

<sup>306</sup> Diario Correo. [Las Bambas: Dirección de Salud de Cusco confirma la muerte de cuatro pobladores \(VIDEO\)](#) September 29, 2015. See also: El Comercio. [Las Bambas: piden prisión preventiva para 3 detenidos](#). September 30, 2015.

<sup>307</sup> IACHR. Press release 100, [IACHR Expresses Concern over Arbitrary Deportation of Colombians from Venezuela](#). August 28, 2015.

<sup>308</sup> RNV. [En Gaceta Oficial! Decreto estado de excepción en municipios de Zulia y Apure](#). September 16, 2015.

<sup>309</sup> IACHR. Press release 109, [IACHR Concludes visit to Colombia's Border with Venezuela](#). September 28, 2015.

the deportations of Colombians and the declarations of states of emergency in several border municipalities.<sup>310</sup>

139. The Commission appeals to all the states to limit their declarations of states of emergency to extremely serious situations, such as war, public danger, or other emergency that threatens the independence or security of the state. Moreover, the Commission reminds the states that in case of a threat certain, states should delimit such decrees to the measures absolutely necessary to neutralize the threat, indicating the human rights whose enjoyment is to be restricted – which cannot include non-derogable rights or guarantees – and the duration and geographic scope of the measures. The Commission takes this opportunity to emphasize 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 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.

### 3. Control of Riots and Other Disturbances at Prisons

140. Through its monitoring mechanisms, the Commission has identified a series of factors behind the prison violence that exists in the region: (a) dilapidated incarceration conditions and lack of essential basic services for prisoners; (b) overcrowding; (c) high levels of corruption among officials; (d) disputes among inmates or criminal groups for the command of prisons or control of spaces, drugs, and other criminal activities; and (e) the possession of weapons by inmates.<sup>311</sup>

141. The Commission would like to emphasize that, according to the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, force should only be used in exceptional circumstances as a last resort, after all other available means have been exhausted, and in accordance with the principles of legality, necessity, and proportionality.<sup>312</sup> The *Standard Minimum Rules for the Treatment of Prisoners* state that officers at detention facilities may only use force in the following circumstances: (a) when someone's life or physical integrity is in danger (self-defense); (b) when there is an attempted escape; and (c) when there is active or passive physical resistance to an order based on law or regulations.<sup>313</sup> In particular, the IACHR recalls that in the event of a riot, officials in charge of maintaining order are required to use strategies and actions “with minimal harm to the life and physical integrity of the inmates.”<sup>314</sup> For his part, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions said that law enforcement officials are required not to use firearms except in self-defense or defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention.<sup>315</sup>

142. The IACHR observes that between the end of 2014 and the date of this writing in 2015, violent incidents have occurred at prisons, principally in connection with complaints over incarceration conditions, alleged ill-treatment, and unannounced transfers to other facilities. In those incidents, the

<sup>310</sup> United Nations. Office of the High Commissioner for Human Rights. [Press briefing note on Venezuela/Colombia](#). August 28, 2015.

<sup>311</sup> IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). OEA/Ser.L/V/II.Doc. 64, December 31, 2011, par. 115.

<sup>312</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008), No. XXIII (2).

<sup>313</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Rule 54 (1).

<sup>314</sup> IACHR, Report No. 34/00, Case 11.291, Merits, Carandiru, Brazil, April 13, 2000, par. 62.

<sup>315</sup> [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions](#), Christof Heyns, A/HRC/26/36, 1 April 2014.

Commission notes that force, though nonlethal or of low intensity, was reportedly used arbitrarily, causing injuries and even death. It was also found that in some instances no attempts were apparently made to exhaust less violent means to deal with the source of violence.

143. The Commission received information about alleged excessive use of force by guards at the Almafuerite and San Felipe prison complexes in Argentina, as well as a series of complaints of possible torture and ill-treatment on the facilities, in addition to poor detention conditions. Accordingly, the Commission requested the State of Argentina to adopt the necessary measures to protect the life and physical integrity of all inmates at both prison complexes, including, among others, strengthening the teams of guards and offering training to prison employees.<sup>316</sup>

144. Conditions of detention are also thought to be the cause of prison riots in Brazil. In that regard, it was brought to the attention of the IACHR that in March 2015, the regional government of Río Grande do Norte declared a state of emergency in its prison system and requested police reinforcements to deal with a surge in prison riots. In less than a week, riots were reported at eight prisons in Río Grande do Norte, six of them at detention centers in the capital, Natal, with the other two in the municipalities of Parnamirim and Nisia Floresta.<sup>317</sup> The Commission takes particular note of the riot on March 17, 2015, at the so-called *Pereirão* prison in the municipality of Caicó, which is currently almost at twice its inmate-holding capacity.<sup>318</sup> Reports also show that on May 26, 2015, there was a riot at the prison in Feira de Santana, Bahia state's second city, which is almost 3 times over capacity. Nine inmates reportedly lost their lives in that last incident.<sup>319</sup>

145. The IACHR learned of a similar situation at San Sebastián de Ternera Prison in Cartagena, Colombia, when, on July 15, 2015, clashes broke out after inmates opposed being moved to other facilities. The Colombian authorities used tear gas to bring the situation under control, in which 11 people were injured.<sup>320</sup>

146. The IACHR also notes that at Kingman prison in Arizona, United States, which is managed by a private firm, prisoners rioted over incarceration conditions, particularly because of alleged mistreatment, excessive use of electroshock weapons and pepper spray, and inadequate medical treatment. Available reports suggest that at least 16 people were injured in the incident.<sup>321</sup>

147. In addition, the IACHR notes that, apparently because of prisoners' opposition to being moved to other prisons, riots broke out at two prisons in Honduras: Marco Aurelio Soto National Penitentiary (PNMAS) in the Amaratéca Valley and San Pedro Sula Penal Center, on March 9 and March 11, 2015, respectively. In the former, at least 10 inmates were injured.<sup>322</sup> With regard to the riot in San Pedro Sula,

<sup>316</sup> IACHR, Precautionary Measure 35/14 - [Almafuerite and San Felipe Prison Complexes, Argentina](#), May 14, 2015.

<sup>317</sup> ABC. [Declaran calamidad en estado brasileño por aumento de motines carcelarios](#). March 17, 2015. See also Globovisión. [Declaran calamidad en estado brasileño por motines carcelarios](#). March 17, 2015; Fox News. [Declaran calamidad en estado brasileño por aumento de motines carcelarios](#). March 17, 2015.

<sup>318</sup> ABC. [Declaran calamidad en estado brasileño por aumento de motines carcelarios](#). March 17, 2015. See also Globovisión. [Declaran calamidad en estado brasileño por motines carcelarios](#). March 17, 2015; Fox News. [Declaran calamidad en estado brasileño por aumento de motines carcelarios](#). March 17, 2015.

<sup>319</sup> Cadena 3. [Motín en cárcel de Brasil deja nueve muertos, dos degollados](#). May 26, 2015.

<sup>320</sup> El Universal. [Motín en cárcel de Ternera dejó once heridos](#). July 15, 2015.

<sup>321</sup> The Arizona Republic. [Sheriffs: Mistreatment of prisoners caused Kingman riot](#). August 11, 2015. See also News-Herald. [Former Kingman prison employee says prison officials knew inmates were going to riot](#). July 19, 2015.

<sup>322</sup> El Herald. [Al menos tres muertos en motín dentro de centro penal sampedrano](#). March 11, 2015.

information suggests that the intervention of 400 police and military personnel in that outbreak of violence led to at least three people being killed and 35 injured, including five policemen.<sup>323</sup>

148. The Commission learned from publicly available information that as a result of a series of complaints of alleged ill-treatment and sudden transfers to other prisons, in November 2014, inmates at “David Viloria” Midwest Region Penitentiary, formerly known as Uribana Prison, situated in the state of Lara, Venezuela, ingested multiple pharmaceuticals found in the infirmary in protest at the above-described situation.<sup>324</sup> By November 25, 2014, more than 40 inmates had reportedly died and approximately 150 had poisoning injuries.<sup>325</sup> The Commission urged the Venezuelan State to investigate the incident and take the necessary steps to prevent a repeat occurrence.<sup>326</sup> The Venezuelan Prisons Observatory (OVP) reported that by October 2015 the facts had still not been explained.<sup>327</sup>

149. With respect to juveniles deprived of their liberty, the Commission learned of a violent incident that occurred on the morning of Friday, November 6, 2015, at the adjoining San Miguel and San Francisco juvenile detention facilities in Fortaleza, Ceará state, Brazil, when adolescents at both centers reportedly set fire to mattresses and electrical devices and destroyed a number of amenities, which apparently justified the intervention of the military police.<sup>328</sup> The outcome of the operation was six adolescents injured and the death of 17-year-old Márcio Ferreira do Nascimento. According to publicly available information, the authorities have not yet determined the origin of the firearm used to kill the youth.<sup>329</sup> In turn, the IACHR also noted with concern the context of violence and poor prison conditions experienced in detention centers for adolescents in conflict with the law in the state of Ceará, which clearly favor the frequent occurrence of events of similar size.<sup>330</sup>

150. On the other hand, the Commission also notes the events that occurred at a correctional facility for minors in Guatemala City on July 7, 2015, in which two inmates were killed and another two injured.<sup>331</sup>

151. The IACHR knows of a similar incident allegedly committed against minors being held at a detention center (Cepirli) of the Institute for Children and Adolescents (INAU) in Montevideo, Uruguay. According to information available and footage from the Cepirli security cameras, two juvenile detainees started disturbances in the cells section on July 24, 2015, which were violently put down by more than 30

<sup>323</sup> El Herald. [Al menos tres muertos en motín dentro de centro penal sampedrano](#). March 11, 2015.

<sup>324</sup> Observatorio Venezolano de Prisiones (OVP). Informe General sobre la Situación Carcelaria en Venezuela. October 16, 2015, pp. 21-22. See also La Patilla. [Uribana, uno de los penales más peligrosos del país](#). December 1, 2014.

<sup>325</sup> Panorama. [Ministra Varela confirmó que 48 reos murieron por intoxicación en cárcel de Uribana](#). December 11, 2014. See also El Nacional. [Varela: Son 48 los fallecidos por intoxicación en Uribana](#). December 10, 2014.

<sup>326</sup> IACHR. [IACHR Regrets Deaths Due to Reported Drug Overdose in Jail of Venezuela](#). December 11, 2014. See also Informe 21. [Violencia en cárceles venezolanas dejó 309 reclusos muertos en 2014](#). 25 de febrero de 2015.

<sup>327</sup> Observatorio Venezolano de Prisiones (OVP). Informe General sobre la Situación Carcelaria en Venezuela. October 16, 2015, pp. 21-22.

<sup>328</sup> IACHR. Press Release 130/15, [IACHR Regrets Violence in Juvenile Detention Facilities in Fortaleza, Brazil](#). November 17, 2015.

<sup>329</sup> Centro de Defesa da Criança e do Adolescente (CEDECA). [Nota pública sobre o colapso do sistema socioeducativo cearense e a morte do adolescente Márcio Ferreira do Nascimento](#). November 7, 2015. See also O Povo online. [Morre interno baleado em rebelião em centros educacionais](#). November 7, 2015.

<sup>330</sup> CIDH, Comunicado de Prensa [130/15 - CIDH lamenta violencia en centros de detención para adolescentes en Fortaleza, Brasil](#). 17 de noviembre de 2015.

<sup>331</sup> Informador.mx. [motín en cárcel de guatemala deja dos muertos. July 7, 2015](#).

<sup>332</sup> IACHR. Press Release 90/15, [IACHR Condemns Acts of Violence against Incarcerated Adolescents in Uruguay](#). August 18, 2015.

INAU officers. The guards threw the juveniles to the ground and beat them. Fire extinguishers were used to overpower other youths by making it hard for them to breathe. The IACHR was deeply troubled by what the INAU workers union told the news media to the effect that the events shown in this video are “usual” practices at juvenile detention centers in Uruguay. The IACHR urged the Uruguayan State to continue with the court-ordered investigations underway, punish those responsible, and adopt measures to ensure that similar events are not repeated.<sup>332</sup>

152. The Commission would like to underscore that, according to the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, force can only be used in “exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation.”<sup>333</sup> Furthermore, in general, it recommends that member states adopt measures to reduce levels of violence in prisons to a minimum, which entails designing and instituting prison policies aimed at preventing violence, including strategies for seizing weapons in the possession of prisoners, preventing the population from rearming, and dismantling criminal structures that have taken root in prisons and that control various criminal activities.<sup>334</sup> In addition, in order to prevent violence in prisons, States should adopt policies that address structural problems in prisons so as to ensure conditions of confinement that are compatible with the standards in that regard.<sup>335</sup>

#### 4. Migrant Operations

153. In the period covered by this report, the IACHR received information about various incidents in which excessive force was allegedly used against migrants, most of them in the context of border control activities, migrant operations, or police control activities.

154. In its report *Refugees and Migrants in the United States: Families and Unaccompanied Children*, the Commission expressed its grave concern at the deaths of individuals in confrontations with agents of the U.S. Customs and Border Protection (CBP) Office of Field Operations.<sup>336</sup> In its report the Commission took note of the conclusions contained in an independent review conducted by the nonprofit Police Executive Research Forum (PERF) that highlighted the need for significant policy changes in the CBP, especially with regard to the use of firearms against vehicles and rock-throwers in situations where less lethal measures would have been more reasonable.<sup>337</sup>

155. In October 2015, U.S. CBP published data on the incidents that had occurred between 2011 and 2015, including physical restraint, the use of an alternative device or the application of lethal force.<sup>338</sup> According to the information released, in 2014 there were 29 incidents in which firearms were used and 1,009 in which less lethal weapons were used; the same figures for the year to date in 2015 were 28 and 740,

<sup>332</sup> IACHR. Press Release 90/15, [IACHR Condemns Acts of Violence against Incarcerated Adolescents in Uruguay](#). August 18, 2015.

<sup>333</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113, December 14, 1990. Rule 64. See: IACHR, Press Release 91/14, [IACHR Deplores Deaths and Injuries at Youth Education Center in Paraguay](#). Washington, D.C., August 22, 2014.

<sup>334</sup> IACHR. *Report on the Human Rights of Persons Deprived of Liberty in the Americas*. OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 282.

<sup>335</sup> IACHR. *Report on the Human Rights of Persons Deprived of Liberty in the Americas*. OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 283.

<sup>336</sup> IACHR, [Refugees and Migrants in the United States: Families and Unaccompanied Children](#), OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, par. 117.

<sup>337</sup> IACHR, [Refugees and Migrants in the United States: Families and Unaccompanied Children](#), OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, par. 117.

<sup>338</sup> U.S. Customs and Border Protection, [CBP Use of Force](#), 2015.

respectively.<sup>339</sup> Although the disclosure of those statistics was a welcome development in terms of transparency and accountability, the Southern Border Communities Coalition, an NGO, also said that they raised more questions than answers as the report lacked contextual information, did not state how the numbers were generated or what specifically constitutes use of force, and did not provide information on whether use of force was justified or whether such incidents were followed by any investigations.<sup>340</sup>

156. With respect to incidents involving the use of lethal force against migrants in the United States, the IACHR was sorrowed by what happened in February 2015, when Rubén García Villalpando, a Mexican irregular migrant was killed by police in Grapevine, Texas. According to the film from the patrol car's dashboard camera, the migrant was unarmed and the police officer shot him when he walked forward with his hands above his head after being instructed to stay where he was. Days later, Amílcar Pérez-López, a Guatemalan migrant, was also killed by two San Francisco plainclothes police officers.<sup>341</sup> According to testimony from a number of witnesses, Amílcar Pérez-López was shot in the back six times as he was fleeing from the police.<sup>342</sup>

157. The IACHR also learned about a Haitian man who was shot by a Bahamian immigration agent as he was trying to avoid arrest in June 2015.<sup>343</sup>

158. Incidents of excessive use of force against migrants were also recorded in Mexico. In March 2015, the Commission received information that immigration control operations were being carried out with disregard for legal due process and that the involvement had been recorded of soldiers in the operations as had the detention of migrants using disproportionate force.<sup>344</sup> In June 2015, the IACHR issued a press release expressing its concern over stepped-up actions reportedly being taken against migrants and their defenders in Mexico since the Southern Border Plan (*Plan Frontera Sur*) was put into operation.<sup>345</sup> The IACHR urged the State to apply international standards on the use of force in immigration control operations.<sup>346</sup> The IACHR was also informed of excessive use of force at migrant shelters by state officials taking part in roundups on trains and in communities.<sup>347</sup> In May 2015, a video was released showing National Migration Institute (INM) agents mistreating a migrant with a motor disability.<sup>348</sup> That same month, according to information in the public domain, a migrant shelter known as *La 72* reported that INM officials, with the support of the Federal Police and a vehicle from the Beta Group, had carried out a violent roundup along the railroad tracks at Tenosique, Tabasco, using physically and verbally aggressive behavior as well as brandishing firearms.<sup>349</sup>

<sup>339</sup> U.S. Customs and Border Protection, [CBP Use of Force](#), 2015.

<sup>340</sup> Southern Border Communities Coalition, [CBP releases use of force breakdown: Unclear what it means](#), October 27, 2015.

<sup>341</sup> The Guardian, [Chronicle of a death untold: why witnesses to killings of Latinos by police stay silent](#), June 3, 2015. See also NBC DFW, [Mexican Government Wants Investigation of Unarmed Man Shot to Death](#), February 26, 2015.

<sup>342</sup> The Guardian, [Chronicle of a death untold: why witnesses to killings of Latinos by police stay silent, June 3, 2015](#).

<sup>343</sup> Tribune 242, [Medical Report Says Haitian Man Was Shot In Back Of Neck](#), July 22, 2015; AI. Bahamas: EXPULSION DE MIGRANTE DETENIDO ILEGALMENTE. 11 de diciembre de 2015. Disponible en: <https://www.amnesty.org/es/documents/amr14/3068/2015/es/?platform=hootsuite>

<sup>344</sup> Washington Office for Latin America, [Mexico's Southern Border Plan: More Deportations and Widespread Human Rights Violations](#), March 19, 2015.

<sup>345</sup> IACHR. Press Release No. 65/15, [IACHR Expresses Concern over Mexico's Southern Border Plan](#), June 10, 2015.

<sup>346</sup> IACHR. Press Release No. 65/15, [IACHR Expresses Concern over Mexico's Southern Border Plan](#), June 10, 2015.

<sup>347</sup> Washington Office for Latin American, Press Release, [Mexico Now Detains More Central American Migrants Than the United States](#), June 11, 2015.

<sup>348</sup> Revolución Tres Punto Cero. [Agentes del Instituto Nacional de Migración agreden a persona discapacitada #Video](#). May 23, 2015.

<sup>349</sup> Animal Político. [Albergue denuncia captura violenta de 100 migrantes: INM acusa agresiones contra sus elementos](#). May 4, 2015.

159. The Commission also followed the situation on the Colombia-Venezuela border closely. As noted above, during the visit to the area from September 10 to 12, 2015, the IACHR received testimonies from several Colombians deported from Venezuela who said that they had been evicted by officials from their homes either forcibly or by means of deception and that the officials had committed abuses and used excessive force before proceeding arbitrarily and collectively to deport them.<sup>350</sup> The way in which those operations were carried out meant that the persons concerned were prevented from bringing their documents and chattels with them. In that context, the IACHR received a report from the Ombudsmen of Colombia that registered 623 complaints of physical and verbal abuse, 554 instances of family separation, 302 complaints of theft or dispossession of property, 203 reports of destruction of homes, 187 instances of withholding and/or destruction of identity documents, 106 deprivations of liberty, and 6 reports of sexual violence.<sup>351</sup> At the end of the visit, the Commission recalls that “within any immigration control procedure, States are obliged to guarantee that their authorities respect the rights to life and physical and psychological integrity of all persons, regardless of their immigration status.”<sup>352</sup>

160. Based on the foregoing, the IACHR reiterates that in migrant operations and border and police control activities the use of force must be in line with international standards on such matters. It is essential that states adopt the necessary measures to reduce incidents of excessive use of force, such as developing and implementing use-of-force protocols and providing training to police and immigration officers as well as other competent officials.

## 5. Evictions

161. During the period covered by this report, the Commission heard about various eviction operations with disproportionate use of force in a number of countries in the Hemisphere. According to information that the IACHR received, in the early hours of May 7, 2015, an eviction operation was carried out at Abasto, La Plata, Argentina, in which an estimated 300 police used rubber bullets, other riot gear, and heavy machinery, to raze a shantytown. By the end of the operation 35 people had been injured and 13 arrested.<sup>353</sup> According to reports, the eviction went ahead in spite of precautionary measures ordered by the First Contentious Administrative Court in and for La Plata.<sup>354</sup>

162. The IACHR also learned that on March 27, 2015, 81 people were evicted from La Arenera Beach at the request of Empresas Públicas de Medellín (EPM), for the purpose of building the Hidroituango hydroelectric project in the Department of Antioquia, Colombia. The eviction was reportedly carried out violently without prior notice to the families, causing a serious humanitarian crisis, which prompted the Commission to request the Colombian State to provide it with information on the matter in accordance with its powers under Article 41 of the American Convention.<sup>355</sup> The Commission has received no response.

<sup>350</sup> IACHR. Press Release 109/15, [IACHR Concludes Visit to Colombia's Border with Venezuela](#). September 28, 2015.

<sup>351</sup> IACHR. Press Release 109/15, [IACHR Concludes Visit to Colombia's Border with Venezuela](#). September 28, 2015.

<sup>352</sup> IACHR. Press Release 109/15, [IACHR Concludes Visit to Colombia's Border with Venezuela](#). September 28, 2015.

<sup>353</sup> Response of CPM to the questionnaire on the use of force circulated by the IACHR. See also El día. [Con fuerte despliegue policial, buscan avanzar con el desalojo en Abasto](#). May 7, 2015; Página12. [Violento desalojo en La Plata](#). May 8, 2015.

<sup>354</sup> Response of CPM to the questionnaire on the use of force circulated by the IACHR. See also El día. [Con fuerte despliegue policial, buscan avanzar con el desalojo en Abasto](#). May 7, 2015; Página12. [Violento desalojo en La Plata](#). May 8, 2015.

<sup>355</sup> IACHR. Request for information, Article 41 of the American Convention: Situation of the 81 people evicted from La Arenera Beach. Colombia. April 28, 2015.

163. Reports also came out of Guatemala about violent evictions there of communities opposed to mega projects and extractive companies.<sup>356</sup> According to information provided to the Commission, in August 2014, hundreds of law enforcement personnel used tear gas and firearms to evict several persons from the communities of Monte Olivo, 9 de febrero, and Semacoch who opposed the construction of the Santa Rita hydroelectric plant in the municipality of Chisec, Alta Verapaz, which resulted in the deaths of three persons and the detention of several leaders of the resistance movement.<sup>357</sup> There were conflicting versions in the digital news media in which the official version of events claimed that firearms were used against civilians who were in favor of the project.<sup>358</sup>

164. In Paraguay, civil society organizations informed the IACHR about repeated evictions of peasant farming communities and indigenous peoples without a court order or prior notice and an intensification in the use of the police.<sup>359</sup> To illustrate their claims, they mentioned the eviction that took place at Guahory, Tembiapora District, Caaguazú Department, between February 12 and 15, 2015, of an estimated 215 families who had settled some 20 years ago on the land, which is reportedly owned by the National Rural Development and Land Institute.<sup>360</sup> CODEHUPY, senators, and regional officials are said to have witnessed disproportionate use of force against the settlers, including children and adolescents, pregnant women, persons with disabilities, and elderly persons. According to publicly available information, the eviction created a humanitarian crisis given that the property and animals of the settlers were reportedly destroyed or stolen, their crops destroyed, school-aged children and adolescents (estimated at 600) prevented from going to school, and, in general, families living in tents without access to clean water.<sup>361</sup> Another example given to the Commission was the alleged violent eviction carried out on March 2, 2015, by the Ecological and Rural Police (*Agrupación Policial Ecológica Rural* - APER) at Riachuelo, Puerto Guaraní, Fuerte Olimpo District in the Department of Alto Paraguay, in which 40 people were reputedly detained and five others were left with bruises, head trauma, and other injuries caused by rubber bullets.<sup>362</sup> According to reports, the settlers identified one of the managers of the company that is disputing ownership of the lands, who, wearing camouflage clothing, played an active hand in the operation.<sup>363</sup>

165. In Venezuela, the IACHR was informed of the eviction that took place on August 17, 2015, at the community of Brisas del Hipódromo, where GNB personnel were said to have violently moved an estimated 200 families, including roughly 300 children, destroyed their flimsy dwellings, and detained some

<sup>356</sup> IACHR, Report on the Human Rights Situation in Guatemala: Diversity, Inequality and Exclusion, December 31, 2015, paras. 172, 447-453.

<sup>357</sup> Respuesta de las Brigadas Internacionales de Paz – Proyecto Guatemala - al cuestionario de consulta sobre el uso de la fuerza formulado por la CIDH. pp. 3-4; IACHR, Report on the Human Rights Situation in Guatemala: Diversity, Inequality and Exclusion, December 31, 2015, para. 181.

<sup>358</sup> La nación. [Tres muertos en protestas contra construcción de hidroeléctrica en Guatemala](#). August 16, 2014. See also: Plaza Pública. [Monte Olivo y Samacoch, las ondas expansivas de un conflicto](#). October 15, 2014; Plaza Pública. [Santa Rita se hunde en las arenas del tiempo](#). October 27, 2014.

<sup>359</sup> CODEHUPY reported on the adoption of Resolution No. 531 by which a *Protocol for procedures for large-scale evictions* is established in Paraguay, which would regulate the conduct of the National Police in carrying out eviction operations; certain laxity is noted out of its content when referring to the use of force, in stating that: "[t]he police personnel should always do everything possible to avoid violence in the enforcement of security coverage to the justice official and others authorities and unrestricted respect for Human Rights". Response of CODEHUPY to the consultation questionnaire on the use of force circulated by the Commission. P. 6: 13-14.

<sup>360</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR, pp. 13-14.

<sup>361</sup> Ñandutí 1020AM. [Desde desalojo, en Guahory niños no van a la escuela por temor a más violencia](#). March 12, 2015. See also Hoy. [Indert accionará contra fiscal por desalojo de campesinos](#). February 24, 2015.

<sup>362</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR, p. 14. See also Ultimahora.com. [Violento desalojo se produjo en Puerto Guaraní](#). March 2, 2015.

<sup>363</sup> Response of CODEHUPY to the questionnaire on the use of force circulated by the IACHR, p. 14. See also Ultimahora.com. [Violento desalojo se produjo en Puerto Guaraní](#). March 2, 2015.

of the neighbors in the framework of the so-called “Operation for the People’s Liberation and Protection” (*Operación de Liberación y Protección del Pueblo – OLP*).<sup>364</sup>

166. The IACHR wishes to insist that, in accordance with international rules and standards, States must restrict the execution of forced evictions and are obliged to take measures to protect people and communities harmed by such operations<sup>365</sup> because, in the words of the Committee on Economic, Social and Cultural Rights (ESCR Committee), “instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”<sup>366</sup>, in which case they shall take the necessary measures to minimize its impact on the affected population<sup>367</sup>, particularly with regard to vulnerable groups such as children, persons with disabilities and elderly, women, indigenous peoples, among other groups and sectors marginalized.

## 6. Special Protection for Specific Groups

### • Journalists and Media Workers

167. The Inter-American Commission learned of different acts of violence committed against journalists in several countries in the region while they were covering public protests during 2015.

168. In that regard, the IACHR would remind states that it is essential, in order adequately to guarantee the right to hold public protests and demonstrations, to facilitate the work of journalists, cameramen, and reporters practicing their profession in such contexts and to ensure that they are not subjected to arbitrary use of force by police or state agents or have their work materials or recording equipment—regardless of the medium—confiscated. The importance of journalism and the media as an effective way of ensuring and preserving the right to freedom of expression has been recognized in several instances by both the Commission and the Court.<sup>368</sup>

<sup>364</sup> Provea. [Provea denunció ante Defensoría del Pueblo desalojos y demoliciones de viviendas ocurridas en Brisas del Hipódromo](#). September 7, 2015.

<sup>365</sup> This, based on a number of international instruments that protect the right to property, the right to protection against arbitrary or unlawful interference in the home, the right to adequate housing and other related rights; such as the American Convention (Articles 21 and 17.2), the American Declaration (Articles IX and XXIII), the International Covenant on Economic, Social and Cultural Rights (art. 11); and other instruments and declarations 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 of victims of gross violations of international human rights and serious violations of international humanitarian law to a remedy and reparation, approved by the General Assembly in its resolution 60/147, the Principles on the restitution of housing and heritage of the refugees and displaced persons, and the Basic Principles and Guidelines on Evictions and Displacement by the UN Development.

<sup>366</sup> United Nations. ESCR Committee. General Comment No. 4 (1991), para. 18.

<sup>367</sup> The States are responsible for providing compensation and alternative accommodation, or restitution, except in cases of force majeure; as well as ensuring “at 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.” United Nations. [Basic principles and guidelines on development-based evictions and displacement. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living](#), para. 52.

<sup>368</sup> I/A Court H.R., 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, pars. 72-74, and *Case of Fontevecchia and D’Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, par. 46.

169. In that connection, the United Nations 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 Inter-American Commission on Human Rights issued a joint declaration on violence against journalists and media workers in the context of protests, noting that “in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.”<sup>369</sup>

170. The State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. This should include assurances that their work materials and tools will not be destroyed or confiscated by the authorities.

171. In relation to the foregoing, the Commission recalls that the Inter-American Court of Human Rights found in the case of *Vélez Restrepo and Family v. Colombia* that the attack on a journalist by members of the state security forces “prevent[ed] him from continuing to record what was taking place and ... disseminat[ing] ... the recording” and that “[a]ttacks such as those suffered by Mr. Vélez result in fear to capture and disseminate certain information and opinions,” so that they limit the freedom of expression “of all citizens, because they have an intimidating effect on the free flow of information.”<sup>370</sup>

172. The IACHR has also reaffirmed that in situations of social unrest the obligation of the State to respect the right of journalists to keep their sources of information, notes, and personal and professional archives confidential is particularly important. As has been previously stated, in order to do their jobs effectively, journalists must be perceived as independent observers and not as potential witnesses for the courts. Otherwise, the safety of both journalists and their sources could be threatened. Furthermore, the “photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.”<sup>371</sup>

173. During the period covered by this report, the IACHR continued to record acts of violence against journalists and media workers by state security forces. For example, in Brazil, the IACHR received worrying information about attacks by military police on journalists during protests in different cities there in 2015. The attacks reputedly included the indiscriminate use of rubber bullets, nonlethal bombs, batons, and threatening language.<sup>372</sup> According to reports<sup>373</sup>, some of the alleged victims of those acts of violence

<sup>369</sup>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. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

<sup>370</sup> I/A Court H.R., *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, par. 146.

<sup>371</sup>See *Guidelines on Peaceful Freedom of Assembly*, OSCE – ODIHR and *Venice Commission*, para. 169.

<sup>372</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). [Repórter do Estádio é alvo de bala de borracha em protesto: é a quinta ocorrência em 2015](#). January 28, 2015; Associação Brasileira de Jornalismo Investigativo (Abraji). [Abraji repudia agressão de PM a fotógrafo da Folha de S.Paulo: é o 11º caso do tipo em 2015](#). May 29, 2015; Comunique-se. [Imprensa ferida: Polícia deixa cinco jornalistas machucados durante protesto no PR](#). April 30, 2015; Band.com.br. [Cinegrafista da Band é atacado por pit bull da PM](#). April 29, 2015.

<sup>373</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). [Repórter do Estádio é alvo de bala de borracha em protesto: é a quinta ocorrência em 2015](#). January 28, 2015; Portal dos Jornalistas. [Repórter do Estádio é alvo de bala de borracha em protesto](#). January 28, 2015; Associação Brasileira de Jornalismo Investigativo (Abraji). [Abraji repudia agressão de PM a fotógrafo da Folha de S.Paulo: é o 11º caso do tipo em 2015](#). May 29, 2015. Band.com.br. [Cinegrafista da Band é atacado por pit bull da PM](#). April 29, 2015; UOL. [No PR, 17 policiais se recusam a fazer cerco a professores e são presos](#). April 29, 2015; Comunique-se. [Imprensa ferida: Polícia deixa cinco jornalistas machucados durante protesto no PR](#). April 30, 2015. Comunique-se. [Fotógrafo da Folha é agredido por PM e impedido de registrar B.O.](#) May 29, 2015

were Matheus José Maria (freelance photographer), Felipe Laroza (photojournalist with Vice magazine), Thomas Dreux Miranda (Xadrez Verbal blog), Edgar Maciel (journalist with Estado of São Paulo), Fernando Otto (TV Estadão); Luiz Carlo de Jesus (Band cameraman); Rafael Passos (CATVE cameraman); Germano Assad (journalist with *El País Brasil*), Henry Milleo (photographer from *Gazeta do Povo*), André Rodrigues (freelance journalist); Danilo Verpa (photographer from *Folha de São Paulo*), and Luiz Roberto Lima (*Jornal do Brasil*).

174. In Canada, according to information received by the IACHR, numerous attacks were documented against journalists by both police and demonstrators during anti-austerity protests taking place in March and April, in Montréal. The attacks by the police reportedly involved teargas and rubber bullets.<sup>374</sup> The IACHR was also informed that an OM99 Media video recorded police obstructing journalists from filming detentions of demonstrators, despite having valid press IDs or advising police that they were journalists.<sup>375</sup> In Colombia, the IACHR learned that on March 11, Isnardo Quiroz, a journalist from CNC Noticias, was wounded after a teargas grenade launcher was discharged while he was covering clashes between police and demonstrators in the truck drivers' strike.<sup>376</sup>

175. In the United States, according to information received by the IACHR, on April 18, 2015, several protests broke out in Baltimore following the death of Freddie Gray, an Afro-American man, while in police custody. According to reports, assaults and arrests of journalists by the police were recorded during the protests.<sup>377</sup> Faced with the violence in the city, the mayor of Baltimore ordered a curfew that went into effect on April 28 and lasted until May 3. The curfew, which was enforced citywide, did not apply to journalists, military personnel, and police, who were able to move about freely in the city between 10:00 p.m. and 5:00 a.m., when movement for all other citizens was restricted.<sup>378</sup>

176. In Venezuela there were reports of journalists being attacked and detained while providing news coverage of people standing in lines outside supermarkets to buy food and other basic household commodities amid the shortages in the country. According to the information, the Venezuelan justice system prosecuted photojournalists who photographed the protests that occurred in that context. They were reportedly charged with instigating public disorder, obstructing public passage, and resisting authority. On some of those occasions, reporters were detained by the Bolivarian National Guard (GNB), a unit of the Armed Forces, and according to reports their recordings or photographic material would have been destroyed.<sup>379</sup>

<sup>374</sup> Hispantv. [Policía canadiense reprime protesta anti-austeridad en Montreal](#). April 3, 2015. See also Cubadebate. [Policía canadiense reprime brutalmente a manifestantes anti-austeridad en Montreal](#). April 5, 2015.

<sup>375</sup> Canadian Journalists for Free Expression. [Concern regarding the brutality of Montréal police against journalists](#). June 24, 2015; Fédération Professionnelle des Journalistes du Québec. [Manifestations étudiantes : des agressions inadmissibles contre des journalistes](#). March 26, 2015.

<sup>376</sup> Fundación para la Libertad de Prensa (FLIP). [Policía disparó fusil lanza gas contra periodista que cubría paro camionero en Pasto](#). March 12, 2015; Federación Colombiana de Periodistas (Fecolper). [La ANP filial de la FECOLPER expresa su enérgico rechazo a la acción del Escuadrón Móvil Antidisturbios \(ESMAD\)](#). March 12, 2015.

<sup>377</sup> *The Baltimore Sun*. [Photojournalists 'Taken Down,' Detained by Police in Baltimore Protests](#). April 26, 2015; *International Business Times*. [Journalists Beaten, Detained By Police At Baltimore Protests](#). April 27, 2015; *The Huffington Post*. [Baltimore Police Beat Journalist During Protest \(GRAPHIC VIDEO\)](#). April 26, 2015; *Mint Press News*. [INTERVIEW: Baltimore Police Shoot At Jail Shawn Carrié For The Crime Of Journalism](#). May 5, 2015; *The Guardian*. [My 49 Hours in a Baltimore Cell – for Being a Reporter](#). May 2, 2015; *Truth in Media*. [Baltimore Exclusive: Detained Journalist and Eyewitness Give Firsthand Account](#). May 13, 2015; *Photography is Not a Crime*. [Journalist Arrested Trying to Record Baltimore Police Making Arrest](#). May 4, 2015; We Are Change/YouTube. [Baltimore Police Go After and Shoot Journalists](#). April 28, 2015.

<sup>378</sup> EFE. [Con el toque de queda, el silencio y los militares se adueñan de Baltimore](#). May 1, 2015.

<sup>379</sup> Ipps. [Caracas: Dos reporteros gráficos fueron dejados en libertad con régimen de presentación cada 30 días](#). January 13, 2015; Sindicato Nacional de Trabajadores de la Prensa de Venezuela (via Twitter). [Reporteros gráficos Blas Santander y Anthony Lares detenidos por la GNB se encuentran en Fuerte Tiuna. Exigimos inmediata liberación](#). January 10, 2015; NTN24. [Foro Penal Venezolano informa de la detención de dos periodistas en protesta de Santa Fe](#). January 11, 2015; *Voz de América*. [Imputados por fotografiar colas y protestas](#). January 13, 2015; *El Universal*. [Levan a tribunales a detenidos de Santa Fe y San Bernardino](#). January 13, 2015; *El Universal*. [Liberado con](#)

177. According to information received, some states have included special protection for journalists at demonstrations in police operational guidelines and protocols. For example, in Brazil, Article 5 of Resolution No. 6 of 2013 provides that: The activities of reporters, photographers, and other media professionals are essential for the effective observance of the human right of freedom of expression in the context of demonstrations and public events, as well as in the coverage of the execution of judicial orders on maintenance and restoration of authority. Sole paragraph. Reporters, photographers, and other media professionals should enjoy special protection in the practice of their profession and any obstacle to their operations, particularly through the use of force,<sup>380</sup> is prohibited.

178. The State of Chile reported that Service Rule No. 7 for Chiefs and Order and Security Officers of the Carabineros imposes obligations on the officer on duty to “provide the press, upon request, with information concerning police activities, in accordance with the facilities determined by the High Command.”<sup>381</sup> Similarly, Chile said that, specifically with respect to maintaining public order, General Order No. 2297 of August 14, 2014, approved the amendment of the “Protocol on Intervention to Maintain Public Order,” and instituted Protocol 5.2 on “Treatment and dialogue with media organizations.” According to the State, the Protocol establishes a series of measures for providing the necessary protection to media workers, camera persons, journalists, and photojournalists and ensuring that they can practice their profession.

179. Colombia, for its part, provided information on Official Communiqué No. 238300 INSGE ARDEH of August 19, 2013, on assurances for the practice of journalism during social protests;<sup>382</sup> in addition, Colombia provided information about regular meetings with the leadership of the *Fundación para la Libertad de Prensa* [Foundation for Press Freedom] (FLIP) and five workshops on freedom of expression and freedom of the press held between September 2014 and August 2015, with the aim of providing training and information to the institution’s personnel about the guarantees protecting the practice of journalism.<sup>383</sup> Finally, the State told the IACHR that the Ministry of the Interior was drafting a Public Policy for Guaranteeing the Right to Freedom of Expression of Persons Who Practice Journalism in the country.

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*régimen de presentación dirigente vecinal Carlos Julio Rojas*. January 13, 2015; Espacio Público. *PNB agrade a fotógrafo en Anzoátegui*. January 15, 2015; El Universal. *Expresión Libre: Enero fue un mes de retrocesos a la Libertad de Expresión*. February 2, 2015; Espacio Público. *Apedrean a equipo de Últimas Noticias en Catia*. January 19, 2015; Noticiero Digital. *Periodista de ÚN: En Catia ya no quieren a UN. allá la escasez es peor que en el Este*. January 19, 2015; Confirmado. *Violentan a periodista Diana Carolina Ruiz en Farmatodo La Florida*. February 3, 2015; Diana Carolina Ruiz (via Twitter). *Integrante de consejo comunal la Florida dentro de Farmatodo vigilan a consumidores y hasta se atreven a quitarle el teléf a quien grabe*. February 3, 2015; Espacio Público. *Golpean a periodistas en Falcón mientras cubrían una cola*. February 19, 2015; Venezuela Awareness. *16Mz Sargento mayor agredió periodistas en Apure*. March 16, 2015; Venezuela al Día. *¡Sobre detención de periodista Nazareth Montilla! Machado: “Ella es expresión de la ciudadanía que se rebela”*. July 29, 2015; En La Noticia (via Twitter). *Conversamos vía telefónica con la Periodista del Diario El Norte, Nazareth Montilla por la detención ayer en el Abasto Bicentenario Bna*. July 30, 2015; InfoVzla.Net. *Julio fue también un mes aciago para la prensa en Venezuela*. August 4, 2015; Espacio Público. *GNB me apuntó con un arma larga para que dejara de grabar*. July 29, 2015; Noticias Yaracuy. *Junta directiva del CNP Yaracuy: “La labor del periodista es sagrada y hay que respetarla”*. September 11, 2015; Ipys. *Yaracuy: Funcionarios de la GNB retuvieron a periodista durante cobertura*. September 16, 2015; Espacio Público. *Detienen a periodista en Yaracuy mientras hacía cobertura en una cola*. September 11, 2015.

<sup>380</sup>Original Portuguese text: “Art. 5º As atividades exercidas por repórteres, fotógrafos e demais profissionais de comunicação são essenciais para o efetivo respeito ao direito humano à liberdade de expressão, no contexto de manifestações e eventos públicos, bem como na cobertura da execução de mandados judiciais de manutenção e reintegração de posse.

*Parágrafo único. Os repórteres, fotógrafos e demais profissionais de comunicação devem gozar de especial proteção no exercício de sua profissão, sendo vedado qualquer óbice à sua atuação, em especial mediante uso da força.”* Brazil. Conselho de Defesa dos Direitos da Pessoa Humana. Resolution No. 06 of June 18, 2013. Available at: <http://www.sdh.gov.br/sobre/participacao-social/cddph/resolucoes/2013/resolucao-06-2013>.

<sup>381</sup>Response of Chile to the questionnaire on the use of force circulated by the IACHR, p. 25.

<sup>382</sup>Response of Colombia to the questionnaire on the use of force circulated by the IACHR, p. 26.

<sup>383</sup>Response of Colombia to the questionnaire on the use of force circulated by the IACHR, p. 26.

180. Guyana reported that its police authorities have a special guide [Guidelines on Police Force Relations with the Media] to facilitate access by the press to police operations, including the supervision of public meetings.<sup>384</sup>

181. The Nicaraguan State reported that the police forces are expressly prohibited to: (i) obstruct or impede the freedom of journalists to obtain and disseminate information; (ii) stop any journalist from practicing his or her profession; and (iii) seize or confiscate informative material or work equipment. The State said that to enforce the aforementioned provisions, when the National Police covers events such as rallies or public demonstrations, it acts through personnel at the Public Relations Division to ensure compliance with those rules. It also noted that observance of that right is overseen by the chain of command for each plan or specific activity and through the institution's Supervision and Control Division.

- **Indigenous Peoples**

182. During the period covered by this report, the IACHR received perturbing information about incidents in which state security forces used force to the detriment of indigenous peoples and their members, particularly in the context of: (a) disputes over land and territory, in some cases leading to evictions; (b) protests and demonstrations in opposition to the occupation of their lands or promulgation of laws or decrees; and (c) shows of opposition to industrial extraction, development, and investment activities.

183. In August 2015, the Commission was informed that members of the Guarani indigenous people in Bolivia blocked a road in protest at operations being conducted by the State-owned oil firm Yacimiento Petrolíferos Fiscales Bolivianos (YPFB) on their land without their consultation, leading to repression by law enforcement agents, who used tear gas against the demonstrators and entered homes in the indigenous community to detain demonstrators.<sup>385</sup>

184. In Canada, the United Nations Human Rights Committee, in its "Concluding observations on the sixth periodic report of Canada," expressed concern about reports of excessive use of force by law enforcement officers, with particular reference to indigenous land-related protests.<sup>386</sup>

185. The IACHR was also told about the harm caused to Mapuche indigenous children and adolescents in Chile as a result of the disproportionate use of force by the security forces in dealing with demonstrations by the Mapuche indigenous people in that country, as referred to earlier.<sup>387</sup> In 2014, Chile's National Human Rights Institute (INDH) brought four actions for constitutional relief (*amparo*) on behalf of children and adolescents over the disproportionate use of force by the public security forces, including cases of children and adolescents wounded by shotgun pellets, three of which were admitted.<sup>388</sup> In its 2014 annual report, the INDH noted "with concern that, in spite of repeated orders from the superior courts for the police to alter its procedures, as well as the institution's own efforts to update and correct its intervention protocols, which were made available to the public in August 2014, practices involving the disproportionate use of force persist that have serious repercussions on the physical and psychological integrity of indigenous children. Calls to initiate a dialogue with a view to building a new type of relationship with indigenous peoples,

<sup>384</sup> Response of Guyana to questionnaire on the use of force circulated by the IACHR.

<sup>385</sup> Panam Post. [Policía boliviana reprimió manifestación de indígenas](#), August 20, 2015. See also Diario Las Américas. [La Policía boliviana detiene a 26 indígenas acusados de bloquear la vía a Argentina](#), August 19, 2015.

<sup>386</sup> United Nations, Human Rights Committee, [Concluding observations on the sixth periodic report of Canada](#), CCPR/C/CAN/CO/6, 13 August 2015, para. 11.

<sup>387</sup> IACHR. Hearing on [Reports of Violence against Mapuche Indigenous Children and Impunity in Chile](#). 156th regular session, October 22, 2015.

<sup>388</sup> INDH. Informe Anual sobre la Situación de Derechos Humanos en Chile 2014. Available at: <http://www.indh.cl/informe-anual-situacion-de-los-derechos-humanos-en-chile-2014>.

particularly the Mapuche, have been taken up universally and denote a consensus that should be highlighted.”<sup>389</sup>

186. The above-referenced abusive and excessive use of force was also inflicted on Juana Calfunao, a Mapuche Lonko traditional elder of the Juan Paillalef community, and on her family, in response to steps that she took in defense of the territory where she resides, warranting the decision of the Commission on October 26, 2015, to grant precautionary measures.<sup>390</sup>

187. According to publicly available information, in February 2015, hundreds of indigenous people from Páez de Corinto reserve in north Cauca, Colombia, settled on land owned by the Incacua plant, where they blocked public roads and demanded the return of their ancestral lands.<sup>391</sup> This reportedly led to clashes with the public security forces, resulting in dozens wounded as a result of alleged excessive force used by ESMAD and the Army.<sup>392</sup> The IACHR also heard about the eviction in June 2015 of a settlement of Wayúu indigenous peoples from a 15-hectare area of land on instructions from the mayor of Puerto Colombia. ESMAD personnel and police reportedly deployed tear gas when they refused to vacate the land and there were reports of arbitrary acts and alleged ill-treatment of a woman and children.<sup>393</sup>

188. In August 2015, indigenous communities in Ecuador, heeding a call from the Confederation of Indigenous Nationalities of Ecuador, declared a national strike to press a number of demands, including bilingual intercultural education and the shelving of a proposed land law.<sup>394</sup> *Human Rights Watch* said that it had recorded injuries caused to members of the indigenous community as a result of excessive use of force by police and military personnel during the protests.<sup>395</sup>

189. It is worth noting that the United Nations Special rapporteur on the rights of indigenous peoples has said that it is “imperative that States adopt the measures necessary to secure the right of indigenous peoples and individuals to peacefully express opposition to extractive projects [and, therefore, states have an obligation to] provide adequate training to security forces, hold responsible those who commit or threaten acts of violence, and take measures to prevent both State and private agents from engaging in the unjustifiable or excessive use of force.”<sup>396</sup>

190. At a hearing on *Corporations, Human Rights, and Prior Consultation in the Americas* in the context of the Commission’s 154th regular session, the participants said that in several countries in the region excessive force was used by security agents or illegal armed groups connected with

<sup>389</sup> INDH. Informe Anual sobre la Situación de Derechos Humanos en Chile 2014. Available at: <http://www.indh.cl/informe-anual-situacion-de-los-derechos-humanos-en-chile-2014>.

<sup>390</sup> IACHR, *Precautionary Measure 46-14, Resolution 39/15 – Juana Calfunao et al. regarding Chile*, October 26, 2015.

<sup>391</sup> El País. *Indígenas del norte del Cauca piden dialogo con Gobierno para frenar desordenes*, February 25, 2015.

<sup>392</sup> Pulzo. *Más de 30 heridos por operativo del Esmad en Corinto (Cauca), denuncia comunidad indígena*. February 26, 2015. See also TeleSurTV. *Colombia: 50 heridos en enfrentamiento entre policía e indígenas*. February 27, 2015; El Espectador. *Se agudizan confrontaciones entre indígenas y fuerza pública en Corinto, Cauca*. February 27, 2015; Organización Nacional Indígena de Colombia. *Los Pueblos Indígenas NO somos actores armados, somos actores de Paz*. February 27, 2015.

<sup>393</sup> RCN La Radio. *Se cumplió desalojo de indígenas Wayúu en Puerto Colombia*. June 10, 2015.

<sup>394</sup> Press release issued by Victoria Tauli-Corpuz, United Nations Special rapporteur on the rights of indigenous peoples, *ECUADOR. Special Rapporteur on the Rights of Indigenous Peoples urges calm and dialogue in Ecuador*, August 24, 2015. See also *Human Rights Watch. Ecuador: Crackdown on Protesters Excessive Use of Force, Arbitrary Detentions, Illegal Home Searches*, November 10, 2015.

<sup>395</sup> *Human Rights Watch. Ecuador: Crackdown on Protesters Excessive Use of Force, Arbitrary Detentions, Illegal Home Searches, November 10, 2015*. See also: Radio Huancavilca. *La ONU se mostró preocupada por la violencia ejercida contra los indígenas en Ecuador, August 25, 2015*.

<sup>396</sup> United Nations, Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Extractive industries and indigenous peoples*, A/HRC/24/41, 1 July 2013, para. 21.

corporations.<sup>397</sup> According to other sources, in March 2015, around 100 ranchers assaulted members of the Otomí indigenous people in San Francisco Magu, Nicolás Romero, State of Mexico, intent on seizing control of the potable water supply that the indigenous community was managing in accordance with its uses and customs, with the aim of supplying clean water to a real estate project whose construction was underway.<sup>398</sup> There was a similar situation with the members of the Teribe and Bribri indigenous people in Salitre, in the southeast of the Department of Puntarenas, Costa Rica, to whom the Commission decided to grant precautionary measures on April 30, 2015, in view of the continuous threats, harassment, and acts of violence in the context of a protracted land dispute, which resulted, among other things, in non indigenous individuals blocking access to the indigenous territory, threatening their members, destroying property, and entering the disputed area without authorization and in a violent manner.<sup>399</sup>

191. The IACHR has also received information about excessive use of force in evictions of indigenous communities or persons. In a hearing on *The Right to Property and the Right to a Healthy Environment of Indigenous Peoples in Bocas del Toro, Panama* held during its 154th regular session, the Commission heard about the eviction in late 2014 of the Ngäbe community from Quebrada Pity by the Municipality of Almirante and the National Police, in which older persons were particularly adversely affected.<sup>400</sup>

- **LGBT Persons**<sup>401</sup>

192. In its *Report on Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas*, adopted in November 2015, the IACHR examined a number of legal provisions that are interpreted and applied in order to criminalize LGBT persons in several countries in the region. Examples include laws against “vagrancy,” laws that seek to protect “public moral standards and conventions,” and laws that punish behavior considered “indecent,” “obscene,” or “provocative.” Such laws greatly influence police brutality, extortion, mistreatment, and acts of violence against LGBT persons. For example, vagrancy laws create *de facto* mechanisms that can be used to discriminate against trans persons, regulate the use of public places, and judge individuals based on how they express themselves physically.<sup>402</sup>

193. Vaguely defined prohibitions open the way for arbitrary enforcement against individuals who do not conform to socially established gender norms. There is evidence that judicial authorities and law enforcement officials have repeatedly used such laws to harass and persecute LGBT persons, especially trans sex workers.<sup>403</sup> In certain jurisdictions, police and law enforcement officials have broad powers to limit or

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<sup>397</sup> IACHR. Hearing on [Corporations, Human Rights, and Prior Consultation in the Americas](#). 154th regular period of sessions. March 17, 2015.

<sup>398</sup> Centro de Derechos Humanos Zeferino Ladrillero. [Salvaje represión a indígenas en el Estado de México](#). March 8, 2015. See also SDP Noticias. [Funcionarios de Nicolás Romero atacan y golpean a defensores otomíes](#). March 10, 2015.

<sup>399</sup> IACHR, [Precautionary Measure 321-12, Resolution 16/15 – Teribe and Bribri Indigenous People regarding Costa Rica](#), April 30, 2015.

<sup>400</sup> IACHR. hearing on [The Right to Property and the Right to a Healthy Environment of Indigenous Peoples in Bocas del Toro, Panama](#). 154th regular session. March 20, 2015.

<sup>401</sup> During the period covered by this report, the IACHR did not receive any information about excessive use of force by state agents against intersex persons. Accordingly, this chapter will refer to LGBT persons.

<sup>402</sup> Response to the IACHR questionnaire on violence against LGBTI persons in the Americas presented by Argentina, Note 96357/2013 of November 29, 2013, and received by the Executive Secretariat of the IACHR on December 13, 2013, p. 20. See also CEJIL, *Estudio sobre los Crímenes de Odio Motivados en la Orientación Sexual e Identidad de Género en Costa Rica, Honduras y Nicaragua*, 2010.

<sup>403</sup> [Argentina], Response to the IACHR questionnaire on violence against LGBTI persons in the Americas presented by Argentina, Note 96357/2013 of November 29, 2013, and received by the Executive Secretariat of the IACHR on December 13, 2013, p. 11. [Mexico] Response to the IACHR questionnaire on violence against LGBTI persons in the Americas, *Centro de Apoyo a las Identidades Trans* (Mexico), received by the Executive Secretariat on December 20, 2013, p. 8.

restrict people's movement in public places. That power, when combined with discrimination and prejudice against LGBT persons, leads to the abuse of the police's discretionary authority to enforce the law on the use of the public places. Moreover, the Commission is concerned about reports that it has received from civil society organizations in different countries about the police's selective enforcement of provisions on "moral conventions" against lesbian, bisexual, and trans women.<sup>404</sup> The IACHR has received information from civil society that such laws are so vaguely worded that their enforcement essentially depends on the prejudices of the officials charged with their application. Consequently, those laws may be used directly against public displays of affection by same-sex couples.<sup>405</sup> Civil society organizations have also reported that some local governments regard LGBT persons as "individuals with bad habits"<sup>406</sup> and encourage the "eradication of homosexuals" as part of citizen security policies.<sup>407</sup>

194. The Commission is concerned at information it has received that LGBT persons are afraid to report abuse and, therefore, those responsible think they will not be punished.<sup>408</sup> Many cases of harassment and violence are not reported to the local authorities and, in general, there is no official data gathering on the subject by states. As a result, this type of violence goes unnoticed, which, in turn, increases the violence against LGBT persons.<sup>409</sup>

195. In Colombia, for instance, out of all the acts of police violence,<sup>410</sup> criminal investigations were only opened into the suspected culprits in three cases, with only one of those cases leading to a conviction of those responsible.<sup>411</sup> The IACHR has also received information about 48 acts of police brutality against LGBT persons in 13 departments in Colombia between September 2014 and August 2015.<sup>412</sup>

196. At a hearing held in October 2015, the IACHR was informed about police violence against trans women in Panama, particularly those who engage in sex work. Civil society organizations also reported that agents of Panamanian security forces often blackmail trans women into giving them money or sexual

<sup>404</sup> See, for example, [Chile], Response to the IACHR questionnaire on violence against LGBTI persons in the Americas presented by Organización de Transexuales por la Dignidad de la Diversidad, p. 3. December 2013.

<sup>405</sup> Chile. Criminal Code, Article 373. Response to the IACHR questionnaire on violence against LGBTI persons in the Americas presented by MOVILH. Chile, pp. 9-10. December 2013.

<sup>406</sup> In Colombia, a police manual on nonlethal weapons justifies police prejudice against certain marginalized social groups, such as LGBT persons. The manual on "Parameters for the Use of Nonlethal Weapons" of the National Police of Colombia, which includes the "normal mindset [of the police] toward typical interlocutors, such as diehard soccer fans, groups of youth under the influence of psychoactive drugs, homosexuals and transvestites, vagrants, intolerant racists and xenophobes." Response of Colombia Diversa to the questionnaire on the use of force in the Americas circulated by the IACHR, p. 3.

<sup>407</sup> For example, the IACHR received information about the creation by the Provincial Municipality of Piura of an "anti-transvestites" group in coordination with the police in August 2015. Sin Etiquetas, "Perú: Municipio crea grupo "antitravestis" de la mano con la policía," August 18, 2015. The IACHR has been informed about initiatives of this nature in several Peruvian municipalities in previous years. Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos - PROMSEX and Red Peruana TLGB: INFORME ANUAL sobre derechos humanos de personas Trans, Lesbianas, gays y bisexuales en el Perú 2012, Sin Igualdad no hay Justicia, 2012, Peru, p. 57.

<sup>408</sup> Christopher Carrico, [Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana](#), Human Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 4.

<sup>409</sup> [Chile] Response to the IACHR questionnaire on violence against LGBTI persons in the Americas presented by Organización de Transexuales por la Dignidad de la Diversidad, p. 3.

<sup>410</sup> Incidents documented by the civil society organization Colombia Diversa in 2013 and 2014.

<sup>411</sup> Response of Colombia Diversa to the questionnaire on the use of force in the Americas circulated by the IACHR, p. 4.

<sup>412</sup> Response of Colombia Diversa to the questionnaire on the use of force in the Americas circulated by the IACHR, p. 3.

favors in return for their freedom when detained or threatened with arrest.<sup>413</sup> In addition they said that there was a system of fines for engaging in sex work or for simply being trans.<sup>414</sup> They also showed images of two trans persons who were victims of police violence in 2014. In response, the Panamanian State recognized the existence of discrimination against trans persons and against LGBT persons in general and said that a representative of the LGBT community had been incorporated in the National Commission against Discrimination

197. As to best practices adopted by the police, the IACHR received information on legislative advances in Nicaragua that have made it a requirement for anyone wishing to make a career in the police to pass the executive level and officer level courses, which include training provided by the human rights ombudsman on homophobia and transphobia, masculinity, risk perception, and assertive communication.<sup>415</sup> The IACHR also takes note of the fact that since 2010 the Ministry of Social Inclusion of El Salvador has had a Department for Sexual Diversity, which has implemented a project for personnel at the Citizen Assistance Offices of the National Civil Police and instructors at the Public Security Academy aimed at reducing the stigma associated with LGBTI persons.<sup>416</sup> Mexico, in turn, reported that its Federal Police was working on a Protocol for Action in cases involving matters of sexual orientation or gender identity and equity.<sup>417</sup>

- **Human Rights Defenders**

198. During the period under analysis, the IACHR received information about several incidents alleging use of force in an excessive manner to the detriment of other groups of human rights defenders as a consequence of their work, in addition to the possible criminalization and use of force to break up a march or demonstration. Below are some examples of the information received.

199. During the period covered by this report, the IACHR also received troubling information about alleged instances of police violence against LGBT rights defenders<sup>418</sup>, including alleged abductions, intimidating questioning, ill-treatment, searches without a warrant, physical violence, and rape in Argentina<sup>419</sup>, Colombia<sup>420</sup>, Honduras,<sup>421</sup> and El Salvador.<sup>422</sup> According to a regional report prepared by

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<sup>413</sup> Redlactrans and APPT, Informe sobre situación de derechos humanos de las personas trans (travestis, transexuales y transgéneros) en Panamá. Versión Preliminar v.1.0. October 2015.

<sup>414</sup> During the hearing, copies were displayed of fines which specified that the reason was “clandestine prostitution” and that the penalty was 100 dollars; while another fine was for “being a transvestite,” for which the penalty was 60 dollars. The fines were reputedly levied by the nocturnal courts of the Ministry of the Interior and Justice of the Republic of Panama.

<sup>415</sup> Law on the Organization, Functions, Career Path, and Special Social Security Regime of the National Police. Response of Nicaragua to the questionnaire on the use of force in the Americas circulated by the IACHR, p. 32.

<sup>416</sup> In addition, three police personnel awareness-raising tools were designed as part of the same project. Response of the Republic of El Salvador to the questionnaire on the use of force in the Americas circulated by the IACHR, p. 13.

<sup>417</sup> Response of Mexico to the consultation questionnaire on the use of force circulated by the IACHR, p. 24.

<sup>418</sup> IACHR, *Report on Violence against Lesbian, Gays, Bisexuals, Trans e Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, Chapter 4.

<sup>419</sup> The IACHR learned of a repressive attack on Diana Sacayán, a trans persons’ rights defender, who, together with other defenders was on her way to the city of La Plata for a discussion on the trans employment quota law in August 2015. Autodeterminación y Libertad, “[Repudiamos la Represión a Diana Sacayán](#)”, August 29, 2015.

<sup>420</sup> According to reports, the trans woman was a human rights defender and the policewoman who assaulted her physically also filmed her family without a court order. Santamaría Fundación. Press release provided to the team that supports the Office of the Rapporteur on the Rights of LGBTI Persons. September 2015.

<sup>421</sup> The IACHR was informed that on August 20, 2015, Marco Aurelio López, a human rights defender and director of the organization Asociación Manos Amigas – LGBT AMAS, was intercepted and made to board a military vehicle. He was then taken to the northeast of the city where he was allegedly physically and sexually assaulted by agents of the military police. In addition, the human rights defenders Wilmer Rodas and Donny Reyes were intercepted in a taxi by the police and subjected to

REDLACTRANS, although violence against trans persons may happen anywhere and at any time of day, the fact that they engage in sex work on the streets at night provides greater opportunities to the police “to take steps against them with impunity.”<sup>423</sup> The IACHR has established that members of organizations that promote and defend the rights of LGBTI persons play a fundamental role in the region. That role is visible in terms of public oversight—to monitor the State’s compliance with its obligations—and, in general, in the process of promoting equality for LGBTI persons.<sup>424</sup>

200. In addition, the IACHR has received information and testimony about the excessive use of force against human rights defenders during or after having organized or participated in a demonstration or peaceful assembly. For example, the IACHR received information on strokes and sustained injuries from over three hundred activists and human rights defenders while participating or attempting to participate in a peaceful demonstration on 11 October, 2015 in Cuba for the release of political prisoners and respect for human rights. It is alleged that the special forces of the Interior Ministry would have been responsible for the beating and subsequent arrests of the defenders, and also, that a special brigade of the same Ministry together with the police would have been involved in the intrusion, damage and theft inflicted on two headquarters of the Patriotic Union of Cuba (UNPACU).<sup>425</sup>

201. Another example was received during a thematic hearing of the IACHR held in October 2015 on the situation of defenders of indigenous peoples’ human rights and the environment in Ecuador. At this hearing, the participating organizations informed the IACHR that its members had been subjected to arbitrary arrests, many of which have been carried out with excessive use of force, being repeatedly beaten. An environmental and indigenous peoples activist recounted her experience, saying that after participating in a peaceful protest in August 2015, she was kicked by police officers, arrested and taken to the police station. According to her, she was denied water while still at the station, and instead of being transferred to another remote station as planned and threatened, she had to be transferred to the hospital because she was in a state of poor health.<sup>426</sup>

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intimidating questioning in Tegucigalpa after attending the celebration of the anniversary of the organization Asociación Arcoiris. Arcoiris. Frontline Defenders. Honduras – Extreme violence, including killings, against LGBTI rights defenders, September 2, 2015.

<sup>422</sup> The IACHR was informed about a brutal beating given to Alex Peña, a trans man, human rights defender, and leader of Asociación de Hombres Transexuales. On June 27 he had reportedly taken part in the gay pride parade. While he was on his way home he reportedly got into an argument with a bus driver, in which a group of National Civil Police agents intervened. He was allegedly assaulted by four policemen, who left him with a fractured orbit and other internal injuries. While the policeman were hitting him, they shouted, “We’re are going to beat you like a man.” The mayor of San Salvador and an assistant government attorney said that it was a case of violence based on prejudice against gender identity and expression. El Faro. [Organizaciones LGBTI denuncian golpiza de Policía a activista transexual](#), June 29, 2015.

<sup>423</sup> According to the organization, the combination of both activities puts trans human rights defenders in a more vulnerable position. REDLACTRANS and others, *La noche es otro país. Impunidad y violencia contra mujeres transgénero defensoras de derechos humanos en América Latina*, 2012, p. 28.

<sup>424</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. doc.66, December 31, 2011, par. 297; IACHR, Press Release No. 23/14, *IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas*, February 27, 2014.

<sup>425</sup> UNPACU, [Listado de más de 300 activistas de Derechos Humanos detenidos en Cuba ayer domingo](#), 12 de octubre de 2015; Cubanet, [Domingo de represión: decenas de manifestantes pacíficos detenidos y golpeados](#), 11 de octubre de 2015. Posteriormente a estos hechos, la CIDH ha seguido recibiendo información sobre otras manifestaciones pacíficas en donde personas defensoras de derechos humanos estarían siendo maltratados y detenidos por agentes del Departamento de Seguridad del Estado en conjunto con la Policía Nacional Revolucionaria.

<sup>426</sup> CIDH, Audiencia sobre [Situación de las y los defensores de derechos humanos de pueblos indígenas y del ambiente en Ecuador](#). 156 período ordinario de sesiones. 19 de octubre de 2015.

202. In Brazil, excessive use of force against defenders of the rights of indigenous peoples was also registered. In August 2015, information was received indicating that in the state of Mato Grosso do Sul, municipality Antônio João, the police along with the landowners were alleged to have been performing recovery operations on the pieces of land, after the Guarani-Kaiowá people had occupied their ancestral land peacefully. As reported, the territory in question had been demarcated as indigenous territory and approved in 2005; however, the decision was suspended the same year by the Federal Supreme Court after an injunction filed by landowners. At the date of occupation of the land, the Supreme Court had not yet made a final decision on the demarcation of the territory. During an operation on August 29, 2015, it was alleged that the police applied excessive use of force and that landowners allegedly shot against members of indigenous communities, killing the defender Semião Fernandes Vilhalva. According to information received, the day after the murder of Semião Fernandes Vilhalva, there was another land reclamation operation, also with excessive use of force. In addition to violence, it is indicated that indigenous peoples, including the defenders of human rights, would be subject to smear campaigns where are falsely accused of damaging property during their occupation.<sup>427</sup>

203. During its on-site visit to Mexico, between September 28 and October 2, 2015, the Commission was informed about records of torture in the country. According to a civil society organization, some 10,000 people are tortured annually in Mexico and, of these cases, most remain unpunished<sup>428</sup>. According to this organization, methods of frequently torture include beatings with fists, kicking with boots, maces and gun stocks in various parts of the body, insults, threats, humiliation, witness and/or listen to the torture of others, wet and dry suffocation, electric shocks, forced nudity and sexual torture.<sup>429</sup> These methods are allegedly applied on activists, social leaders, human rights defenders, journalists, migrants and indigenous leaders, as well as on detainees to obtain confessions and/or other information. Similarly, figures from the National Human Rights Commission found an increase of 600% in the number of complaints of torture and mistreatment recorded in 2013 compared to 2003.<sup>430</sup>

204. On the other hand, in its latest report on the *Criminalization of the Work of Human Rights Defenders*<sup>431</sup>, the Commission showed great concern about the involvement of police and military agents of various states in the region in processes of criminalization<sup>432</sup>, making emphasize in the use of excessive force used on many occasions in the arrest of defenders as part of these processes.

205. The IACHR has also received information on laws with vague provisions that regulate aspects of the right to social protest and peaceful assembly that could leave the door open to the excessive

<sup>427</sup> Front Line Defenders, [Brasil: asesinato de Semião Fernandes Vilhalva, defensor de derechos humanos y líder indígena guaraní-kaiowá](#), 7 de septiembre de 2015; ver también, OMCT, [Brasil: Killing of Mr. Semião Fernandes Vilhalva, one of the leaders of the Guarani-Kaiowá indigneous people in Brazil](#) (inglés), 10 de septiembre de 2015; Gabriela Pavão, [Direitos humanos da ONU 'condenam' norte de índio em conflito em MS](#), Globo (portugués), 4 de septiembre de 2015.

<sup>428</sup> Centro Prodh, Informe sobre patrones de violaciones a derechos humanos en el marco de las políticas de seguridad pública y del Sistema de Justicia Penal en México, junio de 2015, pág. 32.

<sup>429</sup> Centro Prodh, Informe sobre patrones de violaciones a derechos humanos en el marco de las políticas de seguridad pública y del Sistema de Justicia Penal en México, junio de 2015, pág. 22, 44-46.

<sup>430</sup> IACHR. Press Release 112A: [Preliminary Observations on the IACHR Visit to Mexico, Annex to the press release](#). October 2, 2015.

<sup>431</sup> CIDH, *Criminalization of the work of human right defenders*, 29 de diciembre de 2015 .

<sup>432</sup> CIDH, *Criminalization of the work of human right defenders*, 29 de diciembre de 2015, párr. 12, 85. The IACHR understands that “[t]he criminalization of human rights defenders through the misuse of criminal law involves the manipulation of the punitive power of the State by State and non-state actors in order to control, punish, or prevent the exercise of the right to defend human rights.” Moreover, the Commission has indicated that the repetition of stigmatizing statements may contribute to exacerbate the climate of hostility, intolerance and rejection from different sectors of the population which could lead to an impairment to life and physical integrity of the human rights defender, increasing his or her vulnerability as public officials or sectors of the society could interpret them as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate his or her right to life, personal safety, or other rights.”

use of force by authorities who seek to control the demonstration. For example, the Commission notes that in Colombia, Law 353 of 2011 (Public Safety Act), which amended Article 353 of the Penal Code, provides punishment for obstruction of public roads. This is defined as obstructions "affecting public order", made using illicit means to "encourage, direct, constrict, or provide the means to hinder temporary or permanently, selectively or generally, roads or transportation infrastructure" and "threaten human life, public health, food safety, the environment or the right to work". With respect to this law, organizations of civil society have indicated that, following ambiguity about what it could mean a "selective" or "general" obstruction, "virtually all citizens congregations in their exercise of collective protests would provide security agencies, from these standards, with the justification for considering that such protests are violations of criminal law." Since this law confers on the security forces broad and discretionary powers to prevent, impede, suppress, or dissolve obstructions to public roads by using force, organizations fear the law will be enforced against their promotion activities and defense of human rights.<sup>433</sup>

206. With respect to justice officials, the IACHR was informed about a situation in Guatemala of harassment and attacks by third parties against them. In September 2015, Judge Karla Hernandez temporarily suspended the activities of the Company *Reforestadora de Palma de Peten, SA (REPSA)* in the light of a complaint filed by human rights defenders on the environmental damage caused by the company. According to information made available to the IACHR, in the morning on September 18, 2015, a day after her decision, 600 workers of REPSA have seized and occupied the Center for Administration of Justice (CAJ) of San Benito Petén, retaining 100 employees of CAJ. After that, Judge Karla Hernandez and assistant from the Attorney General's office allegedly went to the CAJ to demand the release of detainees; however, upon arrival they were allegedly warned that if they stayed there, they would also be kidnapped. According to civil society organizations, these events occurred under a passive attitude of the security forces and the opportunities of dialogue with the Guatemalan State, allowing a deterioration of the situation and the use of violence.<sup>434</sup>

- **People of African Descent and Other Minorities**

207. In a hearing on *Reports of Killings of Young People of African Descent in Brazil*, civil society organizations told the Commission about the institutional racism and discrimination that continue to mire security and justice systems and that there was deep concern about the human rights violations committed by the Brazilian security forces, especially the Military Police.<sup>435</sup> In that connection, they denounced not only the stigmatization that Afro-descendant youth suffer as a result of being blamed by society for the climate of insecurity and violence that exists in the country but also the level of impunity for acts of violence committed against them.<sup>436</sup>

<sup>433</sup> CIDH, *Criminalization of the work of human right defenders*, 29 de diciembre de 2015, párrs. 124-127.

<sup>434</sup> Front Line Defenders, [Guatemala: Asesinato de Rigoberta Lima Choc y secuestro y amenazas de muerte contra otros tres defensores de derechos humanos en el contexto de graves protestas](#), 25 de septiembre de 2015; Prensa Comunitaria Km. 169, [Comunicado de la Radio Snuq' Jolom Konob' por la tragedia ocurrida en Sayaxché Petén](#), 20 de septiembre de 2015.

<sup>435</sup> IACHR. Press Release 37A/15 [Report on the 154th Session of the IACHR](#), June 19, 2015. This situation was also noticed by the IACHR on its report on *Violence, Children and Organized Crime*. OAS/ Ser.L/V/II.Doc.40/15 November 2, 2015, para. 188. Within the system of individual petitions and cases of the IACHR, on May 19, 2015, the commission filed an application with the Inter-American Court of Human Rights in Case 11.566, Cosme Rosa Genoveva, Evandro de Oliveira et al. (Favela Nova Brasília), in which it claimed that the State of Brazil was responsible for the extrajudicial execution of 26 individuals, including six children, during an operation carried out by the Civilian Police of Rio de Janeiro in the favela Nova Brasilia. In its report on merits, the IACHR took as established the existence of a pattern of excessive use of lethal force by the police, together with acts and omissions designed to help ensure impunity for the culprits. See IACHR. Press Release 069/15, [IACHR Takes Case involving Brazil to the Inter-American Court](#). June 12, 2015. See also IACHR, Report No. 141/11, cases 11.566 and 11.694, Merits, Cosme Rosa Genoveva, Evandro De Oliveira et al. (Favela Nova Brasilia), Brazil, October 31, 2011.

<sup>436</sup> IACHR. Press Release 37A/15 [Report on the 154th Session of the IACHR](#), June 19, 2015. Consistently, other civil society organizations reported that extrajudicial executions in Military Police operations are common in Rio de Janeiro, Brazil, and that of the 1,275 killings by on-duty police between 2010 and 2013, 99.5% of the victims were male, 79% were Afro-descendants, and 75% were 15 to 29 years old. (AI: [Brasil: ¡No más ejecuciones de jóvenes negros por parte de la policía!](#), August 14, 2015; and [You Killed My Son. Homicides by Military Police in the City of Rio de Janeiro](#), August 3, 2015, p. 7.) There is also evidence that those worst affected are Afro-descendent youth living in *favelas* (slums) and other deprived areas and [You Killed My Son. Homicides by Military Police in the City of Rio](#)

208. The IACHR, in its report on *Violence, Children and Organized Crime*, established that:

[g]iven the atmosphere of violence triggered by criminal organizations, it is plausible that some police homicides result from legitimate use of force. However, others are said to be covered-up extrajudicial executions. The deficiencies in the way investigations are conducted to throw light on the circumstances surrounding the deaths, despite the existence at times of circumstantial evidence pointing to the arbitrary or illegal use of forces, add to suspicions that a number of those deaths may constitute covered-up extrajudicial executions. Moreover, the high number of deaths reported during clashes, compared with the number of people wounded in them also suggests the possible existence of extrajudicial executions.<sup>437</sup>

209. At a hearing on *Reports of Discrimination against People of African Descent in Colombia* during the Commission's 156th regular session, the organizations taking part told the IACHR that the Afro-Colombian population is disproportionately affected by police arbitrariness and that in cities such as Cali, Colombia, the police base their actions on labeling criteria and racial profiling.<sup>438</sup> The Commission learned from information available in the public domain about a complaint made by two Afro-Colombian brothers against members of the Barranquilla Metropolitan Police for excessive use of force against them based on their skin color.<sup>439</sup>

210. The IACHR is greatly concerned about the recurring killings of African-Americans and other persons of color in different states of the United States of America, in which questions have been raised regarding the use of excessive force by police.<sup>440</sup> Between September 21 and 25, 2015, the IACHR conducted a working visit to the states of Florida, Missouri, and Louisiana in order to obtain information on racial discrimination and poverty there. On its visits to St. Louis and Ferguson, Missouri, the legacy of the killing of Michael Brown on August 9, 2014 and the decision not to indict police officer Darren Wilson on November 24, 2014, became evident to the delegation. Both events have prompted outrage in certain sectors of the population, erupting into riots in Ferguson that were suppressed by the authorities with an excessive use of tear gas and violence against African-Americans.<sup>441</sup> The delegation received testimony that the Ferguson police deliberately bypassed white demonstrators in order to engage African-American protesters with excessive force.<sup>442</sup> In New Orleans, Louisiana, the IACHR heard about several cases of excessive use of force by the police against African-American children and adolescents and about the need to change the culture of the use of excessive police force (described as "over-policing") and to strengthen accountability mechanisms and transparency in investigations.<sup>443</sup> In turn, during its visits to Orlando and Miami, Florida, the IACHR was

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[de Janeiro](#), August 3, 2015, p. 37.) It is warned that the number of extrajudicial executions, encouraged by a *gatillo fácil* (trigger happy) approach, seems to be on the rise as the inauguration of the 2016 Olympic Games in Rio gets closer =AI, [Brazil: "Trigger happy" military police kill hundreds as Rio prepares for Olympic countdown](#), August 3, 2015)

<sup>437</sup> IACHR, Report on *Violence, Children and Organized Crime*. OAS/ Ser.L/V/II.Doc.40/15 November 2, 2015, para. 188.

<sup>438</sup> IACHR. Hearing on [Reports of Discrimination against People of African Descent in Colombia](#), 156th regular session. October 22, 2015.

<sup>439</sup> El Tiempo. [Denuncian presunta discriminación racial por parte de policías](#), September 30, 2015.

<sup>440</sup> IACHR. Press Release No. 040/15, [IACHR Condemns the Killing of an African-American Man in the United States](#), April 17, 2015 See also IACHR. Hearing on [Reports of Excessive Use of Force by the Police against People of African Descent in the United States](#), 156th regular session, October 23, 2015.

<sup>441</sup> IACHR, Press Release No. 118/15, [IACHR Concludes Visit to Florida, Louisiana and Missouri, United States](#), October 16, 2015.

<sup>442</sup> IACHR, Press Release No. 118/15, [IACHR Concludes Visit to Florida, Louisiana and Missouri, United States](#), October 16, 2015.

<sup>443</sup> IACHR, Press Release No. 118/15, [IACHR Concludes Visit to Florida, Louisiana and Missouri, United States](#), October 16, 2015. The Commission also learned from publicly available information of other violent incidents committed against Afro-American children and adolescents in other federal entities of the United States, as the one that took place in McKinney, Texas, in June 9, 2015 (Vox. [Police officer who slammed black girl to the ground at McKinney, Texas, pool party resigns](#), June 9, 2015; NPR. [McKinney Police Officer Seen](#)

informed of several policies adopted to prevent incidents of excessive use of police force, notably a comprehensive policy to prevent racial profiling and efforts to build trust and relationships with the communities they police. However, the IACHR heard accounts of instances in which police arbitrarily used excessive force in different areas of Miami that resulted in fatalities and serious injuries.<sup>444</sup>

211. At a hearing held by the Commission on *Reports of Excessive Use of Force by the Police against People of African Descent in the United States*, civil society organizations reported that people of African descent in the United States account for just 13.2% of that country's population, but 34% of the victims of police killings in 2015.<sup>445</sup> They also said that in New York, 80% of those subjected to the practice of stop-and-frisk were people of African American and Hispanic descent.<sup>446</sup>

212. Other minorities, such as the Hispanic population, also claim to be the target of police abuse in that country. The IACHR learned, for example, that of the 23 people killed by police in Los Angeles County in 2015, 14 were Hispanic.<sup>447</sup> In 2015, Latino Justice, a civil society organization, reported the deaths at the hands of the police of Oscar Ramírez, aged 28, on October 27, 2014, in Paramount, California; Ruben García Villalpando, aged 31, on February 20, 2015, in Grapevine, Texas; Antonio Zambrano Montes, aged 35, on February 10, 2015, in Pasco, Washington; and Ernesto Javier Canepa Díaz, aged 27, on February 27, 2015, in Santa Ana California.<sup>448</sup> The killings of the last two, who were Mexican nationals, were publicly condemned by the President of Mexico, Enrique Peña Nieto, and that country's ministry of foreign affairs, respectively.<sup>449</sup>

## F. Monitoring the Use of Force

213. As is noted below, the State has the obligation to conduct judicial and administrative inquiries into all situations involving the use of force, especially when they result in death, injuries, or detentions.

214. The Special Rapporteur on extrajudicial executions has said that “[i]ndividuals commit violations of the right to life not because they believe it is justifiable, but because they believe they will not be called on to justify themselves.”<sup>450</sup> The Inter-American Court, for its part, has held that States have a duty to “see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”<sup>451</sup> To that end, it is critical to have in place preventive controls and procedures to effectively review, in accordance with the rules of due process, the legality of the use of force by law enforcement personnel, since the absence of meaningful investigations tends to encourage conduct

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[Pinning Black Girl To The Ground Resigns](#). June 9, 2015; CNN. [Texas pool party chaos: 'Out of control' police officer resigns](#). Junio 9, 2015) or the one occurred in the Spring Valley High School, South Carolina, in October 26, 2015 (CNN. [Spring Valley High School officer suspended after violent classroom arrest](#). October 27, 2015; Washington Post. [FBI Justice Department investigating S.C. police officer who threw student across classroom](#). October 27, 2015; BBC. [US police officer fired for student assault in South Carolina](#). October 28, 2015).

<sup>444</sup>IACHR, Press Release No. 118/15, [IACHR Concludes Visit to Florida, Louisiana and Missouri, United States](#), October 16, 2015.

<sup>445</sup>IACHR. Hearing on [Reports of Excessive Use of Force by the Police against People of African Descent in the United States](#). 156th regular session, October 23, 2015.

<sup>446</sup>IACHR. Hearing on [Reports of Excessive Use of Force by the Police against People of African Descent in the United States](#). 156th regular session, October 23, 2015.

<sup>447</sup>Response of Latino Justice PRLDEF to the questionnaire on the use of force circulated by the IACHR, p. 2.

<sup>448</sup>Response of Latino Justice PRLDEF to the questionnaire on the use of force circulated by the IACHR, p. 2.

<sup>449</sup>El País. [Peña Nieto condena la muerte de un mexicano por la policía de Washington](#). February 14, 2015. See also El Financiero. [Tercer mexicano muerto por policía en EU](#). March 2, 2015.

<sup>450</sup>United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. April 24, 2015.

<sup>451</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, par. 66.

contrary to human rights, which could create a climate of impunity that encourages its repetition and potentially engage the international responsibility of the State.<sup>452</sup>

### 1. Gathering of data and statistical information

215. The Commission believes that when it comes to adopting legislative measures and policies on the use of force by law enforcement personnel, it is critical to know in detail the dimensions of the challenge to be addressed. That is accomplished by consistently gathering official statistics that distinguish between different scenarios (e.g., public demonstrations, evictions, incidents at detention centers or other state facilities, regular citizen security activities, and states of emergency, among others), actors (quantifying and disaggregating them by race, color, gender identity, sexual orientation, age, language, origin, education level, etc.; in the case of state agents, also indicating the security agency to which they belong), weapons used, rights violated (e.g., life, humane treatment, personal liberty, property, etc.), and circumstances of time and place, among others. It is also important to compile data on ongoing investigations and proceedings, including specifying the jurisdiction, and the results thereof.

216. According to the information provided by the states and civil society in their responses to the questionnaire on the use of force, the IACHR notes that many States in the region lack properly collected official statistics, which is certainly a further hindrance to understanding and effectively dealing with the problem. In some cases, official data are available, but they have not been gathered consistently and in a disaggregated way. In other instances, owing to an absence of official data, civil society organizations have taken it on themselves to gather information, usually within the limits of their possibilities and focusing on issues of interest to them. Where data do exist, there are an evident disparities in the way information is gathered, partly due to a dissimilar understanding of what the term “use of force” entails. Data gathering is even more complex in federal states where citizen security is the responsibility of its constituent entities.

217. In this connection, Bolivia reported that “[t]he National Research Department of the Bolivian Police’s Human Rights Direction has not officially heard cases of injuries or deaths in incidents of violence.”<sup>453</sup> Chile reported that 3,551 events were recorded in 2014, involving an estimated 854,852 participants, in which 207 people were injured; in addition, there were 1,180 events as of July 2015, involving approximately 346,317 people, in which 10 individuals were injured.<sup>454</sup> Colombia, for its part, reported that the Mobile Riot Squads Unit (*Unidad de Escuadrones Móviles Antidisturbios*) dealt with 728 events in the fourth quarter of 2014 and 2,054 in 2015 as of the time of preparation of the response to the Commission.<sup>455</sup> Over the same period, Guyana identified nine incidents in which seven civilians were killed in clashes with the police—it was later specified that in three of those cases the individuals died while resisting arrest; all of the victims were men between 27 and 41 years old.<sup>456</sup>

218. El Salvador reported the intervention of police in 60 events during the period under review, which were either demonstrations or sports spectacles, with order restored without the use of force in all cases except the incident that occurred on August 5, 2015, involving a clash between rival soccer fans. On that occasion the Unit for the Maintenance of Order (*Unidad del Mantenimiento del Orden – UMO*) resorted to using gas and rubber bullets, with the result that one person injured in an eye and two others were injured by

<sup>452</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. Serie C No. 292, párr. 348, and *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, par. 102.

<sup>453</sup> Response of Bolivia to the questionnaire on the use of force circulated by the IACHR, pp. 22.

<sup>454</sup> Response of Chile to the questionnaire on the use of force circulated by the IACHR, pp. 24-25.

<sup>455</sup> Response of Colombia to the questionnaire on the use of force circulated by the IACHR, pp. 25.

<sup>456</sup> Response of Guyana to the questionnaire on the use of force circulated by the IACHR, pp. 11.

blanks.<sup>457</sup> The State of Mexico indicated, that during the period covered by this chapter, the SSPDF accompanied 8,256 mass mobilizations in Mexico City and issued 862 orders which includes the provision of service to maintain order and security at public events such sporting , artistic, political , religious , among others.<sup>458</sup> For its part, according to the information that Nicaragua supplied to the Commission, between October 2014 and July 2015, the National Police intervened in three prison riots and covered 186 events involving public demonstrations.<sup>459</sup> Of the latter, only in 6 (3.2%) were acts of violence recorded, with 48 people (24 police officers and 24 civilians) injured and two (both male) killed.<sup>460</sup>

219. Trinidad and Tobago reported that “between September 2014 and the present there have been no incidents in which force was used by the Guard and Emergency Branch of the Trinidad And Tobago Police Service to preserve public order”;<sup>461</sup> however, it went on to document complaints lodged with the Professional Standards Bureau and the Police Complaints Authority (PCA) for alleged excessive use of force.<sup>462</sup>

220. The Commission has no official information for Argentina,<sup>463</sup> Guatemala or Venezuela.<sup>464</sup> The United States furnished only limited data that referred to earlier periods than the one covered by this report.<sup>465</sup> Uruguay, for its part, stated that it had not registered a significant number of incidents that had warranted the use of force. Panama said that no force had been used during the period under review and, therefore, there was no record of any victims.

<sup>457</sup> Response of El Salvador to the questionnaire on the use of force circulated by the IACHR, pp. 10-11. See also La Página. [Tres heridos en disturbios provocados por aficionados de Alianza tras partido frente a la UES](#). August 5, 2015.

<sup>458</sup> Response of Mexico to the questionnaire on the use of force circulated by the IACHR, p. 16.

<sup>459</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR, pp. 24-28.

<sup>460</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR, pp. 26 and 28.

<sup>461</sup> Response of Trinidad and Tobago to the questionnaire on the use of force circulated by the IACHR, pp. 3-4.

<sup>462</sup> Response of the Republic of Trinidad and Tobago to the questionnaire circulated by the IACHR to the states and civil society for developing the annual overview of the human rights situation in the Hemisphere, Chapter IV.A of the 2015 Annual Report. pp. 7-8.

<sup>463</sup> The response submitted by the State did not offer any information in that regard. CELS said that no record was kept of information on the use of force by law enforcement personnel in Argentina. It referred to the partial collection of data by some agencies that could illustrate the phenomenon of state violence, as in the case of the Supreme Court of Justice of the Nation that reportedly annually reviews lawsuits brought against state agents for intentional homicide committed in the exercise of their official functions and a similar initiative by the Office of the Prosecutor General (*Procuración General*) of the Supreme Court of Justice of the Province of Buenos Aires. The Database on Cases of Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (BDPBA) could offer a broad overview of institutional violence.

<sup>464</sup> The response submitted by the State did not offer any information in that regard. However, in their response to the questionnaire, lawyers allied to Fundación Pro Bono Venezuela made references to statistics offered by the Office of the Prosecutor General of the Republic on protests that had occurred in the country since February 2014, as well as alleged cases of torture documented by Foro Penal Venezolano.

At a hearing on the “[General Human Rights Situation in Venezuela](#)” during its 156th regular session, the Commission was alerted about a 28% increase in the number of alleged extrajudicial executions and cases of torture in the first half of 2015, compared with the same period in 2014, 60 percent of which were said to have occurred in the context of operations. The foregoing was illustrated with official data on the results of the OLP after its first three months of implementation, with 160 deaths reported in 90 operations nationwide. It was reported that there was no information about the opening of the relevant inquiries.

In the course of the same session, the Commission received the Venezuelan Prisons Observatory (OVP) General Report on the Prisons Situation in Venezuela (*Informe General sobre la Situación Carcelaria en Venezuela*), October 16, 2015, which suggests that the increase in prison violence in Venezuela is related to excessive use of force and other circumstances, such as overcrowding, squalor, inadequate food, and corruption, among other irregularities. According to the statistics provided by the OVP in that report, in 2014, 179 people died and 309 were injured in prison violence; that compares with the figures reported for the first half of 2015, according to which 109 died and 30 were injured, which represents an alarming 22.47 increase percent in incidents resulting in fatalities. The Commission does not know which of those incidents had to do with use of force by law enforcement agents.

<sup>465</sup> See the State’s response to the questionnaire. Amnesty International, for its part, warns in its report [Deadly Force: Police Use of Lethal Force In The United States](#) of a failure to collect accurate, national data on police use of force, including the number of people killed by police. However, it says that estimates range from 458 to over a thousand individuals killed each year.

221. Civil society organizations provide only partial information on police violence to the Commission. For example, in Argentina, based on news media reports, CELS counted 32 state officials and 154 civilians killed in 2014, with the same categories of fatalities for the first half of 2015 registered as 18 and 65, respectively, in greater Buenos Aires.<sup>466</sup> The Commission for Memory of the Province of Buenos Aires (CPM) is also reportedly conducting a research project that involves the review of lawsuits brought against law enforcement personnel for lethal use of force in the Province of Buenos Aires, covers events that occurred outside the time frame of this report.<sup>467</sup> In Colombia, the organization Colombia Diversa notes the under recording of police violence against the LGBT community; however, the organization documented 222 cases between 2013 and 2014.<sup>468</sup> In Peru, Coordinadora Nacional de Derechos Humanos keeps records on the number of civilian victims of police violence and reported that between September 2014 and August 29, 2015, 13 people died and 172 were injured in social protests.<sup>469</sup> In their responses to the questionnaire, all the other organizations indicated that they did not have information that met the requirement.

222. There is no doubt in the Commission's mind that the existence of a robust, efficient, independent, and impartial system to which state agents are accountable remains the best deterrent. That view is shared by the Special Rapporteur on extrajudicial executions, who said that "[t]o function properly, the police need ... appropriate mechanisms for accountability to be in place."<sup>470</sup> Likewise, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* suggest that states should establish a system of reporting whenever firearms are used,<sup>471</sup> and that, where injury or death is caused by the use of force by law enforcement officials, they shall report the incident promptly to their superiors.<sup>472</sup> The Inter-American Court has held that the safeguarding of the aforesaid information on the use of force is the responsibility of the State and, therefore, its loss or concealment should be investigated in order to establish the administrative or other liability of the official in charge of its safekeeping.<sup>473</sup>

223. A system of reporting on the use of force by law enforcement officials would be incomplete without authorities to review it. For that reason, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* also suggest the need for authorities that are in a position to effectively review of conduct that results in death, serious injury, or other grave consequences.<sup>474</sup>

## 2. Administrative supervision of the use of force

224. Rapid advances in technology and its use by state agents would appear to assist in monitoring the use of force and, therefore, preventing violations of the rights to life and physical integrity by acting as deterrents. In that regard, citing field studies in the United States, the Special Rapporteur on extrajudicial executions found that the use of body-worn cameras by police officers has a deterrent effect since after they were introduced in California there was a 59 percent drop in use of force, while complaints

<sup>466</sup> Response of CELS to the questionnaire on the use of force circulated by the IACHR. pp. 9-10.

<sup>467</sup> Response of CPM to the questionnaire on the use of force circulated by the IACHR.

<sup>468</sup> Response of Colombia Diversa to the questionnaire on the use of force circulated by the IACHR, pp. 3-4.

<sup>469</sup> Response of CNDDHH to the questionnaire on the use of force circulated by the IACHR. p. 3.

<sup>470</sup> United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, April 1, 2014, para. 23.

<sup>471</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle No. 11(f).

<sup>472</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle No. 6.

<sup>473</sup> I/A Court H.R. *Case of The Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, par. 234.

<sup>474</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle No. 22.

concerning excessive force fell by nearly 90 percent.<sup>475</sup> He also mentioned other trial initiatives in Brazil and other countries, involving the use of smartphones as body-worn cameras that transmit video, audio, and geolocation information.<sup>476</sup> Also on the matter of body-worn cameras used by law enforcement officials, the Rapporteur noted concerns about possible violations of the right to privacy of the official or victims when being interviewed, as well as the controversy as to whether the cameras could be subject to manipulation by the official, and the need for secure storage of the footage.<sup>477</sup> Similar concerns were aired before the Commission at its 156th session when, during the hearing on *Reports of Excessive Use of Force by the Police against People of African Descent in the United States*, civil society organizations expressed concerns about the use of body cameras worn by police officers as they believed that it would exacerbate the already enormous number of arrests of persons of color because officers do not turn their cameras regularly or make the footage available to the authorities when it contradicts their version of events; however, they do offer it when it provides proof of the commission of petty crimes.<sup>478</sup>

225. Proper identification of law enforcement officials is another key element of control that facilitates individual identification of the various actors involved in an incident in which force has been used, for the purpose of clarifying the facts and, as appropriate, apportioning responsibilities. In that regard, the Inter-American Court has held that “[i]n order to avoid confusion and uncertainty, it is essential that law enforcement officials identify themselves as such and give a clear warning of their intention to use their weapons at all times,” even in intelligence operations.<sup>479</sup> Given how crucial it is for investigations that officers who have used force can be identified, Amnesty International believes it indispensable for them to wear a visible tag either with their name or number on it identifying them personally.<sup>480</sup> In the case of public demonstrations, the participation in security operations of police officers in plain clothes or without proper identification poses problems for the administrative and/or judicial review of possible irregularities and/or violations of rights. The lack of proper identification constitutes an added obstacle to apportioning responsibilities in contexts where reconstructing the events is, per se, complex. Reconstructions and the value of audiovisual records and testimonies as evidence are severely limited without the possibility of identifying the officers directly involved as state officials with their own personal identity numbers.

226. Furthermore, the absence of identification opens the way to infiltration for intelligence purposes, which violates different rights. The Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern about “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>481</sup>

227. Just as important is the possibility of linking the arms and ammunition, whether lethal or otherwise, assigned to each officer authorized to use force. The *Basic Principles on the Use of Force and*

<sup>475</sup> United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. 24 April 2015, para. 57,

<sup>476</sup> United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. 24 April 2015, para. 57,

<sup>477</sup> United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, *Use of information and communications technologies to secure the right to life*. 24 April 2015, para. 59.

<sup>478</sup> IACHR Hearing on *Reports of Excessive Use of Force by the Police against People of African Descent in the United States*. 156th regular session, October 23, 2015.

<sup>479</sup> I/A Court H.R. *Case of Landaeta Mejías Brothers et al v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, par. 135.

<sup>480</sup> AI. [Use of force: Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law enforcement officials](#), August 2015.

<sup>481</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.

*Firearms by Law Enforcement Officials* indicate as much by recommending there be guidelines in place that regulate the control, storage, and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them. The Commission has already recommended implementing ammunition registration and control systems.<sup>482</sup> Registration of this type, both before and after operations, is an administrative control measure that helps to facilitate judicial and administrative investigations into possible violations of rules and principles on the use of force. Therefore, states should have in place effective mechanisms for making inventories of firearms, ammunition, and other control devices, such as chemical weapons, to be used in a security operation.

228. The Commission regards disciplinary proceedings, which are generally available at the domestic level, as autonomous mechanisms for states to supervise their officials' discharge of the public duties assigned to them. Other than being an appropriate mechanism for monitoring their performance, they are not on their own a "sufficient means for prosecuting, punishing and repairing the consequences of violations of human rights."<sup>483</sup>

### 3. Judicial Proceedings

229. It is incumbent upon the State to investigate alleged human rights violations *ex officio*. In cases involving the use of force by State agents, the investigation has to meet certain standards. Those standards include having the investigation conducted by authorities with real institutional independence and taking reasonable steps to safeguard the stock of evidence required to ascertain the facts being examined,<sup>484</sup> so that, in the case of alleged human rights violations, military courts are automatically precluded from being the authority in charge of the investigation, because their sphere of competence is limited exclusively to investigating and trying members of the military accused of committing offenses against juridical rights pertaining to the military sphere.<sup>485</sup>

230. Conserving the scene where the alleged facts took place is core part of the concept of due diligence.<sup>486</sup> It is especially important to preserve the communications between personnel involved in the operation and all records of sounds and images produced by the security institutions present at the time in their original media, both those directly relating to the sequence of events and those relating to the whole operation at its various levels. The authorities responsible for protecting the scene and the evidence must cooperate effectively with those responsible for conducting the investigation.<sup>487</sup>

<sup>482</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, par. 68.

<sup>483</sup> IACHR Report No. 151/11 (Petition 1077-06), Admissibility. Luis Giován Laverde Moreno et al. Colombia. November 2, 2011, par. 30

<sup>484</sup> I/A Court HR.: *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, par. 81. When referring to the real independence of the investigative body, the Court also queried the propriety of the assistance lent to the principal investigative organ, in other words the Public Prosecution Service, by the institution involved in the events relating to the allegedly excessive use of force, namely the Judicial Police Technical Corps, a circumstance that might have contributed to the irregularities encountered in the proceeding. [I/A Court HR. Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249](#), par. 220.

<sup>485</sup> I/A Court HR.: *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, par. 187-190; and *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 66.

<sup>486</sup> The Inter-American Court of Human Rights has pointed out that "failure to adequately protect the scene of the crime may affect the investigation because it is a crucial factor for its being conducted properly" (I/A Court H.R., Case of Myrna Mack Chang v. Argentina, note 4 above, par. 166) and the United Nations Human Rights Council has urged "States to investigate any cases of deaths or injuries brought about during demonstrations, including those resulting from shots from firearms or the use of nonlethal weapons by law enforcement personnel" (CDH ONU, A/HRC/25/L.20, para. 12).

<sup>487</sup> I/A Court HR. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 227.

231. For its part, the European Court has found that the “most careful scrutiny” must be used, taking into consideration “not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.”<sup>488</sup> The reason for that is that the investigation must seek to ascertain the truth within a reasonable period of time, to make it possible for those responsible to be prosecuted, captured, tried and, where applicable, punished, especially when State agents are believed to be involved.<sup>489</sup> Consequently, investigation should be regarded by States “as their own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective, or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon private persons’ offer of proof.”<sup>490</sup>

232. According to the Inter-American Court, investigation of the facts must “make it possible to determine the degree and manner of participation of those who intervened, be they perpetrators or instigators, and thereby establish the corresponding liabilities.”<sup>491</sup>

233. Regarding the liability of senior officials, the Commission wishes to underscore the provisions set forth in the Principles *on the Use of Force* regarding the liability incurred by issuing illicit orders regarding the use of force.<sup>492</sup> They also establish that States must take steps to ensure that senior officials assume due responsibility when they are aware of, or should have been aware of, agents under their command resorting to the illicit use of force and of firearms, and they failed to adopt all measures at their disposal to prevent, eliminate, or report that use.<sup>493</sup> On the other hand, according to the aforementioned *Principios*, 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>494</sup>

234. Citing the *United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, the Commission and the Inter-American Court have indicated that the investigating authorities must, at the very least, a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. The scene of the crime must be examined exhaustively, using autopsies and analysis of human remains by competent professionals and employing rigorous and appropriate procedures. Furthermore, special diligence shall be shown in cases indicating violence against women and children, torture and other cruel, inhuman and degrading treatment, because such extra diligence is required under special international instruments.

<sup>488</sup> ECHR, *McCann and Others v. the United Kingdom*, Application No. 27229/95, September 1995, par. 36. See also: IACHR, *Luis Jorge Valencia Hinojosa*, Ecuador, Report N° 90/14, Admissibility and Merits, 4 November 4, 2014, par. 123.

<sup>489</sup> I/A Court HR. *Case of the Miguel Castro Castro Prison v. Peru*. Interpretation of Judgment on Merits, Reparations, and Costs. Judgment of August 2, 2008, Series C No. 181, pars. 256 and 382.

<sup>490</sup> I/A Court HR. *Case of the Miguel Castro Castro Prison v. Peru*. Interpretation of Judgment on Merits, Reparations, and Costs. Judgment of August 2, 2008, Series C No. 181, pars. 255.

<sup>491</sup> I/A Court HR.: *Case of Landaeta Mejías Brothers et al v. Venezuela*. Judgment of August 27, 2014. Preliminary Objections, Merits, Reparations and Costs. Series C No. 281, par. 143; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, par. 100; *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 05, 2006. Series C No. 150, paragraphs 79 - 83; and *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, par. 97. See also: IACHR. IACHR, *Luis Jorge Valencia Hinojosa*, Ecuador, Report N° 90/14, Admissibility and Merits, November 4, 2014, par. 195.

<sup>492</sup> *Basic principles on the use of force*, Principle No. 26.

<sup>493</sup> IACHR. IACHR, *Luis Jorge Valencia Hinojosa*, Ecuador, Report N° 90/14, Admissibility and Merits, November 4, 2014, par. 194. *Basic principles on the use of force*, Principle No. 24.

<sup>494</sup> *Basic principles on the use of force*, Principle No. 26.

235. Through its mechanisms, the Commission has ascertained failure by States to comply with their international obligation to investigate, try, and, where applicable, punish security agents responsible for violating the rights to life and personal liberty.

236. For certain groups, access to justice is even more precarious. The petitioners in the hearing on *Complaints regarding the excessive use of force by police against persons of African Descent*, reported to the IACHR on the impunity so far surrounding the deaths of Clinton Allen (2013), Fred Bradford (2013), Rekia Boyd (2012), and Tesfaie Mokuria (1992), four unarmed Afro-Americans killed by police officers; and it was pointed out that although they only account for 13.2% of the population of the United States, Afrodescendants accounted for 34% of persons executed by police in 2015, and that only rarely was justice obtained for the next of kin.<sup>495</sup>

237. During the same session, in the hearing on *Complaints of violence against Mapuche indigenous children and impunity in Chile*, the IACHR was told of indiscriminate violence against the Mapuche people, which directly impacted the child population. The complaints stressed that “so far there was no indication of any decision to try and convict any of the members of the security forces said to have used violence.”<sup>496</sup>

238. With respect to Argentina, reference was made to the publication of a report on the status of proceedings involving security forces personnel and guards charged with institutional violence in April 2015 by the Public Prosecutor for Institutional Violence Cases in Argentina’s Public Prosecution Service. However, it was said that the report only records cases processed by the Federal Justice System and does not separate accusations of violence from accusations of corruption.<sup>497</sup>

239. In Peru, the National Human Rights Coordinating Office alleged total impunity, given that when it examined 143 cases of civilians deaths since 2002, in 82% percent of them no file had been opened or else it had been shelved. In only 18% of cases was an investigation still pending.<sup>498</sup> In that connection, note was taken of an observation by Amnesty International in its 2014/2015 annual report that in Peru, with respect to the (at least) nine people killed and dozens injured by the security forces when they were putting down protests during the period under review, “there was no evidence of any investigation have been initiated into those deaths.”<sup>499</sup> [Subsequently, Amnesty International pointed out that although approximately 40 people had died in the past four years as a result of alleged excessive use of force by members of the security forces in connection with demonstrations, the Public Prosecution Service had pointed to the opening of investigations into only two of those deaths.<sup>500</sup> It is worth pointing out, however, that in respect of the four people killed -- one of whom had been a police officer -- and those wounded in clashes and protests against the Tía María project in April of 2015, information provided by the Peruvian State points to administrative and judicial investigations under way “aimed at investigating and punishing those responsible.”<sup>501</sup> Digital media also reported investigations by the Public Prosecution Service into the

<sup>495</sup> IACHR. Hearing on [Complaints regarding the excessive use of force by police against persons of African Descent](#). 156th regular session. October 23, 2015. IACHR, Report on *Violence, Children and Organized Crime*. OAS/ Ser.L/V/II.Doc.40/15 November 2, 2015, para. 191.

<sup>496</sup> IACHR. Hearing on [Complaints of violence against Mapuche indigenous children and impunity in Chile](#). 156th regular session. October 22, 2015.

<sup>497</sup> The report is posted at: [http://www.mpf.gob.ar/procuvin/files/2015/05/Situacion\\_Procesal\\_de\\_Funcionarios.pdf](http://www.mpf.gob.ar/procuvin/files/2015/05/Situacion_Procesal_de_Funcionarios.pdf)

<sup>498</sup> Response of CNDDHH to the questionnaire on the use of force circulated by the IACHR, p. 3.

<sup>499</sup> AI: [Annual Report 2014/2015. Peru](#). February 25, 2015.

<sup>500</sup> AI: [Peru Urgently investigate two deaths in past two weeks amid anti-mining protests](#), May 6, 2015.

<sup>501</sup> Report No. 102-2015-JUS/PPES of the Peruvian State, relating to a request for information under Article 41 of the American Convention, on the status of clashes between the police and demonstrators against the Tía María mining project, July 10, 2015. In this connection, the IACHR was told that, with regard to the death of Mr. Victoriano Huayna Nina, the Public Prosecution Service was conducting investigation No. 1506094500-20 15-548-0; and that similar investigations were under way into the deaths of Messrs Henry

death of Edward Ademir Soto de la Cruz during protests by workers at the Metallurgical Complex in La Oroya in August 2015.<sup>502</sup>

240. For its part, Nicaragua, said it compiled information regarding the number of complaints received by the Internal Affairs Division of the National Police alleging excessive use of force. It said that in the period covered by this report, 162 complaints had been admitted, 88% of which (144) were filed by the affected person, 8.6% (14) by police commanders, and 1.8% (3) by civil society organizations, such as the Nicaraguan Human Rights Center and the Standing Commission for Human Rights.<sup>503</sup> In 78.3% of the cases (127), the investigation had concluded and in 73.2% of cases (93) it had found no liability on the part of the police officer.<sup>504</sup> In addition, it was reported that two matters had been referred to the courts, which resulted in prison sentences of between 2 and 12 years for 10 police officers.<sup>505</sup>

241. According to figures reported by the Office of the State Attorney for the Defense of Human Rights of El Salvador, the State specifies that between July 2014 and May 31, 2015, it received 596 complaints of alleged violations of personal integrity, 50 of which had to do with the disproportionate use of force by the security forces.<sup>506</sup> Colombia reported that, toward the end of 2014 and in 2015, the Attorney General's office had registered 21 complaints alleging excessive use of force.<sup>507</sup> Trinidad and Tobago reported having received eight (8) complaints to the *Professional Standards Bureau* against police officers for allegedly excessive use of force between September 2014 and July 2015. Five of those complaints had led to charges against the officer involved; three remained pending.<sup>508</sup> The same country reported having received 261 complaints filed with the *Police Complaints Authority* (PCA) for allegedly excessive use of force. In 73.18% of the cases (191), the alleged victims were men, in 23.75% (62) cases they were women. In 8 cases (3.7%), no gender was specified.<sup>509</sup> Chile states that the number of police reports relating to unnecessary violence offenses, contemplated in Article 33 of the Military Justice Code, would give an indication of the volume of criminal complaints filed for allegedly excessive use of force against Carabineros de Chile personnel. In 2014, there had been 38 such police reports, and seven in the first four months of 2015.<sup>510</sup> The Commission did not receive information regarding the status of those complaints.

242. Despite this disheartening scenario, the Commission also took note of immediate steps taken by some administrative or judicial authorities in response to certain worrying instances of the use of force by members of the security forces in various different scenarios. In Honduras, for instance, following the violent eviction carried out by the National Police in the district of San Francisco del Palomar, Choluteca, on September 30, 2015, images of which were circulated in social media, showing members of the Honduran

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Checlla Chura (Investigation No. 1506094500-2015-611-0) and Ramón Colque Vilca (Investigation No. 1506094500-2015-735-0), and Peruvian National Police (PNP) officer Carlos Alberto Vasquez Durand. The IACHR was also told of the establishment of a Special Investigative Committee to elucidate possible liability for alleged police misconduct. It would join together investigations being carried out by the Military Police regarding "events relating to improper use of firearms and police excesses constituting offenses committed in the course of duty during PNP operations to exert control and restore order."

<sup>502</sup> Actualidad Penal. [Public Prosecution Service \(Ministerio Público- MP\) Inician investigación por sucesos ocurridos en La Oroya.](#) August 11, 2015. See also: El Comercio. [La Oroya: necropsia confirma que muerte fue por impacto de bala.](#) August 12, 2015; El Popular. PE. [Mineros y gobierno llegan a un acuerdo La Oroya: se levantó paro por ocho días.](#) August 14, 2015.

<sup>503</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR, pp. 35-36.

<sup>504</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR, pp. 35-36.

<sup>505</sup> Response of Nicaragua to the questionnaire on the use of force circulated by the IACHR, pp. 36-37.

<sup>506</sup> Response of El Salvador to the questionnaire on the use of force circulated by the IACHR, p. 14.

<sup>507</sup> Response of Colombia to the questionnaire on the use of force circulated by the IACHR, p. 33.

<sup>508</sup> Response of Trinidad and Tobago to the questionnaire on the use of force circulated by the IACHR, p. 6.

<sup>509</sup> Response of Trinidad and Tobago to the questionnaire on the use of force circulated by the IACHR, pp. 7-8.

<sup>510</sup> Response of Chile to the questionnaire on the use of force circulated by the IACHR, p. 31.

police force beating women, children, and older persons,<sup>511</sup> orders were issued for the immediate suspension of the head and deputy head of the local police unit while an investigation is being conducted and, reportedly, the Officer of the Special Human Rights Prosecutor is filing an injunction against the police who took part.<sup>512</sup>

243. Another alleged incident occurred in Guatemala and was also disseminated by social media, which showed soldiers severely beating a minor and an adult, on July 26, 2015, in the municipality of San Pedro Yepocapa, Chimaltenango.<sup>513</sup> According to official public information, following an investigation opened by the Office of the Prosecutor for Women and Child Victim cases, on August 5, 2015, the Criminal Court of Original Jurisdiction for Drug Trafficking and Offenses against the Environment in Santa Lucía Cotzumalguapa, Escuintla, had authorized the arrest warrants requested by the investigative body, which resulted in the arrest of five members of the security forces charged with misuse of authority and maltreatment of minors.<sup>514</sup>

244. In the United States, the police officer responsible for the violent arrest of an Afro-American student at the Spring Valley high school in South Carolina, captured on video by her classmates, was reportedly suspended without salary since the incident and subsequently removed from the police forces. His case is said to form part of a civil rights investigation being conducted by the Civil Rights Division of the Department of Justice and the *Federal Bureau of Investigation* (FBI) in Columbia, South Carolina.<sup>515</sup>

245. In Chile, following the severe injuries inflicted on Rodrigo Avilés in May 2015 due to inappropriate use of a water cannon in connection with a student demonstration in Valparaíso, Carabineros de Chile is said to have dismissed the police officer responsible.<sup>516</sup>

246. Regarding the persistence of laws exempting law enforcement personnel from liability, the IACHR voices its profound concern because they pose a huge obstacle to determining responsibilities and applying sanctions, where applicable. In particular, the Commission notes that the Constitutions of Barbados and Dominica justify killing for the purpose of suppressing a riot.<sup>517</sup> In addition, according to the *Riot Acts* of Antigua and Barbuda, Jamaica, and Trinidad and Tobago, the authorities charged with putting down riots shall not be held liable for the death, mutilation or harm done to persons who commit “unbridled” acts.<sup>518</sup>

<sup>511</sup> According to findings of the National Human Rights Commission (CONADEH), several people, including two pregnant women and five children were beaten with batons on the arms, legs, and head and one was hit in the chest by a tear gas shell. In addition, six people, including a child, were reportedly detained at the Preventive Police Office No. 6. See the press release by Criterio.hn. [Conadeh pide sancionar a implicados en desalojo violento de Choluteca](#). October 3, 2015; See also: Online video. [Violento Desalojo en Choluteca](#). YouTube, published by [carlos nieto](#) on September 30, 2015. Posted on November 9, 2015.

<sup>512</sup> Public Prosecution Service of Honduras. [Por desalojo violento en Choluteca, Fiscalía de Derechos Humanos presentará Requerimiento Fiscal contra policías](#). October 2, 2015; See also: Criterio.hn. [Por “uso excesivo de la fuerza” suspenden a jefes policiales de Choluteca](#). October 1, 2015; Fox News [Al menos 17 lesionados en brutalidad policial en desalojo en sur de Honduras](#). September 30, 2015.

<sup>513</sup> Online video. [Soldados golpean a dos menores](#). YouTube, published by [Periódico Guatemala](#) on July 31, 2015. Posted on November 9, 2015.

<sup>514</sup> Public Prosecution Service of Guatemala. [Fiscalía de la Mujer coordina aprehensión de cinco soldados](#). August 6, 2015. See also: Telemundo47. [Guatemala: Presos militares por golpear jóvenes](#). August 6, 2015; El Comercio. [Guatemala: Detienen a soldados por brutal golpiza a menores](#). August 6, 2015.

<sup>515</sup> CNN. [Spring Valley High School officer suspended after violent classroom arrest](#). October 27, 2015. See also: Washington Post. [FBI, Justice Department investigating S.C. police officer who threw student across classroom](#). October 27, 2015; BBC: [US police officer fired for student assault in South Carolina](#). October 28, 2015.

<sup>516</sup> BoiBio Chile. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés](#). May 28, 2015.

<sup>517</sup> Section 2(2)(c) of the Dominica Constitution (1978), available at: <http://pdba.georgetown.edu/Constitutions/Dominica/constitution.pdf>; Section 12(2)(c) of the Barbados Constitution (2002), available at: [http://www.oas.org/dil/The\\_Constitution\\_of\\_Barbados.pdf](http://www.oas.org/dil/The_Constitution_of_Barbados.pdf);

<sup>518</sup> Sections 6, 4 and 12 of the Riot Acts of Antigua and Barbuda, Jamaica, and Trinidad and Tobago, respectively.

According to Bahama's Criminal Code, law enforcement officers shall be exempt from "any criminal or civil proceedings for causing harm to or killing anyone."<sup>519</sup> For its part, Article 20 of the Peruvian Criminal Code refers to exemption from criminal liability for members of the Armed Forces and Peruvian National Police should they kill or injure persons in the course of duty,<sup>520</sup> a precept that led Human Rights Watch to express profound concern in its annual report, published this year.<sup>521</sup>

247. As regards the competence assigned to the military justice system to investigate conduct by law enforcement officers, the IACHR is worried about reports during the hearing on *Social Protest and Human Rights in the Americas*, indicating that actions by the Peruvian Armed Forces during demonstrations would be examined in the military jurisdiction.<sup>522</sup> According to public information, and in the same context of social protest in Tía María, it transpired that the Minister of Justice, Gustavo Adrianzen, had instructed the Ministry of the Interior Prosecutor to file a complaint in the military police jurisdiction against the police officer accused of planting a sharp weapon in the hands of one of the protesters whom they had previously arrested and beaten.<sup>523</sup>

248. Similarly, the Commission was informed during its 156th regular session, of recent changes Colombia's domestic laws, such as the adoption of Legislative Act 01 of 2015, which would amend the military criminal justice system by providing that:

Punishable conduct committed by members of the security forces on active duty and in connection with that same duty, shall be heard by court martial or military tribunals, subject to the provisions of the Military Criminal Code. Those courts or tribunals shall be composed of retired or still active members of the security forces. In the investigation and trial of punishable conduct by members of the security forces in connection with an armed conflict or a clash that meets the objective criteria required under international humanitarian law, the provisions and principles of said law shall apply. The judges and prosecutors in the regular justice system and in the military or police criminal justice system who hear cases involving the conduct of members of the security forces must have adequate training in and knowledge of international humanitarian law. The military or police criminal justice system shall be independent vis-a-vis public security forces command.<sup>524</sup>

249. The petitioners requesting the hearing argued that the adoption of that provision on the terms mentioned above disregarded, *inter alia* the right to effective judicial recourse with full judicial guarantees for victims of crimes committed by members of the security forces in the context of an armed conflict because it imposes rules that fail to recognize judicial autonomy and Independence.<sup>525</sup> They also voiced their concern regarding Law 1765 of 2015, which, they said, did not guarantee the independence of the military criminal justice system because, functionally, it depended on the Ministry of Defense and assigned civilian judicial police functions to the security forces.<sup>526</sup>

<sup>519</sup> Section 81(1)(c) of the Dominica Constitution (2010), available at: [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode_1.pdf)

<sup>520</sup> Provision amended by Law 30151/2014, of January 12, 2014. Available at: <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30151.pdf>

<sup>521</sup> HRW. *World Report for 2015: Peru*. January 29, 2015.

<sup>522</sup> IACHR. *Hearing on Social Protest and Human Rights in the Americas*. 154th regular session March 16, 2015.

<sup>523</sup> Peru21. *Tía María: Denunciarán a policías que 'sembraron' arma a campesino*. April 25, 2015. See also: RT. *Tía María: El peruano 'armado' por un policía ante las cámaras durante una protesta exige justicia*. April 27, 2015.

<sup>524</sup> Congress of the Republic of Colombia. *Legislative Act 1 of 2015*. Official Gazette N0. 49.554 of June 25, 2015.

<sup>525</sup> IACHR. *Hearing on Legal reforms relating to security forces in Colombia*. 156th regular session. October 22, 2015

<sup>526</sup> IACHR. *Hearing on Legal reforms relating to security forces in Colombia*. 156th regular session. October 22, 2015 See also: Congress of the Republic of Colombia. *Legislative Act 1 of 2015*. Official Gazette N0. 49.554 of June 25, 2015.

## G. Conclusions and Recommendations

250. The vast experience acquired by the organs of the inter-American human rights system in the performances of its human rights protection and monitoring functions in the region enables it to pinpoint the progress made in some countries, but also the new challenges and occasionally alarming setbacks encountered in the quest for a balance between security, domestic *ordre public*, and obligations to observe and guarantee equal human rights for all.

251. The use of force has been, and will continue to be, a topic of major importance for the Commission, because its inadequate implementation generally results in the violation of multiple fundamental rights. For that reason, the Commission will continue to impress on States -- through the petitions and cases system, precautionary measures, and reports -- the international principles and standards that govern it.

252. The IACHR remains at the disposal of the States, ready to provide the technical advice needed to draw up comprehensive sets of regulations, along with manuals and training courses. It can help States design public policies that meet the latest international standards in this field and share with them the best practices found in the Hemisphere.

253. In order to ensure that the use of force abides by international human rights law, the IACHR would like to recommend:

- 1) Adopting legislative, and any other, measures needed to regulate the use of lethal and less than lethal force by members of the security forces, in accordance with Regional System standards, the *Principles on the Use of Force*, the *Code of Conduct for Government Officials* and other relevant international instruments. In regulating the use of lethal force, regulations must be detailed and precise, without lacunae that could give rise to interpretations that run counter to the gist of international human rights standards.;
- 2) Regularly and consistently gathering disaggregated data for generating official statistics on occasions on which force was used by law enforcement authorities (e.g. public demonstrations, evictions, incidents in detention centers or other State institutions, in citizen security operations, states of emergency, and so on); on the players involved (quantifying them and breaking them down by race, color, gender identity, sexual orientation, age, language, origin, school enrollment, etc., and in the case of security agents specifying the force they are members of and whether they acted while on active duty or not); on the weapons used (lethal or less lethal) on the juridical right impaired (for example, violations of the right to life, integrity, personal liberty); and on the temporal and spatial circumstances, along with other key aspects.
- 3) Using only civilian police corps to monitor and maintain internal control, especially in connection with social protests and demonstrations, evictions, prison riots, and efforts to combat crime;
- 4) Adopting legislative and other measures to regulate the scope of operations by private security firms, prohibiting their participation in citizen security work.
- 5) Establishing integrated registries of private security firms in the country, along with an agency to monitor their activities and identify their agents and, where applicable, the weapons assigned to each of them. In the case of federal states, creating agencies to coordinate and standardize practices and operational protocols, in line with international standards;

- 6) Designing and implementing, with a human rights perspective, ongoing educational and training programs dealing with the ban on forced disappearance, torture, and disproportionate use of force by law enforcement personnel, along with awareness raising with regard to human rights and sexual and racial minorities, indigenous peoples, and other vulnerable groups. Similar programs should also be taught and made mandatory for private security firms;
- 7) Developing policies, strategies, and special training focusing on negotiation and peaceful conflict resolution techniques and moves for the restoration of order that make it possible to respond to possible riots and disturbances with minimum risk to the lives and bodily integrity of both civilians and police officers;
- 8) Having multidisciplinary teams to participate in competitive entry and ongoing -- academic and practical, physical and psychological -- evaluation processes for members of the police corps. Raising the salaries and fringe benefits for law enforcement officers;
- 9) Endowing law enforcement officers with appropriate protection gear and keeping a record of the lethal and less lethal weapons allocated to them; and providing ongoing training in the appropriate use of those weapons;
- 10) Adopting all measures needed to ensure that all law enforcement officers authorized by law to use lethal force have received proper prior and constant training along with periodic assessments of their capacities;
- 11) Adapting current laws or adopting any legislative measures needed to regulate situations that require the declaration of a state of emergency, specifying that they are appropriate only in the event of a war, public danger, or other emergency threatening the independence or security of a State Party, and expressly stating which rights will be restricted in terms of their enjoyment and excluding those rights and guarantees that cannot be repealed- and stating the time and geographical space for which the state of emergency will be in place in order to deal with the identified threat. Explicitly pointing out the State's obligation to notify the General Secretariat of the Organization of American States immediately of the adoption of the state of emergency;
- 12) Preventing, investigating, and punishing, adequately and effectively, any arbitrary use of force by law enforcement officers, and demonstrating greater severity when such force was directed against vulnerable groups, historically singled out for discrimination based on their ethnic origin, race, gender, gender orientation, in thought or expression, and on other grounds;
- 13) When the use of force by law enforcement officers results in deaths or injuries, opening *ex officio* investigations by independent and impartial authorities endowed with the tools needed to ascertain the facts of the case within a reasonable period of time and to identify the perpetrators and their degrees of liability, in such a way as to ensure accountability, and the prosecution, and punishment of those responsible and appropriate reparation for the victims' next of kin;
- 14) Adopting any measures needed to ensure that law enforcement officers being investigated or tried, administratively or in the courts, for acts allegedly committed involving the misuse or disproportionate use of force are prevented from having contact with the public, pending clarification of their legal status; and

- 15) Regularly and consistently compiling disaggregated data to on investigations be used to generate official statistics on investigations opened and proceedings initiated against law enforcement officers who used force, specifying the authority hearing the case, charges brought, and the outcomes of the proceedings.