

## UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

### CONTRIBUTION TO THE REVIEW OF ARGENTINA

#### Police violence in Argentina

#### **Civil society report prepared jointly by the Center for Legal and Social Studies (CELS)<sup>1</sup> and Movement of Excluded Workers (MTE)<sup>2</sup>**

1. Various patterns of police violence persist in Argentina with varying degrees of severity, despite the international commitments assumed by Argentina<sup>3</sup> and the change in the rhetoric of the national government about these problems since 2019. The main problems reported are the excessive use of lethal force, abuses and arbitrariness in police work in the streets that target poor people, racial minorities, and drug users, in particular, and violent actions in contexts of social protests.<sup>4</sup>

2. Despite having made this commitment in the framework of the last Universal Periodic Review (UPR),<sup>5</sup> no significant progress has been made in recent years in the State's capacity to record, systematize and publish quantitative and qualitative information concerning these phenomena. Moreover, their visibility continues to depend, to a large extent, on the actions of civil society.

#### **1. Abusive and unreasonable use of force by police and security forces**

##### *1.1 Problems linked to the deadly use of force*

3. Given the lack of official information, CELS continues to record cases of deadly use of force by police and security forces throughout the country. In the Buenos Aires Metropolitan Area (AMBA), although the number of people killed in acts of violence involving police officers decreased slightly in 2014, a core number of deaths—which has not been reduced since 2015—persists, contrary to international recommendations.<sup>6</sup> According to CELS data, between 2018 and 2021 at least 368 individuals and 87 security force officials died in acts of

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<sup>1</sup> CELS is a human rights organization carrying out strategic litigation, research, and public-policy advocacy related to issues like police violence and security policies, among others.

<sup>2</sup> The Movement of Excluded Workers (Movimiento de Trabajadores Excluidos—MTE) is a social organization that brings together people excluded from the formal labor market and generates work in the social economy.

<sup>3</sup> See A/HRC/37/5 Voluntary pledges and commitments 109. e “Argentina commits to deepen the policies to prevent and combat institutional violence, and to train the security forces and the penitentiary system in order to fulfil the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and other human rights standards.”

<sup>4</sup> This report is complemented by an annex of cases illustrating the various forms of institutional violence presented here.

<sup>5</sup> See A/HRC/37/5 Voluntary pledges and commitments 109. d “Argentina commits to continue promoting the necessary reforms to achieve better standards of transparency, access to information, production of public data and statistics in order to have a better knowledge of the human rights situation in the country;”

<sup>6</sup> See A/HRC/37/5 recommendation 107.48

violence of this type in AMBA.<sup>7</sup>

4. Within this universe, we observe the repetition of cases produced within the framework of vehicular pursuits and checkpoints. Situations such as the detention of a vehicle or a person merely for the purpose of identification, often culminate in disproportionate use of force resulting in injuries and deaths. Despite the fact that there are regulations<sup>8</sup> that state that firing firearms in these contexts is against international standards that regulate the use of force,<sup>9</sup> this type of intervention is repeated with alarming frequency, especially in marginalized neighborhoods of the country.

**5. In the last decade, the percentage of people killed by law enforcement officers who were off duty at the time of the incident has grown significantly.** This subset generally represents more than 50% of the total number of cases. But between 2020 and 2021, this trend increased significantly, **accounting for between 74% and 77% of the total number of individuals killed.** This figure represents one of the highest values since CELS began keeping records. Between January 2020 and June 2021, most of the cases (63%) correspond to scenarios in which security officers reacted with extreme violence in situations reported as attempted robberies in which they were the alleged victims. Most of the provincial jurisdictions deem that these cases belong to the private sphere. In other words, they are not considered a matter of concern for authorities. As such, they are not addressed by the internal affairs offices or training, retraining, or the protocolization of police interventions.

### *1.2 Lethal interventions for people with mental health conditions*

6. In recent years there have been several situations involving people with mental health conditions that have escalated into acts of violence perpetrated by law enforcement officers, often resulting in serious injuries or death of the people involved. These facts show a **disproportionate use of force in handling people with psychosocial disabilities**, whose allegedly violent character is highlighted in an essentialist/aggressive and criminalizing manner. This situation also contradicts the mandate of the National Mental Health Law in relation to the intervention of the security forces, when, in its provisions, it states that they are to assist the health teams in the management of security and never intervene directly with the person with a mental disorder. The escalation resulting from police intervention also had serious consequences for the police officers themselves, with lethal results in at least one case.

7. The cases recorded show that the security forces do not have training for dealing with people with psychosocial disabilities. This is the reason why they approach potentially conflictive situations with the use of lethal or injurious force, despite the existence of a 2013

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<sup>7</sup> For more information on the statistical data from the database developed by CELS and on the methodology used to construct the data, please see: <https://violenciapolicial.org.ar/>

<sup>8</sup> For example, the General Weapons and Shooting Regulations of the Argentine Federal Police (R.G.P.F.A. No. 8) states that a situation of escape of a person "does NOT justify the use of weapons, unless the aggressor continues to fire at police personnel while fleeing and, in this circumstance, not preventing their escape implies imminent danger of death to themselves or third parties" and that " Shots are not fired at moving vehicles to force their arrest."

<sup>9</sup> *Code of Conduct for Law Enforcement Officials* adopted by the General Assembly in its resolution 34/169 on December 17, 1979; *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 in Havana, Cuba. from August 27 to September 7, 1990.

protocol issued by the National Ministry of Security, which guides, regulates, and establishes a specific procedure for these cases. The actions of the security forces do not take into account the complex connections that exist between psychosocial disability and other life situations such as destitution and/or addictions. In these contexts, **this results in multiple violations of rights that affect people with mental illnesses and their families, causing even greater harm than that which is intended to be managed.** The absence of health care facilities to deal with crises is at the root of the problem given that in any conflict of this nature, the police are called in as the first responders to be present on the scene.

### *1.3 Femicides perpetrated by police officers*

8. In recent years in Argentina there has been a significant number of cases of women murdered by security force officials, which shows an overlap between institutional violence and gender-based violence. This type of case constitutes a traditionally hidden aspect of institutional violence. According to our data, **between January 2018 and June 2021, at least 28 women were killed by police officers for gender-related motives in the City of Buenos Aires and the province of Buenos Aires alone.** All cases of intimate femicides involve male police officers who have murdered their partners or former partners, many of whom were themselves members of the police forces.

9. The use of force by security agents against their partners and former partners highlights **the problematic nature of the right of police officers to carry their service weapons even when they are off duty.** This constitutes a risk factor in cases of violence against women and other household members and contributes to the naturalization of weapons in public and private spaces. In many cases, police officers also use their service weapons to harass, threaten and injure. **Concealment is one of the main aspects of this problem:** in their role as auxiliaries of justice, police officers can manipulate the initial moments at a crime scene to falsify the story of what happened. The lack of an investigation into the use of force in cases of femicide is contrary to the recommendations given to Argentina in 2017.<sup>10</sup>

## **2. Police arrests and raids as spaces of rights violations**

### *2.1 Criminalization of the use of illegal substances as a framework for police harassment*

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<sup>10</sup> See A/HRC/37/5 recommendation 107.40 and 107.47

10. The Inter-American Court of Human Rights highlighted in the sentence of the Fernández Prieto and Tumbeiro cases<sup>11</sup> that arrests and searches without warrants nor in *flagrante delicto* are widespread practices of the police in Argentina that are presented as crime prevention tasks but are guided by discriminatory criteria that result in arbitrary, disproportionate and abusive practices. In 2009, the National Supreme Court of Justice declared in the Arriola ruling that possession of narcotics for personal consumption is a private act, protected by the National Constitution. However, the drug law (Law No. 23.737—Possession and trafficking of narcotics) was not modified in this sense.<sup>12</sup> **The persecution of possession for personal consumption is used by the police all over the country as a tool for the supposed control of drug trafficking, but it is executed as a practice of excessive and abusive control over specific groups of the population.** Extortions, threats, and arbitrary detentions are some of the forms of irregular police interventions that are initiated with the excuse of detention for possession for consumption. These practices almost exclusively target young men from poor neighborhoods, street people, transgender people, sex workers, and migrants, among other groups.<sup>13</sup>

11. **In the City of Buenos Aires in 2021, 71% of criminal cases for drug law violations originated in police arrests of drug users in public spaces.**<sup>14</sup> In the province of Buenos Aires in 2020, these interventions represented 40%.<sup>15</sup> In the interior of the country the scenario is similar, amounting to 76% in Jujuy, 58% in Chubut, 63% in San Luis and 49% in La Pampa.<sup>16</sup> The information from the City of Buenos Aires shows how these arrests involve almost exclusively the poorest populations. The rest of the jurisdictions do not produce disaggregated information to analyze this variable.<sup>17</sup> Practically all of these cases are later discarded by the judicial system, as they are completely irrelevant to the fight against drug trafficking. It is therefore **a police practice of territorial control whose objectives are**

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<sup>11</sup>CASE OF FERNÁNDEZ PRIETO AND TUMBEIRO VS. ARGENTINA OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT JUDGMENT OF SEPTEMBER 1, 2020 (Merits and reparations). See online: [https://www.corteidh.or.cr/docs/casos/articulos/resumen\\_411\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/resumen_411_esp.pdf). The IACHR Court considered that the detention and search implied a violation of the right to privacy in the Fernández Pietro case and that it affected the honor and dignity of the person in the Tumbeiro case. The judgment established as guarantees of non-repetition that the Argentine State must adapt its domestic legal system to avoid arbitrariness in cases of detention, body search or search of a vehicle; duly train police personnel in order to avoid abuses in the exercise of their powers of detention and search, including training on the prohibition of exercising it in a discriminatory manner and based on profiles associated with stereotypes; a system for collecting data and figures related to stops, searches and seizures in the absence of a warrant, in order to accurately and uniformly assess the type, prevalence, trends and patterns of police actions in Argentina. In addition, the number of cases that were actually prosecuted should be specified, identifying the number of indictments, convictions and acquittals. This information should be disseminated annually by the State in the corresponding report, guaranteeing its access to the entire population in general, as well as the confidentiality of the identity of the persons detained or questioned.

<sup>12</sup> Article 14, paragraph 2 of Law 23.737 criminalizes the possession of narcotics for personal use.

<sup>13</sup> See Annex of cases.

<sup>14</sup> Source: Information obtained from a request for information to the Public Prosecutor's Office of the City of Buenos Aires.

<sup>15</sup> Source: Public Prosecutor's Office of the Province of Buenos Aires.

<sup>16</sup> Source: PROCUNAR

<sup>17</sup> Comunas 1, 4, 8 and 3, where the poorest people in the city live or circulate, account for more than three quarters of the arrests. The city of Buenos Aires has 15 comunas (communes). Source: Information obtained from a request for information to the Public Prosecutor's Office of the City of Buenos Aires.

## **unrelated to the criminal policy strategies against drug trafficking.**

12. The testimony of victimized persons describes the repeated dynamics of police intervention: a "suspicious attitude" or a "traffic control" are excuses used to detain people and initiate searches without further grounds.<sup>18</sup> In some cases, the police find small quantities of illegal substances and initiate a criminal case. Although these cases do not progress, people may be subjected to the demands of bureaucratic criminal proceedings for a long time and are stigmatized for having an open case. On other occasions, detention is not formalized. In both scenarios, people may be subjected to extortion, harassment, and other abusive interventions by the police.

### *2.1 Infringement of multiple rights in the context of police raids in poor neighborhoods*

13. Police raids carried out mainly in impoverished neighborhoods of the country leave evidence of a series of irregularities that result in serious violations of the rights of the people involved. One of the main problems observed in these raids is **the lack of judicial control that allows the police to have absolute control over the scene**. The absence of judicial officers in the operations and the validation by the justice system of police actions enables the development of irregularities and their repetition. Only in exceptional cases, for reasons of urgency, the security forces could carry out a raid without a warrant.<sup>19</sup>

14. The lack of oversight during raids also leads to **non-compliance or manipulation of the rule that requires the presence of witnesses during operations**.<sup>20</sup> On numerous occasions, the absence of witnesses is reported. In other cases, it is alleged that the people involved in this function may have connections with or are extorted by the police. When questioned regarding why there are no witnesses to an operation or raid, officials make excuses, claiming that raids are carried out without the presence of third parties for security reasons.

15. The **disproportionate use of force** is another marked police irregularity. These operations are often carried out by special groups prepared to act in violent contexts but they intervene in situations that do not require that level of deployment, leading to unnecessary violence. In these cases, **serious injuries and even the murder of people have been documented**. The idea that a poor neighborhood is especially "dangerous" is invoked by the police and validated by judicial officials, and operates as a justification for the

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<sup>18</sup> En este caso es importante remarcar que "...body searches may only be conducted after a duly justified court order has been obtained. Nevertheless, although exceptional situations may exist in which crime prevention is a legitimate goal of the State's law enforcement personnel, and when it is not possible to obtain a prior court order, and that may justify carrying out a search, the Court considers that this can never be disproportionate or exceed a superficial pat down of a person's clothes, or involve undressing them or violating their integrity." Inter-American Court of Human Rights. Case of Fernandez Prieto and Tumbeiro vs. Argentina. Merits and reparations. Judgement on September 1, 2020. Parr. 109. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_411\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_411_esp.pdf)

<sup>19</sup> Art. 138 and ss. of the Code of Penal Procedure (Art. 138. - When the public official intervening in the proceedings must attest to the acts performed by them or carried out in their presence, they shall draw up a record in the manner prescribed by the provisions of this Chapter. For this purpose, the judge and the prosecutor shall be assisted by a Secretary, and the police or security force officers by two witnesses, who in no case may belong to the department in the case of acts that certify irreproducible and definitive acts, such as seizure, visual inspections, personal search).

<sup>20</sup> Article 138 of the Code of Criminal Procedure of Argentina.

deployment of heavily armed groups.<sup>21</sup>

16. On the other hand, on many occasions the unnecessary destruction of parts of the premises to be searched (broken doors, walls, windows) and damage to furnishings (broken chairs, tables, mirrors) are observed. In addition, theft of valuables and money at the scene by the police officers involved is frequently reported.

17. In some cases, in the absence of judicial oversight, these operations are also an opportunity to falsify evidence to incriminate a particular person or group. For example, the police may leave an illegal substance (an action known as "planting" evidence) to implicate a person in the sale of narcotics and thus implicate him or her in a court case.

18. Finally, irregularities are also recorded in the preparation of the minutes. These are carried out by the police personnel involved in the procedure, often without the participation of judicial officials or in the presence of witnesses. Thus, **the minutes do not usually faithfully represent what happened in the procedure. This can be seen in the minimization of the violence deployed, the concealment of the destruction of elements, or even the omission of information on injured persons.** In addition, it is common that the people involved in the raids are not allowed to read the minutes carefully and are forced to sign them.

### **3 . Police violence in the state's approach to protests and social conflicts**

19. In various jurisdictions of the country there have been **episodes of repression of social protest and criminalization of demonstrators.**<sup>22</sup> In recent years, these interventions were mainly carried out by provincial police and generally validated by the judicial authorities of those jurisdictions.

20. The demands that drive protests vary. The State's repressive response is directed against social, political, and trade union organizations. Often, persecution of their leaders is also reported. In recent years, there have been a significant number of acts of **repression in the context of demonstrations whose main focus was the opposition to extractive projects for the exploitation of finite natural resources.** In these cases, the State's response sought to delegitimize environmental groups and their demands in order to justify violent and arbitrary police action, followed by criminal prosecution of leaders who use public space to

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<sup>21</sup> See Annex of cases.

<sup>22</sup> The I/A Court HR defined the processes of criminalization of social protest as follows: it "consists in the use of the punitive power of the State to deter, punish, or prevent the exercise of the right to protest, and in some cases, to social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of the criminal justice system against demonstrators, activists, and social or political leaders for participating in or allegedly organizing a social protest, or for being part of the organizing or convening group or entity." Interamerican Commission of Human Rights. Report "Social Protest and Human Rights," 2019, Parr. 188. Available at: <https://www.oas.org/es/cidh/expresion/publicaciones/ProtestayDerechosHumanos.pdf>

make their claims visible, in violation of the Escazú Agreement.<sup>23</sup>

21. The irrational and disproportionate use of so-called less-lethal weapons—seen repeatedly—is one of the gravest obstacles to the exercise of the right to protest. Specifically, despite international recommendations<sup>24</sup> and warnings,<sup>25</sup> **the indiscriminate use of rubber bullets and tear gas continues to cause significant injuries to protesters.** Police repressed protestors and bystanders hitting them, representing another one of the police’s widespread practices in the country.<sup>26</sup>

22. Police razzias<sup>27</sup> Police raids are a persistent problem also in the context of social protests. In various demonstrations, there have been widespread arbitrary arrests, carried out during their dispersal, after the demonstrations had ended, contrary to international legal

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<sup>23</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”). Art. 9. Human rights defenders in environmental matters 1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity. 2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system. 3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement. See online: [https://www.argentina.gob.ar/sites/default/files/s1800429\\_es.pdf](https://www.argentina.gob.ar/sites/default/files/s1800429_es.pdf)

<sup>24</sup> See A/HRC/37/5 recommendation 107.74

<sup>25</sup> “A bright line cannot be drawn between lethal and non-lethal weapons: “it must be remembered that almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury.” Empirical evidence shows that in many cases harm to physical integrity has been caused by the misuse of these types of weapons. This is the case of rubber bullets fired at close range and into the upper part of the body, tear gas fired directly at people, irritating gases used against children or the elderly, or electric shock devices used against people with heart conditions. Therefore, consideration should be given not only to the design or features of the weapon, but also to other factors relating to its use and control.” *IACHR (2019), “Social Protest and Human Rights,”* Parr. 121. Available at: <https://www.oas.org/es/cidh/expresion/publicaciones/ProtestayDerechosHumanos.pdf>

<sup>26</sup> See Annex of cases.

<sup>27</sup> “Currently the term razzia is applied to surprise police operations the objective of which is to surround a property, a town, a street, a rock concert, a neighborhood; to restrict the movements of those caught within this encircling action, forcing them to get onto police vehicles or collective public transportation and take them to police territory, generally to police stations. Razzias can be directed toward population groups regardless of their sex, age, or occupation, or toward sects, youths, or sexual minorities. (...) During these procedures, ‘[individuals] are dispossessed of their fundamental rights’ and, therefore, there is a process of dehumanization, where the police ‘demand obedience, unlimited compliance with orders and yelling [...], submission and subservience.’” I/A Court HR. *Bulacio v. Argentina*, Judgement on September 18, 2003. Merits, p. 25/p 56

standards.<sup>28</sup> These arrests, which usually included a strong display of physical and verbal violence, were carried out on people who were not committing any crime and of whom there was no reasonable suspicion that they had committed any crime.<sup>29</sup> Many of these cases involved uniformed police personnel who were not carrying any visible identification. The detention of journalists and people using their cell phones to record the police's repressive actions is another problematic situation that is observed repeatedly, apart from violating international principles.<sup>30</sup>

23. In the City of Buenos Aires, prolonged delays in transferring detained persons to the police station are a recurrent problem. This results in detainees spending hours waiting in police cars and hinders communication with family members and judicial authorities who are unable to track down the whereabouts of the detainees. During these periods of several hours, abusive and humiliating practices are reported, like keeping demonstrators handcuffed in the street or police cars with their handcuffs fastened to the floor of the cars.

24. During eviction operations, violent interventions by the security forces have also been recorded. The use of violence by police forces is a clear violation of the rights of people involved in labor conflicts or those who lack access to decent housing. In the province of Buenos Aires in 2020 and 2021, there were recorded operations to end the encampment of workers in a private factory, in a textile cooperative, and in various land occupations where children were present. In all cases, the use of rubber bullets, tear gas, arbitrary detentions, destruction of the belongings of the people involved, and repression of the press, among other abusive interventions by security forces were verified. In the province of Jujuy,<sup>31</sup> union protests and land occupations were violently repressed.<sup>32</sup> In Catamarca and Chubut, protests

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<sup>28</sup> Regarding this point, it is important to note the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. See A/HRC/31/66 principle 45. "No one may be subject to arbitrary arrest or detention. In the context of assemblies this has particular import for the criminalization of assemblies and dissent. Arrest of protestors to prevent or punish the exercise of their right to freedom of peaceful assembly, for example on charges that are spurious, unreasonable or lack proportionality, may violate these protections. Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists. "Mass arrest" of assembly participants often amounts to indiscriminate and arbitrary arrests."

<sup>29</sup> Circumstances that violate Art. 7.3 of the American Convention on Human Rights, as well as the standard set forth in paragraph 137 of the 2003 judgment of the Inter-American Court of Human Rights in the *Walter Bulacio v. Argentina* case.

<sup>30</sup> On this point, see A/HRC/31/66. Principle 71: "Everyone—whether a participant, monitor or observer—shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent—sometimes referred to as the right to "record back". The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished." *Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies.*

<sup>31</sup> On April 20, 2022, the Center for Legal and Social Studies (CELS) in collaboration with Amnesty International Argentina, Lawyers of Northwest Argentina in Human Rights and Social Studies (ANDHES), the Association of Professionals in Struggle (APEL), the Center of Professionals for Human Rights (CeProDH), and Alejandro Vilca, national deputy for Jujuy PTS/FITU, filed a request for a public hearing at the 184th session of the Inter-American Commission on Human Rights (IACHR). The aim was to bring attention to the serious situation of repression and criminalization of social protest in the province of Jujuy, Republic of Argentina.

<sup>32</sup> See online: <https://andhes.org.ar/la-denuncia-por-represion-a-vecinos-de-campo-verde-llego-a-la-comision-interamericana-de-derechos-humanos/>

motivated by environmental conflicts were repressed and many organizations were criminalized.

25. The police and judiciary branches in different provinces of the country deploy forms of criminalization of demonstrators following days of protests, sometimes extending to the persecution of social organizations involved in the protests. The police carry out raids on activists and representatives of social organizations in an attempt to link them to episodes of disorder during protests. Many times, these interventions involve people who are not connected to the events investigated by the justice system. Police officers working in plainclothes to facilitate locating demonstrators were seen in jurisdictions where they do not perform their regular duties.<sup>33</sup>

26. Judicial oversight of detentions carried out by the police in these contexts is nonexistent or occurs after several days or weeks. The distance kept by judges and prosecutors from the detainees facilitates and consolidates the lack of information about the reasons for the detention, the procedural situation, and the steps to be taken. These issues increase the levels of uncertainty of people detained for minor crimes that, on many occasions, they did not even commit. On other occasions, judicial authorities frame the investigations of what happened during the protests with vague, imprecise, or even disproportionate criminal offenses provided for in the criminal and minor offenses codes, such as "illicit association," to ensure that the protesters are remanded in custody, and authorize invasive investigative measures against social organizations, such as raids and seizure of computers and cell phones.<sup>34</sup> Protesters are forced to bear the burden, uncertainty, and pressure of facing criminal proceedings against them for several months or years, which has a negative impact on the personal and political lives of the criminalized individuals, as well as their constituencies and society in general.

27. As a counterpart to this indefinite judicial persecution against demonstrators, **there is no sustained or consolidated practice of investigating police forces for their interventions that violate fundamental rights in contexts of social protest.** Thus, despite the serious nature of the facts, investigations are not usually initiated to clarify individual or hierarchical responsibilities in these cases, in violation of international obligations.<sup>35</sup>

#### **4. Racist police interventions targeting the Senegalese community in the city of Buenos Aires and the province of Buenos Aires**

28. The Argentine State recognized a problem of racial discrimination and police violence against the Afro-descendant population in our country before the I/A Court HR in the case of José Delfín Acosta Martínez. There, the State understood that the arbitrary detention and subsequent murder by the Federal Police of the Uruguayan activist for the rights of Afro-descendants was not an isolated incident, but rather it was "paradigmatic of the persecution

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<sup>33</sup> See Annex of cases.

<sup>34</sup> See online: <https://www.cels.org.ar/web/2022/03/protesta-en-el-congreso-la-sobrecriminalizacion-de-manifestantes-es-un-mensaje-de-intimidacion/>

<sup>35</sup> See Resolution A/HRC/RES/25/38 recommendation 19 of the Human Rights Council, about the promotion and protection of human rights in the context of peaceful protests "Urges States to ensure accountability for human rights violations and abuses through judicial or other national mechanisms, based on law in conformity with their international human rights obligations and commitments, and to provide victims with access to a remedy and redress, including in the context of peaceful protests."

and stigmatization of the Afro-descendant community in our country."<sup>36</sup> Nevertheless, and contrary to the recommendations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>37</sup> **serious situations of police violence continue to occur, targeting people discriminated against because of their skin color, whether they are African or Afro-descendant people or ethnic groups such as native peoples.**<sup>38</sup> The national government and the provinces have failed to develop specific lines of action to work on these issues with the police forces.

29. In recent years we have recorded an increase in **arrests of Senegalese community members linked to street vending. Their arrests have a clear bias toward racial discrimination.** Many of the arrests have been accompanied by physical and verbal abuse. Among the irregular police practices against this specific population, we observed disproportionate police operations, violent and unjustified searches, constant intimidation, extortion, harassment, and repeated episodes of physical and verbal violence.<sup>39</sup> In turn, the intervention of the justice system exacerbates the violation of the rights of this population despite international recommendations in this regard.<sup>40</sup>

30. These incidents occur mainly in neighborhoods with a high concentration of retail and business activities<sup>41</sup> in the City of Buenos Aires and are perpetrated by the Police of the City of Buenos Aires. They also extend to the City of La Plata and to different municipalities of the Greater Buenos Aires area, where the Police of the Province of Buenos Aires intervene.

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<sup>36</sup> I/A Court HR \* Acosta Martínez and others vs. Argentina case, official summary issued by the Inter-American Court judgment of August 31, 2020 (merits, reparations and costs). The judgment establishes as guarantees of non-repetition measures to raise awareness and train state officials on racial discrimination and deems it pertinent to order the State to, within a period of two years, include training in the regular training received by the Police of the Autonomous City of Buenos Aires and the Argentine Federal Police on the discriminatory nature of the stereotypes based on race, color, nationality, or ethnic origin, as well as the use of racial profiling in the exercise of police authority to make arrests, along with raising awareness on the negative impact that the use of stereotypes has on people of African descent. The police training must include studying this judgment. In addition, it establishes measures for the implementation of a control mechanism and registration system. The Court finds it necessary to take measures to reveal and prevent police violence based on racial profiling. Therefore, it deems it pertinent to require the State to implement: i) a mechanism to collect the complaints of people who claim to have been arbitrarily detained based on racial profiling to produce a record of these situations and enable actions in response to the complaints; and ii) a system for documenting and keeping statistics on the Afro-descendant population in the country, as well as on the arrests indicated in point i) above, so as to tally the arrests of Afrodescendant persons and the complaints filed by them and compare them to the total population. The State shall publish this information annually in a corresponding report, ensuring that it is accessible to the general public, while keeping the identities of the victims confidential.(161) Furthermore, the State must present an annual report to the Court in which it describes the actions taken in this regard for three years following implementation of the data collection systems, indicating the actions carried out for such purpose.

<sup>37</sup> See CMW/C/ARG/CO/2 observation 32 and recommendation 33, on violence against street vendors of Senegalese origin, among others, and the punishment of their aggressors.

<sup>38</sup> In this report we present the situation of police violence against people of African origin, more specifically Senegalese. Situations of police violence against indigenous peoples are included in the INDIGENOUS PEOPLES REPORT.

<sup>39</sup> See Annex of cases.

<sup>40</sup> See A/HRC/37/5 recommendations 107.32 and 107.33. Also see CAT/C/ARG/CO/R.5-6 parr.36.b

<sup>41</sup> Flores, Floresta and Once are the names of the comunas 7, 10 and 11, respectively, in the City of Buenos Aires.

31. In the City of Buenos Aires, the Code for Minor Offenses expressly states that subsistence street vending does not represent a misdemeanor, however, the government of this jurisdiction does not have policies for the use of public space that take into account people who depend on the informal economy to survive. Its response is limited to intervention with a criminal law approach. Since it is impossible to arrest someone for street vending, an activity that is not illegal, there are two figures typically used to make arrests. One is resistance to authority, which is a vague and arbitrary typification used at police discretion and processed by the local justice system. The other is infringement of the trademark law, which is investigated by the federal justice system. Under the minor offenses system, "Parking, car care or cleaning of windows without authorization" and "Improper use of public space - unauthorized lucrative activities" are frequently used charges. In the case of the District of La Plata and the municipalities of the Greater Buenos Aires area, the most common offenses used to arrest this group are "Resistance to authority" and "battery."

32. In the different jurisdictions, state intervention is the same: spot checks are carried out in public spaces jointly with the police. Community members are told that street vending is prohibited. And, in many cases merchandise is confiscated, causing serious economic damage to those arrested because it is difficult to recover confiscated merchandise, further exacerbating their already precarious<sup>42</sup> situation. Filing a complaint only triggers an arrest for "resisting authority."

33. The abusive situations reported include the same police practices mentioned above in relation to the arrests of protesters: being detained for several hours in police vehicles while handcuffed to the floor,<sup>43</sup> denial of food and medical assistance, lack of consular assistance for detainees, impossibility of communicating with family members or interpreters. Police abuses are also recorded when third parties try to intervene or film the police action with their personal phones, in such cases, people are detained or dispersed by means of the use of weapons like pepper spray.

34. As it is evident from the testimonies given by street vendors,<sup>44</sup> police authorities require their subordinates to make a number of arrests for minor offenses daily, and on many occasions, the arrests of Senegalese street vendors are carried out for the sole purpose of complying with this request.

35. It is important to note that **the Province of Buenos Aires does not publish statistical data on police arrests, nor did it respond to requests for information.** At the federal level, the statistical information on arrests does not disaggregate the nationality of the persons arrested, thus failing to comply with international recommendations in this regard.<sup>45</sup>

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<sup>42</sup> See online: <https://www.nueva-ciudad.com.ar/notas/201806/37750-el-reclamo-de-los-senegaleses-llego-a-la-legislatura-entran-a-nuestras-casas-nos-golpean-y-nos-roban-todo.html>

<sup>43</sup> This practice gained visibility when the popular economy advocate Juan Grabois tried to intercede in the arrests of Senegalese vendors and ended up detained and handcuffed. See <https://www.lapoliticaonline.com/nota/115203-grabois-fue-a-interceder-por-unos-manteros-senegaleses-y-termino-detenido/>

<sup>44</sup> <https://www.laizquierdadiario.com/Legislatura-portena-gran-apoyo-a-trabajadores-senegaleses-victimas-de-xenofobia-y-represion>

<sup>45</sup> See A/HRC/37/5 recommendation 107.77

**There is no information-generating policy in the country to give visibility to the discriminatory and racist nature of police interventions.** The only official data that we were able to survey<sup>46</sup> allowed us to highlight in a fragmented manner what happens in the City of Buenos Aires. **Between the years 2017 and 2021, the arrests for violations of the trademark law increased by 80%.** In 2017, one out of three people detained for that crime was a Senegalese national. **In 2020, the foreign population arrested for trademark law infringement accounted for 57%<sup>47</sup> of the total.** On the other hand, the proportion of foreign persons arrested for the offenses of Assault and Resistance to Authority and Disobedience also increased, from 16.5% in 2017 to 20.2% in 2019. Misdemeanors for "Parking, Car care or cleaning of windows without authorization" and "Improper use of public space - unauthorized lucrative activities" in the City of Buenos Aires in 2020 represented 13.2% of the total number of misdemeanors persons of Argentine nationality were charged with, whereas they represented 54.1% of the misdemeanor charges facing African nationals.

36. Arrests involving the Senegalese population in the city of Buenos Aires are markedly more violent than the arrests of other detainees. The Directorate of Assistance to Persons Deprived of their Liberty of the Public Defender's Office of the City of Buenos Aires monitors people who are detained in cases in which the Judiciary of the City intervenes. **In 2019, in 85% of all criminal cases involving people from Senegal, there were indications of police violence, while, in cases of other foreign nationalities, this percentage was 31% and when it comes to people of Argentine nationality, the percentage of people assisted due to institutional violence was 32%.** When assistance is provided for arrests for minor offenses, the percentages are lower, but a higher proportion persists in the case of the Senegalese community: the percentage is 33%. For other foreign nationalities, it was 22%, whereas it was 18% for persons of Argentinean nationality.

### **Questions for the Argentine State:**

1. Despite repeated recommendations, why are data and statistics on acts of violence involving members of the security forces not systematically compiled and published, including information on the situation that gave rise to the police intervention and the characteristics of the victims of police action, detailing their nationality, race, gender, age, whether they suffer from psychosocial disabilities, among other relevant data?
2. What are the reasons for the persistence of arbitrary and abusive arrests, violent operations in the context of raids and social protest, and the irrational use of force (including lethal force) by the police? What concrete actions have been taken to prevent these types of incidents?
3. What measures to reform the disciplinary system of the security forces have been implemented or are planned in order to facilitate holding police officers accountable and ensuring the participation of victims and their families in this process?

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<sup>46</sup> Statistical information is prepared by the Ministry of Justice and Security of the City of Buenos Aires, which we are able to access following periodic requests for information.

<sup>47</sup> Unlike the official information reported in 2017 which discerned the nationality of the persons detained, the information for 2020 only differentiates between nationals and foreigners.

4. What measures have been developed to comply with the obligations expressed in the sentences handed down in the Fernández Prieto and Tumbeiro, Acosta Martínez, and Bulacio cases?

**Recommendations for the Argentine State:**

1. Systematically publish and guarantee public access to detailed statistical information and other types of qualitative and quantitative data on acts of violence committed by security forces personnel, on and off duty, police arrests, seizures and searches without warrants, broken down by motive, gender, race, nationality (specifying indigenous and Afro-descendant populations), age, location, and other variables.

2. Change the prohibitionist intervention model for illegal substances. Reform the drug law to decriminalize consumption per the CSJN's Arriola ruling and regulate illegal drug markets.

3. Implement specific measures for the protection of vulnerable groups, especially young people from poor neighborhoods, ethnic and racial minorities, and people who earn their subsistence livelihoods from street-based self-employment, from police abuses, both at the level of policy design and performance control, for the prevention and detection of police mistreatment. In addition to the political, judicial, and parliamentary oversight that should be guaranteed, independent supervisory bodies are needed to protect and defend the rights of all individuals.

4. Establish a legally binding regulatory framework that protects and guarantees the rights related to social protest. Arbitrate the means to promote its adherence by the provinces through the corresponding institutional channels.

5. Regarding the intervention of the Judiciary in police actions: establish an integrated case management system that facilitates communication and intervention among the different state agencies involved. Define clear criteria for action that ensure respect for human rights standards and aim to decriminalize protesters and other vulnerable persons.

6. Develop risk indicators regarding the situation of women who have or had intimate relationships with security forces officials and establish, together with the three branches of government, early warning mechanisms together with evaluation mechanisms on the effectiveness of their actions on the phenomenon of gender violence and, in particular, violence committed by state officials.

7. Adopt measures to improve oversight mechanisms of security forces, including those of the supervisory offices of the executive branches and of the judiciary, to ensure disciplinary action is enforced in cases related to the lethal and non-lethal use of police force.