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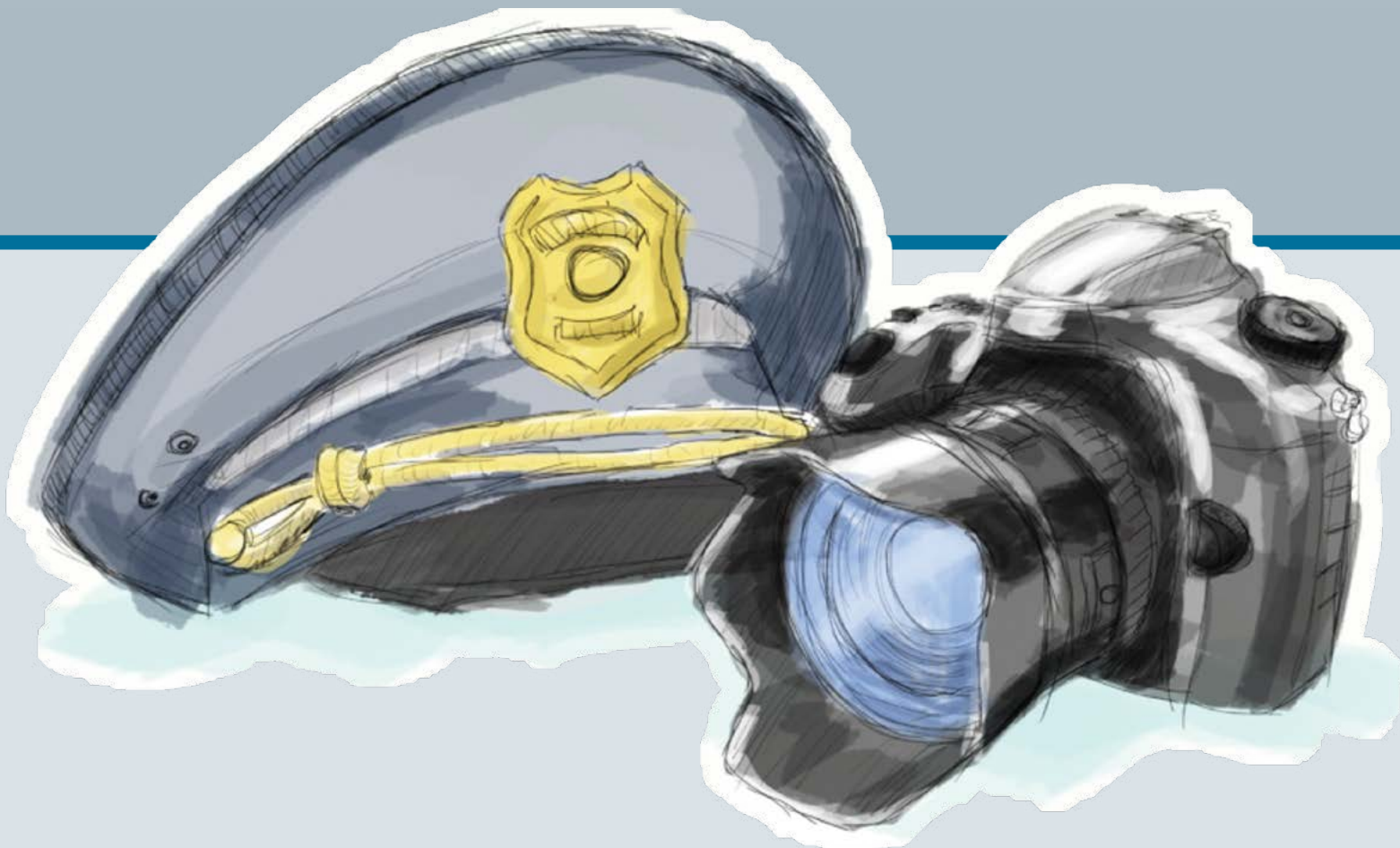
Communication and Information  
Discussion Papers

21

ISSN: 2301-1424

# The pen and the camera are not enemies; neither are uniforms

**Eduardo Bertoni**



With the support of:

**IIHR**  
Inter-American Institute  
of Human Rights

Published in 2022 by the United Nations Educational, Scientific and Cultural Organization (7, place de Fontenoy, 75352 Paris 07 SP, Francia) and the Regional Bureau for Sciences in Latin America and the Caribbean / UNESCO Montevideo Office, (Luis Piera 1992, Piso 2, 11200 Montevideo, Uruguay).

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ISSN 2301-1424



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Original title: “La lapicera y la cámara no son enemigos; los uniformes tampoco” published in 2022 by the Regional Bureau for Sciences in Latin America and the Caribbean / UNESCO Montevideo Office, (Luis Piera 1992, Piso 2, 11200 Montevideo, Uruguay).

The ideas and opinions expressed in this publication are those of the authors; they are not necessarily those of organizations which coordinated and supported this work, and do not commit them.

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# **The pen and the camera are not enemies; neither are uniforms**

**Eduardo Bertoni\***

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\* Representative of the Regional Office for South America of the Inter-American Institute of Human Rights (IHR).

# An Invitation to Debate

More than three centuries ago, British thinker, poet and politician John Milton wrote one of the most important and well-known texts against censorship: *Areopagitica*. It was one of the catalysts for an important debate on the protection of freedom of expression and freedom of the press.

Many centuries before him, the Greeks had strongly emphasized on the importance of the *doxa* (opinion) for democracy.

The debates on the vital importance of freedom of expression and access to information and knowledge for democracies and for the development, protection and promotion of other human rights are by no means new.

However, there is no doubt that the advent of the new information and communication technologies (ICTs), particularly the expansion of the Internet, offers a unique and original dimension to these debates.

The impact on the system for the protection and promotion of human rights, on the consolidation of democracies, on development, decision-making, public policies, and, at the end of the day, on the everyday life of every citizen, is unprecedented.

The progress of knowledge societies is intimately related to the deepening of the debates on the right to freedom of expression and universal access to information in an increasingly connected world. Press freedom, media development, privacy, the role of ICTs in public policies, open governments, documents' protection, and media and information literacy, are just a few of the many issues on the agenda.

In order to emphasize the role of the Organization as a laboratory of ideas, UNESCO Office in Montevideo offers its stakeholders these Cuadernos de Discusión de Comunicación e Información (Communication and Information Discussion Papers.)

Written by leading experts from each field, the main objective of these publications is to provide inputs so that decision makers and public policy makers can take into account different angles of the current issues on the international agenda, always having the existing international standards as a main line.

These papers do not intend to be the final word. Instead, they aim to contribute to an ever increasing, plural and well-informed debate on key issues of yesterday, today and tomorrow.

Happy reading!

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# Executive Summary

One of the main characteristics of a democracy is to have both media and security forces that respect and protect the exercise of fundamental rights.

However, the relationship between journalists and the security forces shows, almost universally, permanent tension. It is a tension similar to –though not the same as– the tension with the agents of the judicial systems. This kind of tensions do not contribute to the consolidation of the exercise of press freedom, neither to the strengthening and better action of the security forces.

The reasons behind the problems are due both to structural factors –those related to the specific performance of the different roles and which may come into conflict–, and to factors caused by the poor performance of the agents. There are situations in which the tension that begins as “structural”, changes due to bad practices by the agents of both institutions. Examples include unlawful actions by security forces when members of the press are covering social demonstrations; refusal to provide information or inappropriate information requests by security forces; and finally, the inefficient management by security forces of threats received by the press when these are reported.

These cases of tension between the press and the security forces could be reduced by increasing the levels of professionalism, strengthening training, and promoting both ethical behaviour and dialogue. Therefore, it would be advisable to implement proposals in three areas, with strategies that focus on each context, but, above all, that are inclusive of all the actors involved in their design. These three areas are:

1. Training: For both the press and the security forces, so that they can understand both the contents and the limits of the rights involved, and everyone can better understand the role that the press and the security forces play in a democratic society, and how they should carry out said role.
2. Transparency: In this regard, both the transparency of the protocols for the action of the security forces in the use of force and the transparency of the police action in the tasks they carry out are crucial.
3. Dialogue: To create permanent instances of dialogue between the press and the security forces, apart from specific situations of conflict.

In these lines of work, it would also be advisable to investigate more deeply into the existence of protocols of action, and, if they do exist, on the easy access to the specific protocols of action relating the press and the security forces. And, if these protocols do not exist, it would be advisable to deepen the dialogue for their development (and their improvement when they do exist.)

To conclude, from everything mentioned above, and as a mathematical synthesis, it appears that:

**TRAINING + TRANSPARENCY + DIALOGUE = < TENSION**

## THE PEN AND THE CAMERA ARE NOT ENEMIES; NEITHER ARE UNIFORMS

*“Each actor should be aware of the roles that they both play, so as to avoid mutual transgression of those roles”<sup>1</sup>*

### 1. Introduction

The relationship between journalists<sup>2</sup> and the security forces shows, almost universally, permanent tension. It is a tension similar to – though not the same as – the tension with the agents of the judicial systems. This kind of tensions do not contribute to the consolidation of the exercise of press freedom, neither to the strengthening and better action of the security forces (in fact, they also do not contribute to the strengthening of the judicial systems, although this issue is beyond the scope of this paper)<sup>3</sup>.

This document explains, in plain words, the reasons why both the press and the exercise of journalism, on the one hand, and the existence of the security forces and their action respecting human rights, on the other hand, are necessary for the consolidation of democracy in Latin America and the Caribbean. For this reason, it is advanced that the conflicts that arise between them, have a significant impact not only on both institutions, but on democracy itself.

Consequently, this publication first answers that question: whether or not both the press and the security forces are essential elements of a democracy. For this purpose, the accepted international standards on the need, in a democratic society, of the press, on the one hand, and the security forces, on the other, are briefly set out.

As it will be seen, this investigation will reveal some manifestations of this conflict. However, the field in which such conflicts can take place is wide-ranging. Thus, this publication only considers situations related to the journalistic coverage of street demonstrations and police action; to the access to information sought by the press and related to investigations carried out by the security forces; and to the response given by security forces to situations of threats or attacks to people who are carrying out their work as journalists, paying special attention to this conflict from a gender perspective.

As it may be noted, the investigation shows, at least from a theoretical point of view, that, in some cases, the reasons behind the problems are due both to structural factors and to factors caused by the poor performance of the agents. For this purpose, structural – or natural – factors, are all those that are related to the specific fulfilment of the roles and that may come into conflict.<sup>4</sup>

This report also describes good practices that tend to reduce confrontations between journalists and security forces, since, to put it simply, this can directly benefit the consolidation of democracy. A review of existing literature

<sup>1</sup> Answer given by a member of a Latin American security force in a survey conducted for the purposes of this investigation.

<sup>2</sup> In this paper, the generic term “the press” may also be used to make a reference to “journalists”. It is not the purpose of this investigation to detail the innumerable conceptual differences that could be raised. The use of the term “the press” is intended to facilitate reading.

<sup>3</sup> See, on this topic, Eduardo Bertoni, *La prensa frente al sistema judicial*, in “Justicia Penal y Derechos Humanos. Homenaje a Ricardo Membreño Jiménez”, Jaime Martínez Ventura (compiler), FESPAD Ediciones, El Salvador, 2005. Some of the conceptual ideas included in said publication have also been considered in this paper.

<sup>4</sup> The idea that some of the conflicts emerge from either “structural” or “non-structural” shortcomings (for example, training issues), was raised by the author and discussed by the participants during the regional webinar organized by UNESCO on December 14, 2021, “*Libertad de Expresión, Medios de Comunicación y Fuerzas del Orden Público en América Latina – Perspectivas para una Nueva Relación.*” The video of the webinar is available at <https://www.youtube.com/watch?v=3sRQHkKw0fY>

and reports was carried out to identify these good practices. Protocols or rules of action of the security forces regarding operations during social demonstrations were also analysed. Finally, a series of consultations were held with security forces personnel from Central and South America,<sup>5</sup> the results of which are included in the Conclusions.

This paper ends with a few proposals that could reduce the existing tension and confrontation, as well as those actions and strategies that could improve the dialogue between both professions, particularly in Latin American countries.

## 2. Are the Press and the Security Forces Essential Elements of a Democracy?

The answer to this first question leaves no place for doubt: one of the main characteristics of a democracy is to have both media and security forces that respect and protect the exercise of fundamental rights.

There are plenty of regulatory arguments. For the purposes of this work, it is enough to review the Constitutions of the Latin America and the Caribbean countries to notice that in them, in one way or another, freedom of expression and freedom of the press are enshrined, and the rule of law is organized through the monopoly of violence, that can only be used under

certain circumstances by the security forces to guarantee the exercise and enjoyment of constitutionally and legally established rights.

But Constitutions are not the only instruments that understand this issue in this way, as all the international treaties that protect the human rights of individuals include both the need to respect the exercise of freedom of expression, and thus, to respect one of its preferred channels –the press–, and the obligation of the States to guarantee the exercise of the rights of individuals, and, for the fulfilment of such obligation, and only when it is necessary in a democratic society, proportional and provided for in the law, security forces could be used as guarantors of the exercise of those rights. This is regulated in this way, for example, by the American Convention on Human Rights (also known as the Pact of San José), to which the great majority of the States of the hemisphere are a party, having it been given a constitutional rank in many of them.<sup>6</sup> Something similar happens with those treaties that fall within the scope of the United Nations, as a universal system of protection of human rights (for reasons of brevity, we do not refer to these treaties in this document.)

The political claim that the press is a necessary element in a democracy was ratified when the Inter-American Democratic Charter was adopted in September 2001. This regional instrument, clearly states that freedom of expression and of the press are essential components of the exercise of democracy.<sup>7</sup>

<sup>5</sup> At the request of the respondents, their name and the security force in which they serve are kept in reserve. The consultation was carried out only for illustrative purposes, to consider some opinions of active security forces personnel.

<sup>6</sup> See American Convention on Human Rights ([https://www.oas.org/dil/esp/tratados\\_b-32\\_convencion\\_americana\\_sobre\\_derechos\\_humanos.htm](https://www.oas.org/dil/esp/tratados_b-32_convencion_americana_sobre_derechos_humanos.htm)):

Article 1.1 Obligation to Respect Rights

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 13.1: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

<sup>7</sup> See Inter-American Democratic Charter ([http://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](http://www.oas.org/charter/docs/resolution1_en_p4.htm)):

Article 3: Essential elements of representative democracy include, inter alia, respect for human rights and



Similarly, it can be deduced that security forces may be necessary to achieve the respect for human rights to which the parties have committed themselves.

The Inter-American Court of Human Rights itself interprets that

*“[...] in the light of the obligations established in Articles 1.1 and 2 of the Convention, States must ensure security and maintain public order, as well as prosecute crimes committed within their jurisdiction. In particular, Article 32.2 of the American Convention establishes that “the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general good, in a democratic society”<sup>8</sup>*

And therefore, it is understood that

*“[...] States have the obligation to ensure security and to maintain the public order within their territory and, therefore, have the right to legitimately use force for its restoration if necessary. While State agents may resort to the use of force and, under some circumstances, even the use of lethal force may be required, the power of the State is not unlimited when it comes to achieving its ends, regardless of the seriousness of certain actions and the culpability of their perpetrators.”<sup>9</sup>*

In short, for the Inter-American Court of Human Rights, the actions of the security forces must be governed by the principles of legitimate purpose, absolute necessity, and proportionality.<sup>10</sup>

More specifically, the actions of the security forces may even be necessary to guarantee press freedom. As expressed in *“Freedom of Expression and Public Order”*,<sup>11</sup>

*“Security forces play a vital role in protecting and ensuring an environment conducive to freedom of expression, access to information and other fundamental freedoms. Without a minimum level of public order, citizens and journalists cannot fully enjoy their right to free expression. Security forces must therefore protect journalists against attacks by others who seek to prevent them from doing their work. They must ensure that journalists can access areas and information about crimes and other matters of public interest, and they must ensure that their own communications with the media are transparent.”*

It is also argued that<sup>12</sup>

*“To guarantee fundamental freedoms such as freedom of expression and access to information in a society, it is vital to reinforce the capacities of security forces to ensure journalist safety. It is therefore essential that security forces and journalists establish professional relationships, which is conducive to a safe and independent*

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fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Article 4: Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

**8** See Inter-American Court of Human Rights. Case: Alvarado Espinoza y otros vs. México. Fondo, Reparaciones y Costas. Judgment of November 28, 2018. Series C No. 370, para. 177.

**9** See Inter-American Court of Human Rights. Case: Cruz Sánchez y otros vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas. Judgment of April 17, 2015. Series C No. 292 para. 262.

**10** In this regard, see Inter-American Court of Human Rights. Case: Hermanos Landaeta Mejías y otros vs. Venezuela. Excepciones Preliminares, Fondo, Reparaciones y Costas. Judgment of August 27, 2014. Series C No. 281, para. 134.

**11** See “Freedom of Expression and Public Order. Fostering the Relationship Between Security Forces and Journalists” at [https://en.unesco.org/sites/default/files/freedomofexpressionandpublicorder\\_english-digital.pdf](https://en.unesco.org/sites/default/files/freedomofexpressionandpublicorder_english-digital.pdf)

**12** See in the same report cited above.

*environment for journalists, enabling all citizens to enjoy their right to freedom of expression and access to information.”*

Having stated in the preceding paragraphs that a democratic system must have both the press and security forces, the following section refers to the tensions that often arise between both institutions.

### 3. Common Tensions between the Press and the Security Forces

In a series of meetings held in Colombia, organized by the Fundación para la Libertad de Prensa (FLIP), between the Colombian press and security forces, it was pointed out that<sup>13</sup>

*“Both the police and the press have reticence, and the relationship between them is the result of prejudice. It was also common to hear that the real tensions between the police and the journalists tend to be the result of specific cases involving certain individuals, and that, from those particular cases, the relationship between both institutions is generalized; thus, there is an association with the prejudices that exist towards the police or the press, and it is generalized that the relationship is conflictive.”*

This tension between the press and the security forces is due both to “structural” factors and to factors “created” by the poor performance of their agents.

Structural –or natural– factors, are understood to be all those that relate to the specific fulfilment of roles: basically, security forces have the monopoly of force and, even when correctly used, it can generate the “reticence” mentioned before during the meeting held in Colombia.<sup>14</sup> Press agents, in turn, should inform people about matters of public interest. Naturally, tensions arise when, for example, for the success of an investigation initiated by a security force, it would be convenient, at the

beginning, to hold part of said investigation in reserve, but because the issue is a matter of public interest, the press is eager to report about it. This is a natural tension; one that is difficult –if not impossible– to solve. Another example is when the press, with good reason, wants to cover social protests, but to maintain public order and even the safety of demonstrators and journalists, security forces must, in certain cases, intervene.

The problem arises when that tension that begins as “structural” becomes a tension that ceases to be natural and is the result of the bad practices of the agents of both institutions. In other words, the tension level increases unnecessarily. The examples provided below will shed light on this point.

There are cases that generate tension between the press and the security forces, but in which said tension could be reduced by increasing the levels of professionalism, strengthening training, and promoting both ethical behaviour and dialogue. In other words, there are tension factors that are natural, and will continue to exist, but there are others that are created because of bad practices, which, if avoided, will decrease the existing tension. It is important to work on the “created” factors.

There follows an explanation of three circumstances where tension is created: unlawful actions by security forces when members of the press are covering social demonstrations; refusal to provide information or inappropriate information requests by security forces; and finally, the inefficient management by security forces of threats received by the press when these are reported.

<sup>13</sup> See “Recomendaciones para el entendimiento entre la Fuerza Pública y periodistas” en [https://flip.org.co/images/Documentos/Recomendaciones\\_entendimiento\\_Policia.pdf](https://flip.org.co/images/Documentos/Recomendaciones_entendimiento_Policia.pdf)

<sup>14</sup> See the report cited in the previous note.

### 3.1. Journalistic coverage and the action of security forces in social demonstrations on the street.

#### i. Cases of abuse reported and the magnitude of the problem that creates tension.

Cases of abuse and attacks against journalists are worrying. According to the report entitled “*Safety of journalists covering protests: preserving freedom of the press during times of turmoil*”, by Frank Smyth, who collected information about these kind of cases between 2015 and 2020”,<sup>15</sup>

*“Hundreds of journalists around the world trying to cover protests have been harassed, beaten, intimidated, arrested, put under surveillance, abducted, and had their equipment damaged. Others have been held incommunicado, humiliated, choked and fired upon with non-lethal as well as live ammunition.”*

From the cases analysed, the UNESCO Observatory of Killed Journalists reports that, from 2015 to 2020, the following journalists (10) have been killed while covering protests:

- Ferzat Jarban, a freelance cameraman, was arrested after filming protests against the government at al-Qasir in 2016. The next morning his body was found severely mutilated. He was the first journalist reported to have been killed in an eight-month period of harsh measures against pro-democracy protests in the Syrian Arab Republic.
- Elidio Ramos Zárate, a journalist of the El Sur newspaper, was shot and killed in 2016, in the city of Juchitan de Zaragoza (State of Oaxaca, Mexico), while covering protests and confrontations.
- Yaser Murtaja was shot to death while covering Palestinian protests on the border with Israel in 2018.
- Ángel Eduardo Gahona was shot during a live broadcast for his local TV news program, El Meridiano, in April 2018, in the city of Bluefields, in eastern Nicaragua.
- Lyra McKee, a 29-year-old freelance writer and investigative journalist working for the Mediagazer and BuzzFeed News websites, was shot to death in 2019, while covering confrontations in Creggan, a suburb of Londonderry (Derry) in the United Kingdom of Great Britain and Northern Ireland.
- Precious Owolabi was shot to death in 2019 while covering demonstrations for Channels Television in Nigeria, that ended in confrontations between demonstrators and the police.
- Ahmed Abdul Samad, a journalist, and Safaa Ghali, a cameraman, were shot in 2020 as they were running away from the protests in the city of Basra, in southern Iraq, which they had been covering for the Iraqi satellite television channel Dijlah TV.
- Alex Ogbu, a website and graphic reporter of the Regent Africa Times, was shot in 2020 when the police was dispersing an Islamic Movement of Nigeria demonstration in Abuja, Nigeria.
- Ahmed Muhana Al-Lami, a freelance Iraqi news photographer, was shot on December 6, 2019, while covering a demonstration in a public square in Baghdad, dying shortly after at the hospital.

It should be noted that 2 of these 10 cases occurred in Latin America. It is also important to emphasize that, although these deaths are not a direct consequence of the actions of the security forces, the lack of protection of the press by these forces also generates the tensions and mistrust that were previously mentioned.

<sup>15</sup> Published by UNESCO. Available at <https://unesdoc.unesco.org/ark:/48223/pf0000374206>, henceforth cited as “*Safety of journalists.*”

Already in 2016, the Fundación para la Libertad de Prensa (FLIP) of Colombia had warned that,<sup>16</sup>

*“Of the 123 attacks recorded by FLIP in 2013, 28 were carried out by the police, that is, 23%, a proportion above criminal gangs or guerrilla groups, that were responsible for 20% and 18% of the attacks, respectively. This trend continued in 2014. FLIP recorded 33 police attacks against journalists.”*

It should be noted, though, that this is a problem that has no physical borders or regions.

Joel Simon, former Executive Director of the Committee to Protect Journalists (CPJ), explained in a recent Op-Ed<sup>17</sup> that:

*“In 2020, 142 journalists were arrested or detained when Black Lives Matter protests swept the nation. Although that number has declined this year, 56 arrests and detainments were documented in the U.S. through the end of November. Nearly 40% of those took place in Los Angeles County.”*

It is important to bear in mind Simon’s conclusion on the effects that the events that take place in the United States have on the rest of the world. In Simon’s words,

*“The implications extend far beyond Los Angeles. The arrest of journalists covering protests undermines American democracy and provides an awful example globally. Images of journalists in the U.S. being beaten and arrested by police are readily exploited by repressive governments to justify their own heavy-handed responses to street protests and demonstrations.”*

Smyth’s work, that had already analysed the problem at a global level a few years before Simon’s warning, explains that,

*“A majority of the attacks have been committed by police and security forces. Police use of non-lethal ammunition ranging from rubber bullets to pepper balls, has injured dozens of journalists, with a few having been left blinded in one eye. The introduction in a few countries of new projectiles, flash balls and butterfly bullets, each designed to produce a small charge or deploy shrapnel upon impact, has caused injury to many journalists. Dozens more have been injured, and many severely, by police firing of live rounds or bullets. Police have also arrested, beaten and in a few cases humiliated journalists, for example by forcing them to take off their shirts and roll on the ground as police beat them and asked demeaning questions.”*

Finally, the issue of violence against women journalists is particularly worrying. According to a survey conducted by International Women’s Media Foundation and the International News Safety Institute in 2013, 40 out of 154 female respondents (26%) said that they had suffered physical violence while covering protests, rallies, and other public events.<sup>18</sup>

## ii. The protocols for the action of security forces

“Safety of Journalists”<sup>19</sup> reveals that,

*“The legal frameworks regulating when and how police and security forces use force during protests including against journalists is weaker in a number of Member States than international standards and laws would suggest. The United Nations High Commissioner on Human Rights in 2020 noted: “To avoid the need to resort to lethal force, States must supply law enforcement officials with effective, less-lethal means, and train them in their lawful use. In some cases, unfortunately, law enforcement officials use*

<sup>16</sup> See “Recomendaciones para el entendimiento entre la Fuerza Pública y periodistas” at [https://flip.org.co/images/Documentos/Recomendaciones\\_entendimiento\\_Policia.pdf](https://flip.org.co/images/Documentos/Recomendaciones_entendimiento_Policia.pdf)

<sup>17</sup> See “Arresting reporters in L.A. sends a dangerous message to repressive governments” at <https://www.latimes.com/opinion/story/2021-12-07/los-angeles-police-journalists-arrests-reforms>

<sup>18</sup> Information referenced by Smyth in “Safety of Journalists”, cited above, Note 15.

<sup>19</sup> See the report cited in Note 15.

*less-lethal weapons improperly, leading to serious injury or even death.”*

Particularly in Latin America and the Caribbean, it is difficult to establish the regulations that should guide the action of security forces during street protests. For this work, we have taken into account a recent research by the Human Rights Centre of the School of Law of the University of Buenos Aires, the Center for Justice and International Law (CEJIL) and the Konrad Adenauer Foundation.<sup>20</sup> This investigation, while not specifically referring to protocols of action in cases where the press is involved, is of paramount importance for two reasons: first, these protocols may be used even when journalists cover demonstrations and the use of force becomes relevant enough to be analysed; second, in some cases, it is possible to infer that the application of these protocols clearly relates to the press (as an example, the protocol cited in reference to Colombia, mentions respect for freedom of expression **even for those who do not participate in the protest**). Anyway, this investigation has not deepened on the more concrete existence of specific protocols.

We will now refer to the situation in Argentina, Brazil, Chile, and Mexico.

In **Argentina** it is difficult to accurately establish which are the regulations currently in force, due to the many resolutions that have been issued over time, making it difficult to easily find the parameters of action of the security forces.<sup>21</sup>

For the present investigation, it is important to emphasize that regarding the action of the security forces in public demonstrations, in 2011, the Ministry of Security issued the “*Minimum Criteria for the Development of Protocols for the Action of Federal Police Forces and Security Forces in Public Demonstrations*” to set guidelines for police intervention in both scheduled and spontaneous demonstrations.<sup>22</sup>

However, according to the CDH-CEJIL-KAS Report,

*“the validity and applicability of these regulations by the federal and provincial security forces are not clear, in part because the “Minimum Criteria” and related documents are not publicly accessible.”*

Additionally, according to the answer given to the Inter-American Commission on Human Rights,<sup>23</sup> the Center for Legal and Social Studies (CELS) of Argentina has recognised, regarding said “Minimal Criteria”,

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- 20** See, “Uso de la fuerza en el marco de protestas sociales: aportes prácticos a partir de un análisis comparado de normativas nacionales”, in press at the time the present document was being written (hereinafter “CDH-CEJIL-KAS Report”).
- 21** Among these regulations, the following should be mentioned: Ministry of Security. Resolution No. 933/2012. “*Créase el Programa sobre Uso de la Fuerza y Empleo de Armas de Fuego*”. August 30, 2012. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/200000-204999/204821/norma.htm>; Ministry of Security. Resolution No. 377/2020. RESOL-2020-377-APN-MSG. October 12, 2020. Available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/236293/20201020>; Resolution 956/2018 approving the General Regulations for the Use of Firearms by Members of the Federal Security Forces. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/316948/norma.htm>; Resolution No. 1231/2019. RESOL-2019-1231-APN-MSG. December 20, 2019, available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/224089/20191224>; Resolution No. 395/2019. RESOL-2019-395-APN-MSG. May 07, 2019, available at: <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-395-2019-322840/texto>.
- 22** Ministry of Security of Argentina. Resolution No. 210/2011 that establishes the “Minimum Criteria for the Development of Protocols for the Action of Federal Police Forces and Security Forces in Public Demonstrations.” It is not publicly available on the Internet. See CIDH. *Informe Anual 2015 capítulo IVA: Uso de la Fuerza*. OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 46. Available at: <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/informeannual2015-cap4a-fuerza-es.pdf>.
- 23** Available at <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/informeannual2015-cap4a-fuerza-es.pdf>, para. 87.

*“[...] the importance of the minimal criteria adopted and has stressed that these include the prohibition of carrying firearms and the obligation for the intervention of the police forces to be progressive, starting necessarily with a dialogue and avoiding, as far as possible, the use of physical coercion mechanisms. It has also stated that there is a record that shows that “the Federal Police can deal with a massive demonstration that later leads to isolated acts of violence by making a progressive and proportional use of force”. According to the CELS, notwithstanding these developments, the Minimum Criteria are inconsistently applied by the different security forces and in the various situations faced by them, and, as it has already been noted, the Commission was informed about the carrying of firearms in the first lines of containment (that is, in contact with the demonstrators), and the inappropriate use of rubber-bullet and tear-gas weapons by civilian police officers who were in the first lines of contact in demonstrations, in violation of the regulation outlined.”*

Thus, in this case we would be dealing with good regulations, that, in the practice, do not seem to meet their purpose. This statement is a common denominator for the analysis of the following countries.

In **Brazil**, in 2013, the Council for the Defence of the Rights of the Human Person, an entity of the Secretariat for Human Rights of the Pres-

idency of the Republic, issued Resolution No. 6 of 2013, to define recommendations of that Council aimed at guaranteeing human rights and applying the principle of non-violence in the actions of the police during demonstrations and public events.<sup>24</sup> For example, this Resolution recommends that, in protests and public events, law enforcement agents should act using non-violent instruments, without using firearms. According to the Resolution,

*“[t]he federal government should prioritize the development, processing and analysis of regulations that address the use of force and, in particular, the use of non-lethal weapons, considering the principles of human rights.”<sup>25</sup>*

In Chile, and without leaving aside the fact that the right to protest is regulated by a very criticized decree issued during the dictatorship of Augusto Pinochet<sup>26</sup>, the situation gets complicated by the fact that the *Constitutional Organic Law of Carabineros – 2011* does not include any regulation on the use of force<sup>27</sup> although the *Doctrine Manual and Code of Ethics of Carabineros* establishes that the State may resort to the use of legitimate force to require members of society to fulfil the obligations it imposes to them, and that Carabineros of Chile, as the public force, holds the monopoly of the force.<sup>28</sup>

In this context, and within the framework of a case presented before the Inter-American Commission of Human Rights<sup>29</sup>, Chile has reviewed its regulations. However, the use of

24 Council for the Defence of the Rights of the Human Person. Resolution No. 6 of June 18, 2013. (The translation is ours). Available at: [https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/30040772/do1-2013-06-19-resolucao-n-6-de-18-de-junho-de-2013-30040760](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/30040772/do1-2013-06-19-resolucao-n-6-de-18-de-junho-de-2013-30040760).

25 Article 8. In Portuguese: O Poder Público federal deverá priorizar a elaboração, tramitação e análise de normas que versem sobre o uso da força e, em especial, sobre a utilização de armas de baixa letalidade, considerando os princípios de direitos humanos.

26 Ministry of the Interior of Chile. Decree No. 1086. “Reuniones Públicas”. September 16, 1983. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=16783&idParte>

27 National Congress of Chile. “Constitución Política de la República de Chile”. 1980. Art. 101. Available at: [https://www.oas.org/dil/esp/constitucion\\_chile.pdf](https://www.oas.org/dil/esp/constitucion_chile.pdf); Ministry of National Defense of Chile. Law No. 18961. “Ley Orgánica Constitucional de Carabineros”. February 27, 1990. Art. 3. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=30329>.

28 Manual de Doctrina y Código de ética de Carabineros de Chile. 2017. Page 100. Available at: <https://generales.cl/wp-content/uploads/2019/09/MANUAL-DE-DOCTRINA-Y-CODIGO-DE-ETICA-2017.pdf>.

29 See Edmundo Alex Lemun Saavedra y otros vs. Chile. Available at: <https://www.cejil.org/es/edmundo-alex-lemun-saavedra-y-otros-vs-chile> and Agreement to Comply with the Recommendations Issued by the Inter-

force is regulated in several regulatory instruments that, as the National Institute of Human Rights (INDH) has said, are of a “low regulatory hierarchy”.<sup>30</sup>

Notwithstanding this, it is important to highlight the issuance of Circular No. 1.832 which updates instructions on the use of force, and the General Order No. 2635 of March 1, 2019 of Carabineros of Chile, that includes the new *Protocols of Intervention for the Maintenance of Public Order*.<sup>31</sup> These protocols mention how to provide for the protection of the right to demonstrate, the restoration of public order, evictions and proceedings regarding lawbreakers.<sup>32</sup> As it arises from the CDH-CEJIL-KAS Report, it is important to mention:

- Protocol 1.1 on Protection of Demonstrators;
- Protocol 2.1 on Intervention in Lawful Demonstrations with Authorization;
- Protocol 2.2 on Intervention in Lawful Demonstrations without Authorization;
- Protocol 2.3 on Intervention in Unlawful Violent Demonstrations;

- Protocol 2.4 on Intervention in Lawful Aggressive Demonstrations;
- Protocol 2.5 on Water Cannon Implementation;
- Protocol 2.6 on Tactical Response Vehicle Implementation;
- Protocol 2.7 on the Use of Chemical Substances for Dispersion;
- Protocol 2.8 on the Use of Anti-Riot Shotguns; and
- Protocol 2.9 on the Use of Firearms.<sup>33</sup>

This specificity and the fact that it has been established that the Protocols should be reviewed and updated every four years<sup>34</sup> can be seen as a progress and a good practice in Chile.

In **Colombia**, regulations related to the action of the security forces during social protests have a varied nature.

For example, since 2017, the National Police has a “Manual for the service in demonstrations and riots control for the National Police” that “*is conceived as the instrument of the service for accompaniment, prevention and intervention of public meetings and/or demonstrations*”.<sup>35</sup>

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American Commission on Human Rights (IACHR) in the case of Edmundo Alex Lemun Saavedra vs. Chile, March 9, 2018. Available at: <https://www.interior.gob.cl/media/2018/10/PUBLICACION-ACUERDO.pdf>.

**30** Based on the work of CDH-CEJIL-KAS, “Specifically, in said IACHR Agreement, Chile undertook to adopt a Presidential Decree with guidelines on the use of force in accordance with international human rights standards and including a mandate for the review of existing protocols on the matter considering those standards. In the context of this process, the Chilean State has adopted a series of measures, including the approval, on November 13, 2018, of Supreme Decree 1364 of the Ministry of the Interior and Public Security, containing “general guidelines on the use of force in police interventions for the maintenance of public order, ordering Carabineros to review and update the existing protocols relating to the use of force for the maintenance of public order, within 90 days and then at least every 4 years, with the participation of civil society and the National Institute of Human Rights. This Decree also establishes that interventions by police officers shall be regulated under the domestic legislation and international treaties on human rights that Chile has ratified.”

**31** Ministry of the Interior and Public Security. Circular No. 1.832 of March 1, 2019. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=1129442>. This circular revised Circular No. 1756 of March 13, 2013. Available, unofficially, at: [https://www.policinglaw.info/assets/downloads/Circular\\_1756\\_of\\_2013\\_on\\_the\\_Use\\_of\\_Force\\_\(Spanish\\_original\).pdf](https://www.policinglaw.info/assets/downloads/Circular_1756_of_2013_on_the_Use_of_Force_(Spanish_original).pdf).

**32** Ministry of the Interior and Public Security. Circular No. 1.832 of March 1, 2019, op. cit., Annexes - General Order No. 2635 of March 1, 2019.

**33** Ministry of the Interior and Public Security of Chile, Circular No. 1832 of March 1, 2019, op. cit., Annexes- General Order No. 2635. March 1, 2019. Protocolos de Intervención para el Mantenimiento del Orden Público. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=1129442>.

**34** Ministry of the Interior and Public Security, Circular No. 1.832 of March 1, 2019, op. cit., art. 1.

**35** Ministry of National Defence of Colombia. National Police. Resolution No. 03002. “Por la cual se expide el manual para el servicio en manifestaciones y control de disturbios para la Policía Nacional”. June 29, 2017. Available at:

This instrument provides that it aims to “*guide the police units to accompany and intervene in demonstrations and in the control of disturbances, by setting the legal parameters that police officers must abide by*”<sup>36</sup>

The following year, the Ministry of the Interior adopted the “Protocol for the coordination of actions to respect and guarantee peaceful protest as a legitimate exercise of the rights of assembly, public and pacific demonstration, freedom of association, free movement, free expression, freedom of conscience, opposition and participation, including of those people not participating in the peaceful protest.”<sup>37</sup>

Another protocol was approved in 2021 by Decree No. 3 of 2021,<sup>38</sup> which was issued in January 2021 pursuant to a 2020<sup>39</sup> Supreme Court Judgement that had determined that in the protests of 2019 the public force has exceeded its duties, and ordered the National Government to convene, within 30 days of the notification of the judgement, *inter alia*, a working group to restructure the guidelines related to the use of force in peaceful demonstrations, and to issue, within 60 days of the notification, a regulation including the relevant guidelines

outlined in the Judgement, the case law of the Constitutional Court, the Inter-American Court, and the United Nations recommendations.<sup>40</sup>

In **Mexico**, the *National Law on the Public Security System* and the *Law on the National Guard* refer to the use of force in accordance with the new *National Law on the Use of Force*.<sup>41</sup> This regulation establishes the principles, procedures, and instruments for the use of force, and regulates the actions of the police in demonstrations and public gatherings. Article 27 of the Law establishes, in a very general manner, that

*Article 27. For no reason, may weapons be used against people participating in peaceful public demonstrations or gatherings with a lawful purpose.*

*In such cases, police action shall ensure the protection of demonstrators and the rights of third parties, as well as guarantee public peace and order.*

*The intervention of public security forces should be carried out by individuals with specific experience and training for such situations, and under protocols of action issued by the Council of the National Public Security System.*

[https://www.policia.gov.co/sites/default/files/resolucion\\_03002\\_1.pdf](https://www.policia.gov.co/sites/default/files/resolucion_03002_1.pdf).

36 Ministry of National Defence of Colombia, National Police, “Resolution No. 03002 of June 29, 2017”, Art 4.

37 Ministry of the Interior of Colombia, “Resolution No. 1190, August 3, 2018”.

38 Ministry of the Interior of Colombia. Decree No. 003. “*Por el cual se expide el Protocolo de acciones preventivas, concomitantes y posteriores, denominado ‘Estatuto de Reacción, Uso y Verificación de la Fuerza Legítima del Estado y Protección del Derecho a la Protesta Pacífica Ciudadana’*”. January 5, 2021. Available at: <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20003%20DEL%205%20DE%20ENERO%20DE%202021.pdf>.

39 Supreme Court of Justice of Colombia. Judgment No. STC7641-2020, September 22, 2020. Radicación No. 1101-22-03-000-2019-02527-02. Available at: <https://cortesuprema.gov.co/corte/wp-content/uploads/2020/09/11001-22-03-000-2019-02527-02-STC7641-2020.pdf>.

40 Fifth resolution of the Judgement

41 It is important to mention that according to the work of CDH-CEJIL-KAS, “*it was sued as unconstitutional before the Supreme Court of Justice in June 2019 by the National Human Rights Commission “with the aim of contributing to the establishment of a regulatory framework that is compatible with the parameter of constitutional regularity in the field of human rights.” Some of the aspects highlighted in the suit are: the non-inclusion of the internationally recognized principles on the use of force; the inappropriate classification of weapons the use of which is being regulated; the poor regulation of the use of lethal force; the inclusion of the use of lethal force in “violent” protests and the non-observance of what was ordered by the Inter-American Court of Human Rights in the Mujeres de Atenco case, by the failure to include in said regulation, the creation of an external observatory for female police officers. Several national and international organizations made an amicus curiae presentation in this process, arguing that the Law contravenes obligations of the Mexican State regarding principles of legality, necessity, and proportionality, right to life and freedom of assembly, association, and expression.*” The Supreme Court of Justice finally declared several articles of the law unconstitutional. See current text at <https://www.diputados.gob.mx/LeyesBiblio/ref/lnuf.htm>.



According to this regulation, security institutions will issue protocols of action, including the one mentioned in Article 27 cited above. In January 2021, the *National Protocol on the Use of Force*,<sup>42</sup> issued by the Ministry of Public Safety and Security was published. It is a very complete and detailed protocol which, among other many specific details, establishes

#### *POLICE ACTION IN PUBLIC DEMONSTRATIONS AND GATHERINGS*

- *For no reason, may weapons be used against people participating in peaceful public demonstrations or gatherings with a lawful purpose.*
- *In such cases, police action shall ensure the protection of demonstrators and the rights of third parties, as well as guarantee public peace and order.*
- *The intervention of public security forces should be carried out by individuals with specific experience and training for such situations, and under protocols of action issued by the Council of the National Public Security System.*
- *When public demonstrations or meetings turn violent, police officers shall act according to the different levels of force established in the National Law on the Use of Force.*

All the previous studies carried out allowed the CDH-CEJIL-KAS investigation to decisively conclude that

*“In all the regulations studied, including those that include prevention as a principle and permanent dialogue as an important part of the protests, there was a lack of clarity and information on how these principles materialize in the different stages of the protest. Two countries in particular –Chile and Colombia–, have provisions that show how the lack of clarity in the regulations may create confusion about the role of the dialogue in the different stages of protests, especially when force is used.”*

The problem of lack of clarity was mentioned during the previously cited webinar organized by UNESCO, *“Libertad de Expresión, Medios de Comunicación y Fuerzas del Orden Público en América Latina – Perspectivas para una Nueva Relación.”* Cristian Taboada, Chief of the Security and Justice Section of the Department of Public Security (DPS) of the Organization of American States (OAS), said that

*“In order to guarantee that the police acts within the framework of the rule of law, it is necessary to generate clear regulatory frameworks on the legitimate exercise of freedom of expression, social protest, and the action of the security forces. States should design specific protocols of action for security forces acting in situations of social protest and public demonstrations.”*

Additionally, the CDH-CEJIL-KAS Report highlights the general lack of transparency of the regulations on the use of force by the security forces, given that, in the research carried out, it had been noticed that relevant regulations in Argentina, Brazil, and Chile, for example, are not publicly accessible.

As a positive fact, however, it can be observed that the existence of protocols, including very detailed ones, such as those in force in Mexico or Chile, is a good practice which, as we shall see, should be made better known to members of the security forces and the general population, along with the establishment of appropriate rules for the effective compliance with said protocols.

### **3.2. The investigation of crimes by the security forces and the access to information by the press**

As it was explained above, a tension factor that is created –and not structural– arises when the press wants to exercise its legitimate right of access to information and the security forces prevent them from doing so. This tension

<sup>42</sup> Secretary of Public Safety and Security. Annex 6 of Agreement 05/XLVI/20 issuing the National Protocol on the Use of Force. Published on January 26, 2021. Available at: [https://www.dof.gob.mx/2021/SSPC/SEGURIDADyPC\\_260121.pdf](https://www.dof.gob.mx/2021/SSPC/SEGURIDADyPC_260121.pdf) (pág 466).

would diminish if both institutions understood that there are certain cases in which information can –and should– be provided and others in which that should not happen.

One issue that seems to be overlooked is that access to public information laws allow security forces –either directly or through the Ministries of Security or the Interior when they depend on them– to provide information, as long as it is public and the exceptions that the laws themselves include cannot be applied. Indeed, a good practice is the direct publication of public information –proactive information–, as in the National Police Transparency Portal in Colombia.<sup>43</sup>

On the other hand, we often find that security force agents, rather than explaining some of their decisions concerning issues of great public interest, hide behind phrases such as “No comments,” or “I never make statements to the press.” This creates tension, especially if they do not explain the reasons why it is advisable not to explain some circumstance which is important for the investigation because, for example, it could hinder it. An explanation could benefit the image of the security forces because it shows transparency and provides a reason for their actions.

A clarification is in order: It is possible that not all members of the security forces can make statements to the press, let alone do so constantly. Therefore, press offices of the security forces could fulfil this role by providing the statements and explanations that are requested. Even when the press gets an answer to its concerns that may not be fully satisfying, at least it allows them to offer information issued by the security force itself, and not interpreted, as it happens many times, by the actors of the conflict.

In the FLIP meetings between the press and the security forces mentioned above, it is stated that

*“The fact of being able to have access to the source of information and the way in which said source is accessed is one of the main reasons for reticence in the relationship between the press and the police. The police tend to question the legitimacy of the procedures that journalists use to access the source. On the other side, journalists argue that official sources tend to be hierarchical and to provide very limited information, and not to agree with journalistic times. There is an imbalance between the expectation and need for information by journalists, and the possibilities of the police to respond to those needs and expectations because of the type of information and the approvals that must be obtained at different levels before the information is provided to the media.”*

However, it is important to note what João Mário Nunes de Goes, Coordinator of the Press and Community Relations Office of the Civil Police of Paraná (PCPR), Brazil, said during a webinar organized by UNESCO,<sup>44</sup>

*“[...] there are limits to the disclosure of certain data that may interfere with ongoing investigations or violate the fundamental rights of individuals. Any police action, including relations with the press, must be based on respect for the human being. And we are all human beings: police officers, journalists, victims, witnesses, or criminals.”*

In that sense, and in accordance with what is explained in “Freedom of Expression and Public Order”,

*“Information should be provided by security forces when:*

- *It is of interest to journalists (especially information on certain incidents, such as accidents, crimes, thefts, detentions and police reports);*
- *It actively encourages public debate on issues related to the police and its work;*

<sup>43</sup> Available at: <https://www.policia.gov.co/transparencia-acceso-informacion>

<sup>44</sup> See Note 4.

- *The public has the right to know;*
- *It helps illustrate how the police carry out their work, noting that this applies both to positive measures and to openness about the challenges faced by the police;*
- *It helps to build public confidence in the police.*

*No information should be provided in the following cases:*

- *Details of an investigation in which this information may compromise the investigation, prosecution of the accused persons, or future investigations;*
- *Details about certain situations, so as not to give other people ideas that could be imitated regarding the methods used;*
- *The identity of the complainants, witnesses, and victims.*

Also, during the webinar organized by UNESCO,<sup>45</sup> Kriscia Rodríguez, who spoke on behalf of the International Law Enforcement Academy (ILEA San Salvador), said that

*At ILEA San Salvador we have always developed respectful relations with both local and international media. Opening our events to the press or having an open attitude when we receive a request to interview one of our officials has been a priority. We are aware that creating such trusting relationships fosters the basis for an understanding that provides a balance for transparency.*

These statements are a contribution to improving the relationship. However, Ms. Rodríguez then explained that

*While it is true that we still do not have a course that specifically addresses the issue of press freedom or relations between the media and law enforcement agents, in our training sessions we cover topics that are intimately related to those issues, as it happens in our Course on Human Rights.*

These words show that, again, it is relevant to highlight the issue of the need for specific training.

In that same webinar, João Mário Nunes de Goes, explained that

*We have included a news agency on our website to provide information on police actions, with texts, videos, and audios.*

This practice of proactive information should be welcomed, and its relation to the access to information laws is evident.

In sum: If we say that the security forces should give explanations in many of the cases in which said information is requested, journalists should also understand that many times, because of the role played by the security forces, their members cannot behave as the CEO of a company or as legislators, giving information about everything that happens. Refusal to give information always creates suspicion. But such suspicion should not tend to create the stereotype that actors act suspiciously just because they do not always provide information.

### **3.3. Threats and other attacks against the press and the response of security forces to prevent and investigate these actions.**

When commemorating the International Day to End Impunity for Crimes against Journalists in 2021, UNESCO said in a press release that

*“New statistics published show an 87% impunity rate for journalist killers. [...] Threats of violence and attacks against journalists contribute to a climate of fear for media professionals, and impact the quality of their journalism. UNESCO research has shown that constant threats deter journalists from pursuing controversial investigations, and encourage self-censorship. Threats can prompt journalists to cover less politicised topics, or to leave the profession or the country.”<sup>46</sup>*

<sup>45</sup> See Note 4.

<sup>46</sup> Available at <https://en.unesco.org/news/unesco-sounds-alarm-persistently-high-impunity-rate-journalist-killers>.

Unfortunately, the issue of impunity is not new. Nearly 20 years ago, members of various national and international organizations gathered in Bogotá, Colombia, to discuss impunity in cases of threats to journalists. The seminar had been convened by the Antonio Nariño Project, the FLIP, and OAS Office of the Special Rapporteur for the Freedom of Expression. The following are some of the conclusions of the meeting<sup>47</sup>:

1. *Frequently, journalists' killings are preceded by threats to their lives. Thus, threats never should be underestimated.*
2. *It is imperative to report all cases of threats against journalists, that the affected persons permanently and effectively cooperate with the justice system, and that cases be closely monitored so that none of them is forgotten.*
3. *It is also necessary to make a public complaint through the media, to make this type of violation of freedom of expression visible and for the journalistic community itself to investigate the cases.*
4. *Organizations working in the defence of freedom of expression, and in particular freedom of the press, should train journalists in the handling of threats so that they can provide more information to the judicial authorities and protect their integrity, and law enforcement agents can get to the source of the threat.*

Points 2 and 4 mentioned above are important for this work. But reporting may not always be easy, particularly for women. The United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity<sup>48</sup> establishes that

*“Female journalists also face increasing dangers, highlighting the need for a gender-sensitive approach. In carrying out their professional duties, they often risk sexual assault, whether in the form of a targeted sexual violation, often in reprisal for their work; mob-related sexual violence aimed against journalists covering public events; or the sexual abuse of journalists in detention or captivity. Furthermore, many of these crimes are not reported as a result of powerful cultural and professional stigmas”*

In the face of this situation, two issues become apparent: To prevent attacks, it is important that previous threats or attacks are reported, but many times journalists do not make these complaints. In the case of women journalists, as it has been indicated, the reason is profound. But in many other cases, the complaints may not be made either because the security forces do not receive them, or, if they do receive these complaints, they lack the means to investigate them properly.

Given that in this paper we try to determine where the tension between the press and the security forces can be reduced, it is evident that, considering the problems exposed above, one can only work in those cases in which complaints are not received or, if they are received, they are not investigated. When this happens, a vicious circle develops: journalists do not submit a complaint because they believe it is not useful, and security forces cannot take any action because they have no complaints. Thus, the tension that has been created increases.

In response to this problem, what can be found as a good practice is that many States are creating units specialized in the investigation of attacks.<sup>49</sup> However, it would be useful to know

47 See Informe Anual de la Relatoría Especial para la Libertad de Expresión 2003, Cap I, B.19, available at <http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202003.pdf>

48 Available at: [https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists\\_en.pdf](https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf)

49 For example, in *Intensified Attacks, New Defences: developments in the Fight to Protect Journalists and End Impunity*, UNESCO 2019 (available at <https://unesdoc.unesco.org/ark:/48223/pf0000371487.locale=es->), it is stated that “A number of Member States reported that they are taking action to address impunity, by developing and implementing new criteria, guidelines and policy instruments to reinforce actions to investigate and prosecute crimes against journalists and/or human rights defenders. In 2018, Brazil reinforced the process of receiving, registering and forwarding complaints that accommodate the specificities of journalists, and improved the flow of information

how much of these resources are specifically allocated to train and give tools to the security forces, who will often be the first ones to receive the complaints. It would, therefore, be a good practice not only to continue strengthening the mechanisms that are being created, but especially to address the needs of the security forces to ensure that complaints are brought to a successful conclusion, together with prosecutors' offices and the courts.

#### 4. Good Practices for Reducing Conflicts. Structural and Non-Structural Factors

In the work cited above, "*Safety of journalists*"<sup>50</sup> some good practices are developed that deserve to be considered and are shared in this work. These include the need to improve – or create – legal frameworks for the security forces, the training of the security forces, and to raise awareness of demonstrators in the protests. Good practices developed by the press were also analysed.

Regarding legal frameworks for security forces, as we have seen when reviewing the protocols for action in the protests, it would be a good practice to improve them in the light of inter-

national standards, so that they are clearer and easily accessible.

Other actions that would contribute to creating more good practices consist on the collaboration of civil society groups to make demonstrators aware of the importance of the press when they cover the protests and to facilitate the proper exercise of their work to avoid over-reactions by the security forces. Needless to say, civil society can play a very important role also in making the press aware of its role and of what society expects from it during street demonstrations

Specifically, to reduce tensions when the press covers social protests, the following good practices are proposed in the document "*Freedom of expression and public order*" cited above:<sup>51</sup>

- *Issue a non-mandatory technical briefing to journalists beforehand;*
- *Designate a spokesperson, who can also provide journalists with real-time information;*
- *Establish a safe communication perimeter, where representatives of the media can receive information;*
- *Disseminate current information to the media through social media to let participants know about their intentions;*

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*between the National Ombudsman for Human Rights and the Protection Programme. Indonesia noted the establishment of a guideline for Handling Cases of Violence against Journalists as determined by the Indonesian Press Council in 2013. Some Member States reported on the appointment of special prosecutors for crimes against journalists (Honduras, Iraq, and Ukraine). For instance, Honduras' Public Prosecutor's Office appointed specialized prosecutors to handle exclusively crimes targeting vulnerable groups. Prosecutors were appointed in cities with a higher incidence of violence against journalists. Guatemala's Human Rights Prosecution Section, in charge of investigating and prosecuting those accused of acts committed against journalists, includes a specific unit for crimes against journalists. In 2018, Guatemala noted the approval of several new policy instruments to reinforce criteria and tools for action in accordance with investigation and prosecution of crimes against journalists and human rights defenders. In 2018, the Iraqi Ministry of the Interior established a special investigation unit for crimes against journalists. This unit is tasked with looking at unresolved cases from previous years as well as investigating more recent cases of killings of journalists. Mandated through a Presidential Decree in 2016, Ukraine set up a Council for the Protection of Journalists and Freedom of Speech. This body includes representatives of the Prosecutor General's Office and aims to facilitate investigations of unlawful actions against journalists."*

<sup>50</sup> See Note 15.

<sup>51</sup> This document also provides examples from several countries where rules governing the police action in general, or specific guidelines on the relationship with the press, have been included. Examples mentioned and which we use are: the Great Britain's Metropolitan Police Service (MPS) Procedural Manual; the Police Service of the Kingdom of Belgium (SPB) Code of Ethics; The South African Police Services (SAPS) Code of Conduct; and the Los Angeles Police Department (LAPD) Operational Procedure.

- *Provide a neutral and quiet central location for dealing with media requests during the event;*
- *Do not prevent the media from taking pictures;*
- *Do not seize equipment;*
- *Press cards should be used as a way to identify journalists, not to sort them or deny them access to the media perimeter or a media room.*

It is also a good practice to follow the guidelines of the Inter-American Court of Human Rights in cases where there may be evidence regarding the use of disproportionate force against the press.

The Inter-American Court of Human Rights has stated that<sup>52</sup>

*“In any case of use of force that has resulted in the death or injury of one or more persons, the State has the obligation to provide a satisfactory and convincing explanation of what has happened and to distort the allegations about its responsibility through appropriate evidence.”*

Finally, we should not ignore the good practices that the press can implement, such as that journalists wear garments and credentials that clearly identify and distinguish them from demonstrators, to respect the guidelines of ethics and professionalism while performing their job, avoiding involvement in the subject matter of the protest, to have adequate safety equipment and to have received training to use such equipment to protect themselves during those protests that may get out of control. These activities should involve not only media workers, but also the owners of the media companies by providing resources and training such as the ones mentioned above.

In relation to threats and attacks against the press, the cited work by Smyth mentions as an example of good practice the protection systems for journalists implemented in Colombia following a legal dispute with the Inter-Ameri-

can Court of Human Rights, and what happened in the State of Sao Paulo, Brazil, where the Public Ministry

*“sent a list of recommendations to the Military Police Command to regulate the actions of military police officers regarding professional journalists and communicators in general, in order to ensure that the performance of the organization is aimed at the protection of such professionals. The recommendations required administrative responsibility, either by action or omission, in cases related to abuses or violent acts against professional journalists and communicators in general, in addition to the continuing training of troops regarding the inviolability of the professional press in demonstrations, with special training.”*

In the works reviewed for this investigation, the importance of the training of the security forces is beyond any doubt. A good practice has been implemented by UNESCO and its partner agencies, which since 2013 have been developing training programs on freedom of expression for the security forces. According to Frank Smyth's report quoted above,

*“More than 3,400 security forces have been trained in over 17 countries including Burkina Faso, Colombia, Côte d'Ivoire, the Gambia, Iraq, Libya, Madagascar, Mali, Palestine, Rwanda, Senegal, Somalia, South Sudan, United Republic of Tanzania, Tunisia, Ukraine and Uzbekistan, South Sudan, United Republic of Tanzania, Tunisia, Ukraine and Uzbekistan.*

[...]

*The outcome of many of these trainings has been to develop standard operating procedures, protocols and institutional arrangements for how both security forces and journalists can do their jobs during protests, with due respect to the roles of each in society.”*

An investigation of possible cases of abuse is undoubtedly a good practice, since impunity can contribute to the repetition of such events. Training for this type of investigations and the

<sup>52</sup> See Inter-American Court of Human Rights. Case: Montero Aranguren y otros (Retén de Catia) vs. Venezuela. Excepción Preliminar, Fondo, Reparaciones y Costas. Judgment of July 5, 2006. Series C No. 150, para. 80.

provision of adequate resources are important on this regard.

In reference to the tensions created in relation to cases of requests for information by the press, as it was noted above, in addition to training and promoting dialogue, it is also important to establish press offices or implement websites –active transparency– that improve information and its quality in those cases in which it should be public.

## 5. Conclusions. Proposals and Strategies for Reducing Tension.

The press and the security forces, with the characteristics already mentioned, are essential in a democratic society. Many times, both institutions are naturally confronted, which creates tensions that do not benefit any of them. It is necessary to promote reforms and practices that do not exacerbate this natural tension due to vices created by agents themselves, tending to decrease the level of conflict where possible.

The press and the security forces need each other. Freedom of the press must be guaranteed by the security forces when they protect the press. The credibility of the security forces, depend, to a large extent, on the press, that when informing its decisions and, where appropriate, making them respectable, lead to citizen compliance with them.

Frank Smyth, in the work cited above, proposes a series of recommendations, such as:

- *Media outlets and employers should pay attention to safety measures including providing appropriate training and equipment to journalists when sending them to cover protests, and they should provide the same resources to freelance journalists when making use of the reports that they provide.*
- *Multilateral bodies like UNESCO should continue to invest resources in training police and other authorities on freedom*

*of expression and press freedom related to situations of protest. This training should include the role of the press in informing the public when reporting on situations of protest. It should also address how police can handle journalists covering protests, including discerning between protestors and the press, and appropriate versus inappropriate tactics to be used when dealing with the press.*

- *Media outlets, civil society groups and multilateral bodies like UNESCO should continue to invest resources to provide appropriate training to journalists on how to safely cover situations. This training should include interactions with police as well as protestors, safety guidelines in reporting on fluid and dangerous situations, resiliency training to handle stress before, during and after, and first aid so that journalists can treat each other as needed.*
- *National authorities should consider appointing an ombudsman with responsibility for the treatment by police and other security forces of the press during situations. This will ensure the appointment of an official to monitor and help curb police attacks on the press while reporting on protests.*
- *The same ombudsman or similar figure should also be authorized to make recommendations for investigation, and as needed, prosecution for government as well as civilian attacks on the press.*
- *Donors and international bodies should continue to invest resources into developing and strengthening national mechanisms for the protection of journalists. UNESCO, with support from the Dutch government, has already supported national initiatives along these lines in Afghanistan, Iraq, and Pakistan, in addition to jointly supporting regional initiatives toward establishing such mechanisms in Latin America and East Africa.*

The need for training has been repeatedly emphasized in this paper as one of the best mechanisms for reducing what here has been called

non-structural or “created” tensions. An obvious question that arises is what would be the best content for this training.

On the one hand, it has been found that there is a good number of materials that could be the starting point and serve as working material in the meetings.<sup>53</sup> It is important to note that at the beginning of the webinar organized by UNESCO,<sup>54</sup> Mehdi Benchelah reaffirmed that

*“To improve knowledge exchange, UNESCO has produced several resources to help members of the security forces and journalists better understand each other’s role.”*

Additionally, the Inter-American Institute of Human Rights (IHR), together with the Chilean

Investigation Police, has been carrying out for 10 years the “*Diplomado Internacional PDI-IIDH*”, that has produced the educational module “Human rights, citizen security and police action”<sup>55</sup> which can also be an input for the training sessions to be carried out.

On the other hand, in terms of specific content, there exist a diversity of proposals. For this work, we have found that the suggested agenda for the *Ciclo intensivo de formación virtual sobre estándares internacionales de Libertad de prensa y función policial en Iberoamérica*, carried out by FLIP in 2017, under the auspices of UNESCO and with the active participation of the Colombian National Police,<sup>56</sup> would fulfil the topics that should be discussed. These topics are:

Topics	Subtopics
<b>I. FREEDOM OF EXPRESSION AND CULTURE OF RESPECT FOR HUMAN RIGHTS</b>	1.1. Definition of freedom of expression. 1.2. History of freedom of expression. 1.3. Characteristics of freedom of expression. 1.4. The role of freedom of expression in a democracy. 1.5. Good practices by police forces elsewhere in the world.
<b>II. DUTY TO PREVENT, PROTECT AND SEEK JUSTICE FOR VIOLENCE AGAINST JOURNALISTS</b>	2.1. What is journalism? Who is a journalist? The functional criterion. 2.2. The duty to prevent. 2.3. The duty to protect. 2.4. The duty to seek justice. 2.5. The different risks affecting women journalists.

<sup>53</sup> As an example, it would be important to translate and update “Freedom of expression and public order: training manual,” available at <https://unesdoc.unesco.org/ark:/48223/pf0000231305>

<sup>54</sup> See Note 4.

<sup>55</sup> Available at <https://www.iidh.ed.cr/iidh/media/1556/acceso-justicia-modulo-2011.pdf>

<sup>56</sup> Available at <https://www.flip.org.co/index.php/en/informacion/pronunciamientos/item/2138-la-unesco-y-la-colombia-NATIONAL-POLICE-Strengthen-Alliance-for-Training-to-the-Ibero-american-Public-Force-in-Freedom-of-Expression-Standards>



Topics	Subtopics
<b>III. THE DUTY TO BE THE GUARANTOR OF FREEDOM OF EXPRESSION AND THE ROLE OF THE PRESS AND THE PUBLIC FORCE IN HIGH-TENSION ENVIRONMENTS</b>	3.1. The role of the press and the role of the public force in society. 3.2. What rules regulate the relationship between the press and the public force? 3.3. Approaches to the Professional Ethics of Journalism. 3.4. Public officials as guarantors of the right to freedom of the press. 3.5. The importance of communication between journalists and security forces. 3.5.1 Communication between journalists and the public forces. 3.5.2. The right to rectification under conditions of equity. 3.6. The role of public forces and the press in stressful situations. 3.6.1. Press conferences and interviews. 3.6.2. Social protests. 3.6.3. Evictions. 3.6.4. Crime scenes. 3.6.5. Judicial hearings. 3.6.6. Case study.
<b>IV. ACCESS TO PUBLIC INFORMATION AND THE RIGHT TO PRIVACY AND FREEDOM OF EXPRESSION ON THE INTERNET</b>	4.1. Access to public information. 4.1.1. History and characteristics. 4.1.2. Scope and limits of the law. 4.1.3. The tripartite test. 4.1.4. Access to information and protection of national security. 4.2. The right to privacy and freedom of expression on the Internet. 4.2.1. "Off-line" rights are the same as "on-line" rights. 4.2.2. Digital assaults against those who exercise freedom of expression in relation to the duties to prevent, protect and seek. 4.2.3. The Manila Principles on freedom of expression on the Internet. 4.2.4. The constitutional protection of the reservation of journalistic sources. 4.2.5. The right to anonymity and encryption of information. 4.2.6. Mass and selective surveillance: The interception of journalists' communications.

In sum, the proposals arising from this investigation come down to three main areas that should be implemented with strategies that focus on each context, but, above all, that are inclusive of all the actors involved in its design. These three areas are:

1. Training: For both the press and the security forces, so that they can understand the content and the limits of the rights involved, and that it can better be understood the role that each one

plays in a democratic society, and how they should carry out said roles.

2. Transparency: In this regard, both the transparency of the protocols for the action of the security forces in the use of force and the transparency of the police work in the tasks they carry out are crucial.
3. Dialogue: To create permanent instances of dialogue between the press and

the security forces, outside of specific situations of conflict.

In these lines of work, it would also be recommended to deepen investigations on the existence and, in that case, easy access to the specific protocols of action linking the press and the security forces. And, if they do not exist, to deepen the dialogue for the elaboration or improvement of these protocols when they exist.

It is important to note that these three main lines of work have also emerged from the consultation carried out for this investigation with members of security forces in the region. This

consultation shows that in most cases the relationship with the press was either non-existent or good. However, virtually all persons who were consulted responded positively when asked about the need for further training and were in favour of meetings being held in conjunction with the press.<sup>57</sup> The topics that were most mentioned to be included in the trainings were varied; however, these topics are related to the rules for the delivery –or not– of information to the press. The importance of understanding the work of the press was also mentioned.<sup>58</sup>

To conclude, from all the above and as a mathematical synthesis it appears that:

**TRAINING + TRANSPARENCY + DIALOGUE = < TENSION**

<sup>57</sup> A response that sums up this view specifically says, “*It is very important to train the press and the security forces, so that they both acquire knowledge and to avoid controversy.*” However, some people (although they were a great minority) responded that they did not believe training was necessary.

<sup>58</sup> One response on this regard was that “*On many occasions, as a public force, when we want to protect the life and integrity of journalists, we make the mistake to prevent them from doing their job.*”

## About the author



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