

São Paulo, January 23 2019

The following organizations present this letter of complaint for human rights violations regarding the scenario of violence that has been taking place in protests in the state of São Paulo in January of the present year.

Mr. Clement Voule, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

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Movimento Passe Livre

Summary

The protests occurred on January 11 and January 16 have been enclosed by arbitrary arrests and disproportionate use of the police force through numerous repressive techniques with the purpose of preventing protests, including indiscriminate use of non-lethal weapons such as rubber bullets and bombs of tear gas.

Moreover, the measures have been accompanied by intense surveillance by the Military Police during protests, through the use of cameras and drones. This scenario was aggravated by the decree n. 64.074/2019 which regulates law n. 15.556/2014 issued by the State Government on January 18th, in which several unconstitutional measures were adopted, such as a five-day prior notice requirement, the determination that the protest route would be defined together with the security public organs, and the criminalization of conducts such as the use of masks.

Considering the present situation, the organisations request the Rapporteurship and other competent bodies to issue a public statement about the case, demanding from the Brazilian Government the implementation of the following measures for conformity with international standards:

- I. The prohibition of arbitrary arrests of protesters;
- II. The prohibition of surveillance practices during protests;
- III. The prohibition of arbitrary searches by the police;
- IV. The guarantee of route definition by the protesters themselves, without State interference;
- V. The surcease of unnecessary and disproportionate use of the police force by public security organs;
- VI. The repeal of the decree n. 64.074/2019 and of the law n. 15.556/2014, which is regulated by the decree;
- VII. The identification of police officers with name, patent and ID number in the helmet and uniform which should be visible from a long distance, as well as the prohibition of the use of masks by the military police;
- VIII. The indication of a mediator who is not part of the police force and public security to facilitate communication between the demonstrators and public authorities;
- IX. The prohibition of action from the “Tropa de Choque” during demonstrations;
- X. The creation of a transparent guidelines for the use of the police force during protests, with popular participation from the Public Defender’s Office, Public Prosecution Office, Civil Society Organizations and other interested institutions, according to international standards related to protests;
- XI. The implementation of capacity building workshops for police officers working with security during protests, according to legal frameworks, with the main objective of preparing public authorities for such situations, and facilitating the occurrence of the protests.

Introduction

Three demonstrations were held on January 11, 16 and 23, 2019, organized by the Free Fare Movement in the city of São Paulo, which aimed to protest against the increase in the public transportation fare.

The first protest, which took place on January 11, was characterized by a series of violations, such as arbitrary searches on the demonstration surroundings. One of the inquiries made by the police to the people who were searched referred to the carrying of banners and masks, which would be prohibited.

In many cases, even when released by the authorities, people deliberately chose not to continue on the demonstration, for fear of suffering further violations, which demonstrates the effects of inhibiting the participation of individuals.

Moreover, the Military Police structured several surveillance instruments, such as one drone and fourth cameras, one of which was used exclusively for filming the negotiations between members of the social movement and police officers. Additionally, it is worth mentioning that the images of demonstrators captured by the police are generally used for identifying engaged individuals for future actions, as well as for the adoption of judicial measures.

This violation scenario escalated, since the following protest carried out on the 16th was marked by severe repression¹. In addition to the above mentioned violations, the police made use of techniques, such as surveillance, “enveloping” (when the police surround the protest from the beginning to the end) and using tear gas bombs and rubber bullets to disperse the crowd.

There is also a significant number of videos² reports that highlight the police’s act of targeting protesters through rubber bullets³⁴. In this sense, it is possible to ascertain that at

1 Cruz, Maria Teresa. "Conselho Denuncia Mais De Dez Ilegalidades Cometidas Pela PM De SP Em Protesto." *Ponte*, January 19, 2019. Accessed January 22, 2019. <https://ponte.org/conselho-denuncia-mais-de-dez-ilegalidades-cometidas-pela-pm-de-sp-em-protesto/?fbclid=IwAR0lAb2u03MqRwgRf5MRWkemrk6rSydW9YDwYlvN7-1R01PfdUw2KxI1UtI>.

2 Tajra, Alex. "Fotógrafo Leva Bala De Borracha Em Protesto Contra Preço Da Passagem Em SP." *UOL Notícias*, January 16, 2019. Accessed January 22, 2019. <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/01/16/video-mostra-pm-atirando-contra-fotografo-em-manifestacao-em-sp.htm>.

3 Cruz, Maria Teresa, and Fausto Salvadori. "PM Atira Em Fotojornalista Da Ponte Durante Manifestação Em SP E Recusa Socorro." *Ponte*, January 16, 2019. Accessed January 22, 2019. <https://ponte.org/pm-atinge-fotojornalista-da-ponte-com-bala-de-borracha-durante-protesto-em-sao-paulo/>.

4 "Protesto Contra Aumento Da Tarifa Dos Transportes Em SP Tem Violência E Detidos." *G1*, January 16, 2019. Accessed January 22, 2019. <https://g1.globo.com/sp/sao-paulo/noticia/2019/01/16/protesto-contr-aumento-da-tarifa-dos-transportes-em-sp-tem-confusao-e-detidos.ghtml>.

least two communicators covering the act were injured by rubber bullets⁵⁶. This is the case of Daniel Arroyo, a communicator from “Ponte Jornalismo” who was injured by a rubber bullet in his knee and also communicator from Futura Press injured by a rubber bullet in his leg.

In the context of these three protests, there were two sectors of the police, called “Tropa de Choque” (Riot Police) and “CAEP - Cia de Ações Especiais”, which acted extremely aggressively towards the protesters. These police officers were identified by a code composed of numbers and letters on the uniform⁷, making it difficult for memorization and further identification, and some of the officers wore masks.

Many of these actions occurred at the beginning of the demonstration at the “Praça do Ciclista”, located in Paulista Avenue, one of the most important locations in the city and that guarantees great visibility to the protests. However, the police actions intended to interfere and prevent the regular course of the protest. While the protesters were all seated discussing the route, before the demonstration itself, the police began to fire tear gas bombs, which caused the change of direction to a different avenue, where the violations continued.

In addition to all the violations described above, a total of 12 (twelve) people were arrested, 9 (nine) of whom were released on the same day, including 5 (five) people with no register of criminal occurrence and 4 (four) which had to sign a police report of a minor offense, a document in which the individual makes a compromise to attend a small criminal claims court. Three others were accused of the crimes of resistance and disobedience, as well as and possession of incendiary devices. A custody hearing was held on January 17, and all three were released on bail⁸, which does not occur frequently.

It is worth mentioning that these violations are not practiced exclusively by security public agents, since the State acts in a coordinated way through several public spheres to restrict the right of protest.

A fact that signals this point concerns the edition of the Decree n. 64,074 / 2019, by the Government of the State of Sao Paulo, on January 19, 2019. The decree regulates a law

5 “Protesto Contra Aumento Da Tarifa Dos Transportes Em SP Tem Violência E Detidos.” *G1*, January 16, 2019. Accessed January 22, 2019. <https://g1.globo.com/sp/sao-paulo/noticia/2019/01/16/protesto-contr-aumento-da-tarifa-dos-transportes-em-sp-tem-confusao-e-detidos.ghtml>.

6 Giovanaz, Daniel. “Polícia Reprime Protesto Do MPL Com Gás Lacrimogêneo E Balas De Borracha Em São Paulo.” *Brasil De Fato*, January 16, 2019. Accessed January 22, 2019. <https://www.brasildefato.com.br/2019/01/16/policia-reprime-protesto-do-mpl-com-gas-lacrimogeneo-e-balas-de-borracha-em-sao-paulo/>.

7 “Protesto Contra Aumento Da Tarifa Dos Transportes Em SP Tem Violência E Detidos.” *G1*, January 16, 2019. Accessed January 22, 2019. <https://g1.globo.com/sp/sao-paulo/noticia/2019/01/16/protesto-contr-aumento-da-tarifa-dos-transportes-em-sp-tem-confusao-e-detidos.ghtml>.

8 Enrique's bail costed R\$ 665.33 (six hundred and sixty-five reais and thirty-three cents) and Victoria and Wesley's nine hundred and ninety-eight reais (R\$ 998.00) for each one.

passed in 2014 (Law No. 15,556), which determines the requirement of prior notice and restrictions on the use of masks at protests, presenting at least three controversial points.

The first one deals with the regulation of prior notice, which must be done at least five days in advance and inform various information about the demonstration, including the route that will be covered. In this point, the decree establishes that route must be defined jointly with the public authorities⁹.

Regarding prior notice, the Brazilian Constitution states that the right of assembly does not depend on authorization, requiring only a prior notice to the competent authority. The purpose of this rule is to facilitate the right to protest, serving as an instrument for public authorities to manage protest logistics through the reallocation of transit routes via public transport, to guarantee the arrival and departure of protesters and conciliate reunions scheduled for the same place. This means that prior notice is an instrument to ensure that the act has a beginning, middle and end.

For this reason international standards demonstrate that prior notice should not bring excessive bureaucratic procedures, as this would transform it into a need for prior authorization, something absolutely unconstitutional and controversial to international human rights standards.

Moreover, the five-day in advance prior notice requirement makes spontaneous

⁹ Original text in Portuguese:

Decreto 64,074 / 2019

Artigo 2º - A comunicação prévia, necessária sempre que a reunião objetivar a participação de mais de 300 (trezentas) pessoas, deverá ser realizada às autoridades da Polícia Militar e da Polícia Civil, observando-se o seguinte:

- I - na Capital e região Metropolitana, por intermédio do Centro de Operações da Polícia Militar -COPOM ou Centro de Comunicações e Operações da Polícia Civil - CEPOL;
- II - no interior e no litoral, por intermédio da unidade policial civil ou militar da localidade;
- III - por meio eletrônico ou protocolada na unidade policial, com, no mínimo, 5 (cinco) dias de antecedência da data do evento, preferencialmente por meio de formulário-padrão a ser estabelecido pela Secretaria da Segurança Pública.

Parágrafo único - O formulário referido acima deverá conter campos para as seguintes informações:

1. natureza do evento, estimativa de número de participantes e previsão de tempo de duração;
2. se haverá utilização de equipamentos de som, caminhões, veículos, ou quaisquer equipamentos que possam demandar interdição total ou parcial de vias, mudança de direção de faixas, alterações nos transportes públicos ou que ensejem a necessidade de orientação ao público;
3. se haverá previsão de deslocamento do público, bem como o itinerário pretendido, o qual será definido em conjunto com o Comandante do Batalhão Territorial da Polícia Militar da área onde ocorrerá o evento;
4. ciência dos organizadores quanto à proibição do anonimato, da vedação ao uso de máscaras ou qualquer outro parâmetro que possa ocultar o rosto da pessoa, ou que dificulte ou impeça a sua identificação durante o evento;
5. ciência dos organizadores acerca da proibição constitucional de portar armas nas manifestações e reuniões públicas, af incluídas armas de fogo, as armas brancas, objetos pontiagudos, tacos, bastões, pedras, armamentos que contenham artefatos explosivos e outros instrumentos que possam lesionar pessoas e danificar patrimônio público ou particular.

protests impractical, besides disregarding many social dynamics involved in the organization of social movements, since the very definition of the route before the protest can be a form of protection to ostensive police repression. For these reasons, the absence of prior notice should not lead to restrictions of the freedom of protest or criminalization of protesters.

A second worrying aspect of the Decree is the criminalization of the use of masks¹⁰. According to the decree, when wearing a mask, the protester would be committing the crime of disobedience. However, wearing a mask is a constitutional practice, considering that the prohibition of anonymity should not be applied to the use of masks in protests, since it does not exclude the possibility of identifying someone who may have practiced an illegal act. According to the decree, even people wearing gas masks and scarfs for protection against tear gas bombs could be arrested for the crime of disobedience.

It is also worth mentioning that, according to the Brazilian Constitution¹¹, defining certain conducts as crimes is not in the scope of the Executive. This means that a State's Government could not define a conduct as crime, as in the use of masks in protests, because that goes beyond the jurisdiction of the state government. Therefore, the creation of criminal laws is within the scope of the Legislative, and should not be conducted by a Decree.

Finally, the Decree also establishes an equalization of licit objects to armaments¹², prohibiting the possession of objects such as pointed objects, sticks, and stones, equating them to fire weapons and white weapons.

At this point, it is important to mention that even carrying "white weapons" is

¹⁰ Original text in Portuguese:

Decreto 64,074 / 2019

Artigo 5º - O uso de máscaras ou de qualquer outro parâmetro que possa ocultar o rosto da pessoa, ou que dificulte ou impeça a identificação de participantes ou manifestante, caracterizando o anonimato vedado pelo artigo 5º, inciso IV, da Constituição Federal e pelo artigo 2º da Lei nº 15.556, de 29 de agosto de 2014, autorizará a intervenção pelas Polícias Civil e Militar, de modo a exigir o cumprimento das normas constitucional e legal.

§ 1º - A recusa poderá caracterizar o delito de desobediência, tipificado no artigo 330 do Código Penal, hipótese em que a pessoa poderá ser conduzida à Delegacia de Polícia para sua identificação e formalização de eventual ato de polícia judiciária.

¹¹ Article 22. The Union has the exclusive power to legislate on:

I - civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law;

¹² Original text in Portuguese:

Decreto 64,074 / 2019

Artigo 2º - A comunicação prévia, necessária sempre que a reunião objetivar a participação de mais de 300 (trezentas) pessoas, deverá ser realizada às autoridades da Polícia Militar e da Polícia Civil, observando-se o seguinte. (...)

Parágrafo único - O formulário referido acima deverá conter campos para as seguintes informações

5. ciência dos organizadores acerca da proibição constitucional de portar armas nas manifestações e reuniões públicas, aí incluídas armas de fogo, as armas brancas, objetos pontiagudos, tacos, bastões, pedras, armamentos que contenham artefatos explosivos e outros instrumentos que possam lesionar pessoas e danificar patrimônio público ou particular

considered a criminal offense by a large part of Brazilian doctrine and jurisprudence. The Supreme Federal Court is currently examining the issue¹³, but has not yet expressed its opinion on the matter.

The unconstitutionality of the Decree is evident, since it creates new legal attributions to objects, prohibits the use of flags, besides indicating that the organizers of the protests could be held accountable for such conducts coming from third parties.

It is important to highlight that this type of illegal practices conducted by the State of Sao Paulo should be not considered a new feature. In June 2013, the increase in bus, subway and train fares caused a great uproar in a large part of the population, especially in the poorer sections of society. Given the scenario, demonstrators organized a series of protests in June 2013 against the abuse of tariffs, as well as the poor conditions of urban public transportation throughout the country. The protest in this context were highly repressed by the police, through large police forces present on the events, divided into several groups and approaching and searching hundreds of passers-by, facts that were widely reported in the press.

Faced with such a situation, a group of Public Defenders engaged in the protection of demonstrators and collected evidence from the hundreds of arrests for investigation that occurred in the context. Moreover, the Public Defender's Office of the State of Sao Paulo filed a Public Civil Action in 2013 in an attempt to impose on the State the prohibition of the practice of "arrests for investigation". The lawsuit was dismissed by the state court and awaits judgment before the Federal Supreme Court.

Moreover, the Military Police of the State of Sao Paulo implemented the capture of photographic images and audiovisual recordings of demonstrators through cameras, drones and camcorders in the first wave of protests in 2013¹⁴.

The monitoring was based on a guideline allowing the creation of an official database of protests and protesters, which clearly endangers freedom of expression by violating privacy and serving as a tool to intimidate and criminalize demonstrators.

On January 22 of this year, during the third protest, the scenario of violations continued, with a series of police actions aiming at the prohibition of the use of masks by the participants¹⁵ with legal support given by Decree 64.074 / 2019. At the beginning of the

13 Federal Supreme Court n. ARE 901623

14 SISTEMA " OLHO DE ÁGUIA " DA POLÍCIA MILITAR DO ESTADO DE SÃO PAULO [PDF]. (2011,

15 Menezes, Newton. "MPL Faz Primeiro Ato Após Decreto De Doria Proibindo Uso De Máscara." R7, January 22, 2019. Accessed January 23, 2019. <https://noticias.r7.com/sao-paulo/mpl-faz-primeiro-ato-apos-decreto-de-doria-proibindo-uso-de-mascara-22012019>.

protest, the police announced the ban on the use of masks, requesting their removal and apprehension¹⁶.

The scenario occurred on the 22nd demonstrates attempts to implement the decree edited by the Government of Sao Paulo, which has numerous legal inconsistencies and is in disagreement with international standards.

It is evident that this current scenario of repression is not disassociated with past actions from the police regarding protests, but reflects a continuation of restrictive practices institutionalized by Brazilian authorities.

Conclusion

As exposed, protesters in Brazil are currently facing a series of violations, such as: (i) the intensification of the State surveillance apparatus through the use of cameras and drones; (ii) use of repressive techniques such as the “enveloping” and indiscriminate use of rubber bullets and tear gas bombs; (iii) control of the route, by means of the prohibition of the protest in certain high visibility routes; (iv) prohibition of wearing masks and flag stick; (v) intimidation techniques, such as indiscriminate searches and arbitrary arrests.

In addition to these actions practiced by security agencies, the restrictions occur through other spheres of public power, as evidenced by the edition of Decree n. 64,074 / 2019.

From the analysis of the Decree, as well as the context in which it is published, it is evident that it is part of a scenario of intensification and sophistication of the instruments of repression, criminalization and restriction of the right of protest.

Considering this brief summary of the main issues involved in the recent protest events in the country, we, the undersigned organizations, request the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to issue a public statement about the subject, demanding that the government comply with international standards, through the adoption of the following measures:

- I. The prohibition of arbitrary arrests of protesters;
- II. The prohibition of surveillance practices during protests;
- III. The prohibition of arbitrary searches by the police;

¹⁶Amendola, Gilberto. "MPL Faz Novo Ato Contra Aumento Da Tarifa No Centro De São Paulo." *Bol Notícias*, January 22, 2019. <https://www.bol.uol.com.br/noticias/2019/01/22/mpl-faz-novo-ato-contra-aumento-da-tarifa-no-centro-de-sao-paulo.htm>.



IV.

The guarantee of route definition by the protesters themselves, without State interference;

V. The surcease of unnecessary and disproportionate use of the police force by public security organs;

VI. The repeal of the decree n. 64.074/2019 and of the law n. 15.556/2014, which is regulated by the decree;

VII. The identification of police officers with name, patent and ID number in the helmet and uniform which should be visible from a long distance, as well as the prohibition of the use of masks by the military police;

VIII. The indication of a mediator who is not part of the police force and public security to facilitate communication between the demonstrators and public authorities;

IX. The prohibition of action from the “Tropa de Choque” during demonstrations;

X. The creation of a transparent guidelines for the use of the police force during protests, with popular participation from the Public Defender’s Office, Public Prosecution Office, Civil Society Organizations and other interested institutions, according to international standards related to protests;

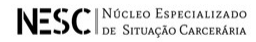
XI. The implementation of capacity building workshops for police officers working with security during protests, according to legal frameworks, with the main objective of preparing public authorities for such situations, and facilitating the occurrence of the protests.

Signatories

This urgent appeal has been signed by the following organisations:

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