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English Edition

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Forced Disappearances?

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INTRODUCTION



SUR 16 was produced in collaboration with the **Regional Coalition on Citizen Security and Human Rights**.¹ Every day individuals are subjected to countless forms of violations of their security. Entire impoverished communities have been deprived of their right to participate in the decisions about their own security; in some areas, citizens are exposed to violence both from criminals and from police allegedly combating crime; developments in the regional and international levels as well as in the local and national levels have been disparate and unsatisfactory. By discussing those topics and others, the articles in the dossier exemplify both the challenges and the opportunities in the field of citizen security and human rights.

The non-thematic articles published in this issue, some of which also touch upon the issue of security, albeit more tangentially, provide insightful analyses of other pressing matters relating to the field of human rights: violence against women, forced disappearances, genocide, the right to self-determination, and migrations.

Thematic dossier: Citizen Security and Human Rights

Security and human rights hold an intrinsic – and problematic – relationship in regions with high rates of criminal violence. In these contexts, lack of security can be both a consequence and a pretext for human rights violations, as human rights can be presented as impediments to effective policies against crime. It is precisely to conciliate the agendas of security and human rights, particularly in Latin America, that the concept of citizen security has emerged.

Citizen security places the person (rather than the state or a political regime) as the main focus of policies directed at preventing and controlling crime and violence. In Latin America, such paradigm shift took place in the last few decades, as part of the transition from military dictatorships to democratic regimes. The concept of citizen security seeks to reinforce the idea that security goes hand-in-hand with protecting human rights, and therefore clearly departs from the authoritarian idea of security as protection of the State, common in the times of military dictatorships in Latin America and elsewhere.

In its 2009 “Report on Citizen Security and Human Rights”,² the Inter-American Commission on Human Rights (IACHR) defines citizen security in the following terms: “The concept of citizen security involves those rights to which all members of a society are entitled, so that they are able to live their daily lives with as little threat as possible to their personal security, their civic rights and their right to the use and enjoyment of their property” (para. 23). Thus, the concept of citizen security used by the IACHR includes the issues of crime and violence and their impact on the enjoyment of personal freedom, specifically property and civil rights.

The report by the IACHR also intends to inform the design and implementation of public policies in this area. In paragraphs 39-49, the Commission highlights the States’ obligations regarding citizen security: (i) Taking responsibility for the acts of its agents as well as for ensuring the respect of human rights by third parties; (ii) Adopting legal, political, administrative and cultural measures to prevent the violation of rights linked to citizen security, including reparation mechanisms for the victims; (iii) Investigating human rights violations; (iv) Preventing, punishing, and eradicating violence against women, pursuant to the Convention of Belém do Pará.

In order to fulfill such obligations, the States should adopt public policies in the area of citizen security that incorporate human rights principles and that are comprehensive in their rights’ scope; intersectorial; participatory in regards to the population affected; universal, i.e. inclusive without discriminating vulnerable groups; and, finally, intergovernmental, involving different levels of government (para. 52). Even though these guidelines do not serve as a prescription, their focus on the actual impact of security policies on the enjoyment of the rights of individuals, their attention to the multi-sectorial nature and participatory mechanisms of those policies, as well as the obligation of preventing crime and violence by tackling its causes, serve as solid guide for States or for civil society organizations and victims wishing to advocate for security policies that promote human rights.

In other words, the concept of citizen security highlights that security policies must be, at very least, people-oriented, multi-sectorial, comprehen-

1. The Coalition is formed by the following organizations: Center for Legal and Social Studies (CELS) – Argentina, Brazilian Public Security Forum – Brazil, *Instituto Sou da Paz* – Brazil, Center for Development Studies (CED) – Chile, Center for Studies on Citizenship Security (CESC) – Chile, Center for the Study of Law, Justice and Society (Dejusticia) – Colombia, Washington Office on Latin America (WOLA) – United States, Myrna Mack Foundation – Guatemala, Institute for Security and Democracy (INSYDE) – Mexico, Miguel Agustín Pro Juárez Human Rights Center (Prodh Center) – Mexico, Fundar, Center of Analysis and Research – Mexico, *Ciudad Nuestra* – Peru, Legal Defense Institute (IDL) – Peru, Support Network for Justice and Peace – Venezuela. Representatives of the Andean Development Corporation (CAF) and the Open Society Foundations also took part in some of the meetings of the coalition.

2. Inter-American Commission on Human Rights, “Report on Citizen Security and Human Rights”, Doc. OEA/Ser.L/V/II. Doc.57, 31 December 2009, available at: <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>. Last Accessed on: May 2012.

sive, context-specific and prevention-oriented,³ as well as participatory and non-discriminatory. The papers in the present dossier reveal how daunting and necessary this task is.

In **Citizen Security and Transnational Organized Crime in the Americas: Challenges in the Inter-American Arena**, Peru's former interior minister Gino Costa examines some of the main challenges and advances in inter-American efforts to combat organized transnational crime using the concept of citizen security. In **The Current Agenda of Security and Human Rights in Argentina**, researchers from Argentina's Center for Legal and Social Studies (CELS) describe the public security agenda in Argentina within the regional context, analyzing the first year of operations of the country's Ministry of Security and its attempt to implement policies incorporating the concept of citizen security. This same department is the subject of an additional article appearing in this issue. In **Civic Participation, Democratic Security and Conflict between Political Cultures - First Notes on an Experiment in the City of Buenos Aires**, Manuel Tufro examines a pilot program recently implemented by the Argentinian ministry with the aim of expanding public participation in the planning of local public safety policies. In the essay, Tufro analyzes the conflicts arising from this attempt to disseminate a practice in line with the ministry's agenda of promoting "democratic security" in places in which mechanisms of participation owe their existence to what he calls a "neighborhood political culture".

In **The March of Folly and Drug Policy**, Pedro Abramovay uses Barbara Tuchman's work to examine drug policies that have been implemented since 1912, arguing that they are example of policies that are not in the interest of the community being served by the policymakers who designed them.

Finally, this issue's dossier includes a double interview about the recent implementation of UPPs (Pacifying Police Units) in poor communities of Rio de Janeiro (Brazil) previously dominated by criminal organizations. The interviewees are José Marcelo Zacchi, who helped design and implement a government program to expand social and urban services in the areas served by the UPPs, and Rafael Dias, a researcher at human rights NGO Justiça Global.

Non-thematic articles

This issue includes five additional articles relating to important human rights issues.

In **Extraordinary Renditions in the Fight against Terrorism – Forced Disappearances?**, Patrício Galella and Carlos Espósito argue that the practice of kidnappings, detentions and transfers of presumed terrorists by United States officials to secret prisons in third-party States where they are presumably tortured – euphemistically called "extraordinary renditions" – guard similarities with the forced disappearance of persons. The distinction is important because

it means that perpetrators of forced disappearances may be prosecuted as having committed crimes against humanity.

Also dealing with crimes against humanity is an article by Bridget Conley-Zilkic in which she examines the field of genocide prevention and response as it furthers its professional development. In her essay, titled **A Challenge to Those Working in the Field of Genocide Prevention and Response** she explores some of the conceptual and practical challenges facing this field, such as how to define genocide, what can organizations do to prevent it, who are the subjects of these organizations' work, and how to measure success.

Another article, **The ACHPR in the Case of Southern Cameroons**, critically analyses decisions by the African Commission on Human and People's Rights concerning the right of self-determination. In it, Simon M. Weldehaimanot proposes that the case of Southern Cameroons has ignored previous jurisprudence and made this right unavailable for "peoples".

Also touching upon challenges to the sovereignty of nation-states is **The Role of the Universalization of Human Rights and Migration in the Formation of a New Global Governance**, in which André Luiz Siciliano reviews the literature on migration to propose that it is an issue which is still mired in anachronistic Westphalian notions that impede the broad and effective protection of fundamental human rights, as opposed to recent concepts such as cosmopolitan citizenship and the responsibility to protect.

In our final article, researchers from Brazilian think-tank Cebrap (Centro Brasileiro de Análise e Planejamento) examine challenges to the constitutionality of recent legislation on domestic violence, the so-called Maria da Penha law. In **Law Enforcement at Issue: Constitutionality of the Maria da Penha Law in Brazilian Courts**, the authors show that most judicial opinions favor positive discrimination of women in order to combat a scenario of chronic inequality. In a context of historical and ongoing oppression of women by men, they argue, treating men who commit domestic violence against women more stringently than women does not hurt the over-arching principle of non-discrimination.

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3. See the report developed by the United Nations Development Programme (UNDP) in partnership with the Inter-American Institute of Human Rights (Costa Rica), available at: http://www.iidh.ed.cr/multic/default_12.aspx?contentid=ea75e2b1-9265-4296-9d8c-3391de83fb42. Last accessed on: May 2012.

CELS

The Center for Legal and Social Studies (CELS)* is an organization that works to protect and promote human rights. Since it was created in 1979 in the midst of the military dictatorship, CELS has fought against systematic human rights violations in Argentina by investigating, documenting, reporting, and litigating in favor of fundamental rights. With the return to democracy in 1983, CELS started to work to consolidate the role of the state in the protection of human rights, influencing the design and implementation of public policies. CELS is dedicated to the fight against impunity for serious human rights violations committed during the dictatorship and structural violations of human rights committed under democracy, in order to strengthen rule of law. Today, CELS works on critical issues such as citizen security, police violence, detention conditions, including torture; economic, social, and cultural rights; the strengthening of judicial institutions; expanded access to justice for vulnerable groups; and the democratization of the armed forces. The intervention strategies that CELS uses include research, advocacy, strategic litigation of key cases to denounce the structural patterns of human rights violations, questioning the content, orientation and implementation of public policies, and suing for the legal protection of vulnerable groups and persons.

ABSTRACT

This article takes stock of the public security agenda in Argentina within the regional context. In this sense, it analyzes the Ministry of Security's first year of operations (it was created in December 2010) and provides some specific experiences with an overview of variety of regional security and human rights approaches. While the current changes to security policy in Argentina have their own characteristics and adaptations, they are framed by and interact with some regional trends. This paper explores progress towards gaining political control over security matters, as well as the effects of the international "new threat" agenda. Some of the enacted measures should serve as warning signs, showing how less democratic trends in security can permeate local political decisions if internationally accepted.

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Security – Human rights – Police – Civilian government – New threats – Anti-terrorism – Argentina

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THE CURRENT AGENDA OF SECURITY AND HUMAN RIGHTS IN ARGENTINA. AN ANALYSIS BY THE CENTER FOR LEGAL AND SOCIAL STUDIES (CELS)*

Issues linked to citizen security and human rights have gained a renewed focus in Argentina. Two recent experiences are milestones that highlight the current state of the local debate.

First, human rights organizations like the Center for Legal and Social Studies (CELS) have been increasingly involved in the debate around security policies, broadening and enriching the traditional agenda of police violence. One strategy has been to promote the Democratic Security Agreement (ASD),¹ which was created in December 2009 and brings together different social and political actors who promote efficient political solutions to the problem of crime from a perspective that respects citizens' rights and freedoms.

Another is the creation of the Ministry of National Security in December 2010,² which began a new phase of civilian government and indicates a shift away from the historical decision to delegate security to the police institutions by Argentine administrations.³

In this article,⁴ we analyze some of the things promoted by the Ministry in its first year, which point to a strategy to recover political control over security forces and to intervene where autonomous centers of power exist, such as in the Argentine Federal Police Force (PFA). We frame the analysis in the context of certain regional trends related to citizen security and explain some of the tensions that arise between security and human rights in regional discussions, and how they manifest themselves in the national arena. Finally, we describe the ASD as a space for advocacy and dialogue around public policies on security that respects human rights.

As an introduction, we raise the importance of differentiating between

*By Paula Litvachky, Marcela Perelman and Victoria Wigodzyk

governance of security and governance of security institutions. It is an analytical differentiation that enriches the evaluation of a governance agenda that, while addressing institutional control over security forces, also implies returning control of operational security decisions to the political sphere.

1 Governance of security and governance of security institutions

The disinclination of political authorities to govern security in Argentina was extensive both over time and across jurisdictions, even though standards and hierarchy had officially placed police forces under elected authorities since the return to democracy in 1983. This implies that what is usually called “self-governance” emerged from the decision of political authorities not to get involved with managing security matters, either due to a belief that the police had the right knowledge, or because the necessary steps of relinquishing control could bring about destabilizing power that the police forces have exercised in the past.

This “delegative model” supposes a double abdication: both of the exercise of governance of security matters and of the exercise of governance of police institutions. While in practice both issues are intimately related, for the purposes of this analysis, it is helpful to differentiate between the two. On one hand, every government is responsible for exercising strategic civilian leadership of the police, which requires maintaining full control over the institution. Meanwhile, preventing and punishing crime and violence in an efficient and legal manner must be done through criminal policy priorities and strategies—among other things—that are established and led by government authorities that take into account social problems and conflicts.

The relationship between the two dimensions is found, first, in that relinquishing control over the police forces implies, in practice, a refusal to establish criteria for recruitment, training, control, resource allocation, and many other matters, without which it is impossible to follow a security agenda that does not arise from the police organization itself. Second, this kind of delegation of power favors police collusion and participation in illegal networks, which constitute the most serious problems with crime.

Although the civilian and political governance of security matters is a key demand of human rights organizations and those who work for the democratization of security in Argentina, the fact that political authorities take on the role that corresponds to them is just one point of departure for promoting democratic security policies. It is important to analyze the policies that have been sustained as well as police actions and their effects in order to substantively assess these efforts in terms of what linkages are being made between security and human rights in practice, not just in speech.

2 The Ministry of National Security’s first year: exercising governance of security

The Ministry of National Security has completed its first year during which the key issue was the decision to return control of security to the political authorities before reforming the legal framework that applies to the police. It is worth noting

that the new Ministry has implemented a series of actions that demonstrate its commitment to exercise civilian control over security matters and the federal police forces, thereby discontinuing the historical pattern of delegating governance of security matters and police institutions to the police themselves—particularly the PFA. The set of operations and plans promoted by the Ministry constitutes a new pattern of security policies that advances their control over territory, population, and security forces.

In terms of governance over the security forces, the first thing that stands out is the change made to the PFA's centers of power. This has been carried out primarily through four measures that had significant symbolic and operational impacts. First, there was the transfer of passport administration from the PFA, which had historically been responsible for managing this important documentation, to the Ministry of the Interior. Second, the PFA was moved out of the neighborhoods in the south of Buenos Aires where its involvement in local illegal networks was a major component of the crime in the area and was replaced by two other federal security forces: the Gendarmerie and the Naval Command. Third and fourth, there were interventions into two areas where the PFA had self-defined the distribution of security services, frequently based on legal or illegal agreements between the police and individuals or businesses in the area: the discretionary handling of “additional services”⁵ and the political centralization of decisions about how to distribute police services on the street. In turn, these measures allowed security resources to be reallocated to strengthen services provided in the city of Buenos Aires and together, they show an intervention into key spaces where the PFA had traditionally exercised arbitrary, illegal, and highly lucrative authority.

Second, the Ministry intervened at critical points in the profession and performance of the police in order to shape the profile of police officers and institutions, including through efforts to recognize the rights of the police themselves. This merging of control and “police wellbeing” within the Ministry's operational areas is a unique characteristic of the current government's management style, which is recognized as such on the regional level. It could serve as the basis for a new consensus within the security forces around something other than a delegative model.⁶

In terms of measures undertaken in areas critical to the human rights agenda, there are draft protocols to regulate police action, an unprecedented recognition of the role of the federal security forces in the state terrorism that emerged in Argentina during the last military dictatorship between 1976 and 1983, as well as the inclusion of a gender perspective in different aspects of management.

However, the changes driven by the Ministry have been institutionalized to varying degrees, and it is too soon to measure their impact on security and human rights. For example, the legal framework that applies to the security forces has not been reformed, even though their internal regulations are starting to be changed through ministerial resolutions. During its first year, and in the context of the 2011 election campaign, the Ministry did not seek to reform the foundational and personnel laws of the federal security institutions, changes that are necessary

to begin a new phase of the federal security system. The intervention strategy has focused more on recovering control over the operational decisions and institutional management of the police, rather than reforming the outdated laws under which they operate. However, at the level of the internal standards, a series of ministerial resolutions has reformed and increased the transparency of various regulations that the institutions had previously managed with great discretion and obscurity.

3 Local tensions surrounding democratic security and human rights

The Ministry has promoted an unprecedented, massive deployment of police officers and prefects into the streets of the capital and the province of Buenos Aires. For example, just a few days after it was created, the Ministry launched Operation Sentinel, which deployed 6,000 police officers across 24 districts of greater Buenos Aires. Meanwhile, Operation Southern Belt intensified security and surveillance in the southern parts of Buenos Aires by deploying the National Gendarmerie and the Naval Command, which, as mentioned earlier, had the immediate effect of displacing the territorial power of the PFA from the places where they had a long history of complicity with crime and violence.

Both operations, as well as the recent announcement of the creation of the Neighborhood Prevention Police, were interventions targeted at poor areas where violations of rights occur more often. The positive aspects of these measures include first the decision by the security authorities to prioritize these places. Second, the inclusion of the residents of the towns and settlements as partners of the political authorities and beneficiaries of security policies, not just—as historically has been the case—as threats that must be controlled.⁷ Third, different indicators affirm that these operations have been well received by the target population.⁸

However, using different mechanisms in these territories than those used in the rest of the city raises sensitive human rights concerns, implying a relationship between poverty and crime. This is an issue that has not been clearly addressed in the local debate, even by those who support democratic security policies.⁹ The relationship between crime and poverty is difficult terrain for the human rights discourse, in part because the poor are the primary victims of the repressive tools of the penal system, and simply exposing them to these agencies puts their fundamental rights at risk.

During the 2011 election campaign, the need to implement “comprehensive prevention policies” that tackle the causes of insecurity was a common theme across the whole political spectrum. Candidates who had different perspectives on security matters—even those who had defended the most authoritarian programs in the past—agreed on this point. Thus, arguments related to the link between inequality and insecurity and, in the absence of a deeper analysis, supported both programs that protect the rights of impoverished sectors, and criminalizing interventions that bring more violence to the sectors they claim to protect. Frequently, however, politically correct rhetoric on “the social” leads to new ways of criminalizing poverty.

Considering the policies that are under development and the homogeneity of the dominant rhetoric in both democratic and authoritarian debates around security, it becomes necessary to make analytical and empirical contributions that identify criteria for evaluating such policies, where otherwise the diagnosis remains implicit. These criteria allow one to evaluate how these territorial deployment policies affect the rights of the people who live in those zones, who are mostly poor.

Here we seek to call attention to the need to strengthen all types of controls over the territorial approach to security, including political, judicial, legislative, and other controls by outside bodies that monitor and defend rights. Territorially differentiated interventions require special controls aimed at the critical elements of the relationship between the security forces and the local residents. For example, some abusive practices—such as informal and unrecorded detentions on public roads—elude traditional controls, and therefore necessitate the design of special control mechanisms.

4 The Argentine case within the regional context

The reforms that have taken place off and on in Argentina in recent years have intensified since early 2011 and form part of a regional trend that values and prioritizes, at least in the discourse, a focus on prevention and accountability.¹⁰ Certainly the implementation of these concepts is dissimilar and sporadic across the different countries in the region. In general, the political rhetoric and the academic advances have not been consistently accompanied by security strategies that apply and sustain these values in the medium and long term.

However, as different authors have noted (UNGAR, 2011, p. 4-6; DAMMERT; BAILEY, 2005), several countries in the region have incorporated “problem-oriented policing” into their policies over the last decade; this approach centers on resolving conflicts in a specific context, prioritizing the prevention of crime, and investigating its causes. Under this kind of security policy, the police play a proactive role focused on analysis and prevention, rather than acting in a purely reactive and frequently repressive way. The impact of this type of policy on human rights has not been sufficiently discussed or evaluated.

While the current changes to security policy in Argentina have their own characteristics and adaptations, they are framed by and interact with these regional trends. As mentioned in the previous section, however, these changes lead to certain tensions around human rights that should be managed by the political authorities and monitored by civil society.¹¹

5 Regional tensions surrounding democratic security and human rights

The security debates taking place at the regional level in different multilateral forums have also permeated the discourse and policies at the national level in another way. In recent decades, tension has arisen between different security paradigms in Latin America. On the one hand, there is a view that confronting

crime and violence requires policies that build capacity for civilian and political management of security institutions without militarization. This view was reflected in the *Report on Citizen Security and Human Rights* published by the Inter-American Commission on Human Rights (2009).¹² On the other hand, the situation of insecurity and violence can be attributed to the “new threats”,¹³ which leads to defining social groups or actors that must be controlled by the police, the armed forces, or both. Fundamentally, this view operates within a friend-enemy logic, which allows for heavy-handed interventions based on the idea that internal security problems threaten institutionalism and even regional stability. This view also posits a need to professionalize the police forces, but in practice, this is frequently done with an eye towards militarization as a key tool to “fight insecurity”.

In recent years, these analytical frameworks have appeared in regional negotiation processes and dialogues.¹⁴ In general, the concept of “new threats” remains central to the definition of security policies and explanations of crime and violence in the region. The police and military are often turned to for responses to political, economic, social, public health or environmental problems or concerns (CHILLIER; FREEMAN, 2005). Making reference to the “new threats” such as terrorism, drug trafficking, or trafficking in persons or assets, broadens the traditional definition of national defense to the point of superimposing internal security issues that are perceived to be threatened by these supposedly new and nonconventional conflicts. This perspective has guided the regional debate in recent years, and has made security a key focus of States’ political and social agendas.

In Argentina, the line between security and defense has been an institutional hinge of the democratic transition.¹⁵ Except for some political conjectures and isolated remarks made during electoral campaigns, there has generally been a strong political consensus around the need to maintain that separation (CENTRO DE ESTUDIOS LEGALES Y SOCIALES, 2011, cap. II).¹⁶ However, regional discussions around the new threats question the delineation between the two, since many countries have a history with the heavy militarization of internal security efforts (particularly Mexico and Central America, but also, in different ways, in Brazil, Venezuela and Colombia) (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2009, p. 42-44).¹⁷

The Argentine government’s position on this is contradictory. On the one hand, in 2011 the government stated in different regional meetings that it does not endorse the tendency towards militarization nor the application of regressive human rights standards in security policies. On the other hand, this year it internally promoted two worrisome initiatives that contradict its previous positions to varying extents.

The measure that most strained the principles of the government’s program was the approval of the so-called “anti-terrorism law”.¹⁸ This law reforms the penal code and doubles sentences for all crimes where it is determined that there was “the aim of terrorizing the population or forcing national public authorities, foreign governments, or agents of an international organization to take an action or to abstain from doing so” (ARGENTINA, 2011b).¹⁹

There are various criticisms of this initiative. The reform introduces an aggravating factor for all crimes in the penal code using very poor legislative technique that creates a loose formulation that leaves the interpretation of possible “terrorist aims” or acts of extortion open to judicial discretion.²⁰ The reform also creates internal inconsistencies within the penal code. For example, it modifies the range of punishments by allowing lesser crimes, if committed with “terrorist aims”, to be punished more severely than the most serious crimes. While these may appear to be mere technicalities, they show that the consequences of thoughtless penal reforms, which feed the “voracity” of the penal system, are not seriously considered.

Even more importantly, this law brought Argentina in line with the regional trend of hardening penal legislation as a response to terrorism. From an international policy perspective, Argentina seems to have responded to a threat of being excluded from the G20 by the Financial Action Task Force (FATF),²¹ an inter-governmental organization created at the behest of the G7 and comprised of the world’s largest economies. In doing so, Argentina missed an opportunity to discuss the best way of complying with international obligations without weakening constitutional guarantees.

The second worrisome issue is the use of military resources to improve surveillance and control of the country’s border regions. In mid 2011, the national government launched Operation Northern Shield (ARGENTINA, 2011a)²² to respond to the transnational security problems related to drug trafficking, trafficking in persons, and the smuggling of goods the use of radars and military resources, and together with the police and security forces. It was presented as a measure aimed at building capacity in some provinces to control land, river, and air space.²³

The operation involves joint work and coordination between the Ministry of National Security and the Ministry of Defense, although the regulation that applies to these operations explicitly states that the national government will control a policy so that the armed forces do not intervene in internal security matters. It also states that internal security forces will carry out the operations that emerge from the identification of illegal acts. However, this kind of intervention strains these principles and raises several questions. A first issue is the linking of regional security problems to “new threats” and the resulting tendency to incorporate the armed forces in security operations that fall into this category (even if only instrumentally, through technological support). This creates concern about the blurring of the line between national defense and internal security, particularly in a regional context where, as previously mentioned, the armed forces are increasingly involved in internal conflicts.

A second relevant question is the need to establish how to guarantee political governance and civilian control over Operation Northern Shield when it includes so many joint actions carried out by both the military and the police. Along the same lines, we can ask how the intelligence information produced through such control and surveillance operations will be managed; in addition to the collection of information, in many cases this implies the self-generation of tasks, which is contrary to National Intelligence Law 25.520.²⁴ In 2008 it was established that information collected by the Armed Forces during “Irregular Aerial Transits

(IATs)²⁵ should be passed on to the civilian authorities of the domestic security system. In other words, military radar operators cannot carry out intelligence activities using the information they collect because they do not have the mandate to systematize or analyze the information. Although a joint resolution issued later by the Ministries of Security and Defense established limitations consistent with the national intelligence law, it is still troubling that it is not expressly stated that conducting and controlling the transfer of this information to the security forces should be done exclusively in the civilian sphere.

Now we will try to reflect critically on the influence of regional and international security agendas on local policy. The “new threat” agenda is permeating governments’ security agendas, with the added complexity promotion in countries with progressive governments. The approval of the Anti-Terrorism Law, one of the high priority measures promoted by the FATF, serves as a warning of how the local political class accepts the less democratic, but internationally accepted trends in security.

6 The experience with the Democratic Security Agreement

As already mentioned, the security and human rights agenda in Argentina gained new momentum with the creation of the Democratic Security Agreement (ASD) in late 2009. Different social and political actors in Argentina have come together to identify and promote basic agreements on these issues. In this sense, the ASD emerged as a multi-sectoral alliance aimed at designing and implementing actions to promote efficient policies that respect human rights given public demand for increased security. Signed by more than 200 politicians, cultural icons, academics, representatives of social and non-governmental organizations, and experts from different sectors and political orientations, the foundational document has ten principles that relate to three areas: the security forces, judicial powers, and the prison system.

6.1 *State response to crime*

In Argentina, state action to address the increase in violence and crime has mostly been limited to simplistic authoritarian responses that have further entrenched the ineffectiveness of the police, judiciary, and prison system. In recent years, some security institution reform processes had favorable results, but they were interrupted in order to return to policies that had been proven to fail.

6.2 *The deceit of the iron fist*

Iron fist policies have not reduced crime. Rather, they have increased violence and, in some cases, they have even posed a threat to democratic governability. Recurring themes in these iron fist policies include the delegation of security to the police, increases in sentencing, the weakening of guarantees, and policies centered on mass imprisonment and preventive detention. The repeated failures of these policies have

been used to insist on continuing with the same formulas, creating a reckless spiral that has never accounted for its results. This series of misguided interventions has not only been an impediment to the professionalization of the police, but it has also boosted the action of illegal networks that enjoy the participation of public officials.

6.3 The responsibility of the State

The state is responsible for ensuring that the public can freely exercise and enjoy their rights. Building a citizenry that respects the law is the ideal, but if the law is broken, the state should provide the means necessary to identify and punish those who are responsible.

Suitable policy to address crime and security requires police who are effective at prevention, who are highly professional and properly compensated. It also requires a criminal justice system that investigates and tries those who break the law in a timely manner, that guarantees full compliance with the rules of due process and the defense at trial. Finally, it needs a prison system that provides decent conditions and executes sentences with a vision of social rehabilitation.

6.4 A comprehensive view of security

Solving this problem requires addressing the causes of crime and criminal networks in order to reduce all forms of violence. A comprehensive view of security implies both preventing physical violence and guaranteeing decent living conditions for the whole population. This requires an integrated approach with strategies that connect security policies with other public policies, and that complements the actions of the penal system with interventions in all other areas under the state's purview. These state resources should be distributed in an egalitarian fashion and should increase protection for traditionally excluded sectors so as to avoid exacerbating inequality.

To advance a comprehensive and effective approach to the security problem, the design and implementation of democratic policies should be based on studies that are based on accurate and publically accessible information. Producing such information is also a non-transferable duty of the State.

6.5 The democratic management of security institutions

All governments are responsible for exercising strategic civilian leadership over the police and this assumes that they have full control over the institution. Preventing and punishing crime in an efficient and legal manner requires a police system that is strictly subordinated to the public security directives issued by government authorities. Recent history shows that delegating this responsibility facilitated the formation of police divisions that operated autonomously, organized vast corruption networks and even threatened democratic governability.

The basic guidelines for the modernization and democratic administration of security institutions are: the integration of police efforts on preventive security

and criminal investigation; the institutional decentralization of the police force to the district and community levels; the cooperation of the police with communities and local governments for the social prevention of violence and crime; internal civilian control and external control of performance and legality; a non-militarized training system for the police that is rooted in democratic values; and a training regimen based on ranks and police specializations.

6.6 The deactivation of criminal networks to reduce violence

The purely repressive measures promoted during security crises are aimed at prosecuting petty crimes and the youngest offenders under the false belief that this will stop increases in crime. The reality indicates that a large percentage of common crimes are associated with major criminal networks and an illegal arms market that puts people's lives and integrity at risk.

Therefore, reducing the violence that has our society in a state of alarm will require redirecting criminal investigation and prevention resources towards the deactivation of these criminal networks and illegal markets. The Public Prosecutor's Office plays a fundamental role in this task, together with other government authorities. A judicial police force under the auspices of the Public Prosecutor's Office will bring transparency to the preparation of criminal investigations.

6.7 Non-violent police action in the public arena

Democratic management of security should guarantee control over police actions carried out during operations in public spaces, such as sporting events, recitals, social protests, and evictions. This requires establishing standards with regulatory status to cover action in public spaces so as to ensure that the use of force is proportional, rational, and secondary to other alternatives, and to eradicate police practices that violate these criteria.

6.8 The role of the judicial system

The judicial branch and the Public Ministry are both responsible for promoting democratic security policies, for quickly and effectively investigating crimes, and for controlling prison conditions. They are also in charge of the use of preventive detention and institutional violence.

6.9 The enforcement of sentences under the rule of law

There are approximately 60,000 people in prison in Argentina. The detention centers are characterized by inhumane conditions. Prisons, police stations and juvenile detention centers have high rates of overcrowding and a large majority of unsentenced detainees. They also lack social rehabilitation measures and are the sites of systematic violence and torture. A democratic security policy should ensure that prison sentences and preventive detention take place under decent conditions

that foster the rehabilitation of the convicted individuals, and that they do not contribute—as they do now—to the continuation and exacerbation of violence, injustice and crime they are trying to resolve.

6.10 The need for a new agreement to promote security in a democracy

To comply with the state's obligation to provide public security in the context of these democratic principles, it is essential to reach a broad political and social agreement that facilitates progress in the design and implementation of short-term, medium-term, and long-term policies to find immediate, lasting solutions to societal demands for security.

In sum, we believe that the ASD is an initiative that creates opportunities and spaces for dialogue that were nonexistent a few years ago. It aims to create a basic foundation on which to build concrete public policies on security that are efficient and consistent with human rights, democratic principles, and the rule of law.²⁶ The ASD helps to coordinate the work and perspectives of different political sectors, issue experts, and civil society organizations, while contributing an alternative discourse to the punitive demagoguery that dominates both in normative principles and policymaking.

Certainly the ASD faces a number of future challenges. One of them is related to the need to move from high-level agreement and discourse down to concrete security proposals and eventually to a structural reform of the security system.²⁷ Another challenge relates to the need to broaden the agreements that have been achieved, translate them to different levels in the country (provinces, local governments / municipalities, etc.) and make them known among different relevant state institutions. Likewise, based on this article's assessment, there is a need to continue strengthening and coordinating with the Ministry of Security to recognize and support promising actions, incentivize the development of a public policy strategy, and monitor and question aspects that are troubling for the human rights agenda.

In all of these areas, they must strengthen the substance and maintain a discourse that respects human rights, while also being proactive and concrete in terms of citizen security. Given the political complexities of this topic, it is essential for political and social actors to maintain a minimum, agreed-upon foundation that can make progress on concrete alternatives to the regressive, iron fist approaches that can otherwise lead to reversals of basic rights.

7 Notes on the new political period and priorities for democratic security

Argentina began 2012 with the renewed and strengthened efforts towards legitimacy at all levels of government, and with a medium-term horizon for free of elections. The experience of the Ministry of Security has shown that it is possible to intervene in centers of autonomous police power—even including

the PFA—without generating major reactions that threaten governability. The Federal Police had degraded so far that not only were they not stopped from engaging in illegal activities, but any demands for training, evaluation or professionalism had been abandoned. This is no small matter, given that it challenges the claims that local politics must bargain with police as a precondition to their ability to govern.

In this sense, analyzing and evaluating security policies from the perspective of the exercise of political rule requires a perspective that can connect regulatory dimensions (institutional designs, mechanisms, laws and regulations) with an institutional culture whereby political authorities influence the daily operations and practices of the police. The literature on police reform makes note of these different levels. Analytically, it is typically said that a reform process starts at the regulatory level because it is harder to change police practices; this is what is often referred to as the gap between standards and practice. However, this descending linearity from regulatory reforms to changes in practice does not necessarily hold true in the Argentine case.

The first year of the Ministry of National Security presents unknowns with regard to the arrangement of regulatory levels, institutional culture, and practices. It has carried out its strategy of recovering political control over security and the security forces within the context of existing legislation. A number of important ministerial resolutions have provided a new regulatory framework for issues that were considered to be critical. The analysis shows that the main commitment was made at the intermediate level, creating the conditions to change institutional culture. All of the decisions and measures showed the security forces and the public that the traditional self-governance of the federal forces was undergoing significant change. However, far-reaching reforms of the federal security system will necessitate a solution to the current coexistence of this style with the anachronistic rules that govern the security forces, ultimately leading to a regulatory arrangement that is consistent with democracy. This would entail a strategy to affirm authority over security matters, starting with culture and practices and then undertaking the necessary reform of the legal frameworks.

Likewise, in order to make progress in this area, it is important that the new context include commitments by legislators in different political coalitions to engage with the proposals of the ASD. However, the multi-party political consensus achieved within the ASD framework at the national level have not yet taken root within the parties, which are weaker or non-existent at the provincial and local levels. Thus, there is a need for actions that will strengthen the foundation of basic agreements on security in a democracy, particularly to prevent the manipulation and trivialization of the issue in the media by representatives of the same parties that forged agreements like the ASD at the national level. Nevertheless, the new context has made favorable conditions for reforming the laws that have governed the security forces since the dictatorship, and for approving regulations to create a new framework for institutional performance and practices of the federal security forces.

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NOTES

1. For more information, see <www.asd.org.ar>. Last accessed on: 15 Jan. 2012.

2. Although various factors contributed to the creation of the Ministry, its formation was also one of the ASD's main recommendations.

3. In Argentina, the main exceptions to the delegative model were the cycles of reforms to the security system in the province of Buenos Aires (1998-2001 and 2004-2007), followed by the transfer of the National Aeronautic Police (PAN) from the military to the civilian sphere, which led to the creation of the Airport Security Police (PSA) in 2005. In both cases, the context of institutional reform, which involved rethinking the regulations and design structures for these security forces, was the driving force for the political government.

4. The analysis used in this article is based on a chapter on security published in May 2012 (CENTRO DE ESTUDIOS LEGALES Y SOCIALES, 2012).

5. "Additional services" include hiring the police to provide security services for a given store and this constitutes a major source of self-generated income for the PFA.

6. These policies are consistent with a regional trend towards police accountability, professionalization, and recognition of police rights. For an example, see the discussion on the Police Ombudsman in Peru in the chapter "Medidas para Enfrentar la Corrupción en la Policía Nacional del Perú: Logros, Dificultades y Lecciones" (COSTA;

ROMERO, 2008).

7. In the capital, these deployments have been combined with community roundtables on security. The information that came out of these roundtables has influenced operational decisions, which indicates that territorial deployment is not only aimed at holding back the crime that occurs in more privileged parts of town, but also at strengthening security in the neighborhoods that are affected by the operations.

8. This conclusion comes from the community roundtables, request from residents of nearby neighborhoods to be included in the plan, comments made by officials who work at the territorial level, and the differential outcome achieved by the national government's political party in the municipalities impacted by Southern Belt—a fact that specialists have interpreted as relating directly to the territorial security operations.

9. There are several statistical studies at the regional and global level that evaluate and analyze the relationship between socioeconomic factors and criminality. But in general, these studies do not consider impacts and tensions related to human rights. See, for example, Mark Ungar (2011, p. 95-99).

10. These trends have been studied in great detail. See, for example, Hugo Frühling (2006, 2007, 2011).

11. "A warning light should go on regarding the simplistic readings of the experience of the Police

Pacification Units (UPP) in the shantytowns of Rio de Janeiro and the way in which this model is being promoted for export to other states in Brazil and also to Argentina. The involvement of the UPP—a security force created specifically for the Rio shantytowns in the context of the next world soccer championship and the Olympic Games—is complex and designed for situations of crime and violence that are of greater magnitude than those in Argentina, both in quantitative terms (deaths, casualties, weapons) and in qualitative terms. Human rights defenders in Rio have criticized the resulting social control that the peacekeeping police have had in the affected shantytowns. Nevertheless, this experience is permeating the local political discourse with little nuance.” (CENTRO DE ESTUDIOS LEGALES Y SOCIALES, 2012, p. 127-128).

12. The Report gathers previous declarations and jurisprudence from the Inter-American Human Rights System and proposes standards for states to follow in developing public policies related to security. One of the most important aspects is that it does not limit itself to highlighting states’ negative obligations, but also explores positive obligations around issues like attention to victims of violence and crime, prevention, judicial investigation (the right to procedural safeguards and judicial protection), the democratic governability of security, the professionalization and modernization of police forces, principles of action and protocols for the use of force, the development of internal and external controls, and the separation of national defense and internal security, among other things.

13. As Marcelo Saín (2001) explains, “The label ‘new threats’ was given to the collection of nontraditional risks and conflictive situations—in other words, things that do not arise from interstate conflicts over territory or borders or from competition over strategic domain, which are particularly subject to military solutions through the use of or threat of using the armed forces of the warring countries. These “new threats” have generated questions and issues that make up the so-called ‘new security agenda’, which emphasizes drug trafficking, guerrillas, terrorism, conflicts of an ethnic, racial, nationalist or religious nature, etc.—that is to say, problems that, under the Argentine institutional framework, would clearly fall under the domestic security arena”.

14. In Latin America, 2011 was characterized by important discussions on regional security; two hemispheric events stood out in particular. In June 2011, the General Assembly of the Organization of American States (OAS) celebrated its 41st session in El Salvador focused on the topic of “Citizen Security in the Americas”. And in November 2011 in Trinidad and Tobago, the OAS held the Third Meeting of Ministers Responsible for Public Security in the Americas (MISPA III), which addressed topics related to police management. Other spaces where regional security issues have

been discussed include the XIX Meeting of High Authorities on Human Rights and Foreign Ministries of MERCOSUR Member and Associated States (RAADDH), held in the city of Asunción, Paraguay from April 25 to 27, 2011, where a seminar was organized on Citizen Security and Human Rights. There, the MERCOSUR Institute of Public Policies and Human Rights (IPPDH) and UNHCHR suggested that the next RAADDH meeting should discuss issues related to citizen security and human rights that could be taken forward in a joint dialogue with the Ministries of the Interior and the Ministries of Justice of the different member states, in order to make progress on regional policies. Meanwhile, there was also the XXI Ibero-American Summit of Heads of State and Governments, held in Asunción, Paraguay on October 28 and 29, 2011, which focused on “Transformation of the State and Development”. The Heads of State and Governments issued a special joint public statement on public and citizen security, highlighting, among other things, the importance of applying public policies on citizen security within each of their respective territories in order to advance a process of regional integration and security. They also emphasized that efforts to “build the capacity of states to prevent and address crime and violence should be accompanied by their institutions’ unconditional respect for human rights, in the context of national and international frameworks” (CUMBRE IBEROAMERICANA, 2011).

15. Every so often in local debates, a candidate tries to take up this position again and propose to solve crime problems by involving the Armed Forces in internal security matters. In their crudest form, these proposals involve putting the army on the streets, but they can also include militarized approaches to police work.

16. See also Marcelo Saín (2001), which recounts the existing political consensus for maintaining this separation and the attempts in the 1990s to get the armed forces to intervene in drug trafficking cases.

17. The IACHR Report makes special reference to this point in Articles 100-105. There, it says: “One of the Commission’s central concerns with respect to the actions that the member states have taken as part of their policy on citizen security is the following: the involvement of the armed forces in professional tasks that, given their nature, fall strictly within the purview of the police force. The Commission has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front” (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2009, art. 100, p. 42). “Within the region, it is sometimes suggested—or even carried out directly—that military troops take over internal security based on the argument that violence or criminal acts are on the rise. The Commission has also

addressed this point, stating that arguments of this type 'confuse the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the state'" (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2009, art. 103, p. 43). And in its recommendations, the IACHR suggests: "In the domestic legal system, draw a clear distinction between national defense as the function of the armed forces, and citizen security as a function of the police. Make it very clear that because of the nature of the situations they must deal with, the instruction and specialized training they receive, and the region's unfortunate history of military intervention into internal security affairs, the police have sole responsible for the functions associated with prevention, deterrence and lawful suppression of violence, under the oversight of the legitimate authorities of a democratic government." (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2009, p. 106).

18. The draft legislation was sent to the House of Representatives by the executive branch in October 2011; it was included on the agenda for the special session, and therefore only underwent a brief parliamentary debate.

19. Law 26.734 was approved on December 22, 2011, enacted on December 27, 2011, and published in the official bulletin on December 28, 2011: Article 3: "When any of the crimes included in this Code is committed with the aim of terrorizing the population or forcing national public authorities, foreign governments, or agents of an international organization to take an action or to abstain from doing so, it will double the minimums and maximums of the scale" (ARGENTINA, 2011b).

20. This type of formulation violates the constitutional principle of legality, which requires that criminal classifications be as precise as possible in order to minimize the degree of discretion and arbitrariness with which the penal laws are applied.

21. See the FATF's 40 recommendations at <<http://www.fatf-gafi.org/dataoecd/38/53/34030987.pdf>>. Last accessed on: 15. Jan. 2012.

22. Decree PEN 1091/11 (ARGENTINA, 2011a), extended for one year by Decree 296/2011 on December 30, 2011 (ARGENTINA, 2011c).

23. According to decree PEN 1091/11 "the northeastern and northwestern borders of Argentina have mountainous characteristics that facilitate the incursion into national territory of criminal organizations dedicated to illegal drug trafficking, trafficking in persons, and the smuggling of goods" (ARGENTINA, 2011a, cons. 4). The operation was established with the goal of "increasing surveillance and control over land, river and air space that falls under national jurisdiction along the northeastern and northwestern borders of Argentina, and to apprehend illegal entrants and turn them over to the legal authorities" (ARGENTINA, 2011a).

24. Article 2, subparagraph 4 of Law 25.520 establishes the scope of intelligence produced by the Armed Forces: "Strategic Military Intelligence – the intelligence part refers to knowledge of the military capacities and weaknesses of countries that are of interest from a national defense perspective, and of the geographic environment of the operational strategic areas identified in military strategic planning." (ARGENTINA, 2001).

25. Joint resolution MD 1517 and MJSy DH 3806, from December 16, 2008.

26. Many of them also contain the standards and the spirit of the IACHR report mentioned earlier.

27. An example is the pressing need to modify the foundational and personnel laws of the federal security institutions, as well as the associated regulations, in order to establish and accompany the public security reform and modernization processes according to constitutional principles and human rights. In turn, this would imply putting effective political leadership over the police system, in order to drive deep changes in its organizational structures and traditional ways of operating See Center for Legal and Social Studies (2011, p. 84 and ss).

RESUMO

O artigo propõe um balanço da agenda de segurança pública na Argentina no contexto regional. Neste sentido, a análise do primeiro ano da gestão do Ministério de Segurança (criado em dezembro de 2010) e a reflexão sobre algumas experiências específicas dialogam com a definição de um panorama regional em matéria de segurança e direitos humanos, com aspectos contrastantes. Embora as mudanças atuais no âmbito da política de segurança na Argentina possuam suas próprias características e ajustes, elas são marcadas por e estão ligadas a algumas tendências regionais. Esta avaliação leva em consideração tanto os avanços positivos referentes ao exercício do controle político em questões de segurança, quanto o impacto da agenda internacional de “novas ameaças” à segurança. Algumas dessas medidas aprovadas alertam para a maneira pela qual tendências menos democráticas em matéria de segurança aceitas internacionalmente permeiam decisões políticas locais.

PALAVRAS-CHAVE

Segurança – Direitos humanos – Polícia – Controle civil – Novas ameaças – Antiterrorismo – Argentina

RESUMEN

El artículo propone un balance de la agenda de seguridad pública en Argentina en el contexto regional. En este sentido, el análisis del primer año de gestión del Ministerio de Seguridad (creado en diciembre de 2010) y de algunas experiencias específicas, entra en diálogo con la caracterización de un panorama regional en materia de seguridad y derechos humanos con claroscuros. Si bien los cambios actuales en materia de política de seguridad en Argentina tienen sus propias características y adaptaciones, se enmarcan y dialogan con algunas tendencias regionales. El balance da cuenta tanto de avances positivos hacia el ejercicio del gobierno político de la seguridad, como de la incidencia de la agenda internacional de “las nuevas amenazas”. Algunas de las medidas sancionadas constituyen señales de alerta acerca de cómo las corrientes menos democráticas de la seguridad aceptadas internacionalmente permean las decisiones políticas locales.

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Seguridad – Derechos humanos – Policía – Gobierno civil – Nuevas amenazas – Antiterrorismo – Argentina

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