

A group of people, some wearing balaclavas, walking in a city street at night. The scene is illuminated by streetlights, and the background shows tall buildings. A white diagonal line runs across the upper part of the image.

ARTICLE 19

Brazil's own goal

Protests, police and the World Cup

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Executive summary

The countdown to the 2014 World Cup has been marked by a series of demonstrations across Brazil, with hundreds of thousands of Brazilians protesting against government corruption, unaccountable decision-making and the vast expenditure used to host the games, money which they believe would be better spent on public services.

Research published in [Brazil's Own Goal](#) shows that the state's response to these demonstrations has been one of increasing repression and violence, more suited to Brazil's years of military dictatorship. Police are using excessive force against demonstrators, including highly indiscriminate use of potentially lethal weapons such as rubber bullets and tear gas. A large number of police officers have been spotted removing their identification during the protests and refusing to identify themselves when asked so as to ensure their actions cannot be traced back to them. There have been thousands of arbitrary arrests and the practices of preventative detention and prior restraint are rife.

To compound the crackdown on freedom of expression, several bills have been proposed in congress to criminalise demonstrations, including increasing the penalty for crimes related to damage to property and persons when these happen in demonstrations, the criminalisation of the use of masks in protests and the closure of public roads.

Furthermore, the General World Cup Law, which was approved in 2012, already prohibits demonstrations that do not contribute to a so-called 'festive and friendly' event, meaning that some protests could be considered illegal depending on their nature if held anywhere near a stadium, which of course are mainly in highly populated urban areas.

The right to protest and freedom of expression is protected under international law, and yet [Brazil's Own Goal](#) shows that these rights are being stripped away in the country. ARTICLE 19 is calling on the Brazilian government to ensure the right to protest and freedom of expression are protected, by introducing a new law to regulate the use of police force during demonstrations, which should follow international standards.

This law should also ensure policing at protests is designed to safeguard the people's right to protest in a safe manner.

Introduction

There have been widespread protests in Brazil, many of them strongly related to the country's preparations for its forthcoming hosting of both the World Cup and the Olympics.

However, these protests were not isolated incidents but a continuation of Brazil's recent history of protest, and of a more widespread backdrop of protest regionally and globally.

Brazil's recent history of protest

For the past thirty years, Brazil has experienced intense social mobilisation which has successfully led to major changes in the country's social and political structure including:

Direct Now: Starting in 1983, this movement brought millions of people onto the streets and contributed to the country's return to democracy in 1984, marking the end of its 20-year military dictatorship.

Movement of Painted Faces: the 1992 protest involved hundreds of thousands of people in the cities of São Paulo, Brasilia, Recife, Salvador and Rio de Janeiro. It culminated in former President Fernando Collor de Melo's impeachment for corruption.

The Freedom March of 2011 saw thousands of protesters and more than 100 collectives taking to the streets in 41 Brazilian cities, protesting against police repression of demonstrations.

During this period, a vibrant range of social movements has grown up, organising and mobilising around several issues: the landless, women, unions, and minorities such as LGBT. Every one of these movements has, at some point, been denied the right to freedom of expression. The March for Agrarian Reform in May 2005, for example, ended with police and protesters clashing, injuring more than 32 protesters and 18 police officers.

“We continue with a police model we inherited from the dictatorship – and the manuals with which the police are trained and the way they deal with people in the demonstrations and on the streets are remnants of that regime.”

Maria do Rosario Nunes, Brazilian Minister for Human Rights under Dilma Rousseff¹⁴¹



Overview of protests

March Protest starts

Demonstrations against the appointment of the conservative pastor, Marco Feliciano, as Chairman of the Chamber of Deputies' Commission on Human Rights and Minorities were the harbinger of the great wave of protests that went on to shake the country. These demonstrations had an impact right across the country, and the controversial appointment of the pastor to a position traditionally held by a political progressive became a daily focus for the media. The protests, daily demonstrations in front of the Chamber of Deputies in Brasília, were led by human rights activists, especially for LGBT and women. On 27 March, a number of these activists, including Marcelo Pereira Reges and Alysson Silver, were charged with defaming Feliciano.

13 June Protests grow

The demonstration around Avenida Paulista on 13 June was arguably the most iconic. It was a turning point in the public's support for the protests, the point at which the public's tolerance of the police's abusive action came to an end. After images showing the violent attacks on protesters were shared widely on social media, large numbers took to the streets to protest against these abuses, not only in the state capital, but throughout the country. According to some estimates, over 200,000 people took part in the 17 June protests in São Paulo and Rio de Janeiro.

17 June - 2 July Police respond

The Free Pass Movement (MPL) was the catalyst for the peak in protests between 17 June and 2 July. The MPL gradually attracted the interest of the population as it protested against planned bus fare increases. The MPL had organised some of the first protests against the increase in Porto Alegre in March. In mid-May, these were followed by further protests in Goiânia which led to the first fare reductions on 10 June. In early June, the protests spread throughout the country after violent crackdowns by police on demonstrations in São Paulo. Although the MPL had been organising protests for more than ten years, many of which had been repressed by the police, the movement had never before seen such an extreme response by police, the judiciary and the authorities.

Date World cup protests start

Large numbers of protesters took to the streets in Brazil's cities. At the start, their demands were limited to fare reduction and urban mobility, but they soon extended to include calls to end corruption, improve healthcare and education, overturn bills such as PEC 37 and reduce spending on the World Cup. The movement lost any sense of leadership or organisation and the streets were occupied almost continually for about two weeks in the second half of June until mobilisation weakened.



July

Violence begets violence

In July, a new type of protest arose, attracting widespread criticism. The “Black Blocs” attacked icons of capitalism, such as the banks, and the state, including government buildings, to draw attention to their cause. The Black Blocs were a masked group of anarchists and anti-capitalists, dressed in black, who could be seen at most protests, especially those in the cities of Rio de Janeiro and São Paulo. The mainstream media’s support for the demonstrations fell as a result of the Black Blocs’ violence.

July

Pope visit used to silence

When the Pope visited in July, the police in a number of cities banned banners that could “offend the integrity of the pontiff and the nation”² while the Federal Court banned protests on the roads around Aparecida.³ Although the rest of the country calmed considerably after July, Rio de Janeiro continued to experience protests marked by violence right through until October.

September

Arrests up

Independence Day⁴ on 7 September saw some of the most extensive police action with 351 arrests made on that one day in response to the demonstrations organised in dozens of cities. The police crackdown injured and arrested protesters across the country and had clear government support. A new unconstitutional bill was approved in early September prohibiting the wearing of masks in protests.

October

State violence sanctioned

The media once again defended a more repressive approach by the police as public opinion changed. The police were authorised to use more threatening tactics against protesters following earlier restrictions. In São Paulo on 8 October, for example, the police were given permission to use rubber bullets, something that had been prohibited since 17 June because of the large numbers of people wounded and seriously injured.



The issues

2013 will be remembered for the incredible size and scope of the social mobilization that gripped Brazil. People on the streets were witness to the disproportionality of police actions.

Police used firearms in at least eight protests,⁵⁷ resulting in the death of one protester. A number of other people also died as a result of the protests:

Cleonice de Moraes was at work as a cleaner in the city of Bethlehem on the night of 20 June and inhaled tear gas during the confrontation between police and protesters. Cleonice, who was hypertensive and on medication, had a cardiac arrest and died on the morning of 21 June.

Marcos Delafrate, a student, was hit on 20 June, in Ribeirão Preto-SP, by a vehicle which crashed into the protesters, crushing Marcos and 11 others.

Valdinete Rodrigues Pereira and Maria Aparecida were blocking the BR-251 highway in Goiás with tyres on 24 June. A vehicle drove towards the group of protesters, ran them over and left without stopping.

Patrick Paulo Silva de Castro, a student, was hit by a taxi on 26 June, in Teresina-PI while jaywalking. He was left with a cerebral oedema and died about two weeks later.

Douglas Henrique Oliveira, during a confrontation with police on 26 June in Belo Horizonte-MG, tried to jump across a flyover and fell. He died the next day as a result of his injuries.

Young unidentified man was hit on 27 June in Guarujá-SP, when a truck tried to change direction to avoid a demonstration and hit two young men, one on the back of the other's bike. One died and the other survived with serious injuries.

Renato Kranlow broke through a demonstration in his truck on 3 July in Pelotas. Protesters threw a stone at him, through the truck's glass.

Our research highlights a number of common concerns about the police and their actions:

- Police officers lacking identification
- Arbitrary arrests and detention, including detention for questioning, practically unheard of since the end of the military dictatorship
- Criminalisation of free expression, treating protesters as offenders
- Pre-censorship, banning, for example, protesters from wearing masks or carrying vinegar
- Disproportionality of police action and prevention of monitoring
- Use of lethal weapons and the abuse of less lethal weapons, resulting in several deaths
- Use of undercover police “agent provocateurs” in demonstrations, sometimes causing and encouraging unrest and violence
- Police, Abin (intelligence agency) and Army vigilantism on social media, police recording protests and preventing protesters from monitoring police actions
- Concern for property rather than the safety of protesters
- Threats and kidnapping.

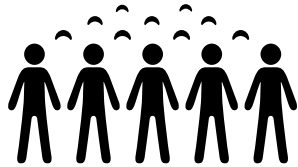
ARTICLE 19's survey of all the 2013 protests, based on records and reports disseminated in Brazil's major media outlets in the country, counted the following numbers of violations and incidents of violence:

Protest in numbers



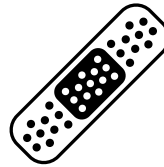
696

Total number of protests



15

Protests with more than 50,000 protesters



16

Protests with more than 10 wounded



112

Use of non-lethal weapons (by anybody)



10

Use of firearms



8

People killed



837*

People injured



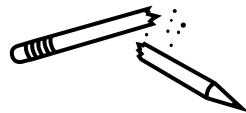
2608

People detained



2

People already sentenced



117

Journalists assaulted or injured



10

Journalists detained

The protests that took place in Brazil in 2013 can be viewed as part of the wave of protests that have taken place in Brazil, in Latin America and globally over the past few years. They can also be viewed as part of the longer tradition of mass protest in Brazil dating back to the mid-1980s. Although they began as a protest against public transport fare increases, they quickly expanded to take up many other popular concerns. To understand these, the social, cultural and political landscapes of Brazil all need to be considered.





Protest in international law

These recent protests highlight some of the issues that arise when protecting and promoting human rights during protests. One of the principal problems is that there is no explicit right to protest within international human rights standards.

However, ARTICLE 19 believes that this right is protected implicitly under international law as it is the exercise of three interrelated and interdependent rights, all guaranteed under the Universal Declaration of Human Rights (UDHR) & International Covenant on Civil and Political Rights (ICCPR):

- Freedom of expression
- Freedom of peaceful assembly
- Freedom of association.

States who are party to the UDHR and the ICCPR have clear legal obligations to promote and protect these rights and, therefore, the right to protest.

A number of obligations and decisions are also relevant to the right to protest:

- The ICCPR obliges states to protect and promote the right of all people to organise or participate in peaceful assemblies as collective forms of expression.
- The European Court of Human Rights has ruled that the right to protest is protected by both
- The right to freedom of expression and the right

to peaceful assembly.⁸

- The African Commission on Human and Peoples' Rights has established a close relationship between the rights to freedom of expression, freedom of association and freedom of assembly, and has stated that the violation of the freedom of association and assembly carries an implicit violation of freedom of expression.⁹
- The UN Special Rapporteur on Freedom of Peaceful Assembly and Association defined the term "meeting" as including demonstrations, strikes, marches, rallies and sit-ins.¹⁰ The Rapporteur has also stressed the obligation of member states to facilitate and protect peaceful assembly.

Freedom of expression is guaranteed by a broad range of international legal standards. As well as the UDHR and ICCPR, it is also guaranteed by the American Convention on Human Rights, which Brazil ratified in September 1992.

The rights to freedom of assembly and association are also protected by various international instruments ratified by Brazil, giving them the force of law according to Brazil's Constitution.



Restrictions on the right to protest in international law

For the past thirty years, Brazil has experienced intense social mobilisation. The right to protest may be subject to certain limited restrictions in international law.

ICCPR: The limitation of the right to freedom of expression – and therefore the freedom to protest – can be justified in some situations but only to protect: the rights or reputations of others; national security; public order; public health and morals.

The ICCPR¹⁸ establishes a “three-part test” for evaluating whether a restriction to freedom of expression and information is legitimate:

- 1. It must be provided by law. The right to freedom of expression cannot be limited at the whim of a public official. Any limitations must be the result of applying a law or regulation that is formally recognised by those entrusted with law making. The law or regulation must meet standards of clarity and precision so that people can foresee the consequences of their actions.**
- 2. It must have a legitimate aim. The list of legitimate aims is not open-ended but is provided for in Article 19(3) of the ICCPR: ‘... respect for the rights and reputations of others, and protection of national security, public order (ordre public), public health or morals’. The list is exclusive and cannot be added to.**
- 3. It must be truly necessary. Even if a limitation is in accordance with a clear law and serves a legitimate aim, it must be truly necessary for the protection of that legitimate aim.**

International Standards

The Report of the UN High Commissioner for Human Rights: The “freedom to conduct and participate in protests should be the rule, and the limitations the exception. The protection of the rights and freedoms of others should not be used as an excuse to limit the exercise of peaceful protests. “¹⁹ It is not legitimate for example to close public roads during demonstrations, since one of the purposes of demonstrations is to capture the attention of the wider population.²⁰

The Organisation for Security and Cooperation in Europe (OSCE) *Guidelines on Freedom of Peaceful Assembly*: Outbreaks of violence at a demonstration should not lead to the restriction of freedom of expression when the majority of protesters are demonstrating peacefully. Peaceful protests that turn violent are still protected under human rights laws and should be broken up using proportionate force.

“The use of violence by a small number of participants in a demonstration (including the use of inciting language) does not automatically transform a peaceful demonstration into a non-peaceful one, and any intervention should aim to deal with individuals involved rather than extended to the whole event.”²¹

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Protests more often turn violent in countries where the right to freedom of peaceful assembly is suppressed.²² Protesters do not usually turn violent, so the instigators of violence are generally easy to identify and deal with.

The European Court of Human Rights:

“an individual does not fail to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of protests if the individual in question remains peaceful in their intentions and behaviour.”²³

Peaceful demonstrations should not be broken up by law enforcement officers and that the dispersal of demonstrations should be the last resort, only used when all reasonable measures have been tried and when the danger of violence is imminent. Such dispersal should be carried out in accordance with international principles.²⁴

UN Human Rights Committee General

Comment No. 34, 2011: “when a State imposes restrictions on the exercise of freedom of expression, it cannot jeopardize the right itself. The relation between right and restriction and between norm and exception should not be reversed.”²⁵

The importance of participation in public demonstrations as a way of consolidating the democratic way of life. In general, freedom of expression and freedom of assembly should be viewed as the norm and states should have limited options for justifying their restriction.²⁶

VEN
DE

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STAY
STRONG

Protest in Brazilian law

The right to protest is guaranteed and protected in Brazilian law by three rights that exist both in its international commitments and in its constitution. Article 5 of the Federal Constitution guarantees everyone the rights to freedom of expression and association:

“All are equal before the law, without distinction whatsoever, guaranteeing Brazilians and foreigners residing in the country the inviolable right to life, liberty, equality, security and property, as follows:

...

IV - the free expression of thought, with anonymity forbidden;

...

XVII - freedom of association for lawful purposes, with paramilitary association forbidden;

XVIII - the creation of associations and, under the law, that of cooperatives is not subject to authorisation, with state interference in their operation forbidden.”

Article 5, Federal Constitution

The legal gap

Despite being constitutionally guaranteed through the inter-relationship of these rights, there is a worrying legal gap in Brazil with regard to the protection of the right to protest. For example, there is no specific legislation about the use of force by police during protests and other gatherings, which gives the state very broad powers when dealing with demonstrators.

Some general guidelines - not limited to protests – about the use of force by law enforcement officials were established by ministerial decree No. 4226/2010 published by the Ministry of Justice and the Human Rights Secretariat, stating that the use of force “[should be based on international documents for the protection of human rights.](#)”²⁷

This decree, however, contains only very broad guidelines and principles about the use of force by police officers, and it is left to law enforcement agencies to define the use of force (tools, techniques, control, empowerment of agents etc). There is no specific statement about the use of force in the context of protest.

This lack of specific legislation creates an environment of legal uncertainty for protests which, particularly once protests intensified from June 2013 onwards, resulted in the criminalisation of protest.

Several protesters were charged with crimes such as conspiracy, contempt, setting fires and damage to public property, while others were charged with crimes under laws that were grossly inappropriate in the context of protest. One such law was the National Security Act, created during the military dictatorship to deal with actions that undermine Brazil's territorial integrity and national sovereignty, representative and democratic regime and the heads of the branches of government, in other words, crimes that threaten the very existence of the democratic state of law in Brazil.

The emergence of hastily drafted new laws

New laws emerged after the June protests which made protesters fearful of occupying public spaces as a way of making their voices heard. These included various state laws and ordinances criminalising the use of masks in protests and the closure of public roads.

The latter were largely the result of Brazil's commitment to FIFA that public roads would not be blocked during the World Cup, commitments included in the World Cup law²⁸. This law includes various civil and criminal penalties for those who cause disturbances around the stadiums, including punishing the use of flags and other such things if they do not contribute to a "festive and friendly event." It also states that people will have to ask FIFA's permission before holding events that could impact on the image of the games. So if, for example, there is a protest planned near the stadium, FIFA could ask for particular content to be removed or prevent its taking place.

In November, a statement from the Ministry of Justice signalled the possibility of establishing "special courts" that would prioritise the prosecution of "violators of order" and adopt faster procedures during the World Cup. Another new piece of legislation is Law 12.850/2013 which muddies the legal definition of criminal association and has already been applied without distinction to both protesters for low-level crimes and criminal organisations for serious crimes. In an attempt to regulate the protests, a number of bills were hastily drafted including:

-
- **Draft Law 728/2011**, which defines crimes and administrative violations relating to the World Cup 2014 and creates the criminal offence of terrorism to be applied to protests during the World Cup carrying penalties of 15 to 30 years imprisonment.¹¹⁵ It also provides for the creation of specialised courts to hear cases relating to the World Cup.
 - **Bill 499/13**, which defines the crime of terrorism in Brazil in such vague and ill-defined terms that social movements could be viewed as terrorist groups. This is a strategy that has been adopted in other countries to criminalise these movements.
 - **PL 6307/2013**, which proposes to amend the Criminal Code by adding a penalty of imprisonment plus a fine for those who damage public or private property “by the influence of the crowd in an uproar.” The proposed minimum sentence is greater than the penalty for murder.¹¹⁶
 - **Bill 5531/2013**, which proposes to amend the Criminal Code to create the offence of “threatening road transport safety.”¹¹⁷ This would prevent protesters from blocking roads and would be punishable by imprisonment of several years, depending on the severity of the blockage.

A number of draft laws aiming to prohibit the wearing of masks, face painting or anything else that protects the identity of the protesters are currently before the National Congress. These include PL 6532/2013, PL 5964/2013, PL 6461/2013 and PL 6614/2013.

A number of draft laws aiming to limit and criminalise the right to protest have also been filed in:

- The House of Representatives, including PL 6347/2013 and PL 6198/2013
- The Senate, including PLS 404/2013 and PLS 451/2013
- Various states’ and cities’ legislative assemblies, including PL 717/2013.

Not all the laws drafted aim to limit the right to protest. Two aim to protect the right to protest: for example, a draft law aiming to restrict police use of less lethal weapons (PL 300/2013) and another asserting the importance of human rights and the principle of non-violence in the context of demonstrations and public events (PL 6500/2013).

The issues in detail

Police officers unlawfully lack identification

One of the problems in the demonstrations from June onwards was police officers not wearing identification giving their name and rank. The use of such identification is obligatory, both for the police forces of particular states and for the Military Police of the Federal District (RUPM).

When asked for clarification by ARTICLE 19, the Military Advisor to the Public Security Advisor in

Paraná confirmed that the wearing of a complete uniform, including identification, is mandatory, the only exception being for undercover officers. Failure to comply is punishable. A similar response was given by the Ombudsman of the Bahia Military Police.

Despite this, a large number of police officers did not display proper identification, and there were cases of police refusing to identify themselves in response to requests by protesters and journalists. Several police officers were caught



by protesters and journalists removing their identification during the protests.

As well as being a violation of police regulations, the absence of clear identification for any state agent on duty is a serious issue. It suggests an intention of wrongdoing and makes it difficult to calculate how many police officers commit abuses.



International Standards

The UN Rapporteur on the Right to Freedom of Peaceful Assembly and of Association, Maina Kiai, emphasised the importance of police officers wearing visible identification on their uniforms as part of a state's obligation to ensure an accessible and effective process for complaints about human rights violations or abuses, so that those responsible are brought to justice.³⁵

The OSCE *Guidelines on freedom of peaceful assembly* assert that “police officers must be clearly and individually identifiable.” When wearing a uniform, this must include some form of identification and officers must “not remove or cover the identification or prevent people from reading it during the protest.”³⁶

Arbitrary arrests and detention

Arbitrary arrests - those without sufficient evidence – were a feature of the 2013 protests. According to ARTICLE 19, at least 2608 people were detained in 32 protests, most in June and October, many with no legal justification.

In law, everyone should be presumed innocent and no one may be arrested without evidence of illegal activity. However, many arrests during the protests were made prior to investigation or without convincing evidence. Those taken for questioning were not just protesters and journalists but also passers-by, including the elderly, unemployed and sick. People were accused of conspiracy without ever having met their alleged co-conspirators, though this crime requires proof of a strong link between conspirators.

In São Paulo, police arrested hundreds of demonstrators for carrying vinegar to mitigate the effects of tear gas, despite the fact that the possession or use of vinegar is not against the law.⁶⁵ On 13 June alone, almost 230 people were arrested for possessing vinegar.

Other protesters were arrested and charged with possession of explosive devices, damage to property and a variety of other crimes without any actual evidence. Videos show how arbitrary these arrests were: for example, on 30 September, a

video filmed at a protest about education in Rio de Janeiro shows a young man being arrested for possession of a forged mortar. A police officer is clearly seen noticing a mortar on the ground near the young man and signalling to another police officer, who then comes and arrests the young man for possession of the mortar.

During detention, police officers frequently acted against the law, preventing access to lawyers, neglecting to tell detainees of their right to silence, using handcuffs disproportionately, leaving individuals incommunicado and forcing individuals to give testimony.

International standards

The Report of the Special Rapporteur of the Inter-American Commission on Human Rights into Public Manifestations and the Exercise of Freedom of Expression and Freedom of Assembly notes that “police cannot arrest protesters when they are acting peacefully and legally” and pointed out that “mere disorder is not sufficient to justify detention”.

Criminalisation of free speech

During the protests, free expression was criminalised. Many of those arrested were charged under the Criminal Code and other criminal laws, which are inappropriate for dealing with the protests.

The main criminal charges used by police were:

- conspiracy
- environmental damage
- damage to public property
- contempt
- setting fires
- lewd acts
- possession or illegal possession of a firearm
- various charges under the National Security Law.

One-third of those arrested during the protests in São Paulo were allegedly caught red-handed⁶⁸. For a crime to be committed red-handed, it must either have been witnessed, or sufficient evidence must have been found to connect the crime to the particular individual. Witnesses are therefore crucial – yet in 76% of cases, the only witness was a member of the security services.⁷⁰

Article 202 of the Criminal Procedure Code says that anyone can be a witness, meaning that anyone can testify without discrimination and most Brazilian law accepts police testimony if it is “consistent with the rest of the evidence”⁷¹. This, however, is clearly sensitive during protests when the only evidence is the testimony of the police officers present. There were reports of other people offering testimonies and being refused.

Another problem was that many people were criminally indicted without evidence of individual responsibility.⁷² This goes against constitutional principles a defendant’s right to defend themselves, due process and human dignity.⁷³ The Federal Supreme Court, the High Court and the State Courts have previously decided that a lack of evidence of individual responsibility is grounds for dismissal of a criminal action.^{74/75}

International standards

The General Report by the UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association recommended that “states guarantee that nobody should be criminalized for exercising the right to freedom of peaceful assembly or subject to threats or use of violence, harassment, stalking, intimidation or reprisals”.

The IACHR Special Rapporteur for Freedom of Expression concluded that “the laws that provide for the crime of contempt are not compatible with the American Convention on Human Rights as they lend themselves to abuse as a means of silencing unpopular ideas and opinions, suppressing thereby the debate that is critical to the effective functioning of democratic institutions.”

Pre-censorship

In 2013, the Brazilian judiciary and legislature took part in serious violations of the right to freedom of expression and freedom of peaceful assembly and association. Several court decisions and bills relating to the protests were actually censorship tools, aimed at preventing or hindering the protesters from protesting.

In Rio de Janeiro on 11 September, the State Legislature passed a law prohibiting the wearing of masks during demonstrations.⁸³ This is clearly an unreasonable restriction to freedom of expression and criminalises a person in advance of their having committed an illegal act.

In Belo Horizonte, a judge released seven people arrested during a protest in the city on 7 September, stipulating that they must not participate in any kind of protest, in person or online.⁸⁴ This decision was a form of pre-censorship, hindering the protesters' freedom of expression and freedom of peaceful assembly and association.

International standards

Principle 5 of the Declaration of Principles on Freedom of Expression establishes that “pre-censorship, direct or indirect interference or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law and that the restrictions on the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

Disproportionality of police action

During the 2013 protests, much police action was blatantly disproportionate. In a protest, the role of the police is to protect protesters and police numbers should reflect this. In most of the 2013 protests, however, the number and types of police deployed, including mounted and riot police, was disproportionate and generated fear and tension. In some protests the number of police was equal to or even higher than the number of protesters.⁵⁹

In 2012, the UN Human Rights Council recommended that the Brazilian Military Police should be abolished, as a military police force belongs to times of war and has no place in a democratic society. The style of policing seen in 2013 is a remnant of the dictatorial regime and should only be used as a last resort to contain serious threats to public order. The Brazilian authorities, however, used it preventatively, reacting to threatening or violent incidents with extreme violence. This type of repression generates more violence and increases the probability of protests turning violent.

Brazilian law sets out principles for the use of force by law enforcement officials. Ministerial Decree 4226/2010 states that it must follow the principles of legality, necessity, proportionality, moderation and convenience⁶⁰. Police action during the 2013 protests did not adhere to these principles.

Violence featured in 63 of the 644 protests that took place in 2013, including on 17 June when there was a violent crackdown on protesters in Rio de Janeiro resulting in the injury of at least eight detainees, 20 police and 11 protesters. While most protesters carried only banners, cameras and camcorders, the police were armed with guns, rubber bullets, tear gas bombs and other “non-lethal” weapons. Their actions revealed anger, a lack of control, and a lack of training and protocols regarding the policing of protests. Protesters were treated as enemies rather than fellow citizens.

Hundreds of photos, videos and testimonials showing aggressive and abusive police action can be found on the internet. They include a photo posted on Facebook by a military police officer from Rio de Janeiro showing himself in uniform holding a broken truncheon with the caption “Sorry teacher,” a reference to a protest by the city’s teachers.⁶²





International standards

The Inter-American Human Rights Commission's Special Rapporteur on Freedom of Expression wrote in the 2005 report that: [“the police may impose reasonable restrictions upon demonstrators to ensure that they are peaceful or to restrain those that are violent, as well as to disperse demonstrations that turn violent or obstructive. However, the action on the part of security forces should not discourage the right to assembly, but to the contrary, protect it; hence, the dispersing of a demonstration should be justified by the duty to protect the people.”](#)

A report submitted to the UN Human Rights Council entitled Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, called for [“all States to avoid using force during peaceful protests, and to](#)

[ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force.”](#)⁶³

According to the OSCE Guidelines on Freedom of Peaceful Assembly, [“where an outbreak occurs in contradiction with the laws, but peacefully, non-intervention or active facilitation can sometimes be the best way to ensure a peaceful outcome. In many cases, the dispersal of an event can create more legal problems than their accommodation and facilitating an overzealous or aggressive policing can weaken the police-community relationship. Moreover, the costs of policing to protect the freedom of assembly and other fundamental rights are probably significantly less than the costs of policing the disorder created by the repression.”](#)⁶⁴

Preventing the monitoring of police actions

Protesters and journalists complained that the police intimidated and coerced people to persuade them not to monitor police actions.

There is evidence to show that police:

- used threats and violence – including the use of rubber bullets, pepper spray and tear gas⁹² – to prevent recording⁸⁹
- confiscated videos recorded during the demonstrations, including from journalists⁹⁰ covering the protests⁹¹ and from members of the public recording police actions on their mobile phones and camcorders
- beat journalists, communications professionals, photographers and protesters^{94/95}
- arrested people recording police actions⁹⁶
- prevented lawyers from accompanying police at events⁹⁷.

This is particularly disturbing as it is well established that the more people – including journalists - monitor police actions, the smaller the chance of abuses taking place. If abuses do take place, recordings and other evidence mean that they can be reported and perpetrators identified.

One of the essential roles of lawyers, public defenders and prosecutors is to monitor compliance with the law and ensure that there is no abuse by the authorities. The right to a defence and the presumption of innocence are constitutional rights which must be observed by police officers.

International standards

The Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai, in reference to then Special Representative of the Secretary-General on the situation of human rights which stated that “the monitoring of events may provide an impartial and objective reporting of the conduct of both participants and law enforcement. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during the protests can prevent violations of human rights. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly.”⁹⁸

According to the OSCE Guidelines on Freedom of Peaceful Assembly, “The photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.”⁹⁹



Use of lethal and abuse of less lethal weapons and protest-related deaths

The use of “less lethal weapons” was a major problem: according to ARTICLE 19, they were used at 112 protests in 2013. “Less lethal” weapons are defined as “devices used by state security forces to disperse crowds, contain potential damage to public and private property, and immobilize those recognized as ‘offenders’ through pain and fear.”⁴⁹

Those used during the 2013 protests included pepper spray, batons, rubber bullets, and tear gas. The police used them indiscriminately and aggressively, causing serious injuries to protesters, journalists and passers-by, which resulted in several deaths. The use of these weapons was excessive: by June 2013 the police in Rio de Janeiro had almost entirely depleted their stocks of tear gas.⁵⁰

These weapons are far from being “non-lethal”.⁵¹ One hour’s exposure to tear gas, for example, can cause corneal damage, blindness, burns and advanced asphyxia.⁵² Rubber bullets can be lethal. The police are supposed to shoot them from a minimum distance of 20 feet, aiming at the legs.⁵³ However, there were many cases of people being hit in the face leading to loss of vision.⁵⁴ The way that police used these weapons made the public and protesters anxious.

Ministerial Decree 4226/2010 establishes the Guidelines on the Use of Force and Firearms by Law Enforcement Public Safety. However, this has no legal force and does not apply to the use of less lethal weapons.⁵⁶ There is also nothing specifying how force may be used in public events.



International standards

According to the OSCE Guidelines on Freedom of Peaceful Assembly, “where pepper spray or other chemical irritants are used, decontamination procedures must be put in place”⁵⁸

The OSCE document also emphasizes that the use of rubber bullets, cassettes, water cannons and other violent methods of crowd control must be strictly regulated. Moreover, “where injuries or deaths result from the use of force by police officers, an open, immediate and effective independent investigation should be established.”

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has said that the only circumstances that justify the use of firearms are when there is an imminent threat of death or serious bodily injury (A/HR/17 / 28). Brazilian legislation echoes this in Appendix 1 of the Decree on the use of force and firearms by law enforcement officials, adding the proviso that firearms can also be used in cases of legitimate self-defence but never against people who are unarmed or against armed individuals who do not represent an immediate danger of death or serious injury.



Surveillance and monitoring of protesters and their personal data by police

During the protests, military police officers recorded protesters using camcorders and cameras. Such a practice not only violates protesters' right to privacy and freedom of thought and expression but could also be used to intimidate and criminalise them, impeding their right to peaceful assembly and association.

Recordings of the protests could have been used as a way of protecting the protesters and the protests by creating a record of abuses committed by the police. However, the material was actually used by the state to repress the demonstrations, for example, creating databases of protesters, which had a chilling effect on freedom of expression.

Asked about the laws and regulations that govern the recording and use of images and audio from public demonstrations³⁷, the Military Police of São Paulo and Rio de Janeiro responded that it is covered by the Federal Constitution although they gave no further details. The Secretariat of Public Security for the State of Rio de Janeiro responded that there is no specific legislation regulating this practice, but that recording in this way is part of their constitutional role to patrol and preserve public order. The Military Police also denied filming protesters³⁸, except from their helicopters.

Requests for further information about regulatory standards, image storage and access to images taken were all ignored in contravention of Brazilian law. All public bodies, including the

police, are responsible for the disclosure of public information, accountability, and transparency. The Access to Information Act (Act 12.527/2011) assures both the right of all individuals to obtain information that is held about them by public bodies and the responsibility of public authorities to provide such information.

Officers also asked protesters and lawyers for personal data, much of which went far beyond what was necessary to identify suspects and was a clear attempt to track them, and also searched for it on the internet. The internet was an important tool for the protesters, used to organise and mobilise. However, the police, intelligence agencies and the army all monitored protesters' online personal data and social media activity, affecting their rights to freedom of expression, protest and privacy.

The Brazilian Intelligence Agency followed the accounts of protesters on Facebook, Twitter, Instagram and WhatsApp.⁴¹

The Military Police asked detained protesters to surrender their Facebook passwords while questioning them about their political and sexual preferences.⁴²

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- The Brazilian Army was also reported to be carrying out “continuous monitoring” of social media.⁴³
 - In Rio de Janeiro⁴⁴ and Goiás⁴⁵, the local police set up their own monitoring schemes. In Goiás, the police monitored the use of the keywords “demonstration” and “protest meeting”, meaning that anyone typing these terms online might be investigated, whether or not they participated in the protests.
 - Investigators from the Criminal Investigations Department of the Civil Police secretly monitored sites to identify groups of protesters to question.⁴⁶

This information was used to help create databases of demonstrators, including detailed personal information about their opinions and activities.

The online surveillance made protesters and those considering joining them feel vulnerable. Privacy is a fundamental right and complements the right to freedom of expression: privacy gives an individual more freedom and security, enabling them to form opinions and express themselves without interference and without fear of being watched by the state. However, in Brazil, there is no legislation protecting personal data and privacy online, so this issue is especially problematic.

International standards

In his 2013 report about the relationship between freedom of expression, privacy and vigilantism, the UN Special Rapporteur for Freedom of Expression, Frank La Rue, stated that the “right to privacy is often seen as a prerequisite for the realization of freedom of expression “ and that “undue interference with the privacy of an individual can both directly and indirectly limit the free development and exchange of ideas.”³⁹

The OSCE Guidelines on freedom of peaceful assembly clarify that recordings by protesters and police officers are allowed, but that their recording, processing and permanence can lead to breaches of privacy.⁴⁰

In his 2013 report, the Special Rapporteur for Freedom of Expression, Frank La Rue, recommended that “states should criminalize illegal vigilantism by public and private actors.”⁴¹.

The Rapporteur also recommended that the transfer of communication data by the private sector to the state “must be sufficiently regulated to ensure that the human rights of individuals are always prioritized” and said that surveillance conducted outside the law may “undermine the basic principles of democracy and is likely to have harmful social and political effects.”



Police infiltration

There were numerous reports of undercover officers infiltrating the protesters during the protests, stirring up violence, causing turmoil and making arrests.⁸⁵ Most of these undercover officers were members of the Intelligence Service of the Military Police, commonly known as P2. Complaints claim that these undercover officers often encouraged

protesters to react violently and to start riots, with the aim of legitimising tougher police action.

Involvement by agents of the state in this type of activity was shown when a military officer was filmed breaking a car window⁸⁶. Such actions clearly aimed to de-legitimise and criminalise protesters rather than facilitating dialogue with them and ensuring respect for fundamental rights.



Prioritisation of the protection of historic buildings and traffic over the safety of protests

The preservation of public order – which includes protecting historic buildings and ensuring traffic circulation - is part of the role of the military police.

However, the 2013 protests show that military action prioritised these goals over public safety, using disproportionate levels of repression and violence. Traffic circulation was used to justify violent police action even when protesters acted peacefully. For example, when protesters simply sang the national anthem during the 20 June protest in Rio de Janeiro, the police threw tear gas without any attempt to speak to the protesters first.

Damage to public property was insignificant during the protests but military police and riot troops used disproportionate force in the name of protecting the country's heritage.

The use of violence and **low lethal** weapons by police, severely wounding many protesters, was not legitimate or reasonable as a means to protect walls and windows from vandalism. In fact, the police's actions in June 2013 made the protests more violent and led to more costly damage, both financially and socially.

International standards

The Special Rapporteur on the right to freedom of association and assembly endorsed the statement by the expert panel of the Office for Democratic Institutions and Human Rights (ODIHR / OSCE) declaring that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly.”

The Inter-American Human Rights Commission also stated that “institutions have the duty to develop operation plans and procedures to facilitate the exercise of the right of assembly ... [including] redirecting pedestrian traffic and vehicles in certain areas.”

The Special Rapporteur also referred to the decision of the Spanish Constitutional Court which established that “in a democratic society urban space is not only an area for movement, but also for participation.”⁸⁸

Kidnappings and threats

Another feature of the protests was kidnappings and threats against protesters and those who opposed police action. ARTICLE 19 noted at least 11 cases.

For example, Paulo Baia, sociologist and professor at the Federal University of Rio de Janeiro (UFRJ), was kidnapped in Rio de Janeiro by unidentified masked men who threatened him saying that he must not give any more interviews or speak out against the police.⁸⁷ Baia believes that this was related to his criticisms of the military police action printed in the newspaper O Globo.

Journalists and the protests

Police targeting of the press

During the 2013 protests, protesters were not the only victims of violent actions by state agents. The military police also committed numerous violations against journalists and communications professionals who were covering the protests. Media professionals needed to be close to the action and were therefore as vulnerable as the protesters.

As the graph below shows¹⁰², there is a correlation between the total number of injured protesters and detainees and the number of media professionals who were injured and detained. In general the most violent protests also tended to be more violent for journalists, although there was an exception in Brasilia on 7 September when the number of journalists assaulted, injured or arrested was proportionately much higher than at other protests.

At times, media professionals covering the demonstrations were intentionally targeted by the police in an attempt to prevent any record of police actions. There were also several incidents when, even after identifying themselves as media professionals, journalists were still threatened, beaten and detained.

In total, at least 117 journalists were attacked and injured and another 10 arrested, including alternative media workers.

The UN Special Rapporteur for Freedom of Expression, Frank La Rue, issued a statement¹⁰³ in September 2013, condemning violence against journalists and others trying to record the protests. Frank La Rue noted that:

“in the context of events and situations of social conflict, the work of journalists and communicators and the free flow of information through alternative means of communication such as online social networks, are essential to maintain the public informed about the events, therefore plays an important role in reporting the performance of the State and public security forces against demonstrations, preventing the disproportionate use of force and abuse of authority”¹⁰⁴.

The general public needs access to detailed information such as interviews with protesters and state agents, photos and videos to develop opinions and make informed decisions. The presence of journalists at demonstrations covering the detail is very important for a diverse and solid analysis of the social context of the country.

On 25 June 2013, shortly after some of the largest protests, the Human Rights Secretariat held a public hearing in São Paulo to discuss the violence against journalists at protests. Media professionals who had been victims of police violence gave their testimonies and described their experiences during the demonstrations. They raised:

- the disproportionate police action
- the excessive use of non-lethal weapons
- the lack of protective equipment and safety training for journalists.

When protesters spoke out against the traditional institutions of the establishment, the media was not exempt. The Brazilian media has a powerful and symbolic place in society and the public felt cut off from it, objecting to the lack of pluralism in the views and ideas that it expresses and the concentration of power in the hands of a few.

There was a feeling that the media was not fully or accurately representing the aims and the reality of the protests.

This led to media outlets and headquarters of broadcasters – particularly O Globo - being targeted, with protesters calling for restructuring and an end to their monopoly. Some journalists working for these media companies found themselves at risk when protesters realised who they worked for, with some experiencing verbal and physical violence at the hands of the protesters.¹⁰⁰

Press coverage of the protests

Press coverage had a significant influence on public opinion and the way the changing dynamics of the protests were viewed.

In early June, when the protests organised by MPL brought more protesters onto the streets, the major media outlets generally took a negative view, highlighting issues such as the blocking of city streets and the vandalism that damaged banks, bus stops and subway stations during the occupation of public spaces. Major newspapers such as Folha de SP¹⁰⁵ and the State of SP¹⁰⁶ published editorials calling for the military police to intervene more forcefully to prevent acts of vandalism. The very day that these editorials were published, the military police acted with more force and brutality, attacking people with less lethal weapons such as rubber bullets.

When media professionals covering the protests fell victim to military police violence, the reporting of

their experiences led to a more positive depiction of the protests, legitimising the occupation of public space. This change in tone won popular support for subsequent protests. Police violence also motivated many people to support the protesters.

The alternative media - citizen journalists and others particularly active on the internet – played a vital role in the public's access to information about what was happening. They reached a new generation, used to accessing information in a different way, having been raised in the digital age. This generation does not relate to the traditional media channels and finds them biased.

However important the impact of large, traditional media outlets on public opinion, the alternative media had a remarkable impact on June's protests. New digital technologies helped spread information across Brazil in a way that had been seen in many other countries during the recent wave of global protests. This more interactive approach, allowing for popular participation, is gradually changing the approach of the traditional media, for example, by them using footage from citizen journalists.

It is not clear whether it was the media's change in position, their first-hand experience of the violence or simply the increasing strength of public support that opened up a wide range of viewpoints on the 2013 protests. The relationship of the media with popular phenomena is complicated, but it is clear that communications are an essential part of social movements.

The judiciary and the protests

The judiciary was very involved in the protests, asked to rule on a range of issues relating to the protesters and the protests, including the application of criminal laws, pre-trial detention, the release of detainees, and the prohibiting or restricting of demonstrations.

Some judges released detainees, rejecting police arguments to charge them with criminal association and conspiracy simply because they were dressed in black or carrying masks or milk of magnesia.

However, one judge released a group of seven protesters only on condition that they did not participate in further protests in person or online. Such a decision was a serious affront to protesters' freedom of expression and their rights to peaceful assembly and association and were a form of pre-censorship.

The first judgment imprisoning an individual came on 2 December 2013. A homeless man, Rafael Vieira, was sentenced to five years imprisonment for carrying bottles of various substances, including bleach. Although the defence argued that Raphael did not participate in the protests and that the substances could not be used to cause damage, the magistrate decided that "ethanol found inside one of the bottles can be used as fuel for fires, with capacity to cause property damage, personal injury and death."

The judiciary looked at the use of masks during protests, leading to statements such as: "it has been common for marchers to commit crimes of damage, or even more serious crimes, taking advantage of the situation and the difficulty of identifying the perpetrators of crimes. "For example, in Rio de Janeiro in July 2013, a special commission - Acts of Vandalism in Public Demonstrations – was convened by Decree 44,302¹¹¹, comprising prosecutors, civil and military police and the courts. Its job was to investigate whether protesters should be required to remove their masks and identify themselves to police when requested.¹¹²

In a decision significantly harming the right to protest, the Court of Minas Gerais in June 2013 banned demonstrations by the Union of Civil Police of Minas Gerais (Sindpol) and the Union of Education Workers of Mines (SindUte) around the stadiums used for the Confederations Cup.¹¹³ This decision ended up before the Supreme Court where it was overturned as it "unreasonably hinders the exercise of the right of assembly and expression of thought by those affected by the court order, contradicting what has been established by the Supreme Court."¹¹⁴

These decisions show the lack of consistency in the judiciary's approach to protest and the lack of guidance in terms of parameters and principles that can be applied.



Conclusion

As the global spotlight falls on Brazil for the 2014 World Cup, Brazil's Own Goal shows that the state has responded to widespread protests leading up to the games with a campaign of intimidation, hasty legislation, and police tactics reminiscent of those used under the old authoritarian regime.

What started in Brazil as a protest against fare increases for public transport quickly expanded to take up many other popular concerns covering social, cultural and political issues in the country.

Though Brazil has a tradition of mass-scale public protests dating back to the mid-1980s, these protests are also linked in many ways to the wave of movements across the region and globally over the past few years.

In response the international human rights community has looked to define a right to protest, examining and identifying where states can place legitimate restrictions on both the right to assembly and the right to freedom of expression.

Unfortunately the Brazilian state has reverted to its old authoritarian approach of seeing protests as threats to “peace”, rather than setting out to lead the world by example.

ARTICLE 19 is calling on the government to stop stripping the Brazilian people of their right to protest in hastily drafted new laws, and instead reform and modernise the Brazilian police to ensure it works for the benefit of a modern, tolerant and human rights-friendly country.

Research methodology

ARTICLE 19 surveyed the protests held in Brazil since the beginning of 2013, analysing the following media reports:

- “A Folha de São Paulo” newspaper, including the cover, the first book, and the daily book, of all editions from 1 January to 31 December 3 2013
- Webpages of the Free Pass Movement (“Movimento Passe Livre” – MPL) groups in the country
- Webpages of ABRAJI (Brazilian Investigative Journalism Association) and the ANJ (Newspaper National Association), in addition to the webpages of journalist syndicates in each of the federal states.

We built a database of violations from the selected media sources, cross referencing the information, such as the use of weapons or the lack of police identification, against videos and images.

We also used research on international standards and the right to protest, national legislation and case law, the documentation from consultations around bill drafting processes in the Chamber of Deputies and the Senate.

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