

# **LEGALIZATION OF THE REPRESSION OF THE RIGHTS OF THE PROTEST AND SOCIAL MOVEMENTS IN LATIN AMERICA.**

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## **SUMMARY:**

Although each Latin American country has its history and independent process, there are common and shared characteristics in these countries: the existence of concentrated power structures and unequal and hierarchical social systems. From the class struggle, the defense of human rights, student, worker, peasant and urban protests, access to land, quality of life, indigenous movements, among many other demands of the population, have been the object of claim of rights towards the States, and consequently have triggered the execution of protests and social demonstrations that aim to demonstrate the discontent for the unsatisfied basic needs and the real deterioration of the rights of which the States should be guarantor.

Although the right to social protest is well recognized constitutionally and internationally, governments have been implementing with increasing force, measures that have limited this right, restricting it and succeeding in silencing the demands of the population, thus preventing it from being affected. legitimacy, flagrantly violating the participation of movements that defend, expand and redefine rights and make democracy effective. In this context, this article aims to document the restrictive practices of some Latin American countries regarding the criminalization of social protest, which does not allow the effective enjoyment of this right and consequently undermine the effectiveness of other fundamental rights, in view of the which, finally, will be evaluated some proposals about some essential practices so that the right to protest is fully developed.

## **KEY WORDS:**

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Represión, Protesta Social, Legalización, Criminalización.

**ABSTRACT:**

Although each Latin American country has its history and independent process, there is a common and shared characteristic in these countries: the existence of concentrated power structures and unequal systems. From the class struggle, the defense of human rights, student and workers protests for urban and rural demands, access to land, quality of life, indigenous movements and many other demands of the population, have become the focus point to claim to the States the guarantee of their basic rights and consequently arise numerous protest that aim to demonstrate discontent for the basic needs unmet and real deterioration of the rights of which states should respond.

Although the right to social protest has international and Constitutional recognition, governments have been increasingly implementing measures that limited this right, restricting it and succeeding in silencing the demands of the population, thus preventing its legitimacy from being affected, flagrantly violating the participation of movements that defend, expand and redefine rights and make democracy effective. In this context, this article aims to document the restrictive practices in some Latin American countries regarding the criminalization of social protest, which do not allow the effective enjoyment of this right and, consequently, the non-realization of other fundamental rights.

**KEYWORDS:**

Repression, Social Protest, Legalization, Criminalization.

**INTRODUCTION:**

Although social protest and non-violent demonstrations are rights that have international guarantees and constitutional recognition, they are not materialized because of the States repression and the limitations through the imposition of standar behaviors, criminalization, the social sanction or penalty, as well as restrictions, use of violence and other mechanisms that hinder and limit the full realization of this right.

From that perspective, this article seeks to address the following question: how some Latin American states have negatively involved in the realization of the right to protest and the actions of social movements, through the legalization of forms of repression routed models State restrictive? To answer this question is necessary to approach to the legal and social context of some Latin American countries respect the right to protest and social events will take place considering that the vast majority of these countries have high rates of inequality and inequity which have led to the organized communities to search for common purposes through social struggle and protest. It seeks to approximate measures of repression and legalization of same, in order to understand the role of the right to protest their link with political, social and economic systems and find the relationship between the restrictive legislation of social protest political models associated with the limitation of fundamental rights.

In order to develop this investigation, this article is organized as follows: 1. General aspects of social protest in Latin America and international guarantees of the right to social protest; All this to establish the origin of the right to protest in Latin America, through the study of international guarantees and the scope that the State has provided these rights. 2. Later it will refer to the restrictive States legalization of rights and repression of social protest in Latin America, issues that seek to determine the ways in which the restrictive Latin American States have oppressed the right to protest and demonstration. 3. In the same way, this study is going to document throughout this research, some lawsuits and experiences that

For this primary sources consulted treaties, covenants, declarations and conventions on the right to protest and comparative law in Latin American countries regarding the regulation of the right to protest in the policiva standard, and secondary sources such as reports, rapporteurs and international standards on guarantees of the right to protest, international jurisprudence about contentious cases of restrictions on the right to social protest and rally in Latin American countries. Also articles websites, magazines and educational spaces on the forms characteristic suppression of restrictive states rights, investigations of violations of demonstrators in Latin American countries and theories of experts on the legislative regulation of the right to protest as a restrictive measure.

This research paper is part of the postulates of qualitative research paradigm, meanwhile, it is based on the theoretical literature review and emblematic cases that provide sufficient

knowledge in order to obtain concepts related to social protest and demonstration in Latin America, national and international legal frameworks protection and permissive regulatory and jurisprudential development and / or restrictive in this regard. Also it aims to analyze a social phenomenon with the main purpose of redefining from a critical stance, vision and concept of such rights. Moreover, the present research work is immersed in the social critical approach whenever looking know the phenomenon and the problems arising from these states y limiting the right to social protest, in order to achieve establish a clear relationship between the criminalization of social protest embodied in legislation and legal practices orbits and direct relationship between these restrictions and restrictive models State of freedoms and fundamental rights.

On the other hand, this research project finds its limits and inspiration to Latin American countries like Colombia, Mexico and Argentina, which have been the subject of serious cases of repression of the demonstrators, who have experienced the interference of the state and the repressive force embodied in legislation that seeks to minimize their rights. Also toBy way of illustration, it is necessary to refer some of the events in Colombia, a country that has stood the large number of demonstrations presented, considering that since 1975 have been increasing social protests and thus They have increased rates repression.

An example icon repression of social protest in Colombia, the National Agrarian Unemployment was carried out in 2013, in which repression reached exaggerated levels, risking flagrantly rights to life and human dignity. The results are evident in an investigation into the facts to the Inter-American Commission on Human Rights, which shows the following figures:

[...] 902 people were victims of some form of aggression. Of the total cases, 15 people were killed, seven victims of some kind of cruel act or torture, including sexual abuse; 315 people arbitrarily detained, 40 people suffering from severe beatings, 329 that because of the attacks, were some kind of injury and / or injury and 5 people with serious injuries that led them to partial or total disability. It is noteworthy that in 70% of cases, the attacks were accompanied by other types of violations [...] there are at least 3 cases of alleged disappearances. The National Police was responsible for 88.15% of the reported facts, the Army, meanwhile, was responsible for 1.55% of cases. (MOVICE-CCEEU, 2013, p. 23, 24)

Another representative case of social protest was the University National Strike of 2011, which had a large territorial scope, and was accepted by the population and later with his success, was valued as a youth win the fight for education as it caused the withdrawal of the reform of the education system supported collective organization MANE: National Student Broad Mesa. Likewise, you can bring up a case in the Department of Nariño in 2014. played, on May 9 of that year, when students at the University of Nariño demonstrated peacefully in support of the agrarian strike carried out at the national level. The response from the security forces, represented by the riot squad mobile - ESMAD was making an intrusion of unfairness, hitting, capturing students and making deliberately damage at the facilities of the University. According to them, their actions were preceded by a legitimate aim, as was to prevent students from blocking public roads. The above case is established as one of the greatest aberrations against the University of Nariño and one of the facts of stigmatization, criminalization and curtailment of social protest in the student movement in the Department of Nariño.

With regard to these acts of violence, the University of Nariño filed a lawsuit against the Ministry of Defense, the Metropolitan Police and anti-riot police riot police, which, on January 31, 2018, judgment was issued in which is declared to administratively liable driven, and as a measure of non-repetition ordered to be held in the company of senior police officers and the presence and appearance of the members of the anti-riot police a ceremony with community participation and loa media where public apologies offered to the offended institution and the community, with samples of a clear and categorical condemnation of the irregular actions that took place there and the adoption of an inescapable commitment to take the necessary corrective measures for cases like these are not resubmitted.

Cases like these show the repression of social protest as a means of demonstration and beyond that, the legalization of same through the implementation of illegitimate actions, restrictive rules, criminalization, limitations on the exercise of the protest, violence, intensive use of force by public authorities, among other measures. "Thus, the increased repression seems to be due to a deliberate strategy of containment of a rising cycle of protest". (Cross, 2015 p. 52). Which would explain the desire to limit the right to protest and thereby silence the demands of the population and not allow to affect the legitimacy of governments and in this way achieve even this right away.

On the other hand, as regards Mexico as one of the countries with strong cases of repression in Latin America, it should be underlined that the most effective mechanism of repression against social protest is the creation of laws that regulate demonstrations and protests, accompanied of a regulation that allows the arbitrary use of force by the police authorities as arbitrary detentions, violations of the right to physical integrity, dignity, honor and personal freedom, cruel treatment and arbitrary interference. In this regard, the Center for Legal and Social Studies - CELS (2016) states that: "in a short period of time the executive and legislative authorities approved laws or sent bills with regulatory frameworks that seek to restrict, punish or limit rights" . (p.11)

Thus, these provisions have as their main characteristics:

- A. Restrict manifestations: they prevent the use of certain circulation routes.
- B. They establish the need to notify the authorities without considering the existence of spontaneous manifestations.
- C. They grant broad and imprecise powers to the authorities in charge of security to make use of public force and even dissolve demonstrations.
- D. They impose administrative sanctions for disturbing the order, crossing the public highway untimely, carrying out actions or omissions that damage the order or public morals, among others.
- E. Classify the manifestations as lawful and illicit or violent and peaceful and allow the dissolution of demonstrations. (Centro de Estudios Legales y Sociales –CELS, 2016, pp. 12 y 14)

These statements are based on the current regulations in Mexico City, regarding the use of force of the State of Puebla and the mobility law of the Federal District, which specifically states in Article 220:

The obligation to give notice about the marches and meetings that will take place in the capital of the country through a written document, with a series of requirements that may leave the people who are demonstrating vulnerable, in addition to mitigating the exercise of social protest.

Finally, regarding Argentina, it is important to highlight one of the events of great relevance in the history of the demonstrations: Mothers of the Plaza de Mayo. In this association founded in 1982, hundreds of mothers marched, whose children disappeared in the dictatorship imposed by General Jorge Rafael Videla since 1976 and of those who never had real knowledge of what happened. At that time, Argentina was in a crisis of state regime, which is why social protest was highly restricted, so much so that a state of siege was established, which consisted in the prohibition of meeting more than five people in public places, because they could be disappeared or judicialized. For this reason, these mothers decided to meet every Thursday to address the Pink House, seat of the Executive Power of the Argentine Republic, to walk around the monument of the Plaza de Mayo, in order to be heard peacefully.

However, it is not possible that the same thing happens again in Argentina, because these measures of repression have been reinstated by the Macri government to face the continuous protests like the one that occurred in December of 2017, where thousands of people They went out to protest the measures that were intended to impose on workers, such as massive layoffs, increase in the rates of public services, raise the retirement age and inflation along with a political economic crisis.

The beginning of these demonstrations was carried out peacefully through cacerolazos, shouts that demanded justice and mobilizations in front of the Plaza del Congreso. However, they became violent, as unjustified repressions were carried out by the police, generating restrictions on the protest and treating the demonstrations as problems of public order and even as crimes, which is why police forces pushed back protesters with tear gas, fire hydrants, dogs, beatings, use of physical force and even with rubber bullets, with several civilians injured in these clashes (Agence France-Presse - AFP, 2017). The situation suffered by the Argentine population evidences a clear form of repression that moves increasingly to different less favored sectors, which constantly fight against the Macri government, which has generated insecurity and repression for all those who decide to be part of demonstrations social, and even has made them illegal, allowing the use of force indiscriminately, performing a repression without limits, because in short it is intended to treat as a criminal anyone who wishes to be part of the demonstrations.

Como consecuencia de esta situación, en la República Argentina se amplió la visión de evitar la realización de protestas que pudiera generar que el Estado siga causando muertes y afecte la integridad física de los manifestantes. Y existe la preocupación sobre las consecuencias que pudiera acarrear la consolidación de políticas de baja tolerancia o reformas con medidas represivas a determinados formatos de protesta cuyos mensajes u órdenes que mantienen las fuerzas de seguridad o policía son que intervengan con dureza contra los manifestantes, generando una vulneración a derechos fundamentales.

### **1. Generalities about Social protest in Latin America.**

To begin, it is necessary to highlight that the social protest is a form of peaceful demonstration whose purpose is to have full enjoyment and enjoyment of Civil, Political, Economic, Social and Cultural Rights, and contribute to the construction of a just State, emphasizing that all person can express their complaints or aspirations in a peaceful way, without fear of reprisals, without being injured, sexually assaulted, beaten, detained and arbitrarily detained, tortured, murdered or subjected to forced disappearance. This is how "Throughout the history, social protests have been the engines of important changes "(Social Protest and Human Rights.)

Understanding the issue of social protest in Latin America is not an easy task, since this is a right that throughout history has developed within unequal and inequitable societies, in which the interests of majorities or elites have marked a big difference with respect to minorities, who have struggled to achieve some minimum of civil or social rights, so they must resort to resistance and mobilization. The history of the countries of Latin America is in the midst of social struggles aimed at the protection of fundamental rights. About the social struggles, Fernando Calderón (2012) points out:

The recovery of democracy, the defense of human rights, the protests of the student movements for quality education, through the conflicts of the working class, the struggles of peasant movements for land, urban conflicts to improve the quality of life, regional demands for the deepening of decentralization processes, the protests of the impoverished middle classes or the demands of indigenous movements for the respect of their territories and for the revaluation of their

ancestral customs and uses, social mobilizations in Latin America they have been and are carriers of democracy. (p.15)

Asimismo, Richard Youngs (2017) afirma que: "Arguably the defining feature of modern protests is their eclecticism. Protests generally contain a mix of system related demands and policy specific grievances what are the meanings behind the worldwide rise in protest."(p.1-2)

For its part, when it comes to the issue of protecting the right to protest, there are some legal and social reasons that fully justify its protection in contexts of democracy or that seek to achieve minimum levels of democracy. In the first place it is said that their protection is necessary because "it is linked to the rights of assembly, association and expression, which are necessary conditions to conceive as democratic a political regime." (Linz, as cited in Cruz, 2015, p 19). In the same way, it is argued that thanks to social protest, pluralism and diversity can be satisfied as immanent foundations of democracy. Moreover, its importance in democratic regimes lies in the possibility that is granted to citizens for the control of government, in order to avoid arbitrariness, abuse and overreaching in the exercise of power (Cruz, 2015). Finally, it must be "social protest must be protected as part of the protection of minorities of all kinds, since a political regime is not democratic if minorities do not have the same rights and opportunities as majorities." (Gargarella, as cited in Cruz, 2015, pp. 24 and 25)

In this order of ideas, most Latin American countries have constitutionally enshrined in their type of State, the paradigm of which is social and of law, where democracy is a transversal axis and explicit guarantees are provided in that sense regarding the right to protest, but that in daily life are exposed to the manipulation of small oligarchies, social inequalities and abuse of power. For this reason, it is important throughout history to highlight the work that indigenous peoples, women, workers, and peasants have developed, all of which are aimed at achieving social goals through social protest and in this way show how it is established by López Arnal (2008) in one of his positions about his book *Rebeliones*, the character and position that underlies this form of political exercise:

An anti-capitalist position that demystifies the fallacies of this mode of production as something eternal and unchangeable, that assumes a position in favor of the oppressed and

exploited of the world and that, delving into the memory of the plebeian struggles, takes up the path of another form of social organization that goes beyond capitalism. (p.3)

The Latin American people found in the social protest a way to express against the deep contradictions of the political and economic model and the discontent for the difficulties to access to basic rights, goods and services. That is why the great social struggles are generated in communities that identify with common problems, for which social protest becomes the only alternative to claim their rights and for the State to fulfill its duty to guarantee it.

In this sense, Guida West and Rhoda Lois Blumberg (1991) consider the existence of four protest categories worldwide: "those resulting from economic hardship; racial, ethnic, or nationalist struggles; humanistic and global causes, such as nuclear disarmament and ecology; and feminist movements. "(p.4) The transforming role of social protest is highlighted, in union and agrarian contexts, for the defense of education and the environment. It should also be noted that restrictive legislation reverses this kind of popular scope through the mobilization in the streets, to achieve the true social purpose of the protesters. In this regard Vega (2002) comments: "It is important to recognize a particularly rich moment in expressions of social protest, dignity and hope, as they showed us, with their practical actions, workers, peasants, indigenous and humble women at the beginning of the previous century. "(p.360)

Aspiration towards consolidating the social paradigm and law in the State, is society as a whole. It aims to find its warranty in harmony with democracy and equitable distribution of power and the means of production. Pitifully social realities are far from legal claims in that dichotomy and constant struggle between being and should be the norm. The social rule of law with which it has absolutely imperfect, where the full guarantee of rights and a dignified life for citizens is very minimal; social problems could not be solved by governmental and institutional way ordinary. This explains that many people in different Latin American countries have opted for social protest as a way to show their disagreement, and assert their rights iscir reivindicar their political positions, constitutional prerogatives, human rights, democracy and free expression.

## **2. International guarantees to the right to social protest.**

The object of international guarantees consists of the existing liability heads of States to promote and protect human rights and prevent infringement or exist restrictive measures that limit, so it is the duty of every country to foster a secure environment, appropriate and generating access to public spaces for people to freely exercise their right to social protest. Above, with the correlative State obligation to eliminate any threats or harassment against demonstrators, where it is necessary for local authorities to safeguard the rights without any discrimination and taking into account that the use of force must be absolutely necessary and in no way it may be excessive.

In this regard, the principle number 4 Right To Protest states:

- 1) The protection of internationally guaranteed human rights must apply during all protests and must be the rule, while restrictions must be the exception. 2) States should ensure that derogable rights which are integral to the right to protest are subject to restrictions only on grounds specified in international law. In particular, no restriction on the rights to freedom of expression, assembly, association and privacy may be imposed unless the restriction is: a) Prescribed by law; b) Pursues a legitimate aim; and c) Necessary and proportionate in pursuance of a legitimate aim. 016)

International law regarding the right to social protest, finds support rights to freedom of peaceful assembly and association, guaranteed in the Universal Declaration of Human Rights 1948, Article 20 (right to freedom of assembly and peaceful association), the International Covenant on Civil and Political Rights 1966, Article 2 (right to peaceful assembly). The exercise of this right may be subject only to the restrictions prescribed by law and are necessary in a democratic society; The International Convention of the Elimination of All Forms of Racial Discrimination of 1965, Article 5, paragraph d (The right to freedom of peaceful assembly and association), the International Covenant on Economic, its in your Article 8, the Convention on the Rights of the Child of 1989 in article 15 (the rights of the child to freedom of association and the freedom to hold peaceful meetings), the Declaration

American Convention on the Rights and Duties of Man of 1948, in its Article XXI (Right of Assembly Everyone has the right to peacefully meet with others) and the 1969 American Convention on Human Rights in Article 15 (Right of Peaceful and Unarmed Reunion The exercise of such right may only be subject to the restrictions provided by law).

From this perspective it is important to highlight the development of international standards designed to ensure protection of the right to protest, and thus limit the restrictions, use of force, violation of human rights, as stated by the Special Rapporteur of the United Nations on the rights to freedom of peaceful assembly and association:

(...) given the interdependence and existing interrelationships with other rights, freedom of peaceful assembly and association are a valuable indicator to determine to what extent States respect the enjoyment of many other human rights, appears the protest as a complex law and a means to defend other rights. (Maina Kiai, 2012, p.3).

Therefore it is of great importance to emphasize some rapporteurs and reports made by the Inter-American system and the universal system on the right to protest, which frame a precedent for how it has handled this fundamental right internationally. First it is important to note the Declaration of the High Commissioner in the report of the Office of the United Nations High Commissioner for Human Rights; this provides that peaceful demonstration is closely related to multiple rights, or complements, including the rights to freedom of expression, peaceful assembly, freedom of association and the right to participate in the conduct of public affairs *assirven de cauce para la garantía de otros derechos civiles, políticos, económicos culturales etc.* “A este derecho se le podrá aplicar “ciertas” restricciones, cuando la sociedad democrática así lo determine, pero el estado debe guiarse siempre por el principio de que las restricciones no deben comprometer la esencia del derecho.” (Maina Kiai, A/HRC/20/27)

In this way Resolution A / HRC / 25 / L.20 establishes that States must promote a safe and propitious environment so that individuals and groups can exercise their rights to freedom of peaceful assembly, expression and association. . Peaceful manifestations can occur in all societies, including manifestations that are spontaneous, simultaneous, unauthorized or restricted.

On the other hand, the recommendation of the second report on the situation of human rights defenders in the Americas to the States, points out the need for measures and operational plans to facilitate the exercise of assembly, which includes, from the requirements requested to conduct a demonstration, the reordering of pedestrian traffic and vehicles in certain areas during implementation, to the accompaniment of the people involved at the meeting to ensure their safety and facilitate the implementation of activities that motivate the protest. At this point stands out, *Kettling* practice, which involves the creation of large police cordons to contain crowds in limited areas, preventing protesters leave or allowing them to leave by one place. "It is inherently damaging to the exercise of the right to freedom of peaceful assembly, by their indiscriminate and disproportionate" (A / HRC / 23/39 / Add.1, para. 37)

On this basis and based on the fundamental importance of the right to social protest in democratic systems, it is noteworthy that the State has a reduced framework to justify its limitation. In this sense, although the right of assembly is not absolute and may be subject to certain limits, they must be reasonable in order to ensure the peaceful development of the demonstrations.

Moreover, it is important to determine the increasing initiation of criminal proceedings against those involved in social protests, arguing disturbance of public order or state security attack. For these cases, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A / HRC / 26/29 recognizes the difficulties that various groups are often socially marginalized in exercising face their rights to freedom of assembly.

Finally, one can say that, about the right to protest, therea wide range of international protection and guarantees that provide fundamental status; with these international pronouncements, is to eliminate any restrictions so, place and time of the exercise of this right and therefore conform to the strict criteria of legality, necessity and proportionality. This implies that excessive or arbitrary measures can not be applied against protesters because it is citizens who come to the social protest as a measure actually to express their unresolved disagreements.

In this way, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have addressed some contentious cases related to acts of social protest in Latin American countries, where the guarantees on which this right is based are supported. Among them stand out: case of Manuel Cepeda Vargas VS. The Republic of Colombia. (Case No. 12,531) dated November 14, 2008, about the state responsibility in the death of Senator Cepeda Vargas and the case of the Patriotic Union activists. In this case, the Commission considers that the right to associate freely for ideological and political purposes contains negative obligations not to be intervened by public authorities that limit or hinder their exercise, in addition to positive obligations to prevent attacks against freedom of association, to protect those who exercise it, and to investigate violations of that freedom. In addition, the Commission notes that:

Those who are under the protection of the Convention have not only the right and freedom to express their own thoughts but also the right and freedom to seek, gather, receive and impart information and ideas of all kinds, including political ideas. As indicated by the Court, freedom of expression has an individual dimension and a social dimension, adding that everyone is free to express his ideas. (...)

Similarly, the Inter-American Court of Human Rights, has spoken in the case Perozo and others vs. Venezuela in its judgment of 28 January 2009, about allegations of violence and threats made to journalists by the armed forces in the context of demonstrations and social protest in Venezuela. In this case, the Court develops the concept of extreme care must have military forces, on the understanding to take reasonable steps to allow protests to develop peacefully and without violating the rights of demonstrators. About foregoing, the Court finds that:

(...) that the legitimate use of force and other instruments of coercion by members of the security of the State should be exceptional and only used when they have been exhausted and failed all other means of control, distinguishing imperatively in such circumstances, among those who, by their actions, constitute an imminent threat of death or serious injury to themselves or others and those who exercise their rights to demonstrate and not present such a threat. (...)

In the same way, the Inter-American Court of Human Rights ruled in the case of the Caracazo vs. Venezuela in its judgment of 11 November 1999, on the violation of human rights produced in the context of social protests by the economic crisis facing Venezuela. In this judgment, the Court established a standard for the use of force, stating that:

The State must ensure that, if necessary to employ physical means to face situations of disturbing public order, members of its armed forces and its security bodies will use only those that are essential to control such situations in a rational and proportional manner. (...)

In addition, the Court ordered take preventive measures such as:

Educate and train all members of its armed forces and security agencies on the principles and standards of protection of human (...) rights adjust operational plans to the demands of respect and protection of such rights, to prevent produce excesses. (...)

About these international disputes, we can infer that there is an international precedent that seeks to protect the right to protest, seeking to avoid the violation of internationally recognized rights, which are part of the constitutional and thus form part of the constitutional articulated each member State, so it is important to exalt the role that these failures in key removal or rejection of the restrictions that have arisen in different circumstances in each country and have led to the erosion of this fundamental right.

### **3. Restrictive states rights.**

To start this analysis is important to note as defined over time the concept of repressive state rights. Thus, the Marxist definition states:

It is explicitly conceived as a repressive apparatus. The State is a 'machine' of repression allowing the ruling classes to ensure their domination over the working class to be subjected to the process of capitalist exploitation (...) (Louis Althusser, 1969, p.3).

From this perspective, a repressive state implies the intention of the elite class cohibir certain social actions that somehow would put their own stability at risk, so take measures as to contain, stop, stop or punish actions that are out its orbit of power. For his part Manuel Tufró (2017) states that:

Is trying to install the idea that "every protest is outside the law." "The ideological substrate corresponds with this worldview in which they do not see the protest as a fact of democracy but as an evil to eradicate and therefore those who are on their side are illegal. (P.2)

So, repression can be legal when States fall within the constitution or the law, or illegal when state or para-state forces act without respect for the law commit crimes in their actions, which generally involves the use of violence. It is possible to state that exists in the repression an exemplary logic of the actions for which those who exercise not only try to maintain their power and not "violates the law," but it also wants the rest of society is self-represses and not imitate certain behaviors. In this regard, the American Civil Liberties Union (sf) stated: "The government can not impose restrictions permit or deny a permit simply does not like it Because the message of a Certain speaker or group." (P.2)

This repression, which has emerged in several countries has been embodied in constitutions, codes of police laws, which in one way or another have made the company lose confidence in state authorities, and therefore become the main vulneradores of rights through the use of power. An example of this is Colombia, where trade unions have existed, peasant, student and indigenous people, who have suffered extermination and had to be reborn his ashes, as referred Cepeda (2012):

To give you a figure, we have seen in the last twenty years a kind of history of Phoenix in Colombia, ie a constant rebirth of social movements that have been killed not one but several times in the course of a few years. (p. 103-117).

On the understanding that Colombia, restricting the protest it has become evident in the current regulations as a genuine characteristic of repressive state that embarrasses the realization of rights. Thus the Law 1453 of June 24 of 2011, entitled "Citizens' Security Act" contains provisions contrary to the right to protest and demonstration, as it is criminalized by criminalizing acts of protest, including behaviors that are too abstract and do not specifically determine which activities are contrary to law, leaving full discretion to the authorities and legal practitioners decisions about the actions eligible to be sanctioned is included. Some restrictions are among the mandatory notice among other restrictive measures, including already they have been examined by the Constitutional Court. Respect to the law 1801 of 2016 or "National Police Code and Coexistence" in the sentence C- 233 of 2017, the vast

majority of articles concerning the right of protest were declared unconstitutional and unenforceable and therefore is granted a period to Congress to regulate this matter through a statutory law until 20 of June of 2019.

By virtue of the foregoing, the debate continues and meanwhile, the regulation of the constitutional right to social protest in Colombia is still paused, leaving a wide legal vacuum regarding these rights. The foregoing, even though in the month of August of the year 2018, the Ex President Juan Manuel Santos issued the "Protocol for the coordination of actions of respect and guarantee of peaceful protest" as a guide in the creation and regulation of the right to the protest, which highlights the importance of this right, as an essential element of democracy, even though we find ourselves in a normative framework that has been characterized by the criminalization of social protest. This is just one example of how laws, bills, regulations and judicial interpretations that seek to limit the right to protest are increasingly created in many Latin American countries.

In view of the above, it is appropriate to highlight the repression of social protest, which in Colombia, as in other Latin American countries, the State and illegal armed actors, have resorted to a variety of tools to carry out the repressive objective, from the silencing and invalidation of their claims, among the most "benign", to imprisonment, assassinations, death threats to leaders of social movements, illegal or arbitrary detention, false accusations and accusations against demonstrators, which they are not taken to the judicial level, but they manage to hinder the protests. In this sense Julie Massal (2015) points out the following:

These strategies to silence, ignore or intimidate the peaceful opposition send little messages conform to the democratic spirit of both elites boast. Well, apparently, it is not possible to achieve changes by way of dialogue, peaceful protest, or constitutionally valid consultation processes. It is thus not surprising that the protest were to move in less institutionalized spaces and use less peaceful means of expression. (P.)

Another reason that the state to encourage repression, is that it seeks to resolve problems of national security, and thus maintain the legitimate order in society, even though freedom of enjoyment of fundamental rights is prevented. Sabine Kurtenbach (2014) states that "Many

governments turn to an excessive repression because, to some extent, the demands that protesters do call into question the relations of social and political power in place." (P.)

It should be noted that repressive states that persist today are the result of fear of the State to civilians Shownonconformity against the prevailing system of social exclusion as delegitimize the establishment or even reach overthrow him. This situation has led to governments with the power to create laws seek a discreet silence somehow such complaints, thus giving more power to the public, police and military authorities with ample leeway to use force and impose a social order, creating a legalization repression presented, without realizing that the more force is generated and human rights violation exists, more violence is required.

#### **4. Legalization of the repression of social protest in Latin America.**

Social protest and demonstrations in Latin America are rooted in countless multiple economic, social and cultural conflicts, which have led to the mobilization of the population of countries with common traits that challenge structures concentrated and unequal power. as statesJ.Craig Klandermans Jenkins and Bert (2005)"That social movements aim to alter social practices and Institutions Have to come into contact With the state, if only to consolidate Their claims. "(P.) <sup>3</sup>After the social protest and protest, discontent is the basic demands unmet in relation to the deterioration of fundamental rights, for which States should respond, managing conflict and creating institutional frameworks that reduce the inequality gap. However, the reality is different: States do not create or guarantee democratic alternatives, if not by contrast, generate measures that criminalize the protest, as restrictive means of participation, undermining this right and downplaying the essential purpose of it as a claim of other fundamental rights.

According to the paragraph 2 of the General Agreement Havana (2013) "It identifies a number of obstacles to manifestations of popular discontent, represented in legislation limiting and criminalizes the exercise of social protest; militarist police practices that repress violently these expressions. "In this sense the protest and demonstration are an expression of political dissent in some Latin American countries has increased with the passing of the years, in the same way so he has made state repression as a direct result and containment strategy

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<sup>3</sup> Social movements that aim to alter social institutions and practices should contact the state, if only to consolidate their claims.

against the claim of rights and the manifestation of nonconformity. This has set the difficulty of the exercise of this right. According to Global Witness, "at least 185 people human rights defenders were killed in 2015 in the world, and of these 122 were killed in Latin America." (P.)

The right to protest has national and international guarantees that should allow full protection and enjoyment. However, these guarantees have not been sufficient to fully guarantee in practice, which has meant that this right is affected by state intervention and contrary interests, through a discourse that finds its justification in the weighting other rights such as national security, mobility, public order or general welfare, at which time, the right to protest loses all legal protection.

The governments of some Latin American countries have been implementing ever more strongly, measures that have limited the right to protest and democracy as a system of government, framing itself in own of so-called restrictive states rights, even though there are political garantistas, international treaties and constitutional texts democratic systems, but they have not understood the organization of power and its structures and connaturales situations of inequality and poverty. So, it is necessary to refer to some of the most common forms of restriction on freedom of protest, which have been implemented as legal and legitimate by governments and are classified as: penalties for actions and behaviors, notice and intervention of the armed forces.

#### **4.1 Penalization of actions and behaviors:**

This has been one of the most restrictive mechanisms implemented in countries like Venezuela and Brazil, governments whose rules have been criminalizing social protest.

On the issue the Center for Legal and Social Studies, CELS (2016) has argued:

Many of the standards adopted in recent years intensified the punishment of actions or behaviors related to the protests. This group of reforms involves issues such as: ban on protests actions in other situations are not prohibited are made; increase penalties for offenses or crimes that are often associated with conducting a protest like cutting a street or occupy a property and create aggravating for crimes when committed in a protest, for example, damage to a property. (P.8)

Regulation to protest tends to interpret a restrictive approach. "In addition to induce greater criminalization of protest actions, such rules seek an inhibitory effect seek to restrict

a priori because announcing possible repressive consequences attempting to discourage participation." (CELS, 2016, p.8). In this regard it is important to highlight the case of Argentina, which in the penal code Article 194 establishes "imprisonment for three months to two years to disrupt the normal functioning of transport, public services or communications" and although not is expressly criminalized for demonstrations or protests, this is an interpretation that is subject to the administrators of justice, which has led to increased criminalization of protest, as stated by judge Raul Zaffaroni Supreme Court in the book *It is legitimate criminalization of social protest?* Therefore, Uprimny and Sanchez (2010) asserts: "The exercise of the right to assembly and demonstration can affect social routines and generate some trauma in the daily course of activities, but this can not justify the criminal treatment behaviors." (p.2)

Finally, you can see how this is one case where the criminal code by creating a series of prohibitions and restrictions on the fundamental right to protest hardens. So says the doctrinante Cortez Morales (2015), who asserts about:

Lto criminalization it is to bring social conflicts to the judicial arena, imprisoning members of the movements and force them to face long and adverse processes. This policy of criminalization is actually a policy of social discontent control using criminal law increasingly to face such nonconformity. (P.)

Given the above, secondly it is necessary to refer to other classes of instrumentalization or materialization of the restriction of the protest, as is the notice.

#### **4.2 PRIOR NOTICE:**

This restrictive measure is a duty to notify authorities prior to the location, date, reason, individualization of Protestants and times as may be realized. In this regard, the Center for Legal and Social Studies - cels (2016) refers:

Often you try to justify this requirement by presenting it as a way to provide greater protection to the exercise of the right to demonstrate. However, many times the notice ends up working as a covert authorization requirement. In these cases, the notification procedure gives the authorities the power to impose dates and times and what have allowed to protest and conditions to do so places are. In some cases, it also gives them the power to ban demonstrations and authorize the use of police force to disperse them if they consider that the protest organizers failed to meet the conditions. (P.8)

Moreover, another clear violation of social protest by this form of repression, occurs in countries such as Peru, Venezuela and Paraguay, where there are rules prohibiting protests at specific sites, such as near public buildings in the downtown area of cities, why, if any of these places indicated in the notice made to the authorities, the authorities may deny permission to protest, obviously cohibiendo of the right to demonstrate and to the meeting.

The most serious impact of these standards is to enable, by legal means or by administrative, repressive state intervention when demonstrations do not meet the established criteria. In some standards and initiatives law explicitly this happens, because it is enabled to repress; in others, it occurs indirectly to justify repression. (Cels, 2016, p.10)

In addition to this, one more concern case in Latin America is Chile because there were a decree promulgated in 1983 by the dictatorship of Augusto Pinochet, which requires written permission 48 hours before performing a demonstration to establish the place where the object of the demonstration will be organized and who organize it and participate in it, generating repression of the right to demonstrate and diminishing the capacity and scope that this may have, and stigmatization of those who fail to participate in the protest.

In this regard, it is important to note also, the case of Mexico with the "Law of Mobility of Federal District", which indicates that it is necessary to give notice by letter with some requirements such as: full name of the person who organizes, name of event, start and end time, place and route, the estimated number of attendees, number and type of vehicles used.

Likewise the Police Code, Law 1801 of 2016 of Colombia in Articles 52 and following states:

Compulsory notice, signed by at least three people and gives the power of district and municipal "authorize" the temporary use of roads in their jurisdiction to exercise public meeting or mobilizing mayors, leaving discretion, allow or impede the exercise of a fundamental right.

That is, impose the measure to give notice, creating disproportional requirements, even raising the possibility of qualifying so prior protests, its content and its participants.

In short, it has the consequence that triggers these cases is the existence of repression that is legitimated in each country, putting in danger the existence and foundation of the right to protest, and also violating international standards to which they belong. In this regard the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of 2005 warns that "the notice or notice does not constitute a" permit "that must be issued by an official, if so effectively violate the right freedom of assembly and demonstration. "

Finally, regarding the use of violence and action by law enforcement, it is necessary to refer to the intervention of the armed forces as one of the classes of restriction.

#### **4.3 Intervention of the Armed Forces:**

As already mentioned, States have given greater prominence to public order and avoid at all costs its threat and violation, although it affected the right to protest. Such is the view of these states, which have created rules, which allow the armed forces carry out operations that generate "public safety" through militarization. A clear example of this phenomenon occurs in Colombia with the Mobile Squads Antidisturbios (ESMAD), which is responsible for monitoring the demonstrations and was created in 1971 and in 1999, for which Edwin Cruz (2015) states:

A model of police containment of the protest based on the intensive use of force further complicates the picture. Indeed, although the rules governing the exercise of force by the riot police maintain a concept of citizen security, in practice the counterinsurgency bias and militarization of policing result in the preservation of public order and national security more in public safety. (P.65)

Similarly, in this regard, the International Federation of Human Rights (2006) states that:

Its mission is to support and Metropolitan Police Departments in attention disorders, when their ability in human talent and means be exceeded. This function is performed on three levels, the first one with the "simple show of force", the second with the "use of batons" and the third with the "use of water and tear gas (...) Incidents which have been injured or even killed people who participated in demonstrations and protests entirely legitimate occur in the third level of performance ESMAD since their formation, they understand the protesters groups as "destructive" item. ( p.39)

Además, entre algunos de los mecanismos represivos usados por las Fuerzas Armadas y Policiales en Latino América, según el Centro de Estudios Legales y Sociales de Buenos Aires – CELS (2014), son:

Indiscriminate use of "less lethal" weapons, police saturation, massive, arbitrary and violent arrests, attacks on freedom of expression, surveillance, undercover agents, the powers given to the authorities by the rules, minimum rights too imprecise, the unclear criteria about bans protest, ample to make arrests and searches criteria, discretion and lack of control, among other mechanisms that are accompanied by the law, they are part of a whole system of repression incongruent with the right to protest and with international human rights standards. (P.14)

Added to this, police impunity is usual in cases where violent repression presents Protestant civilians, since delays, irregularities and insufficient progress in investigations generate direct detriment to effective judicial protection, where most direct or cases not know judicializa responsible is identified. On this the Center for Legal and Social Studies - CELS (2016) states:

In almost all countries, even if they manage to determine individual responsibility for deaths and injuries in situations of social protest, lawsuits rarely come to analyzing the behavior of police officers who were in charge of the operations. (P. 25)

The fundamental right to social protest is recognized as a direct postulate of representative democracy requires the ongoing participation of the citizenry within a legal framework, in accordance with the respective constitutional order, this right has been violated and undermined in their exercise, other postulates as the maintenance of public order, which in a context weighting could render illegal protest, silencing its purpose.

Moreover, and by way of illustration is worth mentioning about the right to protest, the current regulations in Colombia, a country which as previously mentioned, is in such a situation the average of the subject Latin American countries in this study . So, the International Federation of Human Rights (2006) has established the following:

Constitutionally, the right to freedom of expression (Article 20), meeting public demonstration (Article 37), association (Articles 38 and 39) are guaranteed as fundamental rights, have special protection and in case of violation or threat They are covered by the

action of constitutional protection (Article 86). His interpretation is also enriched by international human rights treaties, which under constitutional bloc, are part of domestic law, under a regime of constitutional precedence.

That said, it is possible to deduce that some of the intrinsically linked rights to social protest and its most important connotations in the context of its restriction are:

#### *4.3.1. The right to freedom of expression:*

By international standards, this right implies that "everyone has the right to hold opinions without interference" and that includes the freedom to "seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, writing or in print or art, or through any other media of his choice. "

#### *4.3.2. Freedom of assembly:*

This right is an essential part and it is essential to meet the exercise of social protest element. Regarding this right, the International Federation of Human Rights (2006) states:

Generally, citizens often organize and coordinate action collectively to influence their government, demanding reforms or challenge a policy or State action, and to increase the impact of their requests. The demonstration or peaceful assembly is, in this context, a common form of this type of social protest. (P. 11)

#### *4.3.3. The right of association:*

The right of association is directly associated with the right of assembly. According to the International Federation of Human Rights (2006) "This right includes the right to form groups, associations or adhere freely within the framework of the law without hindrance or state interference" (p.12).

So, it should be stressed that one of the contexts of intimate relationship with the right of association, the unions, or the struggle for union rights, for freedom of association is vital when exercised in situations of labor disputes, cases in which they have been developed more deeply guarantees workers' strike, because these events are regulated by labor law. This, considering that the right of association is sustained as a fundamental right in Articles 39 and 55 of the Political Constitution of Colombia and Articles 353 y354 of the Labor Code, just

as in Articles 2, 357 and 358 of the Federal Labor Law of Mexico and articles 12 and 13 of Law 20,744 Argentina: Law of Labor Contract.

Given that the right to social protest, covers the analysis of all the rights already mentioned, it is important to know some of the judicial guarantees which should be applied in favor of the protesters. First, it is important to mention that no one can be deprived of his liberty if not for criminal reasons that endanger any legally protected by the criminal law, as well the authorities are obliged to abide by the procedures provided for by law, and in that case there is no legal basis and arbitrary detention may be considered by the State's violation of the right to protest, since it would be a persecution and an attack on the right to participate in social events.

Secondly, it should be considered as a judicial guarantee the demonstrators, the presumption of innocence because, according to this principle, "no one can be considered guilty until the criminal indictment has not been established beyond reasonable doubt" (author, date, page ). For this reason, the presumption of innocence in a process involving participation in social protests is essential since some States apply preventive detention as a sanction them afraid protesters not to exercise their rights, even if they are not made threats real security or public order. However, in numerous cases of protests in Latin American countries remain innocent citizens detained for arbitrary periods without valid legal reasons of weight in principle contrary mention. This certainly violent and transgresses human rights. Thus, the Human Rights Committee has established about that "detention before trial should not be the norm,

Likewise, it is vitally important to mention the right to a fair and equitable trial or *dueprocess*, procedural or substantive legal principle that "everyone is entitled to certain, aimed at ensuring a fair and equitable outcome in the process, to allow him an opportunity to be heard to assert their legitimate claims against the judge minimum guarantees" (Rentería, 2013).

Finally, individual criminal responsibility, which states that "No one shall be punished for a criminal offense if not on the basis of individual criminal responsibility." (Author, year, page). Above, indicating that collective responsibility is prohibited. This principle is transgressed in the context of the protest as demonstrators is sanctioned only by the fact of belonging to an organization, association, or group claiming opposition collective rights.

This without ignoring other rights violated in the context of the repression of social protest in some Latin American countries; because in specific cases it is possible to consider the violation of other rights as undermining security and physical and moral integrity of the demonstrators, the violation of human dignity, to life in connectedness with the health of those who are attacked violently in these contexts of social struggles.

Much of the Latino population has the necessary tools to carry out the effective enjoyment of the right to social protest guarantees, however, and as it has been argued in the present study, the rules are not enough shelter to the idealization of this right against the repressive acts, and is as well as a high rate of demonstrations to be peaceful passing claims, protests restricted by the use of violence is presented.

### **CONCLUSIONS:**

1. Social protest is an essential component of any democracy that involves the ability to dignify fundamental rights.
2. Repressive measures the fundamental right to protest and the legalization of same, are framed mostly in states that are characterized by high rates of increasingly growing social manifestations, as are strengthened in the events of injustice, corruption and violation of human rights and that found in the peaceful social protest, a way to make their claims against the dissatisfaction of the social, political and economic demands.
3. Throughout history, Colombia has been a country that has lived in inequality and power struggles, which has triggered opposition citizens and civil resistance actions. Why, social movements in Colombia have sought to generate through social protest, a transformation to the unsatisfied demands, but in response to increased demonstrations has increased creating policies that undermine the enjoyment of this right opposite the concern of the State to silence the voices of dissent and to annul the fundamental right to protest.

4. The main risks to the processes of social protest are in legitimizing the existence of criminalization, repressive actions through both legislative and administrative and bureaucratic, which are triggered in restrictive and lead to excessive use of police force, social stigmatization end of it and those who exercise practices.
5. It has consolidated the initial position, according to which, in Latin America are created with increasing intensity and frequency, repressive measures that increase the power of interference and state interference in the exercise of the right to social protestAnd consequently the right to freedom of expression, assembly and association.
6. States try to annul one of the main forms of citizen participation and thus become restrictive states rights; even if there are international, constitutional and legal guarantees that support the right to protest.
7. In this sense and exalting the importance of this right in the Colombian constitutional framework as a way to vindicate other fundamental rights, we propose some actions to be taken in our country, to ensure the full enjoyment of this right:
  - A. The repeal of repressive social protest contained in laws, decrees, regulations, codes, resolutions, or any other means of legislation legitimizing measures, where restrictions such as prior notice, the use of force, increased penalties are set for those exercising that right and the criminalization of behaviors,
  - B. Promote the right to protest as a legitimate order that dignifies the full enjoyment of fundamental rights.
  - C. Eliminating the use of any weapon that threatens the lives of the protesters, in the context of peaceful social protest.
  - D. The implementation of policies of non repression against protesters.
  - E. Creating new guarantees for the development of the protest and effective implementation of existing safeguards.
  - F. Promote journalism and media as a direct source repressive measures to discourage activity.

- G. Educating the public about the extent of social protest, peaceful means to reach and awareness about the importance of reporting cases of repression or violence in the context of demonstrations.

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