

**Report of
the Mission
to Chile
30 October —
22 November
2019**



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I. Introduction and methodology

1. On 25 October 2019, following protests and social upheaval in Chile, the Office of the High Commissioner for Human Rights (OHCHR) announced that a team would conduct a visit to the country.¹ A group of Chilean parliamentarians had expressed their desire that OHCHR conduct a mission. On 24 October, the Government extended an invitation to OHCHR to carry out such a visit. OHCHR sent a team to assess the human rights situation relating to the protests and state of emergency, identify main patterns and trends of human rights violations committed, analyse the institutional response to the protests, and make recommendations to the State. The OHCHR Regional Office for South America (ROSA), based in Santiago, supported the team's work.
2. The mission took place from 30 October to 22 November 2019. OHCHR visited seven regions (Antofagasta, Araucanía, Biobío, Coquimbo, Maule, the Metropolitan Region and Valparaíso).
3. OHCHR met with a wide number of authorities, including the Minister of Justice and Human Rights, the Minister of the Interior and Public Security, and representatives from the Ministries for Foreign Affairs, Women's Affairs and Gender Equality, Health, Defence, and regional governors and mayors. OHCHR also met with representatives of the judiciary (including the President of the Supreme Court of Justice, appellate judges and other judges), the Public Defender's Office, the Public Prosecutor's Office (National Prosecutor and Regional Prosecutors), the Forensic Service, the police (*Carabineros de Chile*) and the Prison Guard Service (*Gendarmería*). OHCHR also met the National Human Rights Institute (NHRI) and the Office of the Children's Ombudperson.
4. OHCHR also met with over 300 members of civil society, including human rights non-governmental organizations (NGOs), academic centres, student associations, the Association of Magistrates, the Human Rights Commission of the Bar Association, journalists, indigenous peoples organizations, trade unions, health professionals and the media. In addition, OHCHR met with the United Nations Resident Coordinator, the Executive Secretary of the Economic Commission for Latin America and the Caribbean (ECLAC) and with different UN agencies working in Chile.
5. OHCHR carried out 235 interviews (153 men, 38 boys, and 39 women, five girls) with victims of alleged human rights violations—including people injured and detained in the context of the protests—and their family members. OHCHR carried out 60 interviews with members of the police force on duty and injured in the context of the protests, of were medical personnel and members of the judiciary. The team visited police stations, prisons and hospitals, including police hospitals.
6. OHCHR was able to compile and analyse a considerable volume of information, including that provided by authorities as well as information gathered during visits, first-hand accounts, and videos and photos. In accordance with its methodology for human rights monitoring, OHCHR carried out due diligence in evaluating the credibility and reliability of all sources and corroborating the information gathered. The report includes full names only when express consent has

¹ <https://acnudh.org/oficina-anuncia-mision-a-chile-y-preocupacion-por-bolivia-en-el-marco-de-protestas-y-disturbios-alrededor-del-mundo/>

been given by him/herself or family members. When only first names are mentioned in the report, these have been changed to protect confidentiality. The report covers primarily the period between 18 October and 22 November, but also mentions some events after these dates where information has been received by OHCHR.

7. OHCHR thanks the Government of Chile for its extensive cooperation, for the frank dialogue sustained and for the ample information provided, both orally and in writing. The team was granted rapid and unhindered access to places of detention, including access to individuals deprived of liberty whom it wished to interview in private, as well as to the reports and records it requested. OHCHR was also able to freely access hospitals and health centres to interview people injured during the demonstrations.

II. Context

Socio-economic inequality and obstacles in the enjoyment of economic and social rights

8. Since its transition from a military dictatorship to a democracy in 1990, Chile has experienced significant economic growth and achieved progressive reduction in poverty. Poverty levels have been reduced since 1990, from 40% to 8.6% (with 2.3% extreme poverty)². A series of government programmes have been established to boost access to education, health and housing. According to an ECLAC³ 2018 report, Chile is the country in the region that allocates the most funds, per person, for social policies (US\$ 2.387)⁴. In 2010, Chile became the first South American country to join the Organisation for Economic Co-operation and Development (OECD).

9. Despite having one of the highest per capita incomes in Latin America⁵, Chile is among the countries of the region with high levels of inequality⁶. According to ECLAC, wealth in Chile is highly concentrated. In 2017, while the poorest 50% of households owned 2.1% of the country's net wealth, the richest 10% owned two thirds (66.5%), and the richest 1% accounted for 26.5%⁷. For many Chileans, access to goods and services has implied incurring substantial debt, including to cover items in the basic social basket such as food, health, education, housing and transport. According to the National Institute for Statistics, in 2018, half of Chilean workers earn less than US\$ 500 per month⁸; per capita income is approximately US\$15,900.

10. Several UN human rights mechanisms have indicated that the non-fulfilment of economic and social rights is a core area of concern⁹. This includes the lack of access to courts and international human rights bodies to provide remedies for violations of

² This measurement is based on Casen studies carried out by the State. http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/casen_2017.php

³ Economic Commission for Latin America and the Caribbean

⁴ https://repositorio.cepal.org/bitstream/handle/11362/44395/11/S1900051_es.pdf, page 25

⁵ <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

⁶ See report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile, par.6 (A/HRC/32/31/Add.1). See also https://www.undp.org/content/dam/chile/docs/pobreza/undp_cl_pobreza-Libro-DESIGUALES-final.pdf

⁷ <https://www.cepal.org/en/publications/44396-social-panorama-latin-america-2018>

⁸ <https://www.ine.cl/estadisticas/ingresos-y-gastos/esi>

⁹ See the Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Chile (E/C.12/CHL/CO/4), paragraph 7, and the and the Report of the Special Rapporteur on adequate housing from her mission to Chile (A/HRC/37/53/Add.1, paragraph 13).

economic and social rights and a lack of due constitutional recognition for some these rights. In particular, the Committee on Economic, Social and Cultural Rights expressed concern about the limited access to drinking water and sanitation services, especially in rural areas, and the disproportionate and unsustainable use of water by the mining industry. It also expressed concern about the fact that basic health services remain limited, particularly for disadvantaged and marginalized groups on low incomes¹⁰.

11. Protests relating to social and economic rights have taken place over the last 15 years, albeit on a smaller scale. For example, thousands of high school and university students participated in demonstrations in 2006 (the so-called Penguin Revolution), and between 2011 and 2013, to express their discontent over access to and quality of public education. More recently, there have been demonstrations relating to the private pension and health systems, environmental concerns and women's rights.

Other grievances related to the protests

12. Discrimination against women¹¹, indigenous peoples¹² and LGBTI people¹³, are also part of the grievances underlying the wave of protests. Unequal participation of segments or groups of the population in certain democratic spaces has contributed to disengagement with political parties and processes¹⁴. Recent cases of corruption of public officials (mainly linked to the security forces) and light sentences or impunity for cases of corruption by politicians, corporations or business leaders in recent years have also fuelled social discontent¹⁵.

Unfolding of the crisis

13. On 4 October 2019, the Public Transport Expert Panel announced a rise of 30 pesos (approximately US\$ 0.04) in the fare of Santiago's metro service¹⁶. Three days later, a group of students entered a central metro station in Santiago and jumped the barriers. Over the following days, collective fare evasions gained momentum as students and other people joined in. On 17 October, there were mass fare evasions and destruction of turnstiles and infrastructure in over a dozen metro stations. Protests took place throughout the capital. Barricades, fires and looting were

¹⁰ Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Chile (E/C.12/CHL/CO/4), paragraph 5

¹¹ For example, CEDAW recommended that Chile further review its pension system to eliminate all provisions that discriminate against women. This is in relation to the pension system which disproportionately disadvantages women because they are often employed in the informal sector, are paid inconsistently and perform unpaid care work. CEDAW/C/CHL/CO/7, paras. 40–41. See also report of the Working Group on Discrimination against women in law and in practice, mission to Chile, A/HRC/29/40/Add.1, 20 May 2015.

¹² The Special Rapporteur on extreme poverty noted that poverty rates were especially high among indigenous peoples and recommended that Chile prepare, in consultation with all concerned groups, a comprehensive strategy for the elimination of indigenous poverty (A/HRC/32/31/Add.1, para 75). See also the concluding observations of the Committee on Economic, Social and Cultural Rights released in July 2015 E/C.12/CHL/CO/4 p.8 (b).

¹³ See recommendations of Committee on Economic, Social and Cultural Rights (July 2015), (E/C.12/CH/CO/4, para. 12).

¹⁴ See UNDP 2014 “Auditoria a la Democracia: más y mejor democracia para un Chile inclusivo” https://www.undp.org/content/dam/chile/docs/gobernabilidad/undp_cl_gobernabilidad_Informe-Auditor%C3%ADa-a-la-Democracia_2014.pdf

¹⁵ See also statement by the Chair of the Chilean Transparency Council, “the agenda set by the Executive to address the crisis, must go hand in hand with an anti-corruption agenda”. <https://twitter.com/ctransparencia/status/1195687966070448128?s=20> and <https://twitter.com/ctransparencia/status/1195476573178085377?s=20>

¹⁶ <http://www.paneldeexpertostarifas.cl/>

recorded in Santiago and other parts of the country, including Valparaíso and Concepción.

14. On 18 October, the Government decreed a state of emergency¹⁷ for the Metropolitan Region (provinces of Santiago and Chacabuco, and communes of Puente Alto and San Bernardo)¹⁸. This measure allows restrictions to freedom of movement and assembly and makes provisions for the military to carry out public security functions. On 19 October, a state of emergency and curfew were declared in Santiago, Valparaíso and the Province of Concepción. This was subsequently extended to most regions of the country. The state of emergency lasted between five and nine days, depending on the place.¹⁹ Curfews were progressively reduced. Demonstrations continued during the state of emergency and still continue to date. On 25 October, a record number of 1.2 million people participated in a demonstration in Santiago. On 14 November, an agreement was reached by the political parties to set in motion a process to change the Constitution, including an initial referendum in April 2020. At the time of the drafting of this report, protests continued in different regions throughout the country, albeit with less intensity. OHCHR also continues to receive allegations of human rights violations by police forces.

III. Applicable legal framework

International standards relating to management of assemblies and to the use of force

15. The right of peaceful assembly²⁰ enables individuals to express themselves collectively and to participate in shaping their societies. Together with other rights related to political freedom, it constitutes the foundation of a system of participatory government based on democracy, human rights, the rule of law and pluralism. Where these rights are used to air grievances, peaceful assemblies may create opportunities for inclusive participatory and peaceful resolution of differences.

16. It is the duty of the State authorities, including law enforcement officials, to facilitate and, if necessary, manage peaceful protests. Force may not be used to disperse lawful and peaceful assemblies²¹. Before considering dispersal of a non-peaceful assembly, security forces must try to identify violent individuals and isolate them from the rest of the participants at the assembly, and distinguish between those acting violently and those who are not.²²

¹⁷ The state of emergency is regulated by articles 42 and 43 of the Constitution. The first indicates the causes and length for which it can be decreed. Article 43 provides that during the state of emergency the President of the Republic may restrict the freedoms of movement and assembly. The states of constitutional exception are also regulated through the Constitutional Organic Law No. 18.415, which was issued in 1985 and amended after the return to democracy in 1990. This regulation provides in its article 4 that the powers of the President of the Republic may be delegated totally or partially to the Chiefs of National Defence.

¹⁸ <https://prensa.presidencia.cl/comunicado.aspx?id=103631> ;
<https://www.diariooficial.interior.gob.cl/publicaciones/2019/10/19/42481-B/01/1671764.pdf>

¹⁹ <https://twitter.com/mindefchile/status/1188531670594527232?s=20>

²⁰ Recognized under article 21 of the International Covenant on Civil and Political Rights.

²¹ The Chilean Constitution guarantees “the right to assemble peacefully, unarmed, without prior permission”. The Supreme Decree 1086 of 1983 requires the organizers of any demonstration to notify the Provincial or Regional Governor at least two days in advance. In the absence of such a notification, public order agents can prevent the meeting or demonstration, or disperse it.

²² Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution,

17. The mere fact that some protesters in the crowd are violent does not turn the demonstration as a whole into a non-peaceful assembly. Where a decision is lawfully taken to disperse an assembly that is no longer peaceful, all necessary precaution should be taken to avoid or at least minimize the risk of use of force. Where that is not possible in the circumstances, law enforcement officials must ensure that the type and level of force they apply is necessary and proportionate to the threat posed.

18. Firearms should never be used simply to disperse an assembly²³. The use of potentially lethal force, such as firearms, for the purposes of maintaining public order, is an extreme measure and should only be resorted to when strictly necessary to protect life or prevent grave injuries resulting from an imminent threat²⁴, when less dangerous means are not practicable and only to the minimum extent necessary²⁵. Live ammunition may be directed only at people who represent an imminent threat of death or serious injury to law enforcement officials or bystanders. In any event, and as stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions, all use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution, non-discrimination and accountability. Indiscriminate firing into a crowd is never allowed²⁶.

19. The use of less lethal ammunition, such as rubber bullets and other attenuating energy projectiles (AEP) must be limited to duly trained law enforcement agents and must be strictly regulated in accordance with international norms and standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.²⁷ Additionally, less-lethal weapons must be only used according to strict criteria of necessity and proportionality and in situations where other less harmful measures have been proven to be ineffective or are indeed manifestly ineffective to counteract the threat. States parties should never use less lethal weapons in situations where public order can be maintained with less harmful measures, especially in the context of the exercise of the right to peaceful assembly.²⁸

20. The intentional use of firearms by security forces is only allowed when it is strictly unavoidable to protect life. In any other case, it would amount to arbitrary use of force, and, in certain circumstances, could amount to an extrajudicial, summary or arbitrary execution.²⁹

A/HRC/26/36, paragraph 75 and Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 61.

²³ Basic Principles on the Use of Force and Firearms by law enforcement officials, principle 9.

<https://www.ohchr.org/SP/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

²⁴ Human Rights Committee, General Observation No. 6 on the right to life (CCPR/G/GC/36, para 12).

²⁵ Principle 9, Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Also principles 13 and 14.

²⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, A/HRC/26/36, paragraph 75.

²⁷ Adopted at the 8th UN congress on crime prevention and the treatment of the offenders, held in Habana (Cuba) from 27 August to 7 September 1990.

²⁸ Human Rights Committee, General Comment No. 36 on the right to life (CCPR/G/GC/36, para. 14).

²⁹ UNODC-OHCHR, Resource book on the Use of Force and Firearms by Law Enforcement, 2017, p. 24.

21. During the state of emergency, military forces assumed the control of public order. International human rights standards indicate that in exceptional circumstances (such as states of emergency), when military personnel are deployed to maintain public order, the military should be subordinate to the civil authorities, receive full instructions on the law and international human rights standards, adopt and be bound by them³⁰. Moreover, in these circumstances military personnel are bound by international norms and standards on the use of force by law enforcement officers.³¹

IV. Main findings

A. Human rights violations

1. Violations of international norms and standards on the use of force

22. OHCHR considers that the actions of the police and the army have not adhered to international human rights norms and standards relating to management of assemblies and to the use of force. This despite the fact that internal regulations, in particular those of the police, reflects these standards³².

23. Information received by OHCHR from a variety of sources indicate that during a significant number of protests, the police used non-lethal force when the demonstration was peaceful, with the apparent aim of dispersing the demonstration or preventing participants from arriving at the assembly point.

24. Information gathered by OHCHR also shows that the police have repeatedly breached their obligation to distinguish between violent protesters and people demonstrating peacefully.

25. Where some protestors have become violent³³, OHCHR has received numerous and consistent accounts pointing to the non-fulfilment of the principle of gradual and progressive use of methods of dispersion³⁴. According to the information received, in these cases there has been scant recourse to dialogue, containment and dissuasion. A

³⁰ The conduct of the security forces is governed, among other things, by the Code of Conduct for Law Enforcement Officials (1979, Code of Conduct) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1989, Basic Principles). See also the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions (Minnesota Protocols).

See also Commentary to article 1(b) of the Code of Conduct for Law Enforcement Officials: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

³¹ Comments a) and b) to Article 1 of the 1979 Code of Conduct for Law Enforcement Officials. The Chilean Army's "Rules on the use of force during the state of constitutional exception" (2019) authorize the use of lethal force only in self-defence or to protect civil or military personnel in the case of "hostile acts (Rule No 1.1 of the Army's rules on the use of force. <http://deptoddh.carabineros.cl/fuerza>)

³² See Circular number 1832 on the use of force, 1 March 2019, and its protocols. http://deptoddh.carabineros.cl/assets/og_2635-protocolo_orden_publico.pdf. Paragraph 2.8[1] establish that law enforcement officials must, to the extent possible, employ non-violent means before resorting to the use of force in the performance of their duties. They also call for gradual and differentiated use of force and the application of the principles of legality, necessity, proportionality and responsibility. The Army regulations, while containing some core principles on the use of force, is not as thorough and detailed as the Protocols of the Police. See Ejército de Chile, Regla de Uso de las Fuerzas (RUF), Estado de excepción constitucionales de emergencias o catástrofes.

³³ Chilean regulation distinguishes between violent and aggressive demonstrations. See Paragraph 2.4 of the protocols for the maintenance of public order.

³⁴ See paragraph 2.4 of the protocols for the maintenance of public order.

lack of warning of the imminent use of force was also observed in a large number of cases.³⁵

26. OHCHR has also observed that there has been unnecessary and disproportionate use of less-lethal weapons, in particular anti-riot shotguns, during peaceful demonstrations and/or outside the context of violent confrontations between demonstrators and security forces. This has resulted in a high number of people being injured, including passers-by and people who were not committing violent acts but just protesting peacefully.

27. According to the national protocols on the use of force, in cases of riot control, the police are only authorized to use rubber pellets or “super-sock cartridges”³⁶ (only by Special Forces) as ammunition³⁷. According to the NHRI, the majority of serious injuries documented by them are from pellets.³⁸ Lead pellets are not included among the cartridges authorized for the use of the security forces.

28. OHCHR received information from medical staff indicating that lead had been detected in the pellets. This was confirmed by two academic studies, which indicated that the pellets found in the bodies of patients only contained 20% rubber³⁹. On 19 November, the Director General of the police indicated that the police Criminal Laboratory had found that the composition of the pellets (containing 0.08 traces of lead)⁴⁰ differed from that declared by the manufacturer⁴¹.

29. That same day, the Director General of the police suspended the use of anti-riot shotguns during demonstrations, “with the exception of when there is imminent risk of death”.⁴² It appears, however, that the order has not been fully implemented. OHCHR has received information that on 21 November a person participating in a demonstration in Osorno was wounded by pellets shot from anti-riot weapons and had to undergo surgery.

30. According to information gathered by OHCHR, the police have used chemical irritants —especially tear gas— to disperse non-violent demonstrations, often in

³⁵ Basic Principles, Principle 10. Paragraph 2.4[2] of the protocols for the maintenance of public order. According to testimonies received, lack of warning has occurred particularly in Santiago and Valparaiso. See also the communication from the Special Procedures of the UN to Chile: UN experts condemn the excessive use of force and violent acts in the context of recent protests, 8 November 2019 <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25269&LangID=S>

³⁶ “Super sock” ammunition is a form of kinetic impact projectile that consists of a small Kevlar mesh bag containing lead pellets.

³⁷ Paragraph 2.8 (2) of the Protocols for the maintenance of public order.

³⁸ See statistics provided by NHRI. updated on 6 December 2019 www.indh.cl. Of the 3,449 persons injured, 1,554 were injured by pellets.

³⁹ See report by the University of Chile, published on 15 November <https://www.uchile.cl/noticias/159315/perdigones-usados-por-carabineros-contienen-solo-20-por-ciento-de-goma> and report by the Universidad Austral of Chile, published on 19 November <https://www.scribd.com/document/436257056/Estudio-Sobre-Perdigones-UACH>.

⁴⁰ Information provided by the Government to OHCHR on 11 December 2019.

⁴¹ The Protocol on the Maintenance of Public Order establishes that those using the less-lethal weapons need to verify that the cartridges be used to conform with anti-riot use, both from the legal and regulatory point of view. Paragraph 2.8 (2) of the Protocols for the maintenance of public order. <https://twitter.com/Carabdechile/status/1196950642159476737/photo/1>

⁴² Prior to this, on 10 November the police had restricted the use of pellets, only authorizing their use in those cases where the life of a civilian or a member of the police was at risk. General Order No. 2,635 was modified and body cameras were provided to all police human rights instructors. On 4 November in a meeting with Government authorities in Santiago, OHCHR communicated their concern about the use of lead in pellets.

conjunction with anti-riot shotguns.⁴³ Although prohibited by protocols for the maintenance of public order⁴⁴, teargas has been used close to hospitals, for example the Gustavo Fricke Hospital in Valparaíso (8 November) and Clínica Santa María in Santiago (9 November).

2. Arbitrary deprivation of lives and/or other unlawful deaths involving State agents

31. On 19 November, the Office of the Public Prosecutor indicated that there are 26 ongoing investigations related “people who have died in the context of social protests”, from 18 October onwards⁴⁵. Four of these died due to “actions involving State agents”, two people died in police custody and 20 of these died during social protests (including three people who remain unidentified). Five of the 26 victims are women.

32. Of these 26 cases, OHCHR has verified information on 11 cases: four cases relating to arbitrary deprivation of life and other unlawful deaths involving State agents; one case of a person who shot by a civilian with a member of the military being linked to the case; one case relating to the death of a demonstrator during a protest due to a heart attack; one case of a person who allegedly committed suicide at a police station four cases relating to people who died within the context of arson and looting.

33. According to reports by the Office of the Public Prosecutor, in the 15 remaining cases where OHCHR was not able to directly verify the information, eight people died as a result of fires within the context of lootings, two from having been run over by cars; three were shot – reportedly not by security agents– and two people allegedly committed suicide. The circumstances of these deaths are to be determined by relevant authorities.

34. In two of the cases documented by OHCHR, lethal force appears to have been used, in the form of live ammunition, when it was not strictly unavoidable to protect lives. This contravenes international norms and standards on the use of force and may, depending on the circumstances, amount to an extrajudicial execution.⁴⁶ Moreover, violations of international norms and standards on the use of force can trigger not only the individual responsibility for the acts and omissions committed, but also the responsibility of the superiors mandated to order, supervise and/or control the legality, necessity and proportionality in the use of force by their subordinates⁴⁷.

35. The two cases took place on 20 October in the region of Coquimbo, within the first days after the state of emergency was declared in most regions of the country. Both victims were men in their 20s and were unarmed. In both cases, military personnel reportedly used firearms. The victims died as a result of injuries in the upper part of the bodies.

⁴³ Report on the use of tear gas by agents of the State, University of Valparaíso, November 2019, p. 12. <https://medicina.uv.cl/noticias/226-internos-desarrollan-informe-acerca-del-uso-de-gases-lacrimogenos-por-agentes-del-estado>

⁴⁴ Protocols for the maintenance of public order, article 2.7 (3).

⁴⁵ <https://twitter.com/FiscaliadeChile/status/1196902271789027328>.

The Ministry of Justice has established that 24 individuals have died within the context of the protests. <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>

⁴⁶ UNODC-OHCHR, Resource book on the Use of Force and Firearms in Law Enforcement, 2017, p. 24.

⁴⁷ Circular number 1832 on the use of force, page 2.

36. On 20 October, Romario Veloz Cortes (26 years old), an Ecuadorian national, died in La Serena as a result of having been shot (with lethal ammunition) fired by military personnel⁴⁸. According to information gathered by OHCHR (including video footage), Romario Veloz Cortes was walking with a group of demonstrators close to a shopping mall (where lootings were taking place), when army personnel allegedly started shooting at the crowd. He suffered gunshot injuries to his neck and was taken to a hospital, where he died soon after. Two other people were also seriously injured as result of lethal ammunition fired by military personnel against those participating in this demonstration. Charges have been pressed against a soldier.⁴⁹

“I seek justice. Justice for all those who have died.”

Mother of Romario Veloz Cortes

37. Kevin Gómez Morgado (24 years old) was shot with lethal ammunition fired by military personnel on 20 October in Coquimbo after curfew⁵⁰. He was walking in the city centre when allegedly a member of the military shot him from close range. He died as a result of gunshot wounds (to his back), in particular to his lungs. Military personnel have stated that they shot him because he was suspected of being involved in the looting of shops, as he was also carrying an object. A member of the military has been charged with murder and placed in pre-trial detention.

38. OHCHR has documented two other cases of people who lost their lives as a result of State agents’ actions in the context of social protests.

39. Manuel Rebolledo Navarrete (23 years old) was run over by a navy truck on 21 October. The truck was patrolling close to a fishery plant in Talcahuano after curfew, when he received gunshot wounds on his leg. He was then run over by the truck. He died immediately due to wounds to his head. The alleged perpetrator (a Marine officer) has been given alternative measures to pre-trial detention and has been charged with manslaughter.

40. Alexis Andrés Núñez Sandoval (39 years old) died on 22 October as a consequence of cranial trauma related to beating and ill-treatment by police in Maipú, Santiago. Alexis Núñez allegedly participated in a demonstration in Maipú on 21 October, after the curfew. Several witnesses observed how police officers beat him with a baton and kicked his legs, head and chest. According to medical information, he had also sustained injuries as a result of pellet shots. Alexis Núñez endured a closed traumatic brain injury (TBI) and skull fracture.

3. Other deaths within the context of the protests

41. On 20 October, a military convoy was passing by the main road close to Curicó (city which was not amongst those under state of emergency or under curfew) and encountered a barricade and a group of protesters. José Miguel Uribe Antipani (25 years old) was walking with friends close to a main road (Route 5) when he was shot and died shortly afterwards of gunshot wounds to the chest. Initially, murder charges were pressed against a member of the military. On 10 December, the Prosecutor

⁴⁸ On 19 November, the Court of Appeals of La Serena declared illegal the curfew declared both in La Serena and Coquimbo between 20-28 October.

⁴⁹ Information provided to OHCHR by the Government on 11 December 2019.

⁵⁰ On 19 November, the Court of Appeals of La Serena declared illegal the curfew declared both in La Serena and Coquimbo between 20 to 28 October.

responsible for the investigation stated that a hearing had been requested to amend the charges.⁵¹ Ballistics tests had determined that the bullet which had caused his death did not correspond to the calibre of the weapon of the soldier. He will no longer be investigated for murder, and charges will be pressed of having fired shots without justification. The soldier had recognized that he had fired a blank round and war ammunition against José Miguel Uribe.

42. César Mallea (47) died on 24 October at police station (No. 56) in Peñaflor, near Santiago. He was detained after the curfew, allegedly for driving under the influence of alcohol. He called his family members to inform them that he was at the police station and he was fine. Yet, the following day his family was informed that César had committed suicide by hanging. The family has denounced several irregularities in this case, including the veracity of the alcohol test, the place of death according to the medical certificate, the lack of access to the corpse, the lack of registration of the events by the police, and the presence of bruises on the corpse. The case is being investigated by the Office of the Public Prosecutor as a suicide. In cases of death under State custody, there is a presumption of State responsibility⁵².

43. Abel Acuña (30 years old) died from cardiac arrest while taking part in a protest in Santiago on 15 November. Health providers mentioned that the first-responder teams faced difficulties reaching him, due to water cannon, tear gas and shots being fired by the police. On 17 November, the Director General of the police stated, that the police were operating in “an adverse situation”, including the presence of 1,000 people and a lack of visibility due to the absence of public lighting⁵³.

44. On 20 October, the charred bodies of five people were found in a warehouse in Renca, which had been looted and then set on fire the day before. Family members of four of the deceased raised concerns as to the ways in which the Medical Legal Service (*Servicio Médico Legal*) conducted the post-mortem examinations, in particular their delayed intervention at the scene and the conduct further exams related to wounds in one body. The Medical Legal Service stated that it stands ready to carry out any expert examinations required by the Office of the Public Prosecutor⁵⁴.

4. Injuries, including ocular injuries from the use of pellets and other devices

45. The number of people who were injured and sought medical care in the context of the protests ranges according to various sources. For example, the 3,449 injured people the NHRI recorded is only for cases of people who sought medical assistance in hospitals and its staff were able to certify⁵⁵. The Ministry of Justice states that from 19 October to 10 December, 4,903 people were injured (1,313 civilians and 2,792 members of the police)⁵⁶. The Ministry of Health has indicated that 12,738 emergency medical services have been provided “during the situation of emergency”,

⁵¹ http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=17061

⁵² See the Human Rights Committee, General comment No. 36 on the right to life (CCPR/GC/36, para. 29). “Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State’s compliance with its obligations under article 6”.

⁵³ <https://twitter.com/Carabdechile/status/1196200743432269824?s=20>

⁵⁴ <http://www.sml.gob.cl/2019/11/03/sml-confirma-que-peritos-han-cumplido-con-normativas-en-sus-pericias/>

⁵⁵ See statistics of the NHRI updated on 6 December 2019, www.indh.cl.

⁵⁶ <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>

from 18 October to 3 December⁵⁷. The latter are not disaggregated as to the type of medical assistance sought.

46. The NHRI has detailed statistics regarding the types of injuries sustained by the 3,449 injured people. Of these, 51 sustained injuries from live ammunition, 1,554 from rubber pellets, 198 from shots from unidentified firearms, and 180 from pellets. 1,466 people suffered injuries from beatings, gas inhalation, and other causes⁵⁸.

47. According to information provided by the Chilean Ophthalmology Institute, during the period from 19 October to 3 December, 345 people suffered injuries relating to ocular trauma⁵⁹. According to the NHRI, 352 people suffered ocular trauma⁶⁰ (from 16 October to 6 December). The Ministry of Health has indicated that between 18 October and 2 December, the El Salvador Hospital in Santiago has provided medical care for 239 patients with eye injuries.⁶¹

48. OHCHR considers that the alarmingly high number of people (approximately 350) with injuries to their eyes or faces provides a strong basis to believe that “less-lethal weapons” have been used improperly and indiscriminately, against international principles on minimizing the risk of injury⁶².

49. From a very early stage of the crisis, information was made public regarding the ocular injuries due to the use of pellets by police. On 22 October, the Medical Association had stated that there were 29 people who had already suffered severe ocular trauma within the context of use of force by police⁶³. On 26 October, the NHRI provided, for the first time, statistics on eye injuries stating that 125 people had suffered traumatic wounds to their eyesight from 18 to 26 October⁶⁴. On 28 October, the Chilean Ophthalmological Society and the Medical Association termed the situation “a visual health emergency never seen before in the country” and called on the authorities to stop using less-lethal weapons⁶⁵. On 8 November, the UN system in Chile also called on the authorities to end the use of such weapons⁶⁶. By 15 November, the number of patients with severe ocular trauma had increased to 193⁶⁷.

50. OHCHR has documented a series of cases relating to ocular injuries as a result of police actions, mainly from pellets fired from anti-riot shotguns but also some cases due to the use of chemical irritants, in particular tear gas, and in some instances from the impact of tear gas canisters.

51. For example, Fabiola (19 years old), was shot by a police officer in Viña del Mar and suffered eye injuries due to the use of pellets. The pellets, when extracted in

⁵⁷ <https://www.minsal.cl/reporte-de-lesionados-y-heridos/>

⁵⁸ See statistics of the NHRI updated on 6 December 2019, www.indh.cl.

⁵⁹ Of these, 259 individuals were attended to by the Ocular Trauma Unit at the Salvador de Santiago Hospital and 86 individuals were seen at other public and private centres in Santiago and in other regions of the country.

⁶⁰ See statistics of the NHRI updated on 6 December 2019, www.indh.cl.

⁶¹ Information provided by the Government to OHCHR on 11 December 2019. This information does not include patients with eye injuries who have received treatment in other medical facilities (private or public) besides the El Salvador Hospital.

⁶² Principle 5(b) of the Basic Principles.

⁶³ <https://twitter.com/PJimenezQ/status/1187003025187131392/photo/1>

⁶⁴ See statistics of the NHRI for 26 October 2019.

⁶⁵ https://twitter.com/DDHH_ColMed/status/1188783252082958336?s=20

⁶⁶ <http://www.onu.cl/es/el-sistema-de-naciones-unidas-en-chile-llama-a-las-autoridades-a-terminar-con-el-uso-de-proyectiles-no-letales/>

⁶⁷ https://twitter.com/DDHH_ColMed/status/1195342360563073024?s=20
See also paragraphs 28 and 29 of the text.

a medical centre and X-rayed, were found to contain lead. She was diagnosed with a severe ocular trauma, with probable loss of sight owing to the damage to the retina. To regain up to 70% of the vision in her eye, she will have to undergo at least four operations.

52. Mario (30 years old) was walking to join a demonstration in Santiago on 25 October when he was hit by pellets and suffered severe injuries in one eye. OHCHR interviewed Mario in the hospital, where doctors confirmed the complete loss of sight in the affected eye.

53. On 8 November and within the context of demonstrations in Plaza Italia in Santiago, eight people suffered eye injuries. Gustavo Adolfo Gatica Villarroel, a 21-year old university student, was injured by pellets in both eyes. According to information received, after he was injured, the police did not help him to obtain medical assistance. On 26 November, the hospital treating him announced he had lost his eyesight in both eyes.

54. On 26 November, a 36-year old woman, was hit in the face by a teargas canister. She was reportedly waiting for a bus, near a demonstration taking place, in San Bernardo. She has reportedly lost vision in both her eyes. On 27 November, an additional six people suffered injuries to their faces from teargas canisters in other parts of the country.

55. A 2012 internal police report on “the effect of pellets on the human body” had expressly concluded that rubber pellets should be fired only at a distance of 30 meters or more as otherwise they could cause serious injuries, including eye injuries⁶⁸.

56. OHCHR has gathered information, including medical reports, showing that many pellets fired by anti-riot shotguns penetrated the skin, and therefore there is a strong basis to believe that they were fired at a close range. Likewise, the high number of injuries to the eyes or face also indicate that in many cases shots were fired towards the upper part of the body. Such actions increase the risk of eye injury and other serious permanent damage.

57. Authorities had information regarding the extent of such injuries as early as 22 October. However, those responsible failed to adopt effective, prompt and timely measures to end the use of less-lethal weapons, especially anti-riot shotguns using pellets. Prompt action by the police could have prevented other people suffering serious injuries.

58. OHCHR notes several recent decisions by various courts of appeals including in Antofagasta, Concepción, Rancagua, La Serena⁶⁹, Temuco, Valdivia and Valparaíso limited the use of anti-riot shotguns in peaceful demonstrations. These decisions have also limited or prohibited the use of tear gas in certain circumstances or places (for example, in hospitals). On 28 November, the court of appeals of Valparaíso annulled a resolution prohibiting the police from using pellets.

⁶⁸ OHCHR also received information indicating that rubber pellet cartridges contain 12 pellets whose effects and dispersal diameter depends on the distance at which the shot is fired. For example, a shot fired from 15 meters is capable of penetrating and has a dispersion diameter of 85 cm. while a shot fired from 30 meters has a dispersion diameter of 225 cm. but should bounce off the target.

⁶⁹ On 19 November, the court of appeals of La Serena declared illegal the curfew established in La Serena and Coquimbo, established between 20 and 28 October.

5. Torture and ill-treatment

59. OHCHR has documented 133 cases of torture and ill treatment. In the majority of these cases, the alleged perpetrators are members of the police. The majority of these cases took place during the arrest, or transfer to detention centres, or while in detention. During the state of emergency and under curfew, people deprived of liberty also suffered torture and ill-treatment in military and/or police vehicles. OHCHR also documented a number of cases of torture involving military personnel.

60. The most common forms of ill-treatment documented by OHCHR include heavy beatings with the fists; kicks; butt-stroking (striking someone with the buttstock of a firearm or truncheon), often by several agents and in cases after the victim had been tackled to the ground, immobilized, or handcuffed. OHCHR also documented cases where severe forms of physical restraint, including suffocation, were used, which in some cases resulted in loss of consciousness.

61. For example, Pedro (22 years old) and his brother (17 years old) participated in a protest in front of a police station in Antofagasta. According to their accounts, when some demonstrators forcibly pushed over the barriers in front of the station, the police began to fire at protestors and Pedro was impacted in the leg by two rubber bullets. While trying to get up, he was seized by five to seven unidentified police officers who punched and kicked him in the head and in different parts of the body. He was brought to the police station with his brother and kicked, punched and struck with batons, in a corner of the yard, until he lost consciousness. The beatings continued with his hands and head being pinned to the ground. During the transport to the hospital, members of the police reportedly insulted him, threatened him with disappearing him, and spat on him.

62. OHCHR also received information on several cases of people who were run over by vehicles and motorcycles of security forces, in circumstances where elements of a possible accident can be ruled out. Claudio Rafael Arredondo Ponce was reportedly run over by a police vehicle in Viña del Mar on 21 October before the start of the curfew. The vehicle had the front door open and struck him to the ground. The rear wheel of the vehicle ran over parts of his body. Claudio Arredondo was taken to the Miraflores police station where he was severely beaten. A lawsuit against the police has been presented by the NHRI against two members of the police.

“I was participating in a peaceful march on 4 November in Valparaíso. We were sitting in the square when police arrived immediately throwing tear gas. People started running. There were children, tourists and families. There were about 20 members of the police on motorcycles chasing us. They were driving into the crowd. An officer kicked me when passing by my side on the motorcycle. I fell on the ground and was hit by another motorcycle and kicked again. I tried to stand but couldn’t because my knee was injured. I was scared they would hit me to death. I managed to limp away. In the Gustavo Fricke hospital where I was treated, doctors refused to issue a certificate of injuries”.

Marina, a 22-year old student, Valparaíso

63. OHCHR has also received reiterated accounts of psychological torture, such as death threats, threats to “disappear” the person, threats of rape, beatings of family members and friends in front of the person, and threats of aggression towards family members. OHCHR has also received isolated accounts of simulated executions by the police and military forces. These acts were allegedly perpetrated as a form of

punishment for presumed looting or for participating in the protests, as well as with the aim of coercing detainees to refrain from bringing complaints.

“The military threw me to the ground, I felt blows with the butt of a weapon on my head and spine. When we got into the military vehicle, they kept hitting us and they said, ‘let’s take them to the barracks and see how long they last with the electricity’. We begged them to let us go. They took us out in the dark and I could recognize we were at the back of the cemetery. They ordered us to put our faces against the cemetery wall. There were about 12 soldiers behind us, who loaded their guns. They made us shout “forgive me, Chile’. At that moment, I thought they were going to shoot us. We cried, held each other’s hands and said goodbye.”

Fernando, 28 years old

64. OHCHR also received information of detainees who were handcuffed with their hands behind their back, often stretched out on the floor, for prolonged periods, and that the handcuffs were pulled tighter around the wrists than necessary. Sometimes people were handcuffed to each other.

65. Many of the cases of torture and ill-treatment usually occurred in places with no surveillance cameras, such as toilets or warehouses areas next to detention facilities, storage rooms or stairwells. In many cases, the perpetrators, especially the Police, were not wearing name tapes on their clothing, and/or had their faces covered up. In some cases, members of the Police had altered their names on their uniforms.

66. On 21 October, at 9:30 pm (after curfew), Alfonso Chandía Vergara was detained in the street in Concepción and reportedly repeatedly beaten by four members of the police. He suffered fractures to his nose, cheekbone and elbow, as well as bruises in various parts of the body. The police called an ambulance and informed health personnel that the injuries were the result of “a fall”. The ambulance took Alfonso Chandía Vergara to the Regional Hospital where the medical personnel subjected him to a breathalyser test, but, according to him, did not treat his injuries nor issue a certificate of injuries. At 1:30 am, he was released from the hospital and walked for three hours to arrive home, infringing the curfew. The next day, an independent doctor certified his multiple injuries and his arm was immobilized in a cast. When he filed a complaint with the NHRI, Alfonso Chandía was unable to include details about the identity of the police as they were wearing balaclavas and were not properly identifiable.

67. OHCHR received repeated accounts from detainees who had all been subjected to torture and ill treatment and who were forced to declare at the police station and in the sole presence of the police that they had no injuries, sometimes in exchange for being released. OHCHR also gathered information of people deprived of liberty who, after their injuries had been documented at a health centre, were subjected to torture and ill treatment upon their return to the police station.

68. Additionally, victims of human rights violations, especially those occurring in the south of the country, stated that they did not wish to report these violations out of fear of reprisals or lack of confidence in the judicial system.

69. As of 26 November, the Office of the Public Prosecutor had initiated 44 investigations relating to allegations of torture⁷⁰. On 28 November, the Council for

⁷⁰ <https://twitter.com/FiscaliadeChile/status/1199380107569385473?s=20>

the Defence of the State, an institution which represents the State's interests, filed two lawsuits against members of the police for alleged acts of torture committed against two people who were detained in the 51st police station in Pedro Aguirre Cerda, in Santiago. In one of the two cases, the lawsuit also included allegations of sexual violence. The Legal Medical Service has informed that 99 staff members have the proper training to apply the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly (the Istanbul Protocol). On 6 November, the Service also reported that it is providing the forensic services required to certify injuries related to possible human rights violations⁷¹.

70. The NHRI has presented, from 18 October to 6 November, 544 criminal complaints relating to 633 alleged cases of torture and ill-treatment (not counting the complaints of torture involving sexual violence)⁷². Between 2011 and 2017, the NHRI had presented 7 complaints for acts of torture and ill treatment in the context of demonstrations.

71. The prohibition of torture is an absolute rule, which does not allow for derogations (e.g., situations of public emergency)⁷³. While it is recognized that the police and military personnel were operating under difficult circumstances, including threats against their lives and long working hours, these circumstances cannot justify such acts. Several United Nations human rights mechanisms have already expressed concerns over allegations of torture and ill-treatment in the framework of social protest in Chile⁷⁴.

6. Rape and other forms of sexual violence

72. OHCHR has documented 24 cases of sexual violence against women (14), men (6), adolescent girls (3) and adolescent boys (1) within the context of the protests. Sexual violence reported to OHCHR included rape, threats of rape, degrading treatment (such as being forced to perform squats or to strip naked), homophobic or misogynist comments, blows or acts causing pain in the genitalia, and groping. Some of these types of treatment may amount to torture or cruel, inhuman or degrading treatment or punishment.⁷⁵ The Committee against Torture and the Human Rights Committee have expressed concern over “consistent information denouncing acts of sexual violence by the police against women and girls during student protests.”⁷⁶

73. The NHRI has filed 108 criminal complaints for torture referring to 166 cases of alleged sexual violence (women: 47 cases; girls/female adolescents: 28 cases; men: 52 cases; boys/male adolescents 27 cases).⁷⁷ This represents a four-fold increase to the lawsuits presented for torture with sexual violence in the past nine

⁷¹ <http://www.sml.gob.cl/2019/11/06/sml-aplica-protocolo-de-estambul-en-indagatorias-possible-vulneracion-de-dd-hh/>

⁷² <https://www.indh.cl/>

⁷³ Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷⁴ See the Concluding observations of the sixth periodic report of Chile to the Committee against Torture (2018), CAT/C/CHL/CO/6, paragraph 22. and CCPR/C/CHL/CO/6, paragraph 19.

⁷⁵ CEDAW General recommendation No. 35, *op.cit.*, para. 16; *Purna Maya v Nepal*, *op.cit.*, para. 12.3.

⁷⁶ See the Concluding Observations of the Committee against Torture on Chile's sixth periodic report, issued in 2018 (CAT/C/CHL/CO/6), para 22, and the Concluding Observations of the Human Rights Committee on Chile's sixth periodic report, issued in 2014 (CCPR/C/CHL/CO/6), para. 19.

⁷⁷ www.indh.cl

years – since the establishment of the NHRI⁷⁸. Alleged perpetrators are both members of the police and the Army. According to information provided by the Public Prosecutor’s Office, as of 26 November, 44 investigations are open relating to allegations of torture and 90 are open relating to forced nudity⁷⁹.

74. OHCHR observed that in all the regions visited, women and female adolescents reported that during detention in police stations they were often forced to strip naked and perform squats. Threats of rape, insults and degrading comments of a sexual nature by members of the police were also commonly reported. In March 2019, the police revised its protocols on use of force and management of assemblies and included a prohibition of forced nudity.

75. OHCHR documented two cases of rape reportedly committed by police and Army forces, perpetrated against men. On 2 November, Javier (42 years old) was waiting for a taxi in a city in the north when a police van drew up. Five police officers got out without identifying themselves (and without name tapes on their clothing) and forced him into the van. Inside, they removed his trousers and, while one of the officers held him down, others repeatedly forced a collapsible baton into his anus. This reportedly went on for 10 to 15 minutes. The police van left him in the beach area. On 21 October, Josué Maureira (23 years old) was sexually assaulted by police in the 51st Police station of Pedro Aguirre Cerda in Santiago. After striking him repeatedly amid homophobic insults, they pushed a collapsible baton into his anus.

76. Sonia (26 years old) and Carmen (28 years old) reported to OHCHR that, upon being detained in La Serena on 22 October, unidentified military officers with covered faces repeatedly touched their breasts, genitals and buttocks.

77. Carla (16 years old) was detained by the police in Viña del Mar with her father on 5 November. At the time of the declaration, her father informed the police that she has a psychosocial disability. She reported being forced to bare her breasts, harassed physically with a baton, and threatened with being “disappeared”.

78. According to information received, Sergio (17 years old) was assaulted on 5 November on the way home from a protest in Ovalle by a group of police in plain clothes, who grabbed him by the neck and punched him repeatedly on the body and face. One of them repeatedly squeezed his testicles, for several minutes at a time. He was then handcuffed while they continued to squeeze his genitals. Once at the police station, he was photographed and made to sign some documents before being released. He reported that neither his detention nor his injuries were registered.

7. Access to health

79. OHCHR gathered information relating to access to health⁸⁰ provided for injured people, including through visits to hospitals and interviews with health workers. OHCHR observed that access and treatment was being provided according

⁷⁸ <https://www.indh.cl/indh-en-este-mes-se-han-presentado-cuatro-veces-mas-querellas-por-violencia-sexual-que-en-nueve-anos-y-casi-el-doble-por-otras-torturas/>

⁷⁹ http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=16974#.Xd0-wHETT_A.twitter

⁸⁰ The right to health is recognized in article 12 of the Covenant on Economic, Social and Cultural Rights. The Committee, in its General Comment 14, describes its different elements, including availability, accessibility, acceptability and quality.

to the gravity of the injuries. There were however long waiting periods due to the high number of people arriving to medical centres.

80. With regard to access of detainees to medical staff, OHCHR notes that national regulations⁸¹ establish that the documentation of the health state of detainees is done at police stations through a health statement (“*acta de salud*”) and without the presence of medical staff. Only when the detainee presents “visible injuries” or requests for the examination to be conducted in a medical facility, will it be done by health professionals. Detained people, however, have the right to a prompt and proper medical examination upon admission to the place of detention⁸².

81. OHCHR was informed that when injuries were certified in hospital facilities, exams were carried out with detainees handcuffed and in the presence of police officers. There were also superficial medical checks and medical reports not conforming to the Istanbul Protocol. In some case, medical staff were reportedly reluctant to check and document injuries, for example in the region of Coquimbo.

82. On 11 November, the Ministry of Health established an “Integral Programme for Ocular Recuperation”, which includes resources to bring medical attention to victims of total or partial ocular injuries during the demonstrations. According to the programme, all patients will be ensured free access to medical health, including mental health⁸³.

8. Unlawful and/or arbitrary arrests and detentions

83. According to Ministry of Justice, 28,210 people were detained during the period between 18 October to 6 December. 1,615 remain in pre-trial detention while the others have been released.⁸⁴ OHCHR has observed that the majority of people detained in this context are young people without a criminal record.

84. OHCHR observed that, along with detentions carried out in response to looting and acts of violence against security forces, there were also numerous detentions of people exercising their right to peaceful assembly or of people who were on roads near protests or looted buildings. These detentions appear to have been indiscriminate and, in the absence of flagrant crimes by the protesters, could be considered arbitrary in the light of international standards.

85. OHCHR received reports of demonstrators who, after being fired on by tear gas or pellets, attempted to leave the demonstration and were then chased or blocked-in by police forces (“*encerronas*”), making it impossible for them to leave. They were then detained, in some cases along with passers-by.

86. OHCHR also received repeated accounts of people detained for the purposes of controlling their identity. Despite showing their identity documents, they were taken to police stations. Fernanda (25 years old) was detained in Coquimbo as she was going to buy bread with her boyfriend on 20 October. A group of five members of the police asked them to hand over their identity documents. Without giving them

⁸¹ Decree No. 2534 of the Ministry of Justice of Chile, 24 July 2013.

⁸² Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, Principle 24.

⁸³ On 10 December the Ministry of Health announced that 44 persons with complex fractures, burns and neurological damage were being provided assistance by the State.

<https://www.ssmc.cl/ministerio-de-salud-anuncia-programa-integral-de-reparacion-ocular/>

⁸⁴ <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>.

time to hand in the documents, they were both pushed against a car, handcuffed and taken to a police station. At the police station Fernanda was forced to strip naked, called a “Communist” and “Marxist” and beaten on her back with batons.

87. OHCHR was informed of detentions carried out by police officers in plain clothes and using unmarked cars in Temuco and Antofagasta. Jacinto (20 years old) was reportedly detained by a red pick-up truck at 5 a.m., a hood was placed over his head and he was taken to a building where he was interrogated, threatened and tortured. According to reports, needles were inserted under his nails and he was asked to say “all he knew about the protests”. A couple of hours later, still hooded, he was driven (by a different vehicle) to a remote area. When he descended from the vehicle, his abductors shouted at him to run and simulated an execution, loading the pistol but not firing it. Once he could get the hood off, he was reportedly able to see that the car driving away belonged to the special operations police (*Grupo de Operaciones Policiales Especiales de Carabineros, GOPE*).

88. OHCHR also received information relating to cases of adolescents who had their identity documents retained upon their release from police stations, with the apparent purpose of preventing them from participating in new protests. Indiscriminate or punitive detentions through containment tactics are arbitrary and constitute a violation of the rights to personal liberty and security, and to peaceful assembly.⁸⁵ They also represent a form of criminalization of the protest.

Registration of detentions

89. OHCHR received information on people whose detentions were not registered at the police station. People were detained by police for several hours in vans or other police vehicles, without being taken to a police station or their detention being recorded. During that time, detainees were outside the protection of the law and exposed to a high risk of human rights violations.

90. OHCHR also received reports of heavy beatings of detained people, who were subsequently released in remote places. Sebastián (24 years old) was reportedly detained by police officers on 27 October in Antofagasta after leaving a demonstration. He was placed in a police van, with six members of the Police. When asked for his rights to be read to him, the police members replied that he was not under detention. He was reportedly beaten and insulted repeatedly during three hours, and left close to where he had been picked up, close to midnight.

91. On the basis of visits to police stations and information gathered, OHCHR observed that the system for registering detained people was paper-based (without digital support). OHCHR observed that these registries not being kept accurately or in a timely manner. At a police station in Antofagasta, OHCHR found over 40 individuals who had been detained for up to three hours, without their detention being registered. In some police stations visited (for example in Pedro Aguirre Cerda), OHCHR observed that data on the time and context of the detention of several people being held for allegedly disturbing public order were missing.

92. OHCHR was informed of restrictions by the police to information requested by lawyers on detainees. These restrictions took place mostly during the state of emergency. Police reportedly informed lawyers that only NHRI staff or Public Defenders could have access to the registries or that they would have to officially

⁸⁵ European Court of Human Rights, *Austin and others v United Kingdom* (applications Nos. 39629/09, 40713/09 and 41008/09), para. 68.

request it through access for information mechanisms. On 25 October, the Chilean Transparency Council (*Consejo para la Transparencia*) sent a memorandum to the Executive Branch and to the other institutions (police, Army, Prison Services, and Investigative police, inter alia), highlighting that the registry of detainees, according to the Constitution is public and that any person can access it⁸⁶. On 29 November, the Chilean Transparency Council indicated that after examining 27 police stations in three regions in the county, they have found that 70% of these were providing unrestricted access to the information in the registry of detainees⁸⁷.

Right to prompt access to legal counsel

93. OHCHR has documented a series of restrictions of detainees relating to access to a lawyer. The right to access legal counsel is generally a precondition for accessing other rights, such as the right to challenge the legality of detention, and as a safeguard against violations of non-derogable rights, such as the right to life and to physical and mental integrity. The right of access to legal counsel may therefore not be subject to derogation.

94. OHCHR observed that depending on the region, detainees had access to lawyers with differing accounts of efficiency, depending on the region. In the regions of Antofagasta and Coquimbo, public defenders were regularly present at Police stations and were able to interview people detained in the context of protests during the first few hours of custody. In the Metropolitan region and the region of Valparaíso (the ones with the highest number of detainees), OHCHR received information indicating that the interview with the public defender had taken place just minutes before the hearing on precautionary measures began. This may violate detainees' rights to have prompt access to legal counsel and to have adequate time to prepare his or her defence.⁸⁸

95. OHCHR also received information on the difficulties experienced by public defenders in accessing the Public Prosecutor's Office to obtain a rapid decision on the detention or release of people deprived of liberty in the context of the protests. In some locations, prosecutors were not regularly visiting police stations amid the wave of detentions, and delayed their responses on the legality of detentions. Responses were often provided over the telephone to the police. OHCHR commends the instruction of the Regional Prosecutor's Office of Antofagasta requesting prosecutors to appear at police stations. OHCHR also found that the Public Prosecutor's Office lacked oversight of the implementation of release orders issued. In this regard, people were generally released hours after the order have been issued. OHCHR found that the record books in the police stations visited included only the time of actual release, but not the time at which the release order had been given or received.

⁸⁶ <https://www.consejotransparencia.cl/cplt-advierte-sobre-disposicion-inmediata-de-informacion-de-detenido-y-valida-captacion-de-imagenes-ciudadanas-en-el-marco-de-las-manifestaciones/>. See also

<https://twitter.com/ctransparencia/status/1199795031403573251?s=20>

⁸⁷ <https://www.consejotransparencia.cl/cplt-fiscalizo-a-unidades-policiales-por-libre-acceso-a-registro-de-personas-detenido/>

⁸⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 17 and 18.

B. Acts of violence against security forces and destruction of property

96. OHCHR has observed a large number of acts of violence against law enforcement officials, including the police, Army personnel and investigative police. According to the Ministry of Interior, 2,705 members of the security forces were injured between 18 October and 6 December.⁸⁹ OHCHR received information on several cases of wounded members of the police and interviewed several of them.

97. For example, on 27 October, Police Special Forces Lieutenant Camilo Parragué (age 25) suffered an open fracture of the humerus as a result of hooded people having thrown stones at him. He was allegedly thrown to the ground where he was run over by a bus in Santiago. On 6 November Special Forces Second Corporal María José Hernández Torres (25 years old) and Abigail Abusto Cárdenas suffered severe facial burns from a Molotov cocktail thrown in the context of a demonstration in Santiago. OHCHR also interviewed a member of the police Special Forces who was in the hospital after having hit with a brick in his genitals during a demonstration on 1 November in Santiago.

They attack us with stones, bottles and molotovs. The level of violence surpasses the normal.”

Injured member of the police

98. The police, the Army⁹⁰ and the air force⁹¹ have suffered attacks against their premises (in San Antonio and Copiapó), and looting. According to information provided by the Ministry of Justice, 243 attacks on police stations took place between 19 October and 6 December⁹².

99. Acts of destruction have also been committed against public and private infrastructure. 130 of the 136 metro stations in Santiago have suffered some level of damage; six trains were destroyed.⁹³ There was also looting of supermarkets, bank branches and pharmacies, and arson of government offices (for example, the civil registry office of Providencia and the provincial government building of Concepción). There was also damage to protected buildings, churches, statues and other monuments⁹⁴. According to information provided by the Government, a preliminary assessment of the damages would amount to 3,000 million USD.⁹⁵

100. OHCHR has also observed how, in response to acts of looting and destruction of property, groups of individuals or neighbours (“vigilante groups”) have formed to protect property, some holding weapons. On 10 November, an armed person shot at demonstrators in Reñaca, Viña del Mar; one person was injured as a result.

101. On 19 October, President Sebastián Piñera declared that “we are at war against a powerful enemy”⁹⁶. Prior to that, the then Minister of Interior had referred to the acts of destruction as being carried in an organized manner by vandals. A series of

⁸⁹ <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>.

⁹⁰ See https://twitter.com/Ejercito_Chile/status/1194529837756698626?s=20
https://twitter.com/Ejercito_Chile/status/1194612132333203457

⁹¹ https://twitter.com/FACH_Chile/status/1194600703676833800

⁹² <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>

⁹³ Information provided by the Government to OHCHR on 11 December 2019.

⁹⁴ Including in the cities of La Serena, Temuco and Santiago.

⁹⁵ Information provided by the Ministry of the Interior, dated 4 November 2019. This includes damages to 86 schools and 287 public buildings.

⁹⁶ <https://www.youtube.com/watch?v=fg45fhWeFd0>

measures were taken by authorities, including the application of the Internal State Security Act and legislative proposals that establish tougher penalties for relevant crimes and restrictions to protests. The implementation of the latter could constitute a restriction of the right to peaceful assembly and freedom of expression.

102. According to the Ministry of Justice, between 18 October and 6 December, 28,210 people have been detained, and 1,615 remain in pre-trial detention⁹⁷. The Ministry of Interior has filed 785 lawsuits based on the Law on State Security, against 1,560 people (most of these related to looting, arson and attacks against security forces)⁹⁸. On 2 December, the Public Prosecutor stated that there is “small group of people that has caused destruction and have (...) a violent conduct (...) these will be the focus of our attention” Doing otherwise, “would have meant criminalizing a social movement which has in essence being legitimate”⁹⁹.

C. Impact on specific individuals and groups

1. Children, adolescents and youth

103. Although the protests have involved a broad spectrum of society, adolescents and youth¹⁰⁰ have been one of the groups most affected by repression of the protests, in particular secondary school and university students. The Children Rights Ombudsperson has established that there have been at least 374 human rights violations to the rights of children and adolescents¹⁰¹. The NHRI has established that children and adolescents represent at least 14% of those wounded within the context of the protest¹⁰².

104. On 25 October, UNICEF and the Children Rights Ombudsperson expressed their concern that over 10% of detained people were children and adolescents¹⁰³. UNICEF also expressed concern with the increase in human rights violations against children and adolescents¹⁰⁴.

⁹⁷ <http://ddhh.minjusticia.gob.cl/informacion-sobre-la-situacion-del-pais-desde-el-19-de-octubre>.

⁹⁸ Ibid

⁹⁹

http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=17014#.XeVpnO-in74.twitter

¹⁰⁰ There is no consistent definition for the term “youth”. At the United Nations, the age range from 15 to 24 years has traditionally been used. However, as that range was originally chosen only for statistical purposes, it is not used consistently. Some United Nations organizations use “young people” as an umbrella term for “youth” and “adolescents”, spanning the ages 10 to 24. The Committee on the Rights of the Child uses “adolescents” although it has said (General comment No. 20, 2016) that adolescence on the period of childhood from age 10 until the 18th birthday. The United Nations Human Settlements Programme defines “youth” as those between the ages of 15 to 32. Security Council resolution 2250 (2015) and the progress study on youth and peace and security define “youth” as 18 to 29 years of age. Report on Youth and Human Rights, A/HRC/39/33 of 28 June 2018,

[https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/193/07/PDF/G1819307.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G18/193/07/PDF/G1819307.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/193/07/PDF/G1819307.pdf?OpenElement)

¹⁰¹ <https://twitter.com/defensorianinez/status/1200493615283363841?s=20>

¹⁰² 254 girls, boys and adolescents wounded, out of a total of 2985 cases of persons who have sought medical assistance in hospitals and as registered by the NHRI (up to 25 November). See <https://www.indh.cl/>

¹⁰³ <https://unicef.cl/web/unicef-y-defensoria-de-la-ninez-exigen-cumplimiento-de-protocolos/>

¹⁰⁴ <https://twitter.com/UnicefChile/status/1192817497940152321?s=20>

105. OHCHR has received information as to how student leaders and students might have been harassed or targeted by security forces due to their role in the protests.¹⁰⁵ On 22 October, student leader Valentina Miranda (19 years old)¹⁰⁶, together with other two students, was arrested by police after curfew in Santiago. They were “banging pans” as a sign of protest on a street corner when police tried to arrest them, entering the building where the students had sought shelter. The police reportedly beat them and dragged them outside the building, before throwing pepper spray at them and taking them to a police station. The students alleged that they were specifically targeted by these acts of aggression.

106. OHCHR has gathered information on cases when police, entered schools and universities throughout the country, sometimes interrupting classes and without a search warrant¹⁰⁷, wielding tear gas and pellet guns. On 5 November, police entered a high school in Santiago (Liceo 7 de Providencia) using anti-riot guns, reportedly due to the risk of the school being seized (“*tomado*”) by students. Two female students were hurt, including one that received 10 pellet wounds on her leg. UNICEF recalled that “schools should always be safe and protected spaces for children”¹⁰⁸.

107. OHCHR received consistent information from students who reported fear of reprisals by going to school or university. Some educational establishments closed due to the protests, affecting the students’ right to education. The Special Representative of the Secretary-General on Violence against Children, Najat Maalla M’jid, expressed her concern that an increasing number of children are being affected by the wider effects of violence, including their right to education and, with the spread of a general sense of fear, their mental health¹⁰⁹.

108. The Government provided information relating to programmes to assist victims being implemented by the National Institute for Youth and the Undersecretary for Children. These programmes provide assistance and psychosocial support to adolescents (between the ages of 15 to 19) who have suffered human rights violations in the context of the protests. A programme has also been established to provide psychological assistance, free of charge, health and legal advice for girls and boys¹¹⁰.

2. Women

109. Women have played an important role in galvanizing social protests in Chile, in particular relating to violence against women, sexual and reproductive rights, and equality. This has also been the case during this period. In this context, women were affected by all modalities of human rights violations, yet they were most exposed to sexual violence. According to the Office of the Public Prosecutor, of the 2,141 people that have filed complaints relating to human rights violations, 525 are women (25%). Of the 8,812 of detentions the NHRI registered 1,300 women detained and

¹⁰⁵ In this regard, the Committee on the Rights of the Child had already expressed its deep concern about the repressive manner adopted by the State to address the 2011–2012 demonstrations by students demanding changes in the education system and the abusive use of detention measures. See Concluding observations on the combined fourth and fifth periodic reports of Chile, paragraph. 36.

¹⁰⁶ Spokesperson of the Chilean National Coordinator of Students, CONES.

¹⁰⁷ <https://twitter.com/Carabdechile/status/1197213267942367241?s=20>

¹⁰⁸ <https://twitter.com/UnicefChile/status/1191823687281975298?s=20>

¹⁰⁹ <https://mailchi.mp/9702afb28431/un-special-representative-on-violence-against-children-expresses-serious-concern-over-the-continuous-violence-in-chile-and-its-impact-on-children>

¹¹⁰ Information provided by the Government to OHCHR on 11 December 2019.

180 girls (around 20% of the total)¹¹¹. In addition, OHCHR received reports of insults and sexist language by police and military personnel against women. These acts contribute to the perpetuation of gender-based violence against women¹¹². On 11 November, UN Women expressed its concern due to the increase in cases of sexual violence against women¹¹³.

110. The OHCHR has received information on the programme established by the Ministry of Women and Gender Equality to assist women who have reported sexual and/or physical violence in the context of the protests. A team will be set up to support those denouncing such acts and ensure their access to justice and redress¹¹⁴.

3. Human rights defenders and journalists

111. OHCHR found that the NHRI and the Ombudsperson for Children were provided access to police stations and prisons. However, personnel of the NHRI have been subject to restrictions to their monitoring work and in some cases reported reprisals by security forces, including insults and threats. A camera man from the NHRI was beaten by police while walking home after a demonstration on 25 October in Santiago. Although he identified himself twice as NHRI staff, he was beaten with batons on his head, hands and buttocks. On 29 October, a staff member of the NHRI received seven pellet shots on his back and legs while he was monitoring a protest in of Santiago, despite being duly identified. Two other NHRI members were also hurt by pellet shots from anti-riot guns. NHRI personnel report that they faced restrictions in accessing vehicles where people were being detained and were insulted by police members.

112. On 26 November, information was made public that the Director of Amnesty International Chile, Ana Piquer, had suffered a series of threats¹¹⁵. These were received days after Amnesty International published its preliminary findings on the situation in Chile¹¹⁶.

113. OHCHR documented cases of two media workers who were injured while performing their functions. On 21 October, Lukas Jara Muñoz (21 years old), photographer for the *Diario Concepción*, was injured while he was taking photos of a girl being detained during a demonstration in Concepción. Police Special Forces reportedly aimed at him directly, with anti-riot guns.

114. On 22 October, Alejandro Torres (44 years old), a cameraman from the Mega television channel, was shot at by the police while he was covering the looting of a supermarket in Chiguayante (Concepción). As a result of the pellet wounds, he has lost vision in one eye.

¹¹¹ www.indh.cl

¹¹² See Committee on the Elimination of Discrimination against Women (CEDAW), concluding observations on the seventh periodic report of Chile, paragraph 24, and the Report of the Working Group on the issue of discrimination against women in law and in practice Addendum: Mission to Chile, paragraph 38.

¹¹³ <https://twitter.com/ONUMujeresChile/status/1193916298645913600?s=20>

¹¹⁴ Information provided by the government to OHCHR on 18 November. This programme will cover expenses related to such services

¹¹⁵ <https://twitter.com/amnistiachile/status/1199417924659879936?s=20>

¹¹⁶ <https://www.amnesty.org/es/latest/news/2019/11/chile-responsible-politica-deliberada-paradonar-manifestantes/>

4. Health workers and volunteer workers

115. Health workers from State institutions and civil society organizations have provided assistance to injured victims in the context of the demonstrations, both at the site of the demonstration -through improvised health posts- or at hospitals and health centres. OHCHR received information that in several cases, the police had reportedly shot at them or thrown teargas canisters while they were providing first aid assistance to injured demonstrators.

116. Firefighters (*Bomberos de Chile* – staffed by volunteers) have played an important role in putting down fires, especially after lootings and arson. On 7 November, Ariel Bravo, a senior firefighter from Talca was detained by the police while reportedly assisting people who had been affected by teargas. He reported to have been placed in a police bus, where he was insulted and told that the firefighters were protecting criminals who were protesting¹¹⁷.

5. Other groups

117. Indigenous authorities and representatives of the Mapuche people indicated to OHCHR that cases of loss of life, violations of international norms and standards on the use of force and ill-treatment, within the context of protests, have occurred in their quest to have their rights upheld¹¹⁸. The Office of the Public Prosecutor has indicated that out of the total number of people who have claimed to have suffered human rights violations, 13 of them identified as indigenous peoples (all of them Mapuche)¹¹⁹.

118. OHCHR received information relating to several cases of **LGBTI people** suffering sexual violence (as in the aforementioned case of Josué Maureira) as well as receiving homophobic insults during arrests. For example, Mauricio (20 years old), was brought to a police station and when he couldn't remove his earring due to shaky hands, the police reportedly ripped out the earring and threw him to the floor. He has reportedly then been beaten with a baton and insulted with homophobic expressions (“*maricón culeao /fucking queer*”). On 30 October in Temuco, Mauricio (29 years old) and other members of a group advocating for sexual diversity, were detained while demonstrating. Police seized Mauricio, threw him to the ground, pushed his face towards the floor and one of the police proceeded to kneel on his head. While this happened, police used homophobic slurs. The Office of the Public Prosecutor has indicated that out of the total number of people who have filed complaints for human rights violations, eight of them have identified as LGBTI people¹²⁰.

119. OHCHR received information as to discriminatory treatment by the police forces towards **migrants** during demonstrations or detention. These included cases of ill treatment where people were severely beaten while being insulted with xenophobic expressions and being threatened with of deportation. Public

¹¹⁷ <https://twitter.com/CBSA1913/status/1192272826440527874?s=20>. Due to attacks against firefighter personnel from violent persons, a campaign demanding “No more attacks to firefighters” was launched. <https://www.youtube.com/watch?v=pHcErLxCCAs>.

¹¹⁸ See the Concluding Observations of the Committee against Torture on Chile’s sixth periodic report, issued in 2018 (CAT/C/CHL/CO/6), para 22, and the Concluding Observations of the Human Rights Committee on Chile’s sixth periodic report, issued in 2014 (CCPR/C/CHL/CO/6), para. 19.

¹¹⁹ http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=16974#.Xd0-wHETT

¹²⁰ Ibid

Prosecutor's Office has indicated that 41 foreigners (from Argentina, Bolivia, Colombia, Ecuador, Haiti, Peru, Syria and Venezuela) have presented claims relating to alleged human rights violations.¹²¹ On 1 November, the police reportedly hit a Bolivian woman while she was peacefully participating in a protest. She was reportedly dragged by the hair (for several metres) and then detained in a police vehicle during 13 hours. During this time, she reported to have been threatened with deportation if she denounced what had happened. The violence committed against the migrant population can retraumatize those who have suffered traumatic experiences in countries of origin, transit or destination.

120. OHCHR received information of discriminatory treatment of **people with physical and psychosocial disabilities** within the context of the protests¹²². According to this information, seven people (with different types of disabilities) participating peacefully in a demonstration in Temuco on 28 October were reportedly affected by tear gas thrown directly to the place where they were¹²³. On 6 November, the Police, in attempt to dislodge a protestor with disabilities, removed his wheelchair leaving him without support¹²⁴. OHCHR has observed that the internal protocols on the use of force by law enforcement officers do not contain any specific provisions for dealing with people with disabilities.

V. Measures taken regarding accountability of human rights violations

121. According to information provided by the Public Prosecutor's Office, as of 26 November, 2,670 investigations are open relating to human rights violations committed in the context of demonstrations¹²⁵. 44 of these are related to allegations of torture and 90 specifically for forced nudity¹²⁶. 2,052 of the complaints are against members of the Police (74%), 183 cases against army personnel, 50 cases investigative Police (*Policía de Investigaciones*, PDI), and in 26 cases against navy personnel.

122. As of 5 December, the NHRI had filed 709 criminal complaints for human rights violations (91% of these were for torture and ill treatment, including sexual violence), representing a total of 956 people¹²⁷.

123. Despite the high number of police reports and judicial complaints, according to information available to OHCHR, to date only nine people have been formally charged as alleged perpetrators. The government has indicated that, as of 11 December, charges have been filed against three members of the military relating to the deaths of three civilians¹²⁸.

¹²¹ Ibid

¹²² See also <https://twitter.com/colmedchile/status/1201932926243528705/photo/1>

¹²³ <https://www.indh.cl/indh-araucania-presento-amparo-preventivo-a-favor-de-personas-con-discapacidad-que-fueron-gaseados-por-vehiculo-de-carabineros/>

¹²⁴

<https://www.youtube.com/watch?v=9jwex46WkV0&list=PLV1TCHmcDHOHOGPAXLueB9SniJCRjhKwq&index=93>

¹²⁵http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=16974#.Xd0wHETT_A.twitter

¹²⁶http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=16974#.Xd0wHETT_A.twitter

¹²⁷ <https://twitter.com/inddhh/status/1203049767300947969?s=20>.

¹²⁸ Information provided by the Government of Chile to the OHCHR, 11 December 2019.

124. The police have initiated 469 administrative proceedings and 332 investigations following the reports submitted by the NHRI¹²⁹. The police has stated those under administrative proceedings have been reassigned to administrative duties. OHCHR also notes that recent actions undertaken by the police to deploy human rights instructors to enforce its protocols on the use of force and control of demonstrations¹³⁰.

125. On 17 November, President Sebastian Piñera admitted that, “despite all the precautions, in certain cases, protocols were not respected, and there was an excessive use of force (...). [the Government will do its best to assist all victims in their recovery and to ensure that prosecutors and courts fulfill their role of investigating and delivering justice”¹³¹.

126. Congress has also taken a series of measures to examine alleged human rights violations committed during the state of emergency as well as the broader consequences of the situation, including through hearings and the creation of special commissions¹³².

127. To date, security forces have not provided information on the measures adopted to ensure accountability regarding the alleged violations of human rights. Nor have they recognized the commission or possible commission of human rights violations¹³³.

128. OHCHR has also observed that many institutions have provided public information relating to human rights within the context of protests in an updated, accessible and disaggregated manner¹³⁴. This includes regular updates by the Ministry of Interior, Ministry of Justice and Ministry of Health. The NHRI, as an autonomous body, has provided almost daily updates, with disaggregated information and in an accessible manner. However, the lack of public information by law enforcement personnel on actions undertaken to ensure accountability is a matter of concern. Access to information is an important element for the exercise of many human rights and the fight against impunity for human rights violations.

¹²⁹ Information provided by the Government of Chile to the OHCHR, 18 November 2019.

¹³⁰ <https://twitter.com/Carabdechile/status/1203051100913520647?s=20>

¹³¹ <https://www.youtube.com/watch?v=KN0MPR4ROxk>

¹³² See https://www.camara.cl/trabajamos/comision_citacionxcomision.aspx?prmIDCOM=404 and <https://www.senado.cl/appsenado/index.php?mo=comisiones&ac=ficha&id=199>

¹³³ <https://twitter.com/mindefchile/status/1197658823848321024/photo/2>

¹³⁴ <https://twitter.com/ctransparencia/status/1197873399277793285?s=20>

VI Conclusions

1. The demonstrations that have taken place in Chile since mid-October have multiple root causes, including social and economic inequality. The majority of those who have exercised the right to assembly during this period, have done so in a peaceful manner.

2. Based on information gathered by OHCHR, there are reasonable grounds to believe that, from 18 October onwards, a high number of serious human rights violations have been committed. These violations include excessive or unnecessary use of force that led to arbitrary deprivation of life and injuries, torture and ill-treatment, sexual violence, and arbitrary detentions. These violations were committed throughout the country, although the majority of these took place in the Metropolitan Region and in urban contexts.

3. In this context, OHCHR has observed that certain human rights violations, in particular the improper use of less lethal weapons and cases of ill treatment, are recurrent over time and space, and involve the same alleged perpetrators and victims.

4. The management of assemblies by the police has been carried out in a fundamentally repressive manner. The police has regularly failed to distinguish between people demonstrating peacefully and violent protesters. The police used non-lethal force when demonstrations were peaceful, with the apparent aim of dispersing demonstrations or preventing participants from arriving at the assembly point.

5. There are reasonable grounds to believe that less-lethal weapons have been used in a disproportionate and sometimes unnecessary way (in particular anti-riot shotguns, but also tear gas) and that these have been used at a short range. The improper and indiscriminate use of less-lethal weapons was observed both during peaceful demonstrations and in the context of violent confrontations between demonstrators and security forces, primarily by the police.

6. The alarmingly high number of people with injuries to the eyes or face attests to this serious violation. The use, in anti-riot shotguns, of pellets containing lead is also a concern.

7. OHCHR is also concerned that cases of ocular injuries continued to occur, despite the existence, early on, of information related to wounds caused by less-lethal weapons. Those responsible failed to adopt measures, in an effective, expedite and timely way, to minimize the risk to people.

8. OHCHR has documented four cases of arbitrary deprivation of life and unlawful deaths involving State agents. In two of the cases, lethal force, in the form of live ammunition, appears to have been used in the absence of any risk to the lives of civilian or military personnel and against people who were not participating in acts of violence. This contravenes international norms and standards on the use of force and may, depending on the circumstances, amount to an extrajudicial execution.

9. Information gathered by OHCHR indicates that there were many indiscriminate arrests and detentions which could be considered arbitrary in light of international human rights standards.

10. An elevated number of people who were arrested and detained were ill-treated. Some of these cases, including those of sexual violence, simulation of executions and threats that people will be “disappeared”, amount to torture. Many of these cases

occurred in places with no surveillance cameras and with the perpetrators not being duly identified.

11. Women, girls and LGBTI people have suffered specific forms of sexual violence (including forced nudity), mainly related to detentions. Serious cases of sexual violence have also taken place against men and boys.

12. Adolescents and young people constitute the majority of the victims of human rights violations and have been particularly affected. Students, including student leaders, have been harassed or targeted due to their role in the protests.

13. Many people have been deeply affected by the unfolding events, in particular in terms of their mental health. Young people and the elderly have been particularly affected.

14. OHCHR also observed that, in this context, there have been numerous attacks against security forces and their premises. There was also significant looting and destruction of property, public and private, both during and outside of demonstrations.

15. The NHRI and the Ombudsperson for Children's Rights have effectively and in a timely manner carried out their mandate to protect human rights. However, human rights defenders (including personnel of the NHRI), journalists and health workers have suffered restrictions to their work, as well as reprisals for carrying out their mandate.

16. OHCHR is concerned with the low number of alleged perpetrators that have been charged to date, despite the high number of lawsuits and claims filed. The lack of public information by security forces vis-à-vis the actions it is adopting to ensure accountability is also a concern.

17. Different State institutions have taken measures to ensure investigations of alleged human rights violations; to ensure access to lawyers for detainees; access to services for victims; and to provide comprehensive, regular and accessible information to the public. Rulings have been issued by tribunals to protect those people exercising their rights, including to peaceful assembly.

18. OHCHR acknowledges the Government of Chile for its extensive cooperation, for the frank dialogue sustained, for the ample information provided and for the unrestricted access to all places which it requested to visit.

VII. Recommendations to the Chilean State

1. Ensure that, during demonstrations, people can exercise their rights to freedom of peaceful assembly and expression without unnecessary and disproportionate restrictions or risks to their physical integrity and other human rights.
2. Effectively ensure that law enforcement forces strictly follow international norms on the use of force at all times. Guarantee the use non-violent means before resorting to less-lethal weapons, and that these are used in full compliance with international norms.
3. Immediately end the indiscriminate use of anti-riot shotguns to control demonstrations. These must only be used with authorized ammunition and in line with international standards.
4. The use of tear gas should be exceptional and only used when strictly necessary and never inside or near education and health establishments. Immediate measures should be taken to prevent wounds resulting from teargas canisters, including by providing clear instructions to police officers on their proper use -for example, ensuring that they are always fired at a high angle and never horizontally, according to international standards.
5. Adopt measures vis-à-vis the police to:
 - Promote the adoption of structural reforms to ensure civilian oversight and independent monitoring over their activities, strengthening transparency, access to information and accountability as guiding principles.
 - Reform the systems of detention registries in order to ensure that the gathering of adequate, integral and disaggregated information.
 - Ensure that police forces are provided state-of-the-art training (including a gender perspective) on human rights, including on the use non-violent means in the management of assemblies and de-escalation tactics.
 - Include in the police internal regulations specific protection measures for discriminated people and groups, in particular for people with disabilities.
 - Guarantee that proper identification is used in all activities relating to public security (including nametags and identifiers in police vehicles).
6. Ensure that the maintenance of public order is primarily reserved to civil police forces. When military forces exceptionally intervene in security functions, their participation must be a) temporary and restricted; b) subordinate and complementary to the functions of civil forces; c) regulated; and d) subjected to oversight by civil competent organs.
7. Ensure that security forces adopt measures to guarantee accountability for human rights violations, and recognize such violations.
8. Ensure that the State's duty to investigate all allegations of human rights violations is upheld. The State should consider adopting specific measures to accelerate the investigations and judicial proceedings, including by assigning prosecutors and/or judges specialized in human rights.
9. Ensure that there are no procedural impediments to determine criminal individual responsibilities, such as defense or obedience to superior orders. Those found responsible should be tried and given punishments commensurate with the seriousness of the violation. Alleged perpetrators of serious human rights violations

should be suspended from their duties for the duration of the investigation/proceedings.

10. Ensure that all victims of human rights violations have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings. In exercising this right, they shall be afforded protection against intimidation and reprisals. Victims should also have access to free legal assistance to file such complaints, and they should receive a full reparation for the violations suffered.

11. Establish a mechanism to gather, systematize and make public information on human rights violations, the relevant investigations and sanctions established. Access to information and access to justice should be the guiding principles of such mechanism. Civil society should be consulted and be part of this mechanism.

12. Adopt necessary measures and actions to ensure the non-recurrence of human rights violations committee in the context of demonstrations, in particular with regard to torture and sexual violence, and by security forces.

13. Strengthen the capacities of the Medical-Legal Service, specialized prosecutors and other medical personnel in relation to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol).

14. Ensure that all detainees undergo medical exams by healthcare personnel following their arrest. Standard operating procedures should be established for examinations of detainees, with particular emphasis being placed on the proactive detection of injuries, in accordance with the Istanbul Protocol. The health-care system should keep a record of injuries identified as being compatible with torture and ill-treatment and of allegations made by people deprived of their liberty who have been examined.

15. Ensure that human rights defenders, journalists and people assisting in the context of demonstrations are able to carry out their work without restrictions or fear of reprisals.

16. Adopt measures to ensure that criminal law is not used in any way to limit the exercise of the rights to peaceful assembly and freedom of assembly. Authorities should refrain from using rhetoric that may in any way criminalize the protest.

17. Establish a multi-stakeholder mechanism, including civil society and academia, alongside government representatives and private sector, to identify the structural causes of the protests (in particular relating to economic and social rights and discrimination) and recommend actions to address them. Recommendations from UN human rights mechanisms should frame such a dialogue.

18. Ensure that the National Human Rights Institute—including the National Prevention Mechanism against Torture—and the Office of the Children’s Defender have adequate resources to fulfil their mandate effectively in all the regions of country, especially in light of the increased workload.

19. Ensure that the process of elaboration of a new Constitution is inclusive, participatory and transparent, including by guaranteeing gender parity (50% women, 50% men) during the process and the participation of indigenous peoples and all other sectors of society. Human rights should be at the center of this national debate.

20. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

21. Establish a follow-up mechanism, with the OHCHR Regional Office for South America (ROSA) and including participation of civil society, to evaluate within three months the implementation of the above recommendations, as well as the recommendations from international human rights mechanisms. This follow-up mechanism should aim at establishing measures to prevent the recurrence of such events. The results of the work of such a mechanism should be public.