

# Second Legal Report - Human Rights Committee 18.10- Chile Despertó Internacional

## Executive Summary

1/13/20

Chile is facing an escalation of violence since the imposition of the State of Emergency declared on Saturday October 19<sup>th</sup>, 2019 by the government led by Sebastian Pinera.

This impacted severely the Chilean population as well as the international community. Three months since the conflict first started, the severe repression against civilians has not diminished and in some cases has actually increased, putting at risk the daily lives of the people. The Chilean State has been systematically violating the people's right to life, freedom from harm to one's physical and psychological integrity, the right to due process, freedom of expression and manifestation of its population.

The civilian population suffered its first threat to life and physical integrity between October 18<sup>th</sup> and 28<sup>th</sup>, 2019, during which time the country was under a state of constitutional exemption, called State of Emergency, under which the armed forces were authorized to go out into the streets to repress the demonstrators. This repression took many forms which included the use of lethal weapons. The period of constitutional exemption ended yet even though the military returned to their barracks, there have been further deaths, for which Chilean's police force is responsible.

Of the 27 people reported officially as dead in the context of protests, four were killed as a result of a direct action by the repressive forces (two by shots, one by beatings, one from being run over). Two deaths are directly due to the actions of the Chilean police: one case as a result of an attack against the medical team which was providing aid; another victim was electrocuted after falling into a ditch while running from a . Seven deaths were from confrontations between civilians, within a climate of paranoia and insecurity that the media has helped to create. One of these cases was a person who was killed by a store owner who falsely believed that the person was looting his store; when his backpack was opened all they found was a container with his lunch. Other thirteen deaths were the result of asphyxiation or electrocution at looting sites, though after autopsies, there are some doubts as to the causes of deaths which open up the possibility of coverups and extrajudicial killings. Those cases remain open and the families of those persons are demanding more in-depth investigations.

The National Institute of Human Rights (INDH) in its December 30<sup>th</sup>, 2019 report stated that 3,583 people have been wounded, of which 1,615 from birdshot and 230 from teargas fired directly to their bodies. Police actions are intended to inflict permanent damage. The most vivid examples are 359 people who have suffered eye mutilation, two of whom have become completely blind. These actions by the police force have become so obvious and continuous that wearing eye patches and the gesture of covering up one eye with one hand has become one of the symbols of this social upheaval.

The civilian population does not only face danger on the streets, they also face danger while in custody of the police men. If a protestor is detained, can face the risk of beatings and torture: there are 400 cases of torture, 884 cases of use of excessive force and 208 cases of sexual violence by police forces.

The cases of sexual violence clearly demonstrate gender motivated crimes. By November 30<sup>th</sup> the number of victims represented by the INDH had reached 96 torture cases or sexual violence cruelty cases. The total number of victims has reached 135, of whom 53% are women and 47% are men. This data shows that sexual violence has been used for the most part against women and girls, since three out of ten women have denounced these types of crimes compared to one out of every ten men. However, 100% of the male victims who have denounced sexual violence are also considered to be victims of gender motivated violence for the same reasons: violence directed towards men because of their gender, as a corrective measure for those whom are homosexual and punishment for those who are heterosexual. Most of the official sources acknowledge that a big percentage of these types of cases are never reported to the legal system.

The rights that a state governed by the rule of law should guarantee its citizens have been constantly suspended and interrupted. By November 2<sup>nd</sup>, 12,303 people had been detained and many of these charges were later dismissed without merit.

Procedural measures that are supposed to be used only under exceptional circumstances such as preventive arrests (imprisonment prior to trials for procedural or security reasons) are being applied broadly and therefore abused, making these exceptional measures into the most common types of arrests, applying sentences without providing the accused with due process. The most famous example is that of the math teacher, Roberto Campos, who was in a maximum-security prison for almost two months for destroying a turnstile of the Santiago's subway. The National Security Law was applied in order to justify the arrest and imprisonment, a law used for terrorism related offenses. The State Security Law charges were revoked one day before Christmas.

The indiscriminate use of these judicial instruments and the violent police persecution has transformed the act of protest into a criminal offense. The Public Defender's Office of Chile stated that between Oct 20<sup>th</sup> and Oct 30<sup>th</sup> occurred the highest moments of the social outbreak and also while the military force was on the streets, since 542 arrests were made for different crimes during those times. Many of these acts, such as the case of the teacher Campos, were disproportionate and applied with the intent to dissuade future protests.

In other cases, police attacks and persecution have been more direct. An example of this is the case of the government charges of “incitement to violence” against the political leader, Dauno Tótoro, due to a post that he made on his social media calling for a protest against the Piñera’s government because “it must fall”.

Also, on January 8<sup>th</sup> of this year, the government has filed charges against 34 people for calling for a boycott of the national standardized educational test, PSU, a protest carried out by the high school students intended to stop this test from being carried out because of its discriminatory and segregationist nature which affects lower income students’ ability to have access to a college education. Many of those peoples are minors.

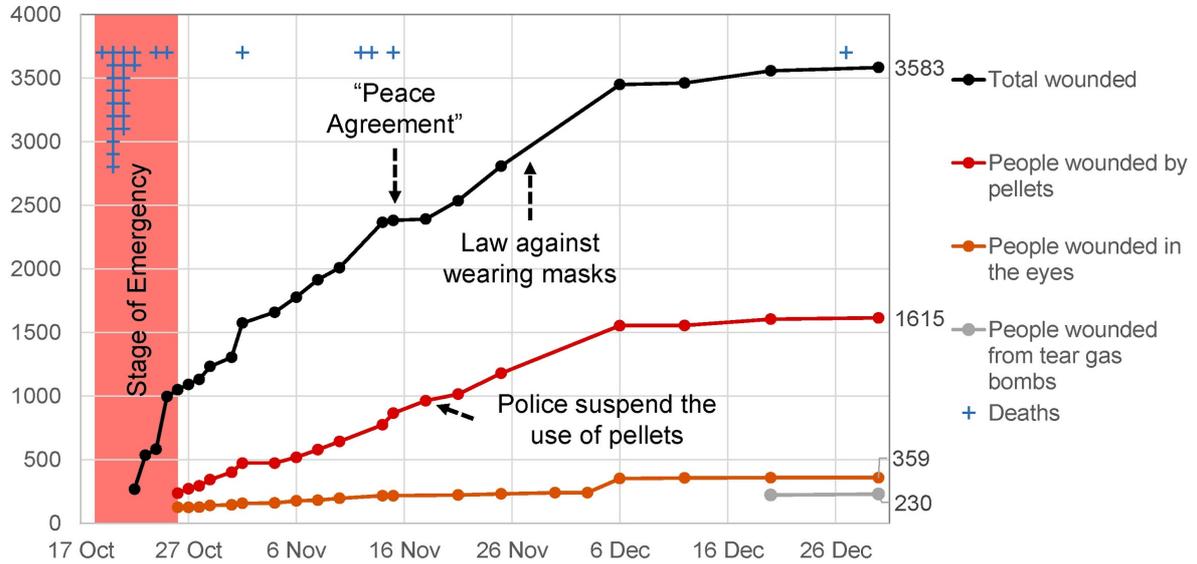
The communication strategy of the government is to deny these facts. On December 15<sup>th</sup>, CNN Spanish interview the Chilean president, Sebastian Pinera, Who said that the videos and articles about the demonstrations and acts of violence were part of a disinformation campaign of fake news and frame-ups to create a state of total crisis. In addition, the president also stated that there was a “foreign hand” involved and many of the videos “are fake, (...) filmed outside of Chile and are out of context”.

In addition, actions carried out at an institutional level have guaranteed impunity for those involved in human rights violations. The general director of Carabineros, Mario Rozas, at a private institutional event, addressed the police under his command referring to the violations of the protocols and assured them that he would not “suspend any of them from their posts, (...) even if they force him to do so”. This general continues in his post with absolute support from the executive branch and the president.

In total, given all of the facts obtained, one could affirm that since October 18<sup>th</sup>, a brutal and escalating violent attack has been unleashed by the police and military against the civilian population, in response to their legitimate demonstrations. Deaths, permanent damage to the eyes, physical wounds, and torture are just some of the state actions that are meant to punish the people for exercising their rights to freedom of expression and association. The restriction of the other rights such as the right of due process, has also been used to achieve the same objectives. All of this has been carried out with the protection of the government, shielding those who have violated these rights and publicly denying that these violations have taken place.

The silence of the international community is lamentable. It is shameful that relations with the state of Chile continue while ignoring what this state is doing against its citizens. The country that only a few months prior was described as the “oasis of Latin-American”, has now become a government that systematically violates the fundamental human rights of its population. We insist that other countries and international organizations denounce this repression and the abuse that has continued for more than three months. The main government authorities are politically and legally responsible for this and we demand that the international agreements- to which Chile is signatory-- and the clauses applicable to human and democratic rights-- be upheld, agreements which were created in order to be enforced for contexts such as these.

# DEATHS AND WOUNDED



Source: INDH and Deutsche Welle

The HR Committee 18.10 from the Red Chile Despertó Internacional refers to the recognised official information and data by the Chilean Institution of Human Rights INDH. However, we are aware that the number of victims and prisoners are slightly higher. This is shown by the recent exchange/interaction between the local legal defensory and Human Right organisations in Chile.

## Legal Department - Human Rights Committee 18.10 - Chile Despertó Internacional.

- Luis Alberto Cortés Vergara, Berlin
- Diva Francesca Serra Cruz, Roma
- Nina Scarlett Arevalo Arevalo, Chiapas
- Javier Ignacio Moreno Gomez, Madrid

## Update of the first HR report

The Human Rights Committee 18.10 issued a first report on December 3, 2019, in order to expose to the international public opinion, the acts of human rights violations that have been occurring systematically in Chile since the outbreak of the social unrest on October 18, 2019. In this way, we have tried to make the violations that the government led by Sebastián Piñera Echeñique has adopted against the civilian population visible through various infractions to the local legislative regulation and international obligations of the agreements signed by the State in the matter of human rights.

More than three months after the conflict first started, the acts of violence and violation of fundamental rights committed against the civilian population by the State of Chile continue to be exercised in a sustained manner, and in some cases have even worsened. Below, we list a brief update regarding the issues covered in the first report:

### **1. Right to life and lethal use of force:**

State repression continues to endanger the life of citizens in Chile. Currently, the National Institute of Human Rights (NHRI) carries out five complaints of homicide against state agents, and 18 for frustrated homicide (these doubled during the course of December).

Despite the fact that a new call for a state of constitutional exemption has not been repeated, nor the use of lethal weapons like in October, protesters continue to expose their lives by participating in peaceful and public demonstrations. In a new case, on December 27th, Mauricio Fredes (33 years old) died as a result of asphyxiation after falling into a pit with electrified cables and water while escaping from a police water cannon during a mass demonstration nearby at the Plaza Dignidad in Santiago.

### **2. Right to physical and mental integrity**

Despite the questions presented in the first report regarding the use of rubber bullets (pellets), both in terms of their composition and their use protocol, usage by the police force has not diminished. In fact, the NHRI records in its report of December 30th, 1,615 bullet injuries. To this we must add 230 wounds by tear gas canisters, resulting from the police shooting directly into the bodies of protesters.

Eye injuries remain a central part of the strategy applied by the police. According to the same report of the NHRI, 359 eye injuries are recorded (that is, there were more than 100 injuries in one month). Additionally, the same agency is processing 930 complaints for different types of crimes related to torture and physical harm, 137 of them being sexual violence. The gender bias involved in this kind of violations will be analyzed in detail later.

In addition to the above, there were new qualms about police actions due to the composition of the water used in the water cannons, which produced strong allergic reactions with protesters, this is according to a document of the medical commission before the Senate Human Rights Commission on December 9th. Finally, and due to the publication of this document, on December 16th, 2019, an independent study on the composition of the water used by these police vehicles, indicates that there were traces of caustic soda in it. Later this study was questioned methodologically by the Chilean College of Chemists. However, the police force admitted that

they add chlorobenzylidene malononitrile or CS Gas to the water. But to date, the Chilean state have not allowed an independent study of the content of the liquid used.

The attacks on protesters even occurred through the use of police vehicles. There are two recent cases:

- On December 21<sup>st</sup>, a young man (20 years old) was crushed between two police cars dispersing tear gas in Plaza Dignidad. The attack left him with multiple fractures on his pelvis.
- On January 7<sup>th</sup>, a minor was run over by a police patrol car during the demonstrations against the completion of the University Selection Test (PSU). The incident caused a fracture in the humerus and a series of bruises on the legs.

Along with all this, there are persistent attacks on medical teams and the teams of human rights observer and defenders in the field. Just as an example, on January 7<sup>th</sup>, the Valdivia Court of Appeals accepted a constitutional protection action in favor of 33 health professionals at the Osorno's Base Hospital, filed for having been victims of police attacks.

### **3. Principle of legality and due process**

Piñera's Government continues to use criminal law as a way of deterring the legitimate right to protest of its citizens, making circulating in traffic or attending a march a crime. In this manner, illegal detentions, the application of exceptional measures such as pretrial detention and other kinds of legal tools are used to advancement penalties directed against people.

An emblematic case, which was treated in the first report refers to the math professor Roberto Campos, who was incarcerated for breaking a subway turnstile in the first days of the social outbreak. Although the crime - normally - would be considered a misdemeanor and would not merit this treatment, the government applied the State's Internal Security Law, citing an attack on the country's security. The professor spent almost two months - from October 30<sup>th</sup> to December 23<sup>rd</sup> - jailed in a high security prison.

As we will see later, cases such as the one described above are repeated with different types of protests and profiles, and were recently applied even to minors.

### **4. Freedom of expression**

The government has continued with its strategy of restricting freedom of expression throughout the country. Complaints and cases of attacks on journalists and photographers during the demonstrations have not ceased since the beginning of the outbreak.

Another strategy that the government is currently implementing is related to the complaint against political and social leaders who express political positions contrary to their vision and which, in the executive's consideration, "incite violence." As an example, the case of the political leader Dauno Tótoro, against whom has been filed a complaint by the State's Internal Security Law, for "inciting violence" due to publications made on social networks. Although the complaint was initially rejected, the Court of Appeals revoked that first sentence and its currently ongoing. Therefore, the state strategy is aimed at holding people accountable for issuing opinions and ideas in the public debate.

In addition to the above, we consider it necessary to deepen some points that were mentioned but not treated in a way that could account for the magnitude and type of violations made by the state towards citizens. In the following, we will focus on 4 points:

- I. Protocol for maintenance of public order used by police officers
- II. Abusive use of criminal law institutions for political repression
- III. Relativization and denial of violence by the Government
- IV. Sexual violence by police officers against protesters
- V. Conclusions

## I. Protocol for the maintenance of public order used by police officers

One of the main objections that made against the Chilean police forces, even before the social outbreak, is that it does not act in accordance with the rules and protocols. The defense of the State of Chile against international inquiries leads to the same point: Chilean's police force and the rest of the institutions would be acting according to internal norms and protocols. However, it has not been disputed that subjecting to such protocols allows them to effectively guarantee the rights of the population.

The document in question corresponds to the protocol for the maintenance of the public order of Carabineros de Chile (Chilean police), approved in March 2019 and which is divided into 6 parts: protection of the right to protest; restoration of public order; evictions; procedures with violators of the law, work with the NHRI and civil society organizations, social media, child advocacy; and annexes.

Although the Protocol has as a reference a normative framework for the protection of Human Rights based on international standards, it is not possible to guarantee the exercise of the rights it intends to protect. Thus, for example, the protocol refers to concepts such as "public order" or "public security", without having at least a legal reference in guarantee of these principles. Therefore, it assumes that the idea of security or order is directly related to the submission and obedience to what the police officer considers dangerous, that is, to what, in an exercise of subjective assessment, the agent considers as an alteration of normal functioning within the framework of the exercise of the right to demonstrate and assemble.

The above can be portrayed quite clearly when this protocol differs between manifestations. Thus, they are **lawful** (as opposed to illegal) when "it takes place in public spaces with tranquility, security and respect for the mandates of the police authority." In turn, a demonstration is **violent** when "orders from agents of the authority are contravened and there is an injury to the rights of third parties, such as the free movement of the roads," and deemed **aggressive** if "damage is generated or when people or the police authority are intentionally attacked."

The point of reference to qualify the exercise of a constitutionally recognized right as illegal, violent or aggressive, is the submission to an order or good police criteria. This configuration of law implies a deep anti-democratic and repressive spirit: as in ancient Rome, peace was achieved through militarization - the so-called Pax Romana -, now the tranquility, security and order to exercise rights such as the freedom of expression or to demonstrate is an element or condition at the sole discretion of the police officer. Without further ado, the consequences are in sight.

Beyond the above distinctions, the Protocol does not provide clear standards to identify cases in which a true intervention or proportionate use of force is required. In fact, it leaves the field open for police criteria, where instead there should be a rigorous standardization of assumptions, and seriously thought out intervention blocks.

In addition to opening these large spaces for police discretion, the protocol also contains regulations that are out of order and wrong. Thus, for example, regarding the **registration of detained persons**, the document states that "as far as possible it will be done by staff of the same gender." That is, it guarantees the dignity of the person as much as possible. This flagrant relativization of the rights of the accused is particularly worrying considering the high number of complaints of sexual violence.

Regarding the **treatment and dialogue with the communication media**, it is noteworthy to point out the precaution taken and to make sure that the police officer "will not be influenced by the scope or category of the media." This precaution is not clear, and allows the police men to act with bias according to the type of journalist who is doing the job. In this way, it delivers a normative tool to the institution to discriminate between media, putting the freedom of the press and freedom of information in check.

Regarding the possibility of using weapons that are non-lethal, but that produce physical or psychological damage that harms the dignity of citizens, special attention should be paid to the precaution established by the Special Rapporteur on torture and other inhuman and degrading treatment of the UN, Nils Melzer, in a 2017 report that states:

*A weapon must be considered intrinsically cruel, inhuman or degrading, if it has been specifically developed or if, by its nature (that is, if it has no other practical use), it serves to: a) use unnecessary, excessive or otherwise illicit force against people; or b) inflict pain and suffering on defenseless people.*

The above applies especially in manifestation contexts or situations outside the detention itself.

Therefore, repression with non-lethal weapons can result in cases of torture. The police have acted systematically under this assumption because even when following the Protocol, it contemplates its use without more limitations than the conception of public order previously discussed.

The above implies that the use of non-lethal weapons by police officers is not only disproportionate or discretionary, but also a way of torture. In this way, citizens, in the framework of exercising rights and public freedoms, have faced repressive practices that hurt and mutilate, but do not kill. Accordingly, the cited report indicates that "although **less lethal weapons**" are designed to neutralize while preventing lethal outcomes, they are also specifically designed to inflict pain or cause suffering in order to repel or otherwise coerce people that are subject to its use. This also occurs because, as it is not considered lethal, its use is dangerously difficult to monitor or control.

Another problem occurs when using less lethal weapons with indiscriminate effects, such as tear gas. In this case it will always be difficult to limit the use of force and the consequent damage, particularly in the presence of innocent witnesses (for example, in the control of masses or hostage-taking). Therefore, its use should always be restrictive. However, being of indiscriminate use necessarily makes a weapon cruel, inhuman or degrading, and can do so in conjunction with the severity of its effects (for example, some projectiles with kinetic impact) or with the circumstances in which it is used (for example, tear gas in enclosed spaces). The most important case of this is certainly eye injuries.

All these elements give us a clear picture of the rules that regulate police actions: they assume that it will be the individual criteria of the policeman who will adjudicate the repressive or non-repressive nature of a demonstration, without even delivering elements that allow some kind of responsibility for it. The foregoing totally contravenes the precautionary principle in the use of force, which the Special Rapporteur Melzer himself establishes as fundamental, and does so specifically in contexts of the use of force outside detention. Said principle, briefly, establishes the following:

*Although the use of force is necessary and proportional to the immediate circumstances of a case, it can, however, be illicit if it results from a failure to plan, organize and control operations in order to minimize damage, respect and preserve life. human and avoid excessive use of force.*

Although in the same Introduction of the Protocol a distinction is made between the different types of resistance (passive, active) and it is indicated that all protesters should not be criminalized as “violators of the law” (even calling to distinguish peaceful from violent protesters), this assessment can only be Manichean and unhelpful, since it is not possible to distinguish between “good protesters” and “bad protesters”. Finally, it is to return to the discretion of the police to distinguish between those who have legitimacy to demonstrate and those who have not.

In line with the foregoing, it is relevant to stress the elements of the use of force in consideration of the exercise of rights, which member countries of the European Union consider as fundamental. Such is the case of the chilling effect or discouragement effect, a concept coined by the European Court of Human Rights, which occurs when states are not especially careful when punishing non-violent behaviors that occur during the holding of a peaceful meeting or demonstration. and therefore end up punishing the entire manifestation. A concentration should not be subject to the threat of a criminal sanction, especially if it is custodial. Even more: the Court emphasizes that the fact that some of the people participating in a demonstration commit attacks or have violent intentions does not imply that the meeting is outside the scope of Article 11 of the ECHR (freedom of assembly and association). Consequently, attention should be paid to the peaceful or violent purpose of the organizers.

In the context of massive and transversal mobilizations, the Protocols that have guided police action are not made to effectively protect citizens and safeguard the exercise of their rights. On the contrary: they inhibit it and allow them to be violated while they exercise these rights. Therefore, although an important part of the human rights violations made at this time are a consequence of a police force that systematically acts in a discretionary and arbitrary manner, the legal reality is that there is a regulation that, despite prohibiting much of the conduct carried out, consecrates a discretionary action for the police in detriment of the citizens' right. Thinking about public order and security in a democratic way requires having the objective of protecting its citizens, not its police forces.

## II. Abuse of criminal institutions for political repression

Since the beginning of the protests in October, the national authority is using all available criminal remedies with the aim of politically persecuting and intimidating the protesters for their actions or even for their statements, may they be social actors or leaders. As confirmed by the human rights coordinator of the University of Chile, Claudio Nash, there are cases of “using criminal law and sanctions as symbolic elements”, where “the authority has wanted to send a message that there are certain types of crimes and certain types of people who are going to be especially persecuted.”

Some of these situations were noted in the first Human Rights report of this committee, such as the attempt of criminal prosecution initiated through the complaint filed by Santiago's regional governor against the leader Dauno Tótoro for the sole fact of having expressed his opinion against President Sebastián Piñera, or the abuse of preventive imprisonment as a remedy, an issue that instead of having ceased, unfortunately seems to have been consolidated since the writing of the first report. We will describe other forms like these below:

**a.- Incarceration and maintenance of preventive detention measure against minors.** This is the case of children under 16, Kevin Uribe and Mauricio Gómez, who were arrested by officials of the Investigative Police (PDI) on November 29 near the Intermodal La Cisterna station. They are charged under the State Internal Security Law and accused of carrying material to make a Molotov cocktail, but according to the defense version, they only had alcohol and a towel. On January 2, a court magistrate decided to revoke the measure and replace it with house arrest, an issue that was rejected by the Court of Appeals of San Miguel indicating that these minors are a danger to society.

**b.- Disproportionality of the measure of preventive detention and lack of evidence against people who begin to claim recognition of the status of political prisoners.** This is, for example, the case of Rubén Rivas, Gilberto Mendoza and Esteban Bustos, three young men who were arrested in the Pedro Aguirre Cerda commune, near a barricade that was lit on the train line that crosses the area. They are accused of hindering the railway and causing a risk of derailment, and young people now face a penalty that reaches from 61 days to 3 years in jail. Since October 30, they remain in a high security prison, locked in a cell for 21 hours. However, these are people who not only do not have a record that justifies such a burdensome measure against the accused, but it is a case that lacks concrete evidence, with only two lighters and pamphlets written with markers with the message: “No crumbs. Let's take everything.”

The demand on the part of youngsters for recognition of their act as a political crime, as stated by defense lawyer Lorenzo Morales, derives from the fact that the duration of the detention and the conditions are clearly disproportionate with respect to the suspected crime committed, believing that it is a measure imposed for political reasons.

Another case that we can mention is that of Alejandro Carvajal, accused of having burned the Pedro de Valdivia University and who also remains in preventive detention since November 8. On December 30, 2019, a hearing was held with the objective of reviewing said precautionary measures and assessing the possibility of replacing it with a measure of house arrest. The defense based its petition on the expert report of hydrocarbons in the clothing and hands of the young man, which had been negative. However, these tests were dismissed and the replacement of the measure denied, which is why the young man has been in pretrial detention for more than 60 days, risking a penalty of 15 years for a paper that was found in his backpack.

**c.- Ministry of the Interior confirms denunciation by law of security of interior of the state against student leaders.** According to what was reported by the Undersecretary of the Interior,

Juan Francisco Galli, the corresponding ministry filed a complaint for the State Security Law for the boycott that secondary students carried out in the country on January 6 and 7 with the objective that the university selection test (PSU) 2020 will not be carried out. The complaint was filed against a number of people, among whom are the leaders of the Coordinating Assembly of Secondary Students (ACES), and the crime they are charged with, is the content in article 6 letter c) referring to the incitement, promotion of the interruption or pretension of a public utility service", said the undersecretary who added that the Public Ministry accepted the complaint and already issued orders to investigate.

**d.- Significant increase in the numbers for detention control hearings with respect to the same period of the previous year.** Unlike the numbers in terms of pretrial detention, which in October had increased considerably, in the same way as arrests declared illegal (but which have returned to normal), there is considerable variation in the numbers of detention control hearings. According to the Public Criminal Defense numbers, between October 18 and November 25, 28,659 detention control hearings have been held, 16.4% more than in the same period of the previous year. The Public Prosecutor's Office, in turn, estimated the increase in procedural formalities by 51% until December 6, compared to the same period last year, reaching 28,044. In summary, and in line with the previous analysis of the protocol under which Carabineros de Chile acts, it is possible to say that the Piñera Government is using all the legal tools available to repress and imprison the protesters. Although the above is justified under a discourse to control violence and guarantee peace, the reality is that the active exercise of the right to protest and citizenship is being punished systematically and in a coordinated manner.

### **III. Relativization and denial of violence by the government**

Sebastián Piñera's government has acted to consistently hide or mitigate the existence of human rights violations and support the actions of Carabineros de Chile and the Armed Forces since the beginning of the protests in October 2019. The above constitutes an attitude of denial, as a government, it seeks to deny empirically verifiable facts for political purposes, or to contrast them with other situations in order to achieve compensation or a tie, reducing their severity. In this sense, we could organize the executive's attitudes in two lines: the straight denial of the reality of the facts in question, or the lifting of an internal or external enemy that would be carrying out coordinated destabilizing actions, which would justify the repressive response

**a. Thesis of the internal or external enemy.** From the first days of the protests, Sebastián Piñera has referred to them as engineered by a "powerful enemy" with whom the government would be "at war", acting maliciously "with the sole purpose of producing the greatest possible damage. " Thus, the government's discursive strategy was inaugurated in a speech on October 20, 2019 to justify the state of constitutional exemption.

The formula has a history in the dictatorship of Augusto Pinochet, who also indicated that Chile was "in a war between Marxism and democracy", although the government has avoided using this terminology publicly since then, due to the political echoes it carries. There are still subsequent records of its use in speeches at least until the end of November.

Indeed, although the use of the metaphor of war is present within the president's previous speeches ("tariff war", "war against climate change"), only at this time it acquires apologetic connotations for state violence. Indeed:

(...) the discourse is not new, but what changes is the reference to which it is printed. It is a punitive and frightening ideology (Wodak, 2015), applied until then to crime, drug trafficking and terrorism, but which now addresses a situation of social chaos that includes both looting and barricades, as

marches, protests and caceroleos (banging on pots), in common public places. The war speech legitimates the declaration of the State of Emergency and the use of the legitimate state monopoly of violence, including the armed forces, to suppress social protest.

This discursive strategy has been reaffirmed with the idea of a foreign enemy that would be acting under orders from enemy governments to encourage acts of violence.

The first trace of this strategy was mentioned in the last report, and there are two notes from the official newspaper La Tercera, made from alleged information from police sources: "Police identify one of the authors of fires in Metro stations" and " Government tracks role of Venezuelans on Twitter ". Through these notes, a racist political profile of the violent people began to be created. Despite having been discredited by the Prosecutor's Office, the government insisted on this profile. On December 21, the newspaper La Tercera again revealed the content of a government report that - according to Interior Minister Gonzalo Blumel-, contained "extraordinarily sophisticated information from analysis with big data technologies, with information technologies". The content of this report (which was never publicly disclosed) was delivered to the Prosecutor's Office to carry out a profile of the protesters based on the analysis of social networks since October 18, and among other things it indicates that 31% of the messages in Social networks would have been made by people outside Chile. The above was used by the government as evidence of "the influence of foreigners" in the demonstrations. In addition to the above, it also individualizes a series of public faces that would also be responsible for generating opinion and mobilizing people on the subject. Subsequent statements by a group of academics who rejected the government's offer to create the report ratify the executive's intention: what was sought was to demonstrate the existence of foreign intervention.

**b. Negación de la realidad.** La segunda estrategia del gobierno para disminuir la gravedad de las violaciones a los derechos humanos en el país ha sido la negación de la veracidad o gravedad de los hechos.

Así, por ejemplo, en las únicas referencias discursivas de Sebastián Piñera a la violencia policial la refiere como "excesos", "abusos", "falta de respeto al protocolo" o "delitos" individuales, sin reconocer ninguna clase de responsabilidad orgánica.

Adicional a esto, también se ha arrojado un manto de duda sobre la existencia de las vulneraciones mismas. El hito más importante de esta estrategia ha sido el descubrimiento de una entrevista dada por el presidente Sebastián Piñera en el programa Oppenheimer Presenta de CNN en español, el 15 de diciembre, donde afirma que hay una "campaña de desinformación, de noticias falsas, de montajes para crear una sensación de un desorden y de una crisis total". Posterior a ello, puso en dudas los numerosos registros realizados por la ciudadanía de excesos y atropellos:

"Hay muchos de ellos (videos) que son falsos, que son filmados fuera de Chile o que son tergiversados, y por tanto sin duda que aquí hemos debido enfrentar una campaña de desinformación que es muy difícil de contrarrestar, porque ha habido poca capacidad de los medios de comunicación de verificar la verdad".

La falsedad de los hechos iría de la mano con la generación de éstos por parte de agentes exteriores. De esta forma, ambas estrategias gubernamentales terminan estando intrínsecamente unidas.

En definitiva, el gobierno se ha dedicado a crear un clima discursivo que naturaliza la acción de violencia del Estado hacia sus ciudadanos. Por un lado, esto se ha hecho configurando un enemigo político al que las fuerzas del orden se estarían oponiendo; por otro, poniendo en cuestión la existencia de las denuncias y registros de violencia realizados alrededor del país. Nuevamente, esto no es accidental: este clima hace parecer necesaria (y hasta deseable) la represión de la protesta social, y va de la mano con los usos del aparato penal y policial anteriormente descritos.

**c. Denial of reality.** The government's second strategy to reduce the severity of human rights violations in the country has been the denial of truth or seriousness of the facts.

Thus, for example, in Sebastián Piñera's only discursive references to police violence he refers to it as "excesses", "abuses", "disrespect for the protocol" or individual "crimes", without recognizing any kind of organic responsibility.

In addition to this, there has also been a blanket of doubt about the existence of the violations themselves. The most important milestone of this strategy has been the discovery of an interview given by President Sebastián Piñera in the CNN Oppenheimer Presents program in Spanish, on December 15, where he states that there is a "campaign of misinformation, of false news, of montages to create a sense of disorder and a total crisis." After that, he questioned the numerous records made by the citizens of excesses and abuses:

"There are many of them (videos) that are fake, that are filmed outside Chile or that are misrepresented, and therefore no doubt that we have faced a disinformation campaign here that is very difficult to counter, because there has been little capacity for the media to verify the truth." The falsity of the facts would go hand in hand with their generation by outside agents. In this way, both government strategies end up being intrinsically united.

In short, the government has dedicated itself to creating a discursive climate that naturalizes the state's violence towards its citizens. On the one hand, this has been done by configuring a political enemy that law enforcement would be opposing; on the other, calling into question the existence of complaints and records of violence made around the country. Again, this is not accidental: this climate makes repression of social protest seem necessary (and even desirable), and goes hand in hand with the uses of the criminal and police apparatus described above.

#### **IV. Sexual violence by police officers against protesters**

One of the main manifestations of the excesses that the Chilean police have committed against the citizens detained during the protests has been the sexual violence that today amounts to 208 cases of sexual violence reported to the National Institute of Human Rights, which has led to 137 complaints filed by the same institution under the same concept, and that as reported by the NHRI in its report dated December 30, 2019, include stripping, touching, threats, insults and four rapes

The Inter-American Court of Human Rights has adopted a broad concept of sexual violence, based on international jurisprudence and using the American Convention on Human Rights and the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women as a normative framework. In this sense, it considers that this constitutes “actions that are committed on a person without their consent, which in addition to understanding the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact”. The Office of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the United Nations has indicated that sexual violence is an expression of gender-based violence directed against anyone because of their sex and the roles assigned by the society to each gender. This violence usually affects mainly women, girls, lesbian, gay, bisexual, transgender, transgender and intersex (LGBTI) people. When it occurs in the context of state custody, it often includes rape and other forms of sexual violence such as threats of rape, touching, undressing, unnecessarily invasive body searches, insults and humiliations of a sexual nature. In particular, the practice called “corrective violation” mainly affects LGBTI people.

Even though the numbers of denunciations and complaints are already overwhelming, there is another major problem related to the fact that most of the organizations that work on the matter expressly recognize that a significant proportion of the cases are not reported to the justice system, which implies another form of violence, an issue that could be explained by the fear and social prejudices that the complaint process implies and eventually leads to public knowledge of the facts, as well as the psychological damage that occurs in the victims when they have to make their story repeatedly ( revictimization), and especially in the circumstance that the instances of denunciations are precisely in front of the same police that perpetrates the violations of their rights, so they preferably tend to silence or seek support in feminist organizations.

The reason for resorting to feminist organizations is the fact that when numbers of wounded and detained people are considered, the largest numbers of victims are men. However, when we refer to violations in the sexual sphere, the numerical correlation changes, since it affects female victims to a large extent (while still affecting men).

For the above reason, feminist organizations in Chile have faithfully requested - as a measure to combat sexual violence by police against protesters - the resignation of the Minister of the Ministry of Women and Gender Equality, Isabel Plá, who maintained a long silence regarding sexual violence against women victims since the beginning of the social outbreak. The basis of this accusation lies in the breach of duties in its legal, constitutional and international treaties, since as of November 9, 2019, after almost 20 days from the beginning of the human rights violations, the Ministry still did not sponsor any complaint about sexual violence against women. The state agency said, not having received any complaints of such nature, statements widely criticized by the feminist sector by focusing solely on the complaint, transferring the duty of the state to ensure compliance with the convention against all forms of discrimination against women and other relevant regulations, to women victims with absolute indolence.

Thus, the State of Chile, through its Minister Isabel Plá, has exercised symbolic and institutional violence against women victims of violence, in the absence of their legal, constitutional and international obligations expressly recognized in Article 1 of the Law that creates the ministry, which states the duty to “... seek the elimination of all forms of arbitrary discrimination against

women”, and even more obscuring and omitting to speak out on such serious violations against human rights (Law 20.820)

## **V. Conclusions**

In Chile, the human rights of the population have been massively violated by state forces since the beginning of the social outbreak in October 2019. The objective of this report has been to organize and centralize the available information on these serious violations in order to inform, but at the same time provide a framework to understand the form and reason why these daily attacks against the dignity of people are carried out.

In this regard, it is important to emphasize that, despite the existence of political milestones presented as advances in protests, such as the "Agreement for peace and a new constitution," the country maintains a permanent militarization of its public spaces by of the police forces. This is the cause that has challenged not only the rights to life and physical and mental integrity of people, but has also seriously impeded the possibility of exercising the rights to freedom of expression, to peaceful assembly, to freedom of information, among others. Along with this, the fundamental guarantees of a rule of law, such as due process, have been totally diluted by the use that has been given to the criminal and repressive apparatus.

However, these violations are not random, but they fulfill a specific objective: to criminalize social protest, to put at risk people's participation in demonstrations that are taking place daily around the country. Violations of human rights in Chile are therefore systematic, and respond to a state policy.

Therefore, the link between the two means that there are responsibilities at various levels. First, criminal responsibilities of the direct agents of the violations made. Then, there is also an institutional responsibility for the framework of rules that allow the discretionary actions of the police and the criminal apparatus, guaranteeing impunity for those involved. Finally, there is a political responsibility for command posts that directly or indirectly support either unrestrained state repression by action and omission. This ranges from the generals of the armed forces involved in the civil authorities that support the repressive actions of Carabineros, and includes, in its center and as a protagonist, the President of the Republic Sebastián Piñera Echeñique.

The persistence of this situation is unacceptable for any political regime that wants to be considered democratic, and it should also be for any other country that is considered in this way. The silence that the international community has maintained regarding the denounced facts within the last three months in Chile is shameful: from now there should be a willingness to act in this regard. In line with the foregoing, we require states and international organizations to express themselves explicitly against human rights violations and to denounce the political and criminal responsibility of the commanding authorities. Finally, the states should also apply the clause on human rights and democracy, foreseen in the international agreements currently in force with Chile, specially created to be applied in contexts such as indicated. The responsibility of a State in violation of human rights is not only the responsibility of its government, but also of an international community that maintains a complicit silence.