

EYES ON CHILE: POLICE VIOLENCE AND COMMAND RESPONSIBILITY DURING THE PERIOD OF SOCIAL UNREST

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EXECUTIVE SUMMARY

From mid-October 2019, Chile began to experience one of the most tragic and simultaneously most transformative episodes in its recent history.

What began as mainly student protests over the increase in the cost of public transport in the Metropolitan Region gave rise to a wave of demonstrations that quickly began to spread throughout the country. This mass display of discontent was a call for greater social equality and called for the recognition and guarantee of social and economic rights such as the right to a decent pension, to good quality public housing, education and healthcare.

Although the majority of the demonstrations were peaceful, many of the acts of protest involved damage to public and private establishments such as some metro stations in the capital, damage to buildings or the obstruction of public roads through the construction of barricades.

In response, the government of President Sebastián Piñera declared a state of constitutional emergency and dispatched the Armed Forces to the streets in some areas of the country for ten days in which they acted to manage control of the protests together with the police, the Chilean Carabineros.

This strategy, far from calming the situation, heightened the protests. The Armed Forces (whose role is not to control public protests) were accused of numerous acts of torture and other cruel, inhuman or degrading treatment or punishment. They also used lethal weapons against protestors on several occasions and killed three people in the context of the protests.

On the other hand, the police - the Chilean Carabineros - rather than allowing protests and appropriately managing the outbreaks of violence with a view to re-establishing public order, injured thousands of people, hundreds seriously.

Although many human rights violations committed by Carabinero officers have previously been documented in Chile, the level of state violence that took place from 18 October was unprecedented in times of democracy.

In this report, Amnesty International presents a detailed analysis of the strategy behind the use of force by Carabineros between 18 October and 30 November. The organization focused on this institution due to the fact that the violation of the right to personal integrity by Carabinero officials was generalised (that is, these were not isolated incidents) and, as it is the institution responsible for public order control, an extensive and structural approach is required in order to avoid the repetition of incidents such as those analysed. Also due to this, the organization paid particular attention to the strategic commanders of the

institution, in addition to certain tactical or operational commanders in the Metropolitan Region, due to the fact that this area was used as a sample for this investigation.

In the preparation of this report, 12 cases of human rights violations were analysed in detail and more than 200 video clips were reviewed, in addition to the official information submitted to Amnesty International by the Ministry of the Interior and Public Security, data obtained from 14 information requests to the public transparency system and documents obtained from legal case files.

The use of force to inflict pain

International human rights standards are clear in demanding that the use of force by the police in the handling of demonstrations must be a last resort and must be guided by the principles of legality, necessity, proportionality and accountability. The use of lethal or potentially lethal force to maintain order in situations that do not pose a specific threat to the life or physical integrity of third parties is considered disproportionate. Less-lethal force must also be used proportionally in pursuit of a legitimate objective and based on the abovementioned principles.

The analysis of the evidence that Amnesty International had access to suggests that for a month and a half Carabinero officers not only used force excessively but also inflicted deliberate pain and suffering on protestors with the intention of causing this suffering or in the knowledge that this could be the result. This generalised damage, that caused serious physical and psychological consequences for the survivors, was the result of a premeditated practice of use of force with the aim of punishing protestors and dispersing them at any cost.

During the month and a half analysed in this report, the number of people attacked and injured was a clear indicator that force was routinely misused on a daily basis:

- More than 12,500 people required emergency treatment at public hospitals due to incidents that took place in the context of the protests, according to the Ministry of Health. In that same period, 2,300 Carabinero officers were injured.
- At least 347 people suffered eye injuries, the majority due to pellets (rubberized buckshot) from shotguns, according to the National Human Rights Institute.
- The Chilean Attorney General's office recorded 5,558 victims of institutional violence, of which 1,938 were injured by firearms and 674 suffered serious injuries, of which 285 were eye injuries. Among the victims, 834 were children or teenagers. Of the total number of reports, 4,170 were against Carabinero officers.
- The Attorney General's Office registered 246 victims of sexual violence, six involving sexual penetration with an object and two cases of rape, one of which was gang rape, and there were 134 investigations of torture and 4,158 of unlawful enforcement (equivalent to ill-treatment).
- 1,946 criminal complaints of threats and abuses against the Carabineros were registered, of which at least 692 were cases of abuses against officials of the institution.

Amnesty International verified that on numerous occasions Carabineros officials deliberately used disproportionate physical force when there was no need to do so, using batons or carrying out physical beatings, including when people were in state custody. In addition, several cases of people being run over by Carabineros vehicles were registered which, far from being accidental, were deliberately directed at those protesting. In the case of **Alex Núñez**, the injuries caused by beatings led to his death, and in the case of **Josué Maureira**, the violence could constitute sexual torture. **Cristóbal Flen** suffered multiple injuries as a result of blows to the head and chest, as did **Moisés Órdenes**, who suffered more than a dozen injuries, several of which were serious, such as a pneumothorax and vision loss.

In the cases of injuries caused by potentially lethal weapons such as shotguns with multiple kinetic impact ammunition, these were used as a tactical tool to control protests. The ammunition consisted of pellets made from a rubber and metal alloy that was highly damaging because it penetrated the skin and dispersed upon shooting. This ammunition should not have been used and should have been

banned due to the fact that it did not comply with international standards on the use of force. Despite this, Carabinero officers discharged this ammunition in a practically uncontrolled and indiscriminate manner, above all during the month of October when more than 104 thousand cartridges were shot. In addition, on numerous occasions it was used against protestors who did not pose a risk to the life of the officers or third parties, such as in the case of the National Human Rights Institute observer **Jorge Ortiz**.

Officers were identified shooting at vulnerable areas such as the head and chest, which, together with the fact that this was notoriously indiscriminate ammunition, caused hundreds of people to suffer from eye injuries. This deliberate approach was identified at least in the cases of **Gustavo Gatica, Renzo Inostroza and the girl D.S.A.G.** On the other hand, officials were also identified shooting in an indiscriminate or random manner with the intention of dispersing the protests and without a specific objective, injuring people such as cameraman **Alejandro Torres** or the boy **M.I.V.Q.** as they did not take into account the presence of children and teenagers.

Tear gas was used disproportionately as a tool for dispersion and was also shot using grenade launchers whereby, on multiple occasions, the container was directed at people's bodies in order to cause damage and not as a tool for dispersing crowds. **Fabiola Campillai** lost her sight and senses of smell and taste due to a grenade shot at her face. Similarly, **Natalia Aravena** suffered a ruptured eye when a tear gas cannister hit her directly in the eye.

The limited traceability of the ammunition used such as pellets and gas cannisters, which unlike lethal ammunition do not leave a specific mark on the weapon, encouraged the sense of impunity within the institution.

Responsibility of commanders for repeated violations

Although it is true that substantial damages to property were reported in addition to injuries to Carabinero officers, the disproportionate number of people injured together with the case evidence and images demonstrating the repeated unnecessary and disproportionate use of force suggest that this could have been a Carabinero policy, and not the responsibility of officers acting alone and disobeying the orders of their superiors.

This policy, which would have come from high-level authorities, would have meant accepting harm to people's integrity as a necessary evil in the re-establishment of "public order", punishing those who protested and stopping the protests at all costs.

The international standard on the responsibility of commanders calls for proof that the commanders knew or should have known that violations were occurring and that, despite this, did not take measures to prevent the acts of violence or to punish the perpetrators.

These conclusions are based on the following facts documented by Amnesty International:

- Both the operational and strategic commanders of the Chilean Carabineros would have known the way in which their subordinates were operating on a daily basis, and the type of injuries that they were causing, through external channels.
- The strategic commanders, such as the General Director or the Director of the National Directorate of Order and Security (DIOSCAR), would have had extensive internal information providing knowledge of the details of the operations and any irregularities committed by their subordinates, among them certain operational commanders in the Metropolitan Region
- The ammunition used was notoriously indiscriminate and harmful and therefore contrary to the international standard. The General Director did not restrict the use of rubberised buckshot until the composition of the ammunition was called into question and the number of people with eye injuries exceeded 250 cases.

- In addition, neither the *Plana Mayor Nacional* (a body of high-ranking officers of Carabineros established in the context of the crisis to advise the General Director) nor the DIOSCAR Director incorporated lessons learned from a human rights perspective into the planning of the institutional response to the protests. In this regard, the tactical commanders, at least in the Metropolitan Region, did not modify their operational plans, which remained unchanged in any substantial way beyond logistics from the start of the crisis. As a result, the same officials that used unnecessary or excessive force remained in their posts operating on a daily basis, such as the prefects and sub-prefects of Special Forces in the Metropolitan Region.
- Rather than issuing precise instructions adapted to reality with the intention of reducing harm to people's integrity, the General Director and the Director of DIOSCAR on one hand maintained imprecise and repetitive orders and on the other hand did not guarantee that these were passed down to operational commanders with concise instructions on key operational aspects needed to protect people's integrity.
- Far from illegal behaviour being punished, this was not only allowed but even supported by the General Director. This was proven not only through the leaking of an audio clip in which it was confirmed that no officer would be discharged, regardless of their behaviour, but also in the number of punishments, which was minimal in relation to the number of complaints. Cases where the officers accepted responsibility were not even punished, possible cover-ups occurred and the punishments carried out in the cases known to Amnesty International, such as those of Gustavo Gatica or Fabiola Campillai, were delayed and were for offences other than the more serious incident, therefore justifying that the use of force that caused the damage was legitimate.

Ultimately, there were omissions identified in several of the institutional routes by which commanders could have put a stop to the human rights violations: the use of ammunition, protocols, planning, orders and disciplinary procedures, among others.

In light of the above it is difficult to believe that the chain of omissions of the strategic commanders such as the General Director, Deputy General Director or the Director of DIOSCAR, far from being unintentional, was not deliberate or that they were not at least guilty of repeated negligence, facts that must be clarified by the Chilean justice system.

CONCLUSIONS: HARMING PEOPLE'S INTEGRITY, A NECESSARY EVIL

I am going to use an analogy, (...) we can say that during this time, in these past 30-something days, our society is suffering from a serious illness. Let's say it is a cancer (...) the treatment for cancer (...) when these medical tools are used, good cells and bad cells are killed. This is the risk that we face when using tools such as firearms, it is complicated".¹

(Head of the Carabineros in the Metropolitan East Zone)

¹ Biobio Chile. "Good cells and bad cells are killed": Bassaletti compares anti-riot weapons to cancer treatment. See: <https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2019/11/22/general-bassaletti-comparo-uso-de-escopetas-antimotines-con-el-tratamiento-contra-el-cancer.shtml>.

The above section has shown how the violation of the right to personal integrity could not have been generalised were it not for commanders and other superiors failing to prevent it. In this regard, Amnesty International identified implicit orders and deliberate or reckless omissions by the Carabinero commanders.

The organization believes that both the operational and strategic commanders analysed in this report would have known the way in which their subordinates were operating on a daily basis, and the type of injuries that they were causing. Besides the information that was public and well-known in media outlets and on social media, the National Human Rights Institute and the Attorney General's Office duly reported to the police institution when complaints or reports were filed against its officials. Some complaints were directed towards the General Director.

However, furthermore, the strategic commanders such as the General Director or the Director of DIOSCAR had extensive internal information available to them on the violations committed by operational forces through departments such as O.S.1 (within the DIOSCAR) and many other channels such as police records, circumstance records, action logs and information from command centres. Such information would have allowed them to obtain detailed knowledge of the operations in addition to identifying irregularities committed by Carabineros officials and their operational commanders, for example the head of the Metropolitan Region (STGO1), the head of the control, public order and intervention zone (STGO4), or commanders of the Special Forces prefecture (G-1, G-2 and G-3), all in Santiago.

However, the strategic (and operational) commanders failed to prevent such violations through the effective mechanisms available to them.

For example, the General Director did not restrict, and much less ban, the use of rubberised buckshot nor make explicit changes to the protocol until the composition of the ammunition was called into question and the number of people with eye injuries exceeded 250 cases.² This was in the knowledge that the damage caused was not only due to the nature of the ammunition but also its improper use. During the period analysed, there was no mention of limiting the use of grenade launchers despite the fact that there were serious injuries due to its improper use.

Similarly, neither the *Plana Mayor Nacional* (a body of high-ranking officers of Carabineros established in the context of the crisis to advise the General Director) nor the Director of DIOSCAR incorporated lessons learned from a human rights perspective into the planning of the institutional response to the protests, and tactical commanders such as STGO4, the head of the control, public order and intervention zone, did not modify their operational plans, which remained unchanged in any substantial way beyond logistics from the start of the crisis and allowed the same officials, such as the commanders of the Special Forces prefecture, to operate in the same way, violating human rights on a daily basis.

In addition, rather than issuing precise instructions to reduce the damage to people's integrity, the General Director and the Director of DIOSCAR maintained imprecise and repetitive orders and did not guarantee that these were passed down to operational commanders with clear instructions.

Furthermore, far from abusive behaviour being punished, this was not only allowed but supported by the General Director, following the statement that no one would be discharged regardless of their actions. This support was proven in the number of punishments, which was insignificant in relation to the number of complaints filed with the Attorney General's Office and the National Human Rights

² COLMED, Forensic expert of the department of Human Rights at the Medical College of Chile, March 2020.

Institute. Punishments were not even applied in cases where the official accepted responsibility and possible cover-ups were identified. In addition, the punishments imposed were not for the more serious incident therefore justifying the illegitimate use of force that caused the damage.

In general, disciplinary investigations were very often slow, merely formalities and inefficient as they lacked autonomy, and the lack of a comprehensive review by the strategic commanders in particularly serious cases was made clear.

This led to new serious damage to the integrity of the population day after day, regardless of the fact that this serious behaviour could have constituted criminal offences. This sense of impunity was partly helped by the limited traceability of the ammunition used.

In summary, there were omissions identified in several of the institutional channels to prevent human rights violations such as the use of ammunition, protocols, planning, orders and disciplinary punishments, among others. If due diligence had been exercised, then it could have put an end to the human rights violations.

In light of the above it is difficult to believe that the chain of omissions of the strategic commanders such as the General Director, the Deputy General Director or the Director of DIOSCAR, far from being unintentional, was not deliberate or that they are not at least guilty of repeated negligence, facts that must be clarified by the Chilean justice system. This means that these omissions could have been part of an institutional policy to disperse the protests at all costs even if this meant accepting harm to people's integrity as a punishment and a necessary evil in the re-establishment of "public order".

Amnesty International concludes that, during the period analysed, Chilean Carabinero officers violated the human rights of the protestors in a generalised manner, including the right to personal integrity in the context of the protests. This is because during the operations they inflicted serious pain and suffering on the protestors with the intention of punishing them, dispersing them and thereby put an end to the protests. In order to re-establish public order, harm to people's integrity was accepted as a necessary price to pay.

The human rights violations could not have been generalised if the strategic commanders of the institution with the power to do so had taken all the measures necessary and available to them in order to prevent the same violations (that they knew of) being repeated on a daily basis.

Amnesty International believes that given their position of guarantors, at least the General Director, the Deputy General Director and the Director of DIOSCAR during the period analysed had the obligation to take all the measures available to them to avoid serious or irreparable injuries. In other words, cases such as those of Gustavo Gatica or Fabiola Campillai could have been avoided if these strategic commanders had acted with due diligence in the context of their duties.

Amnesty International believes that the possible implicit orders and deliberate or reckless omissions that the General Director, the Deputy General Director and the Director of DIOSCAR might have been involved in must be duly investigated by the Chilean Attorney General's Office from a human rights perspective.

In addition, the responsibility of the operational commanders and those mentioned in this report in relation to the Metropolitan Region must also be clarified. In all the cases, the right to due process and the legal guarantees of the accused must be ensured.

Although in this report Amnesty International does not analyse in detail the possible responsibility of actors other than the Carabineros, it believes that the lack of control exercised over the Carabineros by President Sebastián Piñera's administration calls for the identification of all those responsible in a political, administrative or even criminal sense to the highest possible degree, including those who, in

their position as guarantors knew or should have known, had they worked diligently, the magnitude of the human rights violations and who despite having the ability to avoid such violations did not do so.

RECOMMENDATIONS

1. ACCESS TO JUSTICE

The Chilean authorities must publicly acknowledge the severity of the human rights violations and the crimes under international law that were committed during the crisis and adopt all measures necessary to provide reparation to the victims and avoid the repetition of incidents such as those analysed in this report.

The Attorney General's Office must continue to investigate each of those responsible in the Carabineros chain of command that were key to allowing the generalised violation of the right to personal integrity. The duty that each commander responsible had to avoid more people continuing to suffer irreparable damages on a daily basis must be clarified to the highest level.

The Chilean Carabineros must urgently internally investigate all officials who could be suspected of violating human rights and guarantee that no officer, if there is any evidence against them, remains in their post until the investigation is concluded and any responsibility has been ruled out in good faith.

2. STRUCTURAL REFORM OF CHILEAN CARABINEROS

The relevant authorities must effectively ensure that public order forces strictly follow international standards on the use of force.

Due to the limitations that its military nature and organic structure poses, an extensive and in-depth reform is required in line with the proposal made by the Security Commission of the Chilean Senate at the end of 2019.

It is vital that this reform is not simply a modernisation of some details but that it involves an in-depth reform at a normative and cultural level. On one hand, the role of the Carabineros in a society that respects human rights should be considered; and on the other, its structure equivalent to a branch of the armed forces and its relationship with the community and civil authorities.

Specifically, some of the reforms required are:

1. Respect for and protection of human rights. In all of the work that they carry out, the Carabineros must strictly respect, guarantee and support human rights, constantly ensuring their protection and expansion. The human rights department of the Carabineros must have extensive powers and participate in decision making at a strategic and operational level so that compliance with human rights is comprehensive.
2. Genuine governance by civil authorities. The actions of the Carabineros must be managed and controlled by civil authorities, with strict adherence to the legal framework currently in place. One of the options that must be explored is the creation of a Ministry of Public Security, independent from the Ministry of the Interior, that can exercise effective and appropriate control over the institution.
3. System for control, monitoring and evaluation. A police force subject to a comprehensive system of supervision and accountability, that takes into account the context of both the policies of the institution and the needs of the citizens is required. For this, the state must have

the tools and capacities necessary to control, monitor and evaluate police policies, with the aim of ensuring that decision making is guided by rigorous and transparent evaluations.

This includes a reform to the internal control body, whose functions and organisational level must be modified so as to guarantee the independence and efficiency of investigations. It is also necessary to re-evaluate the mechanisms of access to information related to how the Carabineros operate, particularly the aspects that are inaccessible due to an alleged risk to "national security" (in the same way as other branches of the Armed Forces), as this lack of information prevents adequate citizen evaluation and monitoring.

The following measures are identified as those that should be urgently implemented:

1. A ban on the use of TEC Harseim pellets and any other harmful multiple impact ammunition in public order duties.
The firing of multiple impact projectiles is notoriously inaccurate, indiscriminate and arbitrary. Impact projectiles that are inaccurate or that create an impact with excessive energy (such as rubberized buckshot) must be banned.³
The effects and the appropriate use of projectiles and kinetic impact ammunition must be independently evaluated and controlled before being used in public service work.
2. Creation of public order control protocols that are detailed, specific and in accordance with international law in their entirety. This necessarily involves a specific description of when and how the use of force is necessary. The approval of organisations that are experts on the subject such as the National Human Rights Institute and the Children's Ombudsman should be required for the entry into force of such protocols.
3. Review of administrative investigations with the aim of guaranteeing that no individual who has committed human rights violations remains in the institution.

During the process of reform of the Carabineros, the executive and legislative powers must call for a wide-reaching social dialogue that actively includes the participation of civil society and groups that have been historically discriminated against such as Indigenous Peoples, people with diverse gender and sexual identities, migrants, refugees and feminist and women and girl's rights movements, among others.

3. CONSTITUTIONAL PROCESS TO GUARANTEE HUMAN RIGHTS

The human rights violations referred to in this report took place in the context of mass demonstrations to demand the guarantee of basic social and economic rights in Chile: decent healthcare, education, pensions, housing and work.

It is therefore essential that the authorities keep in mind that these demands were the reasons for the protests and that, therefore, the solution to the crisis must be accompanied by the justice, reparation and non-repetition measures necessary for the guarantee of the economic, social and cultural rights demanded.

³ Amnesty International, *The human right impact of less-lethal weapons and other law enforcement equipment*, see

<https://www.amnesty.org/download/Documents/ACT3013052015ENGLISH.PDF>

Among the demands that emerged were the need for a new constitution, as the current Chilean constitution does not adequately protect human rights, in particular social and economic rights. Therefore, the organization believes that the constituent process agreed in November 2019 is a historic opportunity to tackle these demands from all sectors of the population and must be prioritized.

The future Constitutional Convention, be it 100 percent elected or mixed (50 percent elected and 50 percent composed of parliamentary representatives) must guarantee the representation and inclusive participation of social actors and citizens, including municipalities, civil society organizations, regional assemblies and human rights defenders.

Executive and legislative authorities must consider in detail the use of quotas for groups that have been historically marginalized, excluded and discriminated against such as Indigenous Peoples, communities with diverse gender and sexual identities, migrants and women's rights movements. Whatever the mechanism determined is, their participation must be guaranteed and their suggestions must be considered.

The members of the constituent process, from the executive powers to Congress and the Constitutional Convention itself, must ensure that the new constitution comprehensively and indivisibly respects, protects and fulfils all human rights, including economic, social, cultural and environmental rights.

This guarantee must be taken into consideration not only when drafting the list of rights and the incorporation of international human rights treaties into national law, but also in the role of the state in terms of guaranteeing these rights and appropriate enforceability mechanisms.