

ADVANCING ACCOUNTABILITY

SUBMISSION TO SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

Amnesty International submits this document in response to the call for contributions to inform the thematic report on advancing accountability for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association.¹ This contribution focusses on the situation in the American region but is not an exhaustive list of Amnesty International's concerns.

CHILE

2019 PROTEST IN CHILE AND ACCOUNTABILITY

On 18 October 2019, massive protests erupted throughout Chile following an announcement of a rise in the price of public transport in Santiago, the capital. Many Chileans saw this as the final straw after decades of deteriorating access to economic, social and cultural rights.

The largely peaceful protests were heavily repressed. On 19 October, the government declared a state of emergency that enabled the use of the army to contain the protests. The army was often observed using lethal weapons against protesters. Carabineros, Chile's police force, made constant and inappropriate use of less lethal weapons, firing on several occasions potentially lethal ammunition in an unjustified, widespread and indiscriminate manner and in many cases aiming at people's heads. On multiple events, Carabineros used tear gas excessively and unnecessarily, launching this chemical at hospitals, universities, homes and even schools, seriously affecting children and people with disabilities.

Amnesty's preliminary findings, issued at a press conference in late November 2019, concluded that at least 23 people had been killed in the context of the protests, of which at least 4 had died at the hands of security forces. Thousands of people were injured, including hundreds of people with serious eye injuries from rubber-coated buckshot and tear gas used indiscriminately and inappropriately. Other human rights violations included dozens of cases of torture, including sexual torture. Most of the human rights violations documented occurred at the hands of Carabineros.

In October 2020, Amnesty International launched the landmark report *Eyes on Chile: Police violence and chain of command responsibility during the period of social unrest*², concluding the possible criminal responsibility of at least three commanders of Carabineros for their tacit orders or deliberate omissions in the widespread violation of the right to physical integrity of demonstrators, and launched a global campaign demanding that the Attorney General's Office investigates Carabineros commanders³.

The Attorney General's Office is currently investigating command responsibility for these events and could be formally charging commanders and high-ranking officials, in what would be a historic step towards justice and accountability for police violence.

By way of background, at the beginning of 2022, the Chilean Attorney General's Office appointed a new prosecutor to lead the three ongoing investigations involving command responsibility in the context of the 2019 protests: one into crimes

¹ <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-mandate-special-rapporteur-rights-freedom-peaceful-assembly-and>

² Amnesty International, *Chile: Eyes on Chile: Police violence and command responsibility during the period of social unrest* (AMR 22/3133/2020), 14 October 2020, <https://www.amnesty.org/en/documents/amr22/3133/2020/en/>

³ <https://www.amnesty.org/en/latest/research/2020/10/eyes-on-chile-police-violence-at-protests/>

against humanity and two related to command responsibility for widespread torture and serious injuries⁴. She is a top prosecutor, who already charged a mid-ranking commander involved in events documented by Amnesty, where Gustavo Gatica was struck with buckshot in both eyes and was left permanently blind. Former President Piñera and his Minister of Interior, the current Director of the Chilean police and the Director at the time of the events, are amongst the defendants.

The Attorney General's Office investigation is in line with Amnesty International's own findings of widespread violations of the right to physical integrity caused mainly by shotguns and buckshot.

Even though Carabineros commanders' depositions were scheduled to take place at the beginning of 2023, they have tried to delay the criminal process, and formal declarations are still pending.

Amnesty is concerned by the rampant impunity with regards to the human rights violations during protests in 2019-2020, and that is why the organization believes that the processing of police commanders is key to address this impunity and contribute to guarantees of non-repetition. By the end of the year, the Attorney General's Office had brought charges in only 140 of the 10,938 complaints of human rights violations by state officials relating to the period of social unrest starting in late 2019. That handful of cases resulted in 17 convictions and two acquittals. One of those convictions is the conviction by a court of a former captain in the Carabineros of unlawful coercion in connection with the injuries sustained by Fabiola Campillai. She lost her eyesight and senses of smell and taste after police fired a tear gas canister in her face as she was walking to a bus stop in November 2019.

Amnesty International recently launched a global campaign on the use of Kinetic Impact Projectiles⁵ and the need to adopt a Torture-Free Trade Treaty⁶ to prohibit the production of inherently abusive policing equipment.

COLOMBIA

CHALLENGES TO IMPUNITY AND ACCOUNTABILITY FOR VIOLATIONS OF FREEDOM OF ASSEMBLY AND ASSOCIATION IN COLOMBIA

Between 2018 and 2022 Amnesty International documented worrying trends of excessive use of force by Colombian security forces when intervening in protests and mobilizations, especially but not exclusively during the 2019 and 2021 national strikes. Among the most commonly used repertoires of violence were extrajudicial executions, injuries (including severe eye trauma) and gender-based violence (including sexual violence). In addition, there were reported cases of tolerance or acquiescence between State security forces and armed civilian groups that attacked people who were demonstrating, mostly peacefully.

EXCESSIVE USE OF FORCE AND OTHER HUMAN RIGHTS VIOLATIONS COMMITTED BY THE COLOMBIAN STATE IN THE CONTEXT OF INTERVENTION IN PROTESTS AND MOBILIZATIONS

Amnesty International documented several cases of human rights violations during the 2021 National Strike. Among them were emblematic cases that occurred in the city of Cali: (i) cases of disproportionate interference in peaceful protests by the National Police, resulting in the death of young men, as in the events of May 2021 in the so-called "Operation Siloé"; (ii) cases of state acquiescence with armed civilian groups that attacked Indigenous people protesting, as in the events of May 9, 2021; (iii) cases of excessive use of force in coordination with armed civilians and allegations of arbitrary detentions and torture while intervening in protests, such as on May 28, 2021 around a public university⁷.

⁴ La Tercera, Lesa humanidad: Abbott reasigna investigación en que está querellado Piñera y causa por responsabilidad de mando caerá en fiscal Chong, 7 March 2022. <https://www.latercera.com/earlyaccess/noticia/lesa-humanidad-abbott-reasigna-investigacion-en-que-esta-querellado-pinera-y-causa-por-responsabilidad-de-mando-caera-en-fiscal-chong/56SW6VJLCBCKDNPTKXBODYH5II/>

⁵ Amnesty International, "My Eye Exploded": the Global Abuse of Kinetic Impact Projectiles (ACT 30/6384/2023), 14 March 2023, <https://www.amnesty.org/en/documents/act30/6384/2023/en/>

⁶ Amnesty International, UN: Essential elements of the Torture-Free Trade Treaty (IOR 40/5977/2022), 23 September 2022, <https://www.amnesty.org/en/documents/ior40/5977/2022/en/>

⁷ Amnistía Internacional, "Colombia: Cali: En el epicentro de la represión. Violaciones a los derechos humanos durante el Paro Nacional 2021 en Cali, Colombia", 30 de julio de 2021, <https://www.amnesty.org/es/documents/amr23/4405/2021/es/#:~:text=Desde%20el%2028%20de%20abril,y%20ocr%C3%ADmenes%20de%20derecho%20internacional.>

Amnesty International also documented 12 cases of excessive use of force resulting in severe and irreversible eye injuries, 8 of which occurred during the 2021 National Strike. One of the cases is that of Leidy Cadena, a young woman who was injured on 28 April 2021 in Bogotá in the context of a police intervention to a protest⁸.

Finally, Amnesty International also documented 28 cases of gender-based violence committed by state agents against women and LGBTI people in the context of the 2021 National Strike. The typology of cases is diverse and reflects the particular vulnerability in which women and LGBTI people are placed when the Colombian National Police use excessive force. The documented cases include sexist insults, threats, sexual harassment, sexual violence, among others⁹.

ACCESS TO JUSTICE FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS COMMITTED IN THE CONTEXT OF PROTESTS AND MOBILIZATIONS IN COLOMBIA

Amnesty International's documentation of cases of human rights violations committed in the framework of the 2021 National Strike included a review of the institutional reaction to the events and the accountability following them. One of the most troubling groups of cases of lack of access to justice is that of women and LGBTI people who are victims of gender-based violence in the context of police interventions at the protest. None of the 28 women and LGBTI people whose cases were documented by Amnesty International felt confident enough to come forward publicly, most of them due to well-founded fears of reprisals or re-victimization. In many cases these fears appeared after having gone to justice institutions, such as the Attorney General's Office, and being revictimized, in others the victims did not even feel they had safe spaces to file complaints and decided not to go to these institutions¹⁰.

In general, Amnesty International has recommended that the Colombian State guarantee access to justice for victims of human rights violations committed in the context of protests and mobilizations. It has also recommended compliance with judicial decisions that seek to guarantee the right to freedom of assembly. To date, decisive progress is still needed, because although some cases have had milestones, most remain in impunity. Finally, Amnesty International has recommended the implementation of a structural reform of the National Police which considers human rights at its centre.¹¹ Recently a coalition of human rights and victims' organizations, with the collaboration of Amnesty International, presented a set of proposals for this reform, calling for a participatory and transparent reform process and for the inclusion of considerations regarding victims' of human rights violations committed by the National Police rights to truth, justice and reparations.¹²

UNITED STATES OF AMERICA RIGHT TO PEACEFUL ASSEMBLY IN THE USA

Amnesty International has confirmed demonstrable cases where police have failed to keep the peace at protests and protect those participating in them.¹³ For example, in the context of the protests sparked by the killing of George Floyd in May 2020, Amnesty International found that police forces across the USA committed widespread and egregious human rights violations in response to largely peaceful assemblies protesting systemic racism and police violence.¹⁴ In particular, Amnesty International documented 125 separate incidents of police violence against protesters in 40 states and the District of Columbia between 26 May and 5 June 2020.¹⁵ These acts of excessive force were committed by members of state and local

⁸ Amnistía Internacional, "Colombia: Tiros a la vista: Traumas oculares en el contexto del Paro Nacional", 26 de noviembre de 2021, <https://www.amnesty.org/es/documents/amr23/5005/2021/es/>

⁹ Amnistía Internacional, "Colombia: La Policía no me cuida: Violencia sexual y otras violencias basadas en género en el Paro Nacional de 2021", 1 de diciembre de 2022, <https://www.amnesty.org/es/documents/amr23/6234/2022/es/>

¹⁰ Amnistía Internacional, "Colombia: La Policía no me cuida: Violencia sexual y otras violencias basadas en género en el Paro Nacional de 2021", 1 de diciembre de 2022, <https://www.amnesty.org/es/documents/amr23/6234/2022/es/>

¹¹ Amnistía Internacional, "Colombia: La Policía no me cuida: Violencia sexual y otras violencias basadas en género en el Paro Nacional de 2021", 1 de diciembre de 2022, <https://www.amnesty.org/es/documents/amr23/6234/2022/es/>

¹² The set of proposals is available in the following links. Original (Spanish): https://oneamnesty.sharepoint.com/sites/app-secretariatopensend/_layouts/15/guestaccess.aspx?docid=09922d2d38a3f4c6e92f2f9c982acf4db&authkey=ARkAJEAZ45rvWuFyUOmxpfg&e=hZQYYg. Translated (English): https://oneamnesty.sharepoint.com/sites/app-secretariatopensend/_layouts/15/guestaccess.aspx?docid=062a17f5307d2451d9bf1b6d177e30fbc&authkey=AZCUX796ywwmXFbSschIROg&e=Dr6Eli.

¹³ Amnesty International, "USA: Losing the Peace: U.S. Police failures to protect protesters from violence, AMR 51/3238/2020, 6 November 2020, <https://www.amnesty.org/en/documents/amr51/3238/2020/en/>; Amnesty International, "USA: The world is watching: Mass violations by U.S. police of Black Lives Matter protesters' rights", AMR 51/2807/2020, 4 August 2020, <https://www.amnesty.org/en/documents/amr51/2807/2020/en/>.

¹⁴ Amnesty International, "USA: The world is watching: Mass violations by U.S. police of Black Lives Matter protesters' rights", AMR 51/2807/2020, 4 August 2020, <https://www.amnesty.org/en/documents/amr51/2807/2020/en/>.

¹⁵ Amnesty International, "Incidents of police violence", <https://www.amnestyusa.org/protest-map/>.

police departments, as well as by National Guard troops and security force personnel from several federal agencies. Among the abuses documented were beatings, the misuse of tear gas and pepper spray, and the inappropriate and at times indiscriminate firing of “less lethal” projectiles, such as sponge rounds and rubber bullets. In many cases, these were used against people non-violently protesting, rather than as a necessary and proportionate response to widespread violence or a perceived threat.¹⁶

In this same sense, more than 75 protesters were arrested in connection with protests following the death in June 2022 of Jayland Walker, a Black man, who was fatally shot by police 46 times in Akron, Ohio. Local community organizers and activists organized protests and held events demanding police accountability.

Nevertheless, authorities failed to adopt and implement significant police oversight and accountability measures promised by the Biden Administration in response to nationwide protests against police violence in 2020.¹⁷ Further, lawmakers in Congress and at least 11 states introduced at least 16 bills limiting freedom of assembly, with two states enacting such bills into law in 2022. Proposed legal restrictions on freedom of assembly included creating a new federal offence for blocking an interstate highway during a protest and, at state level, introducing increased penalties for acts of civil disobedience relating to infrastructure projects, such as pipelines; obstructing roads; and defacing monuments or public property. Other laws sought to prevent reductions to policing budgets by local governments and remove civil liability for car drivers who hit protesters blocking streets, among other things.

By contrast, in 2021, the California state legislature enacted new laws providing broad protections to journalists reporting on public assemblies, who were often targeted for arrest and violence by law enforcement officials, and created statewide standards and regulations for law enforcement’s use of kinetic impact projectile weapons and chemical agents during public assemblies.

RIGHT TO FREEDOM OF ASSOCIATION IN THE USA

Amnesty International has documented intimidation and harassment against migrant human rights defenders by U.S. authorities when crossing the border or when conducting their work in Mexico, which has impacted both their ability to do their work and their overall well-being. In September 2020, the Office of Inspector General of the Department of Homeland Security issued a report confirming that agency officials unlawfully harassed journalists and border activists without an appropriate legal basis and, in some cases, apparently covered up their violations by destroying evidence of their communications and coordination with Mexican authorities in those abuses.¹⁸

VENEZUELA

RIGHT TO PEACEFUL ASSEMBLY IN VENEZUELA

In the last decade Venezuela has had periods of mass demonstrations demanding political and civil rights. During those periods the government implemented a fierce policy of repression through excessive and arbitrary use of force (both less lethal and intentionally lethal), torture, arbitrary detentions and other human rights violations.

Amnesty International documented human rights violations during those periods, particularly during 2014 and 2017 periods of social unrest, and reported how authorities’ inaction after the events sent a strong message favouring impunity and repetition of such violations.¹⁹

¹⁶ Amnesty International, “USA: The world is watching: Mass violations by U.S. police of Black Lives Matter protesters’ rights”, AMR 51/2807/2020, 4 August 2020, <https://www.amnesty.org/en/documents/amr51/2807/2020/en/>.

¹⁷ In 2020, a bill was introduced specifically in response to police violations at protests (“*Protecting our Protesters Act of 2020*” (HR 7315)) that would amend the federal civil rights statute to allow for the prosecution of any officer who willfully kills or causes bodily harm to a person through the use of force during a response to a protest. However, this bill was never passed into law.

¹⁸ Amnesty International, “USA: ‘Saving lives is not a crime’: Politically motivated legal harassment against migrant human rights defenders by the USA”, AMR 51/0583/2019, 2 July 2019, <https://www.amnesty.org/en/documents/amr51/0583/2019/en/>.

¹⁹ Amnesty International, Venezuela: Human Rights at risk amid protests, AMR 53/009/2014, 1 April 2014, www.amnesty.org/en/documents/amr53/009/2014/en/. Amnesty International, Venezuela: Nights of terror: Attacks and illegal raids on homes in Venezuela, AMR 53/7285/2017, 30 October 2017, www.amnesty.org/en/documents/amr53/7285/2017/en/

In 2019 the documentation led Amnesty International to believe that such human rights violations were part of an attack against civilian population with the intent to silence dissent and that they had a systematic and widespread nature and could amount to crimes against humanity.²⁰

Although Amnesty International has not been able to corroborate this information, the Venezuelan public prosecutor's office has informed the International Criminal Court of some advances in accountability on 700 cases of alleged human rights violations,²¹ such as the deaths of David Vallenilla and Juan Pernaleté who died as a result of lethal repression by Venezuelan security forces in Caracas in 2017. However, these investigations do not include the systematic and widespread nature of the crimes, nor the chain of command above first-hand perpetrators.²² The same has happened with the case of Geraldine Moreno, who was killed by members of the military who were repressing a demonstration in Valencia, Carabobo state, in 2014.

Therefore, impunity continues and guarantees of non-repetition have not been implemented in Venezuela, leaving the right to peaceful assembly, and the right to life and physical integrity at risk in case there are new demonstration of this scale.

Nowadays the situation has shifted, although people in Venezuela have lived for years in a complex humanitarian emergency, these days is more common to witness spontaneous and decentralized mobilizations throughout the country, demanding basic economic and social rights. According to the Venezuelan Observatory on Social Conflict, there were 7,032 protests, of which 77% were demanding economic and social rights.²³

Authorities often responded to these demonstrations with excessive force and arbitrary detentions. For example, six activists were arbitrarily detained in Caracas in June at a vigil in memory of Neomar Lander, a teenager killed during a protest in 2017.

In response, the authorities adopted more targeted, but nevertheless systematic, repressive tactics. These included using the judicial system to silence dissent and criminalize human rights defenders.

RIGHT TO FREEDOM OF ASSOCIATION IN VENEZUELA

The Centre for Defenders and Justice has recorded more than 240 acts of stigmatization against human rights defenders between in 2022 in Venezuela, through public and private media outlets with links to the government.²⁴

Other forms of attacks against human rights defenders in Venezuela include criminalization, and arbitrary detentions, such as the case of human rights defender and prisoner of conscience Javier Tarazona, FUNDAREDES Director, who has been imprisoned with charges of terrorism since July 2021.

Recent developments in Venezuela about the discussion and likely approval of a new law to regulate the functioning of NGOs. Members of the National Assembly have publicly threatened local organizations with this draft law,²⁵ and its approval may leave thousands of organizations - including victims' committees - in a situation of illegality, since the arbitrary requirements established by the law are intended to be so difficult to comply with that organizations fall outside the legal framework, exposing them to sanctions.

²⁰ Amnesty International, Hunger for Justice, AMR 53/0222/2019, May 2019, www.amnesty.org/en/documents/amr53/0222/2019/en/

²¹ Luigino Bracci Roa desde Venezuela, YouTube.com, Fiscal General Tarek William Saab, rueda de prensa sobre acciones ante Corte Penal Internacional, 27 May 2021, www.youtube.com/watch?v=mufDZcZXk1M

²² Provea, Press release, 4 years after the murder of Juan Pablo Pernaleté, 26 April 2021, provea.org/actualidad/derechos-civiles-y-politicos/a-4-anos-del-asesinato-de-juan-pablo-pernalete-comunicado-2/. Monitoreamos.com, Padre de David Vallenilla: "Ahora el caso tiene más fuerza para la Corte Penal Internacional", 28 September 2021, monitoreamos.com/destacado/padre-de-david-vallenilla-ahora-el-caso-tiene-mas-fuerza-para-la-corte-penal-internacional

²³ Observatorio Venezolano de Conflictividad Social, web site, Social conflicto in Venezuela during 2022, www.observatoriodeconflictos.org.ve/tendencias-de-la-conflictividad/conflictividad-social-en-venezuela-durante-2022

²⁴ Centro para los Defensores y la Justicia, Annual Report 2022, centrodefensores.org.ve/wp-content/uploads/2023/01/CDJReporteAnual2022-.pdf, p. 5

²⁵ El País, El chavismo amenaza a las ONG en Venezuela con una ley para regular su funcionamiento, 19 January 2023, elpais.com/internacional/2023-01-19/el-chavismo-amenaza-a-las-ong-en-venezuela-con-una-ley-para-regular-su-funcionamiento.html