



LEUPHANA
UNIVERSITÄT LÜNEBURG

**Between Legal Legacies and Rubber Bullets:
The State of the Right to Peaceful Assembly in Chile**

Submitted by: Sara Trunk

Study Programme: Governance and Human Rights (M.A.)

Lecturer: Dr. Anna Wójcik

Date of Submission: 28 November 2024

DOI: 10.48548/pubdata-1859

“The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry.”

(Maina Kiai, Former United Nations Special Rapporteur on Freedom of Assembly and Association (2011-2017), 2014)

Abstract

This paper explores the status of the right to peaceful assembly in Chile by analyzing the State's response to the 2019 protests ("*Estallido Social*") through the lens of national legal protections and international human rights obligations. Despite formal adherence to international human rights treaties, the paper identifies loopholes such as the national Decree No. 1,086 of 1983 coupled with ambiguous police protocols still curtails the right to peaceful assemblies. The application of the UN Human Rights Committee General Comment No. 37 on the right to peaceful to the handling of the *Estallido Social* shows how the large discretionary powers of the executive branch and lack of accountability facilitated the unprecedented violation of protesters' human rights post-dictatorship through excessive use of force. The significant gap between constitutional as well as international legal guarantees and on-the-ground enforcement reveal fundamental transitional justice challenges that Chile needs to overcome to guarantee the full enjoyment of the right to peaceful assembly in line with its human rights obligations and democratic aspirations.

Table of Contents

- ABSTRACT.....3**
- TABLE OF CONTENTS4**
- 1. INTRODUCTION5**
- 2. LITERATURE REVIEW.....6**
 - 2.1 LEGAL FRAMEWORKS 6
 - 2.2 THE ANATOMY OF SOCIAL PROTESTS IN CHILE 6
 - 2.3 HUMAN RIGHTS VIOLATIONS DURING THE 2019 PROTESTS 6
 - 2.4 SHORTCOMINGS IN TRANSITIONAL JUSTICE 6
 - 2.5 THEORETICAL CONTRIBUTIONS AND GAPS 7
- 3. METHODOLOGY7**
- 4. LEGAL FRAMEWORK7**
 - 4.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS 8
 - 4.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)..... 8
 - 4.3 INTER-AMERICAN CONVENTION ON HUMAN RIGHTS 8
 - 4.4 CHILEAN CONSTITUTION AND FAILED REFORM EFFORTS 9
 - 4.5 DECREE No. 1086..... 9
- 5. THE 2019 CHILEAN PROTESTS 10**
 - 5.1 CHILE WOKE UP – THE INDIGNATION AND THE STRIVING FOR DIGNITY 10
 - 5.2 NATURE OF THE PROTESTS..... 11
 - 5.3 THE STATE’S INITIAL RESPONSE TO THE SOCIAL UNREST 11
 - 5.4 POLICING OF THE MANIFESTATIONS 12
- 6. CRITICAL ANALYSIS..... 12**
 - 6.1 OVERVIEW OF HUMAN RIGHTS VIOLATIONS DURING THE UNREST 12
 - 6.2 STATE OBLIGATIONS AND SUPPRESSION OF PEACEFUL PROTESTS..... 13
 - 6.3 EXCESSIVE AND UNNECESSARY USE OF FORCE..... 13
 - 6.3.1 *Police Escalation Model*..... 13
 - 6.3.2 *Non-lethal Weapons*..... 14
 - 6.3.3. *Unlawful Tactics* 14
 - 6.4 FLAWS IN POLICING PROTOCOLS..... 14
 - 6.4.1 *Ambiguities and Misclassifications of Assemblies* 14
 - 6.4.2 *Mismanagement of “Frontline” Dynamics*..... 15
 - 6.5 *Failure to uphold Non-Derogable Rights*..... 15
 - 6.6 STATE INERTIA AND IMPUNITY 15
 - 6.7 BROADER IMPLICATIONS 16
- 7. CONCLUSION 16**
- BIBLIOGRAPHY 18**
- LIST OF ABBREVIATIONS..... 23**

1. Introduction

“It’s not 30 pesos, it’s 30 years”– Under this motto, more than a million Chileans flooded the streets from October 2019 to early 2020 to voice their discontent with the entrenched socio-economic inequality in their country. On 1 October 2019, the then-Minister of Transport announced a subtle subway fare increase of 30 Chilean pesos, prompting students to organize mass fare evasions during the first half of October to protest the price hike. However, for many citizens, the fare hike symbolized the culmination within a neoliberal, inequitable system cemented by the current Chilean constitution that dates to the Pinochet regime and has remained in force after the transition to democracy in 1990 (Krennerich, 2024). Consequently, on 18 October, the initial subway fare protests erupted into prodigious mass manifestations, spreading rapidly to various regions of the country, with Santiago as the epicenter. Despite the unprecedented number of mostly peaceful protests - counting 1.2 million participants in Santiago alone on 25 October 2019 - protesters were met with unparalleled levels of physical violence by Carabineros, the Chilean police force, since the return to democracy.

The United Nations declared in 1948 that “Everyone has the right to freedom of peaceful assembly”. Despite this universal declaration and corresponding national legislation, this human right remains under threat, particularly due to its potential to drive disruptive political changes (Siegert, 2018). The Chilean 2019 protests (“*Estallido Social*”) are a stark example of a country that, in principle, adheres to international frameworks and national legal provisions yet exhibits serious deficiencies in the implementation of this right and compliance with it. Therefore, this paper examines these disparities through the lens of a specific research question: How does the gap between legal frameworks and the Chilean State’s response during the 2019 protests reflect on the right to peaceful assembly?

2. Literature Review

2.1 Legal Frameworks

The right to assembly, typically exerted collectively as a form of expression, enjoys protection under various international treaties. The Republic of Chile, as a member of the United Nations, is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the Inter-American Convention on Human Rights (IACHR). Chile has also incorporated this right into its national constitution, though it remains overshadowed by Decree 1086 of 1983, a de-facto authorization regime, as examined by scholars such as Arduengo (2021). Therefore, both Arduengo (2021) and Micco (2019) call for a shift away from executive decrees curtailing constitutional guarantees.

2.2 The Anatomy of Social Protests in Chile

Donoso and Von Bülow (2017) as well as Joignant et al. (2017) describe how different social movements have emerged in post-authoritarian Chile in response to systemic inequalities and government inertia concerning the grievances of its populations. Joignant and Somma (2024) argue that Chile's neoliberal order, a legacy of the dictatorship perpetuated post-transition propelled public discontent: In 2019, Chile was among the most unequal countries in Latin America, with unequitable pension systems, access to education and income disparities (OECD, 2019). Scholars like Rozas Bugueño (2022) and Krennerich (2024) examined the 2019 movement's structure, finding that a new group of less educated protesters from the political center emerged while traditional assemblies were accompanied by manifold artistic manifestations. Jiménez-Yañez (2021) and Paredes P. (2021) shed light on how inequality served as a catalyst for the *Estallido Social*, a mass movement for systemic and constitutional change.

2.3 Human Rights Violations During the 2019 Protests

The police's response to the 2019 protests sparked international criticism. Organizations like Amnesty International (2020) and Chile's National Institute of Human Rights (INDH) reported on the excessive use of force, including rubber bullets and tear gas canisters, inflicting permanent harm on thousands of protesters. Dammert and Bonner (2021) examine how the framing of protests in Chilean public discourse as violent public order disturbance discredits the airing of legitimate grievances. Paired with Carabinero's escalated-force model for crowd control, this narrative fueled a repressive environment conflicting with Chile's international human rights obligations.

2.4 Shortcomings in Transitional Justice

Historically, according to Rojas (2022), Chile has grappled with transitional justice as indicated in its latest Universal Periodic Review (2024). While Navarette and Tricot (2021) highlight how police actions in October 2019 were reminiscent of gruesome repression under Pinochet, Arroyo Olea (2020) also speaks of the perpetuation of a

culture of impunity due to the failure to address past human rights abuses. Revised Carabineros protocols (2021) attempt to align Chilean practices with international principles but still must prove to be an effective tool for human rights violations prevention.

2.5 Theoretical Contributions and Gaps

A recurring topic in socio-legal research, the existing literature unveils the disconnect between theoretical adherence to international frameworks and the enforcement of rights in practice in socio-political and historical context. There is a consensus massive human rights violations are still being perpetrated in Chile showing systemic deficiencies in transitional justice. However, literature on human rights implementation focus on the violation of other human rights within the exertion of the right to peaceful assembly. Academic discussions thus lack the direct linkage to the implications for the status quo of the right to peaceful assembly in Chile.

3. Methodology

The approach of this paper will be primarily doctrinal. First, it analyzes Chile's national constitutional and decree provisions on the right to peaceful assembly descriptively, juxtaposing them with international human rights law. Within the framework of a concise case study, the legal protections will then be compared with the State's actions during the social unrest of 2019-2020. To illuminate the disparity between legal theory and compliance, the UN Human Rights Committee's General Comment No. 37 on Article 21 ICCPR will serve as a reference framework for evaluating the 2019 events. Although the General Comment was released shortly after the social unrest, its guidance is grounded on longstanding international human rights norms. It synthesizes authoritative interpretations that were already implicit and therefore should have been applicable to Chile in 2019. Furthermore, it aligns with the principles of other regional human rights treaties such as the Inter-American Convention on Human Rights, making it a suitable analysis tool for the case study. Adopting a critical lens, the study goes beyond mere description and scrutinizes the shortcomings in practice, shedding light on systemic human rights issues in post-transition Chile.

4. Legal Framework

The right to assembly, typically exerted collectively as a form of expression, enjoys protection under various international treaties. The Republic of Chile, as a member of the United Nations, is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the Inter-American Convention on Human Rights (IACHR). Chile has also incorporated this right into its national constitution, though it remains overshadowed by Decree 1086 of 1983.

4.1 Universal Declaration of Human Rights

On December 10, 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights, which complements the UN Charter and lays the foundation for a global commitment to uphold human dignity and the fundamental rights inherent to all individuals. Chile became a founding member of the United Nations during the San Francisco Conference on 26 June 1945 and ratified its membership later that year on 11 October (United Nations, n.d.-b). Between 1946 and 1948, Chile actively contributed to drafting the UDHR. Its representatives participated in the Commission for Human Rights and the enlarged drafting committee alongside delegates from Lebanon, Australia, China, France, the USSR, the US and the UK (United Nations, n.d.-a) Chile's vote in favor of the UDHR at the General Assembly in Paris was a natural extension of its evolving commitment to human rights. Its active role in this process provides evidence of a deep-seated dedication to fundamental rights.

In Article 20, Section 1 of the UDHR, the principle that "everyone has the right to freedom of peaceful assembly and association" is enshrined. Given Chile's fundamental role in drafting the declaration, it is reasonable to expect a firm commitment to upholding this right.

4.2 International Covenant on Civil and Political Rights (ICCPR)

Chile signed the binding ICCPR on 16, September 1969 and ratified it on 10 February, 1972, the year before the military coup. Article 21 of the ICCPR recognizes the right to peaceful assembly:

„The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. “

Although Article 21 is not considered non-derogable according to Article 4 Sec. 2 of the ICCPR, any state-imposed restriction on freedom of assembly must comply with the standard of legality, necessity and proportionality as outlined in the General Comment No.37. This translates to the least restrictive measures having to be applied, especially when state actors use force (UN General Comment No. 37, 2020).

4.3 Inter-American Convention on Human Rights

The binding IACHR, ratified by Chile post-dictatorship on 10 August, 1990 also safeguards the right to peaceful assembly. Its wording is similar to the ICCPR:

„No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others. “

In 2015, the Interamerican Court of Human Rights established in the *López Lone et al. v. Honduras* case that this right applies to both private and public meetings, whether static or moving. Crucially, it construes that

“The ability to protest publicly and peacefully is one of the most accessible ways to exercise the right to freedom of expression and can contribute to the protection of other rights. Therefore, the right of assembly is a basic right in a democratic society and should not be interpreted restrictively” (*LÓPEZ LONE ET AL. V. HONDURAS*, 2015, p. 55).

Furthermore, the court reiterated that restriction must not be arbitrary but “must be established by law, pursue a legitimate purpose, and comply with the requirements of suitability, necessity and proportionality” (*LÓPEZ LONE ET AL. V. HONDURAS*, 2015, pp. 55–56), as outlined in both UN principles and regional conventions on the use of force.

4.4 Chilean constitution and Failed Reform Efforts

Chile has, in principle, domesticated its international obligations to uphold the right to assembly within its national constitution. In Article 19, No. 13, it guarantees the right “to assemble peacefully without prior permission and unarmed. Meetings at squares, streets and other public places shall be governed by general police regulations”.

However, the second clause permits further regulation of this right, leaving room for potential curtailment. Chile’s constitution of 1980, albeit amended, remains a vestige Pinochet regime. One notable outcome of the 2019 *Estallido Social* protests was the referendum on whether to replace this constitution. In October 2020, 78% of Chileans voted in favor of drafting a new constitution (BBC News Mundo, 2020). The final draft of 2022, created by a convention with gender parity and indigenous representation, proposed slight modifications to the right to peaceful assembly:

“The right to assemble peacefully without prior permission and without arms. Meetings in squares, streets and other places of public use shall be governed by the provisions of this Constitution and the law. Those who participate in these shall respect the rights of those who are not part of the meeting and public and private property”.

The substitution of “police regulations” with “this Constitution and the law” hinted at a shift towards a less restrictive legislation. However, the draft was ultimately rejected in the September 2022 referendum.

4.5 Decree No. 1086

Enacted in 1983 under the Pinochet dictatorship to quell anti-regime protests, Decree No. 1086 still regulates the right to assembly in Chile. This decree consists of three articles, with Article 2 stipulating a compulsory prior notification system and Article 3 granting local authorities broad discretionary powers to prohibit assemblies in specific areas:

“Under this decree, the organizers of any meeting or demonstration must notify either the regional intendant (Intendente) or the provincial governor (Gobernador) at least two days in advance. If organizers fail to do so, law enforcement officers may prevent or dissolve the planned meeting or demonstration (Art. 2). Furthermore, the regional intendant or provincial governor has large discretion whether to authorize meetings or processions in high-density roads or streets where they may disrupt public transit, or in squares and leisure roads during recreational or rest hours, and in parks, squares, gardens and green avenues”.

The decree has drawn significant criticism from the international community. On his visit to Chile in September 2015, the Special Rapporteur on the rights to freedom of peaceful assembly and of association of the UN, Maina Kiai, denounced the decree as a “de facto authorization regime” that contradicts Chile’s constitution and is largely “incompatible with international law and best practices governing freedom of peaceful assembly”. Under this framework, he observed that spontaneous assemblies are effectively prohibited. Despite the negative assessment, the decree remains unaltered as stated in the fourth-cycle Universal Periodic Review for Chile in May 2024, where the working group again admonishes the “de facto system of authorization” (Human Rights Council, 2024, p. 4).

5. The 2019 Chilean Protests

5.1 Chile woke up – the Indignation and the Striving for Dignity

After the announcement of the fare increase of the Santiago subway on 1 October 2019, high school and university students started jumping the turnstiles to show their opposition to the price hike. At the beginning of the month, nobody anticipated that those student protests would soon serve as a catalyst for “thousands of protest events that would question the very core of the social, political, and economic model implemented in Chile since the end of the dictatorship”(Navarrete & Tricot, 2021, p. 79). On 18 October 2019, the subway evasions therefore erupted into unprecedented mass manifestations in Santiago first. With the rapid massification of protests, “every single protester [now] had their own demands”(Castro, 2024). Those myriad demands ranged from radically changing the private pension system (AFP), making education free, advancing gender equality and indigenous peoples’ rights, providing better healthcare to putting and so-called ‘corporate abuse’. As one protester described it to the Guardian: “I want the government and big business to stop looting my country – to stop taking what belongs to all of us and selling it to the highest bidder”(Franklin, 2019).

However, in order to lay the foundation for all these claims, the demand to change the constitution inherited from dictatorship soon turned into a common denominator among all protesters. A unifying slogan said that the protests would continue “until dignity becomes customary”(Paredes P., 2021, p. 39). Ultimately, the sudden social uprising can best be described as a “relief of decades bearing the cost of maintaining the image of the “Jaguar of Latin America”, of an economic model that was implemented in dictatorship, accepted in transition and validated in democracy”(Jiménez-Yañez, 2021).

In fact, in 2019 Chile was among the most unequal countries in Latin America and the most unequal member of the OECD (United Nations Human Rights Office of the High Commissioner (OHCHR), 2019). Therefore, the movement did not cease even when the government agreed on the “Acuerdo por la Paz” (“Peace Agreement”) that established the drafting of a new constitution. Protests persisted until March 2020 and were ultimately suppressed by the new state of emergency declared due to COVID-19, which imposed strict lockdowns (Rojas, 2022).

5.2 Nature of the Protests

One of the most salient characteristics of the social outbreak is how uniquely it came about, since it wasn't marked by “any leaderships or representative organisms. It [was] rather characterized by an opening of a protest cycle calling for all citizens”(Navarrete & Tricot, 2021, p. 121).

On the one hand, massive participation was recorded for weeks not only on public squares in Santiago as the epicenter but in several major cities. The overall decentralized social upheaval marked another distinction of the so-called 18-O movement in a normally heavily centralized country. Also, while there were indeed protests announced in advance such as the so-called ‘biggest marching in history’ on 25 October counting approximately 1.2 million protesters, most gatherings emerged spontaneously as was the case on 18 October itself (BBC News Mundo, 2019).

On the other hand, “[t]he demonstrations were complemented by countless creative actions and artistic self-manifestations of the protesters in public spaces”(Krennerich, 2024, p. 32), such as concerts, laser light shows, dance performances and citizens' councils (Rozas Bugueño et al., 2022). The 2019 protests also activated new groups of protesters, differing from the usual highly educated, center-left demonstrators: “[P]eople with a relatively low level of education, politically identified with the center, who do not go to protests alone or with their closest ties, and do not participate in social organizations”(Rozas Bugueño et al., 2022, p. 128) were now at the center of the movement.

However, alongside the protests, numerous severe disturbances of public order were also documented, such as the arson attacks on Santiago subway stations and the massive looting of shops and supermarkets. The latter was mainly attributed to opportunistic actors with an existing criminal record. According to Carabineros, this fringe group was seizing the public distraction and therefore was not representative of the broader movement. To date, it remains unclear who caused the incendiary attacks on the subway with some footage hinting at meticulously organized attacks rather than a direct link to the manifestations themselves (Barraza Díaz & Gutiérrez Ayala, 2023). This research thus focuses on the majority of participants who engaged in peaceful demonstrations to voice legitimate grievances.

5.3 The State's initial Response to the Social Unrest

As soon as the first mass gatherings emerged on 18 October, Carabineros started launching tear gas at the crowds, which could be smelled throughout Santiago. The next day, the metro fare increase was rolled back. However, citing several fires and public disturbances, then-President Sebastián Piñera “decreed a constitutional state

of emergency in the Metropolitan Region [...] allow[ing] restrictions on freedom of movement and assembly and established that the Armed Forces could carry out public order functions“(Amnesty International, 2020, p. 9) according to article 42 and 43 of the constitution.

For the first time since the return to democracy, a nightly curfew was imposed and the military was deployed to the streets again during ten days, undertaking “joint operations in the policing of these mobilizations alongside the Carabineros de Chile”(Amnesty International, 2020, p. 4). The state of emergency was then extended to several other regions of the country and was regulated by law 18,415, the Organic Constitutional Law on States of Exception, that confers the National Chief of Defense the right to regulate and authorize public gatherings to safeguard public order.

In a presidential press release Piñera stated the country was “at war against a powerful, implacable enemy, who does not respect anything or anyone and is willing to use unlimited violence and crime, even when it results in loss of human life, with the sole purpose of causing the greatest possible harm” (Amnesty International, 2020, p. 9), without addressing the legitimacy of any social demands that protesters made. This ‘mano dura’ or ‘iron fist’ discourse is often used in Latin America to frame social protests (Bonner, 2014). It thus shaped the policing of the 2019 protests.

5.4 Policing of the manifestations

In Chile, manifestations are generally policed by using the model of escalated force, consisting of five levels based on the behavioral escalation of the participants(Amnesty International, 2020; Bonner & Dammert, 2021). The correspondent framing of police action at the 2019 protests by local media emphasized the documented public order disturbances, stressing “the criminal threat faced by police, focused on the criminal behavior, often without any mention of the protests. By not mentioning the protests, [this] left the impression that the country was facing an explosion of crime not massive protests”(Bonner & Dammert, 2021, p. 6). In addition, lines between protesters and criminals were deliberately blurred to the point of no distinction. It even went as far as a retired Carabinero General, Aldo Vidal, stating that “peaceful protests do not exist”(Bonner & Dammert, 2021, p. 7). Considering this framing, several watchdog organizations such as Amnesty International or Chiles National Institute of Human Rights (INDH) reported patterns of police brutality, including the use of tear gas and pellet guns, resulting in serious injuries, particularly to the eyes of participants. Thus, widespread criticism of police violence arose, calling into question Chile's compliance with international human rights obligations. While the initial response included legal tools such as curfews and the state of emergency, the enforcement of these measures, police protocols and Decree 1,086 often infringed on fundamental rights, a crucial issue discussed in the next section.

6. Critical Analysis

6.1 Overview of Human Rights Violations during the Unrest

In October 2024, the total number of legal complaints against state agents filed by INDH stood at 3,216, representing almost 4,000 victims of human rights violations unrelated to the right to peaceful assembly, especially the right to life and security of

person (Article 3, UHRD). However, 550 of these concerned the violation of the right to freedom from torture (Article 5, UHRD), including sexual violence.

By 3 December 2019, 12,738 people had received emergency medical care. By March 2020, 460 people had sustained eye injuries caused primarily by rubber-metal pellets fired by Carabineros. Two notable cases were the those of Gustavo Gatica, a university student who lost his eyesight due to the firing of police projectiles and Fabiola Campillai who, on her way to work, was blinded on both eyes by a tear gas canister that Carabineros fired directly at her face. These cases soon became emblematic of a wave of unprecedented eye trauma worldwide, caused by police brutality. At least four cases of arbitrary deprivation of life by the military and Carabineros were also documented, two of them involving live ammunition and fire arms (Amnesty International, 2020; Cortés et al., 2021; United Nations Human Rights Office of the High Commissioner (OHCHR), 2019). During the first six weeks of protests, 28,210 people were detained, many of them while exerting their right to peaceful assembly. “[I]n the absence of flagrant crimes by the protesters, [those detentions] could be considered arbitrary in the light of international standards” (OHCHR, 2019, p. 19) such as Article 9, ICCPR.

6.2 State Obligations and Suppression of Peaceful Protests

Articles 2 and 3 of the Covenant require States parties to not only respect but also ensure the enjoyment of rights, by taking legal measures and providing effective remedies with full accountability (comment remarks 24,33). Regarding Article 21, they must thus protect participants of peaceful assemblies, facilitate the latter (remark 27) and refrain from unwarranted interference. This includes the obligation not to “prohibit, restrict, block or disrupt assemblies without compelling justification, and not to sanction participants without legitimate cause” (remark 26). While Chile has enshrined the right into its constitution, its application is obscured by decree 1,086 - a notification system that should not be used to stifle peaceful assemblies (remark 80) and “must not in practice function as [an] authorization system” (remark 84). Chile’s most recent UPR of 2024 admonished this practice. Chile’s ratification of international treaties may thus represent a “false positive” concerning the right to peaceful assembly, since “domestic political elites make reforms that simultaneously maximize international legitimacy and minimize the need to change [...] unjust domestic practices and structures”(Langford, 2018, p. 75). Chilean state agents have actively suppressed peaceful protests despite guidance from remark 81 which clarifies that a lack of notification does not justify dispersal, which should only take place in exceptional, lawful circumstances (remark 96).

6.3 Excessive and Unnecessary Use of Force

6.3.1 Police Escalation Model

Most human rights violations stemmed from Carabineros’ use of force during dispersals. Chile’s escalated force model of 2013 (Circular No. 001756) shows that they mostly employed measures of Level 4 out of 5. This level is designed to control active aggression by protesters attempting to harm the officials without posing serious

threats to life and permits the use of non-lethal weapons. However, both Amnesty International and OCHR found that the phases of dialogue and prevention were skipped and less harmful measures in line with UN principles on the use of force were not taken.

6.3.2 Non-lethal Weapons

In October alone 2019, 104,000 rounds of rubber bullets were fired, often at a short range and aimed at vulnerable body parts injuring protesters, passersby, medical staff and journalists (Amnesty International, 2020). According to several watchdog organizations, they were often used to disperse protests even though there was no imminent threat and protests were peaceful (UNHCR), violating remark 97 on the avoidance of force, its specificity and the minimization of harm. In fact, this indiscriminate use of less-lethal weapons contravenes remark 98, which prohibits firing into crowds, raising serious concerns about the necessity and proportionality of these measures (remark 43). The OHCHR also critiqued the random kettling of protesters, a tactic that represents a notable violation of international standards (remark 95).

6.3.3. Unlawful Tactics

The force exerted did not follow the escalation model of the police protocols. Overall, it lacked a clear legal basis and therefore casts serious doubt over its legality. Even though the pellets were proven to contain unapproved, potentially lethal materials, Carabineros only ceased their use one month into the social unrest after giving in to mounting pressure from the international community. This highlights lapses in oversight and accountability while both UNCHR and the Inter-American Court of Human Rights had admonished Chile to stop the human rights violations.

6.4 Flaws in Policing Protocols

6.4.1 Ambiguities and Misclassifications of Assemblies

As generally recommended, police protocols were in place in 2019 (remark 88). Ostensibly designed to preserve public order, they group public protests into four categories: Legal with or without authorization, illegal aggressive and illegal. Their ambiguous wording grants broad discretionary powers to police officers, especially regarding the last three categories. These protocols allow for interventions against entire assemblies rather than addressing focal points of violence. In 2019, protests often emerged spontaneously without prior notification. They were thus not protected by Decree 1,086 when they should, in fact have been, even in cases of civil disobedience (Remark 16,17): A gathering, according to Chilean protocols, is considered legal when it is carried out “calmly”. However, this term is undefined in Chilean law, leaving it to the discretion of the crowd management forces (Bonner & Dammert, 2021). Even minor disruptions to public order, such as traffic obstruction, were often deemed sufficient grounds for deterrence and dispersal of a non-peaceful assembly. This practice contravenes remark 17, which clearly states that “[m]ere disruption of vehicular or pedestrian movement or daily activities does not amount to violence” (UN General Comment No. 37, 2020, p. 4).

6.4.2 Mismanagement of “Frontline” Dynamics

According to remark 19, lines between peaceful and non-peaceful assemblies can be blurred and must be assessed based on the violence emanating from participants, yet presuming its peacefulness. During the social unrest, clashes between protesters and the police primarily occurred at the so-called “frontline”, where some participants engaged in stone-throwing. While these participants could surely be deemed violent and thus not protected by Article 21 since their actions are likely to inflict injuries (remark 17,21), this phenomenon needs to be looked at from a sociopolitical angle without categorical police responses. Due to the low threshold for the dispersion of peace assemblies, the frontline has formed throughout the years to protect the other participants and the manifestation from being dispersed (Fernández Droguett, 2020). Either way, individual acts of violence by single participants should be addressed individually as stipulated in the protocols without attributing their actions to the broader movement. However, the documented indiscriminate and “premeditated practice of using force in order to punish protesters and disperse them at all costs”(Amnesty International, 2020, p. 5) reveals the shortcomings of the Chilean State in making the necessary distinctions to guarantee the protections of Article 21, especially after the state of emergency had ended.

6.5 Failure to uphold Non-Derogable Rights

Even violent participants who fall outside of the protections Article 21 still maintain their other rights under the Covenant (remark 10). Considering the documented violations of rights perpetrated under the guise of the level 4 framework of escalated force for “violent aggression” from participants, Chile fell short of upholding even non-derogable rights of the ICCPR in a state of emergency such as article 6 and 7 (remark 99, right to life and freedom from torture). This represents a violation of jus cogens, also stipulated in the convention against torture to which Chile is a signatory.

6.6 State Inertia and Impunity

The state of emergency restricting the right to peaceful assembly in itself was invoked on the basis of national law, citing public order (remark 44) but with no evidence that the protests posed a “threat to the life of the nation” (107). While public order was, if at all, jeopardized by the looting and vandalism committed by opportunistic actors, it was, after all, a convenient way to quell protests with the help of the military. However, the deployment of military personnel for the purpose of policing assemblies is discouraged by remark 92.

According to remark 100, the “State is responsible under international law for the actions and omissions of its law enforcement agencies and should promote a culture of accountability”. However, during the social unrest, law enforcement operated largely autonomously, with the Ministry of the Interior claiming it had no authority over police procedures, equipment or weapons (El Desconcierto, 2019). At the same time, Chile did not pursue its obligation to provide human rights violations victims with justice as noted in the 2024 UPR working group report. While a judicial process against three

Carabineros commanders was initiated on 1 October 2024, it was suspended one day later (Arriaza, 2024). Additionally, the statute of limitation for 688 legal complaints filed by the National Human Rights Institute is nearing expiration, with more than half not showing progress over the last 1-2 years (Burgos & Méndez, 2024). This ongoing impunity thus evokes parallels with the military dictatorship, undermining Chile's post-authoritarian vow to "nunca más"¹ let human rights violations occur (Arroyo Olea, 2020; Rojas, 2022).

6.7 Broader Implications

Chile's handling of the 2019 social unrest demonstrates significant failures in implementing international human rights standards post-transition despite their domestication into constitutional law. Furthermore, the right to peaceful assembly can never be fully protected as long as the use of excessive force leads to violations of Articles 6 and 7 (remark 111). This is a particularly sobering balance of events considering that *Estallido Social* protesters exercised their right to peaceful assembly seeking to advocate for other human rights (remark 114), especially those of social and economic nature.

7. Conclusion

Chile has ratified all major human rights instruments, including the ICCPR and the regional Inter-American Human Rights Convention, which obligates the State to recognize and ensure the right to peaceful assembly. When the 2019 social unrest erupted, the State's initial involved declaring a state of emergency, enforcing curfews and deploying Carabineros and the military for protest policing. This approach dismissed the legitimacy protesters' grievances, subjecting them to extensive repression. The protests, largely spontaneous with no prior notification, were excluded from protection under Decree No. 1,086. Thus, the decree effectively creates a loophole undermining the Chilean constitution's guarantees for peaceful assembly, which are, in principle, in line with international human rights law. This decree also shifts oversight from legislature to the executive branch, paving the way for ambiguous police protocols that facilitated unprecedented human rights violations since Chile's return to democracy. Consequently, an analysis of the legal framework and its implementation revealed that Chile failed to uphold most of the principles that the UN attributes to Article 21 of the ICCPR in General Comment No. 37. Key failures include the interference with assemblies, disproportionate and unnecessary use of force, lack of accountability, and the violation of non-derogable ICCPR rights.

In short, the analysis brought to light a significant gap between the legal protections and their practical implementations. Chile's non-compliance with its international human

¹ Engl. Translation: „Never again“

rights obligations raises questions about whether its ratification of the international treaties' provisions on the right to peaceful assembly is more than symbolic.

Abolishing Decree 1,086, as recommended in recent UPR reviews, would be a crucial first step. The adoption of a new constitution could have facilitated the drafting legislation to eliminate this de-facto authorization regime, a change advocated by Chile's INDH even before the social unrest (Micco, 2019).

However, even if Chile repeals Decree 1,086, the dictatorship's legacy persists, and its people will not attain full enjoyment of the right to peaceful assembly if other human rights violations occur when exercising this right. After more than 30 years, the right to peaceful assembly in Chile still seems to be stuck in the incipient stage of a post-authoritarian democracy. It cannot progress much further if there is no accountability and justice for the victims of past repression. New protocols have been put into place by Carabineros in 2021 and supposedly align with international obligations (Diario Uchile, 2021). Nevertheless, this does not guarantee the consistent application of these procedures in practice. Apart from profound changes to Carabineros as the national police institution, Chile will have to uproot its historical indifference to human rights violations and advance its transitional justice agenda to ensure the full enjoyment of the right to peaceful assembly in the future and compliance with its legal obligations under international law.

Bibliography

Amnesty International. (2020). *EYES ON CHILE: POLICE VIOLENCE AND COMMAND RESPONSIBILITY DURING THE PERIOD OF SOCIAL UNREST* (No. AMR 22/3133/2020).

Arriaza, J. (2024, October 2). Tras dos jornadas de argumentos de Fiscalía: Tribunal suspende formalización de los generales (r) Yáñez, Rozas y Olate. *La Tercera*.
<https://www.latercera.com/nacional/noticia/tras-dos-jornadas-de-argumentos-de-fiscalia-tribunal-suspende-formalizacion-de-los-generales-r-yanez-rozas-y-olate/DTCFIA4U3JDYFHUKIRJTCCBRYU/>

Arroyo Olea, J. (2020). Lo que el viento no se llevó: Continuación de la impunidad en la postdictadura chilena. *Revista Chilena de Historia Social Popular, Revueltas*(02).

Barraza Díaz, J., & Gutiérrez Ayala, C. (2023). *¿Quién quemó el metro? Las revelaciones de una investigación periodística y forense* (Primera edición). LOM Ediciones.

BBC News Mundo. (2019, October 25). *Protestas en Chile: La histórica marcha de más de un millón de personas que tomó las calles de Santiago*.
<https://www.bbc.com/mundo/noticias-america-latina-50190029>

BBC News Mundo. (2020, October 26). *Chile aprueba por abrumadora mayoría cambiar la Constitución de Pinochet: ¿qué pasa ahora y por qué es un hito mundial?*
<https://www.bbc.com/mundo/noticias-america-latina-54686919>

Bonner, M. D. (2014). *Policing protest in Argentina and Chile*. Lynne Rienner Publishers, Inc.

Bonner, M. D., & Dammert, L. (2021). Constructing police legitimacy during protests: Frames and consequences for human rights. *Policing and Society*, 32(5), 629–645. <https://doi.org/10.1080/10439463.2021.1957887>

Burgos, J., & Méndez, N. (2024, October 18). Estallido social: Acción penal de 688 querellas que presentó el INDH por violación de DD.HH. comenzará a prescribir a partir de hoy. *Ciper Chile*. <https://www.ciperchile.cl/2024/10/18/estallido-social-accion-penal-de-688-querellas-que-presento-el-indh-por-violacion-de-dd-hh-comenzara-a-prescribir-a-partir-de-hoy/>

Castro, M. (2024, October 18). Chile cumple cinco años del estallido social con demandas vigentes, pero con otras prioridades. *El País*. <https://elpais.com/chile/2024-10-18/chile-cumple-cinco-anos-del-estallido-social-con-demandas-vigentes-pero-con-otras-prioridades.html?outputType=amp>

Cortés, S., Martínez-Gutiérrez, M.-S., & Jiménez, S. A. (2021). Vulneración de derechos humanos en las movilizaciones de octubre de 2019 en Chile. *Gaceta Sanitaria*, 35(4), 399–401. <https://doi.org/10.1016/j.gaceta.2020.12.029>

Diario Uchile. (2021, September 21). Carabineros da a conocer nuevo protocolo frente a manifestaciones. *Diario Uchile*. <https://radio.uchile.cl/2021/09/21/carabineros-da-a-conocer-nuevo-protocolo-frente-a-manifestaciones/>

El Desconcierto. (2019, November 6). *Chipe libre: Gobierno dice no tener control alguno sobre armamento ni actuaciones de Carabineros*. <https://eldesconcierto.cl/2019/11/06/chipe-libre-gobierno-dice-no-tener-control-alguno-sobre-armamento-ni-actuaciones-de-carabineros>

Fernández Droguett, R. (2020, January 23). La Primera Línea y todas las Líneas del levantamiento social en Plaza de la Dignidad. *Diario Uchile Radio Universidad de Chile*. <https://radio.uchile.cl/2020/01/23/la-primera-linea-y-todas-las-lineas-del-levantamiento-social-en-plaza-de-la-dignidad/>

Franklin, J. (2019, October 30). Chile protesters: “We are subjugated by the rich. It’s time for that to end.” *The Guardian*.

<https://www.theguardian.com/world/2019/oct/30/chile-protests-portraits-protesters-sebastian-pinera>

General Comment No. 37 on Article 21 (Right of Peaceful Assembly), CCPR/C/GC/37

(2020). <https://documents.un.org/doc/undoc/gen/g20/232/15/pdf/g2023215.pdf>

Human Rights Council. (2024). *Chile—Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights* (Universal Periodic Review No. A/HRC/WG.6/46/CHL/2). United Nations General Assembly.

Jiménez-Yañez, C. (2021). #Chiledespertó: Causas del estallido social en Chile. *Revista Mexicana de Sociología*, 82.

<https://doi.org/10.22201/iis.01882503p.2020.4.59213>

Krennerich, M. (2024). *Human Rights Politics: An introduction* (Vol. 12). Springer Nature Switzerland. <https://doi.org/10.1007/978-3-031-57026-1>

Langford, M. (2018). Critiques of Human Rights. *Annual Review of Law and Social Science*, 14(1), 69–89. <https://doi.org/10.1146/annurev-lawsocsci-110316-113807>

LÓPEZ LONE ET AL. V. HONDURAS (Inter-American Court of Human Rights October 5, 2015).

Micco, S. (2019, August 19). Columna de opinión: El derecho a reunión debe ser regulado por ley. *Instituto Nacional de Derechos Humanos*.

<https://www.indh.cl/columna-de-opinion-el-derecho-a-reunion-debe-ser-regulado-por-ley/>

- Navarrete, B., & Tricot, V. (Eds.). (2021). *The Social Outburst and Political Representation in Chile*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-70320-2>
- Paredes P., J. P. (2021). La “Plaza de la Dignidad” como escenario de protesta. La dimensión cultural en la comprensión del acontecimiento de Octubre chileno. *Revista de Humanidades de Valparaíso*, 17, 27. <https://doi.org/10.22370/rhv2021iss17pp27-52>
- Rojas, H. (2022). *Past Human Rights Violations and the Question of Indifference: The Case of Chile*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-88170-2>
- Rozas Buguño, J., Plaza Revecó, A., Retamales Ramírez, M. F., Cortinez Rojas, S., Carrasco Alcayaga, P., & Venegas Marquéz, M. (2022). ¿Por dónde crece la movilización social? Análisis de los nuevos manifestantes de la revuelta social chilena de octubre de 2019. *Revista Chilena de Derecho y Ciencia Política*, 13(2), 127–158. <https://doi.org/10.7770/rchdcp-V13N2-art2893>
- Siegert, K. (2018). The Police and the Human Right to Peaceful Assembly. In R. Alleweldt & G. Fickenscher (Eds.), *The Police and International Human Rights Law* (pp. 217–243). Springer International Publishing. https://doi.org/10.1007/978-3-319-71339-7_11
- United Nations. (n.d.-a). Drafters of the Declaration. *UNIVERSAL DECLARATION OF HUMAN RIGHTS*. Retrieved November 12, 2024, from <https://www.un.org/en/about-us/udhr/drafters-of-the-declaration#:~:text=It%20was%20then%20composed%20of,Union%20of%20So viet%20Socialist%20Republics.>

United Nations. (n.d.-b). *UN Membership* [Dataset]. Retrieved November 12, 2024, from <https://research.un.org/en/unmembers/founders>

United Nations Human Rights Office of the High Commissioner (OHCHR). (2019).

Report of the Mission to Chile 30 October-22 November 2019.

https://www.ohchr.org/sites/default/files/Documents/Countries/CL/Report_Chile_2019_EN.pdf

List of Abbreviations

IAHCR: Inter-American Convention on Human Rights

ICCPR: International Covenant on Civil and Political Rights

INDH: Instituto Nacional de Derechos Humanos (National Human Rights Institute)

OHCHR: United Nations Human Rights Office of the High Commissioner

UHRD: Universal Human Rights Declaration

UPR: Universal Periodic Review