

The Search for Justice:

Analyzing Chile's Democratic Transition in the Wake of the 2019 Social Outburst

In October 2019, millions of Chileans took to the streets to express their discontent with rising transportation costs, privatization of education, and pension administration, demanding a new constitution and a fundamental change to Chilean political reality.¹ The protests grew in scale each day and the *Carabineros de Chile*—the national police—responded with violent repression, resulting in many grave injuries.² While these societal and economic factors indeed catalyzed action, these uprisings were only the most recent in repeated civil disobedience and dissatisfaction since the end of Chile's seventeen year dictatorship in 1989.³ The violence inflicted by the state against protesters and the failure of justice for victims serves as a chilling reminder of Chile's history of state-sponsored brutality against its citizens. General Augusto Pinochet led a bloody coup d'état that ended with President Salvador Allende's death on September 11, 1973. While the middle class and several more moderate political groups (such as the Christian Democrats) supported the new regime at first and were happy to see the socialist leader and party deposed, Pinochet's regime quickly showed a brutal nature. All left and center political parties were repressed and by 1977, traditional parties disbanded for a "private enterprise economy."⁴

Despite touting free enterprise, unemployment rose and the standard of living fell in Chile. Pinochet extended his presidential term, stating a referendum on his party's leadership would only be held in 1988. As powerful groups—including new and reemerging political parties, the Christian Democratic Party and the Democratic Alliance, as well as the Roman Catholic Church—became a vocal opposition, demanding elections well before 1989, the human rights

violations of Pinochet's regime became undeniable.⁵

Elections were held in 1989, when Pinochet did step down but not before appointing several new Supreme Courts justices, making himself a lifelong senator, and remaining commander of the military until 1998, when he was arrested in the United Kingdom. During this reign from 1973-1990, "torture was systematic; 'disappearance' became state policy."⁶It remains unknown what exactly happened to those that disappeared, but it is widely assumed they were killed under a government plan to eliminate perceived opponents of the Pinochet government. More than 3,000 cases of human rights violations, including detainment, torture, and murder have been documented by the National Commission of Truth and Reconciliation and the National Corporation on Reparation and Reconciliation.⁷ These horrible decades of oppression and human rights abuses are permanently etched into the collective memory of Chileans and impact their ongoing relationship with their government, military, and police forces, albeit in different ways. Even by the time of the 2019 social unrest, many had a fear of the police, while others remained less concerned with the human rights violations of the past and worried about Chile's economic future. Such discrepancies are understandable in a country that one academic described as having a "torn collective memory" of the events of 1973-1990.⁸

Since Augusto Pinochet's authoritarian government initiated a transition to democracy at the end of the 1980s, Chileans' demands for "truth, justice, reparations, memories, and guarantees of non-repetition" have persisted over the past three decades.⁹ Chilean officials tortured and jailed political opponents, forced many citizens into exile, and 'disappeared' thousands of people whose bodies have yet to be recovered.¹⁰ State agents "systematically, pervasively, and institutionally" violated the human rights of Chileans.¹¹ Most perpetrators were never investigated, tried, or convicted for their crimes.¹² For many, Chile's dark past maintains a

tight grip on its future as the country's current constitution remains unchanged from the version written in 1980 by Augusto Pinochet's authoritarian government,¹³ representing both a symbolic and politically consequential reminder of a somewhat unchanged, tenuous relationship between state and citizen.

Despite this prevailing sentiment, in September 2022, 62 percent of voters struck down the new constitutional draft undertaken in response to the 2019 protests.¹⁴ At this junction, one must ask what avenues may contribute to Chile's inability to fully transition away from its authoritarian history and into an era of complete democratic rule. As victims of violence during the October 2019 protests struggle to access justice in domestic courts,¹⁵ their confidence in the ability of the Chilean judiciary to protect their fundamental rights and deliver justice wanes. Independent, effective court systems are crucial in establishing new norms and legal cultures in periods of democratic transition.¹⁶ As domestic judiciaries continue to fail to defend the rule of law and protect Chilean citizens from police brutality, the inability to provide justice for victims prolongs the transition to democracy.¹⁷ By analyzing the lack of justice for victims of human rights abuses after the 2019 social outburst, one can recognize Chile's transition to democracy as continuous and understand the importance of offering justice to victims, even if that means circumventing the Chilean judiciary. By leveraging Article 25 (1) of the Convention of Inter American Human Rights, Chileans may elevate their cases to external mechanisms of international justice to establish adherence to universal human rights doctrine in Chile, regardless of the state's inconclusive attempts to address the events of 2019 in domestic courts.¹⁸ *Profile of the Carabineros de Chile*

In 2019, the majority of human rights abuses committed against protesters were perpetrated by the Chilean National Police, the *Carabineros de Chile*. By looking back at the

Carabineros' role in maintaining order under authoritarianism, one can better understand how their violent and judicially unchecked behaviors keep Chile from closing a brutal chapter in its history. During the Pinochet dictatorship from 1973 to 1990, the Carabineros became highly militarized and gained autonomy under their mandate to maintain public order, often disregarding citizens' rights.¹⁹ The Carabineros acted as the "fourth branch of the armed forces."²⁰ Between September and December 1973, the Carabineros were the foremost perpetrators of disappearances and kidnapped 248 people.²¹

After Chile officially transitioned to a democratic government, 6,083 cases of police violence were brought to military court between 1990 and 2004, demonstrating the organization's continuity of brutal policing policies.²² Annual human rights reports have continuously raised concerns about police violence and a lack of accountability in Chile. While studying this issue, one researcher recorded the following insight from an interviewee: "Who beat us up [during the dictatorship]? It was the Carabineros. Afterwards, under democracy, people are still afraid of them."²³ Thus, despite nearly thirty-two years of democratic governance, the existence and continued violent behaviors of the Carabineros remain a significant limitation in Chile's transition away from authoritarianism.

Since 1990, the majority of cases filed against the Carabineros by victims of mistreatment and excessive force have not led to convictions. Between March 1990 and December 2000, 3,877 legal complaints against police were filed by citizens in military courts, and 160 cases of torture were filed between 1995 and 2001.²⁴ Due to a lack of civilian oversight and institutional transparency, many victims of police violence, usually those from low socioeconomic backgrounds, students, and indigenous people, "fear what [the Carabineros] can do with impunity" and do not pursue legal reparations as a result.²⁵ The nation must start a conversation

about the Carabineros' institution and the judicial system that supports its autonomous, unaccountable behavior.²⁶

Reflections on the 2019 Social Outburst

In 2019, the United Nations Office of the High Commissioner for Human Rights (OHCHR) deployed a mission to investigate human rights violations and found that the Carabineros failed to gradually disperse protesters, distinguish between violent protesters and those demonstrating peacefully, and only use non-lethal force.²⁷ The National Human Rights Institute reports 3,449 victims of non-lethal force, while the Chilean Ministry of Justice and Health reported 4,903 victims and 12,738 victims, respectively.²⁸ The Office of the High Commissioner for Human Rights notes that many cases included ocular trauma, beatings, gas inhalation, live ammunition injuries, and wounds from rubber pellets.²⁹ The alarmingly high number of people with facial and ocular injuries provides a strong argument that less-lethal weapons were used “improperly and indiscriminately” in breach of international principles that demand minimizing the risk of injury and avoiding intentionally causing pain to civilians.³⁰ At least 347 people sustained eye injuries from pellets, demonstrating that this equipment was used at close range and targeted at the upper body.³¹ In doing so, the Carabineros violated the norms established in The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³²

Many reports of physical and psychological torture are also documented. The Office of the High Commissioner for Human Rights reports 133 cases of torture and ill-treatment.³³ Many experienced threats to kill, rape, or “disappear” the person and beatings in front of family members.³⁴ The Mission reported twenty-four cases of sexual violence during the protests, which it labeled as “treatment [that] may amount to torture or cruel, inhumane or degrading... punishment.”³⁵ The National Human Rights Institute has filed 108 criminal complaints

of torture, referring to 166 cases of alleged sexual violence.³⁶

Limited Justice in Chilean Courts

Despite the substantial documentation of human rights abuses, justice has been slow and arduous in domestic courts. The Office of the Public Prosecutor in Chile indicates that there are twenty-six ongoing investigations related to “people who have died in the context of social protests” despite documenting 2,670 known cases of human rights violations committed during demonstrations.³⁷ The Attorney General’s Office registered 5,558 victims of institutional violence, and 4,170 of those complaints were against members of the Carabineros.³⁸ Despite the high number of claims filed, few Carabinero officers have been charged.

To best understand the failure of Chilean courts to deliver justice to victims of state violence, one must look no further than Alex Núñez. He died of an extreme head injury and lung damage after participating in a demonstration.³⁹ The Office of the Attorney General for Cases of High Complexity initiated a homicide investigation, and the National Human Rights Institute supported the Núñez family in filing complaints for homicide and unlawful coercion.⁴⁰ Based on a lieutenant’s contradictory, vague statement, Amnesty International presumes many members of the Carabineros took part, tried to conceal the circumstances of the beating, and attempted to avoid incriminating fellow members.⁴¹ A disciplinary process is underway within the National Police system but remains ongoing, and no perpetrator has been identified.⁴²

While Chile fulfills its internationally bound duty to provide administrative and judicial remedies for alleged wrongs, the failure to provide justice for victims prolongs the transition to democracy. The significance of the rule of law in transition periods creates a uniquely important role for domestic courts.⁴³ In independent courts, judiciaries can act as forceful mechanisms to defend “constitutionalism and justice.”⁴⁴ As such, independent and functional court systems

remain vital in establishing new norms and legal cultures in periods of democratic transition. Despite the country's many legal reforms in transparency, the creation of new judicial roles, and judge impartiality, Chile still faces challenges to the effectiveness of its legal system.⁴⁵ In the face of slow-moving trials and a lack of justice for the thousands who suffered torture, detention, serious injury, and death at the hands of state agents in 2019, one must consider elevating these claims to an international level.

Perhaps part of the problem is public opinion. "There should be an overwhelming majority of Chileans who denounce the [Pinochet's] dictatorship and the military coup and acknowledge that the military destroyed democracy," said Marta Lagos, director of the regional polling firm Latinobarómetro and founder of pollster Mori Chile. "That would be the normal situation in a normal country. But that's not the case."⁴⁶ The collective memory of Pinochet's brutalities at times seems clouded: "A July[2023] poll by the Center for Public Studies, a Chile-based foundation, found that 66 percent of respondents agreed with the statement that rather than worry about the rights of individuals, the country needs a firm government."⁴⁷ Many now interpret Pinochet as having freed the country from Marxism, and gloss over the horrific human rights abuses that occurred. It is not hard to imagine that such a mindset is yet another hinderance to justice being served in the wake of the 2019 police brutality.

A Path Forward

Article 5 of the 1980 Constitution states that the state must protect citizens' rights as defined by the state "as well as any international treaties ratified by Chile and which are in force."⁴⁸ Thus, cases involving violations of an individual's human rights may be submitted through petition to the Inter-American Commission of Human Rights and brought to the Inter-American Court of Human Rights. This linkage between domestic Chilean criminal procedure and the

Court offers the possibility of prosecuting the Chilean state itself for its negligent fulfillment of justice.

The Court set a precedent for charging the state for failing to deliver justice in 2010 when Montiel Flores and Cabrera García were arrested by Mexican soldiers and tortured.⁴⁹ In this case, the Mexican state was charged with a lack of due diligence in the punishment of those responsible, an inadequate investigation into the alleged torture, and the misuse of military courts to investigate human rights violations.⁵⁰ Hypothetically, this precedent could allow the Inter American Court of Human Rights to claim jurisdiction under the failure of domestic courts to fulfill justice. The Court pursued the case under Article 25 (1) of the Convention of Inter American Human Rights, which states “the obligation of every state party to provide, to all persons subject to its jurisdiction, an effective legal remedy against acts that violate their fundamental rights.”⁵¹ When a state ratifies an international treaty such as the American Convention, “all its organs and its judges are also bound by that treaty” and must ensure that the values embodied in the said treaty are not inhibited by the enforcement or proceedings of domestic laws and courts.⁵²

Conclusion

In 2019, the Carabineros de Chile demonstrated a capacity for brutality and torture, inflicting severe physical injuries on protesters and bystanders. As few perpetrators have been held accountable, the progress of the ongoing Chilean transition to democracy is placed at risk by the failure of domestic courts to guarantee pathways to justice. In attempting to plot a path forward from 2019 and address the authoritarian legacy of the Carabineros, victims of human rights abuses in Chile may consider leveraging their constitutionally bound access to the Inter-American Court of Human Rights to file complaints against the state and its agents. While

Chile's democracy remains in transition, the demand to fulfill justice for victims may serve as an opportunity for the nation to strengthen its commitment to international human rights doctrine, whether by choice or force.

ENDNOTES

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²² Bonner, "The Politics of Police Image," 674.

²³ Bonner, "The Politics of Police Image," 681.

²⁴ Bonner, "The Politics of Police Image," 683.

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