

Vaccines are Not Enough: How Failure to Protect Human Rights compromised Chile's COVID-19 response

Executive Summary
October 2021

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The adverse human impacts of the COVID-19 pandemic have been felt around the globe, and the Latin America and the Caribbean region has been no exception.¹ As of 11 October 2021, the Pan American Health Organization (PAHO) had reported over 41.9 million COVID-19 cases in the region. More than 1.2 million people have died due to COVID-19.² Inequality has exacerbated the negative social and economic impact of the pandemic, particularly on persons from marginalized groups such as migrants, women, and LGBTI persons.³ The outbreak of pandemic in Latin America has also taken place in a moment of massive social mobilizations demanding profound changes in the social and economic policies.⁴

In Chile, the COVID-19 pandemic has coincided temporally with the emergence of widescale protests and social mobilization. Despite the country's relative economic⁵ and democratic stability immediately prior to the outbreak of the pandemic, Chile was in fact already facing social and political upheaval, in part as a result of deeply unequal access basic necessities. While the Government has taken important public health measures to tackle the effects of the pandemic, the pandemic has served to magnify and intensify these inequalities. This in turn, has fuelled further calls for social change.

The COVID-19 response of Chilean authorities also illustrates vividly the risks and limits of the prolonged use of states of emergency as a legal basis to enable regulatory measures of tackling the pandemic. To its credit, Chile has implemented a highly successful vaccine program and taken a number of other important public health measures to improve the well-being of its inhabitants. Nevertheless, these measures have proved insufficient to curb the spread of the virus and ensure full compliance with Chile's obligations to respect, protect and fulfil the right to health.

It is in this context that this report examines the human rights impacts of the pandemic and the responses of the Chilean authorities.

¹ Pan American Health Organization, Latin America and the Caribbean surpass 1 million COVID deaths, 21 May 2021, available at: <https://bit.ly/2USKaNC>

See also: DW, COVID-19: Latinoamérica es la región más afectada en el mundo, 27 July 2021, available at: <https://bit.ly/2UZgXdD>

² Pan American Health Organization, Geo- Hub Covid-19 – Information System for the Region of the Americas, available at: <https://bit.ly/2TjA00>

³ See for instance: R Green, Covid-19: Latin America's deepest crisis for a century foments major change, International Bar Association, 27 July 2021, available at: <https://bit.ly/3i8eFIS>; International Commission of Jurists, Invisible, Isolated, and Ignored: Human Rights Abuses Based on Sexual Orientation and Gender Identity/Expression in Colombia, South Africa and Malaysia, 2021, available at: <https://bit.ly/3okJqOg>

⁴ See for instance: BBC News, Ola de protestas en América Latina: ¿puede la amenaza de una nueva "década perdida" explicar lo que ocurre en las calles?, 29 November 2019, available at: <https://bbc.in/3xaqxhE>; CNN en Español, ¿Primavera Latinoamericana? 2019, un año de protestas en la región, 22 November 2019, available at: <https://cnn.it/3iT5vPB>

Also see: In Bolivia: B Miranda, Protestas en Bolivia tras la cuestionada victoria de Evo Morales: cómo se radicalizaron las manifestaciones y la violencia en el país, BBC News, 7 November 2019, available at: <https://bbc.in/3rA5jZm>

In Colombia: D Pardo, Paro nacional en Colombia: 3 factores inéditos que hicieron del 21 de noviembre un día histórico, BBC News, 22 November 2019, available at: <https://bbc.in/3i4jNO4>

In Ecuador: BBC News, Crisis en Ecuador: continúan las protestas mientras el gobierno y el movimiento indígena se preparan para dialogar este domingo, 11 October 2011, available at: <https://bbc.in/3yiXSYy>

⁵ According to the 2020 Human Development Report, among the Latin America Countries, Chile is first in the Human Development Index ranking. Globally, out of 189 countries, Chile is in 48th place.

See: United Nations Development Programme, Human Development Report 2020, The next frontier, Human Development and the Anthropocene, 2020, page 343, available at: <http://hdr.undp.org/sites/default/files/hdr2020.pdf>

Section I of this report presents a brief summary of the most relevant international human rights law and standards applicable to the measures implemented by the Chilean government in response to COVID-19. It considers the rights to health, life, freedom of movement and peaceful assembly. In relation to the right to health, **States have an obligation to ensure immediate access to at very least the “minimum essential level” of health services**, facilities and goods on a non-discriminatory basis. This includes providing diagnostics, medicines, vaccines and therapeutics against infectious diseases, including COVID-19.

As far as the right to life is concerned, States are required to **take appropriate measures to ensure protection of life against the many life-changing and life-threatening risks presented by COVID-19**. To do so, States also have the duty to address “the general conditions in society that may give rise to direct threats to life”,⁶ including life-threatening diseases. Such conditions include the the pandemic itself as well as “conditions in society” such as poverty and inequality that compound the virus’s potential threat to life.

Chile’s COVID-19 response measures have included severe restrictions to the rights of freedom of movement and peaceful assembly. The rights to **freedom of movement and peaceful assembly are essential to the full development of individuals and in shaping societies**, for instance by providing scope for governments to be held to account. Any limitations on these rights must comport with the principle of legality and be, necessary, proportionate, and non-discriminatory. This is particularly important at this time when a new Constitution is being drafted. Similarly, where a state of emergency is applicable, States must ensure that derogating measures are (i) strictly necessary to meet a specific threat to the life of a nation (ii) be non-discriminatory (iii) temporary, and (iv) subject to periodic review.

Section II of the report summarizes aspects of the human rights situation in Chile before the outset of the COVID-19 pandemic. On this matter, it is noted despite its relative overall high level of wealth, when it comes to economic distribution, evidence suggests that **Chile is one of the most unequal countries in the Americas**. This inequality gap is in part, a result of the economic model adopted in Chile, which gives private businesses the primary role in the provision of social services.

One of the main consequences of this gap is that, even before the pandemic, a significant number of Chilean inhabitants, particularly persons from marginalized or disadvantaged groups, were **struggling to secure sufficient income to guarantee themselves an adequate standard of living and access adequate healthcare services**. This suggests significant shortcomings in Chile’s

⁶ UN Human Rights Committee, General Comment No. 36: Article 6: right to life, CCPR/C/GC/36, 3 September 2019, para 26.

performance in discharging its legal obligations under international human rights law, including the International Covenant in Economic, Social and Cultural Rights.

Section III addresses the COVID-19 situation in Chile. It analyses some **key aspects of the response of the Chilean Government**, including the health and social relief measures adopted by the Government. In this respect, some legal restrictions relating to the acquisition of health goods and services and the hiring of health workers and other medical personnel. Likewise, in response to COVID-19, Chile created an **integrated health network for COVID-19** (*red integrada de salud COVID-19*) **that played a key role in avoiding the collapse of the health system** by, for instance, allowing people to access either to public or private hospitals. Despite these laudable achievements of Chile's response to COVID-19, **significant disruptions in access to non-COVID-19 related health services have been reported**, including access to reproductive healthcare services.

The Chilean authorities also **adopted social relief measures from the outset of the COVID-19 pandemic**, aiming to alleviate the negative socio-economic impacts of the pandemic. These social relief measures included the provision of economic benefits and help to families in vulnerable situations. Over time, the Government expanded the scope of these measures. Unfortunately, **the measures have been insufficient to effectively respond to the adverse human rights impact wrought by the pandemic**. Overall, **the pandemic has exacerbated the already troubling levels of poverty and inequality in Chile**, particularly in regard to persons from marginalized groups of the population.

Two key elements of Chile's COVID-19 response are discussed in detail in Section IV: the **"state of exception", declared by the government** on 18 March 2020, and its COVID-19 **vaccine rollout programme**, which began on 24 December 2020.

On 18 March 2020, at the onset of the COVID-19 pandemic, Chilean President declared a "state of exception of catastrophe for public calamity" (*Estado de Excepción Constitucional de Catástrofe, por Calamidad Pública*). It lasted until 30 September 2021. Since the state of exception was in force for 18 months and 12 days, its use characterized the Government's responses to the pandemic with various **consequences that threatened human rights and the rule of law**.

For instance, military forces have had a key and outsized role in Chile's response to the COVID-19 pandemic. The state of exception allowed the President to appoint 16 "Chiefs of National Defence" (*Jefes de la Defensa Nacional*), one in each region of the country. These Chiefs, who are high-ranking military officials, **had extensive powers in their designated regions, including powers more appropriately held by public health experts** in the context of public health

emergency such as the one brought about by COVID-19. Though the Chiefs followed guidelines issued by the Ministry of Health and other health authorities, **the power by which public health measures were implemented lied inappropriately with the Chiefs of National Defence**, who enacted resolutions (*resoluciones exentas*) on COVID-19 affairs. These resolutions included severe restrictions on the right to freedom of movement, the use of public transport, the use of private vehicles, and mandated quarantines.

Another important consequence was the imposition of restrictions on freedom of movement. These restrictions include quarantines and curfew. Chile also had its borders closed for almost the entirety of 2020 and part of 2021. These measures **had a considerable impact on the daily lives and human rights of Chilean inhabitants**. For instance, human rights defenders and independent lawyers experienced difficulty in accessing permits to go to police stations and detention places in quarantine zones. In addition, the criminal code was used to police people who violated quarantines or curfew.

With regard to COVID-19 vaccines. **Chile's vaccination strategy is arguably one of the most successful in Latin America**. According to Chilean official data, as of 12 October 2021, 89,05% of Chilean population was fully vaccinated.⁷ This success has been attributed to several factors, including sufficient monetary resources to purchase vaccines; adequate planning for the acquisition of vaccines; previous experiences in vaccine campaigns; and State capacity and infrastructure to implement the vaccine plan.

Despite an effective rollout, it should be noted that the COVID-19 cases and deaths did not decline significantly during the first part of 2021 in Chile. This demonstrates that **although vaccines are essential to tackle the COVID-19 pandemic, they are not alone enough to stop COVID-19 transmission** particularly at earlier stages of rollouts. The situation of migrants and refugees in Chile during the pandemic is particularly perilous. Migrants with irregular status have been disproportionately impacted by the pandemic and have **faced challenges in accessing social relief benefits and the COVID-19 vaccines on an equal basis with Chilean citizens**.

Section V concludes by providing recommendations to the Chilean authorities to assist in ensuring increased compliance with international human rights law and standards. For instance, **sanitary measures taken to response to COVID-19 must fully respect the rights to freedom of movement and freedom of assembly**. Only restrictive measures that are non-discriminatory, necessary and proportionate to the challenges responded to will be lawful. Chilean authorities should take concrete steps to enforce existing legal human rights protections for refugees and migrants, particularly migrants with irregular status in the country.

⁷ Gobierno de Chile, Plan Nacional de Vacunación, available at: <https://bit.ly/3mxw4vj>

The Constitutional Convention (*Convención Constitucional*) should ensure that the **new constitution fully incorporates the rights guaranteed under international human rights law, including all economic and social rights.** This will assist in ensuring the government can be held to account for the elimination of poverty and the eradication of inequality. The Constitutional Convention should also ensure that **the new Constitution improves on the regulation of states of exception** (or emergency), to ensure that all emergency response measures are undertaken in accordance with international human rights law and standards.

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