

**DERECHOS DIGITALES REPORT TO INTERNATIONAL
HUMAN RIGHTS ORGANIZATIONS**
Human rights situation and the use of technology
during social protests in Chile 2019

I. Introduction

This report is presented by Derechos Digitales, an independent non-governmental organization, founded in 2005, with its main offices in Santiago de Chile. Our aim is the defense and promotion of fundamental rights in the digital environment in Latin America using advocacy tools among policymakers, private companies and the general public, to promote social change around the respect and dignity of people.

In this document, Derechos Digitales shares its concerns on the human rights violations that have occurred in Chile since October 18th, when a series of demonstrations started first in Santiago and then throughout the country. We are particularly interested in those cases in which the use of technology played a relevant role either by facilitating the exercise and protection of citizen's rights or by allowing the restriction of fundamental rights by State or other actors.

The use of communication technologies has been important for the exercise of freedom of expression and peaceful assembly and association, which are in the basis of non-violent social protests. They have been particularly used to maintain the flow of information among social actors through digital messaging platforms, social networks and e-mail; to register and report abuses by State authorities through photographs and videos that are shared in real time in webpages and social networks; to inform the public about the protests from a citizen perspective which challenges the state and traditional media narrative; to share information about legal assistance and connect with human rights defenders to denounce abuses and obtain information in real time about the legality of the actions taken by repressive forces or other information shared online (e.g. to record State actors actions during protests).

Moreover, since the beginning of the protests, citizens have found in social networks an alternative and complementary space to the street protests. They have allowed the expression of diverse points of view on the national political crisis and the demand for actions, the reporting of power abuses – with some photo or video recordings becoming viral, the questioning of official narratives and the exchange of information to forge independent opinions on the situation.

Derechos Digitales has monitored the information that circulated on the Internet in order to fight disinformation and assist the legitimate exercise of human rights, but also to denounce the unbalanced coverage of traditional media, which at least at the

beginning, exacerbated violent episodes which helped legitimizing the use of military forces when the government declared a “state of emergency” in the country.

II. Fields of human rights violations in relation to the use of technology during social protests in Chile

Since the beginning of the social movements that led to massive citizens’ demonstrations in Chile starting on October 18th, our work for the defense of fundamental rights in the digital environment has focused in monitoring the following aspects of the exercise of human rights in relation to the use of technology:

(i) Monitoring the functioning of communication networks

Through our different communication channels we have received reports of anomalous functioning of Internet connections, digital messaging apps and mobile networks. In coordination with other civil society organizations and volunteers, Derechos Digitales has developed a series of tests to explain possible reasons for the interference on the networks, which include congestion, physical damage to service provider’s infrastructure and general malfunctioning of apps which were not specific for Chile.

Until this date, after developing a series of technical tests, we haven’t found any evidence of Internet shutdowns, general network interferences or the blocking of specific platforms or services that can be attributed to State action. However we keep constantly monitoring the adequate functioning of networks and services.

(ii) Selective interference in communications and use of malicious software

Derechos Digitales is working on a specific report on an attack against Judge Daniel Urrutia, who is in charge of judicial supervision of some human rights violations reported against the police and previous causes related to their staff illicit actions.

Judge Urrutia has reported to the High Complexity Crimes Unit from the Public Prosecutor’s Office Centro Norte that his telephone communications might be intervened. In his complaint, he details unusual problems he identified in both his personal and professional phones after having publicly intervened in discussions around topics under investigation for the occasion of social protests. One of the cases under his responsibility is related to alleged tortures inside a subway station in Santiago. He was also one of the judges who intervened in favor of the National Institute of Human Rights (INDH) so that its team members could assist people that were wounded by shootings from the police in one of the main hospitals of Santiago.¹

¹ Jorge Molina, Fiscalía investiga espionaje telefónico a juez de garantía que denunció violación de DDHH, 5 de noviembre de 2019, Reportajes Bío Bío, disponible en: <https://www.biobiochile.cl/especial/reportajes/2019/11/05/fiscalia-investiga-intercepcion-telefonica-a-juez-de-garantia-que-denuncio-violacion-de-ddhh.shtml>

Urrutia's mobile devices have been delivered to the Human Rights Unit of the Investigations Police for forensic analysis and it has been requested that the Justices from Santiago's Court of Appeals responsible for authorizing communications' interventions under the Intelligence Services Act to inform if his numbers were included in requests from intelligence services belonging to police or Army.

Derechos Digitales has also analyzed cases of phishing attacks that used texts referring to the demands of protesters and their call for government's political responsibility. We were able to determine that it constitutes a form of click jacking that uses Google and Twitter's infrastructures. There are reports on this technique since several months from different places in the world and the link used in the Chilean case had already been reported to Google's Bug Bounty program.

The malware works by closing the victim's Google account session so that, in order to login again, she has to input her information to a malicious platform that immediately changes her password and requests Twitter to connect an app to the account. Once it has done that, a message is sent to all of the contacts of the affected account. People who are infected lose access to their Google account and to recover it they have to change their passwords or set the two-steps verification.

Regarding the attribution, it seems to have been an opportunistic attack from foreign groups, especially because there are tracks of similar activities since before the social mobilization in Chile and similar links had been used for the same purpose in the past.

(iii) Functioning of newsworthy social network accounts and relevant social network sources for citizen organization

Derechos Digitales and other civil society organizations such as Fundación Datos Protegidos,² have provided assistance and information in situations of suspension or deletion of social network accounts that were used to share news and relevant information for social organization.

From the cases received by the organizations, which respond to only a part of what happened during the period, it was possible to acknowledge that the protocols and tools used by platforms to manage content do not adequately respond to the type of exceptional situations such as the ones faced in Chile and marked by a prolonged and large scale period of social unrest.

We have witnessed cases in which particularly relevant accounts for the reporting of the protests were completely eliminated (in the case of Instagram) or had their traffic artificially compromised (in the case of Facebook). A lower number of reports were received due to the blocking of accounts in Twitter.

² Libertad de expresión en el contexto de las protestas y movilizaciones sociales en Chile durante el estado de emergencia entre el 18 y el 27 de octubre 2019. Documento realizado en conjunto por la Fundación Datos Protegidos y el Observatorio del Derecho a la Comunicación. Disponible en: https://datosprotegidos.org/wp-content/uploads/2019/11/Informe_CIDH_Preliminar_DP_ODC-1.pdf

In Facebook's last Global Transparency Report,³ which covers a period immediately previous to the social protests in Chile, there is disaggregated information about content that were removed from the platform due to violation of their community standards. In the same report, Facebook states that its' goal is to create a community that is safe and inclusive for more than 2 billion of people that use it all around the world regardless of their culture or perspectives. In such sense, community standards allow the platform to define what is or not allowed in Facebook. Violations to such rules are punished with deletion and to identify them Facebook implements both automated technology and human resources to act immediately. Because of that, they acknowledge the possibility of errors in their decisions and commit to react gradually depending on the gravity of the subject or the repetition of infractions.

Among the most common reasons declared by affected users and platforms for restrictions on the circulation of content or on the well-functioning of social networks accounts during the period of social protests in Chile were:

- (a) Application of community standards without due considerations of human rights implications that prevent the distinction between the legitimate suppression of violent and illicit content and those that are not only legitimate, but important and necessary in a context of social protest and State repression. Examples of these are the images of people who were wounded by police shootings against protesters that are certainly shocking and sometimes violent, but allowed raising an alert regarding the police protocols that were being ignored in these situations. Such images may be automatically identified and deleted after being flagged as violating community standards because of violent or graphic content. Another rule that could presumably be considered violated by some of the messages shared in this period is related to the incitement of violence. This could be the case of some declarations against police and military forces or private property that have a political context and do not represent any serious threat.
- (b) Flagging of accounts and content as a form of censorship. As presented before, platforms have community standards, automated tools and procedures with human intervention to enforce the application of their rules. However, evidence collected on the suspension of accounts due to malicious uses of platforms' flagging systems seems to indicate a structural flaw in responding to exceptional situations like this one. The absence of a mechanism that allows quickly reacting to these situations let the accounts that are dedicated to give information on social protests vulnerable to massive flagging by third parties intended to censor their content, particularly in relation to content that are in a gray area regarding platform rules, such as some of the ones on explicit violence. Coordinated efforts of this kind can be easily taken by groups that oppose the protesters and their demands.

³ Disponible en: <https://transparency.facebook.com/community-standards-enforcement#graphic-violence>

- (c) Security attacks to accounts. In different cases, Facebook has reported that one of the reasons for taking down accounts is because of anomalous behavior that could indicate a security flaw. However, there are no further details regarding the nature of such attacks or the reason why eliminating the account would be the logical solution for the company.

To the already complex methods of report and review of this type of decision – which are, as evidenced, not adequate for these exceptional situations – it sums the lack of information offered to affected users by social networking services providers. This prevents users from understanding exactly why the takedown or the account suspension occurred and forces civil society organizations to intervene as trustworthy third parties mediating the contact between users and companies to obtain the missing information, slowing the process of recovery of content and risking the sharing of serious or urgent facts. In several reported cases, affected users don't receive any type of information regarding the reasons why their accounts or content were eliminated or answers that would allow a better use of platforms in the future.

(iv) Use of technology for exercising the right to non-violent social protest

Derechos Digitales has offered recommendations for the use of technology during non-violent social protests in a safe way. That included advice regarding the anonymity of third parties and for communicating without access to telecommunication networks. These guides are concentrated in two main publications available in our webpage.^{4,5}

(v) Information disorder through digital networks

Derechos Digitales has provided recommendations through our communications' channels to fight disinformation and its' spreading. We have also collected non-comprehensive evidence on organized attempts to position certain topics on the public debate using Twitter hashtags. Despite the fact that until the date they don't have the same strength seen in other parts of Latin America, like Brazil, Mexico or Venezuela, it is an interesting example on trying to artificially direct public discussions against social protests by using technologies.

There have also been reports of cases in which information on actors perceived as opponents of the protests had their visibility increased by paid adds in social networks. This was the case of the self-called "yellow jackets", groups of armed civilians organized to combat protesters, whose image was shared as a warning. The attempt was to build an alternative narrative emphasizing the order imposed by the violence of private parties in opposition to an idea of chaos and illegality attached to social protests.

⁴ Disponible en: <https://www.derechosdigitales.org/wp-content/uploads/manual-medios-independientes-1.pdf>

⁵ Disponible en: <https://www.derechosdigitales.org/13972/inquietudes-relacionadas-con-las-tecnologias-en-el-contexto-de-protestas-en-chile/>

Finally, we have received reports of the existence of social network accounts which behaved similarly to bots. Their messages contain unverified content aimed at inciting polarization and a deepening of the conflicts.⁶ In some cases, Derechos Digitales has received reports that these accounts were created using personal data of elderly people that do not use social media or are aware of these technologies.

Derechos Digitales will keep monitoring the evolution of such phenomena regarding the information shared on the debates around the constitutional process that includes two plebiscites – one to decide on drafting a new Constitution or not and another to approve the new text, in case the idea of a new Constitution is accepted –, as agreed by main political parties on the last November 15th.

During this period some initiatives on news fact-checking were developed, trying to offer contextual information to the ones that quickly became viral in social networks. In this sense, it is worth mentioning the work of Diario La Tercera and the Fast Check project.⁷ However, there were important deficiencies in the way fact-checking was developed by specialized agencies, or internally, by the traditional media before presenting information to the national audience. This was the case, for instance, of the broadcasting by Televisión Nacional de Chile (TVN) of images of an alleged incendiary act in a bank agency that were questioned by experts who identified evidence of manipulation at least to exaggerate the dimensions of the fire.⁸ This led to the presentation of more than 360 reports to the National Television Council, which is responsible for observing the respect of the norms that prohibit the broadcasting of inappropriate or offensive content in television.⁹

Some groups have proposed the use of online citizen participation tools during the evolution of the mobilizations. They were usually presented as attested by international technology experts and, without enough methodological rigor, tried to represent the action priorities to address social demands presented by the population. This was the case of Chilecracia (<https://chilecracia.org/>), which had a lot of visibility in social media and attempted to present itself as a useful and neutral instrument, but based its raking of different proposals in a non-transparent or accountable algorithm. The tool and its results are presented in an isolated way, without any considerations on the context, presenting false dichotomies in the exercise of fundamental rights and resulting in biased trends which – protected by an idea technological objectivity and public

⁶ Una muestra de tales contenidos identificados por un miembro del equipo de Derechos Digitales puede verse aquí: <https://twitter.com/pabloviollier/status/1194999893129072641?s=12>

⁷ Disponible en <https://www.instagram.com/fastcheckcl/>

⁸ Bernardita Villa, Cuestionan video viral de incendio en sucursal bancaria: habría sido editado para exagerar llamas, 11 de noviembre de 2019, disponible en: <https://www.biobiochile.cl/noticias/espectaculos-y-tv/tv/2019/11/11/cuestionan-video-viral-de-incendio-en-sucursal-bancaria-fue-editado-para-exagerar-llamas.shtml>

⁹ Rodrigo León, CNTV confirma más de 360 denuncias contra TVN por imágenes de incendio en sucursal bancaria, 15 de noviembre de 2019, disponible en: <https://www.eldinamo.cl/actualidad/2019/11/15/cntv-denuncias-tvn-incendio-banco-colegio-de-periodistas/>

participation – altered the public opinion regarding the urgency in which some measures should be adopted.¹⁰

(vi) Documentation of cases of police abuse during the repression of social protests

Derechos Digitales has indexed videos recorded by people who personally testified human rights violations by order and armed forces which are available online or have been shared directly with the organization through our official channels. With the support of an international university we are beginning to verify the images so they can serve as evidence for judicial actions aimed at sanctioning the Chilean state for these abuses. Our will is to make them available to other human rights defenders and international organizations to investigate and sanction these violations.

(vii) Documenting cases of equipment confiscation, erasing of graphic materials and other aggressions against who graphically document protests

Several people have reported being harassed by the police while trying to document their behavior and heard from the police that this was an illegal practice. Police actions for avoiding being registered included detention, insulting and hitting. There is also evidence of forced confiscation of phones from people who were recording the police and situations (registered in video) of phones destruction by police officers.¹¹

Derechos Digitales started a campaign on the right to record the action of armed forces based on the right to freedom of expression and – eventually – on the right to legitimate defense. We have also made a form available in our webpage for people to report abuses of this nature.

(viii) Monitoring of expression through social media and surveillance of social leaders by police forces

Derechos Digitales has received reports on investigations and intimidation by police forces which were based on information obtained by the monitoring of social media.¹² This connects with recent cases of State abuses for the repression of Mapuche indigenous leaders,¹³ and is particularly worrying for the absence of norms regulating the collection of such information or defining the purposes and limits for its use.

¹⁰ Ciper Académico, ¿Chilecracia? No gracias, quiero democracia, disponible en: <https://ciperchile.cl/2019/11/03/chilecracia-no-gracias-quiero-democracia/>, 3 de noviembre de 2019

¹¹ En video disponible aquí puede evidenciarse uno de los casos denunciados a través de redes sociales: https://twitter.com/phillip_molina/status/1195553077924945921?s=21

¹² Gobierno rastrea rol de venezolanos en Twitter, La Tercera, 28 de octubre de 2019, disponible en: <https://www.latercera.com/nacional/noticia/gobierno-rastrea-rol-venezolanos-twitter/880408/>

¹³ Disponible en: <https://www.derechosdigitales.org/wp-content/uploads/tecnologia-y-vigilancia-en-huracan.pdf>

Such acts demand even greater attention when analyzed together with the information published by Interferencia,¹⁴ which revealed a series of leaks of internal police documents by hackers in an episode that became known as “pacoleaks”. The information evidences how the police has surveilled environmental organizations, worker’s unions, political organizations and human rights defenders. Although the information does not indicate a particular monitoring through electronic means, it is not impossible that these actions were also taken.

(ix) Due process standards in the use of graphic material available in social networks or obtained by police cameras for criminal prosecution

Authorities have declared their intention to use graphic materials (videos and photos) displayed in social media for criminal prosecution regarding acts of violence and damaged to public and private properties during the social protests.¹⁵

The use of evidence obtained by devices like surveillance cameras and drones has to attend the standards of proof established in the Chilean criminal process system to effectively guarantee the right to defense and the respect of the principle of innocence. It is very concerning, for instance, the case of a foreign person who was erroneously identified by video as participating in an excessive demonstration in a subway station and had her image shared widely, including with the press.¹⁶

It is worth mentioning the announcement made in a television by the Governor of the Metropolitan Region in November 12th, who said the audiovisual materials obtained will be processed with facial recognition technology. There are no technical details on the type of technology that they have available for this type of operation, the minimum standards that the materials should have to allow precise identification or if this is even possible, technically speaking. All of this is more relevant considering the high rates of false positives presented by facial recognition systems. An action like this would demand the highest standards which include, in the first place, publicizing the protocols of action, the types of technologies used and the types of training they are subjected by system operators.

In the same sense, in the most recent update of police protocols during protests, it was determined that members of police special forces are equipped with GoPro cameras that record their actions to serve as evidence in investigating eventual cases of abuse.

¹⁴ Disponible en: <https://interferencia.cl/articulos/pacoleaks-estos-son-los-nombres-y-organizaciones-que-han-sido-vigiladas-por-carabineros-en>

¹⁵ El Intendente de la Región Metropolitana, Felipe Guevara, pidió aislar a los delincuentes. «Esto significa dejarlos solos para que las policías puedan hacer su trabajo de orden público». También «denunciar con fotografías y videos los delitos que puedan ocurrir en las calles» y aseguró que hoy día al menos 3.500 personas lo hicieron. María Ignacia Inostroza, Intendente pide aislar a delincuentes y llama a denunciar actos vandálicos, 12 de noviembre de 2019, Rock&Pop, disponible en: <https://www.rockandpop.cl/2019/11/intendente-llama-a-ciudadanos-a-denunciar-actos-vandalicos/>

¹⁶ T13, ataques en el Metro fiscalía asegura que no existen antecedentes sobre nacionalidades específicas, 28 de octubre de 2019, disponible en: <https://www.t13.cl/noticia/nacional/ataques-en-el-metro-fiscalia-asegura-que-no-existen-antecedentes-sobre-nacionalidades-especificas>

The use of both types of graphic materials have to comply with due process standards so that the evidence can be used in criminal procedures.

III. Recommendations

For Chilean State:

Immediately comply with the obligations contained in the American Convention on Human Rights and other international human rights standards, adopting actions to prevent human rights violations by state agents.

Orient through the Minister of Interior the immediate suspension of repression and violent actions from police forces on people that are peacefully protesting and instruct the investigation of situations of violence reported, applying due administrative and criminal punishments.

Urge the Chilean government to conduct a complete and guided by the Commission review of the protocols of action of Carabineros de Chile and the Army for the use of graphic materials obtained from different technological devices – like surveillance cameras, citizen shootings or GoPro devices in power of police forces – exclusively under the legal demands and due process.

Develop and share information to the public on protocols and norms that orient the use of such technological surveillance devices, as well as procedures for the use of open-source intelligence systems on social networks.

Refrain from using technologies that can imply any interference in citizens' communications, either massively or through selective interference on the communications of specific social actors or operators from the judicial system.

For private agents:

Recognize international human rights standards for the protection of freedom of expression, peaceful assembly and association or the right to protest on the streets and online, and applying Terms of Service in accordance with your due responsibilities derived from the United Nations Guiding Principles on Business and Human Rights. Particularly through the review of protocols regarding the use of automated tools and human intervention in situations of emergency or social conflicts.

Refrain from developing and promoting technocratic decision-making tools that isolate and bias the debates around solutions for the social crisis exposed by the current mobilizations.

Refrain from sharing personal information or graphic and audiovisual content with police or state authorities without express judicial orders. Publicize any attempt of intimidation or threat by state agents to force collaboration.

For the Inter-American Commission on Human Rights:

Review completely the adequacy of the measures adopted by the State of Chile according to the Agreement on the Compliance of the Recommendations issued by the IACHR in the case *Lemun Saavedra vs. Chile*.

Urge the government of Chile to conduct a complete review of police and Army protocols under the supervision of the IACHR, including regarding the treatment of people who register their actions and the use of open-source intelligence systems on social networks.

Urge the government of Chile to implement a general legal framework detailed the conditions for the use of video surveillance for different purposes, including public security, considering that the use of surveillance devices in public spaces compromise to a certain degree the exercise of fundamental rights, as it was evidenced in the present case. This obligation may only be adequately satisfied through the approval of a law, which corresponds to the exclusive normative instrument when it comes to the intervention on fundamental rights.¹⁷

November 18th, 2019

¹⁷ Derechos Digitales has formulated recommendations on this matter which are available at: <https://www.derechosdigitales.org/wp-content/uploads/propuesta-estandares-legales-vigilancia-chile.pdf>