

Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end Feb 2011*

**The figures provided in this bulletin incorporate data received from the Human Rights Programme of the Ministry of the Interior and Public Security and from the Chilean prison service (Gendarmeria), complemented by the Observatory's own databases. These are updated directly from the texts of judicial verdicts and other open access sources. .*

The Human Rights Observatory of the Universidad Diego Portales is a joint initiative between the University's Human Rights Centre and Social Science Research Institute, supported by the Ford Foundation and the Heinrich Boell Foundation and linked to a research project with the Chr Michelsen Institute of Norway. The Observatory forms a regional network together with partner projects in Argentina and Peru. It was set up to map current judicial activity in Chile for human rights violations carried out during the 1973 to 1990 military dictatorship, and create a database of cases presently ongoing in national courts. This bulletin provides a summary of case activity and other justice-related developments, based on the Observatory's own database, information supplied by the abovementioned institutions, and additional research using open sources.

To keep up to date with the latest developments between issues, look for us on Facebook (Observatorio ddhh Chile) or Twitter (www.twitter.com/DDHHICSUDP - Spanish only), or visit the current news section of our web page www.icso.cl/observatorio-derechos-humanos .

CASE STATISTICS FOR CHILE

Consistency of data

We are continuing to find discrepancies between numbers and data produced by the various state actors involved with cases for past human rights violations. This month queries have even arisen as to the exact number of individuals currently in prison and the end date of their sentences. For the present the bulletin sets out the most accurate possible synthesis of all presently available data sets, corroborated where possible against primary sources.

Cases and victims

According to Interior Ministry Human Rights Programme data, 1,446 investigations (cases) were ongoing in Chile at end March 2011 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. The vast majority of



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



these cases are over cases of disappearance or politically-motivated execution; while a very small proportion (24 of the 1,446) represent cases brought by survivors of torture and/or political imprisonment. (One additional case, Colonia Dignidad, investigates criminal conspiracy and related crimes not yet associated with named victims). The Human Rights Programme of the Interior Ministry is an active participant in 22.7% of the cases it currently tracks (328 of 1,446 cases).

The total of open cases continues to rise as a result of new complaints generated by the judicial branch at the beginning of the year. These aim to provide full coverage of judicial activity – understood as an ongoing case or a past case which was investigated with due diligence - for all known victims of forced disappearance and execution in Chile between 1973 and 1990.*

** Official numbers for deaths and disappearances in Chile between 1973 and 1990 remain at 3,195. This total should however be revised downwards to 3,186, to reflect errors discovered in 2008 and 2009 in official registers*

As we have previously observed, this level of judicialisation may well be amongst the highest ever achieved in this kind of context, even taking the most conservative of the currently available estimates of case totals. This achievement should however be put into context: only around 30% of people condemned for these crimes are receiving sentences involving actual jail time. Moreover, at least 6 of the 75 individuals imprisoned at some time since 2000 have received post-sentencing benefits resulting in their early release (see below).

Agents (Repressors)

According to Interior Ministry Human Rights Programme data, between 2000 and the end of February 2011, **777**** former security service agents had been charged and/or sentenced in Chile for past human rights related crimes (including those with absolutions currently under appeal; but excluding those fully acquitted at final appeals stage of all charges).

*** Over the same period at least 28 more individuals, not included in the total of 778, died while under charges or after having been found guilty. Four of these died while in prison serving confirmed sentences. It is possible that a small number of individuals – no more than half a dozen – were omitted from pre-2000 registers after having been acquitted of similar charges. .*

Of these 777 individuals, a total of **231** have been found guilty in confirmed final sentences. Less than a third of these are however currently in prison. The remainder are free, due either to the immediate concession of non-custodial alternatives such as parole or suspended sentences or to the later granting of sentence reduction or commutation based on good behaviour.

Human Rights Programme and prison service (Gendarmería) records, when combined, accordingly show a total of 68 individuals serving confirmed custodial sentences for human rights-related crimes as of the end of May 2011. However, if press reports of 2 mid-May concessions of early release are confirmed (see below), the total drops to **66**. (See below, section on judicial branch news, for details)



They are distributed across the following facilities:

Military facilities* – 58 prisoners

- Punta Peuco: 47
- Cordillera: 10
- Hospital de Carabineros (Police hospital): 1

** Day to day custodial duties in these facilities are carried out by regular prison officers.*

Civilian jails – 8 prisoners

- CPP Temuco: 4
- CPP San Antonio: 1
- CP Arica: 1
- CP Alto Hospicio: 1
- CCP Concepción: 1

One prisoner who at the time of publication of our last bulletin had not yet begun to serve his sentence should now have done so, after medical reports were delivered to the sentencing judge. He is accordingly included above in the prisoner totals for Punta Peuco. Despite having been sentenced to ten years in January 2011, we reported on various occasions that prison authorities had no record of Luis Osorio Gardasanich, sentenced in January 2011 to 10 years' imprisonment. Unbeknown to prosecuting lawyers, victims' relatives or the Interior Ministry Human Rights Programme, all of whom believed Osorio to be in the Punta Peuco military prison, sources close to the case report that his sentence remained inactive due to representations about his poor state of health. Nonetheless, forensic service reports finally concluded that Osorio was in a fit condition to begin to serve the sentence imposed. He is therefore believed to be currently in Punta Peuco or shortly to be sent there.

Concerns over the absence of any system of monitoring of compliance or completion of prison sentences and full jail terms

The Observatory has recently come up against repeated inconsistencies in data relating to the whereabouts of individuals supposedly subject to prison sentences, and has encountered reluctance on the part of certain official bodies to release relevant information on the grounds that it is 'private' or 'confidential'. We have accordingly approached both the Human Rights Programme of the Ministry of the Interior and the cross-party human rights legislative committees of both houses of the Chilean parliament, to urge the need for a reliable, open system of scrutiny of the actual completion of sentences by individuals imprisoned for human rights-related offences. This is the only way in which guarantees can be offered to relatives and to society as a whole that penalties imposed in its name are actually being applied as was originally intended. Reliable information about the granting of benefits including commutation or reduction of sentences to the same prisoners would also allow for an informed public debate as to the appropriateness of those



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



responsible for crimes which the Chilean courts now recognise as exceptionally grave being afforded the same concessions and benefits as are applicable to ordinary offenders.

To date our petition of an audience with the legislature's human rights committees has gone unanswered. However we understand that the legal section of the Human Rights Programme's Interior Ministry is actively exploring the setting up of a monitoring system for sentences, establishing formal channels of communication with the prison service and with the Justice Minister and his regional delegates that will provide automatic notification when benefits or alternative sentencing measures are conceded to human rights offenders after initial sentencing. The Observatory welcomes this step and we look forward to reporting in future editions as to its progress.

A detailed summary of the individuals involved, listing the cases and sentences against them (in Spanish only), can always be found in the Publications section of our website www.icsoc.cl/observatorio-derechos-humanos

JUSTICE SYSTEM NEWS

Second-in-command of secretive Colonia Dignidad sect flees the country

Hartmutt Hopp, one of six residents of the German-Chilean Colonia Dignidad sect currently processed* for criminal conspiracy in relation to dictatorship-era human rights violations, managed to flee the country on 23 May despite being supposedly subject to supervised bail conditions. Hopp followed in the footsteps of his former boss Paul Schaefer, an ex junior Nazi officer who founded the Colony – also known as 'Villa Baviera' – on emigrating to Chile after WWII. Schaefer also fled Chile, in the mid 1990s, after having been accused of sexual abuse. He was finally tracked down in 2005 in Argentina, thanks to the perseverance of detectives from Chile's Human Rights Brigade who convinced an Argentine judge to place Hopp and other known associates of Schaefer under surveillance while they travelled to and around Argentina. At the request of the Chilean authorities Schaefer was subsequently expelled from Argentina and convicted of crimes of abuse. He died of natural causes in prison while serving his sentence. Although that initial conviction had no link to dictatorship-era crimes, detectives were also actively investigating the role of the Colonia as a clandestine torture centre between 1973 and 1990 and its possible links to the 1985 disappearance of Russian-American scientist Boris Weisfeiler.

Hopp, one of Schaefer's closest collaborators and the orchestrator of the latter's clandestine stay in Argentina, had also been sentenced in 2004 as an accomplice to abuse. But he and other residents of the colony are currently facing charges in the new, human rights-related, investigation. All of the suspects were free on bail at the time of Hopp's escape, and were supposedly barred from leaving the country. Hopp nonetheless managed to leave for Argentina via an Andean land border crossing. At the time of going to press he was believed to be in Europe, possibly in Germany, where his wife currently resides and which has no extradition treaty with Chile. Hopp could not possibly have planned and carried out the escape without assistance, a fact which has provoked renewed questions about the Colonia's financial assets



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



and about an alleged network of high-level national and international contacts and support. In the days immediately following Hopp's escape, the bail granted to his 5 fellow defendants was briefly revoked but finally reinstated by the Appeals Court. The group includes Schaefer's adopted daughter.

The subsecretary of Chile's Ministry of the Interior and Public Security conceded that it would be 'worrying' were it to transpire that Hopp had indeed managed to flee while supposedly under bail supervision. He also admitted that Chile currently has no real capacity to enforce house arrest or other supposed alternatives to preventive detention or to custodial sentences. His admission sharpens the Observatory's already expressed concerns about the increasing concession of these alternatives to repressive agents given custodial sentences.

Remains of former president Salvador Allende exhumed from Santiago's General Cemetery

On 23 May 2011 judge Mario Carozza, the director of the Chilean Forensic Service, and relatives including senator Isabel Allende oversaw the exhumation of the coffin containing the remains of Chile's former socialist president, who died on the day of the military coup of 11 September 1973. The measure had been ordered by the judge as part of a newly-opened judicial investigation into Allende's death, triggered by his inclusion on a list of 726 victims of political execution for whom complaints were submitted to the courts in early 2011 (see below and previous bulletins).

Allende's remains were taken to forensic service headquarters. Tests including DNA comparison with relatives will be carried out in order to definitively establish the identity the remains and cause of death. The tests offer a chance to finally lay to rest speculation as to whether the former president committed suicide or was the victim of assassination by participants in the military revolt. This is the second time Allende's remains have been exhumed: on the first occasion, in 1990, he was subsequently given an official funeral and his remains were transferred to the capital's main cemetery from the almost anonymous coastal site where the regime had ordered his burial in the 1970s.

The new tests, and the media attention that has surrounded them, drove Allende's family to express their distaste at a national TV programme which repeated longstanding conspiracy theories surrounding Allende's death. The family has for the most part always accepted that Allende took his own life. One disputed theory about possible third party involvement examined in the TV programme speculated that the current tests would reveal that the bullet wounds suffered by the former president come from two different weapons.

On 27 May the judicial branch released an interim report, stating that although full results could not be expected for at least three months, preliminary tests suggested that the remains were in fact those of Allende and that they were basically intact, despite the unprofessional conditions in which the first, 1990, exhumation had been carried out.

New forensic reports suggest that the death of former minister José Tohá should be classed as a homicide

The judicial branch announced in mid-May 2011 the results of new tests ordered by judge Jorge Zepeda Arancibia on the exhumed remains of José Tohá González. Separate reports from the national forensic service and the Anatomy Department of the Universidad de Chile's university hospital agreed that the trauma suffered by the former Allende-era minister, who died in 1974 in Santiago's military hospital, was consistent with homicide.

Ten former Navy officers formally charged in the Woodward case

Judge Julio Miranda Lillo, special investigative magistrate attached to the Valparaíso Appeals Court, issued formal charges in mid-May against ten retired navy officers for their involvement in the disappearance of Catholic priest and British citizen Fr Michael Woodward, illegally detained just a week after the 1973 coup. The charge sheet established that both the city's Naval Academy and the sailing ship Esmeralda had been used at the time as torture centres, something which has always been officially denied by the Navy.

The report accompanying the charges also sets out the judge's so far unsuccessful efforts to locate Fr. Woodward's remains. Exhumations carried out in a section of the nearby Playa Ancha cemetery proved inconclusive, despite a reference in a Naval Hospital report from 1973 that suggests Fr Woodward's remains were taken there. Sources close to the investigation believe this may suggest a later clandestine removal of victims' remains, similar to or part of the 'Operación Retiro de Televisores' ('Operation Removal of Televisions'). This latter was the euphemistic name given by the dictatorship to a coverup operation carried out from 1979 to hide evidence of crimes of disappearance by secretly exhuming victims' remains and reburying them in a different location. The operation's existence was discovered over the course of 2003, as detectives involved in a series of supposedly unconnected investigations found that original burial sites to which they were directed or led by reliable informants were empty or contained only fragments of remains. The same sources are accordingly critical of the failure to date to prioritise this particular angle of the Woodward investigation, since if confirmed, investigation of the reburial network offers the potential to clear up not only the Woodward case but also other unresolved cases of disappearance in the same region.

The same sources also report attempts to exert pressure on the judges in charge of the investigation,* due to the central involvement of the Navy combined with the fact that the case is being investigated in the coastal city of Valparaíso where the institution still holds considerable sway. It is therefore noteworthy that the recent bringing of charges represents a considerable narrowing of the pool of suspects: the charges only affect those accused of direct material involvement in the crime and the judge simultaneously decreed the suspension of investigations against 19 other individuals previously classed as formal suspects. Another unusual feature of recent developments is that the judge chose not to directly notify the parties. He is additionally believed to have ordered a delay in attaching the relevant notification to the official case file, supposedly to avoid public attendance or manifestations by



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



relatives at the court building. As a result, lawyers representing the family and the Human Rights Programme of the Ministry of the Interior in the case have appealed both resolutions and are considering submitting a formal complaint about the magistrate's behaviour. The case continues to be closely monitored by Fr Woodward's relatives, his religious congregation and the British Embassy in Chile.

**The case, currently assigned to judge Lillo, was previously investigated by judge Eliana Quezada, who in accordance with usual judicial practice handed her active caseload over to colleagues while exercising the presidency of the Valparaíso Appeals Court*

New division of caseload between special investigative magistrates for human rights cases

In mid April 2011 the total number of special magistrates assigned to human rights cases was 25, spread across 16 jurisdictions. These included Copiapó, where one recently-opened case was awaiting assignment.

In May, cases were reassigned due to the death in April of judge Victor Montiglio. His cases had been temporarily overseen by colleague Raquel Lermenda during his illness, passing at his death to judge Gloria Chevesich in a caretaker capacity. However in May the cases were permanently reassigned. The number of special investigative magistrates for human rights cases was accordingly reduced by one to 24, as rather than leave the cases with judge Chevesich, they were divided among existing special magistrates. Four of these, judges Solís, Madrid, Zepeda and Billard, therefore saw their caseloads rise. Judge Alejandro Solís took over the Caravana de la Muerte ('Caravan of Death') investigation; Judge Alejandro Madrid cases Operación Cóndor and Colombo; Judge Jorge Zepeda two cases for Calle Conferencia and Judge Joaquín Billard three cases of individual homicides. Each of the four judges in associated to the Santiago Appeals Court, the jurisdiction with the largest number of special investigative magistrates (5, followed by San Miguel with 3).

The 24 special magistrates send periodic case reports to judge Jaime Rodríguez Espoz of the Criminal Bench of the Supreme Court, in his role as current national coordinator of human rights investigations. These cases are no longer seen under the previously used figures of specially designated full or part-time judges (*jueces de dedicación exclusiva o preferente*). Instead the magistrates concerned have all been assigned the category of 'ministros en visita', a judicial category used for the resolution of cases of particular social significance or political sensitivity. The new figure represents in some sense a higher status for the cases, as ministros en visita have the same rank and status as appeals court magistrates rather than only first instance judges

Former military prosecutor Podlech brings criminal complaint against two detectives and a witness

On 11 May 2011 Alfonso Podlech Michaud, a former Chilean military prosecutor currently being prosecuted in Italy for his alleged involvement in the disappearance of Italian citizen Omar Venturelli Leonelli, lodged a criminal complaint in Chile against two detectives of the Human Rights Brigade of the Chilean Investigative Police involved in investigating his case. Podlech, whose legal representative in Chile is his son and namesake Alfonso Podlech Delarze, accused the two detectives of falsifying



the content of statements taken in Chile that have been incorporated into the case against him before the Italian courts. The measure follows a similar complaint brought against a witness who travelled from Chile to testify in the Italian case. Sources close to the investigation consider both measures to be essentially frivolous and/or an attempt by the former agent to intimidate those involved in the case against him

Former DINA agent assassinated in Buenos Aires

On 28 April 2011 the body of former Chilean secret police agent Enrique Arancibia Clavel was discovered in his Buenos Aires apartment. He had been stabbed to death. Arancibia Clavel had lived in Argentina since fleeing Chile in 1970 after the politically motivated assassination of general René Schneider, one of the destabilization crimes that paved the way for the right wing military coup of 1973. After the coup Arancibia Clavel became an international operative of the Chilean secret police. He was detained and imprisoned on various occasions by the Argentine authorities: for the first time in 1978, when he was accused of spying during tensions over frontier issues that almost led to war between Chile and Argentina. On this occasion his flat was raided by Argentine police, who confiscated various Chilean identity cards amongst other possessions. This discovery later allowed crusading investigative journalist Monica González to expose the 'Operación Colombo' montage operations, since the ID cards belonged to individuals who had been forcibly disappeared in Chile.

More recently, Arancibia Clavel was sentenced in Argentina for his involvement in Plan Cóndor crimes including the double car bomb murders of loyal former army commander in chief Carlos Prats and his wife Sofía Cuthbert in Buenos Aires in 1974 and the 1976 disappearances of young Chilean left wing activist Luis Elgueta Díaz and his Argentine partner. Argentine courts sentenced Arancibia Clavel to life imprisonment in the year 2000 for the Prats crimes, and in 2004 to 12 years for the disappearances. He was nonetheless free on parole at the time of his death, though the concession of parole was under active challenge by an Argentine prosecutor.

Arancibia Clavel was for a long time the only person who had been tried for the double Prats-Cuthbert murders, but the case in Argentina that produced his life sentence later generated an extradition request from Argentina judge Maria Servini de Cubria against the former high command of the DINA secret police. The rejection of the request by the Chilean courts produced the opening of a national investigation which in 2010 finally produced sentences in Chile against 6 agents including Manuel Contreras and Pedro Espinoza. All are presently serving prison time in Chile for this and in some cases additional crimes, and could be subject to extradition to Argentina if they are ever released

The murder of Arancibia Clavel is currently under investigation by the Argentine authorities. Although preliminary reports suggest he was the victim of a common crime, it is too early to rule out any connection with his murky past as an agent of the Chilean dictatorship.

Conditional early release (Libertad Condicional) for prisoners convicted of human rights-related crimes

Por tanto, al confirmarse las 2 concesiones nuevas, un total de 6 personas del total de 75 en algún momento encarcelados por estos delitos desde 2000 habrán sido liberadas antes de la fecha de cumplimiento de su condena inicial. El promedio de la conmutación o reducción, respectivamente, de sentencias sería de 11 meses por persona.

On 27 April 2011 the Early Release Commission (Comisión de Libertad Condicional) of the Santiago Appeals Court recommended the concession of conditional early release to 6 former military officers detained in Santiago's Punta Peuco or Cordillera military facilities for crimes related to dictatorship-era human rights violations. Such recommendations need to be approved by the Justice Minister or his designated regional representative (known as the 'Seremi de Justicia'), who has the power to confirm or deny the definitive concession of the benefit. Despite repeated attempts by the Observatory to confirm the details and timings laid down for this procedure via the official source of the Human Rights Programme of the Ministry of the Interior, we have not yet received official confirmation of the present status of these particular recommendations. However, national daily newspaper *La Segunda* reported in its 14 June edition that 2 of the 6 applications from human rights case prisoners had been approved and that accordingly, former police officers Luis Romo Morales and Primitivo Campos Castro had been released from custody almost a month earlier, in mid May.

The two were serving the following sentences:

1. Primitivo Castro Campos

Sentenced in 2007 to 5 years for the aggravated kidnap (forced disappearance) of Carlos Fuentealba Herrera. Without this benefit, his projected release date would have been 24/10/2012.

2. Luis Romo Morales

Sentenced in 2007 to 5 years 1 day for the aggravated kidnap (forced disappearance) of José Lorenzo Cofré Obadilla and Carlos Montecinos Urrea. Already enjoyed the benefit of Sunday parole. Without this benefit, his projected release date would have been 17/4/2012.

It should be noted that this benefit, in theory open to any prisoner who has completed more than half their initial sentence,* does not reduce the total sentence to be served but does allow for a remaining portion of it to be served in a non-custodial setting. Beneficiaries must comply with certain conditions including residence at an address approved by the court and submission to periodic reviews of



conduct by the Conduct Review Board (*Tribunal de Conducta*) of the same penitentiary where they were previously serving their custodial sentence.

** Or more than two-thirds in the case of certain serious offences including aggravated homicide.*

For more details on the benefit and its conditions, see the document 'Libertad Condicional' (Spanish only) on our website www.icso.cl/observatorio-derechos-humanos). Early Release Commissions sit twice a year to consider recommendations made by the Conduct Review Board of each prison in their jurisdiction. The boards in turn maintain a file on each prisoner and can recommend early release for those who meet the qualifying conditions and in the judgement of the review board are "rehabilitated and fit for wider society" ('rehabilitado(s) para la vida social'). On this particular occasion the commission that oversees the Santiago area received 1,822 applications from 8 prisons, recommending 198 of them (10.8%) for positive consideration by the regional Seremi.

The four individuals imprisoned for human rights-related offences whose applications appear to have been turned down at the final stage are:

1. Carlos López Tapia – Cordillera military prison
Sentenced to 5 years 1 day for the aggravated kidnapping (forced disappearance) of Julia Retamal Sepúlveda, and to a 3-year suspended sentence for the aggravated kidnapping of Enrique Jeria Silva, Darío Francisco Miranda Godoy and Jorge Gerardo Solovera Gallardo.
2. Víctor Pinto Pérez – Cordillera military prison
Sentenced to 8 years for the aggravated homicide of Tucapel Jiménez.
3. Alejandro Molina Cisternas – Punta Peuco military prison
Sentenced to 5 years 1 day for the aggravated kidnapping of Mario Edrulfo Carrasco Díaz and Víctor Olea Alegría.
4. Miguel Soto Duarte – Punta Peuco
Sentenced to 5 years for the aggravated homicide of Paulina Aguirre Tobar

As far as we have been able to establish, the concession of this benefit does not require or allow the intervention of the original sentencing magistrate nor of parties to the case that gave rise to the original sentence. However, according to the text of the benefit, the four individuals who were turned down on this occasion are barred from reapplying until two years have elapsed. In each of the present cases, the original sentence will in practice have expired before this period is up. Accordingly each should now complete their full original sentences in jail.

This development brings to 3 the total number of prisoners sentenced for human rights-related crimes and later granted early release under this particular provision. The first, Hugo Alarcón, was freed under the same provisions in December 2010. Three additional prisoners have also been definitively freed ahead of time since late 2009 due to the granting of a different benefit, one that does involve definitive sentence reduction. The individuals concerned are Patricio Zamora, Juan Caniulaf and Gerardo Urrich. See document 'condenados por crímenes ddhh excarcelados por concesión de beneficios' (Spanish only), available on our website.



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



Accordingly, once the 2 new concessions have been confirmed and applied, 6 of the full total of 75 individuals imprisoned for these crimes at some stage since the year 2000 will have been freed ahead of the date of expiry of their original sentence. The average reduction or commutation of sentence received is 11 months per person.

Parliamentary delegation inspecting prison conditions receives complaints from human rights case prisoners

In mid-May 2011 a delegation of parliamentarians visited various prison sites around the country to check on prison conditions. The visit triggered renewed discussions in the media about stark contrasts between the treatment of different classes of prisoners in Chile. TV footage filmed in military facilities such as Punta Peuco showed the relatively comfortable conditions in which individuals convicted of human rights crimes are held, with spacious two-person cabins instead of cells and recreational facilities that include tennis courts. Nonetheless, the delegation received complaints from prisoners at this facility with complaints: one former DINA agent argued that he found it 'humiliating' to be handcuffed when taken to external medical appointments. (This is a regular practice for common prisoners in Chile, the use of which has also been reported on pregnant women when taken from prison facilities to give birth in civilian maternity wards).

The debate served to prolong controversies sparked in April by the revelation that former general Odlanier Mena Salinas, onetime director of national intelligence agency the CNI (Central Nacional de Informaciones), had been conceded the benefit of Sunday prison leave in February 2011. Mena is serving a 6 year sentence imposed on him in 2009. These kinds of benefits are awarded by internal prison committees without reference to the original sentencing judge or court.

OTHER NEWS FROM CHILE

National Culture Day sees massive attendance at memory sites

Chile's now established annual Culture Day (Día del Patrimonio), on which sites of cultural or architectural interest are opened to the public free of charge, has for the past few years included memory sites. Several former sites of clandestine detention, converted by survivors and relatives into places of commemoration and active promotion of human rights, offer educational visits. This year, the circuit of museums and historic sites suggested to the public as part of the day's programme included José Domingo Cañas, Londres 38 and the Villa Grimaldi peace park. For the most part, the sites reported great interest and empathy on the part of the public, including a delegation of students from various Latin American countries who visited the city centre Londres 38 site. The day however got off to a worrying start for the Villa Grimaldi site, when anonymous pamphlets were distributed at the gates denouncing the supposedly political nature of the site and questioning the use of resources on a 'false' project. Margarita Romero, president of the Villa Grimaldi Corporation, expressed the 'surprise and worry' that the attack had provoked amongst the Corporation's members and explained that the incident had been reported to the relevant state prosecutor's office via local police. Despite the



CentroDerechosHumanos
UNIVERSIDAD DIEGO PORTALES



incident, a full programme of musical, commemorative, educational and cinematic events went ahead as planned.

President Sebastian Piñera announces new sub-secretariat of human rights

Chile's annual presidential 'state-of-the-union' address, which takes place on 21 May, is an opportunity for the president of the day to give a public account of his or her government's achievements and proposals. This year president Piñera announced the creation of a new Human Rights Subsecretariat, to be established within the Ministry of Justice. The proposal will be sent to Congress at the end of 2011, where although a simple majority will be sufficient to allow the instance to be set up, a 'supermajority' of 4/7 of the chamber (69 votes or more) will be needed in order to assign it powers and attributes. The government will therefore need the support of at least 7 opposition votes.

The exact points of contact and coordination between this new body and other, semi-autonomous, instances such as the National Human Rights Institute have yet to be established. Justice Minister Felipe Bulnes nonetheless announced that the measure would centralise some of the human rights-related functions currently spread out across the Foreign Office and Interior Ministry. In particular, the measure could reverse the historical anomaly that means the current Human Rights Programme is part of the Interior Ministry rather than the Justice Ministry. The proposal seems unobjectionable from a technical point of view, and (right-wing) UDI party parliamentarian Gustavo Hasbún, member of the lower house human rights committee, told the press that it was designed to widen the understanding of human rights issues in Chile to include a wider range of issues including health and public order. The latter has been an increasing preoccupation in recent weeks, as the approval of a hydroelectric project in Patagonia provoked massive public protests. The management and policing of the protests has been widely criticised, including by a judge who declared mass arrests of a group of demonstrators to have been illegal.

The creation of the new entity should be read in the light of the recent renewal of Chile's UN human rights commission for a second three year period (2011-2014). The selection takes place by voting among UN member states for regional vacancies. Chile gained the highest vote of the 4 Latin American candidates: Chile, Costa Rica, Peru and Nicaragua. Only Nicaragua failed to gain a place, as Latin America had three allotted places.

The new subsecretariat therefore seems likely to form part of a government strategy to bolster Chile's image on the international stage, an interpretation bolstered by foreign minister Alfredo Moreno's reaction to Chile's re-election. He declared that it represented "recognition of the commitment of the Chilean government and society to human rights as an essential pillar of a modern inclusive democracy." (Radio Universidad de Chile, 20 May 2011). It should therefore be more important than ever for Chile to demonstrate consistency between this commitment and the treatment of past human rights violations, still a reference point and preoccupation for external actors evaluating Chile's overall record in the promotion and protection of human rights.



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



University campus in southern Chile makes gesture of recognition of former students forcibly disappeared by the military dictatorship

On 13 May relatives received university diplomas awarded in absentia to 20 young people who had been students in the southern city of Temuco at the time of their forced disappearance during the 1970s. This first symbolic gesture of its kind was carried out by the 'Universidad de la Frontera', product of a recent merger between the original regional campuses of the Universidad de Chile and the now-defunct Universidad Técnica del Estado, UTEM.

Relatives of Victims of Political Execution stage a sit-in at the offices of the Human Rights Programme

On 4 May 2011, offices at the Human Rights Programme of Chile's Ministry of the Interior and Public Security were occupied by representatives of the relatives' association AFEP in protest over the non-delivery of promises made by minister Rodrigo Hinzpeter in 2010 to end a similar protest at that time. The group's grievances include the demand for action over a long-delayed promise for a draft bill to modify Article 93 of the Criminal Code. The modification is needed in order to render the 1978 self-amnesty law compatible with prevailing international law, in compliance with an adverse 2006 ruling against Chile by the Inter-American Court of Human Rights. A draft bill to meet this need, prepared by well-respected and now-deceased parliamentarian Juan Bustos, was suddenly withdrawn from debate in mid 2008 on the request of Christian Democrat and then-president of the Senate Adolfo Zaldívar.

New director for the Human Rights and Memory Museum

At the beginning of May Ricardo Brodsky took over the directorship of Chile's national memory museum, replacing founding director and former minister Romy Schmidt, who oversaw both the museum's inauguration and its reopening following major earthquake damage in February 2010. Brodsky, who worked in the field of arts and culture under various Concertación administrations from 1991, set out his vision for the museum in an interview with the national broadsheet El Mercurio. He aims to place the museum squarely on the mainstream cultural circuit of the district in which it is located (home to a major public park and many of Chile's national museums). Brodsky made reference to the need to boost the current budget of around 1,408 million Chilean pesos by looking to private funds rather than the public purse.

'Memory Manifesto' poster contest opened to boost memory sites' awareness campaign

1 July 2011 is the deadline for taking part in a public contest to design a publicity poster for the 'Memory Manifesto' campaign to be carried out by a network of memory sites between July and September of this year. The sites involved include Villa Grimaldi, Londres 38, José Domingo Cañas and the 'Colectivo 119 - Familiares y Compañeros' group. The design must be submitted in electronic form and the winning artwork will be used in the campaign, with explicit credit given to its author. The winner will also receive a set of books and other materials published by the sites involved. The work can be individual or group, with no age, professional or other restrictions on who can take part. For more information or to receive a copy of the full technical specifications mail 2011contralaimpunidad@gmail.com (Spanish only)



CentroDerechosHumanos
UNIVERSIDAD DIEGO PORTALES



Anti-torture Commission rejects right-wing senator's declarations against Fr. Alfonso Baeza

In early May Chilean NGO the Ethical Anti-Torture Commission (Comisión Ética Contra la Tortura) issued a public statement in defence of Fr Alfonso Baeza, former head of the Catholic Church's Social Apostolate (Pastoral Social). In a press discussion of the so-called 'Bombers' case', in which a group of young activists/anarchists stand accused of a recent campaign of home-made bombs around the Chilean capital, senator Andrés Chadwick of the right-wing UDI party allegedly described Fr Baeza as someone who has "always come to the aid of extremists and violent terrorists". His remark has been interpreted as a reference to the priest's role as an outspoken defender of human rights during the dictatorship, although in fact he also serves as chaplain and visitor to former military personnel currently in prison for state terrorism offences.

NEWS FROM THE REST OF THE REGION

Argentina

'Memoria Abierta' network launches important new cinema catalogue

Memoria Abierta, a network NGO made up of various Argentinian human rights groups and organisations, has been working for over a decade to collate and make available an important collection of oral testimony, documentation, audiovisual resources and artefacts linked to state terror policies under the 1976-1983 Argentine dictatorship. In early June they launched their most recent initiative, a catalogue offering synopses, technical data and stills taken from 450 films related to the theme.

The catalogue is now available on DVD and via the organisation's website at www.memoriaabierta.org.ar

Two retired military officers given dishonourable discharges after being found guilty of human rights offences

Retired Argentine generals Bussi y Menéndez were notified by the country's armed forces of their removal from official lists of retired personnel, with the consequent loss of benefits including military pensions, after both were given life sentences for crimes related to massive human rights violations.

8 former military personnel sentenced to life for the 'Margarita Belén' massacre

On 16 May a court in Argentina's Resistencia province imposed the highest possible sentence on 8 former agents of repression found guilty of the assassination or forced disappearance of a total of 15 victims. Only one defendant, a former policeman, was absolved. The crime that gave rise to the case involved the torture, mutilation and subsequent shooting or disappearance of a group of people illegally detained in the local police station in the locality of Margarita Belén. under the supervision of the army's VI Brigade. A complaint brought by major NGO CELS in 1984 saw the case included in the charges brought against the dictatorship's highest authorities in the so-called junta trials, 'Juicio a las Juntas', of 1985. Amnesty provisions introduced in 1986 and 1987 nonetheless prevented the prosecution of additional suspects, despite a 2001 admission by the then army commander in chief that the incident had not been 'combat' but "a covert execution of prisoners". Pressure from CELS did achieve the opening of new avenues of investigation in 2003, including the possible involvement of still-active members of the state prosecution service – both of whom were subsequently investigated and prosecuted. Once criminal cases were reopened in large numbers in Argentina, from the middle of the last decade, it was finally possible for the courts to take action against the most direct perpetrators of this particularly notorious massacre.



CentroDerechosHumanos
UNIVERSIDAD DIEGO PORTALES



UNIVERSIDAD DIEGO PORTALES

'Member of parliament' Luis Patti sentenced to life imprisonment

Luis Abelardo Patti, a former agent of repression who ran repeatedly for elected office after the return to democracy in spite of his past as a known torturer, was finally sentenced to a life term in prison on 14 April. The former deputy commissioner and local superintendent was found guilty of multiple counts of kidnapping, torture, assassination and other crimes against humanity. In the same case, former military officers Reynaldo Bignone, Santiago Omar Riveros and Martín Rodríguez were also given life sentences while former policeman Juan Meneghini was sentenced to six years.

Although the sentences will have to be confirmed on appeal by the Supreme Court, for the present they follow a common pattern for the Argentine courts of imposing much higher sentences than their Chilean counterparts for similar crimes, and of stipulating moreover that the sentences are served in ordinary prisons. Argentine judges also accept direct typification and sentencing under the figure of crimes against humanity, generally acknowledging that international treaty law is self-executing and accordingly automatically becomes national law. These elements explain in part the more proportional sentences imposed in Argentina.

The Patti case has been particularly notorious due to his repeated candidacies for public posts: the impunity guaranteed by the 1986 and 1987 amnesty laws allowed him to use public office to promote antidemocratic discourses and practice. In an unprecedented act of official repudiation, when Patti was elected as a member of parliament in 2005 (after having run for state governor in 1999), fellow parliamentarians referred the case to their ethics commission and refused to accept Patti's swearing in. Patti appealed, arguing that in the absence of a legal case against him there was no legitimate impediment to his exercising elected office. However, while the appeal was in course the case universe for human rights violations was reopened in Argentina thanks to the annulment of the amnesty laws. Accordingly, even though the Supreme Court ruled in 2008 that the legislature had exceeded its authority in refusing to let Patti take up his seat, by this time there were already legal charges against him that would lead to his eventually being found guilty. The National Electoral Commission also rejected an attempt by Patti to run for office while in prison, helping to set a precedent that individuals subject to serious accusations of this nature cannot run for office while investigations are still ongoing. The case was particularly significant from a democratic perspective since all of Patti's series of candidacies were based on 'mano dura' platforms which at times clearly strayed into an outright rejection of basic rule of law and democratic principles.

As always, see www.cels.org.ar/wpblogs/estadisticas for details of current numbers of cases and accused parties, and to see their geographical distribution and evolution over time since 2007.

Colombia

Amidst continuing discussions about the justice and peace process in Colombia, the new president of the International Criminal Court was invited by Colombian president Santos to visit the Andean country. Sang-Hyun Song was due to make a short tour of the country beginning on 17 May. Meanwhile, the country's Senate was debating a draft legislative bill for a reparations law for victims of the armed conflict. The proposal has been criticised by some for restrictive time parameters and qualifying conditions placed on the definition of 'victim'. At the same time, human rights organisations observed that current state practice of conceding extradition of paramilitary suspects to the US impedes truth recovery in country and denies victims' and survivors' rights to know the truth about episodes of political violence. This due to the fact that in addition to physically removing the suspects from national jurisdiction, extradition is only requested and conceded for drugs offences. This means that possible infractions of international humanitarian law by the same individuals cannot later be added to the charge sheet, and is also believed to be one factor behind a notable recent drop



CentroDerechosHumanos
UNIVERSIDAD DIEGO PORTALES



in the numbers of ex combatants coming forward to make use of the Justice and Peace Law's guarantee of a fixed maximum national sentence in return for a full confession.

El Salvador

Civil society organisations in El Salvador have over the past few years implemented an International Restorative Justice Tribunal, *Tribunal Internacional para la Aplicación de la Justicia Restaurativa*. The initiative is driven by groups including IDHUCA (the Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas) IDHUCA, and the Mental Health and Survivors' Memory Project of the Centro Bartolomé de Las Casas. The third cycle of Tribunal hearings took place between 21 and 23 March 2011 in the parish of Arcatao, in the Chalatenango district. Survivors, relatives and historical memory commissions from local rural communities related traumatic experiences suffered at the hands of right-wing death squads and scorched earth Army policies in the counter-insurgency war against left-wing FMLN (Frente Farabundo Martí para la Liberación Nacional) guerrilla forces. The Tribunal was made up on this occasion of local representatives plus two Spanish and one Brazilian jurist. Its goals include to bring pressure to bear on the Salvadoran government – led since 2009 by FMLN president Mauricio Funes – to act against the impunity that still prevails in the Central American republic thanks to an amnesty law that had not until recently been seriously challenged. This despite repeated efforts by IDHUCA to put it to the test in the case of the six Jesuit priests and two co-workers murdered in 1989 (see below, International News).

Peru

Second round presidential elections held on 5 June will decide the fate of Alberto Fujimori

Peru's second round presidential election runoff took place on Sunday 5 June. A technical draw going into the poll was eventually resolved in favour of nationalist candidate Ollanta Humala, with a slender majority of around 3% of voter preferences. We reported in the previous bulletin on the human rights background of both candidates, concluding that in either case the prospects for accountability for past human rights violations were dim. According to one of the many (and highly inconsistent) pre-election polls, 26% of respondents declared a preference for Keiko Fujimori explicitly on the 'good governing record of her father', currently serving a 25 year prison sentence for corruption and human rights offences and whose pardon and release would have been a certainty had Keiko won the presidency. In the runup to the election, the judge who presided over the historic trial that saw the former autocrat imprisoned had already received repeated open 'warnings' and threats about the reprisals he would have to face over his actions in the case. The debate about a possible presidential pardon however remains open with the election of Humala, since the new president-elect refuses to rule out the measure and there have also been persistent rumours that outgoing president Alan García may consider the measure as one of his last acts in office. (See press report, in Spanish only, from project partner and Peru expert Dr Jo Marie Burt at <http://lamula.pe/2011/06/07/mayoria-de-peruanos-no-aprueban-indulto-para-alberto-fujimori/jomarie>) A habeas corpus petition presented by Fujimori's lawyers before the election is also still pending before the country's Constitutional Tribunal. The measure, if accepted, would revoke the original sentence and lead to a retrial. See <http://wolaperuelections.tumblr.com/post/6145209953/will-alberto-fujimori-be-set-free> (in English) for details.

'El Frontón' prison massacre case

22 senior and junior officers of the Peruvian navy, accused of taking part in the 1986 massacre of detainees at the El Frontón island prison, applied to have the already-derogated Decree 1097 applied to close their case by imposition of a statute of limitations. Judge



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



Jessica León Yarango, senior spokeswoman of the National Criminal Bench, however declared that the crime is not susceptible to a statute of limitations due to its nature as a crime against humanity. The parents of various victims of the massacre, most of whom were detained for alleged terrorism offences at the time of their deaths, presented three habeas corpus writs against a previous instance judge in the case and against current president Alan García (also incumbent president at the time of the crimes). The Inter-American Court of Human Rights has already indicated that Peru is under a legal obligation to trace and identify victims' remains and hand them over to family members.

New cases and investigations

During May a case began in Ayacucho for torture committed in the town of Huanta, Ayacucho in 1984. In late April, exhumations began of the remains of 23 peasant farmers extrajudicially executed by soldiers and state-run peasant militia in 1990. It is hoped that the results will allow formal charges to be brought against the main suspect, a retired army sergeant. Criminal investigations are also currently active against members of the Maoist Shining Path guerrilla group for infractions of international humanitarian law: in early May the regional state prosecutor's office accused former Sendero militant Óscar Alberto Ramírez Durán, known as "Comrade Feliciano", of the arbitrary execution or forced disappearance of hundreds of local residents in the Chungui district of Ayacucho between 1985 and 1999. A military tribunal verdict absolving 140 commandos of human rights offences was meanwhile appealed to the Inter-American Commission of Human Rights, who declared the case admissible.

Uruguay

The month of May saw important and contradictory milestones in Uruguay's accountability trajectory. On 12 May president José Mujica – who has in general been cautious and reluctant on the issue, despite his own past as a victim of repression – overturned a decision made by his predecessor Julio María Sanguinetti, who had applied amnesty to a disappearance case. Mujica's reversal of the application allows the case to be reopened, and it was initially believed that up to 80 other cases suspended under similar circumstances might also now be susceptible to re-opening. Mujica's action is permitted under an unusual clause of the country's amnesty law ('Ley de Caducidad') that gives the executive power to decide on the applicability of the statute on a case by case basis. Mujica's change of heart was attributed by some close observers to the effect of a recent adverse Inter-American Court of Human Rights ruling in the Gelman case. The 24 March verdict found the continued application of the amnesty law to be contrary to Uruguay's international obligation to investigate and punish crimes against humanity. Mujica was also under similar pressure from within his own left-wing coalition, members of whom had submitted a draft bill to revoke some articles of the increasingly embattled law. The draft bill, which did not have the support of the president, echoed an earlier civil society initiative that had unsuccessfully sought to have the law revoked by plebiscite.

In the event the legislative effort faced a similar fate: despite having been approved by a narrow margin by the Senate in April, on 20 May it did not gather enough votes to be passed. The chances for full compliance with the Inter-American court verdict appeared to recede even further when the judicial branch also seemed to reverse its previous stance on crimes against humanity. Responding in late May to state prosecutor Mirtha Guianze's thesis that repressive crimes such as forced disappearance should be directly typified and sentenced as such, given that they existed in international treaty or customary law prior to the date of commission, the Court effectively found that crimes of repression should in effect be treated as nothing more than ordinary criminal offences. The verdict is particularly negative for criminal accountability prospects because its practical effect is to impose a statute of limitations expiry date of 1 November 2011 on all related complaints. Accordingly any



Centro Derechos Humanos
UNIVERSIDAD DIEGO PORTALES



relative or survivor who has not initiated a criminal complaint by that date would in theory be permanently prevented from doing so. It remains to be seen whether human rights lawyers will attempt to combat the measure with the same argument that has to some measure prevailed in other jurisdictions, including Chile – that while criminal accountability was in practice rendered impossible by some structural impediment such as dictatorship itself or the blocking of cases by prevailing – now reversed – presidential interpretations of amnesty, the statute of limitations ‘clock’ should be considered to have been suspended.

INTERNATIONAL NEWS

Spain

On 30 May Spanish judge Eloy Velasco brought formal charges against 20 Salvadoran former military men for crimes related to the notorious 1989 massacre of 6 Jesuit priests, their housekeeper and her daughter in the capital San Salvador. The case has been investigated in Spain since 2008 under universal jurisdiction principles, strengthened by the additional territorial connection provided by the Spanish citizenship held by 5 of the 6 priests. The judge emitted national and international arrest warrants for the suspects, who include former Salvadoran defence minister René Emilio Ponce in what is presumably a judicial oversight, since Ponce in fact died of natural causes on 2 May of this year.

The massacre of the Jesuits and their co-workers proved to be a turning point in the history of the country’s internal armed conflict, contributing to a shift in official US policy away from a military solution toward the idea of a negotiated peace. The shift was accentuated once it transpired that the killers were part of a Salvadoran army battalion trained under US supervision at the School of the Americas. Although a national trial was held in the early 1990s, only the immediate triggermen were involved and most were freed almost immediately a subsequent Amnesty Law was passed. Victims’ relatives together with IDHUCA, the human rights centre of the Central American Jesuit university where most of the priests lived and worked, have been trying for years to have the case reopened in national courts. Faced with continuing rejection from national authorities, some relatives opted to take a case to third country courts in Spain. In recent commemorative activities held in El Salvador, there have however been some positive, although weak, signals about the possibility of reopening the chain of command question in national courts.

Bosnia and The Hague

On 26 de mayo former Serbian commander Ratko Mladic was captured. Mladic had been subject since 1995 to an international arrest warrant for his part in crimes against humanity including the massacre of thousands of Bosnian Muslims in the Srebrenica massacre. Mladic avoided capture for over a decade and a half despite a supposedly intensive manhunt by UN forces and new national authorities. The continuing failure to locate Mladic provoked suspicion that he was being protected by sympathetic local authorities and/or that he had been offered impunity as part of secret negotiations surrounding the 1990s peace accords that finally put an end to open ethnic conflict in the former Yugoslavia. The collusion thesis was even explored in a mainstream Hollywood film, based on real events, in which three US journalists decided to test the sincerity of the manhunt and managed in just a few days to discover the likely whereabouts of the supposedly wanted man. However, until the events of recent days not even the incentive offered to Serbia of facilitating its entry into the EU conditional on Mladic’s capture had proved fruitful. Once captured, however, Mladic’s subsequent removal to The Hague and the custody of the International Tribunal for the Former Yugoslavia, ICTY, was remarkably swift. In a matter of days, his appeal on health grounds had been rejected and Mladic joined his counterpart Radovan Karadzic, currently also being tried by the ICTY. The Karadzic trial has already lasted three years and there are fears that the capture of Mladic may in fact slow it even more if a decision is taken to try the



CentroDerechosHumanos
UNIVERSIDAD DIEGO PORTALES



two together. The ICTY's previously most notorious suspect, Slobodan Milosevic, died of a heart attack before his lengthy trial could be completed.

Sources for this month's bulletin include:

Press reports; the Human Rights Programme of Chile's Ministry of the Interior and Public Security; judicial and police sources; CELS Argentina; Uruguayan lawyer Pilar Elhordoy; Uruguayan photojournalist Martha Passegui; academic Jo Marie Burt; Peruvian NGOs and the daily Spanish-language news bulletins of the International Center for Transitional Justice, ICTJ. (Contact comunicaciones@ictjcolombia.org for more information or to sign up).

Contributions to this bulletin: Organisations with information relevant for future editions of this bulletin are invited to contact us at the mails below. Please include contact and/ or citation details.

To sign up for the bulletin: If you have received this bulletin via a third party and would like in future to receive copies directly, please mail us at observatorioddhh@mail.udp.cl. The bulletin is sent in English and Spanish language versions by email, approximately once every two months. If you do not wish to receive further bulletins, please mail us at the same address.

For more information on the Observatory project contact:

Queries related to the website, case data or search engine

Project Researchers Rodrigo Hernández or Paulina Zamorano
e-mail: observatorioddhh@mail.udp.cl Tel: +562 676.8443

Queries related to workshops or the project in general

Project administrator Jennifer Herbst, MSc, email: observatorioddhh@mail.udp.cl or
Project leader Dr Cath Collins, email cath.collins@udp.cl Tel +562 676.8430

Full project contact details

Observatorio ddhh
Instituto de Investigación en Ciencias Sociales, ICSO
Universidad Diego Portales, <http://www.icso.cl/observatorio-derechos-humanos>
Grajales 1775 – Santiago – Chile Tel: +562 676.8443
e-mail: observatorioddhh@mail.udp.cl