

Human Rights in Chile

News on court cases for past human rights crimes, to end March 2010

Introduction

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 Böll Foundation. 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.

CASE STATISTICS

In the first sign of post-election changes to the situation of justice processes in Chile for dictatorship-era human rights violations, the future production of Interior Ministry monthly case statistics, on which past bulletins have been based, is uncertain. The summary statistics reproduced below are accordingly those circulated in the previous, March, bulletin. This month's bulletin adds some preliminary analysis of sentences and takes a more qualitative look at news and events surrounding the national truth, justice and memory process.

Cases and Victims

334 investigations (cases) were ongoing in Chile at end Feb 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. This caseload represents approximately a third of known victims of death and disappearance, while around 63% had no case in progress.

Agents (Repressors)

Between 2000 and February 2010, **782 former security service agents** had been charged and/or sentenced in Chile for past human rights related crimes, with **60 of these** serving confirmed custodial sentences.

Sentences

Between 2000 and Feb 2010, **286** former security force agents had received a total of 499 condemnatory sentences for dictatorship-era HRV crimes in Chile. 206 of these sentences had been confirmed by the Supreme Court

Charges pending and ongoing investigations

An additional 3,043 formal investigations and indictments (*procesamientos* and *acusaciones*) were pending against a total of 557 former agents at end Feb 2010.

TRENDS IN SENTENCING

Situation of the 60 agents currently in prison

Of the 60 agents described above as currently serving confirmed custodial sentences, 7 are sentenced to life. The average sentence of the remaining 53 is 6.5 years imprisonment.

4 of the 60 agents are former generals (Chile's highest military rank)

Individuals with the highest number of separate sentences include:

- Manuel Contreras (former head of the DINA secret police):
Total confirmed sentences of 196 years, accumulated from 23 separate convictions
- Miguel Krassnoff (high level DINA operative):
Total confirmed sentences of 95.3 years, accumulated from 15 separate convictions
- Marcelo Moren Brito (high level DINA operative, commander of Villa Grimaldi clandestine detention and torture centre):
Total confirmed sentences of 131 years, accumulated from 17 separate convictions

Location of the 60 agents currently in prison

A large majority of current prisoners are serving their sentences in military jails.

1) Military facilities – 53 prisoners

- Punta Peuco: 42
- Cordillera: 10
- Hospital: 1

2) Civilian jails – 7 prisoners

- CPP Temuco: 5
- CPP San Antonio: 1
- CET Valdivia: 1

Sentence reductions in criminal cases

Over the past two or three years there has been a sharp reduction in the length and severity of sentences issued by the Chilean Supreme Court for human rights crimes. This marks a change from the early 2000s, when sentences of life imprisonment or of 20 or 25 years were more common, and also accentuates a contrast with neighbouring Argentina where sentences at all levels of court are commonly more severe. The trend, which is due to a 'gentleman's agreement' amongst Chile's

Supreme Court judges to resolve an impasse over the correct interpretation of amnesty, has been widely criticised by international human rights organisms. The practice, and the extent of its present application, will be analysed in more depth in the subsequent edition of this bulletin

Status of civil demands

On 8 April, the Constitutional Bench of the Chilean Supreme Court for the first time awarded civil compensation for a human rights crime, in response to a claim brought by relatives of Washington Cid Urrutia, disappeared since 1974. The verdict is noteworthy because the Constitutional Bench had previously upheld the application of the statute of limitation to claims which, like this one, originate entirely in the civil court system. A second type of possible compensation in Chile, one associated to a linked criminal investigation, is overseen by the Criminal Bench. This bench has to date applied mixed criteria, accepting some claims but rejecting others.

OTHER NEWS FROM CHILE

'Vetting' and social repudiation

Under previous president Michelle Bachelet (2006-2010), serving members of the security forces processed by judges investigating past human rights crimes were sent into retirement, regardless of the final outcome of the case. In this way the recent phase of 'late justice' in Chile began to produce a long-delayed debate about the suitability of certain individuals to hold significant public position. These include elected office, in the case of civilians who were previously prominent figures in the Pinochet regime. The issue has recently re-emerged via scrutiny of the first round of political appointments made by new right-wing president Sebastian Piñera.

- In March, the designation of José Miguel Steigmeier as governor of Chile's southern Bio Bio region had to be aborted after his links with former Nazi colony Colonia Dignidad were revealed.
- In April, relatives' groups objected to the appointment of Iván Andrusco to head the prison service. Andrusco was part of the high command of the police intelligence service DICOMCAR in 1985, when the service kidnapped and slit the throats of three Communist Party activists. Andrusco was finally forced to resign on 16 April, after less than a month in post. Hugo Gutiérrez, a former prominent human rights lawyer recently elected as a parliamentary representative for the Chilean Communist Party, played a leading role in public criticism of Andrusco's appointment, as did Manuel Guerrero, a Socialist Party local councillor and son of one of the victims of the 1985 crime.

The debate has also moved beyond suspicion of direct involvement in repressive crimes to questions about moral fitness:

- Brazil recently refused to approve the designation of Octavio Errázuriz as Chile's new ambassador in Brasilia. Errázuriz was secretary to the Chilean embassy in Washington in 1975, just before the Letelier assassination and at a time when the regime was vigorously denying the practice of disappearance. Errázuriz was nonetheless simply reassigned as ambassador to the UN
- Days later Piñera appointed Miguel Otero as new ambassador to Argentina. Otero took part Pinochet-era 'legislative councils', unelected bodies which drew up laws under the supervision of the armed forces.

These appointments suggest that Piñera is keeping to the letter rather than the spirit of his pre-election commitment to keep Pinochet-era figures out of the top ranks of his administration, as none of the questioned figures has so far been assigned to cabinet-level positions.

Memory Museum

The exhibition spaces of Chile's national Museum of Memory and Human Rights, (www.museodelamemoria.cl) inaugurated in January by outgoing president Michelle Bachelet, remain closed due to earthquake damage to collections and are not expected to re-open to the general public until June this year. However, a small temporary exhibition has been installed for pre-arranged visits and work continues on the archive collection and development of educational outreach activities. A documentation centre will be opened to researchers at the end of April and the auditorium, which was not damaged, has begun to host human rights-related events. A privately-launched Facebook site dedicated to the museum is now administered by the Museum. According to staff, the Museum proper received approximately 50,000 visitors in its initial, truncated period of opening to the public (11 Jan to 27 Feb 2010).

Truth Commission lists re-opened

The lists of Chile's two official Truth Commissions (Rettig, 1991/2 and Valech, 2003/4) were re-opened in mid February 2010 to allow relatives and survivors to resubmit for consideration cases that had not been classified in the initial instances (dedicated to registering cases of death and disappearance, and of political imprisonment and torture, respectively). Modelled on the second, Valech, commission and under the supervision of the same commissioners, the Comisión Asesora para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y la Tortura (www.comisionvalech.gov.cl) received just over 2,800 submissions for reconsideration in its first 40 days of operation (7 Feb to 26 March 2010). The new commission will continue to receive submissions until 17 August, and will then dedicate 6 months to consideration and classification of new cases. Official victim numbers for Chile – currently standing at 3,186 deaths and disappearances and approx. 29,000 victims of torture and/or political imprisonment – are likely to rise by early 2011 as a result.

Identification and recovery of remains of the disappeared

In March 2010 relatives were finally able to hold a public funeral for victims of the Lonquén massacre, 32 years after partially cremated remains were discovered in sealed up lime kilns in the countryside outside Santiago. The discovery was the first visible evidence of the practice of disappearance at a time when it was still being denied by the regime. Relatives suspected from the beginning that the remains were those of peasant leaders from nearby Paine, but the remains were seized by the state forensic service. Even after the 1990 transition to democracy, a series of mishaps and gross errors by the same service led to misidentification: families who had been given remains to bury were later told that in fact their relatives were still missing. A presidential commission set up under Bachelet to resolve the scandal sent remains for DNA analysis overseas, resulting in a recent trickle of supposedly definitive identifications.

NEWS FROM THE REST OF THE REGION

Argentina

In one of the first repression-era trials to reach a conclusion outside the country's capital, a court in the Argentine city of Rosario handed life sentences to 5 former agents for crimes against humanity. The April 2010 sentence, which has yet to be confirmed on appeal, further specified that the men were to serve their sentences in a regular jail rather than in military-run facilities, which have been criticised for lax security and luxurious conditions.

Brazil

Brazil's Supreme Court is due to rule this week on an October 2008 petition from the Brazilian Federal Bar Association to declare the 1979 Amnesty Law (Law 6.683) inapplicable to common crimes committed by agents of repression.

A Working Group set up in February to draft the mandate of Brazil's recently-announced official Truth Commission is also due to conclude its work this week. The group includes representatives from relevant ministries, including the Ministry of Defence, the presidents of the Amnesty Commission and Special Commission on Politically-motivated Deaths and Disappearances, and eminent Brazilian human rights specialist and Inter-American Human Rights Commission member Paulo Sérgio Pinheiro.

Uruguay

In Buenos Aires, Argentina the ongoing criminal investigation into former Argentine junta members and their accomplices for human rights crimes recently confirmed the continued detention of Manuel Cordero, a Uruguayan citizen and former member of the Uruguayan armed forces. Argentine courts first issued an Interpol arrest warrant for Cordero in 2001, followed by an extradition request in 2005 when he was discovered living in Brazil. Cordero was duly extradited and handed over to Argentine authorities in early 2010. The case, which began in 1999, has already seen former junta leader Jorge Videla and other Argentine security agents sent to trial over the disappearance of around a dozen individuals, including 5 Uruguayan citizens, from the 'Automotores Orletti' clandestine detention and torture centre. The centre was run and staffed as part of the 'Operation Condor' network of Southern Cone security services engaged in illegal repression.

Central America

El Salvador's president Mauricio Funes, elected in March 2009 as candidate of former left wing guerrilla movement the FMLN, issued in late 2009 the first ever public state apology for massive human rights violations, committed under previous, right-wing administrations during

the Central American 'counter-insurgency wars' of the 1980s. The apology was repeated during March 2010 commemorations of the 30th anniversary of the assassination of San Salvador Archbishop Oscar Romero. Funes nonetheless indicated that justice questions could not be resolved except through the country's courts, where the continued applicability of the 1993 Amnesty Law would have to be addressed on a case by case basis. In practice, under previous administrations the hostile attitude of the government-appointed State Prosecutor prevented cases from ever reaching the courts.

Guatemala's amnesty law is one of few in the region to respect international law in specifically excluding genocide, disappearances and other international crimes from its ambit. On 8 Feb 2010, the Penal Chamber of the Guatemalan Supreme Court accordingly found amnesty inapplicable to the so-called 'Dos Erres massacre' of 1982. The lower court responsible for the case was ordered to 'immediately and effectively' execute outstanding arrest warrants and end its toleration of constant delaying tactics such as defendants' repeated re-submission of appeals and writs of habeas corpus. The finding was prompted by an Inter-American Court ruling in the case, which also led the Public Prosecutors' office to announce a plan of action for several more emblematic cases dating from the same period.

Spain

Cases continue in the Spanish courts for crimes committed in El Salvador and in Guatemala (for the 1989 murder of 5 Spanish Jesuits, a confrere and two co-workers; and for genocide, respectively). Both cases moved ahead in the recent period, with several rounds of witness testimony heard. The Guatemala case provided a moment of revelation when a secret military document detailing army participation in massacres of indigenous Guatemalan civilians was produced in the Madrid courtroom, despite the Guatemalan Army's previous insistence that the document could not be found. Despite recent moves in Spain to restrict the scope of the national universal jurisdiction legislation that permits third-country cases such as these to be seen, these cases currently in progress have sufficient direct citizenship and/ or territorial connections to be allowed to continue.

In April 2010, Argentine relatives of Spanish victims of the Franco regime lodged a criminal complaint in Spain, in a neat reversal of previous transnational dynamics whereby Spain had investigated the fate of Spanish victims of the Argentine 'dirty war'. Meanwhile, the judge responsible for previous transnational cases in Spain became embroiled in judicial and disciplinary proceedings that could in theory lead to his dismissal. In February 2010 an instructing magistrate of the Spanish Supreme Court's Second Chamber gave the go-ahead for judge Baltazar Garzón to be subjected to proceedings for the offence of 'judicial prevarication', over the latter's actions in accepting jurisdiction for Franco-era human rights crimes. Garzón is accused of disregarding the 1977 Spanish Amnesty Law and judicial principles of prescription (statutes of limitation) and of non retroactivity of criminal law. Human rights organisations worldwide continue to protest the decision, which some see as politically motivated, although some acknowledge that in effect the special court to which Garzón belongs does not have jurisdiction over domestic crimes except in special circumstances.

Sources for this month's bulletin include: Press reports; UDP database figures; CELS Argentina; Glenda Mezarobba, researcher, UNICAMP, Brazil; Uruguayan lawyer Pilar Elhordoy and Professor Naomi Roht-Arriaza.

Contributions to this bulletin: Organisations with information relevant for future editions of this bulletin are invited to contact us at the mails below by the 4th of each month. Please include contact and/ or citation details.

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