

Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end June 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 Boell 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, based on the Observatory's own database, information supplied by the Human Rights Programme of the Chilean Interior Ministry, and additional research using open sources.

CASE STATISTICS FOR CHILE

New case database and search tool to be launched in early September

The Observatory has compiled a database collating judicial information on the 300 plus cases, almost 800 agents, and 1000 – plus victims and survivors currently involved in ongoing case investigations in Chile. The information is used to produce this monthly bulletin and to check and complement Interior Ministry statistics. Once complete, the database will be used to produce analysis of patterns and trends in sentencing, use of international law, variations in jurisprudence by court and individual judge etc. The project has designed and commissioned a unique online search tool allowing members of the public to retrieve basic case information from the database. The tool – available in Spanish only - presents and interprets basic judicial information for a non-specialist public, according to the priorities identified with a range of user groups consulted before and during the design process. The tool is currently being tested and perfected with the same user groups, and will be fully online by the end of the month at the project's web address: www.icsoc.cl/observatorio-derechos-humanos A launch event is being planned for early September, and details will soon be circulated to the bulletin mailing list. It is hoped that the full database can also be made available for researchers to consult in person by appointment. Mail us for further details.

Cases and Victims

Interior Ministry Human Rights Programme data showed 452 investigations (cases) ongoing in Chile at end June 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. The rise of over 100 in open case figures from last month is almost entirely due to the judicial activation of the first

100 new criminal complaints brought by AFEP, the Association of Relatives of Victims of Political Execution (see below).

June's active caseload now represents almost 37% of known victims of death and disappearance*. Around 57% still have no case either in progress or concluded, a percentage which should fall again next month as another set of new complaints recently submitted begins to be processed. Only 6% of victims are recorded as having had legal cases successfully concluded for the crimes committed against them.

The fact that full investigative coverage is only recently being attempted in Chile reflects the fact that it has never been state policy to pursue criminal investigations for past human rights crimes. Although the judicial branch has the power to open criminal investigations ex officio, and although international human rights law implies state obligations to actively prevent, punish and sanction grave breaches, cases in Chile have almost exclusively been generated by private criminal complaints brought by lawyers, relatives and victims. In recent years the state has adhered to these complaints in an associate capacity, as part of its commitment to offer legal support and advice to relatives and survivors, but it has not yet figured as the active initiator of cases. There is to date no functional equivalent in Chile of Argentina's special prosecutorial unit for actively pursuing criminal action against former regime agents.

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

New cases

Relatives' association AFEP (*Asociación de Familiares de Ejecutados Políticos*) has continued to prepare and submit new criminal complaints (*querellas*) for over 1,000 victims of political execution in Chile whose cases have never been investigated (see above and Bulletin 7). The most recent submission, of 103 new complaints, was made on 5 August 2010. The group's goal is to ensure 100% coverage of the official victim universe, in pursuance of the right to legal recourse that international law guarantees to victims or their relatives in such situations.

Agents (Repressors)

Interior Ministry Human Rights Programme data at end June 2010 showed **782*** former security service agents charged and/or sentenced in Chile for past human rights related crimes (including those with absolutions currently under appeal). No new final sentences were emitted during June, and numbers of those serving confirmed custodial sentences accordingly remained at **64****, distributed across the following facilities:

Military facilities – 57 prisoners

- Punta Peuco: 46
- Cordillera: 10
- Police Hospital: 1

Civilian jails – 7 prisoners

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

** One of whom, former general Alejandro Medina Lois, died in June 2010 aged 79, while under charges but not sentenced. A second individual who had been charged but not sentenced was found dead from gunshot wounds on 27 July (see below).*

*** These figures do not yet include recent final sentences reported below. However only one of the final sentences emitted during July or early August will actually increase prisoner numbers. All but the three policemen newly convicted in the Vergara Toledo case were already in prison and/or were awarded sentence benefits that rule out jail time.*

Sentences

Between 2000 and June 2010, **292** former security force agents had received a total of 505 condemnatory sentences for dictatorship-era HRV crimes in Chile. 210 of these agents have had one or more of their sentences confirmed by the Supreme Court, with almost half receiving some kind of benefit such as sentence reduction or parole.

This figure represents the highest single total of former repressors sentenced for these crimes anywhere in Latin America. In Argentina, where 81 former repressors have to date been sentenced, only three of the 74 presently detained are currently serving confirmed custodial sentences. (*Source CELS Argentina, see www.cels.org.ar/wpblogs*)

TRENDS IN SENTENCING

Recent Supreme Court verdicts show variations in sentencing practice

In verdicts emitted on consecutive days, the Supreme Court imposed custodial sentences on police officers convicted of a particularly notorious crime, but applied the benefit of parole (*libertad vigilada*) to former DINA officials found guilty in a disappearance case. Both verdicts were moreover carried only by majority voting, with two of the five judges voting in favour of the application of statutes of limitation.

On 3 August, the Court sentenced six former agents, including Manuel Contreras and Pedro Espinoza, to between 4 and 5 years for their part in the 1974 disappearance of Anselmo Radrigán. It nonetheless went on to concede the sentencing benefit of 'supervised liberty' or parole to all of the guilty parties. The benefit removes all practical custodial effect from the sentences. However, all are currently in prison serving sentences for other crimes. On 4 August, the Court, with the same 5 judges sitting, imposed sentences of between 7 and 10 years on three policemen convicted of the 1985 killings of two young MIR activists, brothers Rafael and Eduardo Vergara Toledo. The boys were aged 18 and 20 respectively at the time of their deaths, during a street protest against the Pinochet regime. The crime caused widespread revulsion because of the youth of the victims and the fact that it took place in the last half-decade of the regime, when systematic repression had become less intense. The form of the killings was also particularly brutal, with one of the boys shot execution-style in the back of the head when he was already under arrest and lying immobilised on the floor of a police van. On this occasion the Court reduced original sentences, but to a final tariff sufficient to send the three guilty men to prison for the first time. None has other sentences current or pending.

See the Observatory's web page at www.icsoc.cl/observatorio-derechos-humanos to download the full texts of the verdicts (in Spanish only). All Chilean judicial sentences at Appeals Court level or above can also be obtained from the official web page of the judicial branch, at www.pjud.cl

Sentence reductions mean around one in three perpetrators found guilty serves jail time in Chile

The use of discretionary sentencing formulae to reduce on appeal the final sentences imposed on perpetrators of human rights crimes means that only at most a third of those found guilty actually serve jail time. Observatory data combined with figures cited to the press by a lawyer for the government's Human Rights Programme suggest that while 210 individuals have been convicted at Supreme Court level* of human rights crimes since 2000, the majority are given final sentences short enough to allow commutation to parole or house arrest. (The Chilean penal code allows commutation of sentences of three years or under, see below). With 64 perpetrators currently in prison, and allowing for those who have already completed short sentences, plus two individuals who died in custody, the ratio of confirmed sentences actually leading to time served in prison is at most an estimated one in three.

** Around 90 more individuals have been convicted in lower or appeals courts, with confirmation of final sentences pending. Although Appeals Court sentences are in theory final and do not automatically go to the Supreme Court, most defendants invoke procedural reasons to seek a Supreme Court review.*

Sentencing benefits and mitigating factors commonly applied in human rights cases: ordinary criminal code benefits

Chile's ordinary criminal code sets out a range of sentencing benefits and mitigating factors that can be applied to reduce or completely suspend final sentences in criminal cases. Benefits include *libertad vigilada*, a form of parole that suspends the custodial effect of the sentence and in practice means the individual does not actually serve jail time. *Remisión condicional*, conditional remission, is a similar institution that dissolves more of the practical implications of a sentence. Under Chilean law it can be applied by judges to sentences of 3 years 1 day or less. Between July 2007 and January 2010, *remisión condicional* was given to 32 individuals whose low sentences qualified them for the benefit.

Other institutions with similar effects include *irreproachable conducta anterior*, sentence reduction based on previous good character. As discussed in previous bulletins, the apparent anomaly represented by the continued application of this figure to individuals convicted of reiterated and multiple human rights violations proceeds from the fact that the previous good character is measured by the absence of a criminal record at the time of the commission of the offence, which in the case of most human rights crimes was a period of judicial impunity.

Application of military justice codes by the Supreme Court: due and 'undue' obedience

The systematisation of current case verdicts that the Observatory is currently preparing via its database and search engine allows interesting insights into judicial practice in Chile in human rights cases. In recent years, much has been made of the effective transfer of most such cases out of the military court system – which regularly applied amnesty pre-emptively to close cases. It is now more generally accepted that cases involving crimes against civilians should instead be transferred to the regular court system, and a 2010 reform to the military justice system further restricted the ambit of military courts to military, rather than common, offences committed by members of the security forces. Nonetheless, it is notable that the regular court system still applies articles of the military justice code, in particular where these set out mitigating factors that can reduce final sentences.

Supreme Court final verdicts in human rights cases emitted between mid 2007 and January 2010 show for example that the mitigating factor of *obediencia indebida* was applied to 29 individuals convicted of human rights violations. This figure is a reduced version of the principle of due obedience, the notion that a subordinate has no criminal responsibility for crimes committed in compliance with orders given by a superior officer. Although due obedience has widely been regarded as an illegitimate defence for crimes against humanity since the Nuremberg trials, a version of it still exists in Article 214 of Chile's code of military justice. Article 214 exonerates the subordinate and assigns responsibility exclusively to the superior officer who gave the illegal order. Interpretive practice regarding this article sets out 4 conditions

which need to be fulfilled in order for Article 214 to be considered applicable. The Supreme Court did not apply Article 214 in any of the cases in the sample, but it did apply Article 211, *obediencia indebida or undue obedience*. This article states that where due obedience cannot be invoked because one of its qualifying conditions is absent, although the subordinate cannot be completely exonerated of criminal responsibility s/he may be given a reduced sentence.

The use of prescription (statutes of limitation) as grounds for absolution

It is generally considered that the practice of prescription – applying common statutes of limitation tariffs to declare that human rights crimes have in effect ‘expired’ and can no longer be prosecuted – was discontinued by the Supreme Court in December 2006. The date marks the first time the Court overturned a lower court use of prescription on the explicit grounds that international law prohibits statutes of limitation for crimes against humanity (in the case of the homicides of Hugo Vásquez Martínez y Mario Superby Jeldres). Nonetheless, the practice has not completely disappeared from Supreme Court judicial reasoning. Two of the 5 regular members of the Court’s Sala Penal vote almost invariably in favour of the application of prescription or amnesty to human rights crimes, while between mid 2007 and January 2010 it was applied to produce absolutions in 14 final verdicts involving 15 individuals. The charges involved were either aggravated homicide or aggravated kidnap, serious crimes which the same court has in other circumstances classed as war crimes or crimes against humanity not subject to statutes of limitation.

Further analysis of these benefits and their recent patterns of application will be published alongside the new case search tool in coming weeks, and will also be featured in future editions of this bulletin.

Prats case final sentence analysis

As promised in Bulletin 7, there follows a fuller analysis of the judicial reasoning in July’s Supreme Court final sentence for the 1974 assassination of Carlos Prats and Sofia Cuthbert. The full text of the sentence (in Spanish only) can be downloaded from the project website or from www.pjud.cl

On 8 July 2010, the Chilean Supreme Court emitted its long awaited verdict for the aggravated homicides of former general Carlos Prats and his wife Sofia Cuthbert, assassinated on 30 September 1974 in the Argentine capital Buenos Aires. The verdict sentenced former DINA secret police operatives for ‘*asociación ilícita*’ (criminal conspiracy), and sentence tariffs distinguished between commanding and lower level members.

The Supreme Court struck down and replaced a previous Appeals Court verdict, which had in turn confirmed the initial investigate magistrate’s findings and sentences, finding that neither had provided sufficient grounds for their rejection of

the application of 'gradual' or 'half' prescription [*Editor's note: 'half prescription' is a provision allowing for discretionary reduction of sentences when substantial time has elapsed between the commission of an offence and its investigation and sanctioning. See Bulletin 6 for details*]. The struck down verdicts had both ruled half prescription inapplicable by declaring it analogous to full prescription, or the application of statutes of limitation [*Editor's note: Full prescription had in turn been ruled out by reference to principles of international human rights law that exempt crimes against humanity from the application of statutes of limitation*]

The Supreme Court's replacement verdict shows gradual development in the Court's thinking in regard to the concept of criminal conspiracy. The verdict examined the typification of the crime in some depth, characterising it as a crime in its own right (independent of the subsequent crimes that may be committed as a result of the conspiracy) and paying specific attention to degrees of participation. The verdict affirmed the centrality of criminal intent in the definition of the crime, and discusses aspects of culpability. It also clarified that the criminalisation of the conduct proceeds from the intention to protect against illegitimate abuse of the power of the state.

In relation to the participation of Mariana Callejas, sentenced in the overturned previous verdicts as a direct participant in the crime, after reviewing probatory elements and the treatment of reasonable doubt in the original verdicts the Supreme Court sentenced her in the lesser category of accomplice.

The Court went on to invoke international treaty and customary law as grounds for ruling out the application of the 1978 Amnesty Law to the crime, noting that principles of international human rights law place an obligation on states to 'investigate and sanction' perpetrators of grave human rights violations and affirming that the principle of sovereignty has been (self) limited in relation to such offences. It added that the particular offences under consideration fall into the category of crimes against humanity.

Finally, in its consideration of the issue of applicability of half prescription, the Court ruled that the institution of half prescription does not proceed from the same basis as that of the full statute of limitations. The Court held that half prescription is essentially a grounds for mitigation, accordingly not necessarily inadmissible even where statutes of limitation do not apply. The Court accordingly overruled a minority vote issued by judge Brito, who held that "the sentence reduction [mandated by half prescription] is a function of the time elapsed". In this respect the Court seems to have overlooked the fact that the concept of half prescription was originally related more closely to the impending nature of the expiry of the limitation period than to the time elapsed since commission of the offence. Aside from the particular nature and gravity of the offences, the Court also failed to acknowledge the continuous nature of the investigation of the crime

[*Editor's note: Statutes of limitation essentially penalise inaction in state prosecution of crimes. The author points out that there has been continuous judicial investigation of this crime, a fact which could be used to argue that the statute of limitations 'clock' ought never to have been started. It should however be noted that the original investigation took place in Argentina, where the assassination was committed. Criminal investigations were not actively*

pursued in Chile itself until 2002/3, when, having denied an extradition request from Argentina, the Chilean judiciary was obliged by extradition law to open a national investigation]

Overall, the verdict serves to underline the highly discretionary nature of the controversial figure of half prescription, since it emphasised that once the figure has been applied, judges can choose whether or not to reduce sentences on grounds that include 'proportionality' and 'actual harm caused'. In this sense the Court disappointed those hoping to see a change in its recent practice of applying the concept of gradual prescription to circumstances that seem far removed from those for which it was originally designed.

Note prepared by Karinna Fernández, human rights lawyer, Santiago de Chile. Translation by the Observatory.

Other news from Chile

Bicentenary pardons proposal will not include perpetrators convicted of crimes against humanity

The Catholic Church's formal request to Chilean president Sebastian Piñera to consider making use of his presidential pardon faculties to mark September 2010 bicentenary celebrations with a general prisoner release generated wide and often heated debate this month. The request drew attention to poor prison conditions and overcrowding, and suggested that elderly prisoners, those with dependent relatives, and/or those suffering from terminal illnesses could be considered for the measure.

The possible application of the measure to convicted perpetrators of human rights crimes proved particularly sensitive. Some commentators supported the proposal, drawing parallels with pardons granted after the 1990 transition in order to secure the release of prisoners convicted during the dictatorship of crimes connected with armed resistance. Relatives' organisations and human rights groups, on the other hand, vigorously opposed any such reversal of recent progress in prosecuting and sanctioning crimes against humanity, pointing out that the advanced age of some of those sentenced is due to the fact that impunity was allowed to prevail for so long. (Almost all those currently in prison for such crimes were convicted after 2000). They also questioned whether any imprisoned perpetrators could genuinely be classed as 'repentant', another of the qualifying conditions that the Church had suggested the president take into consideration. Their misgivings on this point seemed to be borne out when Manuel Contreras, former head of the DINA secret police and the individual with most accumulated and pending sentences for human rights crimes, gave a defiant televised interview from prison stating that he was "proud" of what the DINA had done under his leadership. He declared himself uninterested in receiving a pardon, and instead called on Piñera to keep a supposed promise made to a meeting of serving and retired military personnel during the presidential campaign to ensure that amnesty and prescription would be used to halt prosecutions.

In characteristically accusatory vein, Contreras went on to claim that the USA's Central Intelligence Agency, CIA, had in fact been responsible for the assassination of Carlos Prats and Sofia Cuthbert. He declared that current army commander in chief Juan Miguel

Fuente-Alba “is the one who should be repentant”, for his recent remarks disowning and excoriating the 9 former agents found guilty of the crime, who include Contreras and 6 more retired military officials. Somewhat self-contradictory, Contreras also claimed that “The Chilean army doesn’t give orders to kill... I never killed anyone, and I never gave orders to have anyone killed.... We never killed anyone who wasn’t a terrorist”. The setting for the interview helped allay any concerns about poor or overcrowded prison conditions in these particular cases: Contreras’s cell is an individual cabin set in the grounds of the special military facility he shares with 9 other detainees, equipped with facilities including the personal computer he is using to write his memoirs.

A final decision on the pardons issue came on Sunday 25 July, when Piñera announced that there would be no general pardon, but consideration of specific individual petitions. Certain categories of offender were however categorically excluded, amongst them those convicted of sexual offences against minors, of particularly violent crimes, and of grave human rights offences. Measures to improve prison conditions were also announced. Factors likely to have weighed in the final decision include a domestic political setting highly intolerant of any suggestion of leniency in the area of crime, plus an international agenda that includes the renewing of Chile’s current membership of the UN human rights committee. Chile has recently been proactive over other human rights issues in pursuit of this goal, receiving recently released Cuban dissidents. Consistency in its human rights policy regarding the past is likely to be an added plus.

Catholic Cardinal Francisco Javier Errázuriz, originator of the pardons proposal, nonetheless expressed the hope that a future government would reconsider and concede pardons to some agents convicted of human rights violations. The public image of the Chilean Catholic Church, already affected by a wave of recent allegations of sexual abuse by clerics, seemed on the whole to have been further harmed by the pardons proposal. Many felt that it represented the definitive separation of the Church from its staunch dictatorship-era defence of human rights under the leadership of now-deceased, and widely respected, Cardinal Raúl Silva Henríquez.

Access to information legislation increasingly invoked in connection with past human rights crimes

Chile’s recently passed access to information legislation is increasingly being put to the test by organisations reporting on issues connected with dictatorship-era human rights violations. In recent weeks CIPER, a cyberjournalism project directed by leading investigative journalist Monica González, successfully appealed to Access to Information commissioners over two requests. One pertained to the release of official statistics on the use of presidential pardon faculties since 1990, while the second obliged authorities to reveal the details of study scholarships awarded to survivors of political imprisonment and torture (See bulletins 6 and 7, Valech Commission scholarships).

Former police officer charged with human rights crimes found dead

Retired policeman Luis Jara, charged in 2004 as a suspect in mass disappearances and extrajudicial executions carried out in the rural community of Paine in the early months of the 1973-90 military dictatorship, was found dead in the southern Chilean city of Valdivia on 26 July. Jara, 75 years of age, died of gunshot wounds. His family reported that he had been suffering from depression due to recent family problems. The death is being investigated, but foul play is not suspected.

Extradition request initiated for on-the-run former agent

A former Navy junior officer who fled the country in May this year on learning of the formalising of charges against her for human rights crimes is to be made subject to an extradition order. Ema Ceballos, presently in Denmark, is wanted in connection with the 1987 kidnap and murder of activist Julián Peña, one of a group of 5 militants of the Frente Patriótico Manuel Rodríguez rounded up and killed by the CNI intelligence service, possible retaliation for the FPMR's kidnapping earlier the same month of an army colonel, who was later released unharmed. Ceballos was charged on 9 July with participation in the assassinations, but could not be officially served with notification of the charges as she had already fled.

Although in general Chile has very few on-the-run former agents when compared to neighbouring Argentina, which has dozens, this case plus one other in which a sentenced agent has not presented himself to serve his sentence show that the issue of evasion of justice is also relevant in Chile.

Investigation of possible human remains halts building project

On 5 August two children reported the discovery of fragments of what may be human remains buried in waste ground in the district of Colina, on the outskirts of Santiago. The condition of the remains, and other factors to do with the area's past history, mean that the Forensic Medical Service and other state agencies have not ruled out possible links to past human rights crimes. The site was under preparation for construction works, which have been halted temporarily while a search is carried out.

Remodelled National Stadium includes a memorial to prisoners detained in the aftermath of the 1973 military coup

Chile's national football stadium recently underwent a costly renovation programme as part of preparations for bicentenary celebrations this year. Relatives and survivors groups, who have been lobbying for years to have the site's history as a past concentration camp and torture centre officially acknowledged, saw their concerns partly answered as the new all-seater stadium preserves a railed-off section of the original terraces as a monument to those detained there.

Legislative project to prohibit public homage to military junta members submitted to the parliamentary Culture Commission for debate

In July, 6 deputies from the Communist and socialist parties submitted draft legislation that would prohibit public funds being used to erect monuments or name public streets after Pinochet or other members of the military junta that seized power in Chile after the 1973 coup. The proposal was redirected from the human rights commission to the Culture Commission, where it will be debated by a cross-party group of deputies before possibly being submitted for general voting. Santiago still has prominent streets that commemorate the coup ('11 September'), and though there is no public monument to Pinochet, a private Foundation promotes and honours his life and work. The same is true of prominent civilian regime figure Jaime Guzmán, assassinated in 1991, whose Foundation headquarters and associated monument represent the most notable visual referent to the dictatorship period in Santiago's wealthy uptown neighbourhoods.

Proposed legislation to demote convicted military perpetrators of human rights crimes receives qualified support from the Minister of Defence

On 15 July, 8 centre and left wing deputies submitted a legislative proposal to alter the current Code of Military Justice in order to add human rights violations to a list of serious crimes for which members of the security forces can be stripped of military honours and privileges in addition to any criminal sentence. The modification, which would affect article 222 of the Code, is currently being debated in the legislature's Human Rights Commission. Defence Minister Jaime Ravinet signalled that the government would support the proposal, on the understanding that the relevant crimes would be clearly spelt out in the legislation and that it would not be retroactively applied. This qualification would mean the measure could not be invoked against those presently being investigated for dictatorship-era crimes, and would only apply to any such crimes that might be committed in the future by members of the armed forces or police.

NEWS FROM THE REST OF THE REGION

Direct justiciability of crimes defined under international human rights law as war crimes or crimes against humanity

Recent judicial practice in Argentina, Chile and Uruguay, the three Southern Cone countries with most current judicial activity regarding past human rights crimes, shows differences in practice regarding the application of international human rights law to past crimes. In Argentina, internationally-defined crimes such as genocide have been directly used as charges against former repressors. In Chile, international law is instead used to suspend the applicability of domestic amnesty or statutes of limitation, with subsequent charges coming exclusively from domestic criminal codes in force at the time of commission of the offence (aggravated homicide, kidnap, illegal exhumation and criminal association being the most commonly used). In Uruguay, the issue is currently under direct consideration by the Supreme Court. Some Uruguayan state prosecutors and lower-level judges insist on bringing internationally-defined charges such as forced disappearance, while to date higher court practice has been to alter the charges to their nearest domestic equivalent. See below.

In all three countries, recent* legislation to incorporate regional or international treaties such as the American Convention against Forced Disappearance or the Rome Statute of the International Criminal Court mean that crimes such as forced disappearance or genocide do now exist in domestic criminal codes. They can therefore be brought as direct charges for crimes committed after the date of the new domestic legislation. Some courts however consider that under the principle of non-retroactivity the charges are not valid before the new domestic laws were passed. Others consider that these crimes were in effect always prohibited under international treaty or customary law, opting for direct justiciability.

** For Chile, Law 20.537 of July 2009, 'Tipifica Crímenes de Lesa Humanidad y Genocidio y Crímenes y Delitos de Guerra', available from <http://www.leychile.cl/Navegar?idLey=20357>. For Uruguay, Law 18.026 of September 2006, 'Cooperación con la Corte Penal Internacional en Materia de Lucha Contra el Genocidio, Los Crímenes de Guerra y de Lesa Humanidad', available from <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18026&Anchor=>*

Argentina

The spouses of 15 former military personnel currently on trial or in prison for past human rights crimes chained themselves to railings outside the headquarters of the Ministry of Defence and the Army on 3 August. They demanded an audience with the relevant authorities and denounced the lack of support from the current armed forces high command for an estimated 900 former officers and soldiers currently affected by judicial proceedings. The tactic is borrowed from human rights organisations and relatives' groups, who famously used these same kinds of direct action to denounce atrocities and the lack of judicial response during the 1976-83 military dictatorship.

The issue of Catholic Church collusion with repression in Argentina has recently come under public discussion. The actions of Christian von Wernich, a former police chaplain definitively sentenced in June 2010 for his part in murders, disappearances and torture, are merely the most visible face of the institution's tacit and occasionally direct approval of and participation in 'dirty war' tactics, which in Argentina moreover had a notably anti-semitic character. The Church also produced its quota of courageous defenders of human rights, but these were in the minority and generally at lower levels of the hierarchy.

Efforts to trace and identify remains of those still disappeared in Argentina continue. The process may finally shed some light on the disputed issue of victim numbers. Although it is widely accepted that the around 9,000 names documented by Argentina's official Truth Commission in 1985 are a significant underestimate, the real figure may well not reach as high as the 30,000 subsequently established by human rights organisations. In late July, the graves of two 'unknown' individuals were finally discovered to belong to French citizen Yves Domergue and Mexican Cristina Cialceta, victims of repression buried anonymously in 1976. The graves had been carefully tended by a local cemetery worker in the provincial town of Melincué, until local high school students, suspecting a connection with human rights crimes, decided to investigate the circumstances of the burial.

The ongoing trial in Mendoza of 5 former repressors heard testimony in late July from Roberto Reyes, a police officer who until 1970 had been an army junior officer. Reyes alleged that during his time in the army, almost a decade before the 1976 coup, he had been sent for 'antisubversive' training that had included coaching in torture techniques under the supervision of US veterans.

Spanish judge Baltazar Garzón attended public hearings in early August in the Argentine province of Córdoba, where former junta leader Jorge Videla and others are on trial for crimes against humanity. Garzón, currently suspended from duties in the Spanish judicial system (see bulletins 5 and 6), is presently an advisor to the International Criminal Court, ICC.

On 2 August it was announced that the newly-created Mercosur Human Rights Institute will be housed on the site of the ESMA, the navy mechanics school in Buenos Aires that operated as a clandestine detention and torture centre during the 1976-83 dictatorship and has since been reclaimed as a memory site. The initiative joins other parallel projects whereby various human rights and relatives associations will develop commemorative and human rights projects in the extensive building complex and grounds of the ESMA. The regional institute, approved by authorities of the Mercosur countries at a December 2009 summit, is scheduled to be operative by October 2010. Mercosur, a regional economic and political bloc, is currently comprised of Argentina, Brazil, Uruguay and Paraguay, with Venezuela in the process of applying for membership.



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Brazil

Discussions continue in Brazil over the installation of an official truth commission and the possible opening of secret armed forces archives relating to over 100 people disappeared during the country's 1964-85 military dictatorship.

Colombia

The extradition to the US of individuals accused of heading paramilitary groups recommenced in early August, after being halted for almost a year by the Supreme Court's insistence that those accused should answer in the first instance to national courts. Meanwhile, a change to criminal procedure ruled that victims of crime could only apply for reparations once a final criminal verdict had been emitted and fully confirmed on appeal.

Guatemala

Francisco Dall'Anese, appointed to replace Carlos Castresana at the head of Guatemala's UN-sponsored anti-impunity commission, took up his post this month. Dall'Anese, former attorney general of Costa Rica, will inherit significant fallout from the political row that led to the resignation of his predecessor. Castresana resigned in protest at the designation as new Guatemalan attorney general of Conrado Reyes, an individual widely rumoured to be linked to organised crime syndicates. In the aftermath of Castresana's departure, the appointment was rescinded and the state attorney post remains vacant. The Supreme Court president who oversaw the original selection process is meanwhile facing public calls for his own resignation or dismissal. The calls have been echoed by members of his own Court.

Peru

In early August, Peru's *fiscalía nacional* (attorney-general's office) announced the reopening of investigations into the origin of funds of an estimated US\$350,000 used to pay for advanced studies in the US undertaken by the children of disgraced former autocrat Alberto Fujimori. The investigation could affect the electoral chances of his daughter, probable 2011 presidential candidate and current congresswoman Keiko Fujimori, who denounced the investigations as a 'conspiracy' and 'political persecution'.

The activation of individual economic reparations for victims and survivors of the political violence of the 1980s and 1990s came a step closer in July, with transfers of funds earmarked for reparations to 29 local government authorities in the country's worst affected regions, including Apurímac and Ayacucho. On 26 July the national Reparations Council, which is in the process of drawing up a centralised Victims Register, sent a first list of 39,004 names to Peru's Council of Ministers. It recommended that the 4,636 senior citizens on the list should be made a priority for the receipt of the individual indemnizations that Law 28592 establishes for those who suffered the death or disappearance of a direct family member, sexual violence or permanent disability as a result of political violence. The register, which is still in the process of completion, currently contains 76,814 names. It is estimated that the final total will be between 92,000 and 107,000.

A growing tendency to separate 'innocent' from other victims however continued, with a government announcement on 28 July that reparations would not be paid to former Shining Path or MRTA militants who in their turn owe fines to the state as part of civil reparations sentences imposed on them in previous criminal prosecutions for membership of terrorist organisations. The fines are moreover classified as inherited debt, meaning that compensation in theory due to family members of convicted Shining Path members later

killed in prison massacres such as that of Castro Castro in 1992 will be offset against the civil penalties the victims previously owed.

Luciano Revoredo, *Cambio Radical* party candidate for the mayorship of the upmarket Lima municipality of Miraflores, recently expressed his implacable opposition to the proposed national Memory Museum which is scheduled to be sited in his district. He pledged to do 'everything in his power' to prevent the building of the museum, which will commemorate the political violence of the 1980s and 1990s and will house the photographic exhibition and other artefacts produced and collected by Peru's Truth Commission process, which culminated in 2003. The Museum project, which has been controversial since its inception, is being overseen by a committee which includes renowned novelist and former right wing presidential candidate Mario Vargas Llosa.

Uruguay

Uruguay's Supreme Court of Justice will be obliged to rule in coming months on the question of the correct typification of human rights crimes committed during the military dictatorship. State prosecutor (*fiscal*) Mirtha Guianze has repeatedly applied for the bringing of charges of forced disappearance against former regime agents, while most judges and the Supreme Court's own attorney (*fiscalía de Corte*) hold that such charges cannot be brought for crimes committed before 1995, date on which the Interamerican Convention against Forced Disappearance came into force. Guianze, for her part, argues both that disappearance has been illegal under international customary human rights law since the 1950s and that disappearance is in any case an ongoing crime, whose date of commission therefore cannot be fixed to a set time period. Her view is shared by state attorney Ana María Tellechea and by judges Mariana Mota and Luis Charles. The latter was the first to apply formal charges of forced disappearance, in 2007 against former dictator Gregorio Alvarez. The charges were nonetheless later modified on appeal to 'aggravated homicide'. Although forced disappearance is now typified and penalised under Uruguayan national law, in Article 21 of Law 18.026 of 2006, the discussion turns on whether the charge can be applied to crimes committed before that date.

In late July Uruguay's ruling party, the centre-left Frente Amplio coalition, approved a legislative project that would annul Uruguay's amnesty law, the so-called *Ley de Caducidad*. The project is designed to anticipate an expected adverse ruling from the Interamerican Court of Human Rights, which has repeatedly declared similar national laws in the region to be incompatible with international legal obligations including the right of victims and relatives to the truth and to effective remedy. The Frente Amplio's draft legislation would, if eventually approved, allow judges to re-open investigations which previous Presidents of the Republic had ordered to be suspended. The discretionary power that the existing law allows to the Executive branch, giving it effective supervisory powers over the judiciary in regard to human rights prosecutions, is one of the main arguments advanced to argue its possible unconstitutionality. The Supreme Court accepted the unconstitutionality thesis in October 2009 in the case of Nibia Sabalsagaray (see bulletin 2), just days before a plebiscite to support a possible general annulment of the law failed to achieve the necessary majority. The Court's ruling nonetheless applied only to the case in which it was made, while the Frente Amplio project would modify the general legal context for all similar cases. The case which is widely expected to produce the first recent Interamerican Court pronouncement on the question is that of Maria Claudia García de Gelman, disappeared in 1976. Maria Claudia, an Argentine citizen, was detained in Buenos Aires and later transferred to Uruguay as part of rendition practices carried out by Southern Cone security forces. Pregnant at the time of her detention, Maria Claudia was kept alive until she gave birth to a daughter. Maria Claudia's

daughter was traced in 2000 by her grandfather, Argentine poet Juan Gelman, after decades of searching. She had been adopted by a Uruguayan family shortly after her mother's final disappearance, and had been kept unaware of her real identity.

Sources for this month's bulletin include: Press reports; the Human Rights Programme of the Chilean Ministry of the Interior; CELS Argentina; Chilean lawyers Karinna Fernández and Eduardo Contreras; Uruguayan lawyer Pilar Elhordoy, and the International Center for Transitional Justice's daily Spanish language news bulletins (Contact comunicaciones@ictjcolombia.org to register). Contact susana.kuncar@udp.cl to receive the monthly Spanish-language bulletin of the UDP's human rights centre, which this month contains commentary on the questioned Chilean presidential faculty of judicial pardons.

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.

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