

Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end Sep 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.

The Observatory's case data and news bulletin is usually produced on a monthly basis. The present special edition however accumulates news from September to November 2010, owing to the temporary absence of project director Cath Collins on project business (see below), and also to a bottleneck in the production of official case statistics used by the Observatory to present overall figures for judicial activity. Our next bulletin will be produced in the New Year, covering developments for December and January 2011.

To keep up to date with the latest developments between issues, look for us on Facebook (Observatorio ddhh (Chile); Spanish only), or visit the current news section of our web page www.icso.cl/observatorio-derechos-humanos (now fully functional after temporary redevelopment)

OBSERVATORY PRESENTS WITH REGIONAL PARTNERS AT CONFERENCES IN CANADA AND EUROPE

The Observatory's pioneering work in tracking and analysing 'late justice' developments in the Southern Cone was showcased during October and November in a series of academic and practitioner events in Canada and the UK. The events were co-organised by project director Cath Collins as part of a Visiting Fellowship with the University of London's Human Rights Consortium, which is allowing Chile's recent experience with post-transitional trials to be shared and discussed with colleagues in other regions of the world.

The series of international conferences, co-organised by the Observatory with the Universities of London and Ulster, brought together around 150 experts and practitioners from Argentina, Peru, Norway, the US, Africa and the UK to discuss the causes and implications of recent shifts towards greater domestic human rights



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accountability in Latin America. Project partners CELS Argentina and Jo Marie Burt/IDL Peru also took part in the events, giving attendees a preview of the innovative regional collaboration which the three projects hope to consolidate in 2011 in order to extend coverage of national justice processes to Argentina, Peru and Uruguay.

The series complements a regional gathering in early September of prosecutors, lawyers and state institutions involved in trial litigation and data production (see Bulletin 9). On this occasion the Observatory's current work was warmly received by attentive publics in Toronto, London, Oxford and Belfast, stimulating interest and proposals for future collaboration and exchange with Africa, other parts of the Americas and international human rights organisations. Collins will remain in Europe until the end of January 2011, to investigate funding possibilities for a second phase of the Observatory and to present findings from her recent book, 'Post-Transitional Justice: Human Rights Trials in Chile and El Salvador' (Penn State Press, 2010) in the universities of Oxford, Salamanca, Toronto and Trinity College Dublin.

SUCCESSFUL PILOT WORKSHOPS ON HUMAN RIGHTS CASES AND THE CHILEAN JUDICIAL PROCESS TO BE CONTINUED

Since the launch of our case search engine in early September, Observatory researchers Jennifer Herbst, Rodrigo Hernandez and Paulina Zamorano have been working intensely to promote and encourage continuing engagement by civil society groups with the judicial process. Interactive workshops with relatives' associations in Chile allow the team to present the search tool, accompanying legal manual and analysis of the current Chile case universe and to receive feedback from actors on the ground about the impact of trials and advances and obstacles in access to justice for past human rights crimes. The team hopes to extend the workshop series to Chile's regions, and is happy to discuss possibilities for presenting to new groups, particularly where some travel assistance can be provided. Mail the Observatory at observatorioddh@mail.udp.cl to find out more.

LAUNCH OF UDP ANNUAL HUMAN RIGHTS REPORT

The Annual Human Rights Report of the Universidad Diego Portales Human Rights Centre was launched on 30 November in the auditorium of the law school. The report was discussed by Lorena Fries, director of the national Human Rights Institute, and by journalist Fernando Paulsen. The report's wide range of themes includes issues of current relevance such as violence against women, rights of indigenous peoples, the policing of social protests, prison conditions and corporate social responsibility in the mining sector. The chapters most closely related to the Observatory's work are 'Truth and Justice' and 'Human Rights Institutions in Chile'. The first of these detects a 'stagnation' of official truth and justice measures since the change of government in March 2010, and also notes the continuing differential treatment given by the courts to statute of limitations issues in civil, as opposed to criminal, cases.



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The chapter 'Human Rights Institutions in Chile' analyses the mandate and operation of national organisms such as the new Human Rights Institute and the Human Rights Programme of the Interior Ministry. The chapter details a series of delays and deficiencies by new government authorities in extending full rights protection to their citizens. It voices concerns expressed by staff of the Human Rights Office of the governmental Legal Aid Programme and of the Human Rights Programme of the Interior Ministry, who find their everyday operations increasingly curtailed. In a section dedicated to the new Human Rights Institute, the chapter concludes that Chile still falls short of fulfilling the Paris Principles and other freely undertaken international obligations. Recommendations include the need to reinforce the organisational independence of the Human Rights Programme of the Interior Ministry in pursuit of its role in supporting criminal prosecutions of perpetrators of serious human rights crimes from the dictatorship period.

The report, like its previous versions (from 2003 to the present), is available for free download at:

<http://www.derechoshumanos.udp.cl/informe-anual-sobre-derechos-humanos-en-chile-2010/> (Spanish only)

CASE STATISTICS FOR CHILE

Cases and Victims

According to Interior Ministry Human Rights Programme data, 546 investigations (cases) were ongoing in Chile at end Sep 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. Most of these – over 450 – were at the '*sumario*' stage (immediately prior to the full formalisation of charges and verdicts/ sentencing).

This active caseload now represents 40% of known victims of death and disappearance.* 53% still have no case either in progress or concluded, and only 7% of victims are recorded as having had legal cases successfully concluded for the crimes committed against them.

** 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 3,185, to reflect errors discovered in 2008 and 2009 in official registers*

Agents (Repressors)

According to Interior Ministry Human Rights Programme data, since 2000 and to July 2010 **786** 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). **71**** of these were serving confirmed custodial sentences, distributed across the following facilities:



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Military facilities – 62 prisoners

- Punta Peuco: 51
- Cordillera: 10
- Police Hospital: 1

Civilian jails – 7 prisoners

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

Place of detention yet to be confirmed – 2 prisoners

*** Over the same period 22 more individuals, not included in the total of 786, died while under charges or having been found guilty.*

Sentences

Between 2000 and July 2010, **292***** former security force agents had received a total of 506 condemnatory sentences for dictatorship-era HRV crimes in Chile. 217 of these agents have had one or more of their sentences confirmed by the Supreme Court, with almost two thirds of the 213 receiving some kind of benefit such as sentence reduction or parole. Approximately**** 7 of the 217 have fully served the sentence imposed.

**** The total rises to approximately 300 if individuals deceased during the period are included. The exact judicial status of these agents at the time of their deaths is currently being investigated by the Interior Ministry's Human Rights Programme*

***** To date there has been no systematic central register of the final completion of sentences by agents sentenced for human rights crimes, nor any systematic monitoring of the satisfactory completion of compulsory parole conditions such as monthly reporting or other supervisory measures. The Interior Ministry's Human Rights Programme has promised to investigate the situation, but the Observatory has not yet received any further information. We are currently preparing a direct request to the prison service for this data to be released.*

COURT AND JUDICIAL BRANCH NEWS

Recent actions by the Interior Ministry's Human Rights Programme provoke questions about new authorities' commitment to criminal prosecution of perpetrators

The current direction of the Interior Ministry's Human Rights Programme, a key institution that has played a role since 1997 in the investigation of state terrorism, has come under scrutiny in recent weeks. Insiders and outside, including international, observers have raised questions about issues ranging from repeated delays in activating new criminal complaints to the recent sacking of two lawyers.

See below for a short background summary of the context of the Programme's work, followed by more details on these recent developments.



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The Human Rights Programme dates back to the mid-1990s, when the government of then-president Eduardo Frei Ruiz-Tagle set up the organism as a followup body to the recently concluded Truth and Reconciliation Commission. It was charged with locating those who remained disappeared as a result of political repression under the 1973-1990 military dictatorship. In its early years, the Programme, which also served as a repository for Truth Commission archives, was restricted by its mandate to activities aimed at locating disappeared persons or their remains. It was not allowed to bring criminal complaints, a task which continued to be the exclusive preserve of private actors such as relatives and survivors in association with human rights lawyers and NGOs. But after new official initiatives, including the controversial Round Table (*Mesa de Diálogo*) of 1999/2000, the presidential human rights policy announcement '*No Hay Mañana Sin Ayer*' of 2003 and the resulting Commission on Political Imprisonment and Torture, the Programme was reorganised and took an ever more central role in offering legal advice and representation to relatives and survivors. Using the somewhat ambiguous legal figure of '*parte coadyuvante*' the Programme, led by lawyers historically associated with human rights defence work back in the time of the Vicaría de la Solidaridad, expanded its role in prosecution work. It began to be accepted by both judges and some civil society actors as an important player in gradual advances toward improvements in justice for past atrocities.

In the months leading up to the March 2010 change of government, the Programme took another decisive step based on changes to its legal mandate produced by the December 2009 entry into force of new legislation setting up a national Human Rights Institute. The changes indirectly allowed the Programme more freedom of action to proactively generate new criminal complaints for victims of forced disappearance and political execution. According to Rosemarie Bornand, then Executive Secretary of the Programme, around 70 separate complaints, on behalf of a total of 99 victims, were presented in the first three months of 2010. The procedure consisted of the drafting of complaints by Programme lawyers, signature by the Undersecretary of the Interior Ministry, and the formal submission of the complaints to the courts. The power to submit complaints directly gave Programme lawyers additional powers to have investigations opened or reopened, whereas their previous role as *parte coadyuvante* only allowed them to associate themselves to complaints already generated by the courts in response to relatives' or victims' petitions. The changes also allowed the Programme to participate in criminal cases for victims of political execution, whereas previously it had been restricted to acting only in cases of forced disappearance.

Under the new presidency of Sebastián Piñera from March 2010, the Programme's executive secretary was replaced. Other changes followed soon after, including the replacement of its head of legal services and of three other lawyers. In the months that followed, continued assurances by the Programme and the ministry on which it depends of a full commitment to act in furtherance of the state's national and international human rights obligations have coexisted, at times uneasily, with signals of discontent and concern regarding the organisation's day to day operations. These episodes included the May 2010 citing of Undersecretary of Defence Oscar Izurieta to appear as a witness in the investigation of the execution of Víctor Jara. The citation was requested by Programme case lawyer Cristián Cruz, a fact which provoked



negative reactions in official circles and gave rise to a controversial internal memorandum requiring all Programme lawyers to submit advance notice of intended case submissions to the Programme's new authorities. (For details see bulletin 6 (English or Spanish) and the recently-launched UDP Annual Human Rights Report, <http://www.derechoshumanos.udp.cl/informe-anual-sobre-derechos-humanos-en-chile-2010/> , Spanish only).

Cruz was dismissed from the Programme on 30 November 2010, together with colleague Luisa Sanhueza whose caseload included the 1975 disappearance of Socialist Party leaders and the medical corps of the DINA secret police – related, therefore, to the ongoing investigation into the death of former president Eduardo Frei Montalva. A third sacking, affecting one of the Programme's social workers, was rescinded the same day. The two dismissed lawyers were told that their firing was due to a 'loss of confidence' in them by the new authorities. The measure has produced expressions of international concern, not least since Cruz was also in charge of one section of the investigation of the death of former minister José Tohá, father of the present leader of one of Chile's main opposition parties.

Just a few days previously Undersecretary Rodrigo Ubilla had promised all possible celerity and the immediate submission of a new criminal complaint in the Tohá case, a promise that had anyway been received with some scepticism due to the now notorious delays that in recent months have caused a backlog of dozens of new complaints already drafted by Programme lawyers. The complaints are awaiting the signature of the Undersecretary, a prerequisite for their formal submission before the courts. The delay has accordingly been denounced by relatives' and survivors' groups as a form of obstruction of the work of the Programme's legal team, amounting to "sabotage". Even before the sacking of Cruz and Sanhueza, the Association of Relatives of Victims of Political Execution (*Agrupación de Familiares de Ejecutados Políticos*, AFEP) had volubly expressed its condemnation of the lack of progress in their relatives' cases by staging a sit-in at the Programme's offices. The exact number of complaints presently awaiting signature is not clear, although press sources quoted Ubilla in early December as claiming that only 6 complaints had been successfully presented in the 9 months since the new administration took over. The Observatory has joined other interested parties in requesting confirmation of the exact figure, and will report the official reply as soon as it is received.

First criminal complaint treating sexual violence as a form of torture submitted to the Chilean courts

On 7 December, the NGO Corporación Humanas presented a criminal complaint before the Santiago Appeals Court requesting the investigation and prosecution of the crimes of torture, cruel and degrading treatment, kidnapping and criminal conspiracy committed against Patricia Herrera. Ms Herrera was illegally detained in 1974 in a clandestine centre which was then operating in an underground complex beneath Santiago's Plaza de la Constitución. In September 2010, Ms Herrera bravely came forward to give testimony about her appalling mistreatment in an interview with an international news station.



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The action represents the first time that a complaint has been submitted to the Chilean justice system for sexual violence classed as torture, and forms part of a campaign by the NGO, known for its work on gender issues, to draw attention to the problem. Experts agree that sexual violence, although relatively frequently used as part of the arsenal of state terror, is rarely denounced and punished as such. This fact makes it doubly effective in punishing victims – predominantly, though not exclusively, women – twice over, since survivors are forced to deal with the shame and stigma that is wrongly attributed to victims instead of being laid squarely at the door of perpetrators. The effects of this dynamic can be seen in the fact that the issue was only recently raised with any force in Chile, when around 3,400 women included accounts of sexual violence in their testimony to the Valech Commission (Commission on Torture and Political Violence, Chile's second official truth commission), which operated in 2003/4, almost a decade and a half after the initiation of formal political transition.

A civil society campaign in which some women's organisations played a leading role achieved the reopening in 2010 of official lists of victims and survivors of state terror in Chile, in a new instance commonly referred to as 'Valech II'. After a six month period of receipt of testimonies and written submissions, this new commission is currently analysing the new data and is due to report in February next year. Sources close to the work of the commission suggest that in the phase of receipt of testimony, commission staff were shocked by the high incidence of episodes of sexual violence being reported for the first time, by women who often had still not told close family members what they had suffered. It is to be hoped that the final report will begin to treat the issue with the seriousness it deserves, and that the recent criminal complaint will open a new chapter in justice system sensitivity and receptivity. The experience of other countries, including Argentina and Peru, suggest that the crime of sexual violence presents particular challenges for justice system operators, and that investigations need to be carried out with particular sensitivity, ideally with the support of specially trained professionals.

Argentina has opened similar cases in recent years, and the Observatory has recently received copies of *amicus curiae* briefs submitted by third parties to Argentine magistrates investigating the ESMA, A-B-O, Vesubio and Automotores Orletti cases. The reports spell out the international normative bases for the classification of systematic sexual violence as a crime against humanity, drawing on the proceedings of the International Criminal Tribunal for the former Yugoslavia against those responsible for the systematic use of rape as a weapon of war. To receive copies of the briefs (Spanish only), prepared by the European Centre for Constitutional and Human Rights and international jurist Professor Theo van Boven, write to us at observatorioddhh@mail.udp.cl

Investigation into the 1991 assassination of Jaime Guzmán continues

In bulletin 9 we reported the formal reopening of the criminal investigation into the 1991 assassination of former senator Jaime Guzmán. New measures ordered by investigative magistrate Mario Carroza gave rise to an extradition request against Sergio Galvarino Apablaza, former member of Chilean armed opposition group the



Frente Patriótico Manuel Rodríguez, FPMR, currently residing in Argentina. The request was approved in principle by the Argentine Supreme Court in mid September, but in the end the extradition was not conceded as Galvarino was awarded political asylum. On 1 December, judge Carroza granted bail to Enrique Villanueva Molina, another former member of the FPMR's high command, who had been remanded in custody in late September on suspicion of involvement in the decision to carry out the assassination. Villanueva's release will however be subject to Appeals Court confirmation and to the setting of satisfactory bail conditions.

TRENDS IN SENTENCING

All Chilean court sentences at Appeals Court and Supreme Court levels are available in full (in Spanish only) from the official web page of the judicial branch at www.pjud.cl. To facilitate location of the relevant sentence in the official system, follow the instructions given on the introductory page of the Observatory's case search engine and/or use the Observatory search facility at www.icso.cl/observatorio-derechos-humanos to identify the unique case reference (Rol) of each investigation.

Not guilty verdicts in the case for the murder of Héctor García

On 2 December, the Supreme Court emitted its final verdict in the case of the August 1974 murder of medic Héctor García García in the San Bernardo district of the Chilean capital Santiago. The unanimous verdict (case code 3881-2009) upheld an earlier San Miguel Appeals Court finding of not guilty in favour of the only suspect, a retired army officer, on the grounds that his participation in the crime was not proven. Both courts therefore agreed in overturning the initial verdict of the investigating magistrate, who had opted in 2008 to impose a sentence of 10 years on the same individual. The Supreme Court instead chose to assign responsibility for the crime to two now deceased individuals: a former army conscript and former officer Germán Barriga Muñoz. Barriga committed suicide in 2005.

Supreme Court's 100th verdict for dictatorship-era HRVs rejects the application of gradual prescription and awards civil damages

There follows below a more detailed analysis of the juridical reasoning behind a 22 September Supreme Court sentence, the 100th emitted since the year 2000 in cases of this kind. The Observatory would like to thank Catalina Lagos, one of the case litigants, for providing this latest in our series of studies of landmark HR case verdicts in Chile. The report has been edited in some minor aspects by the Observatory team.

On 22 September, the Second Bench [Criminal Bench] of the Chilean Supreme Court emitted its hundredth final verdict in cases for human rights violations committed during the 1973-1990 dictatorship. The verdict sentenced Lautaro Iván Castro Mendoza to ten years and one day of imprisonment for his part in the kidnappings (forced disappearances) of Juan de Dios Salinas Salinas and Guillermo Bustamante Sotelo. It also approved a claim for civil damages appended by relatives of one of the victims, granting damages ranging between 15 and 25 million Chilean pesos (US\$31.500 - US\$52.500) to close family members.

The criminal portion of the verdict is notable because the Supreme Court, in contrast to recent practice, did not choose to invoke the figure of 'gradual prescription', whereby final sentences can be reduced on a sliding scale according to the time elapsed between crime and sentencing. In fact, the Court opted to almost double the earlier, Appeals Court, sentence of only 5 years and one day against the same agent.

The text of the Supreme Court verdict signals that gradual prescription was found inapplicable due to the ongoing nature of the crime of kidnapping, making it impossible to fix a definitive end point of the crime from which to calculate the time elapsed before sentencing. This is a major step, as over the past three years the growing and almost routine application of gradual prescription to similar offences has led to the habitual imposition of extremely lenient sentences for these very serious crimes. The low final sentence tariffs in turn have allowed the Court to concede sentencing benefits such as conditional discharge and parole, meaning that many [around two thirds] of individuals convicted of crimes against humanity are given noncustodial sentences and do not serve any jail time at all. In the civil section of the verdict, the Court chose to award moral damages to the family of victim Guillermo Bustamante Sotelo.

In overall terms, this is definitely a positive verdict since it produced both an effective sentence and an award of damages. However the verdict should not be interpreted as an unambiguous signal of a permanent change in Supreme Court practice, as it does not represent a change of heart amongst the permanent members of the Criminal Bench. The verdict instead came about due to a temporary change in the lineup of the bench, with regular judge Rubén Ballesteros replaced by a senior lawyer (this being established procedure in the Chilean judicial system when a permanent member of a particular court, in this instance one of the five regular criminal bench judges Nivaldo Segura, Jaime Rodríguez, Rubén Ballesteros, Hugo Dolmestch or Carlos Künsemüller, is prevented for reasons of illness or similar from sitting in a case).

Nonetheless, although the verdict may not represent a permanent breakthrough, another important feature is that the guilty party, Lautaro Iván Castro Mendoza (who now goes by the forenames Marcelo Iván, after changing his name in 1986), is the same individual who commanded the police post in the rural district of Isla de Maipo in 1973, during the so-called 'Lonquen Ovens' atrocity in which peasant leaders were massacred and their partially cremated bodies hidden in lime kilns. [The discovery of the bodies, announced by Church human rights organisation the Vicaría de la Solidaridad in late 1978, was the first tangible public evidence in Chile of the policy of mass killings carried out under the guise of forced disappearances]. Castro Mendoza however escaped sentencing for this crime when the relevant criminal case was suspended by application of the 1978 Amnesty Law.

- Catalina Lagos Tschorne, human rights lawyer

OTHER NEWS FROM CHILE

Commemorations for International Human Rights Day include homage to celebrated human rights defender Fr José Aldunate SJ

Events held on 10 December to celebrate International Human Rights Day included a concert held at recovered former detention centre the Villa Grimaldi Peace Park in honour of the distinguished Jesuit worker priest and theologian José Aldunate. Founder of the Sebastian Acevedo Anti-Torture Movement, a pioneering nonviolent direct action movement that 'outed' clandestine torture centres during the 1980s, Fr Aldunate also played a key role in the mid 1990s recuperation of the Villa Grimaldi site. In an early ceremony to mark the symbolic reclaiming of the site, the gate through which prisoners had once been brought was permanently chained shut, with Fr Aldunate named custodian of the only key. At the advanced age of 93 Fr Aldunate continues to set an example in courageous commitment to human rights, and can still be seen attending commemorations and demonstrations. At the well-deserved homage event, Fr Aldunate chose to ceremonially hand on the Villa Grimaldi key to younger custodians as a symbol of the need to renew a commitment to human rights across the generations.

The concert took place as the culmination of a study event held earlier in the day, at which the Villa Grimaldi Corporation and feminist groups Tramando and Tierra Nuestra invited attendees to explore the role of women in recent memory politics in the Southern Cone. See www.villagrimaldi.cl for details of these and forthcoming events at the Villa.

Trial over the disappearance of four Franco-Chilean citizens begins in Paris

Relatives and colleagues of Alfonso Chanfreau, Jorge Klein, Etienne Pesle and Jean Ives Claudet, French or French-Chilean citizens who were subjected to forced disappearance during the early years of the Chilean dictatorship, gathered in Paris on 8 December to witness the opening of a trial that is expected to last until the 17th of this month. Testimony from survivors and eyewitnesses will be complemented by expert submissions from Chilean lawyers and activists including Magdalena Garcés, Viviana Uribe and Dr Paz Rojas Baeza about the political and legal context surrounding the crimes and the deliberate frustration of attempts to seek justice in Chile for the four. The fourteen named suspects, all former regime agents, failed to present themselves to the court on the first day of the trial, which can be followed day by day on Facebook by searching for the group 'juicios chilenos DD'.

Attempts to rescind state funding for memory sites thwarted thanks to civil society reactions

The annual budget presented by the Chilean executive to Congress in October 2010, which details public spending plans for the fiscal year 2011, threatened to withdraw earmarked funding previously promised to support memory sites recovered by civil society groups since the late 1990s. Funds which had been assigned through public bidding and adjudication in 2009, under the previous government administration, to preserve and develop activities at sites including Villa Grimaldi and Londres 38 were to be withdrawn. Beneficiaries would have been obliged to resubmit all plans and projects to a general competitive fund for any and all kinds of civil society activities. The measure would have represented a notable backward step in state fulfilment of its truth, justice and memory responsibilities. Thanks to an immediate national and international campaign, the measure was finally defeated and financial commitments already made ought therefore to be honoured over the course of the year.



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Parliamentary Observatory signs agreement with the Lower House of Congress to improve the quality of debate about public policy in the area of human rights

Chile's Parliamentary Observatory, a network of civil society organisations that includes the Corporación Humanas, the UDP's Human Rights Centre, the Centre for Women's Studies, the Fundación Ideas and the Observatorio Ciudadano, signed a formal agreement with the country's Chamber of Deputies in November 2010. The agreement aims to strengthen channels of communication and the exchange of ideas between elected representatives and civil society expertise, allowing members of parliament better access to citizen opinions and perceived priorities during the process of formulation and voting of draft legislation and legal reforms that affect the strengthening of human rights protections.

Promised reforms to the military justice system approved after 5 weeks of parliamentary debate

Reforms to Chile's military justice system were promised by the government as part of a package of measures to resolve a protracted hunger strike carried out in August and September by indigenous (Mapuche) activists (see bulletin 9). The promised reform package was finally voted through Congress in mid October. The changes should exclude civilians and legal minors from the jurisdiction of military courts, in accordance with the principle that the military justice system should be restricted exclusively to the judgement of service-related infractions carried out by members of the armed forces and police [Chile's police force is made up of two main segments, the uniformed *Carabineros*, who fall under military administration, and a smaller civilian detective branch which also oversees customs and frontier policing duties]. Although the final legislative package generally respects the promises made by the executive in September, some concerns have been expressed since the text seems to apply only to civilians as defendants, rather than as possible victims, of crimes falling under military jurisdiction. Crimes committed by serving members of the armed forces and *Carabineros* against civilians would continue to be the preserve of the military courts in spite of a recommendation by the Supreme Court to the contrary. The package also failed to address outstanding matters including the need to reform and update the relevant Military Justice code in order to specify more clearly the service-related infractions which it is supposed to judge, and to offer stronger due process protections to suspects. For more details and to see the text of the law and related congressional debates, see http://www.observatorioparlamentario.cl/boletines/3_trimestre/01_3.html (Spanish only).

Forensic archaeological studies to be carried out in former clandestine detention centre Londres 38

A joint team of Chilean and Argentine experts is set to carry out forensic investigations from early 2011 at the site of Londres 38, a Santiago city centre building that was used as a secret police detention and torture centre during the Pinochet dictatorship. Around 100 of the individuals who were illegally detained at the centre were later executed or subjected to forced disappearance. The studies, programmed to begin in January and February of 2011, aim to uncover cultural and organic traces that may help build a more complete picture of the life stories and resistance activities of detainees. The initiative is among the first to undertake this kind of investigation, as forensic studies carried out to date on similar sites have usually been focused on illegal burial sites and carried out by judicial order. The Londres 38 project is not principally focused on the search for case evidence, although any relevant discoveries will be passed on to the relevant authorities by the relatives' and survivors' groups who have spearheaded the recovery of the site and its use for a memory project. The project, which came under threat due to recent attempts to withdraw previously designated state funding (see above), should now be able to enter its next phase if recent promises to honour funds already committed for this and similar projects in other parts of the country.



NEWS FROM THE REST OF THE REGION

UN Convention on Forced Disappearance to enter into force later this month

23 December will mark the official entry into force of the International Convention for the Protection of all Persons against Forced Disappearance, the text of which was adopted by the UN General Assembly just under four years ago. The text recently reached the threshold of ratification by at least twenty member states required for its full passage into international human rights law. The Convention was opened for signature in February 2007, and its first signatory was Argentine president Cristina Fernández de Kirchner. Albania followed suit in 2007; as did Honduras, Mexico, France, Senegal and Bolivia in 2008; Kazajastan, Cuba, Uruguay, Mali, Japan, Nigeria, Ecuador, Spain, Germany, Burkina Faso and Chile in 2009 and finally, in 2010, Paraguay, Iraq and Brazil. It is notable that the first 21 signatories include 11 from Latin America, a region sadly familiar with the tragic human consequences of this perverse state practice.

Argentina

New website aims to stimulate reflections over memory

In December, the Argentine NGO umbrella organisation Memoria Abierta launched 'Vestigios', a new website that brings together images and information about artefacts preserved by relatives, friends and colleagues of victims, survivors and political activists involved in political activism and resistance to the 1976-1983 Argentina dictatorship. The project aims to improve levels of societal awareness of and knowledge about state terrorism, through exploring the power of objects to establish links between past and present in a way that provokes debate and reflection. Visit <http://www.memoriaabierta.org.ar> to see the project and the invitation it extends to those who have artefacts they may wish to offer to the collection.

Inter-American Commission for Human Rights hearing examines progress and obstacles to justice in Argentina

The Argentine government requested a hearing before the Inter-American Commission for Human Rights in late October in order to present advances in the prosecution of crimes against humanity committed during the country's most recent period of state terror. Leading Argentine NGO CELS, a regional partner of the Observatory, was invited by the Commission to submit a parallel report giving its own evaluation of the present state of affairs. Obstacles highlighted by CELS include the substantial delays experienced during 2009 in getting cases into the final trial phase, known as '*elevación a juicio*'. Despite advances in the investigation phase of cases ('*fase de instrucción*'), subsequent bottlenecks are impeding the setting of dates for oral trial. The issue is symptomatic of a generalised justice system problem in criminal trials, but human rights cases also suffer specific problems, including notable disparities in the duration and effectiveness of the prior investigative phase. CELS's view is that delays are sometimes deliberately engineered, with first instance judges in regions including Mendoza and Jujuy notoriously more reticent than colleagues elsewhere to actively pursue human rights related cases.

Youtube clip raises public awareness of ongoing HR trials in Argentina

NGO CELS Argentina has produced a video clip emphasising the significance of the HR trials that are presently happening all around the country, and reminding people that the public is allowed to attend oral hearings. The clip can be viewed or downloaded by searching for the phrase 'CELS juicios' at www.youtube.com and/or from www.cels.org.ar, where readers can also find up to date statistical information and a blog reporting on the progress of so-called 'megacases' including the ESMA investigation.



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Judge accused of past involvement in torture and disappearances resigns

At the beginning of December judge Otilio Romano, member of the federal court of Mendoza, presented his resignation while undergoing impeachment proceedings before the Magistrates' Council (*Consejo de la Magistratura*). Romano has been linked to crimes of disappearances, torture and theft committed under the 1976-1983 dictatorship, when he worked as a state prosecutor. Similar suspicions have been raised about Luis Miret, another member of the same court, whose resignation – presented in September – has not yet been accepted. Miret instead remains suspended pending the Council's resolution of the impeachment proceedings against him, expected to be concluded in February 2011. The Council's resolutions are relevant to the question of possible criminal accusations against both men, since a judge who has been dismissed from service loses his or her immunity from criminal prosecution.

Brazil

Historian resigns from state archive in protest over the restriction of public access to documents from the dictatorship period

At the beginning of November, historian Carlos Fico left his job at the *Centro de Referências das Lutas Políticas*, a centre set up by the federal government in 2009 to collate and make public formerly secret documents dating from the 1964 to 1985 military government. Fico objected to a decision taken by the National Archive, which administers the centre, to restrict access to dictatorship-era documentation because journalists had supposedly made 'improper' use of the data during the recent presidential, parliamentary and state gubernatorial elections. The presidential election was finally resolved in a second round runoff in favour of Dilma Rousseff, candidate of the Workers' Party of popular present incumbent Luis Ignacio Lula da Silva. Although human rights issues in general were not a prominent campaign issue, Rousseff was attacked by opposing social democrat candidate José Serra for her receipt of a state reparations pension as a victim of politically-motivated blacklisting during the dictatorship era. Both candidates have a record of active opposition to the military regime, and both suffered repression as a result, but Serra sought to gain political capital from the fact that he, unlike Rousseff, had chosen not to receive the financial compensation to which he was entitled.

Members of the governmental Amnesty Commission participate in conference at the University of Oxford

Recent presentations in Europe of the Observatory's work offered the opportunity to make contact with members of the Brazilian state commission that since 2002 has administered reparation policy on behalf of survivors of state repression occurring between 1964 and 1985. The Brazilian Amnesty Commission, set up under the aegis of the Ministry of Justice, launched the 'Amnesty Caravan', a kind of roadshow that travels the country to promote its work for moral and economic recognition of victims and survivors of dictatorship-era repression. Fatal political violence was proportionally lower in Brazil than in neighbouring countries in the same period, but the regime made extensive use of political imprisonment and torture. The Commission, launched during the presidency of Fernando Henrique Cardoso, built on the work of an earlier Commission on Deaths and Disappearances, which had been established in 1995 with the more limited mandate of reporting on the most serious right to life violations committed by the authoritarian regime. Under current president Lula da Silva (2003 a 2010), the Commission continued its work in the restoration of full political and citizenship rights to survivors illicitly deprived of these by the regime, and expanded the symbolic and communicational aspects of its work through the Caravan, support for an official memorial and the opening of state archives (see above). In 2009 the Commission began to publish a specialised journal, the *Revista Anistia Política e Justiça de Transição*, whose three editions to date carry important reporting and documentation about the trajectory of Brazilian



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transitional justice, until now relatively neglected in regional and international discussions of the issue.

During October's international gathering, organised at the University of Oxford, Commission authorities and other Brazilian experts presented to an international expert audience about recent developments in Brazil. These include challenges to the 1979 Amnesty Law, in the form of a domestic case before the Supreme Court and of an ongoing case in the Inter-American human rights system (the Araguaia case, see previous bulletins). Draft legislation to set up an official Truth Commission for Brazil is currently before Congress, and it is hoped that the commission will be set up during the course of the coming year.

The Observatory intends to further deepen knowledge of and contacts with the Brazilian process through a research visit to be made by project director Cath Collins in February 2011, as well as via the inclusion of the Brazilian case in a series of country studies to be carried out between 2011 and 2013 in a joint research project between Norwegian research institutes and the Observatory. Reports on the project will follow in future bulletins.

Guatemala

In late October, two former police officers were found guilty of the forced disappearance of Fernando García. Each was sentenced to a 40 year jail term. This marks the first verdict in a case where evidence was drawn from study of the recently recovered Police Archives. Nine more cases are pending which were opened or reopened based on documents discovered in the archives (see below). The case also marks a legal precedent in the successful criminal prosecution of the crime of forced disappearance, and it is notable that the resulting sentences were of significant length.

The Peace Archive, an official documentation centre created in 2008 under President Álvaro Colom to collate information on Guatemala's 1960-1996 internal armed conflict, has to date catalogued over a million files and photographs related to military operations, illegal adoptions and disappearances. The artefacts were recovered from a now defunct official body, the *Estado Mayor Presidencial*. It is hoped that the thousands of documents remaining to be studied will throw light on the fate and current whereabouts of thousands of children who were forcibly adopted. The Archives also contain other important collections including documentation from Guatemala's official truth commission, the *Comisión de Esclarecimiento Histórico* (CEH), and its Church-led counterpart the Historical Memory Project (*Recuperación de la Memoria Histórica*, REMHI). The final report of the CEH found that the army had committed genocide in Guatemala, whilst the REMHI report, entitled *Nunca Más*, documented over 50,000 cases of serious human rights violations and, like the CEH, assigned responsibility for the overwhelming majority of these to the country's Armed Forces.

Peru

Accomarca case: the 'Butcher of the Andes' loses his appeal against extradition from the US

Early November saw the beginning of the oral hearing phase of the trial of 29 military operatives for the 1985 massacre of 69 peasant farmers in the town of Accomarca, in the Ayacucho region. The crime took place during the first government of current Peruvian president Alan García, and victims included 30 children, 15 elderly people and 2 pregnant women. The state prosecutor has recommended sentences of up to 25 years and a compensation payment of 14 million Peruvian soles (US\$5.000.000) for surviving relatives.



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The crime was committed by a military patrol which accused the townsfolk of being members or sympathisers of Sendero Luminoso, the Shining Path guerrilla movement.

An extradition request was made to the US for the capture of the man suspected of having ordered the massacre: Telmo Hurtado, known as the 'Butcher of the Andes'. On 8 August Hurtado lost his last appeal measure against extradition from his new place of residence. Other suspects in the case include Juan Rivera Rondón, successfully extradited from the US in 2008, and David Castañeda Castillo, currently the subject of extradition hearings in the US city of Boston. Peruvian law allows the charging, but not the sentencing, of a suspect *in absentia*. Only 13 of the 29 named suspects were present at the first case hearing on 4 November.

Release on parole of Lori Berenson continues to provoke controversy

On 8 November US citizen Lori Berenson, imprisoned in Peru in 1996 at the age of 26 for her links with the guerrilla movement the Movimiento Revolucionario Tupac Amaru, MRTA, was released on parole for the second time after a Lima judge ruled that she was entitled to release as she had served the requisite two thirds of her original 20 year sentence. Peru's Justice Minister nonetheless criticised the decision, while the special state prosecutor for terrorism offences announced his intention to appeal against it. Berenson had previously been released, to a supervised address, in May, but the measure was revoked in August when the same state prosecutor objected to a technical error in the release procedure. Parole conditions would require Berenson to continue residing in Peru until the end of her original sentence, in 2015, unless her sentence were to be commuted in favour of a deportation order.

Perpetrators found guilty in Barrios Altos, El Santa and Pedro Yauri cases include Vladimiro Montesinos, right hand man of imprisoned former head of state Alberto Fujimori

On 1 October, after a trial lasting more than 5 years, Peru's First Special Criminal Chamber handed down its verdict in the cases named above. All relate to crimes committed in 1991 and 1992 during the presidency of autocrat Alberto Fujimori, currently in prison for human rights and corruption crimes. The new verdict handed down 19 guilty sentences and 13 absolutions against former military officers and rank and file soldiers for the planning, approval and carrying out of the November 1991 assassination of 15 civilians in the Lima neighbourhood of Barrios Altos, the May 1992 killing of 9 peasant farmers in the El Santa district 6 hours north of the capital, and the June 1992 murder of journalist Pedro Yauri.

The Court sentenced the leaders of the Grupo Colina illicit death squad group to 25 years as intellectual authors (*autores mediatos*) of the crimes of aggravated homicide and criminal conspiracy. The group included former presidential security advisor Vladimiro Montesinos Torres and former Armed Forces commander in chief General Nicolás de Bari Hermoza Ríos. The verdict marks the first time either has been found guilty of human rights crimes (as distinct from offences of corruption). Another group of individuals found guilty included the former directors of the National Intelligence Service (*Servicio de Inteligencia Nacional, SIN*) and the Army Intelligence Service (*Servicio de Inteligencia del Ejército, SIE*). These individuals, like the operating commanders of the Grupo Colina, were sentenced to 25 years as co-authors of the aggravated homicide of 25 victims. A third group was sentenced to between 15 and 20 years. The lowest single sentence was of 4 years, and some suspects were cleared of all charges. Four of those found guilty in this case are also due to be sentenced in the separate Cantuta investigation.

Rosa Rojas, who survived the Barrios Altos massacre, lost her husband and her 8 year old son in the massacre. "They shot my son Javier 8 times, one bullet for every year of his life", she commented after hearing the final verdicts delivered. "You can't wash away that kind of



pain with a guilty verdict". In the Santa and Pedro Yauri episodes of the case, relatives still do not know where their loved ones' bodies were disposed of and so have not been able to carry out a burial ceremony. Maribel Barrientos Velásquez, sister of two of the El Santa disappearance victims, implored the perpetrators to reveal the whereabouts of their victims.

Exhumations begin in the case of the Sendero massacre at Cabanino

Late September saw the initiation of exhumations of the remains of victims of a 1984 massacre carried out by Maoist Shining Path militants in the Sucre province of Ayacucho. The massacre was a revenge attack and a warning to 25 rural communities who had formed a self-defence alliance against guerrilla incursions. The killings had never been investigated until Peru's official Truth and Reconciliation Commission published its 2003 report, which included a list of probable burial sites. The list was a first step towards the later compilation of a register of 99 victims and the identification of 34 illicit burial sites where 72 of the victims might be found. The deaths have been under investigation in a single accumulated criminal case by the Huamanga prosecutors' office since November 2009.

Remains of a murdered woman finally returned to her family

On 13 October relatives were finally able to provide a dignified burial to Mariela Barreto, murdered and dismembered in March 1997 by Fujimori-era intelligence agents under suspicion of having leaked governmental plans to carry out political assassinations to the press. Her remains had been exhumed in August 2010 in the course of the investigation, in which former Grupo Colina member Santiago Martin Rivas is implicated.

Attempted 'full stop law' rejected by Peruvian Congress

On 14 September, a full sitting of the Peruvian Congress overturned, by means of Law N° 29572, a controversial decree law introduced earlier the same month by president Alan García (see bulletin 9). Human rights experts had criticised the law, Decree no. 1097, as a quasi-amnesty which would have had the effect of granting impunity to perpetrators of human rights violations and infractions of humanitarian law committed before 2003.

The decree was overturned after a national and international campaign against it. Domestic critics of the measure included Nobel prizewinning Mario Vargas Llosa, who published an open letter resigning his post as head of the high level commission in charge of designing a national Memory Museum project. Vargas Llosa denounced the 'hypocrisy' of the intended measure. Despite the revocation, defence lawyers continued to try to invoke the decree to have charges dismissed against former military officers in the Ventocilla and Cantuta cases.

For more information about cases in Peru, and the partner project of the Observatory that is mapping the Peruvian case universe, write to jmburt@gmu.edu or see <http://cgs.gmu.edu/HRJDProject.htm>. A website dedicated to analysis of open cases in Peru is currently under construction.

Uruguay

Emotional farewell to noted co-founder of relatives' association

Early December saw the death at 93 years of age of María Ester Gatti, founder of the Uruguayan Association of Mothers and Relatives of the Disappeared. Mrs. Gatti, a teacher by profession, was the mother of María Emilia, forcibly disappeared in Argentina together with her partner Jorge Zaffaroni and their daughter Mariana, aged 18 months. Mrs. Gatti's dedicated search for her daughter led her to appear as a witness in Argentina in the case against former dictator Jorge Videla, and to the recovery of her granddaughter at the age of 16. Mrs. Gatti continued to be active in the search for justice in Uruguay, taking part in campaigns against the amnesty law in 1987, 1989 y 2009.

Gelman case: Argentine poet and his Uruguayan granddaughter testify before the Inter-American Court

In mid November, Juan Gelman and his granddaughter Macarena travelled to Costa Rica to appear before the 7 judges of the Inter-American Court of Human Rights. The pair expressed their hopes that the Uruguayan government might finally put an end to the country's amnesty provision (the so-called *Ley de Caducidad*). Gelman and his granddaughter met for the first time in 2000, bringing to an end over two decades of searching by the Argentine poet to discover the fate of his disappeared daughter in law and the unborn child she had been carrying when detained. The child had been stolen by army officers and given up for adoption, never knowing her real origins. Gelman's search eventually led him to Uruguay, but the political authorities of the time, in particular then-president Sanguinetti, refused to cooperate. The pair have now lodged a complaint before the regional court concerning the continuing uncertainty over the fate of Macarena's mother and the insufficiency of the state's efforts to guarantee access to justice. A verdict is expected in early 2011.

Supreme Court declares the amnesty law unconstitutional

On 29 October the Uruguayan Supreme Court gave its verdict in a challenge brought by human rights lawyers to the constitutionality of the country's amnesty law. The Court found in favour of the petition against the 'Ley de Caducidad de las Pretensiones Punitivas del Estado', in effect an amnesty law that provides impunity to military and police operatives for repressive crimes committed during the 1973 to 1985 dictatorship. The law was introduced in December 1986, during the transition to democracy. In recent times there has been growing pressure to annul or restrict the reach of the law: even before the case, the governing centre-left Frente Amplio coalition had announced that it was in the process of preparing draft legislation for an eventual annulment. In 2009, the same court had declared the law inapplicable in the case of the 1974 killing of teacher and activist Nibia Sabalsagaray killed in 1974, and civil society groups had attempted to challenge the continuing validity of the law via plebiscite.

In the most recent verdict, no. 1525 of 29 October 2010, the Supreme Court accepted the thesis of the petitioning lawyers that articles 1, 3 and 4 of the laws contravene the current constitution. The articles respectively establish the general principle of state abstention from criminal prosecution (Art.1) and empower the executive branch to decide whether a specific crime falls within the remit of the law (Arts.3 & 4). This last aspect has been particularly criticised since it contravenes the principle of judicial branch independence. The verdict differs from the earlier, 2009, one as this time the petition required the judges to pronounce directly on the principle of constitutionality of the law, rather than solely rule on its applicability to the case at hand. Nonetheless, the verdict's immediate effect will be restricted to the cases at hand, which will now be fully re-investigated. The verdict does however offer cause for optimism, and can be read as a declaration of intent by the Court as to the line it will take in future.

The three lawyers responsible for the petition were Pilar Elhordoy, active contributor to the work of the Observatory and to this bulletin, together with colleagues José Luis González and Walter de Leon (original case lawyer of the Bordaberry investigation, of which the October petition formed part and as a result of which Bordaberry, former de facto president of Uruguay, is currently in prison). The victims named in the petition are Ivo Fernández, Eduardo Mondello, Hugo Pereyra, Walter Arteché, Gerardo Alter, Iván Morales, Amelia Lavagna, Carlos Curuchaga, Carlos Argenta, Julián López, Nicanor Lerena, Pedro Lerena, Bonifacio Oliveira, Humberto Pascarella, Silvia Saldaña, Gilberto Coghlan, Aldo Perrini, Felipe Fernández Mendietta and Nuble Yic.



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The Uruguayan Congress chose meanwhile to postpone its own discussions about a possible legislative change to the statute. The issue of the law's applicability and the related question of the proper use of statutes of limitation for human rights crimes have taken on a particular urgency as statutes of limitation will lapse for many of the relevant crimes in November 2011 if they continue to be treated as common criminal offences. To date, the Uruguayan courts have generally preferred to apply a special, extended, statute of limitation to repressive crimes instead of recognising them directly as crimes against humanity or war crimes, to under extant international law statutes of limitation should not be applied.

Sources for this month's bulletin include:

Press reports; the Human Rights Programme of Chile's Interior Ministry; CELS Argentina; Chilean lawyers Hugo Montero, Cristián Cruz and Catalina Lagos; Roberto D'Orival; Erika Hennings; the Corporacion Parque por la Paz Villa Grimaldi; the Chilean Observatorio Parlamentario; Uruguayan lawyer Pilar Elhordoy, Uruguayan photojournalist Martha Passegui; Argentine activist Ernesto Ledjerman; academic Jo Marie Burt; academic and lawyer Naomi Roht-Arriaza; the European Centre for Constitutional and Human Rights; Peruvian NGOs and human rights lawyers 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).

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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, ICISO
Universidad Diego Portales, <http://www.icso.cl/observatorio-derechos-humanos>
Grajales 1775 – Santiago – Chile Tel: +562 676.8443
e-mail: observatorioddhh@mail.udp.cl or cath.collins@udp.cl