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Human Rights Observatory, Universidad Diego Portales, Santiago,
Chile
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Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end Dec 2010

Monthly data supplied by the Human Rights Programme of Chile's Ministry of the Interior has recently been subject to delays. The data supplied in these bulletins always reflects the most recent official figures received.*

** Which was renamed as of February 2011 as the 'Ministry of the Interior and Public Security'*

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 and linked to a new research project with the Chr Michelsen Institute of Norway. 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.

To keep up to date with the latest developments between issues, look for us on Facebook (Observatorio ddhh (Chile); Spanish only), or, from March 2011, visit the current news section of our web page www.icso.cl/observatorio-derechos-humanos

CASE STATISTICS FOR CHILE

Cases and Victims

According to Interior Ministry Human Rights Programme data, 689 investigations (cases) were ongoing in Chile at end Dec 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973



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and 1990. This represents a significant increase - of 145 cases – when compared to September's figures. The difference is almost entirely accounted for by new cases for victims of political execution (141 of the 145).

This active caseload now represents 1,453 (45.6%) of known victims of death and disappearance.* A further 7% of victims are recorded as having had legal cases successfully concluded for the crimes committed against them. This leaves 47.4% of officially recognised victims with no judicial activity either concluded or in progress, the first time this figure has dipped below 50%. Over the course of 2010 the proportion of victims with no formal justice activity should be further reduced due to the combined effects of a large group of complaints recently submitted by an Appeals Court prosecutor and another currently in preparation by the Association of Relatives of Victims of Political Execution (AFEP). See below.

** 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*

Agents (Repressors)

According to Interior Ministry Human Rights Programme data, between 2000 and the end of 2010, **778**** 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 as of the end of December, distributed across the following facilities:

Military facilities – 63 prisoners

- Punta Peuco: 52
- 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 – 1 prisoner

*** The reduction in this figure compared to its September equivalent (786 agents) is due to not guilty verdicts delivered in October and November, for example of 4 agents in the case for the homicides of Raúl Pellegrin y Cecilia Magni. The Human Rights Programme and the Observatory both follow a policy of removing from active records the name of any agent who is fully exonerated – in other words, who is absolved of all charges in a particular case while not*



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subject to charges or sentences in any other case. Over the same period 24 more individuals, not included in the total of 778, died while under charges or after having been found guilty.

**** This figure includes Luis Henríquez, who later committed suicide (in February 2011 - see below).*

Sentences

Between 2000 and July 2010, **307****** former security force agents had received a total of 506 condemnatory sentences for dictatorship-era HRV crimes in Chile. 221 of these agents have had one or more of their sentences confirmed by the Supreme Court, a rise of 4 when compared to September's figures.

However, the four new sentences agents received sentences low enough to be served without actual jail time. The percentage of finally sentenced agents who have escaped prison due to the awarding of benefits such as parole accordingly continues to rise, currently standing at 65%. Approximately***** 3% of the 221 agents (7 individuals) have served out their sentences.

***** The total rises to over 313 if individuals deceased during the period are included. The exact judicial status of some of the 24 agents deceased over the period of at the time of their deaths is currently being investigated by the Interior Ministry's Human Rights Programme*

****** In the previous bulletin we reported on the project's efforts to obtain fuller information from the relevant authorities about projected sentence completion, release dates and compliance with parole conditions for those convicted of human rights crimes. Although we finally received a reply to a formal request for information lodged with the prison service, the report that was delivered did not identify prisoners by name and also dealt with a total of only 59 agents, whereas both the Observatory and the state Human Rights Programme put the figure at 71. [Today 70, owing to the death of Luis Henríquez, see below]. When we contacted the prison service about the discrepancy, we were informed that the relevant post was vacant owing to the removal of its previous incumbent. We will continue our efforts to query the figures.*

COURT AND JUDICIAL BRANCH NEWS

In the first week of January, subprefect Sandro Gaete, head of the Human Rights Brigade of Chile's Investigative Police (civilian detective police), was relieved of his command and transferred to an environmental policing post in the far south of the country with immediate effect. No reasons were given for the measure, which is difficult to understand from a professional perspective as Gaete is perhaps Chile's foremost expert in the investigation of past human rights crimes. Under his leadership the Brigade has been of invaluable service to the special investigative magistrates assigned to human rights cases.



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The investigative records of the Brigade - formerly known as the 'Departamento Quinto' - was housed, until last February's earthquake, in Santiago's formerly notorious 'Borgoño' police headquarters. The archive contains hundreds of key interview and interrogation records built up over years of painstaking investigative work during which the Brigade has contributed to the conviction of around 200 former repressive agents and the imprisonment of around 70 of these. Although Chile's outgoing investigative magistrate system places judges in charge of criminal investigations, over the past decade Brigade detectives, together with Human Rights Programme lawyers, have been pivotal in the modest advances achieved towards Chile's meeting of its moral and legal responsibilities to victims of past repressive crimes. The first signs of ambivalence in the attitude of the new centre-right government to the work of the Brigade came after last year's earthquake caused major damage to its headquarters, rendering the investigative archive almost inaccessible. The Brigade was forced to seek its own emergency accommodation, and operated for months afterwards from temporary premises without basic services such as light or telephone lines. Senior judicial sources remarked off the record that the episode seemed symptomatic of a lack of interest on the part of the new authorities in successful investigation of human rights crimes.

Read in this light, the removal of Gaete could signal at best a de-prioritization of the official search for truth and justice, since irrespective of who replaces him in post, Gaete's departure represents an irreplaceable loss of human capital accumulated over the course of a career dedicated to the solution of sensitive, complex cases. The ability of Brigade members to correctly identify agents operating under aliases, or to connect apparently isolated cases due to their intimate knowledge of patterns of repression, have often been essential for the successful conclusion of the investigative phase of ongoing cases. Gaete was particularly well regarded for his calm professionalism and respectful treatment of all parties in cases, earning the respect of witnesses, relatives, and all parties in the cases the Brigade was involved in. Witness the range of voices raised to register concern over the move: human rights organisations wrote to the Interior Ministry and the Supreme Court expressing their rejection of the change, and at the end of January held a meeting with Supreme Court president Milton Juica. Case litigant and relative Joan Jara also went on the record to express concern over what the change might mean for the investigation into the 1973 murder of her husband Victor.

Added to last year's replacement and resignation of Human Rights Programme officials, the recent sacking of two of the institution's lawyers, and the replacement of highly-regarded judge Sergio Muñoz as judicial branch coordinator of human rights cases, Gaete's reassignment undoubtedly further weakens criminal investigation of past human rights violations in Chile. A police spokesman simply claimed that the change 'would not negatively



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affect' the 546 cases presently under investigation in Chile. In late January the Observatory contacted Prefect Luis Nieto Parra, new national director of the Brigade, who kindly agreed to meet with the Observatory after the February recess. We will provide more information in future bulletins.

Former policeman sentenced for human rights crimes commits suicide in prison

On 11 February 2011 Luis Henríquez Apablaza died after hanging himself in his prison cell in the southern Chilean city of Temuco. Henríquez, aged 72, was two years into a 10 year sentence passed on him in 2008, after Henríquez and 4 more agents were investigated for the 1973 kidnap and aggravated homicides of Juan Bastías Riquelme, Leomeres Monroy Seguel and Hernaldo Aguilera Salas.

New criminal complaints

We report below on three independent sources of new criminal complaints for human rights crimes that have been active in recent months. These are the Human Rights Programme of the Ministry of the Interior, an Appeals Court prosecutor, and direct action by private citizens affected by crimes (survivors or relatives). Until this year, only relatives and survivors had been active in this field.

Interior Ministry reluctant to submit full range of criminal complaints prepared by its own lawyers

In bulletin 10 we reported on the current status of criminal complaints prepared directly by lawyers from the government Human Rights Programme, which represent the first time the state has chosen to exercise directly its prerogative and responsibility to pursue the criminal prosecution of internationally-defined human rights crimes from the dictatorship period. However, the complaints must be submitted by the Ministry of the Interior, which oversees the Programme's work. The requirement for complaints to be signed by the Minister has proved to be a significant bottleneck in the actual presentation of complaints to the relevant judicial authorities once prepared. In January, the Programme reported that it had submitted 70 complaints for 138 victims (86 victims of political execution and 52 of forced disappearance). 31 additional complaints, for a total of 54 victims, were described as 'pending' (awaiting ministerial signature). 9 more complaints had been rejected by the ministry, most over minor procedural errors.

Current disagreements between relatives, some Programme lawyers and high-level ministry officials about whether or not the Programme should be protagonising criminal complaints in this way revolve around differing



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interpretations of two relevant statutes. The first is Article 6 of the 1992 law 'Ley 19.123', which established Chile's National Corporation for Reparation and Reconciliation, CNRR. The second is 'Ley 20.405', passed in November 2009, whose Article 10 *transitorio* established the legal basis for the work of the recently-created National Institute for Human Rights, INDH. The Human Rights Programme was created in 1997 to carry on some of the unfinished work of the CNRR, and until 2009 operated according to the terms of Ley 19.123. However, under the terms of the newer Ley 20.405, the Programme's legal powers and mandate are instead derived from those of the INDH.

Article 6 of Ley 19.123 states that:

"Establishing the whereabouts of detained-disappeared persons and the remains of politically executed persons, and disclosure of the circumstances surrounding the disappearance or death of those persons, constitutes an inalienable right of victims' relatives and of society as a whole" [*Unofficial Observatorio translation*]

Original text: "Se declara que la ubicación de las personas detenidas desaparecidas, como igualmente la de los cuerpos de las personas ejecutadas y las circunstancias de dicha desaparición o muerte, constituyen un derecho inalienable de los familiares de las víctimas y de la sociedad chilena."

Article 10 *transitorio* of Ley 20.405 states that:

"The Human Rights Programme of the Ministry of the Interior, established by Supreme Decree number 1,005 of 1997, will continue to offer such legal and judicial assistance as may be required by the relatives of the victims referred to in Article 18 of Ley 19.123 [victims of forced disappearance and of political execution] in order to give effect to the rights set out under Article 6 of the same law. Accordingly, [the Programme] is authorised to carry out such legal actions as may be required, including, where relevant, the lodging of criminal complaints for the crimes of kidnap or forced disappearance or of homicide or summary execution" [*Unofficial Observatorio translation*]

Original text: "El Programa de Derechos Humanos, creado por el decreto supremo N° 1.005, de 1997, del Ministerio de Interior, seguirá prestando la asistencia legal y judicial que requieran los familiares de las víctimas a que se refiere el artículo 18 de la ley N° 19.123, para hacer efectivo el derecho que les reconoce el artículo 6° de dicha ley. En virtud de lo anterior tendrá la facultad para ejercer todas las acciones legales que sean necesarias, incluidas las de presentar querellas respecto de los delitos de secuestro o desaparición forzada, en su caso, y de homicidio o de ejecución sumaria en su caso".

Some ministerial aides insist on a restrictive interpretation of both articles, opposing the presentation of complaints for victims of political execution in



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cases where remains have already been located and/or were handed to relatives at the time of the offence on the grounds that the rights granted by Article 6 have already been fulfilled in those case. For the present, and while the issue is being studied in more depth, the Ministry is not authorising complaints that fall into this category.

The issue is of considerable importance, since the complaints that have been put on hold include at least one which takes an additional step forward by challenging a previous application of amnesty to suspects in a particular crime.

Court prosecutor lodges 726 new complaints for victims of human rights crimes, including the first ever complaint over the death of deposed former president Salvador Allende. Relatives' group plans to present additional complaints in March

On 26 January, in an action that took many HR organisations by surprise, court prosecutor Beatriz Pedrals presented criminal complaints for 726 individuals whose deaths or disappearances are not presently subject to national judicial activity. She took the measure in her capacity as a representative of the judicial Public Ministry (*Ministerio Público Judicial*), which is authorised to generate criminal complaints ex officio. The action is not connected with the expanded role given to public prosecutors under Chile's newly-reformed criminal justice system, as these are powers that already existed under the pre-reform system which still applies to past human rights crimes. Sources close to the court system believe that the action, which came as a surprise to most of the country's existing private pro-accountability actors, may be the result of the interest shown by some highly placed Chilean judicial figures in finally offering a comprehensive and effective route for the acceptance and resolution of these cases. The complaints will be assigned in the first instance to special investigative magistrate Mario Carozza, who has responsibility for all new claims of this type lodged after mid-June 2010. The likely fate of the new complaints will become clearer when normal activities resume in March after the courts' regular summer recess in February. March is also likely to see the reception of another large group of new complaints, this time sponsored by the Association of Relatives of Victims of Political Execution, AFEP. Taken together, these new initiatives should produce a significant rise in the proportion of currently recognised victims of human rights crimes who have criminal cases in course or completed. This combined figure is currently at its highest ever historical point of 52.6% (see above)

The inclusion of the name of ousted pre-coup president Salvador Allende amongst the new complaints generated national and international media attention, although as even the political left now generally accepts the thesis that Allende committed suicide in the presidential palace on the day of the coup, it seems on balance unlikely that the complaint will produce a full-blown



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criminal investigation. Another novel aspect of the recent list is the inclusion of at least 8 names of victims from Chile's indigenous, Araucania, region who apparently do not figure on any previous official victim register (such as that drawn up by Chile's official truth commission, the Rettig commission). Experts have generally agreed that under-reporting of cases of political execution and forced disappearance is particularly likely in indigenous communities and districts. Mario Carozza, the judge responsible for the new complaints, is reported to have requested assistance for these particular cases from his colleague Fernando Carreño, a judge from the southern, Temuco, appeals court who has a track record of successful investigation of similar cases in the region.

Charges brought in case of "false" disappearance

On 17 December, judge Alejandro Solís brought fraud charges against Lidia Reyes Millar, in relation to the obtaining of benefits by deception under reparations laws designed to provide assistance to relatives of victims of dictatorship-era human rights violations. The case was triggered by government authorities after it was discovered that the 1982 death of Pedro Millas Márquez, which widow Lidia Reyes reported as a case of forced disappearance, had actually been the product of a railway accident.

Human Rights Programme decides not to appeal a judicial resolution rejecting the use of preventive detention in the Victor Jara case

During January 2011, the Human Rights Programme of the Ministry of the Interior decided against re-submitting a petition of preventive detention previously filed by a Programme lawyer against 4 agents in the case of the assassination of emblematic Chilean folk singer Victor Jara. The petition was generally understood to be a first step which if accepted would have led to a subsequent request for formal charges to be filed against retired army officers Hugo Sánchez, Edwin Dimter and Raúl Jofré and former army prosecutor Rolando Melo. The petition was first filed by then-Programme lawyer Cristián Cruz, the same staff member whose subsequent dismissal we reported in bulletin 10. The petition was denied by presiding judge Juan Fuentes Belmar. In mid January Programme legal director Francisco Ugas, who took over the case from Cruz, decided not to appeal the judge's ruling, preferring to await a judicial decision over charging before requesting detentions. Human rights programmes and Cruz have questioned the decision, although it is worth pointing out that the use of preventive detention has been very infrequent for cases of this type in Chile (By contrast, in neighbouring Argentina most currently detained former regime agents are in pre-trial detention)



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To date, only one individual has been charged in the case: former conscript Paredes Vásquez. It is also likely that after February's court recess the case is also taken over by a new judge, as Fuentes Belmar is due to take over the presidency of the Santiago Appeals Court.

The Chilean Supreme Court agrees to issue a national detention order against al Bashir, the Sudanese president currently wanted by the ICC to face charges of crimes against humanity

In a fundamentally symbolic gesture, the Chilean Supreme Court recently became one of the first national judicial authorities to accede to an ICC request for domestic courts to declare the Sudanese strongman and current president a 'person of interest'. The Supreme Court emitted a domestic warrant to activate and complement the national arrest warrant already issued via the ICC. The measure may surprise those who have followed closely the tortuous path trodden by national cases involving similar allegations and the very ambivalent judicial attitudes to international law and jurisprudence that have been in evidence. However, in fact the decision was triggered by a petition submitted to the Court by a third party. Chilean legislation moreover gives the President of the Supreme Court power to respond directly to this type of petition. This fact is likely to have helped in producing a favourable response since present postholder Milton Juica stands out among his judicial colleagues for his advanced knowledge of international law.

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.

The month of January brought a reversal in Supreme Court judicial reasoning over the issue of *media prescripción*, 'half prescription', a statute of limitation-related tool (see previous bulletins for a full explanation of the term). In a January verdict, judge Rodríguez voted in favour of applying half prescription to reduce final sentences in a disappearance case. This represents an apparent change in the judge's position, as in recent cases he had consistently opposed the concession of this and other extenuating circumstances in human rights cases. The shift was enough to reverse the criminal bench's finely balanced 3-2 majority, in this case accordingly operating in favour of the use of half prescription to reduce final sentences.



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The text of the verdict suggests that the judges were looking to signal their view that the figure of ongoing crimes, used to constitute disappearances as crimes of kidnap, is valid only until 1990. In the view of some of the judges, Chile's return to formal democracy in that year marks a turning point beyond which it becomes unsustainable to argue that individual military officers - such as the accused in this case - continued to have effective control of the fate of disappeared (kidnapped) individuals. The case at issue was over the 1973 disappearances of Antonio Aninao Morales, Rubén Morales Bañares, José Alejandro Ramos Jaramillo, José Moisés Ramos Huina and Gerardo Alejandro Ramos Huina in the Melipeuco region of Chile's southern Araucanía district. Victims' relatives issued a press release condemning the sentence reductions conceded in the final verdict.

On 20 December, the Supreme Court issued its final verdict in the case of the disappearances of Fernando Guillermo Silva Camus and Claudio Guillermo Silva Peralta, father and son who disappeared from the clandestine Villa Grimaldi detention centre. The Court imposed 5 year sentences, without sentencing benefits, on Manuel Contreras and other former high ranking DINA secret police figures (Miguel Krassnoff Martchenko, Marcelo Moren Brito and Basclay Zapata Reyes) for their part in the double crime. Pedro Espinoza and Palmira Almuna Guzmán were found guilty on only one of the two charges, the kidnapping of Claudio Silva. Espinoza was sentenced to 4 years and Almuna Guzmán to 800 days. The low sentence tariff against Palmira Almuna Guzmán rules out jail time as it is low enough to trigger the benefit of conditional remission. The other five agents found guilty are all currently serving jail sentences for similar offences. The verdict also ordered the payment of civil compensation by the state and by individual perpetrators to victims' relatives. As has often been the case in recent verdicts, both criminal and civil aspects of the verdict were the result of a narrow 3-2 majority vote, with judges Segura y Ballesteros emitting a minority vote in favour of denying both criminal and civil action on the grounds that the statute of limitations should be applied.

The next day, the court emitted its verdict in the case of Sergio Riffo Ramos. Contreras, Espinoza, Martchenko and Moren Brito each received sentences of 5 years and 1 day for their part in the crime.

On 27 October, the court resolved a case for the aggravated homicide of Miguel Ángel Becerra. The verdict annulled a 7 year sentence passed in 2008 against former Colonia Dignidad leader Paul Schafer, as he is now deceased. It went on to confirm sentences of 541 days, with the benefit of conditional remission, against Furt Schnellenkamp Nelaimischkies and Rudolf Collen Franzkowsky as accomplices after the fact. The Court overturned the compensation award that had been made against the guilty parties at the previous, Appeals Court, stage as it considered that the statute of limitation had expired. It abstained from pronouncing over an additional civil claim



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against the state, finding that this part of the action ought to have been submitted directly to the civil courts.

Perseverance of relatives of the disappeared in France finally produces important verdict and sentences *in absentia* against Chilean agents

Below we reproduce two reports submitted by participants in the recently-concluded trial in Paris of Chilean dictatorship-era crimes. The first of these comes from Erika Hennings, who together with fellow activists and relatives has been assiduous in pushing for national and international justice for these crimes. The second report came from Karinna Fernández, Chilean human rights lawyer, who observed the trial at the invitation of the International Human Rights Federation, FIDH. Both reports are the result of an Observatory invitation to a range of relatives, witnesses and lawyers to send us their reflections about their experience of the trial and its significance. Thanks to Ms Hennings, the Observatory also has on file a copy of the formal charges in the case (in Spanish) and of the civil award aspect of the verdict (in French). To receive an electronic copy of either document, please email us at observatorioddhh@mail.udp.cl

[This case was] begun in France in October 1998, at the initiative of relatives of dual Chileno-French nationals or Chileans of French extraction who had been executed or forcibly disappeared in Chile, viz. relatives of Enrique Ropert, executed in September 1973, son of Miria Contreras (also known as "la Payita"), brother of Isabel and Max Ropert; relatives of Jorge Klein, Alfonso Chanfreau and Etienne Pesle, all victims of forced disappearance, all represented by lawyer William Bourdon. A few days later, the complaint was extended to include Jean Ives Claudet, represented by lawyer Sophie Thonon. The investigation was initiated by judge Roger Le Loire, who began to cite witnesses to testify in the case and requested documentation be sent from Chile. Le Loire also asked for sworn statements to be taken from the individuals named as suspects in the crimes. The French judge also travelled to Chile in the course of his investigation and met with various judicial figures, including Chilean judge Juan Guzmán. Those relatives who were in France in October and early November of 1998 successfully promoted awareness and media coverage of the case there. Later I travelled to France in December 1998 – to take part in events celebrating 50 years of the Universal Declaration of Human Rights – and also gave a statement to judge Le Loire and the French police who were working with him. In late 1998 the French case lawyer William Bourdon travelled to Chile, to pursue a request already made for a Chilean lawyer to be appointed to advise France, through its embassy in Chile, on technical aspects of the case and about Chilean legislation and judicial procedure. In meetings with the embassy, it was decided that the services of Roberto Garretón would be retained for a three year period to this end.

As the case took its course it was vital to keep permanently informed and active, ready to push the investigation ahead at every stage. We relatives managed to do this, greatly assisted by the proactive and sensitive work of



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lawyer Bourdon. As the years went by we always received prompt replies from him, something which I must say is actually quite rare in the legal field. At the end of 2004, the investigative phase came to an end and charges were formulated. [] This attracted little attention from the French and Chilean press. We knew that the next step would be the public trial phase, and it was at that stage that the Association of former [Chilean] Political Prisoners in France, the Chilean human rights organisation CODEPU and the FIDH decided to join the case. Finally a date was set for public hearings in May 2008, but proceedings were suspended after a few days so that official notice could be served on the accused and on witnesses. The trial phase was re-scheduled for 8-18 December 2010, during which period direct and 'context' witnesses were called. Relatives were also given the chance to explain to the court how disappearances had affected them. The case of Enrique Ropert was finally excluded by the judge, as the only case of execution rather than disappearance. The disappearance cases were treated as incidences of ongoing kidnap.

One interesting aspect of the case and how the court chose to address it is the way that the personal and political lives of four individuals, and the story of the repressive crimes committed against them, was allowed to stand for and transmit the broader reality of the pre and post coup political situation in Chile, the systematic plan behind repression and the way that this was prepared in advance (viz. the case of Georges Klein, detained on the day of the coup itself), the reality of repression in the countryside, in southern settlements and the length and breadth of the country, the Pesle case, repression targeted at left wing parties and the campaign to annihilate groups such as the MIR, the role of the DINA in the Chanfreau case and finally the reach of repressive crimes to the whole of the Southern Cone via Plan Cóndor, which operated in the Claudet case. We saw how each of these 'micro-level' stories contains the history of a country.

- Erika Hennings, relative and human rights activist

On 17 December last, the President of the Paris Criminal Court handed down an historic verdict, sentencing 13 members of the Chilean dictatorship's repressive apparatus to prison terms ranging from 15 years to life for the crimes of kidnap, disappearance and torture of four Franco-Chilean citizens. This lengthy process began in France in the aftermath of the 1998 Pinochet detention in London, with the presentation of various criminal complaints on behalf of a total of nine victims. In the end, those which were declared admissible were those which also incorporated a civil demand and had been presented by the relatives of Alfonso Chanfreau, Jean-Yves Claudet, Georges Klein and Etienne Pesle. The complaints were subsequently supported and co-sponsored by the International Human Rights Federation, FIDH, the French League of Human Rights, LDH, CODEPU, and associations of former political prisoners in France and in Latin America.

After 12 years of investigation, various people observed the hearings that took place between 8 and 18 December in the Paris Criminal Court, representing the first ever full trial on French soil of agents of the Chilean military dictatorship. The trial demonstrated the continuing relevance of international human rights



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law, and how universalism can be used to operationalise the legal norms. It also showed that the passage of time need not be an insuperable obstacle when it comes to the criminal prosecution of the worst kinds of human rights atrocities. The process of the trial allowed the voices of victims' relatives to be heard, giving them the chance to tell the stories of their loved ones and the devastating impact of their disappearances.

Survivors of the persecution unleashed on so many people during the dictatorship told their stories, as did eyewitnesses of the specific crimes committed against the four named victims. Investigators, international law experts and Chilean lawyers were also on hand to talk about the context in which the crimes were committed and about the current justice situation in Chile, which although it is finally holding perpetrators to account is imposing very lenient sentences that often allow the guilty parties to avoid jail terms altogether. Once again, the accused kept silence: they refused to attend the proceedings or even to be represented in them despite being duly notified by the French judicial authorities.

As witness testimonies unfolded, the court appeared constantly surprised by the appalling nature of the crimes as well as by the abovementioned features of present day justice in Chile. This surprise was evident in the kinds of questions the bench put to witnesses, and was also reflected amongst the public, who attended the hearings in large numbers, filling the courtroom every day. Finally, after long days of public hearings and interrogations, the court gave its final verdict. Pending the usual confirmation and appeals process, ways now need to be found to operationalise the verdict. Only the relatives who brought the cases can really answer as to whether the verdict brings them some measure of satisfaction, but from the point of view of the criminal law, the notion that it is humanity as a whole that demands the punishment of these kinds of crime finally takes shape when this kind of decision is not only made, imposed and enforced by a judge but is followed through, with petitions of extradition for the guilty parties in order to bring them within the physical jurisdiction of the court.

- Karinna Fernández, human rights lawyer

OTHER NEWS FROM CHILE

Observatory team offers a successful pilot series of national workshops and international presentations

The Observatory's groundbreaking work in monitoring and analysis of 'late justice' processes in the Southern Cone was publicly presented in Chile and further afield in late 2010 and early 2011.

On the national scene, project researchers Jennifer Herbst, Rodrigo Hernández and Paulina Zamorano have been working hard to initiate dialogues with relatives' organisations and other claimmakers involved in ongoing national cases. Interactive workshops carried out by the team in late 2010 and early 2011 at the invitation of relatives' associations offered a chance to promote



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awareness and use of the case search engine, legal manual and other useful information produced by the Observatory. The workshops also allow the team to hear from actors on the ground about the impact of cases and the achievements and setbacks that claimbringers face in their search for justice for human rights crimes. The workshops have already been successfully expanded beyond the Chilean capital to the country's regions. The project is always open to expressions of interest from new groups who would like to host a workshop, in particular where there is any possibility of offering a contribution towards the minimal travel and materials costs incurred. Contact the project on observatorioddh@mail.udp.cl for more details.

In the international arena, current project director Cath Collins concluded a series of events connected with her Visiting Fellowship at the University of London human rights consortium. She visited the former Stasi secret police archive in Germany, and presented her recent book and the work of the Observatory in the universities of Salamanca, Oxford and Trinity College Dublin. In the first of these events, Collins was invited to give a keynote seminar at the Iberoamerican Institute of the University of Salamanca before taking part in a roundtable discussion with a Spanish judge and a case lawyer involved in litigating the Jesuit case in Spain. At Oxford's Latin America Centre, eminent professor and expert in Chilean politics Alan Angell offered comments to an attentive public at a launch event for Collins's book *Post-Transitional Justice* (Collins, Penn State Press, 2010). In Belfast, a panel on the book was held to close two days of intensive teaching on Latin American transitional justice at Trinity College Dublin's Belfast campus. The book was commented by Professor Colm Campbell of the University of Ulster's Transitional Justice Institute, with whom the Observatory has forged close links and has plans for joint research projects. Days later, the institutions held their second joint event, a very successful 'Sandpit' workshop that led to the formation of interdisciplinary working groups to deepen thinking on conceptual frameworks, methodology and gender-based research in emerging field of 'post transitional justice' that the book aims to introduce. The last event of the cycle was a presentation in Canada, kindly organised by Professor Joan Simalchik at the University of Toronto and held in the offices of Canada's Centre for Children's and Young People's Rights.

The contacts and networks that were forged and deepened over the course of the trip should allow the Observatory to improve the Central America coverage of its bulletin via new contacts with a collaborative project between the University of Salamanca and the NGOs CALDH and Fundación Mirna Mack, Guatemala and IDHUCA, El Salvador. The trip also offered the chance of consolidating contacts with the incipient truth recovery process in Brazil, via meetings held in February with the Amnesty Commission of Brazil's Ministry of Justice. These activities all contribute to the Observatory's initial goal of promoting collaboration and exchange between the 'Plan Cóndor countries'



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that are active today in attempts to overcome impunity and other authoritarian legacies inherited from recent dictatorship periods. Finally, the existing active cooperation between the Observatory and the University of London will continue via a project to collate and analyse information on recent Inter-American human rights system cases from Southern Cone countries and Peru.

Presence of former repressive agents in public life continues to spark controversy

Despite periodic reporting of behind-closed-doors agreements to end the promotion of dictatorship-era repressive agents to military command positions or their appointment to civil service posts, cases of high level functionaries with questionable pasts continue to arise. The apparent removal of such individuals from active military service has proved at times to be merely cosmetic, as some were simply subsequently re-hired on a civilian employee or consultancy basis. This was the situation surrounding the hiring of Italo Seccatore in 2010 as an advisor to Oscar Izurieta, newly appointed Ministry of Defence undersecretary and former army commander-in-chief. Seccatore, a retired army colonel, was formerly responsible for designing information systems for the dictatorship's most feared security apparatuses, the now-defunct DINA and CNI. Some sources have also linked Seccatore more directly with repressive crimes, through his contacts with murdered DINA chemist Eugenio Berríos and with the notorious double agent Luz Arce. Izurieta defended the appointment to the press by arguing that Seccatore had a right to work as long as he had not been cited or charged by the courts, adding "if we don't believe in the judicial system, what are we to do?" This attitude certainly contrasts with the displeasure expressed by the Piñera government and in military circles when Izurieta himself was called to testify in the Victor Jara case (see bulletins 6 and 7). But despite the expressions of support, it was subsequently announced that the services of Seccatore and a second 'advisor' with a similar background would no longer be required by the ministry.

Within the month, a further announcement stated that three employees, including the son in law of Manuel Contreras, would not have their contracts renewed when these lapsed at the end of January 2011. The Defence Ministry spokesperson added that this final measure meant no employee with demonstrable links to repressive apparatuses remained on the Ministry's books. This second measure owed much to pressure brought by Chile's Association of Relatives of the Disappeared, AFDD, and the decision was apparently taken personally by new Defence Minister Andrés Allamand, who replaced the outgoing Jaime Ravinet in January.

While valuing the new minister's actions, relatives criticised the fact that another prominent right-wing political figure, the Renovación Nacional party member of parliament Alberto Cardemil, is apparently seeking to have the



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parliamentary Defence committee draft a legislative proposal that would give additional sentencing benefits and sentence remissions to former agents currently in prison for serious human rights crimes. In a letter published in national newspaper *La Tercera*, Cardemil explicitly called for “a case by case application of amnesty, whether total or partial, proper or improper (*“propia o impropia”*)”. Cardemil’s position was enthusiastically supported by Gonzalo Rojas, columnist for influential right-wing broadsheet *El Mercurio*, who claimed that the Armed Forces have been subjected to “opprobrium and arbitrary treatment the like of which no other social group in Chile has to suffer”.

All of this took place in the same month in which parliamentarians appointed to investigate the recent deaths of dozens of inmates in a fire at the San Miguel public prison in Santiago declared themselves “scandalised” by the notorious differences that they had observed between prison conditions in ordinary jails and those in which former military officers are held. The parliamentarians pointed out for example that the guard-to-prisoner ratio in the Cordillera and Punta Peuco prisons, specially built to receive prisoners convicted of human rights crimes, was two to one. By contrast, at the time of the fatal fire in San Miguel it appears that just 4 prison officers were supervising more than 1,500 prisoners. 81 lives were lost in the San Miguel blaze.

In early February a new chapter was opened in the debate when it became known that Guillermo Castro Muñoz, currently Jefe del Estado Mayor of the army, had admitted under sworn testimony before a judge that he had once been an agent of the National Intelligence Centre, the CNI. The CNI replaced the feared DINA secret police on the latter’s dissolution in the late 1970s, inheriting many of its functions and sinister tactics. The CNI subsequently oversaw the construction of a highly effective police state to control the civilian population after the first intense wave of post-coup repression had died down. The revelation raises the thorny question of whether having served in the CNI, in whatever capacity, should be considered an absolute impediment to current service or the holding of high rank in the Chilean armed forces. The situation is somewhat more clear cut regarding the CNI’s predecessor the DINA, which recent Supreme Court verdicts have made clear should be considered as per se a criminal conspiracy (*asociación ilícita*). The question of the correct treatment of individuals who have served out sentences is another unknown quantity which will have to be addressed as the lenient sentences currently being handed down lead to early release of agents. One such case was reported in early January, when a man who had served a sentence for his part in the Operation Albania killings had been hired to oversee a country club belonging to the Detective Police – the same force that had carried out the investigation and interrogations that had led to his imprisonment. Similar questions have been raised over the appointment of retired brigadier Pablo Belmar Labbé as head of security for Santiago’s main municipal park, the Parque Metropolitano. The post falls under the remit of the Housing Ministry. Belmar was cited as a



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suspect in the case of the murdered UN diplomat Carmelo Soria, whose daughter insisted that Belmar “is one of the people who posed as a policeman in order to kidnap my father”.

New National Human Rights Institute publishes its first annual report

The report details the structure, mandate and organisation of the new body and reports on the levels of state compliance with regional and international obligations in a range of areas including dictatorship-era crimes, indigenous peoples’ rights and gender/ sexual identity issues. The text can be downloaded free of charge from www.indh.cl/wp-content/uploads/2010/12/Informe_Final_Corregido1.pdf

Celebration of the first anniversary of the national Museum of Memory and Human Rights

Early January 2011 marked 12 months of activity at the Museum, which was inaugurated on 11 January 2010 by outgoing president Michelle Bachelet. Over 3,000 people attended an anniversary event and concert. Romy Schmidt, the museum’s executive director, highlighted the fact that despite having had to close for a time due to damage sustained in the major earthquake of February 2010, the Museum had managed to establish itself as a reference point for a range of commemorative, educational and artistic events. The year’s activities included a series of photographic exhibitions and audiovisual installations. The temporary exhibition space hosted an exhibition about the Winnipeg, the boat carrying Spanish Civil War refugees that consul Pablo Neruda helped dispatch to Chile. The Museum forecourt hosted plays and dance presentations during Santiago’s annual theatre and modern dance festivals.

The auditorium, which hosted the Observatorio’s search engine launch in September 2010, also hosted part of Santiago’s International Documentary Film Festival, FIDOCS, and held showings of the new documentary “Mi vida con Carlos [My Life With Carlos]”, by Germán Berger Hertz. The film relates the personal and family odyssey of Berger - son of well known human rights lawyer Carmen Hertz – when he decides to find out more about his father Carlos, forcibly disappeared in 1973.

2010 also saw the inauguration of the Museum’s documentation centre and digital library, which allows remote access to the museum’s digitalised collections. The collections continue to grow, via donations and loans from individuals and organisations. Plans for 2011 include consolidation of the work of its education and outreach teams, with the definitive launch of the regional roadshows that were piloted during 2010 in the port city of Valparaíso. These plans will of course be greatly helped if 2010’s difficulties in obtaining previously promised state finance are not repeated.

NEWS FROM THE REST OF THE REGION

Argentina

Domestic case news

Seven human rights case verdicts were handed down in December 2010. In the first of these former dictator Jorge Rafael Videla was convicted for the first time since the Junta trial of the early 1980s (in which his sentence was later revoked by a presidential pardon). This time the verdict was in a case over illegal executions in a jail in Argentina's Córdoba province. In the same case, a fifth guilty verdict was passed against notorious former Third Army Corps chief Luciano Benjamín Menéndez.

In the other December verdicts:

The Federal Court of the city of Resistencia passed its first human rights case verdict since cases were re-opened in the early 2000s. Ten suspects were on trial in the case known as "Caballero", which investigated the provincial police force of the Chaco province. The Federal court of Mar del Plata city imposed life sentences on Alfredo Manuel Arrillaga, Justo Ignacio Ortiz and Roberto Luis Pertusio in a case investigating crimes of repression committed at the city's Navy headquarters. The case over the Atlético-Banco-Olimpo (ABO) clandestine detention 'circuit' was also resolved: the capital's second federal court handed down life sentences to 12 defendants and sentenced 4 more to 25 years each. The preliminary, written, verdict stage of the so-called "Masacre de Palomitas" case concluded with judge Carlos Olivera Pastor of Salta's 2nd federal court sentencing 3 former colonels to life imprisonment.

In cases over the illegal appropriation of children of the disappeared, the 1st federal court of La Plata found both defendants in the case for the appropriation of María Natalia Suárez Nelson guilty. The 5th federal court of San Martín found against a former intelligence officer of the 601st Battalion of Campo de Mayo and his wife for a similar crime

At the end of January former general Cristino Nicolaidis, member of the fourth military junta in his capacity as the final army commander in chief of the 1976-83 dictatorship period, died in the city of Córdoba at the age of 86. He had been under house arrest serving a 2007 sentence for human rights crimes in relation to the 1980 kidnapping of Montonero guerrilla activists. He was also a defendant in a trial for the illegal appropriation of children that was due to begin this month [February 2011].

Chilean agent Enrique Arancibia Clavel may have been freed early by error from a prison sentence in Argentina

A recent Argentinian press report suggested that in February 2011, at the request of an Argentine state prosecutor, the Argentine courts would be reviewing the freedom granted in 2007 to former civilian DINA agent Enrique Arancibia Clavel. Arancibia has twice been sentenced by the Argentine courts for human rights related offences, committed under the Plan Condor international repression network. His first sentence, of 12 years, was passed in 2004 for the kidnap and torture of two young Chilean women, Laura Elgueta Díaz and Sonia Díaz Ureta, aged 18 and 21 respectively at the time of the crimes. This is the sentence that the courts decided in 2007 had been



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served, due to a 'two for one' formula used to calculate real length of sentences to be served and under which a good proportion of the time Arancibia Clavel spent on remand awaiting final sentencing was counted double for the purposes of calculating his remaining sentence tariff. Arancibia Clavel was first detained in 1996, and time served after 1998 was counted at this double rate. He was accordingly released in 2007, after which he continued to live in Buenos Aires. What the report does not fully explain is how Arancibia Clavel obtained his freedom despite a second sentence against him, passed in 2000 for the double assassination of former Chilean army commander in chief Carlos Prats and his wife Sofia Cuthbert. This second guilty verdict was confirmed by the Argentine Supreme Court in mid 2004. The case is the same one in which Argentine judge María Servini de Cubría requested the extradition of the entire high command of the DINAL secret police, including Pinochet, from Chile to Argentina. When the Chilean Supreme Court found against the extradition petition in 2002, extradition law required it to instead open a domestic case. This case in Chile was not concluded until mid 2010, when it produced some relatively severe sentences. Arancibia Clavel is accordingly the only Chilean conspirator in the crime who has ever been brought under the effective jurisdiction of the Argentine courts, due to his having been a longtime resident in Argentina after being sent there as a DINA spy during the 1970s.

Brazil

Dilma Rousseff takes over as president

On 1 January, successful presidential candidate Dilma Rousseff was sworn in as president of Brazil, replacing popular outgoing president Luis Ignacio Lula da Silva. Both represent the Workers' Party, PT. In her inaugural speech Rousseff made reference to human rights as one of the three guiding principles of Brazil's future foreign policy direction, the others being multilateralism and the principle of non-intervention. Despite the careful mention of the latter, sources close to the new administration predict that her human rights policy followthrough may be a little more robust than that of Lula's administration. Rousseff made reference to her generation's "struggle" against the country's 1964-1985 military dictatorship, and saluted "fallen comrades", but made no specific reference to the new official Truth Commission which is due to be convened during her first year in office. As expected, her speech was instead focused on the need to continue the fight against poverty and improve levels of basic health and education services.

Rousseff's new Human Rights Secretary Maria do Rosario, who has ministerial rank, offered a conciliatory message to the press just two weeks in to her new post. She insisted that the Truth Commission would be focused on "truth, not on punishment, our goal is to complete the process of national reconciliation because that's the only route to a fuller democracy". She ruled out the possibility of tensions arising between her own office and that of Defence Minister Nelson Jobim, who reacted to the initial announcement of the Commission in 2009 by threatening to resign in solidarity with the opposition expressed by the Armed Forces to the measure.

Meetings in Brazil allow the Observatory to deepen contacts with colleagues in the region

During the first fortnight of February Observatory project leader Cath Collins met colleagues and official institutions in Brazil to deepen contacts and facilitate information exchange with the only 'Condor country' which has so far not seen a



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reopening of judicial processes connected to its most recent dictatorship period. The main meeting was also attended by Lorena Balardini of CELS Argentina, main regional partner of the Observatory and a key player in efforts to regionalise the work of trials mapping. The meetings built on contacts initiated in the University of Oxford last October, as reported in bulletin 10. The visit also offered a chance to meet with local researcher Glenda Mezarobba, the Observatory's main Brazil contact and source of news for this bulletin, and with Spanish researcher Dr Elena Barahona of the Universidad de Salamanca, who is about to launch a network initiative which will link her university with the main accountability case actors in and over Central America (including the Jesuit case in Spain).

Truth recovery initiative continues on course, while the new government studies its response to a recent adverse ruling by the Inter-American Court of Human Rights

Brazil's new Truth Commission, promised under recently replaced president Lula, continues to be part of the political agenda for 2011. The legislative bill that will create the commission, the first official measure of this kind in Brazil, is awaiting Congressional debate after the present summer recess. The final bill is expected to contain limitations on the powers and scope of the instance, reflecting changes made to placate the Armed Forces and Ministry of Defence, who reacted negatively to the original proposal. Nonetheless the Commission will certainly represent a step forward for a country whose previous similar initiatives have been unofficial or of mixed origin (viz the well-known Catholic Church Nunca Mais initiative of the 1980s and a report and register on executions and forced disappearances published a few years ago).

As reported in the message accompanying bulletin 10, the Inter-American Court of Human Rights recently emitted its first verdict over a claim of denial of access to justice related to the Brazilian dictatorship and the continuing validity of the 1979 Amnesty Law, which was upheld by the country's Supreme Court after a domestic challenge in 2010. The verdict found against the Brazilian state, and in keeping with the Court's previous line over similar amnesty provisions in other countries, found that Brazil's amnesty law as currently interpreted violates the rights of survivors and victims' relatives to truth and access to justice. The full text of the verdict in Spanish is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_esp.pdf. Brazil's incoming administration will have to decide how to respond to the verdict and the measures that the Court recommends the government take in the case, which is for members of left-wing guerrilla forces forcibly disappeared in the region of Araguaia

Guatemala

Supreme Court and Constitutional Tribunal at loggerheads over correct interpretation of international law and regional obligations

Following an Inter-American Court of Human Rights verdict, the Criminal Chamber of the Guatemalan Supreme Court recently emitted a verdict supporting the meeting of the state's obligations to offer justice in the Bamaca case. However shortly afterwards the Constitutional Tribunal, which tends to be much more negative towards accountability cases for human rights crimes, issued a very disappointing ruling in the case for the Dos Erres massacre. Accordingly, one of the defendants in the Bamaca case tried to get the Constitutional Tribunal involved, asking it to block the Supreme Court action. The appeal was accepted the same day, in a short ruling which gave no supporting arguments for the decision. Members of the Tribunal also made clear their



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displeasure at what they considered to be “interference” by the regional court, after a former Inter-American court judge on a visit to Guatemala was received by tribunal members after requesting an informal meeting about issues unconnected with the appeal, of which the visitor was not even aware at the time.

Paraguay

The justice balance 22 years after the fall of Stroessner

It is over two decades now since Paraguayan dictator Alfredo Stroessner was obliged to flee the country after having exercised almost untrammelled personal power in a 45-year spell of one man rule (1954 a 1989). The ‘palace coup’ which dethroned him was not however sufficient to see a genuine transition. Even after a belated 2008 Truth Commission exercise recommended various cases to the judicial branch for criminal investigation, less than a dozen cases have successfully gone through national courts. That was the assessment of Rodolfo Aseretto, lawyer for the Churches Committee, CIPAE, one of the country’s foremost dictatorship-era human rights organisations. Aseretto pointed out to national press sources the contrast between the figures of 128,000 victims/ survivors and 2,800 repressors detailed in the Commission’s report and the total of only 8 successful convictions to date. Three more cases have been handed on to regional or international instances. Moreover the crime of illegal seizure of land, widespread in Paraguay and extensively reported by the Truth Commission, remains completely unpunished. Despite Paraguay’s status as one of the region’s poorest countries, the cost of reparations for human rights crimes has to date been borne exclusively by the current Paraguayan government rather than by any of the beneficiaries of such crimes.

Possible discovery of human remains in the southern region of Itapúa

In January, a delegation from the national Truth, Justice and Reparations Secretariat – successor body to the 2008 Paraguayan Truth Commission – discovered what are believed to be three sets of human remains buried near the bank of the Paraná river in the ‘Carlos Antonio López’ district of the country’s Itapúa region. The delegates were accompanied by representatives of the Forensic Department of the National Police and of the state prosecutor’s office (Ministerio Público). It is presumed that the site may be a clandestine cemetery used to dispose of the remains of militants of the ‘May 14th’ guerrilla movement murdered by the Stroessner regime.

Peru

[There follows a summary of case news from Peru for November and December 2010. We are grateful as always to the ‘Human Rights Trials in Peru’ project, directed by Dr Jo Marie Burt, for their detailed case reports]

The Peruvian courts’ attitude to statute of limitation issues in human rights cases

In the El Frontón prison massacre case, involving the 1986 deaths of 118 prisoners, in mid November a national court (the 2da Sala Penal de Reos Libres de Perú) dismissed a hábeas corpus writ brought by the defendants, all former naval officers. The men had attempted to have the case dismissed through the application of the statute of limitations.



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The following day a sister instance (the 3ra Sala Penal de Reos Libres) also dismissed a habeas corpus writ, this time submitted by former Interior Minister Agustín Mantilla. Mantilla is accused of having directed the operations of the 'Comando Rodrigo Franco', in effect an official death squad that functioned out of the Interior Ministry during Mantilla's period in office under the first, 1980s, term of current president Alan García. The court declared the statute of limitations to be inapplicable and ordered charges to be preferred against Mantilla and 8 other suspects for the kidnap and murder of 5 victims.

Former army officer Telmo Hurtado, currently wanted in Peru for trial in cases including the 1984 massacre of 33 people in Huamanquiua and the notorious assassination of 69 peasant farmers in Accomarca in 1986, should have to stand trial soon in his home country, as in early December he was reported to be in detention in Miami awaiting extradition to Peru (See bulletin 10). In the meantime, the Accomarca case suffered a partial setback when the Constitutional Tribunal declared that although the statute of limitations should not immediately be applied to the case, the killings did not constitute a crime against humanity. Accordingly the tribunal ruled that the statutory period should be calculated from 2002, date on which investigations were initiated in a competent court. 2002 was also the year in which the Peruvian state definitively overturned the previous, Fujimori, regime's attempts at self amnesty, following its acceptance of the Inter-American Court's landmark Barrios Altos case verdict.

More negative signals for human rights organisations were to follow on 22 November, when the National Criminal Chamber, Sala Penal Nacional, absolved four army officers and junior officers accused of the murder of 12 peasant farmers in the Ayacucho region in October 1986. Though the court acknowledged that the army carried out the killings, it described them as a mere "excess". Nonetheless it called on statutory authorities to redouble their efforts to locate and detain two on-the-run suspects: Agustín Tuya López, who is believed to be in the north of the country, and Dante Retamal Guerra, believed to be in the USA.

***Fujimoristas* continue their smear campaign against the judge who presided over the trial of disgraced former autocrat Alberto Fujimori for human rights crimes**

In December, Fujimorista congressional representative Rolando Sousa made public reference to correspondence between former Fujimori case judge César San Martín and lawyers based in Spain to argue that the guilty verdict against Fujimori had been "directed from the very start" from the outside. This was merely the most recent in a series of attempts by the authoritarian former president's supporters to discredit the 25 year sentence finally passed on him. Fujimori's parliamentary party representatives also tried unsuccessfully to block the same judge's promotion to the presidency of the Supreme Court. The group immediately announced its intention to appeal to the Constitutional Tribunal to annul the remainder of Fujimori's sentence, based on the alleged outside interference in the verdict.

NGOs denounce failure to judicialise sexual violence against women as a human rights violation

Peruvian human rights organisations COMISEDH, Paz y Esperanza, APRODEH and DEMUS alleged that 97% of the 538 cases of serious sexual violence against women detailed by the Peruvian Truth Commission are not being investigated by the justice



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system. The groups also claimed that the remaining 3% of cases tend, despite having been formally entered into the system, to be abandoned or simply to languish uninvestigated.

Prosecutor very active in human rights cases is cleared of allegations of prevarication presented against her by president Alan García

December saw the resolution of a complaint presented by Peruvian president Alan García against state prosecutor Cristina Olazábal Ochoa. The complaint had asked for her to be sacked. Olazábal is considered one of the country's most committed prosecutors in human rights cases, and was the person who in 2005 recommended that the president be investigated on suspicion of involvement in genocide over the Accomarca massacre, which happened in 1985 during García's first term as president.

Barrios Altos case reveals in more detail the systematic nature of repression in Peru

At the end of December the Anticorruption Court conceded bail to Hugo Coral Goycochea, a former agent of the 'Grupo Colina' death squad. Coral was awarded the concession for his "effective cooperation" with the authorities in clearing up the Barrios Altos and El Santa massacres. Coral testified that the Grupo Colina operatives involved in both crimes acted under the direction of former president Alberto Fujimori, then Armed Forces Commander in Chief Nicolás Hermoza Ríos, and Juan Rivero Lazo, then head of the Army National Intelligence Service, DINTE. The investigations have accordingly managed to throw more light on the operational structure of the Colina group and the direct involvement of Fujimori in its activities.

Imminent electoral campaign points up the possibility of a pardon for Fujimori

Mid-January produced public debate about the possibility of a pardon for former president Alberto Fujimori, currently serving a 25 year prison sentence for human rights crimes. A journalist from the CNN TV channel asked Luis Castañeda Lossio, would-be presidential candidate for the Solidaridad Nacional party, whether he would issue a pardon to Fujimori if he were to be elected. Castañeda Lossio, who had not previously offered any view on the matter, hedged by saying he would go along with whatever the judicial branch decided. Journalists immediately began to ask other candidates for Peru's 2011 presidential election what they would do. Keiko Fujimori, daughter of the disgraced former ruler, was not explicitly polled but has made no secret in the past of her firm intention to pardon her father immediately she is elected. Pedro Pablo Kuczynski, right-wing candidate for the Alianza para el Gran Cambio coalition, confirmed that he would pardon Fujimori if the latter were shown to have serious medical problems. Candidates Ollanta Humala and Manuel Rodríguez Cuadros, generally considered to be of the left, said they would not consider a pardon. But perhaps the most surprising response came from Alejandro Toledo, transitional president after Fujimori and current candidate for the Peru Posible party. Despite being an old foe of Fujimori's, Toledo took essentially the same line as right wing candidate Kuczynski. However some of Toledo's own party members, including former National Human Rights Coordination president and human rights lawyer Ronald Gamarra, took issue with their candidate's line and indicated that in their view a pardon would be contrary to international law.



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Parole definitively awarded in Berenson case

We reported in previous bulletins the controversy caused last year by the decision to concede parole to Lori Berenson, US citizen and former sympathiser with Peru's Tupac Amaru guerrilla movement, MRTA. Berenson was given a lengthy jail term for her association with the group. Peru's public prosecutor for anti-terrorism cases, Julio Galindo, appealed against the concession of parole and in the hearing which resulted, Berenson affirmed publicly her rejection of and repentance over her former views. Days later, the national criminal chamber (Sala Penal Nacional) finally confirmed her parole.

Uruguay

Supreme Court again declares the amnesty law inapplicable in a human rights case on the grounds of unconstitutionality

The ruling is at least the third in a series that tends toward a growing refusal by the country's highest court to allow the amnesty law to take effect in cases of grave human rights crimes.

In sentence Nº 2337, signed on 15 December 2010 but only made known to the parties in the case recently on 9 February 2011, the Uruguayan Supreme Court once again considered that the application of amnesty to a particular human rights case would imply a breach of the constitution. The case at issue, known as the 'Soca shootings', *los fusilados de Soca*, is represented by human rights lawyer Pilar Elhordoy. It was developed from a larger case that accuses former president de facto Juan María Bordaberry of crimes including 'attack on the constitution', *atentado a la Constitución*, and for which he is currently in prison. The Soca episode investigates the kidnap and murder of five left wing activists: Floreal García, Mirtha Hernández, Héctor Daniel Brum, María de los Angeles Corbo and Graciela Estefanell. All were victims of Plan Condor, having been detained and tortured in Buenos Aires, Argentina in November 1974 before being handed to the Uruguayan army and killed a month later. Their bodies were abandoned in Soca, in Uruguay. The victims included the birth parents of Amaral García, son of Floreal and Mirtha, who was the first stolen child to recover his true identity thanks to the tireless efforts of Grandmothers of the Plaza de Mayo in Argentina. The case witnesses include Julio Abreu, the only survivor of what are now known to have been at least 6 clandestine rendition flights carried out between Argentina and Uruguay at that time.

The Court's decision paves the way for a more complete investigation of the crime and could also have implications for the still-unsolved murder of Ramón Trabal, a constitutionalist Uruguayan military officer assassinated in Paris in 1974 shortly before the Soca killings. Declassified US State Department documents later suggested that the crime may have been another of Condor's overseas operations, although at the time it was officially blamed on Uruguay's Tupamaro guerrillas. Trabal's death was accordingly used as a pretext for the 'reprisal' killings of the 5 Soca victims.

The Supreme Court verdict is the third in a row to take the same line, after similar verdicts supported continuing investigations in the case of Nibia Sabalsagaray and of a group of around twenty additional victims (verdicts from 2009 and October 2010, respectively; see bulletin 10).



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Complaints against the justice system by an extremist group of retired military officers lead to open threats against an investigative journalist

The so called 'Forum for Freedom and Harmony', *Foro Libertad y Concordia*, is private association of former Uruguayan military officers who continue to support and justify torture, forced disappearance and other atrocities carried out by the regime of which they were a part. In January the group published an open letter denouncing what they call the 'persecution' of retired soldiers by the justice system and calling on the current commanders in chief of the armed forces to speak out in support of those accused. They threatened 'extreme consequences' if their demands were not met, and promised to actively 'resist' the 'wave of detentions' that they expect to take place this month (February 2011). The letter, which was broadcast in full by a national TV channel during its news bulletin, took particular issue with court activity during 2010 leading to charges being brought against former or serving military officers or army employees Ernesto Soca, Juan Carlos Gómez, Miguel Dalmao, José N. Chialanza, Uruguay Araújo Umpiérrez and Enrique Rivero.

In spite of various representations made by governing party deputy Luis Puig concerning the threats and falsehoods contained in the letter, the government played down the incident. Current president and former guerrilla activist José Mujica was surprisingly deferent to the group, describing its members as "people who are trying to defend what they consider to be their rights". And rather than defend the work of the justice system, Mujica suggested that the group's criticisms might only be misdirected, rather than unfounded, saying "The government has no control over state prosecutors and can't tell the judges what to do". This lukewarm attitude on the part of executives to the criminal prosecution of crimes against humanity is very widespread in the region, and without a doubt weakens the symbolic effect of trials as a possible expression of social repudiation, clearly backed by present democratic authorities, of crimes against humanity.

The reverberations of the incident continued to make themselves felt in early February, when an investigative journalist made reference to the Forum's letter in an article on a verdict in the Soca case (see above). His article, published in the national magazine *Caras y Caretas*, earned him a series of interventions, insults and threats made by members of the group under their own names on the journalist's Facebook page. The threats have been reported to the relevant authorities and to regional and international networks and organisations for press freedom and the protection of human rights defenders

Uruguay's main prosecutor in human rights cases is a victim of theft

In December 2010 a personal computer was stolen from the home of state prosecutor Mirtha Guianze, who oversees a major proportion of the most important human rights accountability cases currently active in the country. A connection between her professional activities and the robbery has not been ruled out, as the thieves made straight for the computer and the data it contained, ignoring other valuables in the house.

Excavation work recommences in a former military reserve believed to contain the remains of victims of forced disappearance

February 2011 should see the reactivation of forensic work by a group of experts from Uruguay's Universidad de la República in the environs of the former headquarters of the army's 14th Battalion. Bone fragments discovered in late 2009, together with



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survivor testimony, suggest that the site may have been used by repressive forces as a clandestine cemetery. In late 2010 the judicial branch asked the government to assign resources to enable an exhaustive examination of the area. The activities have been triggered specifically by the case for the disappearance of María Claudia García de Gelman López, mother of Macarena Gelman, who recovered her real identity in 2000 (see former bulletins). It is believed that the site may also be connected to other rendition flights between Argentina and Uruguay carried out under Plan Condor. Previous partial excavations of the site, carried out 5 or 6 years ago, did not uncover evidence of mass burials. The work is nonetheless hampered by a coverup operation carried out by the armed forces in the mid 1980s. In the so-called 'Operación Zanahoria', the remains of victims of political execution were removed and reburied in an unknown location in order to prevent their discovery after political transition.

Something similar took place in Chile, some years later, under the euphemistic title of 'Operation TV Removal'. Ironically, this latter episode was one of the first doors that could be opened for criminal prosecution in Chile. Despite its status as a relatively minor crime – certainly when compared to kidnap and murder – the illegal reburial took place long after the cutoff date at which Chile's 1978 Amnesty Law ceased to apply. In early 2000 it was therefore possible to bring charges for the lesser crime even when the major crimes that underlay the incident were still considered subject to amnesty.

Former soldier and possible case witness found dead in mysterious circumstances

At the end of December, the body of Uruguayan citizen Julio Ruperto Ramírez was discovered in the area of Villa Paranacito, Argentina, where he had emigrated in search of work. Although initial reports suggested an accidental death by drowning, the brother of the deceased former soldier insisted that the body had presented stab wounds and other contusions that would suggest he had been murdered. Nonetheless, the family did not have the chance to view in person the remains of the 58 year old, and exact details remain hazy as no full autopsy appears to have been carried out. Ramírez had served in Uruguay's notorious 13th and 14th Battalions during the dictatorship. Both his brother and other acquaintances allege that Ramírez had recently made drawings indicating possible clandestine grave sites in the battalion headquarters, and had talked about offering testimony to judicial authorities

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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