

## **TRUTH, JUSTICE AND MEMORY FOR DICTATORSHIP-ERA HUMAN RIGHTS VIOLATIONS, 40 YEARS AFTER THE MILITARY COUP<sup>1</sup>**

### **Observatorio de Derechos Humanos**

[www.icsoc.cl/observatorio-derechos-humanos](http://www.icsoc.cl/observatorio-derechos-humanos)

[observatorioddh@mail.udp.cl](mailto:observatorioddh@mail.udp.cl)

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## OVERVIEW

The year 2013 saw a series of events and anniversaries in Chile that were particularly charged because of their association with historical memory. The main event was undoubtedly the 40th anniversary of the military coup of 11 September 1973. However, another significant anniversary, in mid October, marked 15 years since former dictator Augusto Pinochet was arrested in London on a Spanish warrant for human rights crimes. The fact that both dates were presided over by a right wing government, whose successor was due to be chosen in presidential elections due just a few weeks later, is one of those peculiar ironies that history occasionally produces. The sensation of the repetition of an inexorable cycle uniting past, present and future was accentuated by the late emergence of Evelyn Matthei as the presidential candidate for the right-wing Alianza alliance, competing against Michelle Bachelet for the centre-left Concertación. This pairing means that the future political direction of the country will be decided between two daughters of Air Force generals, one of whom has moreover been repeatedly accused of moral or command responsibility in the death of the other, a constitutionalist officer loyal to Allende who died in prison from wounds sustained under torture.<sup>2</sup> 2013 therefore offered a unique opportunity for Chile to take a long and candid look at its recent past, drawing the necessary lessons that would allow advances in truth and justice advances through honest dialogue. Nonetheless, the events of the year as analysed here<sup>3</sup> lead us to conclude that the heavily charged symbolism of the 2013 anniversaries will go down in history as, at best, a missed opportunity. It is evident that some sectors on the political right are still uncomfortable with the concept of human rights in general, and human rights issues in relation to the dictatorship, in particular. This manifests itself in some cases as a lack of clarity or consistency in repudiating both the authoritarian nature of the dictatorship and the state terror policies that were an integral part of it. In other cases, it shows up as a permanent desire to renegotiate the parameters of acknowledgement of particular truths, as was illustrated in June 2013 by the comments of the general secretary of the right-wing UDI party over the *degollados* case.<sup>4</sup> A similar phenomenon can be detected in military circles. In July 2013, outgoing army commander in chief Juan Miguel Fuente-Alba added his voice to the repeated calls made by his successors for ‘compassionate treatment’ of

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<sup>2</sup> In early August 2013 a request from casebringers the Association of Relatives of the Disappeared, AFEP, to have former Air Force general Fernando Matthei charged as a presumed accomplice to torture was turned down for the second time. Then-general Alberto Bachelet was tortured by his former comrades in arms in 1973 on the premises of the Air Force Academy, at the time under the administrative command of the then-colonel Matthei. Two other former colonels are currently under charges for torture in the ongoing case for Bachelet’s death, which was started by a criminal complaint (*querrela*) brought by the AFEP.

<sup>3</sup> Principally, although not exclusively, between July 2012 and June 2013 inclusive. This time limit is preserved in all statistical analysis in the chapter, in order to preserve comparability with the equivalent chapter from previous years. Some of the narrative and qualitative analysis of the chapter however covers an extended period to early September 2013.

<sup>4</sup> José Antonio Kast denied that state agents had carried out the *degollados* killings. Although he later apologised for what he claimed was a ‘confusion’ between this crime and the later Operation Albania massacre, the apology stopped short of acknowledging that both crimes were in fact episodes of systematic state repression. The Clinic Online, 20 June 2013, “Kast pidió perdón por confundir el caso degollados con la operación Albania [...]”.

former military personnel guilty of crimes that national and international law define as the gravest possible. Fuente-Alba expressed the “sorrow and sadness” that he feels on seeing the law applied. He also referred to “these things that happened 40 years ago”,<sup>5</sup> thereby rendering invisible the persistent commission of grave crimes of repression throughout the subsequent 17 years, including and beyond the September 1989 assassination of Jecar Neghme.

The immediate runup to 11 September itself produced a veritable wave of requests for forgiveness (*perdón*) from a range of social and political actors. Presidential candidate Evelyn Matthei rejected the need for a *mea culpa*. The National Magistrates’ Association however declared that the judicial branch, and in particular the Supreme Court, had in its view “failed to fulfil its essential duties” during the dictatorship, erring both “by action and omission”.<sup>6</sup> In response the Supreme Court recognised, for the first time, the “abandonment of its jurisdictional responsibilities”.<sup>7</sup> Nonetheless, judge Hugo Dolmestch, Supreme Court spokesman and coordinator for human rights cases, affirmed that the Supreme Court of the time had been “right” to support the coup, and recognised that he was “in favour of low sentences”.<sup>8</sup> It is clear, then, that the systematicity and political nature of repressive crimes and crimes against humanity, elements that serve to aggravate the offence, are nonetheless taken by some sectors as mitigation.

**KEYWORDS: Truth, Justice, Memory, Dictatorship, Amnesty Decree Law**

## INTRODUCTION

Article 5 of the Chilean Constitution states that “the exercise of sovereignty takes place within the limits of respect for the essential rights that emanate from the human condition.”<sup>9</sup> Art. 27 of the Vienna Convention on Treaty Rights, valid in Chile since January 1980, established that states may not invoke national legal dispositions to evade their international obligations. Current regional and international norms confer on states the responsibility to prevent grave violations of human rights and humanitarian law and, where these have already occurred, to investigate them, apply sanctions to those responsible, provide reparations for their worst effects, and guarantee their non-repetition. The victims of these practices become subjects entitled to actively exercise their rights to truth, justice, holistic reparation and guarantees of non repetition.<sup>10</sup> We might also consider that society

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<sup>5</sup> *El Mercurio*, 14 July 2013.

<sup>6</sup> National Magistrates’ Association of the Chilean Judicial Branch, Public Statement, 4 September 2013.

<sup>7</sup> Full sitting of the Chilean Supreme Court, Public Statement, 6 September 2013.

<sup>8</sup> “que las penas no sean muy duras.” *El Mostrador*, 4 September 2013, “Vocero de la Corte Suprema y violadores a los DD.HH [...]”.

<sup>9</sup> “el ejercicio de la soberanía reconoce como limitación el respeto de los derechos esenciales que emanan de la naturaleza humana”. Author’s translation.

<sup>10</sup> See, inter alia, UN Principles for the Protection and Promotion of Human Rights through the Combating of Impunity, updated version (E/CN.4/2005/102/Add.1) and the accompanying Independent Expert’s report

as a whole possesses these same rights. The nucleus of atrocities classified as crimes against humanity are moreover considered an offence not only against a particular society but against humanity itself. This understanding underpins the post WWII definition by the community of states of special duties to prevent and punish such crimes, elevating these duties to the status of peremptory norms or *ius cogens* and renouncing the use of mechanisms such as amnesty or statutes of limitation to prevent or impede punishment.

Recent times have seen a growing emphasis on the intimately interrelated nature of the rights to truth, justice, reparation and guarantees of non-repetition,<sup>11</sup> with the establishment in 2012 of a new UN special rapporteurship for these matters.<sup>12</sup> It has also been suggested that it is not only victims but the state which stands in need of rehabilitation, being obliged to repair and re-establish its legitimacy in the eyes of citizens and offended parties through respectful treatment of victims. State responsibilities, then, extend beyond the mere design of adequate, integrated and sustained policy measures to include the emission of a consistent message of clear repudiation of past and present violations and those responsible for them. This last may constitute the principal weakness of Chile's post-1990 trajectory in managing the legacy of massive and systematic violations committed during the 1973-90 civil-military dictatorship.

## 1. JUSTICE

### 1.1. Overall balance after 15 years of case investigation<sup>13</sup>

The 1998 “Pinochet case” undoubtedly marked a milestone in the history of international human rights law.<sup>14</sup> According to human rights lawyer Roberto Garretón, the case

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(E/CN.4/2004/88); UN, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (GA Res 60/147, 2005); Convention against Torture and Other Cruel, Inhuman and Degrading Punishment; International Convention for the Protection of All Persons from Enforced Disappearance; 1998 Rome Statute of the International Criminal Court; Istanbul Protocols; 1997 Joinet Principles; 2000 Van Boven-Bassiouni Principles; the Inter-American Convention to Prevent and Punish Torture; the American Convention on Human Rights (Pact of San José).

<sup>11</sup> UN Security Council, Report of the UN Secretary-General Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, S/2004/616, para. 26; UN General Assembly, First Annual Report of the Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Repitition (henceforth Special Rapporteur) A/HRC/21/46, section D, August 2012. See also the Inter-American Court of Human Rights on the reparatory dimension of justice in, inter alia, the Almonacid Arellano case verdict, 26 September 2006, para. 161.

<sup>12</sup> See UN Human Rights Council Resolution 18/7, which created the Special Rapporteurship on Truth, Justice, Reparation and Guarantees of Non-Repitition (henceforth Special Rapporteurship); see also the first annual report of the Rapporteur, op.cit.

<sup>13</sup> References throughout this chapter to ‘human rights cases’ refer invariably to cases related to crimes of state repression committed between 1973 and 1990, although for reasons of space the shorthand ‘human rights cases’ is often used. si bien, por razones de espacio, este calificativo no siempre es reproducido en su totalidad.

<sup>14</sup> See Sebastian Brett, “The Pinochet Effect: Ten Years on from London 1998”, report of a conference held at the UDP in 2008. This and all other cited documents published by the UDP Human Rights Observatory are

“overcame [Chilean] judges’ fear of doing justice”.<sup>15</sup> It had a significant multiplying effect on an existing, timid, national trend toward more justice for Chile’s multiple dictatorship era human rights violations. Last year’s chapter (see UDP, *Informe Annual DDHH en Chile 2012*, Spanish only) described the major national milestones in this trajectory, which began in January 1998 with the first ever criminal complaints admitted directly against Pinochet for human rights crimes.<sup>16</sup> That moment became the starting point for a wave of judicialization that has continued to grow, although not without setbacks, until the present day. A measure of formal justice was thereby added to the multiple public policy measures and social practices around truth, reparations and memory that have constituted a permanent, albeit often ignored, backdrop to national social and political life since 1990. A decade and a half after Pinochet’s London arrest, there are around 1,350 criminal cases open in Chile involving over 800 former state agents. By the end of July 2013 the Supreme Court had emitted a final resolution in 153 such cases, confirming at least one guilty verdict in 140 of them.<sup>17</sup> International prohibitions on the concession of amnesty or statutes of limitation to crimes against humanity or war crimes are currently being respected. The main remaining weaknesses in national justice for past crimes are the slow pace of cases; the extreme leniency of final sentences; the lack of transparency in the granting of post-sentence benefits to those convicted; the continued application of statutes of limitation to civil claims and the concession of ‘half statute of limitation’ (*prescripción gradual*) to criminal cases; the complete lack of legal support services to survivors of political imprisonment and torture, and the persistent refusal of the executive and legislative branch to act in compliance with the state’s international responsibilities regarding the 1978 Amnesty Decree Law.

### 1.2.1. Interpretation of the 1978 Amnesty Decree Law by the Chilean courts

Amnesty decree law DL 2.191, published on 19 April 1978, continues to be valid and is therefore theoretically fully applicable to crimes committed between 11 September 1973 and 10 March 1978. The figure below, Fig. 1, shows how judicialization of past crimes in Chile has proceeded in four distinct phases. Firstly, crimes falling expressly outside the ambit of the law were addressed. These included the Letelier assassination, explicitly excluded by the text of the law, and crimes committed after the 10 March 1978 cutoff date

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available to download free of charge at [www.icsoc.cl/observatorio-derechos-humanos](http://www.icsoc.cl/observatorio-derechos-humanos), Publications section. Documents whose title appears in English in this chapter are available in both English and Spanish versions. Documents whose titles are not translated into English in this chapter are only available in Spanish.

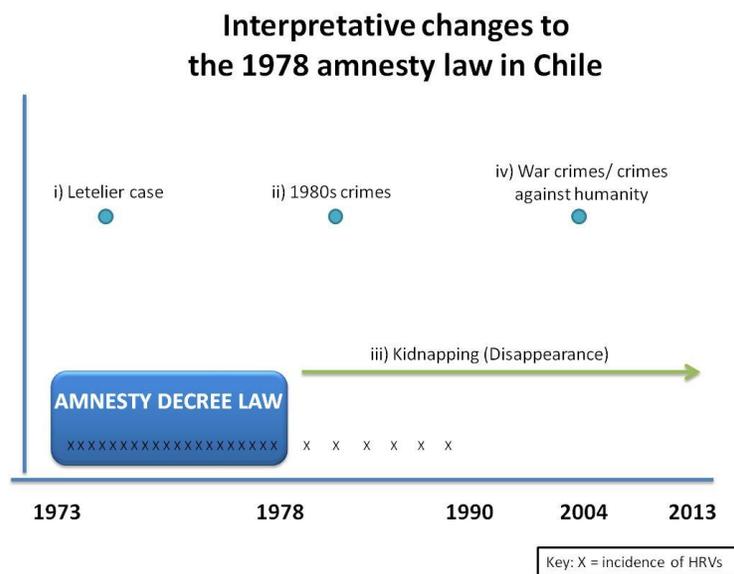
<sup>15</sup> Interview with the Observatory, July 2013.

<sup>16</sup> Also now analysed in the Observatory publication ‘Jurisprudential Milestones in Human Rights Cases in Chile, 1990-2013’.

<sup>17</sup> Since November 2002, when the first definitive verdict of the new phase reached the Supreme Court. The figure is taken from Observatory data registers. Judicial branch figures show less cases finally resolved (143 cases at 8 August) due at least in part to different practices in regard to how ‘human rights cases’ are defined. See the 2012 version of this report (Spanish only).

(thus encompassing all 1980s-era violations, such as the assassination of Tucapel Jiménez<sup>18</sup> or the degollados assassinations). In a third phase, the ‘portion’ of ongoing crimes - forced disappearance, treated as kidnap - that could be considered as having continued beyond the March 1978 deadline were also investigated and prosecuted. In a fourth and current phase, offences that constitute of war crimes and crimes against humanity began to be exempted from amnesty or statutes of limitations, in accordance with international law. This tendency was affirmed by the Supreme Court in criminal cases after the 2004 Sandoval Rodríguez verdict.<sup>19</sup>

**Figure 1: Phases in the interpretation of amnesty in Chile since 1998**



Source: Constructed by the authors. The crosses mark the incidence of repressive crimes, particularly concentrated in the 1973 to 1978 period but continuing throughout the entire dictatorship era (to 1990).

It should be noted that the courts presently desist from applying amnesty to cases of forced disappearance (kidnap) on the grounds of its character as an ongoing crime and/or crime against humanity (though the former grounds appear to be falling into disuse from mid 2013). In cases for extrajudicial execution (homicide) or torture (“*apremios ilegítimos*”), the inapplicability of amnesty is specifically rooted in its characterisation as a crime against humanity. As things stand, therefore, there is nothing to stop amnesty being invoked and applied in the case of a human rights violation that is not considered to be either a crime against humanity or of an ongoing crime. Examples include the murder of Gloria Stockle,<sup>20</sup> which was apparently not considered constitutive of a crime against humanity. Although the case nonetheless escaped being subject to amnesty, the exception seems to have been

<sup>18</sup> This case is an example of those which the judicial branch never counted as a ‘human rights case’, treating it instead as a common murder case. The ‘degollados’ case is another prominent example.

<sup>19</sup> Supreme Court, Rol. 517-2004, 17 November 2004.

<sup>20</sup> See section 1.3.2., Changes and Tendencies in Judicial Cases.

principally or solely made thanks to its late (1980s) date of commission. The cases of Grober Venegas and Cecil Alarcón<sup>21</sup> are also relevant. In these, the Supreme Court began to refuse to acknowledge kidnap as an ongoing crime; although it did uphold convictions on the grounds of the existence of a crime against humanity.

### 1.2.2. Amnesty and self-amnesty

Amnesty is an instrument whose use is admitted in international law for the purposes of putting an end to internal armed conflict,<sup>22</sup> a state of affairs which nonetheless clearly did not exist in Chile at the time the 1978 Amnesty Decree Law was imposed. Renowned jurists such as Eugenio Zaffaroni have argued that exculpatory laws must, in order to be considered valid, be introduced by a legitimately-constituted legislature, a condition which did also not apply to the authoritarian lawmaking process that produced DL 2.191. They must also, adds Zaffaroni, exclude crimes for which amnesty is prohibited in international treaty law; and may not be applied to crimes committed by the same persons who introduce them, this latter in order to avoid “legitimation of a coverup” through self-amnesty. The Chilean Supreme Court has made repeated reference since 1998 to the prohibition of self-exculpation in the case of crimes against humanity. In its adverse ruling against Chile in the 2006 Almonacid case, the Inter-American Court of Human Rights (henceforth, Inter-American Court) noted that the state of Chile had refrained, in its submissions on the case, from arguing the compatibility of DL 2.191 with the American Convention on Human Rights; and had furthermore “admitted that, ‘in principle, amnesty or self amnesty run contrary to the norms of international human rights law’.” The Inter-American Court reiterated that DL 2.191 is a “self-amnesty, dictated by the military regime itself, in order to place beyond the reach of justice, principally, its own crimes”, and made clear that the responsibility for this situation is current, actual and belongs to the government of the day: “The state [of Chile] has, since ratifying the American Convention [on Human Rights] on 21 August 1990, maintained Decree Law 2.191 [...] in contravention of the obligations set forth by [the Convention].”

In the Barrios Altos case verdict against the state of Peru, issued on 14 March 2001, the Inter-American Court of Human Rights made clear that “the manifest incompatibility between self-amnesty laws and the InterAmerican Convention on Human Rights means that the aforementioned laws lack juridical effect”. The concurring opinion of judge Cançado Trindade stated that “so-called ‘laws’ of self-amnesty are not, in fact, true laws: they are an aberration, an inadmissible affront to the legal conscience of humankind”. It is accordingly insufficient for the judicial branch to cease to apply DL 2.191 on a case by case basis, while the other branches of state take no action. Debates about the need to bring national legislation in line with Chile’s international obligations on this issue have raised objections including the *nulla poena* prohibition on retroactive effect of legislative change, and/or the anticipated risk of an unfavourable or even regressive outcome. As regards retroactivity,

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<sup>21</sup> Ibid.

<sup>22</sup> Second Additional Protocol to the 1949 Geneva Conventions, of 1977, relating to the protection of victim of armed conflicts of a non-international character.

legislative proposals presented to Congress since 2006<sup>23</sup> have not recommended derogation of DL 2.191 but rather interpretation of art. 93 of the Criminal Code. As the text of proposal (‘Boletín’) 6422-07, presented to the legislature in March 2009, clearly indicates, an ‘interpretive law’ differs from a derogation or modification in that it does not alter the existing law. Instead, it fixes the correct margins or parameters of application of the law to “that which could also have been made by the judge even in the absence of [the interpretive law].” In relation to the second objection, fear of a legislative defeat or reversal, it is difficult to see how the ‘fear of losing’ can legitimately exempt the authorities of the day from acting in accordance with the state’s freely contracted international obligations. Beyond the debate over legal technicalisms, we believe that 40 years on from the military coup, 35 years after the imposition of a self-amnesty, and 7 years since an adverse international ruling was issued obliging the Chilean state to act,<sup>24</sup> it is unacceptable that Chile continues to renege on these obligations before the national and international community. We therefore repeat, with particular emphasis, the call made in previous *Informes* for the government of the day to actively support, and give executive urgency to, one of the abovementioned interpretive proposals; or to introduce a proposal of derogation or annulment to the same end (the permanent dissolution of the effects of the 1978 Amnesty Decree Law.

### 1.3. The current justice scenario

Between 2010 and 2013, around 2,000 new criminal complaints have been registered for the 3,216 victims of forced disappearance or political execution currently recognised by the Chilean state. The new complaints focus particularly on cases of political execution, due to a decision taken in 2010 by the Agrupación de Familiares de Ejecutados Políticos, AFEP, to bring complaints, in successive tranches, for all victims of execution whose cases had never been correctly investigated. In 2011, the judicial branch initiated investigations ex officio for 726 of these same victims. Some of the new complaints were also reinforced and complemented by the Human Rights Programme of the Interior Ministry (Programa de Derechos Humanos del Ministerio del Interior y Seguridad Pública),<sup>25</sup> which currently appears as a litigating party in 512 of the subsequent cases. First instance sentences – verdicts handed down by the initial investigative magistrate – began to emerge during 2013 for this group of cases;<sup>26</sup> while the Human Rights Programme presented 87 additional

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<sup>23</sup> Boletín 6422-07, presented on 31 March 2009; and Boletín 3959-07, presented on 30 August 2005. This last was accumulated (*refundido*) with project 3345-07, presented in 2003, ie before the Almonacid case verdict. According to the Senate online legislative project search tool, Boletín 6422-07 currently (Sep 2013) appears in the category non-urgent (‘sin urgencia’), while Boletín 3959-07 still shows as ‘extremely urgent’ (de “suma urgencia”) in spite of the lack of actual movement.

<sup>24</sup> A ruling that was moreover recalled and reiterated by the Inter-American Court in September 2013 in the García Lucero case, condemning Chile for undue delay in the delivery of justice in the case of a torture survivor currently resident in the UK. Stop press addition to the English translation of this report.

<sup>25</sup> Henceforth, the Human Rights Programme.

<sup>26</sup> Judge Mario Carroza, Rol 208-2010, simple (non-aggravated) homicide of Patricio Álvarez, verdict of 4 March 2013; Rol 221-2010, simple homicide of Marco Reyes Arzola, verdict of 29 May 2013; Rol 351-2011, simple homicide of José Laurel Almonacid, verdict of 17 April 2013.

complaints, in the name of 123 victims of forced disappearance, during the main period covered by this year's *Informe*.<sup>27</sup>

Twenty-nine specially designated investigative magistrates ('ministros de fuero'), each attached to the respective district Court of Appeal, are currently assigned to the investigation of around 1,400 criminal cases for death and disappearance, plus around 33 torture cases brought by groups of survivors.<sup>28</sup> In early August 2013, the first ever face to face co-ordination meeting of human rights case magistrates was called by Judge Hugo Dolmestch, currently the Supreme Court's designated coordinator for human rights cases. The initiative, and the participation in it of auxiliary services such as the national forensic service, SML; the detective police, PDI; and the Human Rights Programme, is particularly valuable given that many sources close to cases identify a lack of coordination, exchange and cross-referencing of information and testimony as one of the major remaining obstacles in outstanding cases. Parallel efforts to introduce the recognition of video recorded testimony are also encouraging. This development, which would facilitate both the sharing of relevant testimony across cases and the taking of testimony from witnesses overseas, was one of the possible innovations recommended by legal professionals and witnesses during a binational seminar on witness treatment in human rights cases held at the Universidad Diego Portales in August 2011.<sup>29</sup> It is nonetheless a matter of concern to see a reiteration of announcement of plans to develop an electronic database allowing ministers to share information, given that a similar project, developed in 2010 under the supervision of judge Sergio Muñoz, was supposedly already in operation (see *Informe 2011*).

August's case judges meeting began with the screening of a documentary portraying the important advances achieved by judge Hector Solís and his team in the investigation of the Paine case. Significantly, the film was made not as a standalone effort but as part of a series commissioned by the judicial branch to document various aspects of its work in an effort to promote better community understanding and ownership of the justice system. It is particularly important that the work of human rights case judges is explicitly valued in this way, by their peers and by society as a whole, as many have previously had reason to feel undervalued in this role or to see it as a career dead end. It has become common at such gatherings to hear appreciative official mention of the plaudits offered by the UN Working Group on Forced and Involuntary Disappearance after its August 2012 mission to Chile. While it is true that the Group's report recognised the 'extremely important steps' taken in Chile since 1990, it is also true that its conclusions signalled continuing challenges

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<sup>27</sup> July 2012 to June 2013 inclusive. See supra, note 3.

<sup>28</sup> Data extracted from the case summary document 'Resumen estado de causas de DD.HH., mayo-junio 2013', supplied to the Observatory by judge Dolmestch, and from the Human Rights Programme's regular case spreadsheet for May 2012.

<sup>29</sup> Human Rights Observatory, summary of seminar on witness treatment in Argentina "Trato de testigos en causas de DD.HH: La experiencia Argentina", 4 April 2012.

including “the continued validity of the Amnesty Decree Law, the lenient sentences imposed on perpetrators, and the slow advance of cases”.<sup>30</sup>

Regarding the latter point it is important to note that, whilst all judges investigating dictatorship-era human rights cases are currently of appeals court rank (‘ministros en visita’), the full-time designation previously given to their lower ranking predecessors has gradually been discontinued. Human rights case judges accordingly had to fulfil all other regular appeals court duties, including sitting on other matters for up to three days in week. In practice, this left some with only two mornings a week to spend on complex human rights case investigations. It is therefore encouraging that on 13 September 2013, days after the preliminary published version of the present report called for attention to this matter, judge Dolmestch announced that, from October, the seven case judges currently attached to the Santiago Appeals Court would be freed from other duties. A promise was also made to review the workload of the remaining judges, assigned to regions outside the capital. Most dictatorship-era cases are nonetheless concentrated in the Santiago jurisdiction.

The low number of cases seen by the Supreme Court over the period of this report is a cause for concern. Four final verdicts were handed down between July 2012 and June 2013, compared to 18 in the same period for 2012, and 23 in 2011. The drop is largely attributable to a bottleneck in the ratification of initial verdicts by the respective Appeals Court. Only 7 first instance verdicts went through the Appellate Courts between July 2012 and June 2013.<sup>31</sup> This delay seems in turn to be caused largely by the practising and repetition of pre-sentencing medical reports (‘exámenes de facultades mentales’), which are carried out by the state forensic service, SML. These reports are obligatory where initial sentences are over 15 years in length and/or the guilty party is over 70 years of age. In some cases, the tests have been triggered due to agents reaching the 70 year age limit in the lapse between original sentencing and appeals court hearings. In others, defence lawyers have repeatedly requested the repetition of previous reports, alleging possible deterioration in the state of their clients’ mental or physical health. This has been the case of, for example, César Manríquez Bravo, a former army captain found guilty of aggravated kidnapping in a case of forced disappearance.<sup>32</sup> His lawyers argue that he is suffering from severe depression, rendering him unfit to face the appeals stages of additional counts

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<sup>30</sup> UN Human Rights Council, Report of the UN Working Group on Forced and Involuntary Disappearance, A/HRC/22/45/Add.1, 29 January 2013, p. 1.

<sup>31</sup> Santiago Appeals Court, Case Rol 4083-2008, accumulating investigations of aggravated kidnap and torture committed in the Tejas Verdes regiment; Chillán Appeals Court, Case Rol 113-2012, kidnap of Cecil Alarcón; Santiago Appeals Court, Case Rol 3372-2010, extrajudicial execution of Eugenio Berríos Sagredo; Puerto Montt, Appeals Court, Case Rol 81-2011, disappearances and extrajudicial executions in Coyhaique-Puerto Cisnes; Santiago Appeals Court, Case Rol 2612-2010, disappearances of the ‘Valparaíso Eight’; Santiago Appeals Court, Case Rol 852-2012, disappearance of Muriel Dockendorff; and Santiago Appeals Court, Case Rol 470-2011, disappearances of Juan Gianelli, José Sagredo and Alfredo Salinas.

<sup>32</sup> Final confirmed sentence (as modified/ confirmed on appeal) 18 June 2012, 5 years and 1 day imprisonment as author of the aggravated kidnap of Héctor Vergara Doxrud. Official confirmation of place and effective initiation of period of incarceration pending (no reply received to date to repeated requests to the prison service, Gendarmería).

against him.<sup>33</sup> Various sources close to current investigations have suggested that repeated requests for updating of medical reports rarely produce significant variations and are principally a delaying tactic.

### **1.3.1. Composition of courts and assignment of special investigative magistrates**

Judge Alejandro Solís, one of the designated human rights judges who has resolved most cases, retired in late 2012. His 44 completed case verdicts have become obligatory reference material in some of the country's law schools due both to their exhaustive analysis of relevant precepts of international law and their contribution to historical memory via extensive citation of testimony. The verdicts give account of the systematic and extensive nature of the practice of state terror, and of the tireless struggle of relatives and human rights activists against impunity. Judge Solís also pioneered a uniquely collaborative style of work, gathering a team of detectives, forensic scientists, experienced actuaries and a social worker to facilitate the most effective, correct and dignified working relationship possible with relatives and all other interested parties in the Patio 29 case. In June 2013, judge Solís was presented with the Raúl Silva Henríquez award by relatives' and survivors' associations the Corporación de Familiares de ex Prisioneros Políticos Fallecidos de Chile and the Comando Unitario de ex Prisioneros Políticos y Familiares. In April 2013, he acted as an international observer to the genocide trial of former Guatemalan dictator and ex general Efraín Ríos Montt, as part of a delegation of regional judicial experts. Judge Solís's national caseload has now been assigned to judge Leopoldo Llanos.

Over the course of the year the work of judge Héctor Solís in the Paine case was also recognised, in the documentary film series "Judges forging communities". A copy of the film was presented to the Museum of Memory and Human Rights by the Supreme Court president in July 2013. Around the same time, press reports suggested that an unofficial right-wing 'veto' against the promotion of judge Carlos Cerda to the Supreme Court was finally about to be lifted. The supposed veto is the result of the political right's disapproval of Cerda's actions in historical human rights cases. Its lifting should finally allow him to be both put forward and selected in forthcoming shortlists for Supreme Court vacancies (candidates are selected from the shortlist by the President and must be ratified by parliament).<sup>34</sup> The Criminal Bench of the Supreme Court underwent a change in composition, with the recent incorporation of judge Lamberto Cisternas as a permanent replacement for Jaime Rodríguez Espoz, who retired at the beginning of 2012 and whose post had been filled by a succession of temporary senior lawyers ('abogados integrantes') since then. The new permanent configuration should make it possible to discern stable jurisprudential or doctrinal lines over issues such as the proportionality of sentencing or the

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<sup>33</sup> Disappearance of Jorge Grez Aburto, verdict of 16 December 2010, and disappearance of José Flores and Rodolfo González, verdict of 27 May 2010.

<sup>34</sup> El Mostrador, 29 July 2013, "Piñera levanta veto del oficialismo sobre juez Carlos Cerda". The same article quotes 'sources at La Moneda' as saying that president Piñera had never, in fact, confirmed the existence of a previous veto against judge Cerda ("el presidente Piñera jamás ha expresado que tenga un veto sobre este juez".)

applicability of gradual prescription, whose use has become increasingly unpredictable in recent times.

### 1.3.2. Changes and tendencies in judicial cases

In December 2012, relatives' associations the AFDD and AFEP jointly presented a criminal complaint<sup>35</sup> for the crimes of rebellion and the overthrow of the legally constituted government of the day, in regard to the 1973 coup against Salvador Allende. The complaint is made against all those who planned or perpetrated the coup, both military personnel and civilians. The text makes specific mention of the role played by the armed forces high command, some senior Christian Democrat politicians, members of the subversive armed terror group Patria y Libertad, and the directors of newspaper *El Mercurio* and other media of the day. This is the first attempt to judicialise the violent seizure of power itself, as distinct from the other crimes that followed it. While it is true that so-called 'political crimes' such as this one are rarely successfully prosecuted, a similar complaint was key in reopening the judicialization of crimes of past repression in Uruguay. The complaint,, represented by lawyers Eduardo Contreras and Alfonso Insunza, has been assigned to judge Mario Carroza. In September 2012 Judge Carroza closed his investigation into the death of deposed president Salvador Allende, after receiving forensic reports consistent with the thesis of death by suicide.<sup>36</sup> In the case of the homicide of Víctor Jara, currently investigated by judge Miguel Vázquez, 8 former agents were charged ('processed') as authors or accomplices.<sup>37</sup> All 8 were placed in preventive detention, although four were freed on bail shortly afterward.<sup>38</sup> The eight include Edwin Dimter Bianchi, long suspected of having been the cruel and feared officer known to prisoners in the Chile Stadium as the Prince (Príncipe), the ringleader of the torture and murder of the iconic singer and activist after whom the stadium has now been renamed.

Between July 2012 and July 2013, inclusive,<sup>39</sup> the Supreme Court emitted 6 definitive verdicts in dictatorship-era human rights crimes, for a total of 10 victims of extrajudicial execution or forced disappearance. All resulted in the confirmation of guilty verdicts, although less than half of the resulting individual sentences, (5 of 13) imposed prison terms. The most notable tendencies include greater development of the issue of indemnization, both with regard to the competence or otherwise of the criminal bench to concede it and the compatibility of administrative reparations (Rettig and other pensions) with those obtained by the judicial route. The current tendency is to accept claims for

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<sup>35</sup> Judge Carroza, Rol 2442-2012, complaint (querrela) presented 14 December 2012.

<sup>36</sup> Judge Carroza, Rol 77-2011, case of Salvador Allende, definitive suspension (closure) initially declared on 13 September 2012; ratified by the Santiago Appeals Court in May 2013 and by the Supreme Court on 24 June of the same year.

<sup>37</sup> Judge Vázquez, Rol 108.496-MG, aggravated homicide of Víctor Jara, official charges preferred (procesamientos) on 26 and 28 December 2012.

<sup>38</sup> In a resolution dated 28 March 2013.

<sup>39</sup> This section, which contains qualitative analysis and comment, extends the strict 12 month periodicity of the chapter in order to allow discussion of the only final (Supreme Court) sentences emitted to date in the 2013 calendar year, since both are from July.

indemnization, founded mainly on opinions argued by judges Brito and Juica, although this practice has not been invariable. In terms of practice around criminal liability, the application of half prescription to cases of ongoing crime (kidnap) had initially been discontinued after the arrival of judges Brito and Juica (see *Informe 2012*). The new practice was however maintained only up to and including the case of victims José Jara and Alfonso Díaz. In the next case with similar characteristics, for the disappearance of Grober Venegas, the Court confirmed the concession of half prescription that had been made by the Arica Appeals Court. This led, as is usual, to the reduction of sentences to non-custodial length. The decision was made against the minority opposing votes of judges Brito and Juica.

**Table 1. Detail of Supreme Court verdicts in dictatorship-era human rights cases between July 2012 and July 2013**

Nº	Case	Date of verdict	Case code (Rol)
1	Kidnap of José Jara and Alfonso Díaz	6 July 2012	2661-2012
2	Aggravated* homicide of Gloria Stockle	24 November 2012	2220-2012
3	Aggravated kidnap of Grober Venegas	23 November 2012	3573-2012
4	Homicidios en Las Vizcachas	18 December 2012	3841-2012
5	Aggravated kidnap of Cecil Alarcón	18 July 2013	519-13
6	Homicide of Luis Almonacid	29 July 2013	1260-13

\* Treated in the final verdict as simple homicide

Source: Authors' own, with case data from [www.pjud.cl](http://www.pjud.cl).

The only final verdicts in 2013 to date are in the cases of Cecil Alarcón<sup>40</sup> and Luis Almonacid Arellano.<sup>41</sup> The latter is the victim whose case produced an adverse verdict against Chile in the Inter-American Court of Human Rights in 2006, condemning the continued validity of the amnesty law. Both cases produced non-custodial sentences, of 5 years. The first verdict, against perpetrator Andrés de Jesús Morales, continued the negative trend begun in the Grober Venegas case of allowing gradual prescription in cases involving kidnap. Since this requires the designation of a date of commission of the crime, it represents an abrupt reversal of the progressive practice of the Court in recent years, in which kidnapping had been deemed an ongoing (permanent) crime as long as the victim was not recovered nor their fate and whereabouts fully established. The Alarcón case saw a repetition of the practice adopted in Grober Venegas en 2012: the 91st day after the beginning of the kidnap was arbitrarily designated as the date at which the crime “can be considered fully consummated”. It follows, then, that kidnap was considered punishable in these cases solely in regard to its status as a crime against humanity, rather than as an

<sup>40</sup> Supreme Court Rol 64-2009, 18 July 2013.

<sup>41</sup> Supreme Court Rol 1260-13, 29 July 2013.

ongoing crime. This position eliminates the distinction the Court had begun to draw in recent years between cases of execution (homicide), where gradual prescription continued to be conceded, and cases of kidnap, where for a time it was not. While this state of affairs lasted, the Court's reasoning was based on the impossibility of setting a starting date for the calculation of the time elapsed since the commission of the crime. The reasoning of the final verdict in the Alarcón case was drafted by judge Dolmestch, presently coordinator of human rights cases for the Supreme Court, with the minority dissenting votes of judges Juica y Brito. The verdict also awarded indemnization to Mr. Alarcón's family, holding, counter to the argument made by state legal body the Consejo de Defensa de Estado (CDE), that there is no manifest incompatibility between judicial and administrative routes to reparation. The same argument was used in the case of Grober Venegas. Neither was the statute of limitation applied to the damages claim in either case, this last contrary to the opinion expressed by a full sitting of the Supreme Court in January 2013.

In the case of Luis Almonacid Arellano, the court upheld the January 2013 verdict of the Rancagua Appeals Court, sentencing Raúl Hernán Neveu Cortesi to the non-custodial sentence of a 5 year supervision order ('libertad vigilada') for homicide. The complainant and the Human Rights Programme had appealed against the characterisation of the crime as simple, rather than aggravated, homicide given the circumstances of the murder (Luis was shot on the doorstep of his home, in front of his pregnant wife, despite offering no resistance to his would-be captors). Neveu's defence, for its part, appealed for half prescription to be applied. Although the criminal bench ratified both the classification of simple homicide and the non-application of half prescription, their reasoning was restricted to formal technical considerations and accordingly no specific higher court jurisprudence or tendencies can be deduced.<sup>42</sup>

The limitations of space make it impossible to review in detail all relevant lower court sentences from the period. Notable aspects and incidents however include the resolution in August 2013 of the Riggs case without charges against any member of the Pinochet family. In May 2013, the Michael Woodward case was concluded with no custodial sentences applied. The investigation into the kidnap, torture and presumed subsequent murder of the British-Chilean priest, which took place on the 'Esmeralda' navy ship in the port of Valparaíso in 1973, led to formal complaints over the behaviour of investigative magistrate Julio Miranda Lillo. On taking over the case from a previous investigator, Miranda Lillo first dropped charges against all the officers then involved, before absolving 5 of the remaining 8 suspects and dismissing charges against another on health grounds. Finally only 2 people were found guilty, with neither receiving a custodial sentence. The missing cleric's sister and brother in law, who have been active in the search for justice for Michael and other victims, expressed their disappointment at the verdict:

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<sup>42</sup> It should be remembered that the Supreme Court's role in these matters is limited to pronouncing on whether lower courts can be held to have applied the law correctly. The Supreme Court only pronounces on the substantive part of a lower court sentence where, having found errors of application of the law, it issues a replacement verdict [rather than, as may sometimes occur, referring the sentence back to the lower court for amendment. Translator's note].

“Chile has still not developed a justice system capable of investigating, resolving and punishing human rights violations”.<sup>43</sup>

#### 1.4. Survivors

In July 2013 Argentine relatives’ association the Grandmothers of the Plaza de Mayo (Abuelas de la Plaza de Mayo)<sup>44</sup> celebrated the discovery of ‘recovered’ grandchild number 109. These are sons and daughters of victims of forced disappearance, who as newborns or toddlers were themselves appropriated and handed over to military families under false identities. In this particular case the person traced was Pablo Athanasiu, named in the Rettig truth commission report as a victim of disappearance alongside his parents, active in teh MIR, forcibly disappeared in Argentina in April 1976. Pablo, today aged 38, was brought up in a military household by a man currently in prison for other crimes of repression. He has been in contact with the aunts who constitute his closest remaining family in Chile, although it is believed he has not travelled to Chile since his true identity was discovered in April 2013. Two Chilean victims of child abduction after the disappearance or assassination of their real parents have now been identified as adult survivors. The other, Claudia Poblete, recovered her identity in February 2000. The news of Pablo’s recent recovery prompted a wave of stories in the Chilean press about other cases of children affected by politically-motivated repression targeting their parents. These include the case of Eva Victoria Julien and her brother Anatole, children of Uruguayan origin who were abandoned in a public square in the Chilean port of Valparaíso in 1976, when Eva was just eighteen months old and Anatole, four. Their parents had been murdered, in their presence, by agents of the Argentine military dictatorship as part of Operation Condor. The case of Ernesto Lejderman, surviving adult son of an Argentine-Mexican married couple murdered in Chile, drew particular attention. Ernesto was orphaned at the age of two after his parents were shot dead in front of him by a military patrol. The particular notoriety of the case has to do with the involvement of former army commander in chief Juan Emilio Cheyre.<sup>45</sup> With the exception of Pablo Athanasiu, all of these cases have long been in the public domain and have been the subject of campaigning by human rights organisation and by the individuals involved. Ernesto, who has travelled regularly to Chile since discovering the true story behind his parents’ deaths, initiated a criminal complaint before the Chilean courts in 2000, and from 2004 repeatedly raised questions about Cheyre’s 2001 promotion.<sup>46</sup>

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<sup>43</sup> Patricia and Fred Bennett, electronic communication with the Human Rights Observatory, 30 July 2013.

<sup>44</sup> The grandmothers’ group Abuelas began, like their counterpart Madres (Mothers) of the Plaza de Mayo, as a relatives’ association. They would gather regularly outside the government palace in Buenos Aires, during the 1976-83 dictatorship, to demand the return of their forcibly detained and disappeared relatives. Abuelas have dedicated themselves particularly to tracing and identifying the children born to pregnant political prisoners during illegal detention, who were subsequently appropriated by military families and forcibly adopted, their original identities supplanted.

<sup>45</sup> See section 3.5. Public Images of the Coup.

<sup>46</sup> See previous news bulletins produced by the Observatory

#### **1.4.1. Valech archives and the 50-year secrecy law**

It is striking that Chile's thousands of survivors of political imprisonment, torture and the many grave crimes of repression other than death or disappearance have never been treated by the authorities as a coherent group of active subjects for the purposes of promoting the full exercise of their rights to truth, justice, reparations and guarantees of non-repetition. Various reparations measures have been open to some categories of survivor since 1991.<sup>47</sup> Nonetheless, the first instance of individualised acknowledgement of survivors did not happen until 2004, in the form of the 'Valech' truth commission. The commission's two iterations (2004/5 and 2011) moreover had no judicial consequences, thanks to the secrecy law which was applied to all testimony and other information collected. The limits of that law are about to be put to the test, via an appeal to the Comptroller General's Office (Contraloría General de la República). This will argue that, in the first instance, information relating to 30 additional cases of forced disappearance or extrajudicial execution recognised by 'Valech II' in 2011 should be placed at the disposal of the courts, given that these cases are properly the remit of the former Rettig Commission (1991), whose results were handed to the courts and whose archives are currently an essential referent and first port of call for investigative magistrates. Similarly, it should be pointed out that the complete absence of feedback or connection between official truth and justice measures in regard to survivors contradicts the growing recognition, in the applicable international legal and normative framework, of the necessarily and inextricably interrelated nature of the two rights.

#### **1.4.2. Inconsistent treatment of civil claims by the Criminal Bench and Constitutional Bench of the Supreme Court**

Two legal routes are open to survivors or victims' relatives who wish to exercise their rights to seek redress in the form of indemnization. In both routes, the resulting claim can be directed at individual perpetrators and/or at the state at whose behest the perpetrators acted. The first route consists of a civil claim appended as part of a criminal case. In these instances, at appeals stage the claim may eventually be seen by the criminal bench of the Supreme Court. The second route is a standalone civil claim ('demanda') in civil courts, in which case the final supervisory instance is the constitutional bench. In both types of case the CDE, acting in legal representation of the Treasury (Fisco), generally opposes the petitions. It seems anomalous that the CDE on the one hand supports criminal prosecution, arguing in favour of the inapplicability of statutes of limitation, while on the other hand defending the state against economic liability by arguing, inter alia, that the statute of limitation on civil actions has expired.

In 68 of the 128 past human rights cases seen by the Supreme Court between 2000 and June 2013, complainants incorporated an indemnization claim to the criminal action. The criminal bench rejected the claim in 32 of the 68 cases; accepted it in 27, and negotiated an agreement between complainants and the CDE in 8. The remaining case, over

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<sup>47</sup> *Informe 2012*, p. 44, and Observatorio de DD.HH., "Tabla leyes y medidas de reparación" and "Medidas de reparación".

the kidnapping of Eduardo González, was referred to a full sitting of the Court, at the request of the CDE, in an effort to establish uniform criteria. The Court's decision, taken in January 2013, was to declare the criminal suit lapsed under the terms of the statute of limitations (expiry of which was set, in this case, at four years). The Court decided that the point of departure for calculation of the four-year limit should be the moment at which the victim's relatives were made cognizant of the commission of a crime, and set this moment as the publication of the Rettig truth commission report on 4 March 1991. Accordingly, the Court revoked the \$50.000.000 pesos (USD 94,300) in damages previously awarded by the Santiago Appeals Court.<sup>48</sup>

The Constitutional bench of the Supreme Court, for its part, has consistently refused to award damages, arguing that civil suits are still subject to the statute of limitation even when they are based on crimes against humanity. 40 cases of this type were heard by the bench between May 2002 and January 2013, with an award made in only one of them (in a case for disappearance).<sup>49</sup> The exception can be attributed to an unusual temporary composition of the bench on the day in question, with the presence of two non-career judges (*abogados integrantes*).<sup>50</sup>

### **1.4.3. Juridical treatment of torture in domestic cases brought by survivors**

Torture survivors currently exist in a legal vacuum, since there is no official policy or strategy to prosecute such crimes nor any governmental institution with the necessary mandate to do so. This unsatisfactory state of affairs leaves survivors increasingly at a relative disadvantage compared to the situation over cases for execution and disappearance. No official body has presented criminal complaints over torture on behalf of or in representation of survivors, and indeed when private complaints did begin to be made, the Supreme Court initially chose to exclude torture cases from the definition of 'human rights crimes' to be investigated by special magistrates.<sup>51</sup> The combination of this with the absolute secrecy law that still applies to all testimony and data collected by the Valech commission explains the current meagre total of 33 criminal investigations open in Chile for survived torture. Human rights lawyer Magdalena Garcés, who acts in some of the cases, indicated that there are moreover specific probatory and normative obstacles.<sup>52</sup> These include court practices such as an excessive dependence on the existence of eye witnesses or on the production of a recent, unambiguous diagnosis of post traumatic stress in survivors.<sup>53</sup> Additionally, the applicable criminal code of the time<sup>54</sup> assigned minimal

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<sup>48</sup> Pronouncement of a full sitting of the Supreme Court, Rol 10665-2011, aggravated kidnap of Eduardo González, verdict of 21 January 2013.

<sup>49</sup> Constitutional Bench of the Supreme Court, Rol 2080-2008, case of María Isabel Ortega Fuentes versus the Treasury (Fisco) de Chile, verdict of 8 April 2010.

<sup>50</sup> Bench composed of permanent members Judges Héctor Carreño, Pedro Pierry and Haroldo Brito; and temporary members (senior lawyers) Nelson Pozo and Maricruz Gómez.

<sup>51</sup> See *Informe 2012*, citing Supreme Court memos (Auto Acordados) numbers 36 and 81.

<sup>52</sup> Magdalena Garcés, electronic communication with the Observatorio, June 2013.

<sup>53</sup> A practice applied, for example, in the Air Force Academy (Academia de Guerra Aérea) torture case.

<sup>54</sup> Criminal Code art. 150 n°1 (apremios ilegítimos) and n° 2 (aplicación de tormentos).

penalties. The Supreme Court has to date (since 2000) resolved four criminal cases for torture, typified as “undue pressure” (apremios ilegítimos) or “torments” (tormento). A fifth case was definitively resolved in the Talca Appeals Court, without being referred to the Supreme Court. Accordingly a total of 5 cases have been seen, representing only 55 of the 38,254 torture survivors currently officially recognised by the state.<sup>55</sup>

#### **1.4.4. Case against Chile in the Inter-American Court: *García Lucero v Chile***

During its 47th Period of Extraordinary Sessions, held in Medellín, Colombia on 20 and 21 March 2013, the Inter-American Court of Human Rights heard oral arguments in a case brought by Chilean torture survivor Leopoldo García Lucero. Mr Lucero was repeatedly tortured between 1973 y 1975 while illegally detained in the National Stadium and Chacabuco concentration camps. He was later exiled, together with his immediate family, to the United Kingdom, where he still lives. Mr Lucero’s case is for abdication by the Chilean state of its international duties in regard to access to justice and adequate reparation,<sup>56</sup> in particular for survivors who continue to reside outside the national territory. The Court’s verdict remained pending at time of writing.

#### **1.4.5. Controversy over recognition of the status of *exonerado político*\***

*\*The term ‘exonerado político’ refers to individuals who lost their jobs and were blacklisted for political reasons during the dictatorship period*

The 2012 version of this report sums up the controversy sparked by accusations that some past awards of the status of *exonerado* had been made on the basis of false or inadequate documentary evidence. An investigation by the Comptroller General’s office (*Contraloría General de la República*) of the records of the Exonerados Políticos Office and of social security and pensions body the Instituto de Previsión Social, IPS- which calculates and pays out associated pensions- suggested possible irregularities in up to 3,000 of the cases currently recognised, and found that in 1,187 of these the entitlement to, or specific calculation of, a pension had been erroneous.<sup>57</sup> According to press sources, the queried cases included those of 627 former paid employees of the Communist, Socialist, Radical and Christian Democrat parties.<sup>58</sup> Nonetheless, only 1.2% of the cases itemised in the Contraloría’s final report annexes actually cite documentation supplied by political parties as the motive of their concern.<sup>59</sup> However, in an electoral campaign year the issue was

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<sup>55</sup> Observatorio de DD.HH., “Totals of victims and survivors presently recognised by the Chilean state”.

<sup>56</sup> In contravention of articles 1.1, 8.1 and 25 of the American Convention on Human Rights (Pact of San José), ratified by Chile with effect from 21 August 1990.

<sup>57</sup> Informe Final de la División de Auditoría Administrativa de la Contraloría General de la República, n° 81/2012, 9 May 2013.

<sup>58</sup> *La Tercera*, “Contraloría cuestiona pensiones vitalicias a 1.187 ex empleados del PC, PS, DC y PR”, 30 May 2013.

<sup>59</sup> A further 7.3% have to do with applicants’ own actions or omissions of applicants, such as the non-inclusion of the background document setting out the political motivation behind their sacking, which is required as part of the application. 10.2% had to do with personal taxation histories during or after the politically-motivated dismissal, and 81.3% were related to problems with employee records, withholding of

widely commented on by all party sectors. Former Socialist Party president Ricardo Núñez attempted to play down any responsibility of his party by stating that members of parliament who had supplied certificates to some of the supposedly fraudulent applications had been “misled”.<sup>60</sup> Some opposition deputies meanwhile correctly pointed out that the final report does not make or support findings of fraud or deliberate falsification, and signalled their intention to take action against Alliance parliamentarians who had spoken of the issue in those terms. Given the malicious use that has been made of the issue to question the moral probity of those currently on the list, a comprehensive overhaul and updating would be helpful to finally lay to rest real or imagined doubts about the thousands of genuine cases.

## **1.5. Agents (perpetrators)**

### **1.5.1. Guilty verdicts**

Previous versions of this report have drawn on data about new complaints and sets of charges that was supplied on a semi-regular basis by the Human Rights Programme of the Ministry of the Interior, allowing case actors, researchers and the public in general to monitor advances. The production of this data has unfortunately run up against ever growing delays. The most recent report currently available, received by the Observatory on 3 September 2013, covers the period to June 2012. As a result, we have been unable to update the statistics appearing in the 2012 version of this report to the high standard of accuracy that we consider necessary for continued reliability.

Additionally, the prison service continues to refuse to communicate directly with us about the issue of sentence serving and the concession of post-sentencing benefits to individuals who are supposed to be in custody.<sup>61</sup> For present purposes we can therefore do no more than estimate that between 1998 and the present day, approximately 868 people have been investigated, charged and/or sentenced in human rights cases.<sup>62</sup> One third of those have been the subject of at least one guilty verdict, but only 30% of the final sentences imposed since 2002 have been custodial.<sup>63</sup> Accordingly, around 64 individuals are, or have been,

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employers’ national insurance contributions or question marks over the actual status of political intervention of private firms who had been the registered employers of applicants. Source: own calculations based on annexes of the final Auditors’ report cited supra, note 56.

<sup>60</sup> *La Tercera*, “Ex presidente del PS asume responsabilidad por falsos exonerados políticos: ‘Fuimos engañados’”, 28 May 2013.

<sup>61</sup> This refusal was expressed repeatedly in 2012 in verbal communications by telephone and in the failure to answer repeated email communications. In 2013, it took the form of a similar and complete lack of response to specific queries formulated electronically and channelled through the Human Rights Programme of the Interior Ministry. A specially designated case magistrate reported to us at the end of 2012 that similar request from him to confirm the current prison status of individuals he had previously sentenced was denied on the grounds of respect for the privacy of the prisoner.

<sup>62</sup> Data at May 2012, based on Human Rights Programme data. 31 of those same individuals died while on charges and/or under sentence.

<sup>63</sup> Notably, the occurrence of proportionate sentences is concentrated around cases concluded before 1998, when the special category of ‘human rights cases’ had not yet been adopted by the judicial branch (see for example the cases of Juan Alegría, and of the “degollados”). The only life sentence handed down in more

servicing prison time for these crimes. A further 16 individuals have, or should have been, freed from prison between 2002 and August 2013 either because their sentences had been fully served or due to the concession of benefits leading to their early release.<sup>64</sup> We estimate that around 20 other suspects have spent some time in preventive detention, although this is not invariably used and is generally imposed for short periods of 5 days, in the immediate aftermath of formal charging, after which bail is usually conceded. Only 7 of the 16 former perpetrators who we estimate to have already been released served their full sentences. The remaining 9 were freed ahead of time thanks to benefits.<sup>65</sup> In the period from July 2012 to June 2013 final sentences were handed down in 4 cases, resulting in 11 individual guilty verdicts (with no absolutions). Five of the 11 sentences were of custodial length, but as two of those 5 individuals were already in prison for other crimes, the total prison population should rise by 3.

**Table 2: Verdicts and individual sentences in final Supreme Court verdicts for cases over past human rights crimes, compared over 3 annual report periods**

	July 2010 - June 2011	July 2011 - June 2012	July 2012 -- June 2013
<b>Number of cases finalised at Supreme Court level</b>	<b>23</b>	<b>18</b>	<b>4</b>
Total of absolutions	12	12	0
Total of guilty verdicts	84	49	11
• Number of convictions imposing custodial sentences	34	13	5
• Number of convictions allowing non-custodial sentences	50	36	6
<b>Total number of perpetrators involved in these cases</b>	<b>64</b>	<b>48</b>	<b>11</b>
Number of perpetrators found guilty in at least one case	52	40	11

Source: Own production, with data obtained from the Human Rights Programme of the Interior and from judicial verdicts

(\*) Not including those already in prison for similar offences

(\*\*) Confirmation of actual transfer to prison still pending at close of edition

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recent times was in 2007, against Hugo Salas Wenzel, for the Operation Albania murders. Observatorio de DD.HH., “Agentes condenados cumpliendo pena de cárcel”.

<sup>64</sup> At the date of closure of this edition the admittance of 6 new prisoners and release of 4 existing ones remained unconfirmed. These changes have nonetheless been taken into account in for the purposes of calculations given here, according to which the prison population of human rights case perpetrators has seen a net increase of 2.

<sup>65</sup> Observatorio de DD.HH., “Agentes condenados cumpliendo pena de cárcel”, op. cit. and “Condenados (...) excarcelados por concesión de beneficios”. Both documents are kept as up to date as possible, taking into account the abovementioned limitations on the necessary official information.

### 1.5.2. Benefits and mitigating circumstances applied at the time of sentencing

The 2012 version of this report noted certain advances towards the discontinuation of half prescription. However, as reported above, Supreme Court practice has changed once again. In the main period analysed by the present report, half prescription was applied to the cases of Grober Venegas and Gloria Stockle. A total of six perpetrators benefited, three in each case.<sup>66</sup> In the Stockle case, the crime was also recategorised as simple homicide, ie not classified as a crime against humanity. Nor was the crime of rape penalised or otherwise referred to in the verdict, despite the fact that the accused had specifically confessed to it. Concession of the benefit of half prescription also automatically rules out the application of aggravating circumstances such as repeat offending (*conducta reiterada*). Overall, therefore, the prospect is of a return to the situation of invariably low non-custodial sentences that prevailed before 2012.

**Table 3: Mitigating circumstances and benefits applied at the time of final verdict in Supreme Court resolutions over past human rights cases, compared over three periods**

	Type of mitigating circumstance or benefit	Number of applications (*)		
		July 2010 - June 2011	July 2011 - June 2012	July 2012 – June 2013
<b>Mitigating circumstances</b>	Half prescription (half statute of limitations)	70	30	6
	Previous good character ( <i>irreprochable conducta anterior</i> )	83	36	0
<b>Benefits</b>	Parole/ supervisión order ( <i>libertad vigilada</i> )	45	30	6
	Suspended sentence ( <i>remisión condicional</i> )	5	8	0

Source: Own production with data supplied by the Human Rights Programme of the Ministry of the Interior and taken from judicial verdicts

(\*) The total number of applications of a given mitigating circumstance or benefit may exceed the total number of beneficiaries because the figures can be accumulated, ie a single individual may receive any combination of the four

<sup>66</sup> Gradual prescription was also conceded in the Alarcón case, resolved in July 2013.

### **1.5.3. Effective serving of imposed sentences: Sites of detention and post-sentencing benefits**

Owing to the difficulty of obtaining official data outlined above, this section is unavoidably based on the situation as of January 2012, the last date for which we have data officially supplied and confirmed by the prison service. At that time, the vast majority of individuals actually subject to custodial sentences – 53 of a total of 62 – were detained in the special military facilities of Punta Peuco y Cordillera (staffed by the regular prison service). We estimate that the relative proportion of prisoners detained in these facilities as compared to those in ordinary jails had not varied substantially as of early September 2013, with the newly-convicted prisoners whose actual prison admission was yet to be confirmed having been mostly destined for those same facilities. Individuals convicted of human rights crimes who serve their sentences in common jails (9 individuals, as of January 2012) generally do so at their own request, made to facilitate visits from relatives in regions, as both special facilities are located in the capital. It is common knowledge that Punta Peuco and Cordillera offer relatively benign conditions when compared with regular prisons (see for example previous years' editions of this report). From a human rights standpoint, this imbalance ought to be rectified by improvement in the substandard and often inhuman conditions suffered by the country's regular prison population.

It has also been suggested to us that in response to earlier denunciations, the present governor of at least one of the two special facilities has taken action to correct the more flagrant abuses of prison regulations. Nonetheless, another significant potential anomaly remains uncorrected. Post-sentencing benefits, ranging from Sunday and weekend leave to definitive sentence reduction or commutation to parole, are currently the exclusive preserve of parole committees specific to each prison. On this matter we share the view of the National Human Rights Institute, INDH, that this situation introduces high levels of discretionality which are exacerbated by a lack of judicial oversight (supervision by the original sentencing judge or court).<sup>67</sup> Specifically, on 18 June 2013 the Constitutional Bench of the Supreme Court rejected a writ of protection (*recurso de protección*) presented by victims' relatives after the September 2012 award of Sunday leave privileges to Guillermo González Betancourt and José Fuentes Castro, both of whom were sentenced to life imprisonment in 1995 for the triple murders of Manuel Guerrero, Santiago Nattino and José Manuel Parada. Relatives, represented by lawyer Fernando Leal, appealed against the rejection of the original writ and also initiated a complaint before the Comptroller General's office (*Contraloría General de la República*), on the grounds that the two prisoners have disciplinary sanctions on their prison records that ought to rule them out of consideration for the award of benefits. A draft legislative bill presently before Congress (Boletín 8600-07) seeks to rule out the future concession of post-sentencing privileges to perpetrators of crimes against humanity. The proposal, introduced in October 2012, would amend Chile's Crimes Against Humanity law, Ley 20.357 of 2009, but would probably not be applicable retroactively to the existing prison population. In the words of the draft bill itself, the practice of conceding benefits to perpetrators of what are considered the most

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<sup>67</sup> INDH, <http://www.indh.cl/directora-del-indh-se-reune-con-familiares-de-victimas-del-caso-degollados>.

serious crimes imaginable “[transmits to the country] that you can torture people, burn them alive, slit their throats, make people disappear for the sole crime of thinking differently [...] and finally walk free.” At the close of the present edition, the draft bill was at its first reading stage before the Justice, Legislative and Constitutional Committee of the lower chamber, and did not have the executive sponsorship that would see it classed as ‘urgent’.

In a radically different vein, right-wing UDI party representative Jorge Ulloa attempted on 4 June 2013 to introduce a draft bill that would automatically grant a suspended sentence to all perpetrators presently serving sentences of up to 15 years for homicide, kidnapping and other serious crimes. The bill also seeks to guarantee automatic parole (*libertad provisional*) to any individual currently convicted in a first level or appeals court for such crimes. The bill asserts, without further substantiation, that all such individuals have been ‘denied due process’. To argue the inapplicability of the Geneva Conventions – which outlaw amnesty for war crimes – it is suggested that the two dictatorship-era decrees that introduced and reaffirmed a state of ‘commotion’ or ‘internal conflict equivalent to war’<sup>68</sup> did so “only for jurisdictional purposes”. In effect, it is proposed that the decrees be respected only insofar as they sought to legitimate repressive crimes. The text goes on to cite the Second Additional Protocol to the Conventions as a basis for arguing for a broad amnesty, in spite of already having denied that the Conventions are applicable. Finally, it suggests that neither the 1925 Constitution nor the dictatorial constitution that replaced it in 1980 “allow for” the possibility of modification by international treaty law, a position that consigns international law to sub-constitutional rank. In this, the text directly contradicts both Art 5 of the 1980 Constitution and Supreme Court ruling Rol 3125-04, of March 2007. Consideration no. 35 of the ruling states that international treaty law and customary law enjoy constitutional primacy (*primacía constitucional*). In the event the draft bill, reference code (*boletín*) no. 8963-07, was thrown out by the Constitutional Committee of the lower chamber on the grounds of its unconstitutionality. The vote to exclude it was a narrow 6-4 majority. Committee member and Christian Democrat representative René Saffirio described it as a “frankly aberrant” bill that constituted “a national embarrassment for Chile on the international stage”. Supporting him in voting for the unconstitutionality of the motion were legislators Burgos, Ceroni, Díaz, Harboe, and Rincón. Deputies Turren, Cardemil, Cristián Mönckeberg and Squella voted against.

## **1.6. International dimensions of the search for justice over past violations in Chile**

### **1.6.1. Chilean victims of disappearance with citizenship links to France**

On 17 December 2010, a Parisian criminal court found 13 Chilean regime agents guilty of the kidnap and torture of Alfonso Chanfreau, Jean-Yves Claudet, George Klein and Etienne

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<sup>68</sup> DL no. 5, of September 1973, and DL no. 640, of 1974.

Pesle.<sup>69</sup> The corresponding extradition requests are believed to have been lodged before the Chilean authorities in May 2013. The current location of all of the 11 perpetrators currently living is known, and 10 of them are in prison in Chile for similar offences. Only one, Gerardo Godoy, is believed to be at large. Despite his conviction *en absentia* in France, Godoy has yet to be charged in the national case investigating the same crimes. He has, however, already served a sentence in the Sandoval case and is awaiting final confirmation of an Appeals Court conviction imposed in June 2013 for the aggravated kidnap of Muriel Dockendorff. Interviewed about the case by the Observatory, Erika Hennings, wife of Alfonso Chanfreau, highlighted the importance of the exemplary high sentence tariffs imposed by the French courts at the same time as she emphasised the importance of domestic followthrough on the existing first instance sentence in order to ensure real sentences are imposed domestically on all those responsible.<sup>70</sup>

### **1.6.2. Extradition request made in the Víctor Jara case**

In January 2013 the Supreme Court approved an extradition request to US authorities<sup>71</sup> in the name of Chilean citizen Pedro Barrientos, charged with being a material participant in the murder of Víctor Jara.<sup>72</sup> The Chilean court declared the crime to be constitutive of a crime against humanity, thereby satisfying the double criminality threshold that is a precondition for extradition proceedings. The request is currently in the hands of the US authorities.

### **1.6.3. Extradition request denied in the Carmelo Soria case**

On 21 January 2013, judge Lamberto Cisternas ordered the reopening of the national investigation into the death of Spanish UN official Carmelo Soria.<sup>73</sup> The case, which was initially suspended in 1996 by the application of the amnesty decree law, had already been the subject, in 2010, of an unsuccessful effort to have it reopened. On 22 January 2013, the Supreme Court received an extradition request from the Spanish Audiencia Nacional for six Chilean former regime agents<sup>74</sup> wanted over their alleged participation in the murder. The request was turned down on 26th July: Supreme Court judge Juan Araya signalled his “unreserved support” for the principle of a “non-derogable duty” to afford justice, but gave jurisdictional precedence to the national case currently open investigating the same crime.

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<sup>69</sup> *Informe 2011* and Observatorio de DD.HH., Bulletin 11, pp. 10-11.

<sup>70</sup> Interview with the Observatorio, 2 July 2013.

<sup>71</sup> Supreme Court, Rol 486-2013, extradition of Pedro Pablo Barrientos Núñez, verdict of 30 January 2013.

<sup>72</sup> Ministro Vázquez, Rol 108.496-MG, aggravated homicide of Víctor Jara, *op. cit.*

<sup>73</sup> Ministro Cisternas, Rol 1-1993, aggravated homicide of Carmelo Soria, verdict of 21 January 2013.

<sup>74</sup> Juan Guillermo Contreras Sepúlveda, José Remigio Ríos San Martín, Jaime Enrique Lepe Orellana, Pablo Fernando Belmar Labbé, Guillermo Humberto Salinas Torres, René Patricio Quilhot Palma.

#### **1.6.4. Colonia Dignidad: Hartmutt Hopp, fugitive from justice currently living in Germany**

On 25 July 2013, the Second Chamber of the Supreme Court authorised an extradition request to German authorities for Hartmutt Hopp,<sup>75</sup> former second in command at the Colonia Dignidad cult headquarters in southern Chile and currently subject to a 5 year 1 day prison sentence as an accomplice to the sexual abuse of minors. Hopp went on the run in 2011 despite being supposedly under police supervisión while on bail. Chile has no bilateral extradition treaty with Germany, which rarely concedes such requests. Accordingly, the option of requesting Hopp be made to serve his sentence in a German prison is being evaluated.<sup>76</sup> Other cases are ongoing against Hopp, in Chile and in Germany. These investigate other abuses committed against the colony's residents as well as the use of the site - also known as Villa Baviera - as a place of detention, torture and extermination during the dictatorship.

#### **1.7. Regional dimensions of the struggle against impunity: Trials in Argentina<sup>77</sup>**

The current phase of formal (criminal) justice for human rights violations committed during Argentina's most recent military dictatorship (1976-1983) began in 2001 with the first judicial nullification of the amnesty laws (Full Stop and Due Obedience laws). The results obtained to date in Argentina can be favourably compared to those in Chile over the same period, in particular as regards the imposition of penalties proportionate to the gravity of the crimes and clear social repudiation of their perpetrators.<sup>78</sup> Argentina has also had the benefit, since 2007, of a specially designated prosecutorial unit to coordinate prosecutions.<sup>79</sup> Nonetheless, problems remain. These included long delays in the confirmation of sentences by the Supreme Court, and recent scandals over the promotion to army commander in chief of a general linked to repressive crimes, and over the escape of two perpetrators from a military hospital.<sup>80</sup>

The current phase of judicialisation is beginning to target civilians for complicity, and also attempts to promote a speedy resolution of cases, principally for the benefit of victims, survivors and their families. Accordingly, norms and protocols have been developed to speed up the investigation of complex cases and improve treatment of witnesses.<sup>81</sup> Nonetheless, many challenges remain. The continuous case monitoring carried

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<sup>75</sup> Supreme Court, Rol 4146-2013, 25 July 2013.

<sup>76</sup> Interview with case lawyer Hernán Fernández, CNN Chile, 24 July 2013.

<sup>77</sup> Section written by Lorena Balardini and Andrea Rocha of the Justice, Truth and Memory section of the research unit at the Argentine NGO the Centro de Estudios Legales y Sociales (CELS).

<sup>78</sup> This repudiation is moreover cross-party, as shown by the unanimous approval by both legislative chambers in 2010 of a declaration of current trials as 'state policy' "política de Estado").

<sup>79</sup> The Special Prosecutorial Unit for Coordination and Followup of Cases for Human Rights Violations Committed During the Period of State Terror.

<sup>80</sup> *La Nación*, Argentina, "Millonaria recompensa por los dos militares prófugos", 27 July 2013.

<sup>81</sup> Acordada 1/12 of the Cámara Nacional de Casación Penal y Tiempo Argentino, "Una guía para agilizar los juicios", 4 March 2012.

out by CELS since 2007 shows that, as of 15 May 2013, 2,088 individuals had been charged. 386 of these had been convicted, and 34 absolved, in the 95 verdicts emitted to date. Only 17% of those sentences had however been confirmed by the Supreme Court, with a further 24% confirmed at the second, appeals court, stage. 211 cases are still at the initial, investigatory stage, with a further 62 currently in the trial phase.<sup>82</sup> The temporal reach of trials has moreover extended back beyond the 1976 coup to earlier crimes closely related to the same plan for systematic repression. One example, the ‘Trelew Massacre’ of August 1972, led in October 2012 to life sentences against three former naval officers.<sup>83</sup> Various other cases, still ongoing, investigate the criminal activities of paramilitary groups connected to the state apparatus. These include the extreme right wing ‘Triple A’ as well as the Armed Forces themselves, in the runup to the 1976 coup. Current cases investigate, for example, the Rosario Chapel massacre of 1974; Triple A activities – over which 5 people have been charged – and ‘Operation Independencia’.<sup>84</sup>

These investigations have shown how closely linked business elites were to the dictatorship. On 15 November 2012, the owner and administrator of the Ledesma sugar company were charged with direct complicity in the disappearance of 29 individuals, including 3 union leaders. In March 2012, three military men were convicted of the kidnap and killing of Carlos Alberto Moreno, trade union lawyer and advisor to the National Mineworkers’ Union. The court also ordered that the possible instigation of the crime by the director of cement company Loma Negra be investigated. In 2013, a court in the city of Bahía Blanca ordered investigations into the propaganda and misinformation campaign carried out during the dictatorship by newspaper *La Nueva Provincia*. A prosecutorial application to carry out preliminary interrogations is currently on appeal. In April 2013 Juan Alfredo Etchebarne, former head of the Comisión Nacional de Valores, was formally questioned over allegations that he attended torture sessions in clandestine detention centres.<sup>85</sup> In May, three former board members of Ford Motors Argentina were charged over the kidnapping and torture, on factory premises, of 25 shop stewards.

The Federal Court of Santiago del Estero recommended to the Supreme Court and National Magistrates’ Association in December 2012 the creation of a special investigative unit to look into the possible involvement of justice system personnel in crimes against humanity.<sup>86</sup> The court denounced the passivity and inaction of judges of the time when presented with writs of habeas corpus. Judges and prosecutors have also been accused of active participation in torture, the forcible appropriation of children, and theft.<sup>87</sup> The

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<sup>82</sup> Preliminary phase of the initial verdict. <http://www.cels.org.ar>

<sup>83</sup> Tribunal Oral Federal, verdict of 16 October 2012.

<sup>84</sup> Operation for the persecution and elimination of political opponents in Tucumán province, initiated in February 1975 via a secret decree signed by Isabel Perón. 195 people were disappeared, 68 were assassinated and more than 1,500 illegally detained. Operativo Independencia case (1975/marzo/1976), file nos. 401.015/04, 401.016/04 and annexes, 27 December 2012.

<sup>85</sup> *Página 12*, “La trama financiera de la última dictadura”, 24 March 2013.

<sup>86</sup> Tribunal Oral Federal of Santiago del Estero, Case 960/11, verdict of 5 December 2012.

<sup>87</sup> Inter alia, judge Otilio Romano, under charges for 103 cases of illegal detention and torture (‘torments’) occurring between 1975 and 1983, when he was employed as a state prosecutor. He was officially suspended

judicial branch has seemed reluctant to judge crimes committed by its own members. To date, only one judge has been convicted.<sup>88</sup> Eleven more are under charges, while 6 are formally classed as suspects. Amongst prosecutors, the figures are 3 charged and 3 more suspected. Former judge Ricardo Lona, accused of archiving dozens of complaints over illegal deprivation of liberty, forced disappearance and homicide, has seen investigations against him repeatedly suspended or abandoned since 2004, often due to justice system personnel recusing themselves on the grounds of personal acquaintance or friendship ties to Lona. Argentine Supreme Court president Ricardo Lorenzetti has said that trials for dictatorship-era crimes have now become “part of the the Argentine social contract”, constituting a consensus “owned by no-one in particular and which no-one can therefore call a halt to”.<sup>89</sup> If he is right, then the most difficult stage of the struggle against impunity may be only just beginning: the judicial branch will have to demonstrate both its genuine independence from economic interests linked to the dictatorship and a willingness to lay to rest the ghosts of its own past complicity.

**Table 4: Comparison of case outcomes in Chile y Argentina at November 2012**

	Chile				Argentina			
<b>Final verdicts</b>	141				10			
<b>% of final verdicts with ≥1 conviction</b>	92.9%				100%			
<b>Number of individual sentences imposed</b>	447				16 (325 on appeal)			
<b>Range of sentence tariffs</b>	<b>≥ 5 years</b>	<b>5-15 years</b>	<b>15-20 years</b>	<b>Life</b>	<b>≥ 5 year</b>	<b>5-15 years</b>	<b>15-25 years</b>	<b>Life</b>
	65.8%	3.3%	2.2%	0.7%	0	18.75%	31.25%	50%
<b>% of custodial sentences</b>	24.1%				100%			
<b>Place of detention</b>	84% military facilities				64% regular prisons			
	16% regular prisons				36% house arrest			

Source: Case databases of UDP Human Rights Observatory and CELS Argentina.

from his present duties in August 2011, after which he fled to Chile and requested political asylum. His extradition to Argentina was approved by the Chilean Supreme Court on 21 August 2013 (Rol 4281-13).

<sup>88</sup> Former federal judge Víctor Hermes Brusa, sentenced in December 2009 to 21 years’ imprisonment.

<sup>89</sup> Ricardo Luis Lorenzetti and Alfredo Jorge Kraut, *Derechos humanos: Justicia y reparación. La experiencia de los juicios en la Argentina*, Buenos Aires: Sudamericana, 2011.

## **2. OTHER OFFICIAL ACTORS RELEVANT TO THE JUDICIALISATION OF PAST HUMAN RIGHTS CRIMES**

### **2.1. The legislature**

Previous versions of this report have criticised a lack of protagonism by legislators in truth, justice and reparations matters. Not every suggestion represents an advance, as we have seen above in the impunity law proposed by deputy Ulloa. Nonetheless, some proposals made in the period covered by this report could represent a step forward if they were given the executive sponsorship which is unfortunately almost obligatory for any draft bill to stand a real chance of becoming law. The proposals in question include, as well as those already mentioned above, one which would declare the coup anniversary date of 11 September a public holiday dedicated to the promotion of human right, in memory of victims of state terror.<sup>90</sup> Another project would produce the automatic application, by all state agencies, of the legal and administrative category of ‘absent through forced disappearance’ to individuals who were disappeared by the state. This would allow relatives to carry out legal transactions and paperwork related to property transfer and inheritance without, as at present, being obliged to actively apply for a judicial order or resort to use of the figure of ‘missing presumed dead’.<sup>91</sup> Another project, introduced in the form of a draft bill in May 2012, would deny entry to Chile to individuals under charges in their country of origin for human rights violations.<sup>92</sup>

### **2.2. Human Rights Programme of the Ministry of the Interior and Public Security**

The Human Rights Programme was set up principally to locate the remains of the disappeared and of victims of political execution whose remains had not been handed over to relatives. However, the justice dimension of its work has gradually expanded. It first adopted the role of co-plaintiff (coadyuvante) in cases initiated by relatives and later, in 2009, acquired and began to exercise the power to bring criminal complaints in its own right.<sup>93</sup> Between March 2010 and June 2013, the Programme presented 576 separate complaints for a total of 815 victims. 43 complaints from this total were presented between January and June 2010, most of them on behalf of victims of forced disappearance.<sup>94</sup> Within the time period covered by this report, delays occasioned by the failure of the Ministry of the Interior – on which the Programme depends – to sign new criminal complaints began to generate a significant backlog. The signatures are essential in order for prepared complaints to be formally submitted to the courts. In late 2012, the relatives’ association AFEP submitted a writ of protection (recurso de protección) against Rodrigo Ubilla, vice-minister

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<sup>90</sup> Draft legislative bill Boletín 8585-17, submitted on 12 September 2012.

<sup>91</sup> Draft legislative bill Boletín 9005-17, submitted on 2 July 2013.

<sup>92</sup> Draft legislative bill, submitted on 2 May 2012.

<sup>93</sup> Law 20.405 of November 2009, creating the National Human Rights Institute, Instituto Nacional de Derechos Humanos (INDH).

<sup>94</sup> Francisco Ugás, director of the legal team of the Human Rights Programme, electronic communication with the Observatorio, June 2013.

of the Interior. The action produced the activation and presentation of some of the pending complaints.<sup>95</sup> On 3 September, members of the AFEP began an overnight sit-in at the offices of the Human Rights Programme, demanding progress over the same issue. Many Programme staff members, including lawyers and social workers, supported the action; which led finally to the signing of 13 of the 59 draft complaints pending, plus a commitment to sign more by the end of the month. On 11 September 14 more signatures were received, leaving 32 complaints still pending.

### **2.3. Human Rights Investigative Brigade**

The Human Rights Investigative Brigade of the detective police, *Policía de Investigaciones (PDI)*, plays a key role in the investigative tasks that fall to human rights case magistrates. The Brigade's detectives are the on the ground operatives who carry out investigations via the cultivation of contacts and the carrying out of dozens of interviews with a wide range of witnesses, suspects and sources. Previous versions of this annual report have recorded our concern over the growing tendency to remove or replace experienced Brigade officers. This year also, experienced investigators such as subcomisarios Freddy Orellana y Víctor Vielma have been obliged to set aside their work in the Brigade and embark on full time further training at the police academy. Ongoing formation is of course essential if officers are to keep their professional knowledge up to date and advance in their careers; and also potentially serves as a transmission belt for the Brigade's expertise to positively influence colleagues and peers within the police. Nonetheless, it is important that the PDI, like other services, plan for in-service personnel training in a way that avoids negative impact on the high levels of professionalism and efficacy achieved in former years. The PDI also needs improvements in physical resources and personnel, from its current strength of 48 detectives in the field, if it is to successfully meet the challenges of an ever increasing workload. This increase includes the expansion of its workload beyond dictatorship-era cases to the reception of investigative orders from the military prosecutor and the Public Prosecutor's Office in recent cases of alleged security service abuses.<sup>96</sup> We would like to acknowledge the exemplary willingness of the Brigade, under current national director Prefect Moisés Cárcamo, to give public account of its work through activities including a January 2013 seminar, organised by the Observatory and the Institute of Judicial Studies,<sup>97</sup> and an 'investigative clinic' co-organised by the Human Rights Programme and relatives' organisations to search for new information on cases that present particular evidentiary challenges.

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<sup>95</sup> *Radio Universidad de Chile*, "Presentan recurso contra subsecretario Ubilla por no firmar querellas", 17 December 2012.

<sup>96</sup> Exemplified in the tripling of the total number of investigative orders/ warrants executed by the Brigade over the course of 2012, as compared to 2009. Observatorio de DD.HH. and Instituto de Estudios Judiciales, IEJ, "El trabajo criminalístico e investigativo de la Brigada de DD.HH.", January 2013.

<sup>97</sup> *Ibíd.*

## 2.4. National Forensic Service, Servicio Médico Legal

Under current national director Dr Patricio Bustos, Chile's national Servicio Médico Legal, SML, has played a key role in recent years in fulfilling victims' rights, and the state's duties, in truth, justice and reparations. Jaime Tohá, brother of murdered minister José Tohá, described the institution's contribution to the search for justice for his brother as 'exemplary', after José's remains were exhumed and forensically examined on a judge's order.<sup>98</sup> Four areas of the SML's work are particularly relevant: identification and exhumation of remains, court-ordered reports on survivors, and court-ordered reports on the accused (known as 'evaluations of mental capacity', *exámenes de facultades mentales*). As regards identification, 12 of a total of 128 identifications of remains performed or confirmed since 2006<sup>99</sup> were achieved during the period of this report.<sup>100</sup> During the same period, 50 post mortem reference samples were taken from deceased relatives of victims of disappearance. The practice, which is carried out by judge's order with the consent of relatives and in the presence of family members, allows cross referencing of genetic material. In this way, the level of certainty of identifications currently classed as 90% probable – ('consistent' or 'not ruled out') can be raised to 99%, 'positive'. The major remaining challenge in identification is the inevitably time-consuming nature of DNA analysis, currently carried out by overseas laboratories.

Regarding exhumation, judicial investigations of extrajudicial execution can involve both the review of previous autopsies and the carrying out of new confirmations of identity or studies of cause of death. These have been carried out in cases including those of José Tohá, Pablo Neruda and former presidents Salvador Allende and Eduardo Frei Montalva. The Tohá and Neruda cases are currently awaiting results from overseas laboratories. In the case of Nobel prizewinning poet Neruda, results are pending from laboratories in North Carolina, USA and Murcia, España. These include a toxicological report. The Allende case is currently completed and closed, while that of Frei Montalva is still open. A worrying precedent was set on 23 July 2013 by the regional Rancagua Appeals Court, when it issued an absolution - in the case of the murders of former Frente commanders Cecilia Magni y Raúl Pellegrin – founded on questioning of forensic reports provided by the SML and by independent experts. The SML's work with survivors is driven by judicial requests for impact reports on survivors of torture. Francisca Pesse, SML psychologist, has pioneered the introduction and rollout across the country of the Istanbul Protocol, which sets out internationally-recognised standards and procedures for rigorous yet respectful treatment of

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<sup>98</sup> SML, "SML entrega restos de José Tohá a sus familiares", 19 November 2012.

<sup>99</sup> The complete list can be viewed at [www.sml.cl](http://www.sml.cl), section Identificación y DD.HH.

<sup>100</sup> In the Lonquén case, Óscar Hernández Flores. In the Cuesta Barriga case, Hernán Pérez Álvarez, Ángel Guerrero Carrillo, Lincoyán Berríos Cataldo, Horacio Cepeda Marinkovic and Fernando Ortíz Letelier. Mr. Guerrero, Berríos, Cepeda and Ortíz were commemorated in a joint ceremony at Santiago's General Cemetery on 28 July 2012, attended by a large group of friends, relatives, and fellow political activists. In the Communist Party Activists case, Hernán Soto Gálvez and Jorge Troncoso Aguirre. Also, Jenny Barra Rosales, a MIR activist and student nurse. In the Patio 29 case, José García Lazo. In the case of the Fundo Las Tórtolas, in Colina, Vicente Atencio Cortez and Eduardo Canteros Prado, both Communist Party activists illegally detained in Villa Grimaldi.

torture survivors. 78 technicians have been fully trained in the Protocol since it was introduced in December 2011. It has been applied to both historical and recent cases, with a total of 50 examinations carried out under its strictures between March 2012 and July 2013. These include one case initiated by a protection order presented by the National Human Right Institute, INDH, in January 2013. The INDH asked the respective appeals court to involve the SML in the investigation of alleged abuses at the Valdivia prison. These kinds of request are becoming increasingly common due to the intervention of human rights organisations and growing awareness among state prosecutors and defenders of the Protocol.<sup>101</sup>

These examples, like the leadership that the PDI Human Rights Brigade has been given in implementation of the new anti-discrimination law among the police, show the multiple ways in which the process of justice for dictatorship-era crimes can have positive knock-on effects. It can assist in the improvement of justice institutions, thereby increasing awareness and protection of rights across the board. Although the learning effect within the judicial branch is reduced by the fact that dictatorship-era cases are investigated under the obsolete investigative magistrate system, sensitisation to international law and the prospect of new legislative initiatives offers some opportunity for positive learning.

### **3. MEMORIALISATION AND HISTORICAL MEMORY 40 YEARS AFTER THE COUP**

#### **3.1. Completion of the investigation into the death of former president Salvador Allende**

On 11 September 2012, on the 39th anniversary of Salvador Allende's death, the 3<sup>rd</sup> bench of the Santiago Appeals Court confirmed the final closure of an investigation into the cause of his death. The investigation was initiated in response to a criminal complaint presented by human rights lawyer Eduardo Contreras. The remains of the deposed president were exhumed on 23 May 2011 and sent for tests. The results were cross referenced by case judge Mario Carroza with witness statements given by some of the people who were in the Moneda palace with Allende on the morning of 11 September 1973. In the event, the judge found that the evidence supported the predominant existing thesis of suicide.

#### **3.2. Change of name of Avenue 11 September**

In July 2013 Avenida 11 Septiembre, a main thoroughfare of the uptown Santiago district of Providencia, reverted to its pre-dictatorship name of New Providence Avenue (Avenida Nueva Providencia). The change, which was not without incident,<sup>102</sup> had its origins in a campaign promise made by then-mayoral candidate, and current Providencia district mayor, Josefa Errázuriz. The change was finally approved by the municipal council when all of its

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<sup>101</sup> SMLmemo prepared for the Observatorio, July 2013.

<sup>102</sup> The first set of new street signs installed by the subcontracting firm contained a typographical error, reading "Nueva Proidencia" [sic].

right-wing members bar one deliberately absented themselves from a council meeting at which the issue was due to be voted upon. The presence of the sole right-wing party representative was enough to make the meeting quorate, thus allowing the change to go through by majority vote even though he himself did not support the measure. The change removes one of the more visible reminders of the unwavering support previous Providencia mayor Cristián Labbé extended to the dictatorship and to the person of Pinochet. Despite this change, however, dozens more streets and avenues the length and breadth of Chile still carry names which pay tribute to the 1973 coup.<sup>103</sup>

### 3.3. Memory sites and the imperative to remember

Thousands of buildings and sites across Chile were used as clandestine detention and extermination centres during the dictatorship. Some of them, such as the Santiago sites Villa Grimaldi, Londres 38, José Domingo Cañas, Nido 20 and part of the National Stadium, have been successfully transformed into commemorative and educational sites by survivors, relatives and activists. Such places serve to educate national and overseas visitors, and often seek to stimulate adherence to human rights principles and the struggle for social justice. Campaigns are currently under way to recover other sites including the Cuartel Simón Bolívar, the so-called ‘Venda Sexy’, Tres and Cuatro Álamos, Tejas Verdes, and the Punta Arenas Memory House (Casa de la Memoria). In March 2013, relatives and activists organised a march and vigil at the gates of Villa Baviera, also known as Colonia Dignidad. This farm and rural residential community in the south of Chile was previously the nucleus of the sinister religious sect led by now-deceased paedophile and former German army officer Paul Schaefer. The vigil was organised to renew calls for a permanent memorial at the colony – which is still in operation – to the 34 victims of forced disappearance who were at some time detained in the complex, according to the Rettig truth commission report. Dozens of similar memorials and plaques have already been placed in private and public spaces around the country. Many of these projects are documented in the entrance hall of the national Museum of Memory and Human Rights, which since its inception in 2010 has undoubtedly carved out a place for itself as the country’s major and most important centre for commemorative activities and the promotion of historical memory.

The Villa Grimaldi Peace Park, which has always explicitly commemorated all those known to have disappeared or been executed after having been illegally detained at the site on its Wall of Names, has now begun a project to also identify and commemorate survivors. The list presently contains 165 names, including those of current president Michelle Bachelet and her mother, Ángela Jeria. The list, together with an explanation of the procedure for survivors to authorise the addition of their own names, can be consulted at [www.villagrimaldi.cl](http://www.villagrimaldi.cl). Other campaigns highlight the need to recover and celebrate not

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<sup>103</sup> *The Clinic*, “Las otras calles fachas y monumentos que mantienen viva la dictadura”, 13 March 2013; *La Tercera*, “Las otras batallas por las calles 11 de septiembre”, 23 June 2013.

only the memory of repression but the memory of the active defence and promotion of human rights, exemplified in sites such as the former Vicaría de la Solidaridad, beside the cathedral in the capital's Plaza de Armas, or the offices of the Vicaría's forerunner, the Comité Pro Paz, in Santa Mónica street in Santiago. Since it would clearly be impractical to recover, staff and occupy every one of these thousands of significant spaces on a permanent basis, now may be the time to seriously debate alternatives such as the installation of street-level plaques and signs demarcating 'routes' of commemoration and resistance. This practice has been successfully adopted in Argentina, as well as in some European countries to publicly commemorate sites related to Nazi atrocities during WWII.

Another strand of thinking and practice around historical memory concentrates on the production of 'living artefacts' such as song, artistic interventions, audiovisual work, theatre, murals, photography and present-day activism, all inspired and motivated by the commitments, idealism and significant events of the recent past. Some of these initiatives are deliberately autonomous, preferring not to seek official validation or support. Others have received some practical and financial assistance from the Symbolic Works (Obras Simbólicas) area of the Human Rights Programme of the Interior Ministry. This area, which has a modest budget,<sup>104</sup> accepts project proposals from civil society groups in the first half of each calendar year, and can extend some financial aid or public works to those it chooses to support. Recent projects partly or wholly supported by the Programme include a documentary film about the 119 (Operation Colombo). In 2013, the Programme oversaw the execution of 10 projects. Two of these had originally been approved in 2012. Months of delay in giving the final green light to these projects from the Ministry of the Interior – which oversees the Programme's work – however led to four months of complete paralysis of all ten projects, meaning that only one was completed in time for the significant 11 September anniversary. These additional projects included signage and ongoing earthquake damage repairs at Villa Grimaldi; restoration of the Wall of Names in the Santiago General Cemetery; memorials in Talca, at the University of Chile Law School and in a cemetery on the outskirts of Paine; and a research initiative by the José Domingo Cañas memory site in the Patagonian region of Aysén.

### **3.3. Official commemorations of the 40th anniversary of the coup**

Announcements from the Moneda presidential palace of official events to mark the 40th anniversary of the coup and its consequences were made only days before the event itself. In the runup to the 11 September, the Observatory team made repeated efforts to obtain official confirmation from the press office about planned activities and the president's official engagements diary for the day. Consulted by telephone on 26 July and again on 22 August, for example, the Moneda press office stated that no official activities were planned

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<sup>104</sup> Ranging from 55 million pesos (USD 104,000) in 2011 –when all public budgets were cut in order to prioritise emergency reconstruction after the February earthquake – to 100 million (USD 189,000) in 2012 and 158 million (USD 298,000) in 2013. Data in the public domain, supplied to the Observatorio in July 2013 by Cristián Flores, coordinator of the Symbolic Works (memorials) area of the Human Rights Programme.

and that the president's schedule for the 11 September had yet to be defined.<sup>105</sup> This experience lends weight to the accusation, formulated by the campaign office of Michelle Bachelet, that an official invitation to all former presidents and current presidential candidates to attend an activity on Monday 9 September smacked of last-minute improvisation. Most candidates declined the invitation, citing prior commitments. An idea proposed well ahead of time by staff at the Human Rights Programme, that would have involved commissioning a major national photographic exhibit, to be displayed in the Plaza de la Constitución (in front of the Moneda palace) throughout the month of September, had to be abandoned in late 2012 when 'imminent' public works were announced. The works, which were not in fact begun until well into 2013, involved fencing off and digging up emblematic spaces including the entire Plaza and the Morandé street lateral access to the Moneda. The barriers began to be gradually removed in the early part of September, after any possibility of applying to carry out meaningful commemorative activities in these emblematic spaces had already lapsed. The statue of Allende that stands in one corner of the Plaza spent most of July and August invisible under a thick layer of protective black plastic. A similar fate was suffered by the various other statues of former Chilean presidents dotted around the Plaza, presumably to protect them from possible damage during the lengthy, and leisurely, works programme. The principal international projection of Chile's image on the 11 itself was meanwhile a commercial one, with Treasury minister Felipe Larraín presiding over 'Chile Day' at the UK's London Stock Exchange.

### **3.4. Presidential candidates and human rights**

A survey on 29 July 2013 – 6 weeks before the emblematic 40th anniversary – of the campaign web sites of the nine extant presidential candidates revealed that only one of them (Humanist Party candidate Marcel Claude) considered the topic of human rights in general, and the legacy of the dictatorship in particular, sufficiently important to merit a specific mention.<sup>106</sup> Michelle Bachelet's campaign however went on to announce, in early September, the results of a consultation on the matter with representatives of some human rights organisations and other civil society representatives. The results included the reiteration of a promise first made in 2006 - and left unfulfilled during the four years Bachelet's first, 2006-2010, presidential term – to derogate the effects of the amnesty

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<sup>105</sup> The equivalent activities in September 2012 were equally revealing: a member of parliament for the right-wing governing coalition interrupted a minute's silence in the legislative chamber with slogans calling Allende a 'cowardly suicide' "un cobarde que se suicidó". *La Nación*, "Diputado Urrutia tildó a Allende como 'el cobarde'", 11 September 2012.

<sup>106</sup> Survey carried out on 29 July 2013 of candidates' online platforms - selected as a relatively inexpensive mass medium, available on roughly equal terms to all candidates and many potential voters - allowing assessment of candidates' own sense of the importance of foregrounding human rights questions a modest 6 weeks before the emblematic 11 September anniversary. Claude's platform dedicated three paragraphs to the subject, under the heading 'Diversity, human rights and discrimination'. Contents included a call for the revocation of the 1978 amnesty decree law, questioning of the 50 year secrecy law applicable to Valech Commission testimony, and challenge of the existence of cutoff dates (deadlines) for applications to various reparations programmes.

decree law of 1978. Other candidates followed suit, and/or announced their own initiatives, over the course of the month of September.

### **3.5. The coup and the ethics of public life: the Cheyre-Lejderman affair**

The runup to 2013's most significant dates – the September coup anniversary and the end-of-year presidential elections – produced a climate of expectation and debate in public opinion and in mass media outlets. The Chilevisión TV channel's documentary series *Imágenes prohibidas* ('Forbidden Images') provoked and channelled a flood of individual memories, feelings and opinions, allowing younger generations a glimpse of the enervating and often devastating violence that the dictatorship visited on the entire fabric of civic and cultural life. The sense of a collective catharsis can only be compared to that lived in 2003, around the 30<sup>th</sup> anniversary of the coup. Then, as now, some of the country's mainstream TV and print media finally chose to acknowledge and embrace 'revelations' and truths that human rights defenders and organisations have been announcing to the four winds for many years. However, if 2003 was experienced as in many ways a defining moment in the demand for truth – with, for example, recognition of the need for a new truth commission – 2013 may yet come to be seen as the year when serious questions finally began to be asked about the need to finally add consequences to such truths as are already known. This move, and its possibly dramatic consequences, was graphically illustrated in a live TV encounter on 20 August 2013 between former army commander in chief Juan Emilio Cheyre and Ernesto Lejderman, formerly the orphaned child at the centre of the 'Lejderman case'. Cheyre maintained the version of events he has almost invariably told in public: that as a young officer in the Arica regiment during the dictatorship, he was asked I the course of routine duties to organise the handover to a nearby convent of a two year old boy whose extremist parents had supposedly chosen to kill themselves using their own stock of explosives after being cornered by security forces. The infant, later handed over to his paternal grandparents in Buenos Aires, Argentina, is today a 38 year old man whose indefatigable search for the truth about his origins led him, first, to rediscover his parents' idealistic political activism and, second, to confront the powerful machine of Chilean military secrecy and impunity.

During this, the first public face to face encounter between the two men, Ernesto maintained an invariably calm and generous recognition of the positive aspects of the former general's actions and views. At the same time, he was politely insistent in inviting Cheyre and other representatives of the Chilean high command to supply the many missing pieces in the jigsaw of truth about his parents' deaths and the fate of the many still-disappeared victims of repression. He emphasised again and again the need for a form of justice that produces penalties proportionate to the gravity of the crimes committed, and is accompanied by societal repudiation of those responsible. The more immediate consequences of the encounter – during which Cheyre admitted that he had 'never read' the Rettig truth commission report – included an opinion column penned by Carlos Peña, rector of the Universidad Diego Portales. In this, as in a subsequent letter published in the same, conservative, broadsheet, Peña questioned the lack of distinction between legal and ethical responsibilities evidenced by Cheyre's performance. In his eventual letter of resignation

from the presidency – though not from membership – of the board of Chile’s electoral commission, the body which will oversee forthcoming presidential elections, Cheyre declared himself “free from all legal and ethical reproach” (*libre de todo cuestionamiento legal y ético*),<sup>107</sup> apparently on the grounds that the criminal case pursued for the murder of Ernesto’s parents had been content to deal with Cheyre only in the category of witness. Peña, on the other hand, voiced a more widely felt sentiment when he asked whether such figures were really the best that Chile could continue to offer, so long after transition, for sensitive and symbolic posts as guarantors of democratic values and the democratic process. In doing so, he helped to instal on the public agenda a long-postponed debate about the consequences of the truth, the need for social censure of political violence and apologia for authoritarianism, and the long overdue definition of precisely who it is felt can appropriately guide Chile’s democratic future.

#### 4. CONCLUSIONS and RECOMMENDATIONS

Since the return to electoral democracy in 1990, Chile has seen significant advances in the search for truth, justice, reparations and guarantees of non-repetition regarding the systematic crimes of repression that were committed under its civil-military dictatorship. Nonetheless, these advances have come about largely thanks to the persistence and commitment of relatives, survivors and civil society human rights organisations. They have moreover taken the form of isolated and often temporary measures, susceptible to reversal. We have yet to see the emergence of clear political will capable of proclaiming, unreservedly and without ambiguities, Chile’s determination to draw from its recent political history the positive lessons of an ever-stronger, cross-party and socially universal commitment to freedom, justice and equality framed in the language of rights. President Sebastián Piñera said, in late August, that “we must be clear and unwavering in our permanent condemnation” of the past abuses committed by agents of the state.<sup>108</sup> During the official commemorative act held on 9 September, he added that “we must do everything in our power to move ahead in truth and reconciliation”, reiterating for good measure criticisms already formulated of the actions of the dictatorship-era courts and media.<sup>109</sup> Welcome as these words and sentiments are, they offer obvious points of contrast and contradiction with the general tenor of these issues during his administration, as set out above.<sup>110</sup>

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<sup>107</sup> Carlos Peña, “Cheyre y la memoria”, *El Mercurio*, 21 August 2013, and letter of resignation of Juan Emilio Cheyre from the presidency of the board of the national electoral commission, Servel, as cited in *La Tercera*, “Cheyre renuncia a presidencia del Servel tras vinculación con caso de DD.HH.”, 22 August 2013.

<sup>108</sup> *El Mostrador*, 31 August 2013, “Piñera reafirma críticas a la prensa y al Poder Judicial”.

<sup>109</sup> *La Tercera*, 9 September 2013, “Piñera: Muchos de nosotros, que pudimos hacer más en defensa de los DD.HH., nos alcanza una cuota de responsabilidad”.

<sup>110</sup> In one example, in the early hours of 8 September police officers forcibly removed a series of banners from bridges over Santiago’s Mapocho river. The banners, which made reference to the situation of the disappeared and calle don military authorities to disclose information, were artistic interventions commissioned by the Londres 38 memory site. All necessary legal permissions and permits had been applied for and approved by the Council for National Monuments and the two district councils concerned. As of 13

This chapter extends an invitation to 2013's presidential candidates, inheritors of a unique and weighty historical responsibility, to render fitting tribute to the thousands of women, men and children killed, disappeared and tortured during Chile's period of state terror by making human rights a focus of sober reflection, clear promises, bold action and future direction for 2014 and beyond.

To comply more fully with its freely contracted national and international responsibilities in truth, justice, reparations and guarantees of non-repetition regarding the grave human rights violations committed in the recent past, the Chilean state should:

1. Transform the 40th anniversary of the coup into a genuine opportunity for profound reflection and a platform for the expression of clear, explicit, cross-sectorial rejection and repudiation of political authoritarianism and state terror and those responsible for them.
2. Seize this historic opportunity to remove from its body of laws all of the significant legacies of that terror, beginning with the 1978 amnesty decree law and its effects in promoting impunity.
3. Extend due urgency (via executive sponsorship) to draft bills presently before the legislature that seek to strengthen Chile's actions against impunity by ensuring that existing and future occurrences of crimes against humanity are sanctioned with effective penalties proportionate to their extreme gravity.
4. Provide special investigative magistrates assigned to human rights cases with explicit support, assistance and acknowledgment in dealing with the multiple and complex investigations that make up their caseload. Maintain and, if necessary, extend to other regions of the country the exclusivity of functions that was announced on 13 September for magistrates attached to the Santiago appeals court; in order to speed up case resolution to the maximum extent compatible with continuing guarantees of exemplary levels of respect for the due process and other rights of both complainants (victims and their relatives) and accused persons.
5. Equip the Human Rights Brigade of the Investigative Police, PDI, with increased personnel commensurate with the additional workload they have recently acquired in relation to implementation of new anti-discrimination legislation and other cases not related to dictatorship-era human rights violations.
6. Implement a single, transparent system of case monitoring that tracks case progress, the serving of custodial sentences, and the concession of post-sentencing benefits

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September, only 4 of the 11 banners had been recovered and returned. Londres 38 initiated a judicial protection order to recover the others, which was however later rejected by the courts.

and ensures that these benefits are conceded only in strict accordance with existing legal and administrative norms, and through procedures subject to jurisdictional control (overseen by a judge).

7. Create a single, permanent institution to administer existing official registers of recognised victims and survivors of forced disappearance, extrajudicial execution, torture and other grave human rights violations committed between 1973 and 1990 (including the so-called ‘Rettig’ and ‘Valech’ lists); actively investigate and acknowledge previously unknown or unaccredited cases on an ongoing basis, and take responsibility for actively supporting victims’ relatives and survivors in the full exercise of their rights, including the right to effective reparations.