

Observatorio de ddhh, Universidad Diego Portales
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Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end Feb 2011*

**The figures provided in this bulletin incorporate data received from the Human Rights Programme of the Ministry of the Interior and Public Security and from the Chilean prison service (Gendarmería), complemented by the Observatory's own databases. These are updated directly from the texts of judicial verdicts and other open access sources. The data given for open cases and victims involved in these are valid to end February, while the data on former agents currently in prison has been updated to end March using information supplied by the prison service.*

The Human Rights Observatory of the Universidad Diego Portales is a joint initiative between the University's Human Rights Centre and Social Science Research Institute, supported by the Ford Foundation and the Heinrich Boell Foundation and linked to a new research project with the Chr Michelsen Institute of Norway. It was set up to map current judicial activity in Chile for human rights violations carried out during the 1973 to 1990 military dictatorship, and create a database of cases presently ongoing in national courts. This bulletin provides a summary of case activity and other justice-related developments, based on the Observatory's own database, information supplied by the abovementioned institutions, and additional research using open sources.

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

We are currently in the final stages of a server switch and redesign to improve the reliability and accessibility of our web page data. We are also in the process of redesigning the format of this bulletin for the same purpose. If you have any feedback or comments that might help in this process, please mail us at the address given at the end of the bulletin

CASE STATISTICS FOR CHILE

Consistency between data sources

Over the past few months the Observatory has been making efforts to contact the full range of state bodies involved with dictatorship-era human rights cases. It has become increasingly clear that each one applies different recordkeeping criteria and methods, since each gives different and sometimes contradictory information about the same case universe. For example, in March it became clear that 3 people who have figured regularly in the Interior Ministry's monthly reports as imprisoned for human rights crimes had actually already been released: in one case, over a year



ago. There are also variations in reports given by the Interior Ministry and the judicial branch as to how many human rights cases are currently open or active and what proportion of the recognized victim universe they cover. The Observatory is in the process of mapping the particular definitions and methodology used by each organisation, in order to unify criteria where possible and to improve the reliability of the data available to the public. For the present the bulletin sets out the most accurate possible synthesis of all presently available data sets, corroborated where possible against primary sources.

Cases and victims

According to Interior Ministry Human Rights Programme data, 1,418 investigations (cases) were ongoing in Chile at end Feb 2011 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. The vast majority of these cases (1,393) are over cases of disappearance or politically-motivated execution; while a very small proportion (24 of the 1,418) represent cases brought by survivors of torture and/or political imprisonment. (One additional case, Colonia Dignidad, investigates criminal conspiracy and related crimes not yet associated with named victims). The Human Rights Programme of the Interior Ministry is an active participant in 22.9% of the cases it currently tracks (325 of 1,418 cases). The total of open cases continues to rise as more new cases are brought, by private complainants and *ex officio* (viz. the 726 *denuncias* submitted by judicial prosecutor Beatriz Pedrals at the instigation of the judicial branch, reported in bulletin 11). In early March, the Agrupación de Familiares de Ejecutados Políticos, AFEP, submitted a new group of criminal complaints for victims of political execution. Most of these have been or will be accumulated to existing investigations. All new complaints and *denuncias* have been assigned in the first instance to investigating magistrate Mario Carroza, whose individual caseload shows 803 separate new cases received to date in 2011, plus a further 366 carried over from 2010 or previous years. To date, 316 more cases have been handed on to other judges or tribunals which had prior claims to jurisdiction. According to judicial records, at 6 April 2011 judge Carroza was actively overseeing 746 cases, almost all of which (743) were at the investigative (*sumario*) stage.

Overall case numbers will probably rise again in the next bulletin, as official Programme records begin to reflect this new activity. Regarding the proportion of the officially-recognised victim universe that this case universe represents, the picture is unclear as available sources differ. Judicial sources assure us that the 726 complaints recently submitted by prosecutor Pedrals were specifically prepared in order to complete 100% judicial coverage – understood as the existence of a completed, active or once-active and reasonably diligent investigation – of the universe of currently-recognised victims of disappearance or politically-motivated execution. The present case universe even reaches to individuals such as former presidents Salvador Allende and Eduardo Frei Montalva, until recently not considered part of this victim universe*

** Allende has generally been considered a victim of suicide, and therefore his death has never been officially investigated as a possible human rights crime, despite the fact that his name is included in the truth commission (Rettig Commission) initial victim register. Eduardo Frei Montalva does not appear in*



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the register since his death was considered until recently to have been due to natural causes. Recent judicial investigations have however shown that his death was almost certainly the result of an undercover security force operation designed to eliminate political opponents.

However, the current registers of the Observatory and the Human Rights Programme show a more reduced, albeit growing, current judicial coverage of around 66.7% of officially-recognised victims of death or disappearance,* with cases having been concluded for a further 8% of victims and 25.3% yet to register judicial activity in the post-2000 period.

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

These discrepancies are not completely accounted for by the time lag between Programme registers (to February) and new activity in March; nor by considering cases once active but presently suspended or dismissed. The Observatory is currently in the process of cross checking sources and we will report our findings in future editions. In any case, judicialization of past human rights crimes in Chile is indisputably at an all time high, probably representing the most complete national judicial response to massive human rights violations currently in existence.

Agents (Repressors)

According to Interior Ministry Human Rights Programme data, between 2000 and the end of February 2011, **777**** former security service agents had been charged and/or sentenced in Chile for past human rights related crimes (including those with absolutions currently under appeal; but excluding those fully acquitted at final appeals stage of all charges).

*** Over the same period at least 28 more individuals, not included in the total of 778, died while under charges or after having been found guilty. Four of these died while in prison serving confirmed sentences. It is possible that a small number of individuals – no more than half a dozen – were omitted from pre-2000 registers after having been acquitted of similar charges. .*

Of these 777 individuals, a total of **230** have been found guilty in confirmed final sentences. Less than a third of these are however currently in prison. The remaining 162 of 230 are free, due either to the immediate concession of non-custodial alternatives such as parole or suspended sentences or to the later granting of sentence reduction or commutation based on good behaviour.

Human Rights Programme and prison service (Gendarmería) records, when combined, accordingly show a total of **68** individuals serving confirmed custodial sentences for human rights-related crimes as of the end of March, distributed across the following facilities:

Military facilities – 59 prisoners

- Punta Peuco: 48
- Cordillera: 10
- Hospital de Carabineros (Police hospital): 1

Civilian jails – 8 prisoners

- CPP Temuco: 4
- CPP San Antonio: 1
- CP Arica: 1
- CP Alto Hospicio: 1
- CCP Concepción: 1

Place of detention yet to be confirmed – 1 prisoner*

**Namely Luis Osorio Gardasanich, who was sentenced in January 2011 to 10 years' imprisonment but does not yet appear to have begun serving his sentence.*

It should be noted that the main existing sources present slight discrepancies as to the number and precise location of these prisoners. We appreciate the co-operation received this month from the new Data and Statistical agency of the Chilean prison service (Área de Gestión de la Información y Estadísticas de Gendarmería de Chile) in beginning to draw up a unified register.

A detailed record of each individual's judicial record is always available in the 'Condenados Presos' document (Spanish only) on the Publications section of our webpage, and/or can be obtained by mailing us at observatorioddhh@mail.udp.cl

The Chilean prison service also reported this month that although the detention centres of Punta Peuco and Cordillera continue to be military-owned facilities, since 2003 the day to day supervision of the prisoners held there has been the exclusive responsibility of the prison service. This means that former military officers imprisoned for human rights crimes are no longer being guarded directly by their peers, as was the case before this change was made.

JUSTICE SYSTEM NEWS

Specialised detective brigade increases its numbers and assures of its continuing commitment to human rights cases

In the previous bulletin we reported on concerns resulting from the unexpected transfer of Sandro Gaete, at the time the operational chief of the specialized human rights crimes investigative unit of Chile's detective police. Gaete had for years headed the team of detectives who actually carry out case investigations under the supervision of investigative magistrates. Gaete has been redeployed to an environmental crimes brigade in Chile's remote southern region of Aysén. In early March the Observatory met, as promised, with the human rights brigade's new authorities, whose openness and desire to respond to public concerns was appreciated.

The service's new national director Luis Nieto, new operational chief Tomás Vivanco and experienced deputy chief Patricio Bascuñán met with the Observatory in the brigade's new permanent headquarters in Santiago. Forced to operate in precarious



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conditions after the February 2010 earthquake seriously damaged existing premises, the Brigade now has a medium term lease on a more suitable building. Team leaders recognised that the continued need to share office space is not ideal, as it means witnesses and relatives still do not enjoy privacy when called to give statements. Nonetheless they highlighted the fact that 9 new detectives have been added to the squad over the past year, giving a full operating strength of 71 frontline operatives. The new additions, mostly relatively junior officers, have mostly been 'apprenticed' to existing teams within the Brigade (The most experienced officer currently still on the Brigade's books has around 12 years of accumulated experience).

The new authorities also informed the Observatory that they had no cause for concern over the past service records of the new recruits. Although the Brigade does not have a specific voluntary recruitment process (new operatives are designated centrally rather than applying or being selected in advance by Brigade officers), both the relatively junior status of the new cohort and a routine revision of service records on appointment were sufficient to satisfy existing authorities that there is no possibility of new arrivals turning out to have been themselves involved in past human rights violations.

Officials explained the general routine of the brigade's work, acknowledging that it is gradually taking on responsibility for investigating other, more recent, possible violations but stressing that the overwhelming majority of the caseload is still dedicated to investigation of dictatorship-era crimes. Each of the specially designated judges (*ministros en visita*) currently investigating these crimes has a team of detectives assigned to them. The detectives carry out evidence-gathering and other functions according to the judge's instructions [as these cases are seen under Chile's old investigative magistrate system where judges, rather than the police or state prosecutors, have primary responsibility for building a case]. Although all the detective squads are based in central headquarters in Santiago, those assigned to judges in Chile's regions travel regularly to receive new instructions, serve warrants etc.

Regarding the question of access to investigative archives, first raised in discussions between the Brigade and the Observatory in 2009, we were told that although a modified form of an initial project to digitalise investigative files is currently under way, there are now no plans to make any portion of the electronic resource available for research purposes or public consultation. However, Officer Nieto did promise to keep us informed about plans to revive a previously-published annual report which would allow the public to know more about the day to day activities of the Brigade.

New revelations broaden the scope of existing debates about the effective serving of sentences by those found guilty of crimes against humanity

A press report in March about the granting of prison benefits ('beneficios intrapenitenciarios'), including Sunday leave, to prisoners convicted of human rights crimes, combined with continuing efforts by the Observatory to obtain detailed information about the status and location of these prisoners, confirm a recent shift in



the centre of gravity of the debate over impunity in Chile. Initially, attention was focused on the almost total lack of final sentences for these crimes. After 2000, the numbers of final guilty sentences grew as new criminal complaints registered in and after 1998 worked their way through the system. From 2007 the major controversy had to do with the question of proportionality of sentencing, thanks to an increase in use by the Supreme Court of the figure of 'half statute of limitations' ("*media prescripción*") to reduce final sentences imposed on guilty parties. In 2010 and 2011 the discussion has centred more on the question of effective enforcement of these final sentences once imposed. The enforcement issue requires consideration of prison conditions and what might be referred to as 'prison benefits' – sentence reductions or commutations which are applied not at the point of sentencing but after a certain proportion of the initial custodial sentence has been served.

The Observatory has to date identified various types of benefits which have been applied to individuals sentenced to imprisonment for crimes against humanity. These benefits are not specific to this class of prisoners: they are theoretically available to all prisoners who meet the qualifying conditions. To the best of our knowledge it is not currently possible to obtain the raw data needed to see whether these benefits are being applied disproportionately to human rights case prisoners as compared to the general prison population. However it should be borne in mind that international human rights law recognizes the particular gravity of crimes constituting human rights violations, reflected in its refusal to countenance the applicability of amnesty, statutes of limitation or other discretionary instruments. It seems clear that the intention of the applicable body of law is to establish the principle that the special status of these crimes requires that they be fully prosecuted and that proportional sentences, once applied, should be served in their entirety. It is therefore questionable whether benefits designed for those convicted of ordinary criminal offences should be applied to crimes considered so serious that they affect humanity as a whole (the notion that gave rise to their denomination as 'crimes against humanity')

The specific benefits that have been applied to some of the 77 people who have passed through Chilean jails since 2000 after having been convicted of some kind of human rights-related crime operate in various ways. Some of them reduce final sentences some time after these have been imposed, allowing the prisoner to serve out his or her sentence in a shorter time frame. These benefits are usually designed as incentives to good conduct on the part of the prison population. One example for Chile is Law 19856, which rewards good conduct during a custodial sentence by discounting two months of remaining sentence for each year already served. According to the prison service, Gendarmería de Chile, Juan de Dios Caniulaf, Gerardo Urrich and Patricio Zamora were freed under the terms of this law in late 2009 (Caniulaf and Urrich) and late 2010 (Zamora). They received total discounts of between 5 months and one year on their initial sentences. A fourth prisoner, Carlos López, is due to be freed from the Cordillera military facility at the end of May 2011 under the terms of the same law.

A second type of benefit, which includes conditional release, suspended sentencing or parole, does not strictly speaking reduce the total length of the sentence to be served but rather allows the whole sentence or some portion of it to be served in a



non-custodial setting. Associated conditions typically stipulate that the person's movements and/or professional activities should be restricted, and they may be required to report periodically to police or justice system officials [the equivalent of parole officers]. These special conditions are known as 'alternative measures' or 'alternative regimes' for the serving of sentences (*medidas o regimenes alternativos de cumplimiento de penas*). They do not wipe a person's criminal record nor do they reduce the final sentence tariff: they only change the conditions and physical location where this is to be served. According to Gendarmería de Chile, this benefit was applied in December 2010 to Hugo Alarcón Vergara to allow his early release from the Punta Peuco military facility, where he had been serving a 5 year sentence since 2006 for his part in the murder of Juan Alegría. The effect was to bring forward by 8 months his projected release date of August 2011

Suspended sentencing and parole ('remisión condicional' and 'libertad vigilada'), two more examples of this same class of benefit, can be applied either at the moment of sentencing or after it. If they are applied at the moment of sentencing the result can be that the individual never serves any jail time at all. The fact that the majority of those found guilty of human rights-related crimes in Chile since 2000 – 162 of 230 individuals – have never been imprisoned is mostly due to the concession of these benefits at the moment of sentencing. Where the final sentence imposed, after consideration of benefits such as half prescription, is between 2 and 5 years, the guilty party can apply to the court for the immediate concession of suspension or parole. If granted, the person does not serve any part of their sentence in custody. Additionally, the 68 individuals who are currently in custody can apply for later concession of the same benefits once the remaining portion of their sentence is short enough to fall within the prescribed limits. Some of the 68 who have been convicted of multiple offences also already have the same benefits for their additional sentences.

In both cases - benefits conceded at the moment of sentencing or afterwards – the concession is not automatic. It depends on the court's evaluation of the person's conduct and the risk of their reoffending, and can be revoked if the conditions imposed are not met. We have however reported in previous editions the chronic lack of effective supervision of parole conditions for these benefits, although it is impossible at present to determine whether the problem is specific to these cases and prisoners as this is a generalised problem across the criminal justice system. A recruitment drive has recently been announced to train more parole officers to reduce the shortfall.

A third type of benefits, prison benefits, came to the attention of the press in March this year. What distinguishes prison benefits from the other two types already mentioned is that while the latter are overseen directly by the courts, prison benefits are conceded not by individual judges but by prison-convened committees which may include other types of professionals such as psychologists. These 'parole committees' consider applications for benefits including supervised leave and Sunday leave (*salida controlada* and *salida dominical*), or compassionate leave to attend family funerals and the like. These benefits are in essence interruptions of or exceptions to normal prison routine, and do not directly replace or affect the length of the original sentence or any conditions appended to it. As of late March 2011, two



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of the 68 prisoners currently in jail for human rights-related offences were known to have been granted prison benefits: Luis Romo Morales, sentenced in 2007 to 5 years and a day for the kidnapping of José Cofré and Carlos Montecinos; and Odlanier Mena, sentenced in 2008 to 6 years for the homicides of Donoso Dañoibeitía, Ripoll Codoceo and Valenzuela Bastías ('Caravan of Death' case, Arica episode). A third prisoner who had been granted prison benefits (supervised leave) has since been definitively freed under Law 19856, reduction of remaining sentence on the grounds of good conduct. It may be that more of the 68 individuals currently imprisoned enjoy similar benefits, and we are continuing to research the matter.

Discussions over benefits and the application of 'humanitarian measures' or 'commutative pardons' to common prisoners sparks debate over their possible extension to individuals sentenced for human rights offences

A discussion about ways to reduce prison overcrowding in Chile saw the resurfacing of old discussions over the status of former regime agents convicted of human rights crimes. Those who still insist in considering these agents to be 'political prisoners' unjustly imprisoned have continually lobbied for the granting of benefits, amnesty, pardons or any other legal figure that would produce their immediate release. The possibility that a proposal to identify common criminals suitable for early release on humanitarian grounds might stretch to include former agents of repression was accordingly greeted with great expectation by some and equally strong concern by others. One proposal was that particularly notorious individuals such as Manuel Contreras, former head of the DINA secret police, simply be excluded by name from the measure. However, many jurists and other commentators pointed out that since the proposal took the form of a draft legislative bill rather than the existing faculty of presidential pardon, it ought not to contain this kind of specific discretionality.

Over the course of the discussion, which took place in February and March this year, the Observatory provided data to interested groups regarding the age and known state of health of a portion of those in prison for crimes against humanity. The re-reporting of this analysis some time later in a national newspaper provoked strong negative reactions from various quarters. In response, our website news section at www.icsoc.cl/observatorio-derechos-humanos contains further information supplied to us by the Ministry of Justice regarding the exact terms of the project as finally drafted. We take the opportunity to reaffirm our conviction that it is essential for human rights defenders and the general public to take an active part in debating and 'modelling' proposals for new legislation, in order to generate a fuller prior appreciation of the consequences of the various alternatives. This in turn allows interested parties to make representations and carry out informed lobbying of policymakers. We invite all relevant actors to continue to pay attention to this issue, since the Ministry of Justice itself stated that the option not to include the age and health-related parameters that might have incorporated human rights prisoners had been discarded only 'for the present', suggesting that the issue of the correct treatment of elderly or terminally ill prisoners remained to be resolved. Several of those in prison for human rights offences already fall into one or other of these categories, and over time a higher proportion will do so.

The Observatory's view, as reflected above in the discussion of effective serving of sentences, is that there are weighty moral, sociopolitical and legal reasons for



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considering that the particular seriousness that international law and human conscience affords to crimes against humanity makes it essential for them to be the object of mandatory, effective criminal prosecution followed by the application of proportionate sentences that are fully enforced.

New complaints reopen debate over the cause of death of former president Salvador Allende

The 726 new complaints activated by an Appeals Court prosecutor for victims of disappearance and politically motivated executions included one in the name of former socialist president Salvador Allende, who died in the presidential palace on the day of the violent September 1973 military coup. The presiding magistrate has already ordered a re-working of the original autopsy and has interviewed medic Patricio Guijón, a witness who was with Allende in the palace on the day in question. The investigation has reopened old doubts as to whether Allende's death was in fact suicide or homicide. Chile's Interior Ministry is acting in the case directly rather than through its Human Rights Programme. The latter would be more usual in human rights related cases since the Programme is specifically mandated to assist in the location of remains and the uncovering of the truth about the fate of victims of political execution and/or disappearance. Sources within the Programme nonetheless considered that Allende's case presently falls outside their mandate, this in spite of the fact that the former president does appear in the victim register drawn up by Chile's first official truth commission (the Rettig Commission) in 1990/91. In any event, Allende's daughter Isabel, currently a Socialist Party senator, met with the Minister of the Interior in mid March and declared herself satisfied with the 'excellent' disposition shown by the authorities to collaborate with judicial investigations into her father's death.

Chilean state associates itself to criminal complaint over death of former minister José Tohá

Chile's Consejo de Defensa del Estado, CDE, an official body charged with representing the state's legal interests, decided in early April to associate itself to the criminal case over the 1974 death of José Tohá. Allende's former cabinet minister died in a military hospital six months after the coup, in extremely poor physical condition after having been confined together with most of the high command of the deposed Unidad Popular government in the Dawson Island concentration camp in the extreme south of the country. Despite the fact that the death was officially classed as a suicide, an autopsy carried out at the time and fresh details uncovered by the current judicial investigation all suggest that Tohá's death was intentionally provoked. The involvement of the CDE in the case, a sign that the state considers its interests to be at stake, is a step which has become less frequent in human rights cases in recent years, in order to avoid overlap or contradiction with the activities of the Interior Ministry Human Rights Programme. The Programme has been party to the Tohá case since 2010, when the medic who had carried out the original 1974 autopsy gave new testimony before a judge incriminating notorious former DINA agents Marcelo Moren Brito and Eduardo Iturriaga Neumann. Both are currently in



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prison for crimes against humanity. The present Tohá case is being investigated by judge Cepeda, with Tohá's family represented by well known human rights lawyer Nelson Caucoto.

CDE reaches a settlement with the family of teacher Jecar Neghme Cornejo, executed for political motives in 1973

The Consejo de Defensa del Estado, in representation of the Chilean state, has agreed to pay financial compensation to the family of Jecar Neghme Cornejo, whose son and namesake Jecar Neghme Cristi was also later assassinated by state agents in one of the last and most notorious political murders committed before the beginning of the transition in 1990. The particular role of the CDE in providing legal representation on behalf of the state's legal interests has placed it in an increasingly contradictory position over recent human rights cases which include a civil demand component alongside requests for criminal prosecution. This is because the CDE, despite often acting on behalf of the prosecution case against individual suspects, defends state coffers in civil cases arguing that the state has no liability for the consequences of its implementation of a systematic terror strategy during the 1973-90 dictatorship. Around the same time as the settlement was agreed, the daughters of murdered couple Carlos Prats and Sofía Cuthbert announced that they would be bringing a civil suit against the Chilean state. The double homicide, committed in Buenos Aires in 1974, has already given rise to criminal investigations culminating in prosecution in both Argentina and Chile.

OTHER NEWS FROM CHILE

Lead pastor of the Methodist Pentecostal Church in Chile was an agent of the intelligence services during the dictatorship

In early April, press and other sources denounced the past involvement of Robert López Rojas, former Chilean navy officer and actual president of the country's Methodist Pentecostal Church with the National Intelligence Centre (Centro Nacional de Inteligencia, CNI). The CNI was the agency which replaced the feared DINA secret police on the latter's dissolution in the late 1970s. According to press agency EFE, which broke the story, far from proving evasive or apologetic López confirmed that he had been a CNI agent since 1979 and declared himself "proud" of his role there. He also denied any involvement in illegal activity, and it seems to be true that he has never been under formal investigation for human rights-related offences. Nevertheless in 1985, the same year that he was appointed a pastor, López was arrested and questioned while photographing judge Carlos Cerda leaving the San Miguel prison buildings. The judge, one of few valiant magistrates who pushed ahead with human rights investigations during the dictatorship and was disciplined and threatened as a result, was in the middle of investigating two disappearances at the time of the incident.

After the arrest the Army is supposed to have informed judicial authorities that López had been assigned to 'protect' a junior officer implicated and later charged in the



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case. The president of Chile's council of evangelical churches (Mesa Ampliada de Iglesias Evangélica), which brings together pastors of various churches who hold the same leadership responsibilities as López in his, played the issue down. He insisted that any role López might have played in the repressive apparatus of the CNI "is completely irrelevant as far as his relation to the Church is concerned".

Judge Victor Montiglio dies after a short illness

Judge Victor Montiglio, a respected and meticulous investigator who oversaw various human rights cases, died in early April after having been diagnosed with a serious illness in the middle of last year. In spite of his illness Montiglio returned from sick leave soon after his initial diagnosis to continue major investigations including the Operation Colombo case, in which he was investigating the final destiny of around 53 of the 119 victims of this well known montage operation. Despite his continuing belief that the 1978 amnesty law should be applied to cases of this kind, Montiglio's consummate professionalism and investigative skills earned him the respect of human rights lawyers and relatives and also led him to be one of the judges who had brought most formal sets of charges against suspects in human rights crimes. Judge Ana Gloria Chevesich took over Montiglio's cases on an interim basis a few days after his decease, ordering the immediate closure of the investigative phase of many of them. Although this measure paves the way for the bringing of more sets of formal charges, it was considered premature by sources close to some of the relevant cases, who consider that investigative steps left pending will render the cases weaker than necessary in the quality and quantity of evidence that can be relied upon in the sentencing phase.

Suggestions of Allende's removal from the itinerary of official guided tours of the government palace denied

In March 2011 the Chilean edition of the news and comment magazine Le Monde Diplomatique reported that the now traditional public tours offered to tourists who want to see the inside of Santiago's presidential palace, La Moneda, no longer make any reference to the sites most directly associated with former president Salvador Allende, who died in La Moneda on the day of the military coup on 11 September 1973. At least since 2003, the itinerary of the tour usually took in rooms adjacent to the palace entrance known as 'Morandé 80', traditionally used as the president's private ingress and egress and which had been obliterated by Pinochet on rebuilding since it was too closely associated with the iconic former president. But in 2003 the entrance was restored as part of commemorations to mark the 30th coup anniversary, presided over by then-president Ricardo Lagos. From that date on, both the door and a statue of Allende which stands close by became the natural focus of popular commemorations and left-wing political demonstrations. The guided tours of the palace interior never included the statue itself, which is located in a public square outside the building's perimeter. However they did generally include a visit to a mezzanine level stair landing near to the site of Allende's death, marked by a bronze reproduction of the official commemorative coin minted for his inauguration.



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Víctor Hugo de la Fuente, editor of *Le Monde Diplomatique's* Chilean edition, accompanied journalist colleagues from overseas on the tour in March 2011 and declared himself struck by the absence of these sites, visited on previous occasions, from the more recent itinerary. An enquiry by the paper to palace employees produced the explanation that changes to the itinerary made during closure for post-earthquake repairs were intended solely to improve compatibility between the visits and the operating requirements of the building, which is still the working presidential office. The sources denied that the changes had been influenced by political considerations.

Pinochet's former Defence Minister dies at the age of 99

César Benavides Escobar, close collaborator of former Chilean dictator Augusto Pinochet on and since the day of the 1973 coup, died in late March 2011 at the age of 99. Benavides was Minister of the Interior between 1974 and 1978, and Defence Minister between 1978 and 1980. In connection with both of these posts he was included by Spanish judge Baltazar Garzón in a list drawn up in the late 1990s of 'persons of interest' for international or third country investigations of crimes against humanity committed in Latin America's Southern Cone.

NEWS FROM THE REST OF THE REGION

Argentina

New case information available online

Observatory partner and leading human rights NGO the Centro de Estudios Sociales y Legales (CELS-Argentina) has developed a new graphics section on its website allowing access to greater levels of detail about significant human rights case developments in Argentina. CELS, like the Observatory, closely follows the national case universe via judicial and press sources. Unlike the Observatory, CELS also plays a direct role in national cases through its substantial public interest litigation programme and its historic trajectory as one of the most important human rights defence organisations to emerge during the 1976-83 Argentine dictatorship. CELS's present day research capacity has enabled ongoing exchanges over methodology and data production between project partners in Argentina, Chile, Peru and Uruguay which we hope to expand over the course of 2011.

See www.cels.org.ar/wpblogs/estadisticas for details of current cases and suspects in Argentina, broken down by region and over time since 2007, after a significant number of cases had been (re)opened due to the annulment of Argentina's amnesty provisions. Feel free to contact CELS at comunicaciones@cels.org.ar with queries or comments about this new presentation of data. We also invite readers to comment on the new Chile case graphics available on the Observatory's redesigned website (see below for http reference).

Three important case verdicts delivered in early 2011

The first few months of 2011 saw the end of the oral (final) phase of three trials for crimes against humanity in Argentina. This brings the total of cases fully concluded since the major 2005 case reopening to 44.

The most recent of the three 2011 verdicts, on 31 March, produced guilty verdicts against one former army officer and three former agents of the national intelligence service (Secretaría de Inteligencia del Estado, SIDE). The case, dealing with events at the Automotores Orletti clandestine detention centre, was seen by the Tribunal Oral Federal nº 1 court in Buenos Aires, and was presided over by judges Adrián Federico Grünberg, Oscar



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Amirante and Jorge Humberto Gettas. The former intelligence agents convicted were Raúl Antonio Guglielminetti (20 years' imprisonment), Eduardo Ruffo and Honorio Martínez Ruiz (25 years each), and the former army officer, retired section general (General de División) Eduardo Cabanillas received a life sentence. One retired air commodore, Néstor Guillamondegui, had the case against him dismissed for health reasons and another suspect, former colonel Rubén Víctor Visuara, died during the course of the investigation. The NGO CELS was a complainant in the cause, in representation of victims' relatives Marcelo Gelman, María Claudia Irureta Goyena and Guillermo Binstock. The case is the first in the post-2005 period to deal with crimes committed by Argentine and Uruguayan security services acting in collusion under the Plan Condor Southern Cone repressive network. The Automotores Orletti torture and detention centre operated during 1976 in a mechanics' workshop in the Floresta district of the Argentine capital Buenos Aires, under the command of General Otto Paladin, then-director of SIDE. Over 300 illegally detained people passed through Orletti, amongst them a group of Uruguayan citizens who were kidnapped in an extortion plot to obtain a US\$10 million dollar bounty that was divided up between the intelligence service and the squadron assigned to carry out the operation.

On 23 March Luciano Benjamín Menéndez former commander of the Third Army Corps, received his sixth sentence for human rights related crimes. A court in the Tucumán province, presided over by judges Carlos Jiménez Montilla, Gabriel Eduardo Casas and José María Pérez Villalobo, sentenced both Menéndez and an accomplice, former police officer Roberto Heriberto Albornoz, to life imprisonment. The case investigated a multiple assassination, carried out in a joint military and police operation, of five Montonero activists: María Alejandra Niklison, Fernando Saavedra Lamas, Juan Carlos Meneses, Atilio Brandsen and Eduardo Gonzalez Paz.

In February 2011 former colonel Fortunato Valentín Rezett was sentenced to life by a court in the city of Mar del Plata for the aggravated homicide of Ana Lía Delfina Magliaro. The court also revoked the benefit of house arrest previously conceded to the accused and ordered his immediate transfer to a regular civilian prison. Case judges Roberto Atilio Falcone, Mario Alberto Portela and Martín Bava declared in their verdict that the murder constituted "a crime against humanity committed in the context of the genocide that was carried out in this country during the most recent civil-military dictatorship".

Brazil

In mid-February 2011, the São Paulo state police opened a special unit dedicated to the identification of human remains thought to belong to victims of forced disappearance carried out during the 1964 to 1985 military regime. The unit draws on expertise from the state's Forensic Medical Institute (Instituto Medico Legal), and its first task will be to analyse as yet unidentified remains recovered from the city's Formosa and Perus cemeteries. The initiative came about via a judicial order issued during the investigation of a complaint submitted by relatives of Sérgio Corrêa, disappeared activist of the left-wing Ação Libertadora Nacional (ALN) group. It is believed that the search may also throw light on the fate of Corrêa's fellow activist Virgílio Gomes da Silva, also disappeared. The new unit will allow the São Paulo police to carry out their own forensic testing rather than having to rely on facilities located in the nation's capital, Brasilia.

Guatemala

Developments in early April offered reasons for optimism that anti-impunity efforts in Guatemala may finally be reaching to the higher ranks of former repressive structures. On 8 April the arrest of Jorge Alberto Gómez was announced. Gómez is accused of intellectual authorship of the 1984 forced disappearance of Fernando García. At the time, the accused was the head of the Joint Operations Centre (Centro de Operaciones Conjuntas, COC), whose



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function was to coordinate repressive actions carried out by the national police and the army during Guatemala's dirty war. Gómez was later made commander of the fourth national police corps, which has also been linked to human rights crimes. Two other men, Gómez's subordinates, have already been tried and sentenced for the same crime, and it is believed that Gómez was the officer who gave the order. This case is one of the first tangible results of the recent discovery and opening of a hidden National Police archive documenting repression (see previous bulletins).

Perú

Ollanta Humala and the disappeared of Alto Huallaga

Accusations of involvement in crimes against humanity have dogged former military man and flamboyant nationalist presidential candidate Ollanta Humala ever since his time as commander of a military base in Peru's Alto Huallaga region in the early 1990s. Humala is now head to head with the daughter of disgraced former president Alberto Fujimori in the race for Peru's presidency, to be resolved in a second round runoff on 5 June. But in 2006 Peru's national human rights umbrella group the Coordinadora Nacional de DDHH published a detailed report of over 3,700 disappearances in the area around the 'Madre Mía' military base. Its military commander, known by the nickname 'Captain González', was accused of direct involvement in torture, disappearances and assassinations. Many witnesses and experts are convinced that 'Captain González' and Humala are one and the same person, and according to some versions Humala may even have been held under house arrest in the recent past due to state prosecutors and/or judges sharing this belief.

During Peru's 20 years of acute political violence, which cost around 70,000 lives between 1980 and 2000, it was common for members of the security forces to operate under assumed names in the dirty war unleashed against Shining Path guerrillas and civilian populations in rural areas. Experts agree that the *nom de guerre* system was so institutionalised that the Peruvian army and/or Ministry of Defence almost certainly hold central records that would allow the definitive identification of Captain González and thousands of other potential suspects. Both institutions have however refused to cooperate with the justice system. This refusal has become the principal obstacle to overcoming impunity in Peru, and it may have proved to be the making of Ollanta Humala.

In February 2011, just two months before the (first round) presidential elections, in which Humala was competing for the second time, the state prosecutor's office of San Martín province decided to suspend (archivar) the reopening of a case in which Humala figured as a potential suspect. At the same time, a close collaborator of Humala's is currently on trial for having bribed witnesses to retract their previous testimonies in the same case – over the crimes committed at the Madre Mía military base. The question mark over Humala's repressive past might come back to haunt him in future, as a recent Constitutional Tribunal verdict upheld the international legal principle that crimes against humanity, since they are not subject to statutes of limitation, can be prosecuted by national courts irrespective of whether they took place before or after Peru's 2003 signature of a specific convention on the matter. However, much will ride on the end result of the upcoming second round of voting. Prospects are bleak since Humala's rival, Keiko Fujimori, has her own weighty reasons to reject any notion of vigorous prosecution of human rights violations: her father is currently in prison on precisely these charges. These are lean times for justice prospects in Peru.

Anniversary of historic guilty verdict against former president Alberto Fujimori for crimes against humanity

7 April 2011 saw the second anniversary of the guilty verdict and 25 year sentence handed down to former autocrat Alberto Fujimori by a special criminal court (the Sala Penal Especial)



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for serious human rights violations committed during his 1990-2000 rule. The sentence was confirmed by the Supreme Court at the end of the same year, 2009, marking a significant step forward in the struggle against impunity worldwide. The anniversary was marked by Peruvian NGO the Instituto de Defensa Legal (IDL) with the publication of a book compiling reflections from national and international experts on the significance of the case. The volume, product of an international conference co-organised by IDL and George Mason university, USA, can be downloaded free of charge at http://www.idl.org.pe/webpanel/informes/100417file_Libro%20conferencia%20Fuji.pdf

Renewed efforts to try Alberto Fujimori

On 15 March Peru sent an official request to the Chilean Supreme Court which, if granted, would allow former president Alberto Fujimori to be tried on fresh additional charges. The request is thought to have been prepared by Peru's Supreme Court and approved by its government in February of this year. The crimes for which broadening of the initial extradition warrant are being requested include misuse of public funds and fraud.

Elections and pardons

On 6 March current Peruvian president Alan García raised the question of a possible presidential pardon for former autocrat Alberto Fujimori if the latter's state of health were to worsen. National human rights ombudsperson Beatriz Merino did not directly criticise the measure on legal grounds, merely observing that Garcia's mention of a possible referendum to legitimise the measure did not seem to make sense according to constitutional provisions whereby pardons are an exclusive discretionary faculty of the president of the day. Human rights lawyers however suggested a double impediment to the measure, since in their view existing Peruvian legislation prohibits the concession of pardons to criminals convicted of kidnap while international law does the same for those convicted of crimes against humanity. Various first round presidential candidates expressed support for pardoning Fujimori if he were confirmed to be suffering from a terminal illness. These of course included Fujimori's daughter Keiko, who in the event emerged from the 10 April round of voting as one of the two candidates who will now compete for the presidency. Víctor Robles, congressional candidate for the Fuerza 2011 party, declared himself in favour of a law to amnesty all 'remorseful' "terrorists" [Shining Path and other armed left wing militants] as well as military personnel. Robles added that although "authoritarian excesses" may have been committed in the early phase of Fujimorismo, in the early 1990s, with Keiko Fujimori in the presidency there would be no chance of a recurrence.

In an opinion survey carried out by the Observatory's partner project Human Rights Trials in Peru, directed by Dr Jo Marie Burt, 63% of respondents declared themselves against a possible pardon, with 35% in favour. In a separate attempt to win release, Fujimori presented a series of habeas corpus writs to Peru's Constitutional Tribunal, which chose to reserve its verdict until after the current electoral cycle.

Peru's Constitutional Tribunal confirms unconstitutionality of 'amnesty by stealth'

On 21 March the Constitutional Tribunal published a ruling in response to a request by a group of legislators to review the legality of Decree Law 1097 [see previous bulletins for details of the legislation]. The resolution confirmed the illegal nature of various articles of the law, brought in by executive decree on September 2010 but which has already had to be revoked owing to national and international protests over its effect in guaranteeing impunity to members of the armed forces and police accused of human rights violations. The Tribunal's verdict also reaffirmed that such crimes cannot be subject to statutes of limitation, another important aspect of current debates.



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According to Yván Montoya, law professor at Peru's Catholic University, the Tribunal found the statute of limitation exception to apply irrespective of whether the crime took place before or after 2003, the year in which Peru signed a specific Convention explicitly agreeing to respect the inapplicability statutes of limitation for human rights violations.

The ruling also upheld use of the principle of inapplicability whether or not it has been established that the relevant court also has full authority to classify the offences at issue as crimes against humanity. This part of the ruling ought to prevent retrospective questioning of the Fujimori case judges' definition of the Barrios Altos and La Cantuta massacres as crimes against humanity. For further commentary on the Tribunal's verdict, see <http://www.justiciaviva.org.pe/notihome/notihome01.php?noti=504> (Spanish only)

High ranking Shining Path militant may be in line for parole

Peru's national penal institute (the Instituto Nacional Penitenciario, INPE) is believed to have reached a favourable conclusion with regard to a request for conditional release (liberación condicional) from Osmán Morote Barrionuevo, considered number 2 in the Shining Path command structure and who has been in prison since being captured in 1987. The report considers Morote's behaviour and work record while serving time at various prison facilities around the country. The final decision on the request however falls to whoever is selected to take over from the original case judge, who is about to retire.

First ever charges for rape in the context of Peru's political violence

Former general Luis Pérez Documet and eight other military officers have been charged with kidnap, rape and other acts of torture committed in 1992 against a university student who became pregnant and gave birth to a daughter as a result. The crimes were carried out by members of a Special Forces Division (División de Fuerzas Especiales, DIFE) in the La Cantuta university district.

Accomarca case hearings take place in prison

We have reported in previous bulletins on the beginning of hearings in the Accomarca case, which deals with the massacre of 69 peasant farmers by soldiers in 1985, within days of the inauguration of current president Alan García for his first term (1985-1990). Case hearings are currently being held in the Lurigancho jail, where two of the 29 formal suspects in the case are already imprisoned for corruption offences. Of the remaining 27 suspects 26 have been granted bail while one more, Telmo Hurtado, is undergoing extradition proceedings in the US. If his pending final appeal is denied, Hurtado should be returned to Peru by the end of the year.

Uruguay

A tendency on the part of current Uruguayan political authorities to lag behind their judicial counterparts on the question of overcoming impunity for past human rights crimes surfaced once again in March 2011 before being partially reversed in early April. On 13 April a extremely narrow Senate vote (16 to 15) effectively revoked the consequences of the amnesty law that protects former members of the armed forces from prosecution for crimes against humanity. The draft bill will now go to the lower house, where the governing Frente Amplio coalition that sponsored it has an equally slender majority (holding 50 of 99 seats). The measure is however far from certain to be passed, as the Frente Amplio is divided on the issue despite its centre-left identity and the fact that various of its leaders spent time in the dictatorship's prison cells and torture facilities during the 1970s and 80s.

Current Uruguayan president José Mujica, former guerrilla activist and political prisoner, is one of those who has to date shown a notable lack of enthusiasm for angering the armed forces with bold anti-impunity measures. After a series of cautiously progressive decisions by



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the Supreme Court, which has to all intents and purposes declared the amnesty law to be unconstitutional on three separate occasions, Mujica poured cold water on attempts by human rights organisations to lobby his own Frente Amplio legislators in favour of the drafting of the current bill. Instead, in February this year Mujica declared his intention to continue to abide by the terms of the law and to activate its controversial Article 4, which gives the president of the republic the right to determine whether or not amnesty is applicable to a given case. The article is widely regarded as violating the principles of separation of powers and judicial autonomy. Mujica nonetheless called on the country to "learn to live with the past", a conciliatory message clearly aimed at past and present military officers, who have made their displeasure over the recent charging of suspects clear, even going so far as to issue open threats (see previous bulletin).

Despite these worrying signals, relatives and human rights organisations continue to explore new avenues in the judicialisation of human rights crimes before the national courts. At the beginning of March 2011 a complaint was registered against health professionals who actively collaborated with crimes of repression. In this first case, a doctor and a psychologist were accused of responsibility for the induced 1978 suicide of Communist Party activist and political prisoner Norma Cedrés de Ibarburu. Her suicide came after three years of imprisonment accompanied by systematic and repeated psychological torture, intended to cause the catastrophic and irrevocable deterioration of her mental health. Uruguay is one of the countries which particularly opted to use extensive and longlasting imprisonment and torture in preference to immediate physical elimination of political opponents. The active participation of medical professionals in this practice was publicly highlighted for the first time in late 2010, with a street-based action ('outing' or *escrache*) against Marcelino Dolbey and Martin Gutiérrez, a psychologist and psychiatrist who many survivors have identified as responsible for the psychological torture they suffered. The recent complaint, the first to channel these facts into judicial actions, is represented by human rights lawyer and Observatory partner Pilar Elhordoy.

Sources for this month's bulletin include:

Press reports; the Human Rights Programme of Chile's Ministry of the Interior and Public Security; the Chilean prison service; judicial sources; CELS Argentina; the AFDD and AFEP; Uruguayan lawyer Pilar Elhordoy; Uruguayan photojournalist Martha Passegui; academic Jo Marie Burt; academic and lawyer Naomi Roht-Arriaza; Guatemala's Grupo de Apoyo Mutuo; Peruvian NGOs and human rights lawyers and the daily Spanish-language news bulletins of the International Center for Transitional Justice, ICTJ.

(Contact comunicaciones@ictjcolombia.org for more information or to sign up).

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

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