

# CHILE

## @Pisagua: reopening of investigations into the identity of human remains recovered from a clandestine grave

Since the government of President Patricio Aylwin took office in March 1990, scores of bodies of victims of human rights violations, killed by members of the security forces during the former government, have been discovered in Chile. The remains have been found in single or mass graves, in cemeteries or in the countryside, where they had been illegally, and often secretly, buried by members of the armed forces.

One of the most striking of such discoveries was that of a clandestine mass grave outside the cemetery of the small northern sea-port of Pisagua, where 19 bodies and the remains of at least one other person, reportedly corresponding to former prisoners of a local military detention centre, were discovered in June 1990. The investigations were closed on the basis of the 1978 Amnesty Law by a military court in March 1991, before all the remains could be identified. An appeal, calling for the investigations to proceed until all remains could be identified, was upheld in January 1992 by a Military Appeals Court, which ordered the completion of the corresponding forensic investigations.

Human rights organizations such as the *Vicaría de la Solidaridad*, Vicariate of Solidarity, and the local *Comisión Chilena de Derechos Humanos*, Chilean Human Rights Commission, had gathered information about reports of 22 people who had been executed and of 19 who had "disappeared" in the Pisagua region following the 1973 coup. It was in that town where the army had established the *Centro de Detención de Pisagua*, a detention centre where scores of members and sympathizers of the deposed government of President Salvador Allende were transferred to after the 11 September 1973 military coup. Many of the prisoners had presented themselves voluntarily to the local military authorities, unaware of what they would be arrested.

According to reports, prisoners in the *Centro de Detención* suffered systematic torture, as a result of which at least one, Isaías Higuera Zuñiga, died. At least 29 prisoners of the centre were summarily executed, after being sentenced to death by *Consejos de Guerra*, war councils. The composition and procedure of those councils drastically reduced or even eliminated the rights and guarantees which should have protected the accused. They were extensively used in Chile in the years immediately after the 1973 coup, in many cases resulting in the summary execution of people who had been identified as sympathizers of the previous government. Other prisoners of the Pisagua detention centre were killed in circumstances indicating illegal and extrajudicial executions. The military could never prove

their claim that some of these prisoners had been killed during shootouts or while trying to escape, while others had died in accidents. At least eight people "disappeared" in the detention centre "disappeared". The bodies of those killed were only rarely returned to their relatives, and, in most cases, the whereabouts of the bodies remained unknown to the bewildered families.

November 1973: prisoners in the Pisagua detention centre suffered systematic torture and a number were arbitrarily executed. The remains of at least 20 people were discovered in a mass grave in June 1990.

### **The opening of the investigations:**

Following the testimony of a former prisoner who revealed the site of a clandestine burial ground outside Pisagua's cemetery, close to the former detention centre, Héctor Salazar, a lawyer of the Vicariate of Solidarity, presented a legal complaint about "illegal burials" in the area. The complaint was presented on 31 May 1990 before the *Juzgado de Letras de Pozo Almonte*, a local civilian court and made no mention of alleged human rights violations. The complaint was thus a legal "loop-hole" to the 1978 Amnesty Law, whereby cases of human rights violations committed before April 1978 - the date the law was enacted - should be transferred to military jurisdiction, and "amnestied" or closed, regardless of the stage of the judicial investigations. Hundreds of cases of human rights abuses have been closed by military courts on the basis of this law, before and after March 1990, and such rulings have been consistently upheld by the Supreme Court.

Nelson Muñoz, the civilian judge in charge of the Pisagua case, opened an investigation into the complaint. On 2 June 1990 he called local archaeologists and forensic experts from the *Instituto Médico Legal de Iquique*, Iquique's Institute of Forensic Medicine, to carry out the excavation and to help in the recovery and identification of the bodies. The archaeologists, following proper guidelines for the preservation of forensic evidence, discovered the remains of at least twenty people, including 19 bodies, in a deep, unmarked mass grave. Most of the bodies found were preserved nearly intact as a consequence of the extreme dryness of the Atacama desert: many still wore blindfolds and had their hands tied behind their backs. Bullet wounds bore further evidence to the cause and manner of death of the victims. The bodies were individualized using several methods for their adequate identification, based on matching pre and post-mortem information such as dental charts from those missing with those obtained from their bodies. In addition to the 19 bodies, the archaeologists recovered a bag containing human remains belonging to at least one, and possibly up to three individuals.

The findings received wide publicity despite efforts of lawyers and relatives to keep a low profile of the case in the media, in order to prevent the military courts from reclaiming jurisdiction. Gripping photographs of the bodies of the victims appeared on the front pages of newspapers, confronting the public with the grim reality of past human rights violations. On 6 June 1990, the Supreme Court ordered a *Ministro en Visita*, a Special Investigating Judge, to take over the investigations into the findings in Pisagua.

An illegal mass grave containing the remains of at least 20 people was discovered outside the cemetery of Pisagua in June 1990. The body in the second photograph belonged to a young man who was still blindfolded and had his hands tied behind his back. He died from multiple gunshot wounds.

Special Investigating Judges are members of Courts of Appeal who are appointed by the Supreme Court of First Instance in order to investigate exceptional cases, such as crimes which have caused public alarm. Initial fears that the Special Judge Hernán Sánchez Marré, a member of the Appeals Court of the town of Arica, would curtail the investigations proved unfounded. He ordered these to continue and promised "...to investigate the case to the end" ("*...investigar el caso hasta el final*"). On 8 June 1990 he publicly announced that 19 human bodies and an additional bag containing human remains had been recovered from the clandestine grave. In the days that followed all 19 bodies were positively identified as belonging to former prisoners of Pisagua's detention centre. The unidentified remains found in the bag continue under forensic examinations.

Relatives of the prisoners who "disappeared" in Pisagua looking at the excavations at the graveside in June 1990.

### **The Victims:**

The Pisagua victims were among dozens of other cases of gross human rights violations documented in the region by local human rights monitors. Such reports were later confirmed by the *Comisión Nacional de Verdad y Reconciliación*(CNVR), the National Commission for Truth and Reconciliation, which was set up by the present administration in April 1990 to document gross human rights abuses committed in Chile during the military government. The Commission's report, which was published in March 1991, documented 957 cases of "disappearances" and 1068 cases of other abuses such as deaths under torture and summary executions.

In its report the Commission concluded that the former detention centre in Pisagua had been the most important of those established by the military in the northern region of Tarapacá, where it documented 35 cases of gross human rights violations which occurred during the months that followed the 1973 coup. The Commission also concluded that detainees were systematically tortured in the Pisagua detention centre, that several had been summarily executed or had been victims of extrajudicial executions, and that eight former prisoners of the centre had "disappeared" while under military custody.

The following are the cases of the victims whose bodies were found in the mass grave in Pisagua and whose identities have been confirmed. The remains of at least one other victim are currently under forensic investigation for their identification.

**Juan Calderón Villalón**, a Customs official and member of the Socialist Party during the government of President Salvador Allende, was detained in the town of Valparaíso following the September 1973 coup and transferred to the Pisagua detention centre. **Marcelo Omar Guzmán Fuentes**, a member of the Socialist Party, health worker and director of the public Hospital of the northern town of Iquique, presented himself voluntarily to the local army garrison (*Regimiento de Telecomunicaciones No.6*) after the coup and was transferred in detention to Pisagua. **Luis Alberto Lizardi Lizardi**, a member of the Socialist Party, was detained in Pisagua on 11 September 1973 and transferred to the detention centre.

According to reports which appeared in the local press in October 1973, the above mentioned victims were among a group of six "extremists" who had been killed in the Pisagua detention centre while trying to escape. Although the killings were acknowledged by the authorities, they failed to return the bodies to their relatives or inform them where they had been buried. The whereabouts of the bodies of three other victims, **Norberto Jesús Cañas Cañas**, **Juan Jiménez Vidal** and **Michel Selim Nash Sáez** remain unknown. In its report, the CNVR considered that the official version of the killings was highly improbable, given that some of the victims were in such a bad physical condition, as a result of torture, as to render their escape impossible. Furthermore, witnesses interviewed by the CNVR said that on the

day of their killing the six detainees had been called by the commander in charge, and then transferred to an unknown destination. The Commission concluded that they had been victims of gross human rights violations in the hands of state agents. The findings of the bodies of three of them in the mass grave, with signs of having died in an execution style killing, confirmed the reports of the witnesses.

**Nelson José Márquez Augusto**, a member of the Communist Party, was detained in Iquique in September 1973 and transferred to Pisagua where, according to several witnesses, he was extra-judicially executed on 18 January 1974. The whereabouts of his body remained unknown until found in the mass grave.

**Orlando Tomás Cabello Cabello, Nicolás Chañez Chañez, Juan Mamani García, Luis Aníbal Manríquez Wilden, Hugo Tomás Martínez Guillén, Juan Rojas Osega** were detained in Iquique by *Carabineros*, uniformed police, in November 1973, under charges of drug trafficking and merchandise smuggling. They were never brought before a judge. Instead, they were transferred to the Pisagua detention centre, from where they "disappeared" on 29 January 1974. In February 1974 the army officially announced that they had been released free of charges, but their whereabouts remained unknown. Their bodies were found in the clandestine grave, their hands tied behind their backs and with other signs of an execution-style killing.

**Julio Cabezas Gacitúa**, a state attorney for Iquique at the time of his detention in September 1974, presented himself voluntarily to the local army garrison in Iquique, where he remained in detention; **José Córdova Croaxato**, administrator of the local state seafarer company and member of *Movimiento de Acción Popular Unitaria*(MAPU), Popular Movement of Unitary Action, was detained at his workplace in Iquique on 11 September 1973; **Humberto Lizardi Flores**, professor at the local university and member of the *Movimiento de Izquierda Revolucionaria*(MIR), Leftist Revolutionary Movement, was detained in Iquique on 11 September 1973; **Mario Morris Barrios**, a customs official, was detained in Iquique on 11 September 1973; **Juan Valencia Hinojosa**, head of the provincial *Empresa de Comercio Agrícola*, Enterprise of Agrarian Commerce in Iquique and a member of the Communist Party, presented himself voluntarily to the local army garrison, where he remained in detention. The five detainees were transferred in September to the Pisagua detention centre, where they were summarily executed in October 1973. On that month, the army announced that a war council held on 11 October in the detention centre, had found them guilty of "**...traición a la patria y espionaje**" ("...treason against the fatherland and spying"), and had sentenced them to death, adding that the detainees had been executed accordingly. The CNVR concluded in its report that, based on the testimonies of several witnesses and on the fact that the corresponding files did not exist, the 11 October 1973 war council had never taken place, and that the victims had been extrajudicially executed. The whereabouts of their bodies remained unknown until found in the Pisagua clandestine grave.

**Germán Eladio Palominos Lamas**, a member of the Socialist Party, was detained on 23 September 1973 in Iquique and transferred to the Pisagua detention centre. He was sentenced to death by a war council held in the centre on 29 November 1973, and summarily executed in the same month. Although the army had announced that Germán Palominos had been buried in the Pisagua cemetery, the whereabouts of his body remained unknown until found in the Pisagua clandestine grave. The CNVR concluded in its report that he had been illegally executed.

**Alberto Yáñez Carvajal**, a former prison official in Iquique, suspended after the September 1973 coup and a member of the Communist Party, was detained in Iquique on 5 January 1974 and transferred to the Pisagua detention centre that same month; **Luis Toro Castillo**, an employee of the national railway company in Iquique and a member of the Communist Party, was detained at his workplace on 1 October 1973 and transferred to Pisagua. Both detainees were sentenced to death by a war council held in the detention centre on 10 February 1974, and summarily executed. The CNVR concluded in its report that both detainees had been victims of illegal executions.

**Manuel Sanhueza Mellado**, a leader of the *Juventudes Comunistas*, communist youth, in Arica, where he was detained on 10 July 1974, was initially transferred to the local army garrison before being allegedly transferred to the Pisagua detention centre on 27 or 28 July 1974. He was never seen alive again and remained "disappeared" until his body was identified among those found in the Pisagua clandestine grave. In October 1974 the army claimed that he had died in an "accident" during a fishing expedition to collect food for the detention centre and that his body had disappeared in the ocean. According to multiple testimonies, all the above mentioned had suffered brutal physical and psychological torture during their arrest in the detention centre.

On 16 June 1990, Enrique Troncoso, the bishop of Iquique, celebrated a mass in memory of fourteen victims who had been found in the Pisagua grave and whose bodies had already been identified. After the mass, the coffins were transferred to the local cemetery by the relatives, in a two-hour march joined by a huge crowd. In the days that followed, the bodies of **Luis Alberto Lizardi Lizardi**, **Alberto Yáñez Carvajal**, **Juan Mamani García**, **Marcelo Guzmán Fuentes** and **Manuel Sanhueza Mellado** were positively identified and returned to their relatives.

The relatives of the victims discovered in Pisagua had to wait more than 16 years to mourn their loved ones. Shown here are the relatives of one of the victims during the funeral wake held in the cathedral in Iquique in June 1990.

#### **The closure of the investigations and latest developments :**

During the following weeks, the Special Investigating Judge requested information from the military courts about the *Consejos de Guerra*, War Councils, which had reportedly taken place in Pisagua and as a result of which eight of the victims identified in the clandestine grave had been summarily executed. The Arica sixth military court informed the judge that the information was unavailable, alleging that the files had been destroyed during a terrorist attack on the military installations in November 1989. Furthermore, on the basis that military personnel had been involved in the killings, the military court issued a *contienda de competencia*, or demand for jurisdiction over the case. When the Special Judge refused to transfer the case, the military court, presented a demand to the Supreme Court.

In November 1990, the Supreme Court ruled in favour of handing the case to military jurisdiction. The investigations were stopped, despite the fact that forensic investigations into the remains found in the bag recovered from the mass grave had not been completed. In March 1990, the Arica sixth military court ordered the definite closure of the case on the basis of the 1978 Amnesty Law. The lawyers in charge of the case appealed this decision before the *Corte Marcial*, Military Appeals Court. Alleging procedural and humanitarian reasons, they requested that the investigations be reopened in order to complete the identification of all the remains recovered from the grave.

In January 1992, the Military Appeals Court ordered the completion of the forensic investigation into the Pisagua case in order to complete the identification of the unidentified human remains recovered from the mass grave, and called on the *Instituto Médico Legal*, the Institute of Forensic Medicine, in Santiago to carry out this research. Although this ruling did not affect the previous decision by the military court to apply the 1978 Amnesty Law, preventing prosecutions of those allegedly responsible in this case, the Military Appeals Court's decision was welcomed by human rights lawyers as a precedent applicable to other cases which had been similarly closed before completion of forensic investigations. At the time of writing, the results of the investigations into the remains had not been publicized.

Those responsible for the killings of the victims whose bodies were discovered in the Pisagua clandestine grave have not been brought to justice. As in most other cases of past human rights violations, they continue to benefit from impunity. The January 1992 ruling of the Military Appeals Court, ordering the completion of the forensic investigations into the Pisagua case, did not affect the initial ruling by the military court, which based on the 1978 Amnesty Law, prevents any investigation into the responsibilities for the killings. As a consequence, once the last remains are positively identified, the case will be closed for good.

#### **Amnesty International's concerns:**

Over the years Amnesty International has repeatedly called for full investigations into human rights abuses committed during the military government, and for those responsible to be brought to justice. Also, it has repeatedly voiced its opposition to the pre-convictional and self-imposed 1978 Amnesty Law and to the closure of investigations into human rights violations, before full responsibility had been established. The organization has repeatedly expressed its concerns to the current administration about the impunity benefitting the perpetrators. Although Amnesty International welcomes the decision to complete the forensic investigations into the Pisagua case, the organization remains seriously concerned at the standing decision not to proceed with any further investigations into the case. More than a year and a half after the case was opened, nobody has yet been held accountable, despite substantial evidence indicating the participation of military personnel in the gross human rights violations which have been unearthed in Pisagua.