

CHILE

Testament to suffering and courage: the long quest for justice and truth

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Part Two - Appeals Cases

CHILE

**Testament to suffering and courage:
the long quest for justice and truth** *A thousand years
of footsteps may tread this space
but the blood of those who died here will not be wiped away
and the hour of their death will not be forgotten
though 1000s of voices break the silence”*
[from a poem by Pablo Neruda]¹

1. Introduction:

The arrest of Augusto Pinochet in London in October 1998 at the request of the Spanish judge Baltasar Garzón, had given relatives of the thousands of people who died or “disappeared” in Chile following

¹ “*Aunque los pasos toquen mil años este sitio
No borrarán la sangre de los que aquí cayeron
y no se extinguirá la hora en que caísteis
aunque miles de voces crucen este silencio ...”*

The poem was used to accompany one of the drawings in a collection put together by the Association of Relatives of the “Disappeared”, AFDD, *Agrupación de Familiares de Detenidos Desaparecidos* in 1983 to illustrate their experiences. The poem appeared with a drawing of Lonquén, a disused mine where the remains of “disappeared” prisoners were found in 1979. The government refused to hand over the bodies to the relatives and the mine was later blown up.

detention renewed hope that justice might at last be possible. It had also rekindled the debate about human rights violations committed during the years of military rule and reminded the civilian government that time has not lessened the anguish of the relatives and friends of those who "disappeared" who continue to campaign for the fate of their loved ones to be clarified and for those responsible to be brought to justice.

Since January 1998, over 260 criminal complaints (*querellas*) have been submitted to investigative Judge Juan Guzmán Tapia against Augusto Pinochet and others regarding gross human rights violations committed under military rule, between 1973 and 1990. The complaints

"All these years I have had to live with hunger, poverty, exploitation and above all fear, confusion, doubt, distrust, loss and loneliness."²

²"Hambre, miseria, explotación y por sobre todo miedo, desorientación, confusión, dudas, desconfianzas, pérdidas, soledades he tenido que vivir todos estos años", said the wife of one of 15 people who "disappeared" from the small community of Liquiñe in 1973. The group, some of who were of Mapuche origin, had never presented a complaint to the courts about the "disappearance" of their loved ones. For some, it was only after the National Commission for Truth and Reconciliation began its work that they gained the courage to come forward to present their case. In 2000, during excavations carried out in Concepción, the relatives of 17 people denounced for the first time the "disappearance" of their relatives, saying that they had not come forward before because they had been too scared.

have been lodged on behalf of individuals and different sectors of society³ by relatives of people who “disappeared” following detention or who were summarily executed as well as by professional associations, trade unions and political parties. Criminal complaints have also been submitted on behalf of some of the tens of thousands of former prisoners who suffered torture at the hands of the security forces and survived their ordeal.

The two commissions, the *Comisión Nacional de Verdad y Reconciliación*, CNVR, National Commission for Truth and Reconciliation and its successor the *Corporación Nacional de Reparación y Reconciliación*, CNRR, National Corporation of Reparation and Reconciliation that were set up by the civilian government of President Patricio Aylwin, recorded the “disappearance”, extrajudicial execution or death under torture of 3,197 people between 1973 and 1990.⁴

³ For example criminal complaint 183 was lodged in December 2000 by the *Agrupación de Familiares de Ejecutados Políticos* (AFEP, Association of Relatives of Political Executions) and *Opción*, a children’s organization on behalf of 134 minors killed between 1973 and 1989. In January 2001 complaint 203 was filed by AD-MAPU on behalf of 93 Mapuche Indians who were killed or “disappeared” following detention between 1973 and 1990.

⁴ The remit of the two commissions did not include, however, the cases of the tens of thousands of people who were detained and tortured by the security forces nor did it include those of the thousands of people subjected to kidnappings, attempted murder or death threats at the hands of unidentified individuals or groups with links to the security forces. Outside their remit too were the cases of people who faced arbitrary detention and unfair trial or those who were forced into exile abroad or internally (*relegados*).

After more than twenty five years, the issue of impunity with regard to the serious human rights violations committed under military rule, remains unresolved. There has been some progress in the courts where, apart from the investigations of Judge Guzmán, the Supreme Court has provided new interpretations of the 1978 Amnesty Law - the principle barrier to justice - which has led to some "disappearance" cases being reopened.⁵ The courts have also

⁵ It is important to note, however, that jurisprudence is not legally binding in Chile and therefore each case is resolved on its own merits.

"... I do not have the power to go up to Pinochet and tell him that he is responsible for the "disappearance" of my family and that he has caused me to live tortured by thoughts of them all these years ... They destroyed my life and their lives, but not my mind. I will carry on fighting. I want justice to be done, that Pinochet and his men go to court, that they say they are responsible and that they tell us where they left our relatives..."⁶

charged some former army officers, agents of the *Dirección Nacional de Inteligencia* (DINA) National Intelligence Directorate, and other members of the security forces with serious human rights offences. The important advances in the courts are undermined, however, by the continued use of the 1978 Amnesty Law to close cases without proper investigation and by the largely unfettered power of the military courts. Besides the legal restraints, there are also political and institutional obstacles that need to be addressed if those responsible for human rights violations are to be held to account.

⁶ *... no tengo la capacidad de llegar hasta Pinochet para decirle que es el responsable de la desaparición de mi familia y que me ha hecho vivir torturada todos estos años pensando en ellos ... Liquidaron mi vida y sus vidas, pero no mi mente. Seguiré luchando. Quiero que se haga justicia, los hombres de Pinochet y él vayan a los tribunales, se declaren responsables y nos digan dónde dejaron a nuestros familiares"* Carmen Vivanco Vega's words echo the sentiments of the other members of the Association of Relatives of the "Disappeared" (AFDD, *Agrupación de Familiares de Detenidos Desaparecidos*). Now in her 80s, Carmen Vivanco has never given up her struggle to find out what happened to the five members of her family - her husband, son, brother, sister-in-law and nephew - who "disappeared" following their detention by the DINA in 1976. In the 26 years since their "disappearance", her determination to see that those responsible are brought to justice remains undiminished.

The ruling of the Santiago Appeals Court on 9 July 2001 that former general Augusto Pinochet was mentally unfit to stand trial in a case known as the "Caravan of Death" (*Caravana de la Muerte*) in which an army unit, allegedly acting under the direct orders of General Pinochet, kidnapped and/or murdered 75 prisoners in the north of Chile shortly after the 1973 coup, disappointed hopes of justice for the thousands of victims of human rights violations committed during his 17-year rule. Although, theoretically, the case against him could be reopened, the court's decision means it is very unlikely that Augusto Pinochet, whose parliamentary immunity as senator for life was lifted in August 2000, will face proceedings in this or in any of the other criminal complaints that lawyers in Chile have lodged against him.

This document provides a summary of the events that followed the arrest of Augusto Pinochet in the United Kingdom in 1998 and charts the main human rights developments of recent years. It considers some of the principle obstacles to justice and looks at recent court decisions in relation to the 1978 Amnesty Law. The second part of this paper contains a number of cases of individual prisoners who "disappeared" after their arrest by government agents. The

"I want them to return him to me alive. I talk with him; somehow I see him. My mother's heart tells me he is somewhere".⁷

⁷"Yo quiero que me lo devuelvan vivo. Converso con él, como que lo veo. Mi corazón de madre me dice que está en alguna parte." CNVR – Chapter Four of the second part of the CNVR's report contains fragments of the testimonies its members took from people up and down the land testifying to the suffering and harm done to the victims' families as a result of the killing or "disappearance" of their loved ones. This paper reproduces some of these quotes.

cases that have been selected are among the 1,198 "disappeared" prisoners documented by the two commissions set up by President Patricio Aylwin. They illustrate the experiences of many of the relatives in their search for missing family members and the ways in which the paths to truth and justice have been obstructed by the authorities.

© private. Rodrigo Alejandro Medina Hernández, an 18-year-old philosophy student "disappeared" following his arrest by the DINA on 27 May 1976. On 27 May 2001, twenty five years after his "disappearance", his family held a symbolic funeral in his memory as a "goodbye ceremony" (*ritual de despedida*) to him and as way of going through their own personal bereavement. The family planted a tree and put up a plaque in his name in the *Parque por la Paz* (Peace for Park) that was created on land once occupied by the Villa Grimaldi, a former secret detention and torture centre of the DINA.

"I have to know what happened to him. I've spent so much time looking, and what happens is that you don't know whether perhaps they need something; whether they might be cold or want a cigarette. How can I live like this!"⁸

2. Confronting the past:

2.1 Arrest of Augusto Pinochet, London:

On 16 October 1998, Augusto Pinochet was arrested in the United Kingdom (UK) after the Spanish judge Baltazar Garzón issued an international warrant of arrest in order to prepare the request for extradition on charges of crimes against humanity including genocide, widespread and systematic torture and "disappearance" committed while

⁸ " Necesito saber qué pasó con él. He buscado tanto y lo que me pasa es que uno no sabe si a lo mejor ellos necesitan algo, si tendrán frío, si querrán un cigarillo. Cómo puedo vivir así? ..." From the CNVR report.

he was in power from 1973-1990. In March of the following year, the House of Lords, the United Kingdom's highest court, ruled that he did not have immunity from prosecution for acts of torture committed when he was head of state and that he could be extradited on the reduced charges of torture and conspiracy to torture alleged to have been committed after 8 December 1988, the date on which the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment became binding on Chile, Spain and the UK. The ruling stated that "torture is an international crime over which international law and the parties to the United Nations Convention against Torture have given universal jurisdiction to all courts, wherever the torture occurs".

Extradition hearings commenced in September 1999 and in October the magistrate hearing the case ordered the committal allowing for the extradition of the former head of state to proceed on 35 cases of torture or conspiracy to torture after 8 December 1988 and the continuing cases of torture resulting from 1,198 "disappearances" submitted by the Spanish judge Baltasar Garzón. This decision was appealed by Augusto Pinochet's lawyers. In November, the UK Home Office asked for Augusto Pinochet to undergo independent medical tests following a request by the Chilean Government that he be released on health grounds and on 3 March 2000 the UK authorities decided not to order his extradition to Spain or to allow legal proceedings in respect of extradition requests from Switzerland, Belgium and France on grounds that he was unfit to stand trial. Augusto Pinochet left the UK for Chile the same day.

"Our family want to know the truth and wants the whole country to know the truth, and wants to end the impunity surrounding the tragedy we have experienced".⁹

In August 2000, following submissions from seven Chilean human rights lawyers, the Chilean Supreme Court lifted Augusto Pinochet's parliamentary immunity from prosecution as a senator for life. The court's decision paved the way for a criminal investigation into his involvement in the "disappearance" of 19 people during the military operation of October 1973 known as the "Caravan of Death" (*Caravana de la Muerte*) in which 75 people were murdered. In December 2000, Judge Juan Guzmán issued a warrant for Augusto Pinochet to be placed under house arrest for the kidnapping and/or murder of 75 victims of the "Caravan of Death". His lawyers successfully appealed this order. In January 2001, after medical tests to assess the former general's fitness to stand trial had been carried out, Judge Guzmán questioned him in connection with the "Caravan of Death" case and shortly after issued a second warrant for him to be taken into preventive detention. He was held under house arrest until 12 March when he was released on bail. The same month, the Santiago Appeals Court ruled that the trial against Augusto Pinochet could proceed but reduced the charges from that of perpetrator of the offences of kidnapping and/or aggravated homicide to one of concealment (*encubrimiento*).

© private. The *Parque por la Paz* (Peace Park) where the Villa Grimaldi, the DINA's most important secret detention and torture centre, once stood

The ruling of UK Magistrate Ronald Bartle, of Bow Street (London) Magistrates' Court, in September 1999, that the extradition of Augusto Pinochet should be allowed to proceed represented another step towards the acceptance of universal jurisdiction in cases of human rights violations and the universality of international human rights standards. The Magistrate considered that the effects of "disappearances" can amount to mental torture for the relatives of the "disappeared" and left it to a trial in Spain to decide. International human rights mechanisms have already provided this definition. Article 1(2) of the UN Declaration on the Protection of All Persons from Enforced Disappearance of December 1992, states: "*Any act of enforced disappearance... inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia,... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment*".

⁹ *"Nuestra familia quiere saber la verdad, que el país entero sepa la verdad, que no haya más impunidad frente a la tragedia vivida", CNVR.*

The Inter-American Court of Human Rights, the European Court of Human Rights, the UN Human Rights Committee and the Inter-American Commission on Human Rights have all stated that "disappearances" per se violate the right of the relatives of the "disappeared" not to be subjected to torture or ill-treatment. The United Nations Human Rights Committee, a body of 18 experts established under the International Covenant on Civil and Political Rights (ICCPR) to monitor implementation of that treaty concluded that enforced disappearances inflict severe mental pain and suffering on the families of the victims in violation of Article 7, which prohibits torture and cruel, inhuman or degrading treatment or punishment (*Elena Quinteros Almeida v. Uruguay*, Communication No. 107/1981, views of the Human Rights Committee adopted on 21 July 1983, para.14, reprinted in Selected Decisions of the Human Rights Committee under the Optional Protocol, 2 (1990)). The European Court of Human Rights reached the same conclusion, finding that the extreme pain and suffering an enforced disappearance inflicted on the mother of the "disappeared" person violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment (*Kurt v. Turkey*, Judgment, Eur.Ct.Hum.Rts, Case No. 15/1997/799/1002, 25 May 1998, para. 134).

The Pinochet case has shown that international law is not a set of agreements that can be ignored, but a vital mechanism for the protection of individuals. The rulings by the UK courts created a very important precedent for the future of human rights. Fundamental principles were reaffirmed, such as the scope of universal jurisdiction and the absence of immunity from prosecution for former heads of state accused of crimes such as crimes against humanity and torture.

"I went everywhere, from Arica to Chillán. We've dug up the whole countryside looking for them."¹⁰

2.2 The Human Rights Discussion Table (*Mesa de Diálogo*):

On 21 August 1999, a *Mesa de Diálogo*, (human rights discussion table) was convened on the initiative of the then Minister of Defence Edmundo Pérez Yoma to bring together human rights lawyers, armed forces representatives, the Minister of Defence, members of the church and other members of civil society to discuss the legacy of human rights violations committed during the military government including the issue of the "disappeared". The initiative was criticised by some human rights groups, including relatives of the "disappeared", who were sceptical of its outcome. In June 2000, members of the Human Rights Discussion Table signed a Declaration which recognized the grave human rights violations committed under the military government. It registered, among other things, that the armed forces and *Carabineros* (uniformed police) had no information on the "disappeared", but established their commitment to cooperate in obtaining it. On 5 January 2001, information was submitted by the Armed Forces to President Ricardo Lagos containing the names of 180 people arrested between 1973 and 1976 and 20 unidentified victims. The information stated that most of the victims had been thrown into the sea, rivers and lakes in Chile. It was significant that after 27 years of complete denial on the part of the armed forces, in particular the army, that they had been responsible for human rights violations, an acknowledgement of the deaths of 200 people who had been arrested was made.

¹⁰ "Yo fui a todas partes, desde Arica hasta Chillán. Hemos escarbado la pampa entera buscándolos". CNVR

Nevertheless, the information provided was insufficient and inadequate, and in a number of cases contradicted well-documented evidence. The *Agrupación de Familiares de Detenidos Desaparecidos* and other human rights organizations were highly critical of the information provided noting, among other things, that no information was given on the branch of the security forces involved in the arrest, torture and deaths of the victims, nor the names of those directly responsible. They also criticised the absence of any information about where the detainees were taken, how they were killed and the exact location of their whereabouts.

In April 2001, the first evidence of errors in the information provided by the armed forces emerged with the disclosure that the remains of **Juan Luis Rivera Matus**, one of the people registered in the information as having been thrown into the sea, had been found on military premises in Fuerte Arteaga and identified by the Medical Legal Institute (*Instituto Médico Legal*).

"On windy nights, my mother thought the creak in the door was him. She used to get up to let him in, and then she would weep".¹¹

2.3 Appointment of judges to investigate disappearances:

¹¹"En noches de viento mi mamá creía que era él cada vez que crujía la puerta. Se levantaba a abrirle y luego lloraba". CNVR.

In June 2001 the Supreme Court appointed nine judges to investigate exclusively a number of "disappearance" cases and another 50 magistrates to give preferential attention to the "disappearance" cases under investigation in their respective criminal courts¹². The initiative came out of agreements arising from the *Mesa de Diálogo* to clarify the whereabouts of the "disappeared". The judges were given a period of 90 days to carry out their investigations with the possibility of extending the period of investigation further. Relatives of the "disappeared" have expressed their disappointment that only nine judges will look exclusively at the cases and concern that the courts might use the opportunity to speed up closure of the cases. *Concerns have also been expressed about the decision to only investigate cases that remain pending or that have been temporarily suspended and calls have been made for all the cases to be examined.* In August, there were reports of concern among human rights lawyers after a court in Coronel and the 4th Criminal Court of Santiago closed their investigations into the cases of **Pedro Merino Molina** and **Juan Mora Morales** without taking all the necessary investigative steps and despite the fact that they were among the list of courts that had been assigned to give preferential and exclusive treatment to "disappearance" cases. In October 2001, it was announced that the case of **Pedro Merino Molina** had been reopened by the Santiago Appeals Court.

2.4 Progress in ongoing investigations:

Investigations into many "disappearance" cases are either closed or temporarily suspended ("*sobreseído temporalmente*"). Of the cases that remain open, many have remained dormant for many years. In the following cases, however, there have recently been some important developments.

¹² Subsequent information has indicated that the nine judges "dedicated exclusively" would investigate 65 cases and the 50 judges would "prioritize" the investigation of 90 individual cases. Thirty-six cases of victims of human rights violations which are recorded in the list submitted by the Chilean armed forces in January 2001, are to be investigated by the newly appointed judges.

Investigations of Judge Juan Guzmán Tapia: Since January 1998, more than 260 criminal complaints have been lodged with Judge Guzmán against Augusto Pinochet and others. In July 2001 Judge Guzmán charged five senior members of the former intelligence agency, the DINA,

"When my brother "disappeared" my old father went crazy. He died wandering through the streets crying out his son's name".¹³

including its head, Manuel Contreras, with the abduction of 12 opponents of the military government and with unlawful association.¹⁴ In the judicial decision, the DINA was described as an illicit association (*asociación ilícita*). The ruling noted, "that the DINA was in charge of different secret detention centres in Santiago known as the barracks of Londres 38, José Domingo Cañas, Venda Sexy, Villa Grimaldi and Cuatro Alamos. In these centres", it adds, "unlawful acts - torture - were inflicted systematically on the detainees, they were held in secret detention and in some cases, were killed before the bodies, which today have still not been found, were disappeared".

¹³ "Cuando desapareció mi hermano mi papá era viejito, se transtornó. Murió caminando por los caminos gritando el nombre de su hijo". CNVR

¹⁴ The names of the 12 people who "disappeared" from the Villa Grimaldi, one of the DINA's secret detention centres are: Claudio Silva Peralta, Alan Bruce Catalán, María Teresa Eltit Contreras, Jorge Fuentes Alarcón, María Isabel Joui Petersen and Humberto Menanteau Aceituno (whose body was found in 1975) who were members of the *Movimiento de Izquierda Revolucionaria* (MIR), Movement of the Revolutionary Left; members of the Socialist Party, Ricardo Lagos Salinas, Carlos Lorca Tobar, Ezequiel Ponce Vicencio and Claudio Thauby Pacheco; of the Communist Party Manuel Carreño Navarro and Guillermo Beausire Alonso who was not a member of any political party. Many more people "disappeared" after being held at the Villa Grimaldi. Details about the cases of Ricardo Lagos Salinas and Claudio Thauby Pacheco are on pages 37 and 40.

The ruling also noted that the "DINA was an intelligence service of the government, giving it greater capacity for centralized action, economic resources and state support means. In practice it was a secret organ that operated above the law".¹⁵

Those facing charges are: Manuel Contreras, retired general and former director of the DINA, retired brigadier Miguel Krassnoff Marchenko, retired colonel Marcelo Moren Brito, retired army officer Basclay Zapata and civilian agent Osvaldo Romo Mena. On 24 July 2001, Judge Gabriela Pérez, temporarily replacing Judge Guzmán ordered a judicial confrontation between Basclay Zapata and prisoners who had been held at the Villa Grimaldi.

*"I am ready to forgive, but I need to know who I have to forgive. If they would just speak up and acknowledge what they have done, they would be giving us the opportunity to forgive. It would be more noble if they were to do that. There will be reconciliation only if there is justice."*¹⁶

¹⁵ "se encuentra establecido en autos que la Dirección de Inteligencia Nacional, mantuvo en Santiago diferentes lugares clandestinos de reclusión, conocidos como los cuarteles de "Londres 38", "José Domingo Cañas", "Venda Sexy", "Villa Grimaldi" y "Cuatro Alamos ... En dichos recintos se infligieron en forma sistemática apremios ilegítimos –torturas– a los detenidos, se les mantuvo secuestrados y, en algunos casos, se cometieron homicidios en contra de los mismos, para posteriormente hacer desaparecer sus cuerpos, los que hasta la fecha no han sido encontrados ...

la DINA era un servicio de inteligencia del gobierno, por lo que tenía una mayor capacidad de acción centralizada, recursos económicos y medios estatales. En la práctica se trató de un organismo secreto que actuó por encima de la ley".

¹⁶ "Yo estoy dispuesta al perdón, pero necesito saber a quién tengo que perdonar. Si

*ellos hablaran, reconocieran lo que hicieron, nos darían la oportunidad de perdonar.
Sería más noble si así lo hicieran. Sólo habrá reconciliación si hay justicia". CNVR*

"Disappearance" of five men in 1987¹⁷: In September 1987, five left-wing activists "disappeared" in Santiago. The military government claimed that the men, members of the *Frente Patriótico Manuel Rodríguez* (FPMR), Manuel Rodríguez Patriotic Front, an armed opposition group, had probably gone underground – an explanation often used by the authorities during the 1970s. Subsequently, witnesses testified to the abduction of one of the men by armed men in civilian clothes. In May 2001 it was announced that a unit of the security police, *Central Nacional de Informaciones* (CNI), National Information Centre, was responsible for the abductions and murder of the five men. According to reports, two former agents confessed to participating in the crimes. The bodies of the men were reportedly thrown into the ocean. Members of the unit were also reportedly responsible for the "Operation Albania" in June 1987 in which 12 members of the FPMR were killed and for the deaths of four men in September 1986¹⁸ following an assassination attempt against Augusto Pinochet. The 1978 Amnesty Law is not applicable in this case.

2.5 Cases pending in other countries against Augusto Pinochet and DINA officials:

The case instigated by the Spanish courts is only one of a number of cases that have been initiated in national courts outside Chile, against Augusto Pinochet. Other cases are pending against him and former DINA officers in Argentina, France, Italy, Belgium and Switzerland.

¹⁷ For more details on the case, see page 31.

¹⁸ The background to these cases are described in several AI documents including: "Disappearances" – five new cases – AMR 22/01/88, and Intimidation and harassment by clandestine groups – AMR 22/35/88.

Latest developments in these investigations include the announcement in July 2001 by the French investigating magistrate Roger Le Loire that he may be in a position to try Augusto Pinochet *in absentia* in 2002 in connection with the deaths of five French citizens at the hands of the Chilean security forces. Also in July, Argentine judge Rodolfo Canicoba Corral ordered the arrest of Augusto Pinochet for his role in the so-called “Operación Condor” that operated in the 1970s involving the security forces of the military governments of Chile, Uruguay, Argentina, Paraguay, Brazil and Bolivia who coordinated and carried out human rights violations, including assassinations and “disappearances”, against real or perceived opponents of their regimes¹⁹.

© AI.

A monument to the “disappeared”, detained and executed during the military government was built in the General Cemetery of Santiago. In 1991, 127 unidentified bodies were exhumed from unmarked graves in Plot 29 of the cemetery. Some of the bodies, victims of human rights violations, were subsequently identified.

© Juan Carlos Cáceres - International Women’s Day - relatives of women who “disappeared” following their arrest march through Santiago carrying placards

“I would like those responsible for so much suffering to go through just 15 days of what I have had to live through for years and years. These have been 12 years of suffering

¹⁹ Argentine judge Rodolfo Canicoba Corral also ordered the arrest of the former head of the Uruguayan army, General Julio César Vadora for his responsibility in the “disappearance” of Uruguayan citizens in Argentina. He had previously requested the extradition from Chile of Manuel Contreras, former head of the DINA as organizer of the “Operación Condor”.

and I would like those responsible to go to jail for what they have done, because if not other governments will come along tomorrow and the drama will be repeated¹²⁰.

3. Barriers to justice:

Despite recent steps taken by the Chilean judicial authorities to deal with the legacy of human rights violations committed during the period of military rule in Chile, several legal and constitutional mechanisms remain in place that continue to block effective judicial investigations and prosecutions of those responsible. The single greatest barrier remains the 1978 Amnesty Law. This section considers some of the main obstacles to justice and looks at recent decisions that have been taken by the Supreme Court offering new interpretations of the amnesty law.

3.1 Amnesty Law of 1978 (Decree Law No. 2,191)

The military government issued Decree Law 2,191 in April 1978 preventing prosecution for certain crimes committed between September 1973 and March 1978, the period when a state of siege was in force

²⁰*Me gustaría que los culpables de tanta tragedia sufrieran nada más que quince días lo que a mí me ha tocado vivir durante años. Para mí son doce años de sufrimiento y quiero que los responsables paguen con la cárcel lo que hicieron, porque si no el día de mañana vendrán otros gobiernos y el drama se repetirá. (Carmen Vivanco in the mid-1980s)*

and repression was at its height.²¹ While the law led to several hundred political prisoners being pardoned – many of whom had previously been expelled from Chile – it was mainly designed to shield from prosecution those responsible for human rights violations.

This law has remained the overriding obstacle to justice and has been used systematically over the years to close judicial investigations into scores of "disappearances" carried out between 1973 and 1978. During military rule, the Supreme Court consistently upheld requests for cases to be transferred to military jurisdiction and for the military courts' subsequent decisions to curtail investigations on the basis of the amnesty law. The vast majority of cases made little progress, though there were limited exceptions, most notably the case led

²¹ Article 1 of Decree Law No. 2,191 stated: "An amnesty is granted to all persons who committed criminal acts whether as authors, accomplices or accessories during the period when the State of Siege was in force, between 11 September 1973 and 10 March 1978, provided that they are not already indicted or serving a sentence" ("Concédese amnistía a todas las personas que, en calidad de autores, cómplices o encubridores han incurrido en hechos delictuosos, durante la vigencia de la situación de Estado de Sitio, comprendida entre el 11 de septiembre de 1973 y el 10 de marzo de 1978, siempre que no se encuentren actualmente sometidas a proceso o condenadas")

"Impunity" means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.²²

by Judge Carlos Cerda whose meticulous investigations resulted in charges being brought

against a number of members of the security forces for their part in the arrest and subsequent "disappearance" of ten people in 1976.²³ The case, however, was later closed and the judge disciplined for refusing to archive the case.

The Inter-American Commission on Human Rights has stated that the Chilean Amnesty Law is incompatible with the obligations of the Chilean State under international law and considered that "the legal effects were part of a general policy of human rights violations in Chile" (Inter-American Commission on Human Rights, Report No. 25/98, para. 76; see also Inter-American Commission on Human Rights, Report No. 36/96). The Human Rights Committee of the United Nations, a body of experts established under the International Covenant on Civil and Political Rights to monitor implementation of that treaty, also considered this

²²From the final report by the Special Rapporteur on the question of impunity, Mr Louis Joinet on the Question of the impunity of perpetrators of human rights violations (civil and political) presented at the 49th session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities on 2 October 1997 [UN Doc. E/CN.4/Sub.2/1997/20/Rev.1]

²³See case of Reinalda del Carmen Pereira Plaza

kind of amnesty law incompatible with the international obligations of states under international human rights law.²⁴

²⁴See views of 19 July 1994, Case Hugo Rodriguez, Communication 322/1988, UN Doc. CCPR/C/51/D/322/1988; Preliminary observations of the Human Rights Committee - Peru, 25 July 1996, UN Doc. CCPR/C/79/Add.67, para. 20; Observations of the Human Rights Committee - France, UN Doc. CCPR/C/79/Add.80, para. 13; Observations of the Human Rights Committee - Uruguay, UN Doc. CCPR/C/79/Add.19, para. 7, Observations of the Human Rights Committee - Argentina, UN Doc. CCPR/C/79/Add.46, para.10; Human Rights Committee - El Salvador, UN Doc. CCPR/C/79/Add.34, paras 7 and 12; General Comment No. 20, para. 15.

Following the return to civilian rule in 1990, a number of judges began to insist that the amnesty law could not be applied until all the facts had been clarified and the full criminal responsibility of any suspect had been clearly established. In recent years, and particularly following changes to the structure of the Supreme Court and the appointment of a new panel of judges to the Second Criminal Chamber (*Segunda Sala Penal*) in 1998, reinterpretations of the amnesty law have opened the door to new possibilities of judicial investigations in some cases of human rights violations²⁵.

“The years passed and the boy grew up and asked after his mother, so I told him the truth: ‘the military took her away, but she will come back’ and the child longed for his mother, and would say, for example: ‘when mummy comes back, we will have chickens, or we will buy this or that ...’. But suddenly, one day he surprised me and said, ‘Daddy, I think the military killed mummy’; now he doesn’t like talking about it. He is 13 years old’²⁶

In 1998, for example, the Supreme Court revoked the application of the amnesty law in several cases, among them: those of 23 agricultural

²⁵ While important, it should, however, be noted that jurisprudence is not binding in Chile, so each case is resolved on its own merits.

²⁶ “Los años pasaron y el niño crecía y preguntaba por su mamá, mi respuesta tuvo que ser la verdad, ‘se la llevaron los milicos, pero ya llegará’, y el niño añoraba que llegara su madre, pues me decía, por ejemplo: ‘cuando llegue mi mamá vamos a criar pollitos, o vamos a comprar tal o cual cosa’. Pero de pronto, un día me sorprende y me dice, ‘papá, yo creo que los milicos mataron a mi mamá’. Ahora a él no le gusta hablar del caso, ya tiene 13 años”. The husband of Mónica Chislayne Llanca Iturra talking in 1986 about the effect on his family of his wife’s “disappearance following her arrest by the security forces on 6 September 1974. She was six months pregnant at the time.

workers from Paine arrested by the army and carabineros in October 1973 and subsequently "disappeared" whose bodies were not among the ones that had been identified following exhumation from a mass grave in the Santiago General Cemetery ²⁷; of Luis Ortíz Moraga in December 1974; of eight members of the MIR in Valparaíso in 1975; and of Enrique Cordova Poblete in 1974. In the case of **Enrique Cordova Poblete**, the Supreme Court referred to Chile's obligation under the 1949 Geneva Conventions, stating that common article 3 applied because the military government had announced a state of war in September 1973.

In addition, in a few cases, the court also ruled in favour of the case remaining under civilian jurisdiction. In January 1999, the Supreme Court ordered a military judge to reopen a case involving 26 people from Parral who "disappeared" following their arrest in 1973 and 1974, ruling that it was an ongoing crime, that continued after the period covered by the amnesty law, since the victims had not reappeared and their deaths had not been verified.

The Supreme Court decision that caused the greatest stir however, was the one handed down in July 1999. This ruling unanimously confirmed the arrest of a retired general and four other former army officers accused of participating in the "Caravan of Death", an army unit allegedly acting under the direct orders of General Augusto Pinochet, that executed 75 prisoners in the north of Chile in October 1973, shortly after the military coup. The case forms part of an investigation begun in January 1998 by Judge Juan Guzmán Tapia into a series of criminal complaints submitted by relatives and organizations against Augusto

²⁷ See cases of Samuel Altamiro Lazo Quinteros, Carlos Enrique Lazo Quinteros, Samuel del Tránsito Lazo Maldonado and Luis Rodolfo Lazo Maldonado on page 49.

Pinochet and other members of the security forces including former head of the DINA, Manuel Contreras. Judge

“We shall continue our struggle until they tell us what happened to him and until justice is done. His life and that of all the “disappeared” cannot remain in oblivion. We are fighting to ensure that what happened to them will never happen in our country again”²⁸

Guzmán had concluded that because the bodies of 19 of the victims of the “Caravan of Death” were never found or their deaths legally certified, their abduction was an ongoing offence. He therefore charged the officers with “aggravated kidnapping”. In the other cases where the death of the victims had been clarified, the judge decided that the amnesty law could be applied and charges against another five officers were dropped.

The Supreme Court unanimously upheld Judge Guzman’s ruling that the amnesty law could not be applied where an individual’s death could not be legally certified and in which the victim could be assumed to still be missing. The ruling implied that cases should continue until the facts surrounding the fate of the individual had been clarified and the existence of a criminal act had been determined.

In February 2000, the Supreme Court added a new interpretation, setting aside the legal principle of former adjudication

²⁸ *“Nosotros seguiremos luchando hasta que se nos diga que pasó con él y se haga justicia. Su vida y la de todos los desaparecidos no puede quedar en el olvido. Estamos luchando porque lo que a ellos les sucedió no vuelva a ocurrir en nuestra Patria”.* The family of Víctor Díaz López who “disappeared” after his arrest by DINA agents on 12 May 1976.

(cosa juzgada/res judicata) and reopening judicial proceedings in the case of the "disappearance" in 1974 of **Antonio Cabezas Quijada** on the grounds that an investigation could not be concluded until the body of the crime had been determined and the perpetrators identified.

Despite the Supreme Court's more favourable interpretations of the Amnesty Law, in April 2001, Alejandro González, former president of the National Corporation for Reparation and Reconciliation²⁹, expressed concern at the speed with which the Military Appeals Court has been closing cases without conducting proper investigations to establish the whereabouts of the victims or identify those responsible.

In January 2001 two Chilean human rights lawyers submitted to Judge Guzmán Tapia the legal brief (*Informe en Derecho*) prepared by Amnesty International and the International Commission of Jurists on the incompatibility of the Amnesty Law with international legislation

²⁹The main objective of this body, that succeeded the National Commission for Truth and Reconciliation, was to locate the remains of "disappeared" prisoners.

*“Even though it won’t do me any good, even though it might look useless, I need to know why they killed him; what happened, what he was doing, how they caught him. Anything to put my mind at ease”.*³⁰

and the obligation of the Chilean courts of justice to investigate, bring to trial and punish those responsible for gross human rights violations carried out during the military government.³¹ The lawyers were acting on behalf of relatives of the victims of the *Operación Condor*³² and the *Caravana de la Muerte* respectively. According to international law, the systematic and widespread extrajudicial executions, "disappearances" and torture that took place in Chile during the military government constitute crimes against humanity. As such they cannot be subject to any statute of limitations. Amnesty International reiterated its call that the Chilean Government take all necessary measures to ensure that Decree Law 2191 is annulled.

3.2 The role of the military courts:

³⁰ *Aunque no sirva, aunque parezca inútil, necesito saber por qué lo mataron; qué pasó, qué hacía, cómo lo descubrieron. Cualquier cosa que haga que mi cerebro se descanse”, CNVR*

³¹ For further information see "Legal Brief on the Incompatibility of Chilean Decree Law No. 2191 of 1978 with international law", AI Index: AMR 22/002/2001 issued in January 2001.

³² Through the *Operación Condor*, the security forces of the military governments of Chile, Uruguay, Argentina, Paraguay, Brazil and Bolivia in power in the 1970s and 1980s coordinated and carried out human rights violations against real or perceived opponents of their regimes.

Despite moves to restrict the ambit of military jurisdiction, the power of the military courts remains largely undiminished. Civilian judges who initiate investigations into human rights violations frequently have to hand over the case to the military courts, who under Articles 2 and 3 of the Code of Military Justice (*Código de Justicia Militar*) generally claim jurisdiction for crimes involving members of the security forces. Civilian judges do not have the power to carry out investigations in establishments belonging to the military. In the military appeals courts (*Cortes Marciales*) three of the five members in Santiago and two of the four members in Valparaíso are officers on active service and therefore suffer a clear conflict of interest. In the Supreme Court (*Corte Suprema*), under article 70a of the Code of Military Justice, the army's general auditor sits on all the cases that fall within military jurisdiction. Over the years, the role of the general auditor has extended to cases conducted by civilian courts in which military personnel are accused of human rights violations. Until 1999, this post was occupied by General Fernando Torres Silva who is currently under judicial investigation for his involvement as an alleged accessory (*presunto encubridor*) in the murder of trade union leader Tucapel Jiménez in 1982. As general auditor, he voted consistently for investigations into serious human rights violations to be closed on the basis of the 1978 Amnesty Law³³.

³³ During the 1980s, Amnesty International repeatedly criticised the actions of Fernando Torres Silva who as military prosecutor (*fiscal militar*) ordered the prolonged incommunicado detention of political detainees following their transfer to prison and in many cases after they had been tortured by members of the security forces, in particular the Central Nacional de Informaciones (CNI - state security police).

*“It makes me angry. Those who ought to end up in jail are still free, and that’s partly the fault of the amnesty law”.*³⁴

3.3 The 1980 Constitution

The 1980 Constitution, drafted by the military government, has also represented an important obstacle in the struggle for justice. Its provisions included the appointment of nine designated senators (*Senadores Designados*) and, for a number of years after the return to a democratically-elected government, the opposition, including the designated senators, held a majority of seats in the upper chamber. Over the years these appointees have used their majority to block attempts at constitutional reform and other measures including endeavours to introduce legislation to limit the scope of the military courts and abolish the death penalty³⁵.

© AI. Viviana Díaz, president of the *Agrupación de Familiares de Detenidos Desaparecidos*

© Juan Carlos Cáceres

³⁴“*Me da rabia. Los que debieran ir a parar a la cárcel siguen gozando de libertad y esto, en parte, por culpa de la Ley de Amnistía*”, CNVR

³⁵A bill abolishing the death penalty for ordinary crimes and increasing the minimum term to be served under a life sentence from 20 to 40 years was passed by the Senate in December 2000 and became law in May 2001.

The *Agrupación de Familiares de Detenidos Desaparecidos*, AFDD, Association of Relatives of the "Disappeared" was set up in the early years after the coup under the auspices of the Catholic Church. They have campaigned tirelessly for information from the authorities about the fate and whereabouts of their loved ones and for those responsible for their "disappearance" to be brought to justice. This has sometimes been at some personal risk. Viviana Díaz Caro and Mireya García, the President and the Secretary General respectively of the AFDD received a posted death threat in December 1999 with the following message: "Lets hope that Father Christmas will give us the opportunity to meet face to face in the year 2000, so that we can blow your brains out. Enjoy your last Christmas. . . you will not be around for the next. Greetings to your family. . . Merry Christmas to all. FNL-Villa Grimaldi Editions.³⁶¹" Villa Grimaldi was a well known torture centre used by the DINA during the 1970s. The threat was one of several sent to relatives of victims of past human rights violations, including members of the AFDD, human rights lawyers and activists in the wake of Augusto Pinochet's arrest in London in October 1998. Despite legal setbacks, the AFDD continues to pursue its goal through national and international legal avenues and peaceful public activities.

PART II - APPEALS CASES

Reinalda del Carmen Pereira Plaza

"I thought that now I would be able to find out what happened to my daughter, what happened to her child. She was nearly six months

³⁶¹ *Que el viejito Pascuero nos regale la oportunidad de encontrarnos cara a cara durante el 2000 ... y así poder volarte los sesos. Disfruta de tu última navidad .. Para la próxima ya no estarás. Saludos a tu familia ... Pascua Feliz para todos. F.N.L. 'Ediciones Villa Grimaldi'"*

*pregnant when she was detained in December 1976. What happened to my grandchild? Was he born or not? Or did they kill both of them? The investigations by Judge Cerda must continue. It's been said that some of 'them' are calling for the Amnesty Law to be applied. That would mean impunity as in so many other cases. It would be another blow to add to the grief we have already suffered. I have shed so many tears over this ... They say that your eyes dry up from so much crying, but it is not true ...'*³⁷ – said the mother of Reinalda del Carmen Pereira Plaza in 1986 during the investigations of Judge Carlos Cerda into the "disappearance" of a number of people including her daughter.

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Reinalda del Carmen Pereira Plaza, a medical laboratory technologist and a trade union leader, was violently abducted in Santiago on 15 December 1976 by two armed men who forced her into a car. She was nearly six months pregnant at the time.

She was one of 13 people – 11 members of the Communist Party and two of the *Movimiento de Izquierda Revolucionario* (MIR), Movement of the Revolutionary Left, arrested between 29 November and 20

³⁷ *Pensé que ahora podía llegar a saber qué pasó con mi hija, qué pasó con su hijo. Ella tenía casi seis meses de embarazo al ser detenida, en diciembre de 1976. Qué pasó con mi nieto? Nació o no nació? O los mataron juntos a ambos? La investigación del ministro Cerda debe seguir por buen camino. Se ha dicho que algunos de 'ellos' están pidiendo que se les aplique la Ley de Amnistía. Entonces, quedará todo impune como tantas otras cosas. Sería un sufrimiento más que se sumaría sobre la pena que tenemos. He derramado ya tantas lágrimas por esto ... Dicen que los ojos se secan de tanto llorar, pero no es cierto ...'*

December 1976 by members of the security forces. The methods used for arresting the thirteen were similar, in particular that in all but one case, the arrests took place in public. In most of the cases the government's official response to the courts was that the thirteen had crossed into Argentina on foot via the *Los Libertadores* pass between the end of 1976 and the beginning of 1977.

Witnesses to the arrest of Reinalda del Carmen reported that at about 8.30pm as she was waiting for a bus, a man got out of a Peugeot and grabbed her violently. A second man got out and as she was bundled into the car, she hit her head on the door before being thrown on to the floor of the car. She showed signs of pain and distress and shouted repeatedly for someone to help her. Two men who were identified as belonging to the Military Academy reportedly tried to intervene but were told not to get involved ("*en esto no se metan*"). The car sped off followed by another in which five security agents were travelling.

On 20 December 1976, Reinalda del Carmen's mother submitted a *recurso de amparo* (similar to a writ of habeas corpus³⁸) to the Santiago Appeals Court. In January 1977, the Ministry of the Interior claimed that according to travel certificate 354, she had left the country

³⁸ The purpose of *habeas corpus* is to end an illegal detention and assure the integrity of the person detained, by requiring the prisoner's physical presentation before a judicial authority. The scope of the *recurso de amparo* "protection" is broader than that of *habeas corpus*, as it affords protection not only of the right to liberty but also of other constitutional rights including the rights to life and physical integrity.

on foot on 21 November 1976. The Appeals Court rejected the appeal and passed the case to a criminal court for further investigation. Her mother appealed to the Supreme Court but to no avail. In response to the request for the appointment of a Special Investigating Judge (*Ministro en Visita*) by the families of the 13 people who “disappeared” towards the end of 1976, the Supreme Court appointed a judge to look into eight of the 13 cases. Two other cases were subsequently added³⁹. The inquiry proceeded without much progress until it was transferred to Judge Carlos Cerda in 1982.

Judge Cerda’s persistent and meticulous investigation succeeded in establishing that the documents provided to show that the “disappeared” had left the country were falsified and that there was no proof that they had left Chile. The judge was also able to investigate the composition and operations of the so-called Joint Command (*Comando Conjunto*), which operated from approximately late 1975 until late 1976 in Santiago, coordinating intelligence activities and political repression, including a number of “disappearances”.

³⁹The names of the other 9 are: Santiago Edmundo Araya Cabrera, Armando Portilla Portilla, Waldo Ulises Pizarro Molina, Lincoyán Berríos Cataldo, Luis Segundo Lazo Santander, Juan Francisco Ortiz Letelier, Horacio Cepeda Marinkovic, Lisandro Tucapel Cruz Díaz, Edras de las Mercedes Pinto Arroyo.

The turning point came in August 1986 when Judge Cerda charged 38 members of the armed forces and another civilian collaborator with "illicit association". His investigation was of huge importance for all the cases of "disappeared" prisoners. It was the first time since 1973 that a judge, of his own initiative, had successfully investigated a case. For the first time also, a judge had decided to charge not only those personally responsible for the arrests but also their superiors -- including one air force general and former member of the governing junta. As the report of the National Commission for Truth and Reconciliation subsequently recorded, his investigations also made it possible to demonstrate "that there was a conspiracy between uniformed troops and civilians who were kidnapping, torturing, and murdering people and that this conspiracy had budgets, funding, personnel, buildings and so forth"⁴⁰ In addition, it was demonstrated that at least two of these people - Reinalda Pereira Plaza and Edras de las Mercedes Pinto Arroyo - had been arrested by people involved in this conspiracy. Judge Cerda's findings also demonstrated that persistent investigations could shed light on the fate of the "disappeared".

Judge Cerda's investigation uncovered information not only about the 10 cases formally allocated to him but also about at least 30 other people detained and "disappeared" over the same period. In 1985 the judge asked the higher courts to allow him to take charge of these investigations too - but this request was refused.

⁴⁰ "ordenó diligencias que permitieron probar la existencia de una asociación ilícita formada por personal uniformado y civil que secuestraba, torturaba, y asesinaba personas, asociación que disponía de presupuestos, fondos, personal, locales, etc" - CNVR, page 103.

The positive developments of Judge Cerda's investigation were however halted when in October 1986 the Chilean Supreme Court upheld a ruling by the Santiago Appeals Court ordering that the charges be dropped and the investigation closed on the basis of the 1978 Amnesty Law. Judge Cerda contested the decision, arguing among other things that the amnesty law could not be applied before penal responsibility had been established. In response, the Supreme Court disciplined the judge with two months suspension from work on half pay. The judge appointed to replace him, immediately closed the case. Lawyers representing the families appealed to the Santiago Appeals Court in June 1987 without success. Finally, on 11 August 1989, the Supreme Court confirmed the permanent closure of the case on the basis of the Amnesty Law.

Nothing is known about the fate of Reinalda del Carmen Pereira Plaza nor whether her baby was born. She was one of nine women who were pregnant at the time of their arrest and "disappearance". The names of the other women are: Michelle Peña Herreros, arrested on 28 June 1975 when she was eight months pregnant (see page 35), María Cecilia Labrín Sazo, arrested on 12 August 1974, six weeks pregnant; Cecilia Miguelina Bojanic Abad, arrested on 2 October 1974, four months pregnant; Mónica Chislayne Llanca Iturra, arrested 6 September 1974, six months pregnant; Gloria Ester Lagos Nilson, detained on 25 August 1974, six weeks pregnant; Jacqueline Paulette Drouilly Yurich, arrested on 30 October 1974, three months pregnant, Nalvia Rosa Mena Alvarado, arrested 29 April 1976, three months pregnant; Elizabeth Mercedes Rekas Urra, arrested on 26 May 1976, four months pregnant.

In January 2001 the families of these women submitted a complaint to investigating Judge Juan Guzmán against Augusto Pinochet and other DINA agents for the act of removing the babies that might have been born in captivity.

Vicente Israel García Ramírez

Vicente Israel García Ramírez was 19 years' old at the time of his arrest and subsequent "disappearance". In 1995 his mother expressed the following:

"Eighteen years ago, on 30 April 1977, my beloved son Vicente Israel García Ramírez aged 19 was detained and "disappeared" by agents of the state, the DINA. I never imagined that it would be possible to let a mother and family wait for so many long years without knowing his fate, without knowing where his remains were left ... On the 18th anniversary of his "disappearance", I cannot help but express my pain and my impotence. It seems that with each passing day, the pain becomes greater and the sense of impotence increases, because such disdain, insensitivity and silent complicity is beyond comprehension ... I wish to know where my beloved son Vicente is, where all the young "disappeared" are. I demand that my right to truth and justice are respected. I ask do not forget, because my son and all our children deserve forever our respect and our remembrance".⁴¹

⁴¹Hace 18 años, un 30 de abril de 1977, mi amado hijo Vicente Israel García Ramírez, de 19 años, fue detenido y hecho desaparecer por agentes de un organismo del Estado, la DINA. Nunca imaginé que se podría mantener a una madre y a una familia por tan largos años sin saber de su destino, sin saber dónde dejaron sus restos ...

Cuando se cumplen 18 años de su desaparición, no puedo dejar de expresar mi dolor y mi impotencia. Pareciera ser que cada día que pasa el dolor se torna más presente y la impotencia aumenta, porque es incomprensible tanto desdén, insensibilidad y cómplice silencio ...

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Vicente García Ramírez, a student who was a member of the Socialist Party, was arrested at his home with his wife Karin Reimer Carrasco by members of the DINA at about 8.30am on 30 April 1977. The two were blindfolded and taken to a DINA detention centre believed to be in the Calle Borgoño. According to Karin Reimer Carrasco, Vicente was put in a separate cell and tortured. Another relative who had also been detained, reported hearing Vicente in the next cell groaning and with apparent respiratory difficulties. The following day, she heard his captors offering him breakfast on condition that he "talked". The relatives were released on 3 May 1977.

Recursos de amparo submitted on his behalf by his mother and his wife in May were rejected. In August the case was sent to the 2nd Criminal Court (*Segundo Juzgado del Crimen*) in Santiago for further investigation. In May 1978, a judge's decision to close the case on the basis of the amnesty law was revoked a couple of months later by the Santiago Appeals Court. In September 1978 the court accepted a request from the family to question an acquaintance of Vicente García's - a member of the army - about a car owned by Vicente in which the two had been driving three days before his arrest and from which papers belonging to the Socialist Party had subsequently gone missing. Relatives informed the court that the car had been requisitioned by the DINA. Ten months later, the soldier testified before the court that the vehicle indeed

Anhelo saber dónde está mi querido hijo Vicente, dónde están los jóvenes desaparecidos. Exijo que mi derecho a la verdad y a la justicia sean respetados. Pido no olvidar, porque mi hijo y todos los hijos nuestros merecen por siempre nuestro respeto y recuerdo".

belonged to Vicente García but is reported to have said that he had no recollection of who they had visited shortly before Vicente García's arrest nor was he able to say anything about the papers.

In 1979, the case was once again suspended while the following year, the appeals court once again revoked the order. In 1980, relatives informed the court that a car fitting the description of Vicente García's had been seen in the Calle Borgoño parked opposite a centre belonging to the security police, the CNI (Central Nacional de Informaciones).

In August 1980, a criminal complaint for abduction was added to the case. The member of the army was again called to testify and unlike the previous occasion, gave the name of the person, who was also in the army, that he and Vicente García had visited on 27 April 1977.

The following year, the order to suspend the case was once again revoked but in May 1982, an order to suspend the case was upheld by the appeals court.

Carlos Fariña Oyarce

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"He was happy, good at football and helpful around the home"

In June 2000, 27 years after he was taken from his home by members of the security forces, the remains of Carlos Fariña Oyarce were uncovered by construction workers on wasteland in the western part of

Santiago. He was 13 years old at the time of his abduction and is the youngest of the “disappeared” prisoners of Chile. According to his brothers, his body bore the signs of 12 gunshot wounds – four in the head and eight in the back. His mother, Josefina Oyarce died from cancer in 1977 before her son’s remains were located.

Carlos Fariña Oyarce was detained on 13 October 1973 by members of the Yungay army regiment of San Felipe, *Carabineros* (uniformed police) and *Investigaciones* (criminal investigations police) who entered the family home in Conchalí on the outskirts of Santiago at about 10 in the morning. The men asked for Carlos to be handed over. Two of the *Carabineros* pulled him out of bed and one of them hit him hard in the chest with a rifle butt causing Carlos to fall over. According to his mother’s testimony, he was practically dragged out of the house and taken to the local football field where other people who lived in the area had been rounded up by the security forces. His mother pleaded with the officer in charge of the troops to let her son go because he was ill but was told that he would be handed back when he was grown up. Carlos Fariña was subsequently driven away in a military jeep by two soldiers and taken to an unknown destination.

Shortly before his arrest, Carlos Fariña had been involved in an incident in which a young neighbour had accidentally been wounded with a gun that Carlos had been looking after for a local older boy. The neighbour’s mother went to the local police station to denounce the incident. On discovering what happened and on the advice of the police, Carlos Fariña’s mother took him to the local youth court. The court ordered him to be sent to a Youth Detention Centre but the child ran away after apparently being sexually abused. He arrived home with a high temperature and his mother decided to wait for him to get

better before telling the judge what had happened. The mother of the child who had been wounded, unaware of the reasons for Carlos leaving the detention centre, informed the security forces who were conducting house-to-house searches in the area.

Following his “disappearance”, Josefina Oyarce began to search for her son. On 2 April 1974, she submitted a *recurso de amparo* (similar to a writ of *habeas corpus*) to the Santiago Appeals Court asking among other things for the Minister of Defence to identify the army regiment that had been based in the area at the time of Carlos’ arrest and for information from police officials and from *Secretaría Ejecutiva Nacional de Detenidos* (SENDET), National Executive Secretariat for Detainees. In May 1974, General Oscar Bonilla, Minister of the Interior at the time, told the Appeals Court that the minor was not in custody and that the government did not know his whereabouts. On 15 June 1974, the court sent a request to the Ministry of Defence which replied in October saying, “as it concerns individuals denounced to the military courts, the relevant information was sent to the Ministry of the Interior”.

On 14 November 1974, the court rejected the *recurso de amparo* that had been submitted seven months previously and sent the case to the local criminal court.

On 14 June 1976, Josefina Oyarce submitted a complaint for the abduction of her son to the 3rd Criminal Court (*Tercero Juzgado del Crimen*) in Santiago which transferred the case to the 10th Criminal Court (*Décimo Juzgado del Crimen*). On 21 June, this court accepted jurisdiction and opened a file into the case. On 6 September, the judge closed the case temporarily (*sobreseído temporalmente*). This decision was confirmed by the Santiago Appeals Court on 13 October.

In the lists the Chilean Government presented to the United Nations of people in detention, Carlos Oyarce is registered as having “no legal existence”, despite his name being correctly registered on his birth certificate. According to his brothers, because Carlos was too young to have an identity card, his name was erased from all the state registers.

Carlos Oyarce’s brothers described their sibling as “happy, good at football and helpful round the house” (*alegre, bueno para el fútbol y colaborador en la casa*). He went to the Peru School (*Escuela Perú*) in Conchalí. Among his remains was the identity card of one of two friends arrested with him whose name is among those of people who were executed by the security forces.

In August 2000, his brothers submitted a criminal complaint to investigating Judge Juan Guzmán for war crimes, injuries, abduction of a minor, murder and illegal burial (*querrela por crímenes de guerra, lesiones, sustracción de un menor de edad, homicidio e inhumación ilegal*) against Augusto Pinochet and against the commander of the Yungay Regiment.

The case is currently being investigated by the judge of the Tenth Criminal Court (*Décimo Juzgado el Crimen de Santiago*) of Santiago, one of the nine judges appointed by the Supreme Court in June 2001 to look exclusively at cases of the “disappeared”.

Gonzalo Iván Fuenzalida Navarrete, 26

Julio Orlando Muñoz Otárola, 34, construction engineer

José Julián Peña Maltés, 37, an engineer

Manuel Jesús Sepúlveda Sánchez, 28, mechanic

Alejandro Alberto Pinochet Arenas, 23, car mechanic

© private - Alejandro Pinochet Arenas with his father

“Since I learnt of his abduction, I feel completely destroyed. I have got other children, and grandchildren, but Alejandro was the one I needed the most and the one who needed me the most ... I think you have to feel the pain to understand it. I feel the pain of anyone going through the same experience. If I could only do something, give something, sell everything, I would do it for him not to be in this situation ... From the description of his height, he could be the young man that was abducted on 10 September in the centre [of Santiago] ... Every tall boy I see, I think might be him. Often I look at him and wonder - is that him?”⁴²

⁴²*Desde que supe de su secuestro estoy quebrado total. Tengo otros hijos, y nietos, pero Alejandro era él que más yo necesitaba y él que más me necesitaba a mí ... Creo que hay que sentir el dolor para entenderlo. Siento el dolor de cualquier persona que esté pasando por lo mismo. Si pudiera hacer algo, dar algo, o vender todo, lo haría con tal que él no estuviera en esta situación ... Por la estatura, podría corresponder al joven que fue secuestrado el día 10 en el centro ... En cada joven que veo, me parece verlo a él. Muchas veces miro y me pregunto, será él?”*

(Father of Alejandro Pinochet Arenas shortly after his son's "disappearance" in 1987.)

The five men "disappeared" following their arrest during the week of 7-10 September 1987. A few days before, army colonel Carlos Carreño had been abducted from his home by members of the *Frente Patriótico Manuel Rodríguez* (FPMR), Manuel Rodríguez Patriotic Front. Members of the state security police, the *Central Nacional de Informaciones*, CNI, and other members of the security forces began house-to-house searches throughout the metropolitan area of Santiago, during the course of which, the five men, members of the Communist Party with apparent links to the FPMR, were arrested by the CNI.

It was thought at first that the men might be in detention and a *recurso de amparo* was submitted to the Santiago Appeals Court on behalf of Alejandro Pinochet, José Peña, Gonzalo Fuenzalida and Manuel Sepúlveda on 21 September and for Julio Muñoz on 25 September. Fears grew however when the CNI, *investigaciones*, (the criminal investigations police) and the *carabineros* (uniformed police) all denied that the men were in their custody. The military prosecutors (*fiscalías militares*) and branches of the security forces maintained that none of the men had had arrest warrants issued against them, although it was later disclosed that Julio Muñoz Otárola was in fact wanted by a military prosecutor, in connection with his investigations into an attack on a breadshop in 1986.

On 13 October the then under-secretary of the Interior Alberto Cardemil indicated that, "the government became aware through the media of the presumed disappearance of these [...] individuals ... and immediately asked the security forces to carry out the corresponding

investigationsthis situation should not be too surprising. The communist way of operating is a mixture of the spectacular and publicity with secrecy. This is the way they work and operate therefore it is very probable that this is due to a 'submerging' of this kind".⁴³

On 18 November 1987 the court rejected the *recurso de amparo* ordering the case to be transferred to the corresponding criminal court. The relatives appealed against the decision but it was confirmed by the Supreme Court on 26 November 1987.

In May 2001, it was announced that members of the CNI had been involved in the abduction and murder of the five men and that members of the same unit had also been responsible for the deaths of 12 members of the FPMR in June 1987 during the so-called Operation Albania and for the deaths of four men in September 1986 during a state of siege that had been imposed after the assassination attempt on General Augusto Pinochet. The bodies of the five men were reportedly thrown into the sea. This information was based on confessions from two former CNI agents, one of whom reportedly participated in the abduction of Alejandro Pinochet Arenas. A witness to the abduction had made a photographic identification in court, identifying Alejandro Pinochet as the man who had been abducted. On the basis of his

⁴³ "Que el gobierno se había enterado a través de los medios de comunicación social del presunto desaparecimiento de esos [...] sujetos ... que inmediatamente se había solicitado a los servicios de orden y seguridad que hicieran las averiguaciones correspondientes ... no debe extrañar mayormente esta situación. La acción comunista mezcla la espectacularidad y la publicidad con la clandestinidad. Ese es su modo de trabajar y actuar, así es que es muy probable que esto se deba a un 'submergimiento' de esta naturaleza".

description, it had been possible to put together a description of another CNI agent involved in the abduction.

Another key piece of information came from an article that appeared in the now defunct magazine "*Pluma y Pincel*" in May 1989 based on tapes recording radio conversations between members of the security forces on 9 September 1987 about the operation to "arrest without witnesses" three people. The identities of the agents involved had been clarified following the progress made in the Operation Albania case. In an interview given shortly after the "disappearance" of his son, the father of José Julián Peña Maltés said,

"I shall not rest until I know what has happened to him. I will not abandon him. I ask anyone who may have seen him or who has some information about his arrest to help us. I ask this as a father".⁴⁴

The case is currently being investigated by the judge of the Third Criminal Court (*Tercer Juzgado del Crimen*) of Santiago, one of the nine judges appointed by the Supreme Court in June 2001 to investigate exclusively cases of the "disappeared".

Michelle Marguerite Peña Herreros

Michelle Marguerite Peña Herreros a 27-year-old engineering student at the State Technical University (*Universidad Técnica del Estado*), was eight

⁴⁴ *"No descansaré hasta saber lo que pasa con él. No lo abandonaré. Pido a cualquier persona que lo haya visto, o que tenga algún antecedente de su detención, que nos ayude. Lo pido como padre".*

months pregnant when she was arrested on 20 June 1975 by members of the DINA. Though there were no direct witnesses to the arrest, there is evidence to suggest that she was detained at home in the Las Rejas neighbourhood of Santiago, possibly at the same time as Ricardo Lagos Salinas with whom she shared the house and who also “disappeared” after being detained by members of the *Dirección de Inteligencia Nacional* (DINA), Directorate of National Intelligence. In July 1975, a prisoner who had been held at the Villa Grimaldi, a secret detention centre run by the DINA, reported hearing the voice of Michelle Peña.

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She was an active member of the Socialist Party (*Partido Socialista*). Her arrest and subsequent “disappearance” took place in the context of a series of raids by DINA agents against leaders of the Socialist Party who were in hiding at the time. Other members of the party arrested in June and July 1975 who also count among the “disappeared” are: Ricardo Lagos, Exequiel Ponce, Mireya Rodríguez, Carlos Lorca, Modesta Carolina Wiff, Rosa Soliz Poveda and Sara Donoso Palacios.

In July 1975, Michelle Peña’s sister submitted a *recurso de amparo* (similar to a writ of *habeas corpus*) to the Santiago Appeals Court. The Minister of the Interior denied that she was in custody and the appeal was rejected. On 29 August, a *recurso de amparo* was submitted to the Military Appeals Court (*Corte Marcial*) after relatives heard that she might be in the Santiago Military Hospital. The Military Appeals Court declared itself without jurisdiction and sent the case to the Santiago

Appeals Court. On 26 September 1975, the court rejected the appeal and directed the case to the 6th Criminal Court.

The court requested information from the Military Hospital asking whether a pregnant woman had been at the hospital between 25 June and 2 August 1975 and whether she had been identified. The hospital responded by sending the medical notes of another patient who had subsequently thrown herself in front of a car. In July 1976, the court finished the investigative phase of the case and temporarily suspended proceedings. Its decision was upheld by the Santiago Appeals Court on 29 October.

A complaint for illegal detention (*denuncia por detención ilegal*) was presented to the 5th Criminal Court on 10 July 1975. The Ministry of the Interior, the head of the *Secretaría Ejecutiva Nacional de Detenidos* (SENDET), National Executive Secretariat for Detainees and the head of the *Dirección de Inteligencia del Ejército* (DINE), Intelligence Directorate of the Army, all denied that she had been detained. The court suspended proceedings on 30 October, a decision which was upheld by the Appeals Court on 19 January 1976.

In 1978, a criminal complaint was presented by human rights lawyers against General Manuel Contreras, former director of the DINA, and other senior officials of the intelligence agency for their responsibility for the abduction and subsequent “disappearance” of 70 people, including Michelle Peña Herreros, between 1974 and 1976. The case was one of the most important legal actions to be taken on behalf of the “disappeared” and contained substantial material, including personal testimonies to back up the allegations of illegal arrests, torture and “disappearances” by the DINA. The DINA was formally under the

authority of the military junta, but in practice, it reported solely to the orders of General Pinochet.

The complaint was originally presented to the 10th Criminal Court which, without carrying out any investigations whatsoever, declared itself without jurisdiction to continue with the case and passed it to the military courts. The case was then closed pending new information. In 1983, the Military Appeals Court ruled to re-open the investigation of 35 of these cases but in November 1989 a military judge closed the proceedings on the basis of the 1978 Amnesty Law and because in the 10 years that the case had been open, it had not been possible "to determine the responsibility of anybody" ("*determinar responsabilidad de persona alguna*"). This decision was upheld by the Second Military Court on the grounds that "the penal responsibility of the people allegedly incriminated in the acts had expired" ("*por encontrarse extinguida la responsabilidad penal de las personas presuntamente inculpadas en los hechos denunciados*"). In 1990, the Supreme Court confirmed the closure of the cases, declaring the amnesty law to be constitutional.

The 70 cases in the original complaint were submitted by lawyers to the Inter-American Commission on Human Rights of the Organization of American States. In 1996 it concluded that the 1978 Amnesty Law violated the American Convention on Human Rights (ACHR) ratified by Chile in August 1990 and recommended the Chilean Government adapt internal legislation to conform to the ACHR so that the human rights violations of the military government can be investigated to identify those responsible and bring them to justice.

In January 2001 a criminal complaint for war crimes, injuries, abduction, removal of a minor and genocidal illicit association (*querrela criminal por crímenes de guerra, lesiones, secuestro agravado, sustracción de menores, asociación ilícita genocídica perpetrados*) was submitted to investigating Judge Juan Guzmán against Augusto Pinochet and DINA chiefs for the “disappearance” of Michelle Peña.

Michelle Peña’s case appeared on the list of names of 180 people arrested between 1973 and 1976 submitted by the armed forces to President Lagos in January 2001. According to the information supplied, she was arrested by the DINA and died on 25 June 1975. Her body was reportedly thrown into the sea near San Antonio. No information was given about where she was held prior to her death nor about the treatment she suffered.

The case is currently being investigated by the judge of the Tenth Criminal Court of Santiago, one of the judges appointed by the Supreme Court in June 2001 to look exclusively at cases of the “disappeared”.

Ricardo Ernesto Lagos Salinas

Ricardo Lagos Salinas was 24 years old at the time of his arrest and was married with two children. He was a member of the political committee of the Socialist Party. He was arrested on 17 June 1975 by members of the *Dirección de Inteligencia Nacional (DINA)*, Directorate of National Intelligence. Although there are no witnesses to his arrest, it is believed that he was taken from his home in the neighbourhood of Las Rejas, Santiago, possibly at the same time as Michelle Peña Herreros.

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On 24 June 1975, another member of the Socialist Party went to a house where he had previously arranged to meet Ricardo Lagos and saw a white Chevrolet car waiting nearby. He went into the house and was promptly detained by two armed men in civilian clothes. He and

Ricardo Lagos were taken to the Villa Grimaldi where they were tortured with electricity and beaten. On 26 June, the witness saw Ricardo Lagos near the bathrooms and a couple of days later when he was taken to an area in Villa Grimaldi called the Tower ("La Torre"), he recognised the voice of Michelle Peña in the next-door cell. The witness was subsequently released. According to the testimony given to the National Commission for Truth and Reconciliation by Luz Arce, one time member of the Socialist Party who after torture collaborated with the security forces, she also saw Ricardo Lagos in the Villa Grimaldi and had the impression that he knew he was going to be killed.

The security forces had been searching for Ricardo Lagos from the time of the coup in September 1973. On 16 September 1973, his father, Ricardo Raúl Lagos Reyes, ex mayor of Chillán, his step mother Sonia Ojeda who was pregnant and his brother Carlos Eduardo Lagos were gunned down at their home by soldiers. In 1974, his wife and two children fled the country.

His arrest and "disappearance" took place in the context of operations by the DINA against the central committee of the Socialist Party in June and July 1975. The following people were also arrested and subsequently "disappeared": Michelle Peña Herreros, Exequiel Ponce, Mireya Rodríguez, Carlos Lorca, Modesta Carolina Wiff, Rosa Soliz Poveda and Sara Donoso Palacios.

On 3 September 1975, a *recurso de amparo* was submitted to the Santiago Appeals Court, which following negative responses from the authorities, was rejected by the court and transmitted to the 7th

Criminal Court of Santiago. On 28th October, the court opened the investigation.

In June 1979, Ricardo Lago's case was taken up by the Special Investigating Judge (Ministro en Visita), Servando Jordán López who had been appointed by the Supreme Court to investigate cases of "disappearances" in the Santiago area. In December, the judge declared himself without jurisdiction and passed the case to the military courts. In June 1982 and without carrying out any investigations, the pre-investigative phase of the case was closed and on 16 July the case was closed. The decision was confirmed by the military appeals court on 3 May 1983

In 1978, a criminal complaint was presented by human rights lawyers against General Manuel Contreras, former director of the DINA, and other senior officials of the intelligence agency for their responsibility for the abduction and subsequent "disappearance" of 70 people, including that of Ricardo Lagos Salinas, between 1974 and 1976. The case was one of the most important legal actions to be taken on behalf of the "disappeared" and contained substantial material, including personal testimonies to back up the allegations of illegal arrests, torture and "disappearances" by the DINA. The DINA was formally under the authority of the military junta, but in practice, it reported solely to the orders of General Augusto Pinochet.

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On 9 July 2001 Judge Juan Guzmán Tapia charged five senior members of the DINA with the abduction of 12 government opponents and for illicit association. Ricardo Lagos Salinas is among the 12 cases. The accused are: Manuel Contreras, retired general and former director of the DINA, retired army general Miguel Krassnoff Marchenko, retired colonel Marcelo Moren Brito, retired army officer Basclay Zapata and civilian agent Osvaldo Romo Mena.

Ricardo Lagos' case appeared on the list of names of 180 people arrested between 1973 and 1976 submitted by the armed forces to President Lagos in January 2001. According to the information supplied, he was arrested by the DINA and died on 26 June 1975. His body was reportedly thrown into the sea near San Antonio. No information was given about where he was held prior to his death nor about the treatment he suffered.

The case is currently being investigated by the judge of the Tenth Criminal Court of Santiago, one of the judges appointed by the Supreme Court in June 2001 to look exclusively at cases of the "disappeared".

Jaime Eugenio Robotham Bravo
Claudio Francisco Thauby Pacheco

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Jaime Robotham Bravo and Claudio Thauby Pacheco, former sociology students at the University of Chile and members of the Socialist Party were arrested at about 7.00pm on 31 December 1974 on the corner of Sucre and Miguel Angel Streets in Santiago by heavily armed members of the *Dirección de Inteligencia Nacional (DINA)*, Directorate of National Intelligence. Jaime Robotham was hit with a rifle butt as he tried to resist arrest. The two were taken to the Villa Grimaldi where they were seen by a number of witnesses.

According to witnesses, the two men were brutally tortured. A pencil was reportedly thrust into Claudio Thauby's navel and pushed up towards his ribs. One witness testified to having seen him being badly beaten the night of his arrival at the Villa Grimaldi particularly around the ears. This appeared to have caused balancing difficulties and resulted in him needing two people to hold him up. Another detainee related hearing that Claudio Thauby had died under torture. In declarations she made to the National Commission for Truth and Reconciliation, Luz Arce Sandoval - one-time member of the Socialist Party who turned informer after being arrested and tortured by the DINA - reported hearing one of his torturers telling him that "he was

going to learn how traitors died" (*"iba a aprender como morían los traidores"*). Claudio Thauby had previously been a cadet at the Military Academy at the same time as one of his torturers. Jaime Robotham was beaten and repeatedly subjected to electric shocks. A detainee reported seeing him in a terrible state. It was known that he had been taken to "The Tower" (*La Torre*) in Villa Grimaldi. He was seen being taken out of Villa Grimaldi together with Julio Fidel Flóres Pérez and Herbit Ríos Soto. The three men were never seen again.

Press reports carried on 12 July 1975 stated that the charred bodies of two people who had been shot had been found inside a car 45 kilometres northeast of Buenos Aires, Argentina. They were said to be carrying identification cards with their names, "Luis Alberto Wendelman Wisnik" and "Jaime Eugenio Robostan Bravo". A note with the bodies read, "Executed by the MIR" (*Dados de baja por el MIR*). The documents found on the bodies were said to be those of Jaime Eugenio Robotham Bravo and Luis Alberto Guendelman Wisniak, another Chilean "disappeared" prisoner. The Chilean press said that finding the bodies confirmed that many individuals who counted as disappeared, in fact clandestinely left the country. The reports added that the identity of the bodies had been confirmed by the Chilean authorities and that "Amnesty International would just have to rub their names off its list of disappeared people in Chile"⁴⁵. Relatives who travelled to Argentina to identify the bodies found that they were not those of their relatives and that the documents were forgeries that were full of mistakes. The National Commission for Truth and Reconciliation notes that the

⁴⁵"Amnistía Internacional no tendrá otra cosa que borrar sus nombres de la lista de personas desaparecidas en Chile".

identification photograph for Robotham Bravo had been taken when he was a teenager. His mother had given it to a member of the investigative police who had come to her house several times claiming that he was investigating the “disappearance” of her son and saying that he needed a passport-sized photograph of him.

In July 1975, the Chilean press published a list of 119 people said to have died in “armed confrontations between extremists” in various Latin American countries. The list was said to have been reprinted from one that appeared in the Argentinean magazine *Lea* and the Brazilian newspaper *Novo O Dia*. Subsequent inquiries revealed that *Lea* was the first (and only) edition of a magazine that did not legally exist and that *Novo O Dia* only appeared intermittently. Among the names was that of Jaime Robotham. The names corresponded to those of 119 people arrested by the DINA between June 1974 and February 1975 who subsequently “disappeared”. Many of those listed had been seen in secret detention centres after their arrest and it became clear that the articles were part of a plan by the DINA to persuade Chilean and international opinion that allegations of “disappearances” were untrue.

Relatives' recourse to the judiciary yielded no results. In the case of Jaime Robotham, a *recurso de amparo* submitted in January 1975 to the Santiago Appeals Court was rejected nearly three months later. The family had submitted evidence that Jaime Robotham had been seen in the Villa Grimaldi but the various government agencies continued to deny that he had been detained. The case was sent to the 8th Criminal Court in Santiago where it was temporarily closed in October 1975. Two complaints for presumed misadventure (*denuncias por presunta desgracia*) that had also been submitted in January 1975 were subsequently archived. In August 1976, relatives asked for the case to

be reopened on the basis that two former prisoners were willing to testify to having seen Jaime Robotham in the Villa Grimaldi but their request was denied.

In April 1991, relatives of Jaime Robotham Bravo submitted a criminal complaint for aggravated kidnapping, prolonged incommunicado detention, arbitrary detention, and falsification of documents (*querrela criminal por los delitos de secuestro agravado, incomunicación prolongada, detención arbitraria y falsificación de documentos públicos*).

Relatives' appeals to the courts during the 1970s on behalf of Claudio Thauby Pacheco were similarly unsuccessful. In March 1991, a criminal complaint for aggravated abduction, prolonged incommunicado detention, unnecessary force and arbitrary detention (*secuestro agravado, incomunicación prolongada, rigor innecesario y detención arbitraria*) was submitted to the 8th Criminal Court of Santiago. In the complaint, the relatives called for the people who had seen Claudio Thauby in detention to testify. None of them had been called by the court that had originally carried out the investigations to corroborate their statements.

In March 2000, a criminal complaint to the courts for the abduction and "disappearance" of the two men was submitted against Augusto Pinochet and other senior DINA officers.

On 9 July 2001 Judge Juan Guzmán Tapia charged five senior members of the DINA for the abduction of 12 government opponents and for illicit association. Claudio Thauby Pacheco is among the 12 cases. The accused are: Manuel Contreras, retired general and former director of the DINA, retired army general Miguel Krassnoff Marchenko, retired

colonel Marcelo Moren Brito, retired army officer Basclay Zapata and civilian agent Osvaldo Romo Mena.

Alvaro Miguel Barrios Duque

Alvaro Miguel Barrios Duque, a 26-year-old university student and member of the *Movimiento de Izquierda Revolucionaria* (MIR), Movement of the Revolutionary Left, had only been married a month when he was detained by members of the *Dirección de Inteligencia Nacional* (DINA), Directorate of National Intelligence. He was arrested from his home in the Conchalí district of Santiago on 15th August 1974 at midday. His family witnessed the detention. Among the individuals present was a former member of the Socialist Party, Luz Arce Sandoval. Luz Arce had been arrested previously and following torture at the hands of the DINA had become a collaborator. In the testimony she gave to the National Commission for Truth and Reconciliation in 1990, she said that Alvaro Barrios Duque had died as a result of the list of people she had given to the DINA.

Alvaro Barrios Duque was taken out to an unmarked red truck where he was blindfolded and handcuffed by men in civilian clothes. Julio Cañas was arrested shortly after and both men were taken to Londres 38, a secret detention centre run by the DINA in the centre of Santiago. Julio Cañas was released later that day. In the evening of 15th August, Alvaro was driven home where he collected some clothing and asked for cigarettes and bread. His family reported that he seemed nervous. He told them that he had been arrested by an intelligence service and then left the home.

Later in 1976 and 1977, men in civilian clothes went to the home of an uncle of Alvaro Barrios Duque. On the first occasion, three young men told his uncle that they were looking for Alvaro because a loan company that they did not name had agreed a loan for him. The uncle told them that his nephew had "disappeared" two years previously and that it was strange that after such a period, a loan should recently have been approved. In 1980, the financial scandal known as the "IVA Fraud" case broke. The Union Trading company, run by a member of the DINA, defrauded people of millions of pesos using different papers. Among the documents were bills in the name of Alvaro Miguel Barrios Duque.

In August 1974, the 10th Criminal Court began an investigation into the "disappearance" of Alvaro Barrios. This case was subsequently among the cases taken up by the Judge Servando Jordán, the Special Investigating Judge (*Ministro en Visita*) appointed to investigate "disappearances" in the Santiago region. In May 1981, he passed the case to the military courts who suspended the case in July 1981. The Military Appeals Court subsequently declared the case definitively closed on the basis of the 1978 Amnesty Law.

An investigation was also begun in the 8th Criminal Court which was suspended in May 1976. In July 1996, at the request of the National Corporation for Reparation and Reconciliation, the case was reopened and a number of steps were ordered to be carried out which included calling members of the Armed Forces to testify. The military courts contested jurisdiction and in September 1997, the Supreme Court ordered the case to be transferred. The case was closed soon after on

the basis that the case had already been adjudicated in the proceedings initiated by the 10th Criminal Court. This decision was upheld by the Military Appeals Court in June 1998.

An appeal against this decision was presented to the Supreme Court, which proceeded to compare the two investigations that had been carried out. In the investigations conducted in the 10th Criminal Court, it had been established that unknown civilians, in collaboration with Luz Arce Sandoval and a man, Patricio Alvarez Poblete, had detained Alvaro Barrios Duque. Only Patricio Alvarez had been questioned and no one had been charged. In the second investigation, Patricio Alvarez had testified in and out of court. Luz Arce had testified out of court and mentioned the names of the DINA agents who had been involved in the detention of Alvaro Barrios, none of whom had been questioned by the military court. As a result, the Supreme Court resolved that the full facts and those responsible had not been fully identified, did not accept the assertion of former adjudication, revoked the previous decision and called for the investigation to be exhausted, determining who was responsible and the whereabouts of the victim. It also specified which former DINA agents should be called for questioning.

Alicia de las Mercedes Herrera Benítez, 52

Hugo Ernesto Vivanco Vega, 58

Nicolás Hugo Vivanco Herrera, 30

Oscar Orlando Ramos Garrido, 58

Oscar Arturo Ramos Vivanco, 24

In 1988, Carmen Vivanco Mena whose husband, son, brother, sister-in-law and nephew “disappeared” following their detention in

Santiago by the *Dirección de Inteligencia Nacional* (DINA), Directorate of National Intelligence, in August 1976 related her painful experience in an interview:

“I have lived alone since they disappeared: my family is the Association of Relatives of Disappeared Detainees.

It is tragic what has happened to me: not to know what happened to them, where they were taken to, at what moment while they were being tortured they would have needed a hand from their family. Nevertheless, my pain keeps me going, ready to fight in order that the same thing never happens to others.

I would like those responsible for so much suffering to go through just 15 days of what I have had to live through for years and years. These have been 12 years of suffering and I would like those responsible to go to jail for what they have done, because if not other governments will come along tomorrow and the drama will be repeated.

The terrible thing is not having the bodies, not being able to go to the cemetery to plant flowers. When someone dies in a confrontation, one cries, one suffers, but the body is there: we are just left with this open wound.

When I am alone in the house, I turn on the radio because they used to like listening to football. I make certain meals and think, ‘my husband liked this dish so much’. It is painful being alone, but I have a great determination to discover the truth: it is a constant struggle in order that no one else will have to go through what we have been through ...

What happens to me and I think the same thing happens to my other friends at the association - I leave work, I get on a bus on 14 November 2001 I see my son’s face. My pain is great and permanent ... They were people, human beings ... when they took my husband and son away, they were in the workshop in my own home. So how can I find peace? We spend every day thinking of ways to find out about our relatives. It is a pain we feel everyday ...”⁴⁶

⁴⁶ *“Vivo sola desde que desaparecieron: mi familia es la Agrupación de Familiares de Detenidos Desaparecidos ...*

Lo que me ocurrió es trágico: no saber que pasó con ellos, donde se los llevaron, en que momento de la tortura habrán necesitado una mano de su familia. Sin embargo, ese dolor que siento me mantiene de pie para seguir luchando, para que no le suceda lo mismo a otras personas.

Me gustaría que los culpables de tanta tragedia sufrieran nada más que quince días lo que a mí me ha tocado vivir durante años. Para mí son doce años de sufrimiento y quiero que los responsables paguen con la cárcel lo que hicieron, porque si no el día de mañana vendrán otros gobiernos y el drama se repetirá.

Lo terrible es no tener los cadáveres, no poder ir al cementerio a colocarles una flor. Cuando alguien muere en un enfrentamiento se llora, se sufre, pero está el cuerpo: nosotros siempre estamos con una herida abierta.

Cuando estoy sola en la casa coloco la radio porque a ellos les gustaba escuchar fútbol. Hago ciertas comidas y pienso, 'pero tanto que le gustaba a mi marido'. Es angustiante estar sola, pero tengo una tremenda fuerza de voluntad por saber la verdad: es una lucha constante para que nadie viva lo que nosotros hemos vivido ...

A mí, y creo que todas las compañeras de la Agrupación nos pasa lo mismo - salgo del trabajo, voy en una micro y veo la cara de mi hijo. Mi dolor es grande y permanente ... Eran personas, seres humanos ... cuando se llevaron a mi esposo y a mi hijo, estaban en el taller de trabajo de mi propia casa. Entonces, cómo puedo yo tener tranquilidad? Todos los días una está pensando qué hacer para saber de nuestras familiares. Es una angustia de todos los días."

The five who were members of the Communist Party, were connected with publishing and had worked at the *Imprenta Horizonte* where a number of party publications had been produced. At around midday on 4th August 1976, Hugo Ernesto Vivanco Vega who had gone out to buy some bread, was arrested in the street by DINA agents. He was bundled into a car and taken to the Villa Grimaldi. A witness to the arrest informed Hugo Vivanco's wife, Alicia de las Mercedes Herrera Benítez who was arrested a few hours later at her home. She had previously telephoned her son Nicolás Hugo Vivanco Herrera and gone to the home of her sister-in-law Carmen Vivanco Vega to inform them about her husband's arrest. On 5th August Oscar Orlando Ramos Garrido, a member of the central committee of the Communist Party and his son Oscar Arturo Ramos Vivanco were arrested by DINA agents and taken to the Villa Grimaldi where all trace of them was lost. On 10th August, Nicolás Hugo Vivanco Herrera, who had been trying to locate his parents, was arrested in the street.

All petitions on behalf of the five failed. The courts claimed there was no evidence that they were in detention and rejected the appeals made on their behalf. In 1978, a criminal complaint was presented by human rights lawyers against General Manuel Contreras, former director of the DINA, and other senior officials of the intelligence agency for their responsibility for the abduction and subsequent "disappearance" of 70 people, including the these five, between 1974 and 1976. The case was one of the most important legal actions to be taken on behalf of the "disappeared" and contained substantial material, including personal testimonies to back up the allegations of illegal arrests, torture and "disappearances" by the DINA. The DINA was formally under the

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The complaint was originally presented to the 10th Criminal Court which declared itself without jurisdiction to continue with the case without carrying out any investigations whatsoever and passed the case to the military courts. The case was then closed pending new information. In 1983, the Military Appeals Court ruled to re-open the investigation of 35 of these cases but in November 1989 a military judge closed the proceedings on the basis of the 1978 Amnesty Law and because in the 10 years that the case had been open, it had not been possible "to determine the responsibility of anybody" ("*determinar responsabilidad de persona alguna*"). The decision was upheld by the Second Military Court on the grounds that "the penal responsibility of the people allegedly incriminated in the acts had expired" ("*por encontrarse extinguida la responsabilidad penal de las personas presuntamente inculpadas en los hechos denunciados*").

In 1990, the Supreme Court confirmed the closure of the cases, declaring the amnesty law to be constitutional.

The 70 cases in the original complaint were presented by human rights lawyers to the Inter-American Commission on Human Rights of the Organization of American States. In 1996 it concluded that the 1978 Amnesty Law violated the American Convention on Human Rights ratified by Chile in August 1990 and recommended the Chilean Government adapt internal legislation to conform to the ACHR so that the human rights violations of the military government can be investigated to identify those responsible and bring them to justice.

Samuel Altamiro Lazo Quinteros, 49, married with seven children, agricultural worker and member of the Socialist Party

Carlos Enrique Lazo Quinteros, 41, married with six children, agricultural worker, no political affiliation

Samuel del Tránsito Lazo Maldonado, 24, married with one child, student, member of the Socialist Party

Luis Rodolfo Lazo Maldonado, 20, agricultural worker, member of the Socialist Party

The four men were arrested on 16th October 1973 by soldiers from the Infantry School of San Bernardo. At about 4 o'clock in the morning, Samuel Lazo Quinteros and his sons Samuel del Tránsito and Luis Rodolfo were awoken by soldiers who entered their home without any search or arrest warrants. The men were told to get dressed and to take their identity cards. About 15 minutes later, Carlos Enrique Lazo Quinteros was arrested by the same group of soldiers.

During the night of 16th October, soldiers carried out a wide sweep of the area and arrested 23 people from their homes at the rural settlements known as Campo Lindo, 24 de Abril and Nuevo Sendero in the Paine commune. At no time did the soldiers show any search or arrest warrants. Some of them had their faces blackened, some were wearing balaclavas. They were all heavily armed. Most of those arrested were agricultural workers who had participated in the agrarian reforms led by the government of Salvador Allende. The families were not allowed to get out of their beds and were told that their husbands and sons would return later in the day. The men were first taken to the Paine substation, (*Sub Comisaría*) where some were seen by their

relatives, and then transferred to the San Bernardo Infantry Regiment. After that all trace of of the men was lost.⁴⁷

The detentions took place in the context of widespread repressive action directed primarily at agricultural workers in the Paine area between September and November 1973 in which numerous people were executed or “disappeared” following their arrest by police or army personnel.

On 24 March 1974, a *recurso de amparo* was submitted on behalf of 131 people arrested in the Paine area. The authorities responded negatively to requests for information and the appeal was rejected on 28 November 1974. A special investigating judge was appointed to look into the case in January 1975 but closed the case nine months later. In March 1975, a criminal complaint for presumed misadventure was submitted on behalf of 23 people from Paine. Once again, the authorities refused to disclose any information and the case was suspended. In 1977 relatives of the victims asked for the case to be reopened on the grounds that in its 1975 report to the United Nations, the Chilean Government had alleged that the bodies of 63 people listed as “disappeared”, were in fact registered in the Medical Legal Institute

⁴⁷ The names of the other detainees are as follows: Andrés Pereira Salsberg, René del Rosario Maureira Gajardo, Patricio Loreto Duque Orellana, Ramiro Antonio Muñoz Peñaloza, Silvestre René Muñoz Peñaloza, Jorge Hernán Muñoz Peñaloza, Mario Enrique Muñoz Peñaloza, Basilio Antonio Valenzuela Alvarez, Jorge Fredes García, Carlos Enrique Gaete López, Luis Alberto Gaete Balmaceda, Carlos Alberto Nieto Duarte, Laureano Quiroz Pezoa, Rosalindo Delfín Hernán Muñoz, Luis Ramón Silva Carreño, Pedro Antonio Cabezas Villegas, Roberto Esteban Serrano Galaz, José Domingo Adasme Núñez, and José Ignacio Castro Maldonado.

(Instituto Médico Legal). Among the list were 10 people from Paine. This conflicted with information previously supplied by the Medical Legal Institute. Other legal suits followed with a complaint for the illegal arrest of the Lazo Quinteros and Lazo Maldonado brothers in May 1977 and a complaint in March 1978 against the officer in charge of the San Bernardo Infantry School.

In May 1979, the judge in charge of the case visited the Forensic Medical Institute to check their records. In August, the judge declared himself without jurisdiction to continue with the case, confirming that the “disappeared” inhabitants of Paine had been detained and that the list of 63 people that the Chilean authorities had presented to the United Nations was false. Another civilian judge took over the case. The military refused to hand over the names of those who had been involved in the operations. The court was told that one of the accused was a military attaché at the embassy in Uruguay. In December 1979 nine criminal complaints were added to the case.

On two occasions the judge in charge declared himself without jurisdiction. Both times, the Pedro Aguirre Cerda Court of Appeals revoked the decision and ordered the judge to continue with the investigations. However, in October 1980 the case was handed to the Second Military Court and in 1982 the case was suspended. This decision was overturned by the Military Appeals Court in March 1984 who ordered more investigations to be carried out. In 1985 at least 26 military officers who were on active service at the time testified. All of them denied any participation in the operations in the Paine area. The military prosecutor requested the application of the 1978 Amnesty Law and the case was suspended again.

In 1979, the *Vicaría de la Solidaridad*, the Catholic Church sponsored human rights organization denounced the existence of 200 unmarked graves in Plot 29 (*Patio 29*) of the General Cemetery (*Cementerio General*) of Santiago thought to contain the bodies of some of the “disappeared”. From the investigation it was thought that at least six of the graves could provide information regarding some of the “disappeared” involved in this case. Between 1981 and 1987 requests were made on five separate occasions for the graves to be exhumed without result.

In February 1992, the Military Appeals Court revoked the 1985 decision to apply the Amnesty Law and sent it back to the investigative phase (*sumario*) ordering the exhumation of bodies from six unmarked graves in Patio 29 of the General Cemetery in Santiago. The previous year, forensic experts had exhumed 127 unidentified bodies from this area of the cemetery as part of an investigation by the 22nd Criminal Court of Santiago into their illegal burial. Between 1993 and 2000 the remains of several men from Paine who “disappeared” following their arrest by the army were identified. Their names are: José Ignacio Castro Maldonado, Patricio Duque Orellana, Luis Gaete Balmaceda, Mario Muñoz Peñaloza and Roberto Serrano Galaz.

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© private - Carlos Lazo Quintero

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