

CHILE

@The Human Rights Legacy

Introduction

On 11 March 1990, Patricio Aylwin, leader of the 17-party coalition, *Concertación de Partidos por la Democracia* (Coalition of Parties for Democracy) took office as the president of Chile, ending more than 16 years of military rule.

One of the central issues of the campaign preceding the presidential and congressional elections of 14 December 1989, concerned proposals for dealing with human rights violations committed under the former military government. Since assuming power, the Aylwin Government has taken important measures to address the legacy of past human rights abuses. These measures included: the creation of the *Comisión de Verdad y Reconciliación* (Commission for Truth and Reconciliation) to establish the truth behind many of the human rights violations committed between September 1973 and March 1990; proposals to reform legislation that had seriously affected the rights of prisoners charged with politically-motivated offences to a fair trial; the release of 49 convicted political prisoners following a presidential pardon; and a bill calling for the death penalty to be eliminated.

In addition, in August the Chilean Government ratified the American Convention on Human Rights and the United Nations Convention on the Rights of the Child. It also withdrew all but one of the reservations to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and reservations to the Inter-American Convention to Prevent and Punish Torture both ratified by the former government in 1988. These reservations, had significantly limited the effectiveness of the treaties. In addition, the government signed a declaration recognizing the competence of the Human Rights Committee to examine inter-state complaints under article 41 of the International Covenant on Civil and Political Rights.

The scope of a number of the human rights initiatives taken by the government were limited by a series of factors, many of them inherited from the previous administration. The 1980 Constitution, for instance, although amended in several aspects following a plebiscite held in July 1989, continued to place restraints on the civilian government. It ensured, for example, the continuing presence of General Pinochet as Commander-in-Chief of the armed forces. It also enabled the former administration to appoint nine senators to Congress. This meant that even though the *Concertación* gained 22 of the 38 elected seats in the Senate, it failed to achieve an overall majority. In practice, this enabled representatives of the parties who supported the former government and the designated senators to block a number of the legislative reforms proposed by the Aylwin Government, among them those that sought to facilitate the early release of some political prisoners and speed up the trials of the remaining cases. (Further details are

included under Trials of Political Prisoners - see below). The members of the Supreme Court, appointed under the previous administration, further hindered the government's initiatives by blocking investigations into past human rights violations.

Amnesty International has followed with close interest the measures initiated by the Chilean Government since it assumed power to deal with human rights abuses committed during the period of military rule. It takes note of the obstacles faced by the Chilean Government in addressing the legacy of past human rights violations but believes that the government has a continuing obligation to ensure that:

- full investigations into allegations of human rights abuses under the previous government, including all complaints of torture, are carried out, that the full truth is made known and that those responsible are brought to justice;
- the proceedings against prisoners charged with politically-motivated offences are reexamined without delay, aimed at determining whether those prisoners who did not receive a fair trial according to international standards should be released or should have their case re-heard under fair procedures;
- the death penalty is abolished;
- any allegation of torture or other cruel, inhuman or degrading treatment is immediately and impartially investigated and that those responsible are brought to justice;
- there is a comprehensive review of judiciary aimed at introducing reforms to bring about a genuinely independent and impartial judiciary which will never again condone human rights abuses committed by agents of the state.

1. Investigations into Human Rights Violations

Further evidence of military and security force involvement in serious human rights violations continued to come to light during the year with the discovery of a number of clandestine graves containing the remains of victims of past human rights abuses. Some of the bodies were subsequently identified as individuals who had "disappeared" following their arrest or were known to have been summarily executed by the army or the security forces. Nevertheless the courts continued to use the 1978 Amnesty Law (Decree Law 2.191 of 1978) to block investigations into abuses committed between 1973 and 1978 - a period marked by serious and widespread human rights violations, including "disappearances"¹ and extrajudicial executions. In addition, the Supreme Court upheld a request from a military court that investigations arising from the discovery of a clandestine grave be transferred from civilian to military jurisdiction, leaving little prospect that the investigations would continue.

¹ The policy of "disappearance" directed at opponents of the military government largely ceased in 1977, though a few cases were recorded in the following years. For further information, see the Amnesty International report, Disappearances: The Truth Must be Revealed, AMR 22/13/88.

A. Comisión de Verdad y Reconciliación (Commission for Truth and Reconciliation)

On 24 April President Aylwin announced the creation of the *Comisión de Verdad y Reconciliación*. The Commission was charged with gathering information to establish the truth behind cases of "disappearances", executions and deaths as a result of torture, as well as deaths as a result of violent acts by private individuals on political pretexts. It was also mandated to recommend measures aimed at preventing human rights violations from being committed in the future and advise on reparations to the victims. Its brief did not include the many hundreds of complaints of torture submitted to the courts over the years. It had no formal powers but transmitted information on cases within its mandate to the courts for judicial review. The Commission was given a period of between six to nine months to prepare a report for the president.

The creation of the Commission provided the opportunity for individuals to come forward, some for the first time, to present their testimony. Human rights organizations, branches of the armed forces, political parties and others also presented cases. By the end of the year, it was reported to have received well over 3000 cases. At the time of writing, the report was expected to be presented to President Aylwin early in 1991.

B. Cases closed under 1978 Amnesty Law (decree law 2.191)

Cases continued to be closed on the basis of the 1978 Amnesty Law during the year. Of particular concern to Amnesty International was a Supreme Court ruling on 24 August, which upheld the decision of lower military courts to use the Amnesty Law to close investigations into the "disappearance" of 35 people. Its decision brought to an end one of the most important legal actions to be taken against members of the former intelligence agency, the *Dirección de Inteligencia Nacional* (DINA, Directorate of National Intelligence), formally disbanded in 1978 and implicated in a significant number of "disappearances".

The case was initiated in 1978 when a criminal complaint was presented to the courts against General Manuel Contreras, director of the former intelligence agency, and other senior officials, for their responsibility in the abduction and subsequent "disappearance" of 70 people between 1974 and 1976. The case included important testimonies supporting allegations of illegal arrests, torture and "disappearances" by the DINA. Originally presented to the civilian courts, the case was immediately closed without further investigation when the court declared itself without jurisdiction. Thirty five of the seventy cases were reopened by the *Corte Marcial* (Military Court of Appeal) in 1983. These cases were closed on the basis of the amnesty law by the then *juez militar* (military judge) General Carlos Parera at the end of 1989.

In August 1990, the Supreme Court rejected an appeal that had been submitted by a lawyer on behalf of the relatives of the "disappeared" prisoners that argued that the Amnesty Law was unconstitutional. The Supreme Court's decision that cases of serious

human rights violations committed before 1978 could be closed before the facts and criminal responsibility were determined set a legal precedent which undermined hopes that full accountability would be established in other cases or that the whereabouts of victims would be clarified.

Other investigations into "disappearance" cases closed by military courts during 1990 included that of Claudio Tognola Ríos, a doctor from the northern town of Tocopilla, who "disappeared" following his arrest by a military patrol in 1973. His case was closed in February by the acting military judge in Antofagasta, Colonel Julio Pacheco Parado. The remains of Claudio Tognola Ríos, found in a disused mine in Tocopilla, were reported to have been identified in November 1990.

C. Investigations arising from the discovery of clandestine graves handed to military courts

In November the Supreme Court upheld a request from the military courts that investigations arising from the discovery of a mass grave in Pisagua, northern Chile, be transferred from civilian to military jurisdiction, leaving little prospect that the investigations would continue.

The disclosure in June that a mass grave had been uncovered in Pisagua, the site of a prison camp after the military coup, provoked a national outcry. Several hundred political prisoners passed through the camp between September 1973 and the second half of 1974. Some were summarily executed on the orders of *Consejos de Guerra* (War Tribunals) or under the pretext of trying to escape. For years relatives had been calling for investigations to clarify the circumstances surrounding the deaths of their loved ones and for the bodies to be returned to them.

Some of the bodies recovered in June were reported to be in near perfect condition as a result of the mineral content of the desert and still wore perfectly preserved blindfolds and ropes tying their hands together. Eight of the bodies were said to have been identified as those of prisoners who had "disappeared", five of them for reasons not linked to political motives. Of the eleven identified as victims of extrajudicial executions, eight were reported to have been summarily executed on the orders of a War Tribunal and three were shot under the pretext of trying to escape.

At the end of the year the Supreme Court was also considering a demand by the military courts to have the investigations arising from the discovery of the remains of 18 peasants killed in 1973 in the settlement of Chihuío, in the southern central region of Chile, transferred from civilian to military jurisdiction.

Some civilian court judges continued, however, to investigate cases of abuses committed during the period covered by the amnesty law. They included judges investigating complaints of *inhumación ilegal* (illegal burial) arising from the discovery of secret graves and the subsequent identification of some of the bodies even though many of the cases had already been amnestied in the military courts. Another investigation that continued was one conducted by Judge Gloria Olivares into the "disappearance" in July

1974 of Alfonso Chanfreau Oyarce. He was arrested by the DINA and held in Londres 38, a secret detention centre, until his "disappearance" two weeks later. The judge visited the former detention centre in September accompanied by people who had been held there at the same time as Alfonso Chanfreau. With their testimonies, she was able to establish that Londres 38 was in use in 1974 as a DINA torture centre, and was reported to have ordered further investigations.

Ⓓ. Investigations into post-1978 cases

Most cases of human rights violations committed after the period covered by the 1978 Amnesty Law remained unresolved, though some progress was reported to have been made in a limited number of investigations conducted by civilian court judges.

In December, for example, the *ministro en visita* (special investigating judge) in charge of the investigations into the murder of four left-wing activists in September 1986 brought charges against a former agent of the disbanded *Central Nacional de Informaciones*² (CNI, state security police), now an agent of the *Dirección de Inteligencia Nacional del Ejército* (DINE, Directorate of National Intelligence of the Army). He was charged in connection with the kidnapping and assassination of journalist, José Carrasco, one of the four men who were abducted and killed in September 1986 by a clandestine group calling itself the *Comando 11 de setiembre* (11 September Command) following the assassination attempt against General Pinochet shortly before.

Amnesty International welcomes the important measures taken by President Aylwin to deal with past human rights violations including the creation of the *Comisión de Verdad y Reconciliación*. Amnesty International hopes that full investigations into the serious allegations of human rights will be carried out and that those responsible will be brought to justice. Although Amnesty International takes no position on post-conviction amnesties or measures of clemency, it believes that this should never be at the expense of the right of the victims and their relatives to truth, justice and compensation. Amnesty International believes that an important safeguard against the repetition of these practices is to ensure that those responsible for serious human rights violations are brought to justice.

² The CNI, implicated in serious human rights violations including extrajudicial executions and torture was formally disbanded in February 1990, and its files and personnel transferred to the army intelligence unit, the DINE.

2. Trials of Political Prisoners

Amnesty International has expressed its concern on numerous occasions about the lack of guarantees for a fair trial in the cases of prisoners charged with politically-motivated offences. In May 1989, Amnesty International issued a report giving a detailed description of the serious irregularities recorded in the trials of the political prisoners. (For further details, see Political Prisoners in Chile: Their Right to a Fair Trial - AI Index: AMR 22/11/89).

When the civilian government took office in March, some 380 prisoners charged with politically motivated offences remained in prison. The majority faced legal proceedings in military courts on charges of belonging to armed opposition groups or of armed offences. One of the president's first measures was to announce a pardon for 47 convicted political prisoners.³ He also announced proposals for reforming legislation that had given rise to serious irregularities in the trials of the political prisoners. Among the proposals were reforms intended to: invalidate confessions extracted under torture; restrict the sphere of military justice to military offences; allow civilian judges to review all cases currently before military courts; tighten the definition of terrorism; and reduce penalties for politically-motivated offences. He also presented a bill calling for the elimination of the death penalty (See below - Death Penalty).

A number of these reforms were rejected by the senate commission in November, including the proposal to restrict the sphere of military justice to military offences and a series of other provisions that would have benefitted the political prisoners. A congressional agreement between the main parties represented was subsequently reached in December which included among other things: a temporary modification of article 9 of the Constitution extending the president's power to grant a pardon to political prisoners convicted under the Ley Antiterrorista (Anti-terrorist Law), the Ley de Control de Armas (Arms Control Law) and the Ley de Seguridad del Estado (State Security Law) arrested before 11 March 1990; and the transferral of cases of political prisoners charged with offences under these laws from ad-hoc military prosecutors to members of the Corte de Apelaciones (Court of Appeal). Both measures were awaiting final congressional approval at the end of the year, and the situation of some 230 political prisoners remained unresolved.

Amnesty International believes that the majority of political prisoners have not benefitted from even minimum guarantees with regard to their basic rights, such as the right not to be tortured, the right to be judged by an independent and impartial court, the chance to fully exercise the right to defence and the right to equality of all parties at the trial. The organization calls for their situation to be reexamined without delay, aimed at determining whether those prisoners who did not receive a fair trial according to

³ Two more political prisoners received a pardon later in July.

international standards should be released or should have their case re-heard under fair procedures.

3. Death Penalty

On 25 January 1990, the Military Court of Appeal commuted the death sentences against Juan Díaz Olea and Cristián Vargas Barahona to life imprisonment. They had been sentenced to death in the first instance by a military judge in February 1989. For further information about this case, including details of the serious irregularities reported in their trial, see Political Prisoners in Chile: Their Right to a Fair Trial - AMR 22/11/89 and When the State Kills ... The Death Penalty v. Human Rights, published in 1989 for further background about the death penalty in Chile.

In March, President Aylwin presented a bill to Congress calling for the elimination of the death penalty from existing legislation.⁴ The bill, approved by the Chamber of Deputies, was nevertheless rejected by the Senate in December which voted to retain the death penalty for 37 offences.

At the time of writing, nine prisoners charged with politically motivated offences continued to face recommended death sentences.

Amnesty International opposes the death penalty unconditionally and in all cases.

4. Torture and Other Forms of Ill-treatment

Allegations of torture significantly decreased following 11 March 1990. However Amnesty International was concerned at reports that at least seventeen cases of torture were alleged to have occurred, mostly at the hands of the *carabineros* police.

At least eight of the detainees, some of them accused of politically-motivated offences, said they were tortured during the time they were held at the Tercera Comisaría (Third Police Station) in Santiago.

The treatment described by the detainees included the use of electric shocks, the "telephone" (where the detainee is beaten on the ears with the palms of the hands), the "submarine" (where the detainee's head is submerged under water until the person can no longer breathe), being hung by the wrists, sleep deprivation and beatings. Detainees also reported that they were subjected to psychological intimidation in the form of threats to themselves and their relatives.

There were also some reports of the excessive use of force by *carabineros* during demonstrations. In September, for example, *carabineros* were held responsible for wounding at least three people, one of them seriously. The incidents occurred during a peaceful demonstration to the General Cemetery in Santiago to lay flowers on the tomb of

⁴ A provision for the death penalty exists in the Constitution. Any changes to the Constitution require a two thirds majority in Congress.

former president, Salvador Allende and to remember the victims of human rights violations buried in unmarked graves in Plot 29 (*Patio 29*) of the cemetery.

Amnesty International was also concerned that in spite of the many hundreds of complaints of torture presented to the courts over the years involving personnel of the *Central Nacional de Informaciones* (CNI, state security police), its members continued to enjoy impunity. In March, the Military Court of Appeal upheld a decision by a lower military tribunal to release two ex-members of the CNI charged with causing the death of Mario Fernández López in October 1984. Mario Fernández López, a transport driver, died in hospital after being subjected to torture in a CNI secret detention centre. It was one of the very rare cases known to Amnesty International since 1973 which had resulted in the conviction of members of the Chilean security forces for human rights violations.

Amnesty International welcomes the government's commitment towards ensuring that the use of torture is eradicated in Chile and its decision to withdraw the important reservations of the former military government to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Inter-American Convention to Prevent and Punish Torture. Amnesty International believes that it is essential that full investigations into any allegations of torture be carried out and that those responsible be brought to justice. Furthermore Amnesty International believes that investigations into all the complaints of torture lodged before the courts during the years of military rule should be fully investigated and that those responsible should be brought to justice in line with Chilean Government's obligations under international human rights norms.

5. Violation of the Right to Freedom of Expression

Some 30 journalists faced legal proceedings in the military courts during the year. A number of the cases were brought by military prosecutors under articles 284 or 417 of the Code of Military Justice (*Código de Justicia Militar*) which makes it an offence to "threaten, offend or defame" the armed forces or *carabineros* respectively. Some of the cases stemmed from legal actions initiated under the former government while others were brought in 1990 after the civilian government assumed power.

Among the journalists who were arrested and briefly held during the year was Juan Pablo Cárdenas, director of *Análisis* magazine, who was arrested on 26 September in connection with articles discussing the role of the armed forces in past human rights abuses. He was released unconditionally on 9 October after the Military Court of Appeal revoked the two charges against him. Alfonso Stephens, a columnist with *Análisis* and the editor of *El Siglo* newspaper, Juan Andrés Lagos, also arrested in September, were released on bail in October.

Several journalists received death threats during the year after the publication of articles about the role of the armed forces in past human rights violations.

Amnesty International was concerned at the continued harassment of journalists in the form of legal actions initiated in the military courts, short-term detention and death threats.

INTERNAL (for AI members only)

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CHILE

Human Rights in Chile: A Summary of
Amnesty International's Concerns

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. In addition please undertake as many of the following recommended actions as possible.

1. Section officers: This document outlines measures taken by the civilian government of Patricio Aylwin since taking office in March 1990 and provides a general statement of concerns. It may be sent to your country's Foreign Minister as instructed in IOR 41/15/90 of November 1990 in connection with AI's concerns in Chile at the next session of the UN Commission on Human Rights.
2. Press officers: This document can be distributed to media contacts on request. There is likely to be increased media interest in Chile once the report of the Commission for Truth and Reconciliation is handed to President Aylwin in February.
3. Chile and South Andean RAN coordinators: This document is external and can be used in response to requests for information about the human rights developments that have occurred in Chile in 1990 and Amnesty International's continuing concerns.

DISTRIBUTION BY THE IS

This document has been sent direct by the IS to: Sections, South Andean RAN coordinators, groups with Chilean prisoners and groups with Chile "disappearance" dossiers.

