

Chile

Since the death of former dictator Gen. Augusto Pinochet in December 2006, Chilean judges have continued to prosecute and convict former military personnel accused of committing grave human rights violations under the military government. However, the Supreme Court's criminal chamber has reduced sentences in several recent cases, with the result that convicted perpetrators eventually do not serve time in prison.

Overcrowding and ill-treatment in Chile's prisons remain serious problems. Police abuses continue to be reported in the Araucanía region, where indigenous Mapuche communities engage in sometimes violent protests in defense of land claims.

Prosecutions for Past Human Rights Violations

In the pursuit of accountability for human rights abuses under military rule, as of July 2008, 482 former military personnel and civilian collaborators were facing charges for enforced disappearances, extrajudicial executions, and torture; 256 had been convicted (of whom 83 had had their conviction confirmed on appeal), and 38 were serving prison sentences.

At the time of his death from a heart attack in December 2006, Pinochet was under house arrest, facing prosecution for torture, enforced disappearances, tax evasion, and forgery. The Supreme Court had closed three previous cases against him on medical grounds, but judges came to doubt that his mild dementia disqualified him from trial. In June 2008 Pinochet's former secret police chief, Manuel Contreras, was sentenced to life imprisonment for the car bomb murder of Gen. Carlos Prats and his wife Sofía Cuthbert in Buenos Aires in 1974. Pinochet, who had succeeded Prats as army commander just before the 1973 coup, escaped prosecution for the crime.

A majority of the five judges in the Supreme Court's criminal chamber now rule that an amnesty decreed by the military government in 1978 is inapplicable to war crimes or crimes against humanity, and that these crimes are not subject to a statute of limitations. However, not all of the judges agree that the amnesty is inapplicable. Given that court rulings in Chile are not binding in cases other than the one under review, and that the composition of the Supreme Court panel may change from case to case, the legal obstacles to convictions have not been entirely overcome. A bill promoted by the government to amend the criminal code so that crimes against humanity are not subject to amnesties or statutes of limitation remained deadlocked in Congress in 2008.

During 2007 and increasingly in 2008, the court has applied a law allowing those convicted for human rights violations to benefit from a sentence reduction in recognition of the time elapsed since the criminal act (more than 30 years in some cases). This has meant that several former military personnel sentenced to prison by lower courts have been exempted from serving time.

Prison Conditions

Chile has more prisoners per capita than any other country in South America. The prison population has grown by 28 percent since 2003. Despite the opening of six new privately contracted prisons, overcrowding remains a serious problem. For example, in 2008 the Southern Santiago Center for Preventive Detention, with a planned capacity of 3,170 places, had 6,256 inmates. In many of these older prisons sanitation and hygiene are abysmal. Inmates are sometimes crowded into dark and unventilated punishment cells without sanitary provision for up to 10 days. In August 2008 a Supreme Court official told a Senate committee that she considered this practice to be cruel and degrading.

Military Justice

Even though Chile has completely overhauled its criminal justice procedure in recent years and reinforced due process guarantees, military courts still have wide jurisdiction over civilians and also over human rights abuses committed by the *Carabineros* (uniformed police), which is part of the armed forces. At this writing, a

civil-military commission is in the process of developing a new code of military justice, and has identified as a guiding principle that no civilians should be tried by military courts.

Police Abuses

Carabineros often use excessive force during operations in indigenous Mapuche communities in southern Chile. The abuses typically occur when police intervene to control Mapuche protests and prevent land occupations, or when they enter communities in pursuit of Mapuches suspected of crimes (such as theft, damage to property, and arson) allegedly committed during ongoing land disputes with farmers and logging companies.

Mapuche agronomy student Matías Catrileo, age 22, was killed on January 3, 2008, when a police officer opened fire with a submachine gun on protesters during a land occupation near the city of Temuco. The officer was reported to have said on his radio just before the shooting that the protesters were throwing stones. According to a report by the criminal investigations police, the bullet fired by the officer struck Catrileo in the back. A military prosecutor charged the police officer with “unnecessary violence resulting in death.” The case remained open at this writing.

In June 2008, Citizen’s Watch, a Temuco-based human rights NGO, reported the case of two Mapuche teenagers, Jorge Mariman (18) and Luis Marileo (16), who were mistreated by police when they raided the home of José Cariqueo, leader of a Mapuche community near Ercilla, while searching for a missing horse. According to Citizen’s Watch, which interviewed Cariqueo, Jorge Marimán’s leg was broken by a police bullet, and Luis Marileo’s jaw was fractured by a blow from a riot control shotgun butt. The police, who did not show a search warrant, reportedly left the two injured without providing assistance. Citizen’s Watch, which reported the case to the minister of the interior, received no substantive reply to its concern.

Reproductive Rights

Chile is one of a handful of countries in the world that prohibits abortion for any reason, even in cases of rape or incest or to save the life of the mother. Despite the

comprehensive ban, an estimated 60,000 to 200,000 clandestine abortions are practiced each year. In April 2008 the Constitutional Court ruled against a legal provision that allows free distribution of emergency contraception, including the “morning after pill.” The World Health Organization recognizes that emergency contraceptive pills can prevent pregnancy and does not consider them to induce abortion. However, Chile’s court ruled that such methods violate the constitutional protection of the right to life of the unborn. It thus ignored the rights of living women—particularly the poor and adolescents—to health, information, autonomy, non-discrimination, freedom of conscience, and freedom to enjoy the benefits of scientific progress.

Freedom of Expression and Information

Chile has removed many of the legal norms inherited from the military dictatorship that constricted the press. In August 2008 President Michelle Bachelet enacted a law that creates an independent Council for Transparency. The four-person council will be empowered to order officials to make information available to the public, as well as to impose sanctions if they fail to do so. The law is due to enter into force in April 2009.

Key International Actors

Several rulings against Chile by the Inter-American Court of Human Rights since the return to democracy in 1990 have given impetus to reforms to strengthen the right to justice, free expression, and fair trial. However, many of the reforms demanded by the court are still outstanding.

In July 2008 the Inter-American Commission on Human Rights declared admissible a complaint against Chile filed by Karen Atala, a judge whose appeal for custody of her three children was denied by the Supreme Court on the grounds that her lesbian relationship would harm their upbringing. The commission held that the decision could violate Atala’s right to equal treatment, to privacy, and to due process, as well as the rights of her children. As of October 2008 the commission had yet to rule on the merits of the case.

In August 2008 the Organization of American States rapporteur on the rights of persons deprived of their liberty, Florentín Meléndez, visited prisons in Chile. While the rapporteur praised conditions in privately contracted prisons, he expressed concern about “excessive and unnecessary force in punishment,” and a “systematic practice of physical mistreatment” by guards in all the prisons he visited. He also described as “especially alarming” the deficiency of education and healthcare provision, as well as of recreational and sports programs, in the two juvenile prisons he visited.