

Chile

Chile has made significant progress in recent years in prosecuting former military personnel accused of committing grave human rights violations during the dictatorship of Gen. Augusto Pinochet (1973-1990.)

A new code of criminal procedure, in force all over the country except Santiago (where it will be introduced in 2005), has strengthened due process guarantees for criminal defendants and greatly reduced the incidence of torture. Yet special procedures that violate due process rights are still being used in prosecutions of members of the Mapuche indigenous community, charged under terrorism laws for attacks on farms and pine plantations in the Araucanía region. A still unresolved legacy of the Pinochet era is the problem of military court jurisdiction over crimes involving police.

Prosecutions for Human Rights Violations under Military Rule

According to the Catholic Church's Vicariate of Solidarity, 311 former military personnel, including twenty-one army generals, had been convicted or were facing charges for human rights violations by mid-2004. In early January 2004, the Santiago Appeals Court upheld the conviction of Gen. Manuel Contreras, former head of the Directorate of National Intelligence (DINA, or Pinochet's secret police), and three lower-ranking DINA agents, for the 1975 "disappearance" of detainee Miguel Angel Sandoval Rodríguez. In November, the Supreme Court dismissed a final appeal against the conviction, ruling that the crime of kidnapping was not covered by an amnesty law enacted by the military government in 1978.

In recent years, the courts have deemed the 1978 amnesty to be inapplicable in "disappearance" cases since a "disappearance" must be considered a kidnapping—an ongoing crime—unless the victim's remains have been found and the courts have thereby established his or her death. Following the Supreme Court verdict, the government announced that a building on an army base would be adapted as a special prison for human rights offenders.

In a surprise ruling, the Santiago Appeals Court stripped Pinochet of his immunity as a former head of state in May 2004, allowing him to face trial for the "disappearance" of twenty people in the 1970s. The Supreme Court narrowly affirmed the decision in August. The crimes form part of "Operation Condor," a clandestine scheme by the military regimes of Chile, Argentina, Brazil, Uruguay, and Paraguay to kidnap and "disappear" dissidents from each other's countries. As of December 1, 2004, the investigating judge in the case was assessing reports on Pinochet's medical condition before deciding whether to indict him. In December Pinochet lost his immunity again, this time to face possible

prosecution for the 1974 assassination in Buenos Aires of former army commander Gen. Carlos Prats and his wife, Sofía Cuthbert.

It is the third time that the Chilean courts have cleared the way for Pinochet to be prosecuted for human rights violations. His first prosecution ended in July 2002, when the Supreme Court ruled that the eighty-eight year-old former dictator suffered from moderate dementia, making him unfit to stand trial. Pinochet also faces a criminal investigation and a tax office probe after a United States Senate investigation revealed in July 2004 that a Washington, D.C., bank held millions of dollars in secret deposits for Pinochet while he was in detention on human rights charges in London.

Confronting the Past

Chile has been confronting human rights violations of the past in other important ways. On November 28, President Lagos presented on television the report of the National Commission on Political Imprisonment and Torture (Comisión Nacional sobre Prisión Política y Tortura), which he had established in 2003 to receive testimonies from victims of torture under military rule and recommend reparation measures.

The report was based on testimony from 35,000 people, many of whom had never testified before about the abuses they had suffered. It concluded that torture had been a systematic state practice and recommended various reparation measures, including that victims receive a state pension of about 112,000 pesos a month (approximately U.S.\$190). Human Rights Watch criticized the government's decision to keep the testimonies secret for fifty years, and urged that it send information about alleged perpetrators to the courts for investigation.

The dramatic findings of the report prompted a national debate in the news media. Prior to the report's release, the army's commander-in-chief acknowledged for the first time the army's institutional responsibility for human rights violations during military rule. Until his statement, the army's position had always been that human rights violations were solely the responsibility of individual officers. The other branches of the armed forces accepted the findings of the report, but insisted that responsibility for the abuses was individual rather than institutional.

Due Process and Police Abuses

The introduction of the new Code of Criminal Procedure in all parts of Chile except the capital has helped reduce complaints of torture and mistreatment by the uniformed police (Carabineros). The new code requires a judge to review all detentions within twenty-four hours in a public hearing at which the defendant, his or her defense lawyer, and the prosecutor are present. Confessions must be ratified by the defendant in court to be admissible in criminal proceedings. The Public Defender's Office, created under the new code as an independent body under the supervision of the Ministry of Justice, provides free expert legal counsel to those unable to hire a lawyer. These and other measures have greatly strengthened due process protections for defendants.

Unfair Trials of Mapuche

Not all Chileans have benefited equally from the new code, however. During 2004, twelve members of Chile's largest indigenous community, the Mapuche, as well as a non-Mapuche sympathizer, were tried on terrorism charges for crimes committed in the context of land conflicts with private owners and forestry companies. Several provisions of Chile's antiterrorism law restrict the due process rights of the accused.

The government claimed that arson attacks by Mapuche on farmhouses, woods, and fields in the Araucanía region in southern Chile were orchestrated acts of terrorism, intended to generate fear in the groups affected and to pressure them to abandon their properties. In a report published in October 2004, Human Rights Watch argued that the terrorism charges were an exaggerated and inappropriate response to the disorder, which was directed mainly against property and had not claimed any lives. The Chilean antiterrorism law allows the identity of witnesses to be withheld from defendants, permits the prosecution to conduct investigations in secret for up to six months, and allows defendants to be held for months in preventive detention prior to the issuance of a formal indictment.

In a trial in Temuco in October 2004 of eight Mapuche defendants facing charges of illicit terrorist association, the prosecution presented at least ten witnesses who appeared in court behind screens and spoke through voice-distorting microphones. The practice of concealing from defendants the identity of their accusers breaches due process rules established in the International Covenant on Civil and Political Rights. To the credit of the Public Defender's Office, whose lawyers provided free legal counsel to the Mapuche, the court unanimously acquitted the defendants in early November.

The police reportedly mistreat and insult inhabitants of Mapuche communities, including women, children, and the elderly, when police make arrests or conduct searches. Complaints of such abuse are investigated by military tribunals that have a near-perfect record of ruling in favor of police. Acts of violence by civilians against the police are also dealt with by military tribunals, in clear breach of international fair trial standards. Human Rights Watch has urged the Chilean government to introduce legislation limiting the jurisdiction of military courts to military offenses.

Restrictions on Freedom of Expression

For the second consecutive year, Congress in 2004 dragged its feet on legal reforms to protect freedom of expression. In December 2003, the lower house of Congress approved a bill to amend the Criminal Code and Code of Military Justice to remove provisions that penalize strongly-worded criticism of the president, military officers, and members of Congress and the higher courts, a type of law known as *desacato*. Delaying the bill's approval, senators insisted on linking *desacato* reform to broader proposals to protect the privacy and reputations of those in the public eye. A bill hurriedly approved by the lower house in December 2003, which could subject media that comment on politicians' private lives to

crippling damage awards, was discussed at length in the relevant Senate committee in 2004. As of November 1, 2004, however, neither bill had been submitted to a vote.