

Chile

Chile continues to prosecute hundreds of former military personnel accused of committing grave human rights violations during the dictatorship of Gen. Augusto Pinochet. After President Ricardo Lagos pardoned a low-ranking official convicted of homicide, a debate on clemency measures, long advocated by the army commander-in-chief and the opposition parties, was restarted in Congress.

The Lagos government failed to tackle reform of the over-extended system of military justice, which still allows civilians to be prosecuted by military courts for assaults on police and even speech offenses.

After years of debate, extensive constitutional reforms have become law. They have eliminated most of the authoritarian elements of the Constitution introduced by Pinochet in 1980.

Prosecutions for Human Rights Violations under Military Rule

Progress toward holding accountable those responsible for Pinochet-era human rights violations continues, but not without challenges. On January 25, 2005, the Chilean Supreme Court ordered all judges investigating human rights violations under military rule to halt their inquiries within six months. Unless trials were begun within this time, or the parties appealed successfully for cases to be kept open, all investigations into human rights violations committed during the dictatorship were to terminate on July 25, 2005. In early May, after sustained attention by both local and international human rights groups, the court rescinded the measure.

Former dictator Augusto Pinochet still faces a series of court cases. Before criminal proceedings can begin courts have to decide, on the merits of each case, whether to strip him of immunity from prosecution as a former president. Some immunity cases in 2005 were decided in his favor, others against him. The evident inconsistencies in the different Supreme Court decisions reflected variations in the composition of the panels hearing the cases, as well as the fact that panels are not bound by past precedent.

In March 2005, the Supreme Court upheld Pinochet's immunity against charges relating to the 1974 assassination in Buenos Aires of former army commander Gen. Carlos Prats and his wife. In September and October, in contrast, the Supreme Court lifted Pinochet's immunity in the so-called Colombo Operation and Riggs Bank cases. The former involves an elaborate scheme in 1975 to cover up the abduction and murder of 119 Chilean leftists. The latter involves possible charges of tax evasion and forgery, among others. The judicial probe into these issues followed the U.S. Senate's discovery in 2004 that Pinochet had salted away millions of dollars in secret accounts at Riggs Bank in Washington. It has

been alleged that the main source of Pinochet's fortune (estimated at \$27 million) were rake-offs from arms trafficking.

Pinochet's lawyers continued to use his alleged mental incapacity to block prosecutions. In June, an appeals court decided that Pinochet was not fit to stand trial for nine deaths and a kidnapping associated with a scheme known as Operation Condor by which political dissidents in neighboring countries were forcibly "disappeared." In September the Supreme Court upheld the ruling. However, in November a medical team from the state Medical Legal Service concluded that Pinochet had exaggerated his symptoms and was fit enough to stand trial in the Colombo case.

In a surprise decision in August, President Lagos pardoned an army sergeant convicted of the 1982 murder of a trade unionist. Manuel Contreras Donaire (no relation to Manuel Contreras Sepúlveda, Pinochet's director of intelligence) was serving an eight-year sentence for his part in the abduction and murder of Tucapel Jiménez, the president of the public employees' union. President Lagos commuted the remainder of Contreras's sentence to be served at home. The measure, reflecting Lagos's view that low-ranking soldiers obeying orders should be treated leniently, aroused passionate debate. Opposition senators presented several bills aimed at shortening sentences for human rights violators and allowing other military prisoners to benefit automatically from pardons.

In March 2005, Paul Schaefer, founder and leader of the Colonia Dignidad, a mysterious German colony in southern Chile, was captured in Buenos Aires and swiftly deported to Chile to face child sex abuse and human rights-related charges. Schaefer and his associates enjoyed close relations with the military government, which used the colony as a detention center after the 1973 military coup. Scores of political prisoners are thought to have been held there and tortured and many "disappeared." In March and May police found three cars buried on the property similar to those owned by political prisoners who disappeared in the 1970s. In June, a huge arsenal of military weapons was discovered, as well as files containing intelligence documents about political figures and prisoners believed to have been held there.

Torture Commission

The government has continued to confront the military-era legacy of torture, even though it has not supported prosecutions for this systematic abuse. In June 2005, the National Commission on Political Imprisonment and Torture, which issued a major report in November 2004, published an addendum on 1,204 new victims. It included a chapter about the situation of eighty-six victims who were detained with their parents when they were younger than twelve years old, who were born in prison, or were in gestation when their mothers were detained. The commission classified those detained with their parents or born in detention as torture victims. Some had been used as hostages or to pressure their parents while they were being tortured.

The government's insistence that the testimonies collected by the commission must be kept secret for fifty years—even from the courts—has hindered prosecutions.

Terrorism Prosecutions of Mapuche

A court in the southern city of Temuco frustrated prosecutorial efforts to reinstate terrorism charges against five Mapuche defendants and a sympathizer whom a trial court had unanimously acquitted in November 2004. Most of the defendants' alleged crimes were against property and none posed a direct threat to life. The Supreme Court had annulled the November verdict on grounds that prosecution evidence had not been properly considered, ordering a retrial. The second trial court found in July 2005 that there was insufficient evidence to sustain charges of illicit terrorist association. An appellate court later upheld the ruling, as did the Supreme Court in November.

Restrictions on Free Expression

Chilean legal restrictions on free expression have been eased. In August 2005, Congress finally approved a bill amending the Criminal Code to eliminate provisions that penalized strongly worded criticism of the president, military officers, members of Congress, and higher court judges, a type of law known as *desacato*. Unfortunately, the text approved after a three-year debate in Congress was a watered-down version of the bill originally presented by the government. It retained *desacato* offenses in the code of military justice, such as the offense of sedition, and preserved the jurisdiction of military courts in such cases, even over civilians. Moreover, legislators insisted on criminalizing "threats" made against them for their views expressed in Congress or made against judges for their decisions, a prohibition that could be used in the future to penalize criticism.

Progress in the area of freedom of expression was also made in July, when the Senate rejected a proposal by the lower house to strengthen the constitutional protection of "public life," an anachronistic notion dating from the military government that shielded public officials and politicians from scrutiny. Constitutional reforms approved in August went a step further, removing from the Constitution references to public life and the crime of defamation. The reforms also established the principle that the decisions of government bodies are public.

Discrimination on the Basis of HIV Status

In August a Chilean court ordered Carabineros, the uniformed police, to pay compensation of 100 million pesos (approx. \$1,800) to a former police corporal who was fired because he was living with HIV. In the first decision of its kind, the 13th Civil Court of Santiago cited Law No. 19,779 of 2001, which states that an HIV test result may not be grounds for dismissal from employment.

Constitutional Reform

In August 2005 a package of constitutional reforms that had been under debate since the early 1990s finally became law. It abolished the position of "appointed senator," and restored the president's power to fire the commanders-in-chief of the armed forces and the uniformed police.

International Criminal Court Ratification

Despite strong advocacy by Foreign Minister Ignacio Walker, the Senate has still not approved a constitutional reform allowing Chile to ratify the Rome Statute for the International Criminal Court. Approval of the Statute has been stalled since April 2002 when the Constitutional Court, ruling on a petition by a group of opposition senators, declared the ratification bill unconstitutional.

Criminal Procedure Reform

The introduction of a new code of criminal procedure in all parts of the country has improved due process guarantees for defendants facing criminal prosecution. Legislation was passed in November 2005 toughening some of its provisions, making pretrial release more difficult to obtain.

Key International Actors

The Chilean Congress has still to implement legislation compensating the family of United Nations diplomat Carmelo Soria, who was abducted and killed by government agents in 1976. In a friendly settlement brokered by the Inter American Commission on Human Rights in March 2003 the Chilean Government agreed to pay \$1,500,000 to Soria's relatives. However, after months of delay, in November 2005 the Senate Foreign Relations Committee rejected the compensation payment.