

Chile

Chile continues to prosecute former military personnel accused of committing grave human rights violations during the dictatorship of General Augusto Pinochet. Since she took office in March 2006, President Michelle Bachelet has said she will push legislation to prevent an amnesty law from obstructing prosecutions for past abuses, and to allow Chile to join the International Criminal Court.

Chile has also made significant advances in protecting the rights of detainees and ensuring due process in criminal trials. Conditions in Chile's seriously overcrowded prisons remain a serious concern, however, and Chile's over-extended system of military justice still allows civilians to be prosecuted by military courts.

Prosecutions for Past Human Rights Violations

As of October 2006, courts had convicted 109 individuals for crimes including "disappearances," extrajudicial executions, and torture under military rule. Thirty-five former generals of the army, police, and air force have been convicted or are facing trial. Paradoxically, these advances have been achieved even though successive governments have allowed an amnesty law exempting military personnel from punishment for crimes committed between 1973 and 1978 to stand. In cases of enforced disappearance the Supreme Court has generally held the law to be inapplicable, considering them to be kidnappings that are ongoing until the victim's death can be proven. For example, in May and June 2006, the Supreme Court reversed decisions of the Santiago Appeals Court which had granted amnesty to the alleged kidnappers of Jacqueline Binfa and Diana Aron in 1974.

Several judges, however, consider the amnesty applicable to killings that took place during the period covered by the law. In March, for example, Judge Víctor Montiglio amnestied three military officers accused of "disappearances" in Arica in 1973, after concluding that the victims had been killed. Other appellate judges disagree and

have ruled that international human rights law invalidates the amnesty in all cases of grave human rights abuse. At this writing, the Supreme Court had yet to issue a ruling on this crucial issue.

In October 2006, however, President Bachelet announced that she would present a bill to prevent the amnesty law from being applied in cases of grave human rights abuse. Her announcement came in response to a ruling of the Inter-American Court of Human Rights that the law was incompatible with the American Convention on Human Rights, and therefore without legal effect.

Court cases against former dictator Augusto Pinochet continue to accumulate. In October 2006, Pinochet was charged for the torture and disappearance of more than 50 people who were held after the military coup at the Villa Grimaldi, a notorious Santiago detention center. He is still being prosecuted for an elaborate scheme in 1975 to cover up the abduction and murder of 119 Chilean leftists, known as Operation Colombo. Pinochet also faces charges of tax evasion and forgery following the discovery of secret bank accounts in the United States in which he had stashed away millions of dollars.

Identifying the remains of victims of the dictatorship continues to be a major problem. Mistaken identifications have caused the victims' relatives uncertainty and anguish for many years. In April 2006, the director of the Medical Legal Service (Servicio Medico Legal, SML), the forensic service affiliated with the Justice Ministry, admitted that the SML had wrongly identified the remains of at least 48 victims of extrajudicial executions whose bodies had been exhumed in 1991 from unmarked graves in the Santiago General Cemetery. In August 2006, a panel of international experts arrived in Santiago to revise and correct the SML's procedures and findings.

Army Abuses Committed after the Return to Democracy

Court investigations into human rights abuses by the army committed after the return to democracy in 1990 have advanced. Such abuses include killings to prevent former agents from testifying in human rights and arms trafficking cases. In April 2006, three Uruguayan army officers were extradited to Chile to face charges of involvement—with two former directors of Chilean army intelligence—in a conspiracy

to hide in Uruguay a former Chilean agent who had developed chemical weapons believed to have been used in political assassinations. The agent, Eugenio Berríos, was found on a Uruguayan beach in 1995 with a bullet through his head. In addition, five army officers, including two generals, are facing trial for covering up the murder in 1992 of Gerardo Huber, a Chilean army colonel who was a key witness in an investigation into illegal arms sales to Croatia.

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. The main political parties agreed in 2006 that torture victims who were unable to give their testimonies to the Commission on Political Imprisonment and Torture, which reported in November 2004, should be given an opportunity to do so. On the negative side, in June 2006, the Supreme Court unanimously upheld former President Ricardo Lagos's order that all testimonies be kept secret for 50 years.

Prison Conditions

Chile's prison population increases by 8 percent a year and its prisons are severely overcrowded. In 2006 approximately 39,000 prisoners were being housed in facilities designed to accommodate 24,000. Much of the increase is due to the greater efficiency of the courts following the introduction of a new nationwide prosecutorial system. It has been aggravated by delays in the construction of new prisons contracted out to private companies.

A report published by the Diego Portales University Law Faculty in June 2006 highlighted serious problems of overcrowding, lack of adequate medical attention, violent deaths, torture and ill-treatment, and corruption by prison guards. The Southern Santiago Center for Preventive Detention, with a maximum capacity of 3,170, contained 5,617 inmates at the time of the report's publication. According to a report sent to the Minister of Justice by a Supreme Court official, prisoners were kept locked up in overcrowded cells, mostly without sanitation or ventilation and poorly lit, for 15 hours at a time.

Prison overcrowding and an inadequate prison service contribute to violent deaths in prison fights. Thirty-three prisoners were reported in September 2006 to have died during the year in fights, many of them stabbed to death with home-made knives.

Terrorism Prosecutions of Mapuche

The Bachelet government has tried to end the use of Chile's anti-terrorism law to prosecute members of Chile's largest indigenous group, the Mapuche, for crimes against property committed during land protests. In April, the government announced that it would cease invoking the law in such cases. However, Congress has refused to allow parole for Mapuche prisoners already convicted under the law, three of whom, together with a sympathizer, staged an unsuccessful 70-day hunger strike in May to obtain their release. A bill proposed by the government to remove from the anti-terrorism law crimes against property in which there are no victims, also failed to garner support.

Police Abuses and Military Justice

Police brutality and excessive use of force against the Mapuche are problems in parts of southern Chile where there are continuing conflicts over land. Investigations into these incidents are usually conducted by military prosecutors. Any charges of violence against the police, or of violent abuses by the police, are heard by military courts that are staffed by officers on active service and therefore provide no guarantees of independence and impartiality.

A government-sponsored commission exists to draw up proposals to restrict the scope of military courts and to bring them into line with due process standards, but no bill has yet been presented to Congress.

International Criminal Court Ratification

Chile is the only nation in Latin America that has signed but not yet ratified the Rome Statute for the International Criminal Court. The reform 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. In August 2006, senators postponed the debate once again, asking the government to clarify the potential

effects on Chile's defense acquisitions should the United States apply sanctions under the American Service-Members' Protection Act (ASPA), which prohibits US aid to countries that ratify the Rome Statute without promising not to refer United States citizens for prosecution by the court.

Key International Actors

The Inter-American Court of Human Rights has issued several landmark rulings on Chilean cases. In November 2005, it ruled against Chile in the Palamara case, involving a former civilian navy employee whose treatise on military intelligence was censored by the navy, and who was convicted by a naval court in 1995 for disrespect. The court found that Chile's military tribunals had excessively wide jurisdiction, including over civilians, and failed to comply with international standards of competence, independence, and impartiality. It ordered Chile to reform its military courts, to ensure that they meet these standards, and to end their jurisdiction over civilians.

In September 2006, the court ruled against Chile for failing to provide a nongovernmental environmental group with access to information about a logging project in the south of Chile. It ordered the government to take measures to ensure the right of access to public information.