

**HUMAN RIGHTS
AND THE
"POLITICS OF AGREEMENTS"**

**Chile during President Aylwin's
First Year**

July 1991

An Americas Watch Report

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I. INTRODUCTION & SUMMARY

When Patricio Aylwin became President of Chile, on March 11, 1990, he had promised to resolve the human rights legacy of over 16 years of military dictatorship, through a process of exposing the truth about past abuses and seeking justice. Aylwin and the multi-party coalition he leads, the *Concertación de Partidos por la Democracia* were committed to a program of reform based on respect for human rights.¹ The four years of this first civilian government after military rule were expected to be years of democratic consolidation, recovery from the political trauma of dictatorship, modest social progress. In the best case, they would lead to what President Aylwin called national reconciliation.

The abuses of the regime of Gen. Augusto Pinochet had included summary executions, disappearances, systematic torture, arbitrary individual and mass arrests, forced exile and internal banishment, the violation of labor rights, illegal operations in foreign territory including the 1976 assassination of former Defense Minister Orlando Letelier in Washington, D.C., and countless acts of direct and indirect censorship, intimidation and violation of the home. The most indiscriminate repression took place in the mid-70s, when the country was ruled under state of siege and a secret police, subordinate only to Pinochet, specialized in disappearances and torture. In the dictatorship's later years, although State violence became more selective, certain killings committed by the armed and security forces drew so much attention to human rights abuses that even some figures on the Chilean Right became disenchanted with the regime.

Many Chileans knew more than they admitted, and did not act to save their countrymen or protest the repression. A relatively small group of people, human rights activists, journalists and politicians, knew most of what was occurring. But very few people in Chile knew the entire sweep and systematic nature of human rights violations. Some independent press had been permitted after the late 1970s, but mass media were either State-controlled or favored the regime; they dutifully ignored all but a few unavoidably notorious cases of

¹ The *Concertación*, begun as a tactical alliance in the 1988 presidential plebiscite campaign, described below, then became institutionalized as the future government after the elections of 1989. Originally 17 parties, several of which have since combined, it extends from the Socialist Party and the Party for Democracy (PPD) on the left, through the centrist Christian Democratic Party and Radical Party to small conservative parties like PAC. The Christian Democrats -- the party of President Aylwin -- are the largest party in the coalition and in Chile.

repression. Pinochet also had, and continues to have, supporters who refuse to credit human rights denunciations. Some of them are convinced by the military's justification for the September 1973 coup and the bloody revenge after it: the country needed saving from incipient internal war between Marxism and the forces of order. Others defend the regime by pointing to the way Pinochet redesigned Chilean democracy with a new Constitution, considering it an improvement. The less-moderate Right even goes so far as to thank Pinochet for democracy itself; in this view, the massive protests from 1983 onwards, the solid majority won by a harassed opposition in the 1988 presidential plebiscite, and the resounding 1989 election victory for Aylwin are less important than the fact that Pinochet permitted the plebiscite and elections at all.²

Pinochet did not, of course, intend for his enemies to run the "authoritarian democracy" he created, nor for some of his former allies to join the *Concertación* in insisting on certain constitutional reforms before the 1989 elections.³ Nevertheless it is true that the Aylwin government is to a great extent the result of the military's design. The military regime passed along restraints on civilian authority, as well as the insecurity that is the product of human rights violations. It also passed along limitations on elective representation, in both national and local government, and sought to minimize the possibilities for social reform. Committed to a cautious, legalistic approach and to soothing the public's fear of confrontation, the Aylwin administration has attempted to stabilize military-civilian relations and to navigate through the narrow legal channels its limitations leave open.

The military regime's 1980 Constitution defines a form of government which, though somewhat modified by the reforms of 1989, does not allow the full exercise of democracy. Civilian control of the military is incomplete even on paper; the President may not, for example, remove the commanders of the armed forces, and the National Security Council that advises him is made up of an equal number of military men and civilians. The new government would like to change these and many other obtrusions of military power if it can.

² Under the Constitution of 1980, Pinochet submitted himself as sole candidate for President in a yes-or-no plebiscite in October 1988. Had he won, he would have been legitimized for eight more years as President; since he lost, the Constitution required open presidential and parliamentary elections the following year.

³ These reforms were approved in a July 1989 plebiscite. Fifty-four in all, they modified some of the most flagrantly authoritarian aspects of the Constitution but left much of it unchanged.

But its legislative freedom is also limited. A unique electoral system designed by the regime gave greater representation to the civilian Right than corresponded to its direct vote in the 1989 elections.⁴ The Constitution provides for nine senators to be appointed by the outgoing government and the judiciary, in addition to the 38 senators who are elected. Of a total Senate membership of 47, nearly one-fifth are appointed, therefore, and in this case sympathetic to the military regime. To this rightist bloc are added 16 elected senators: 13 currently representing *Renovación Nacional* (RN), one representing the *Unión Democrática Independiente* (UDI), and two independents aligned with the Right. The total of these two groups is 25, giving the civilian Right the potential to block any of the government's reform proposals. In the more representative Chamber of Deputies, the *Concertación* has a nearly two-thirds majority, but time after time its initiatives have been blunted or transformed in the Senate.

The new government thus confronts laws it has been unable to change, including the death penalty for three dozen crimes, and *leyes de amarre* (literally, tying-up laws) passed by the military regime in its final months, which transferred security-police personnel, security records and numerous State properties, including places formerly used for torture, out of the control of the incoming civilian administration. The Army, the principal beneficiary of these transfers, now commands the intelligence apparatus of the dictatorship in parallel to the security forces that serve the civilian government, the uniformed police (*Carabineros*, formerly part of the military government) and the civil police force *Investigaciones*. Meanwhile, an amnesty law, decreed in 1978 and covering abuses committed by the military regime until that time, is defended by the Right in Congress and by the armed forces as a prerequisite for their cooperation.

It is a fundamental fact of the Chilean transition that the Aylwin government coexists with Pinochet as commander-in-chief of the Army and thus confronts, on many levels, the resistance of the former dictator and his supporters to any human rights accusations. As Pinochet proclaimed, in his histrionic style, on the seventeenth anniversary of the coup, if the

⁴ The "binomial" system, which favors third-place winners over second-place winners in a system in which each contending force has two candidates per race; in order to win both congressional or senatorial seats open in each constituency, a "list" of two candidates must win 66.7 percent of the vote. Put another way, a list can win 33.4 percent of the vote -- or less, if various lists are in competition -- and win 50 percent of the representation, as the rightist parties did in many races in 1989. See Americas Watch, *Chile in Transition: Human Rights since the Plebiscite 1988-1989*, New York, 1989, pp. 60-62.

circumstances of 1973 were to be repeated the Army "would have not a moment of doubt in acting as before."⁵ Thanks to a Supreme Court sensitive to the military's wishes, the 1978 amnesty has been applied consistently to forestall not only punishment of human rights violators but even legal investigations that could identify them. By small degrees, President Aylwin has won a psycho-political battle with Pinochet during the first year of civilian rule, reprimanding the general when he has overstepped the acceptable limits of arrogance and meeting Pinochet's bluster with serenity. But the transition is shaped as much by Pinochet as by the President, for the general defines what is most difficult for the government. Chileans continue to pay taxes to support, for example, the former secret police personnel now on the army payroll; an effort in Congress to change this was unsuccessful. When a congressional investigation began to point to Pinochet as involved in a corruption scandal -- a matter of the Army's having paid his son \$3 million -- he called the Army into state of alert, and to avoid a constitutional crisis, the government had to swallow the insult. This is not to say that the government cannot maneuver, and on human rights issues it has made progress, within limits. But Pinochet's presence implies continual resistance. The government must continually balance the more moderate, flexible air force and the *Carabineros* against the Army, and win ground from Pinochet by degrees.⁶

All these limitations, as well as the multi-party character of the *Concertación* itself, have forced the government to adopt a style it calls the "politics of agreements," a search for consensus and compromise. This sort of negotiations is, of course, typical of democratic systems, but in Chile's case not all political actors are representative, in Congress or outside it. In practice, therefore, the "politics of agreements" has prevented the *Concertación* from delivering on several major campaign promises. Rather, it has translated into conservatism in social spending, a certain constraint in debate between government and opposition, and frequently, government concessions regarding human rights, an issue to which the opposition is sensitive for obvious reasons.

The government's formula for maintaining a moral standard on human rights, while consolidating civil-military relations and pursuing the "politics of agreements" with the Right, has been the concept of reconciliation. Laden with Catholic associations, the concept as promoted by the government, and particularly by President Aylwin, implies forgiveness for past abuses by the

⁵ *La Epoca*, September 12, 1990.

⁶ For example, the government won a quiet but important victory by influencing senior army officers' promotions and retirements at the end of 1990.

victims and repentance by the victimizers in the interests of national coexistence. Senior government officials have stated repeatedly, as have survivors and relatives of victims, that reconciliation is not possible without both truth and justice. President Aylwin has clarified, however, that he actually expects *justicia en lo posible*, justice so far as possible, and this does not satisfy victims, for whom the Chilean justice system has been an adversary nearly as harsh as the armed forces. The Chilean civilian Right, like the Army, does not appear repentant, although it played an important role not only in supporting the regime but in the early bloodshed after the coup. The relatives of the disappeared still cannot find their loved ones, and those responsible go free and even command army regiments. In the streets, human rights demonstrations organized to be peaceful are frequently interrupted by angry groups demanding prosecutions of the guilty military, and are violently dispersed by equally angry police. In the courts, human rights cases are heard in military jurisdiction, by military judges, and closed as soon as possible meanwhile a former member of the DINA, Pinochet's first secret police, directs the *Estado Mayor*. As a legacy of this horror and frustration, Chile confronts political violence by armed groups that combine common crimes with assassinations and bombings, claiming to offer an alternative. Thus, the concept of reconciliation, broadly supported in theory, is profoundly controversial and elusive in practice. A National Commission on Truth and Reconciliation (also known as the Rettig Commission), appointed by President Aylwin, produced an incomplete but nonetheless impressive accounting of the repression during the 1973-90 dictatorship, and in this way the President offered the country an important part of the truth it requires. Demands for justice go unmet, however, and the Chilean justice system does not foster confidence.

The government's attitude toward the human rights issue is variable; it is well known that some of the President's senior advisors consider the issue too conflictive and politically costly, and that the government as a whole has been determined to move "beyond" the issue of past abuses during 1991. Among these pragmatic planners, President Aylwin's own commitment to truth and justice regarding past abuses, and to full respect for human rights under democracy, is one of his government's central strengths. He has been accessible to human rights organizations and relatives of victims, and he has spoken frequently and eloquently of the moral imperative to honor, vindicate and offer reparation to the victims of repression. Moreover, he has taken difficult positions. He has challenged the Supreme Court to change its practice of hurrying to apply the amnesty law, so as to permit full investigations and determination of guilt. He has taken political risks to ensure that the nation would have a serious, generous and accurate history of past abuses. Partly for

these reasons, Aylwin enjoys a phenomenal popularity for a transitional President after his first year, or for any President in any year. A poll released in April 1991 showed that the number of people who rate his performance very good has more than doubled since June 1990 (from 7.3% to 15.7%), those who consider it good has remained stable at over 29%, and those who rate him better than regular have increased by half (from 23.6% to 36%), such that his detractors -- rating him regular or poor -- amount to less than 7% of the population.⁷ This is an extraordinary achievement in a divided nation, especially after a year in which clandestine graves have been discovered, a harrowing human rights report has been issued, inflation was higher than expected and the crime rate has risen.⁸

One of the government's goals is to institutionalize respect for human rights and project the human rights lessons of the past 17 years. An Office of Return assists exiles to come home and publicizes the needs of this special, and large, group of victims.⁹ A National Women's Service has been created, and its director given Cabinet rank, to address the system of legal, economic and social discrimination against women. Judicial, constitutional and penal reforms are under consideration, as is the creation of a council representing the needs of indigenous populations. During 1990, the Aylwin government made important attempts at reform of laws defining political crimes, which succeeded only in part due to rightist congressional opposition: changes in the military regime's most repressive political laws have opened the way for civilian trials for most of the political and security-related prisoners held over from the military regime -- a total of over 2,000 cases between those incarcerated and those free on bail -- though the changes were not so broad as proposed and though the prisoners will still face long waits in the overburdened civilian courts. The government's attempts to benefit security-related prisoners were made more difficult by the ongoing violent activity of extreme-left groups, whose actions reduced public sympathy for the prisoners and rein-

⁷ Bestland poll, results reported in *El Mercurio*, April 14, 1991.

⁸ Inflation was under 30% in 1990, a success story compared to the rest of Latin America. This was nonetheless somewhat higher than the new government had projected and than the country was used to.

⁹ One million Chileans who fled in the 1970s still live abroad, and 85% of those who returned during the 1980s live in extreme poverty, according to Jaime Esponda, director of the National Office of Return. Press conference reported in *La Epoca*, January 25, 1991.

forced rightist congressional opposition to their release.¹⁰ Americas Watch is concerned that these prisoners, both those awaiting trial and those serving sentences who are eligible for presidential pardons, may be set aside due to the political climate created by extreme-left violence, and we urge the government to continue defending these prisoners' right to due process, including pardons for those not guilty of crimes against the person.

After years in which the military accused peaceful opponents of it, predicted it and provoked the marginalization and rage necessary for it, terrorism has become a reality in Chile. It is primarily identified as extreme-left, although rightist intimidation has not completely disappeared. The April 1, 1991 assassination of UDI Senator Jaime Guzmán, though not the first political assassination under civilian rule, brought the problem into focus for the Aylwin government, and the government has created a special office to coordinate public-security policy. In the meantime, the ongoing campaign to control terrorism during 1990 led to abuse of detainees, including credible allegations of torture, although this is evidently not a policy of the Aylwin government.¹¹

This report, despite its title, covers slightly more than a year, in order to record the impact of the Guzmán assassination, which has been felt in all areas of the national debate on human rights. The assassination has curtailed discussion of the report produced by the National Commission on Truth and Reconciliation. It has renewed rightist pressure to prevent clemency for security-related prisoners held under Pinochet, even those not accused of crimes against persons. It has, perhaps not permanently, created a crisis mentality in which respected government officials attack the press for reporting on human rights violators because, according to these officials, exposure may open the subject to reprisals for which the press would then be "to blame." It has even led to the first renaming of a Santiago street for a victim, Jaime Guzmán; no disappeared person, no victim of extrajudicial execution under Pinochet, not even former President Allende has received such an honor. The Guzmán assassination is widely seen as marking the end of the idealistic first period of the Aylwin government.

¹⁰ There were 181 incarcerated as of the end of March 1991, and this number had been declining gradually since Aylwin took office.

¹¹ Thirty-five legal complaints have been filed concerning allegations of torture between March 11, 1990 and mid-April 1991, none yet past the judicial investigative stage. There have been other cases of torture not brought before the courts.

Americas Watch concerns in Chile center on:

- ▷ the obstacles to justice in human rights cases from the military period;
- ▷ the legal plight of security-related prisoners held over from the Pinochet era;
- ▷ the credible allegations of torture and other mistreatment of detainees that have appeared since the new government took office;
- ▷ abusive detention procedures; and
- ▷ part of the government's legislative response to terrorism.

In addition, we have one criticism of U.S. policy towards Chile. The fourteen-year-old restrictions on U.S. aid to Chile were lifted in November 1990, prematurely in our view. The Bush Administration has already requested military aid for Chile, small amounts to be sure but symbolically closing the chapter. Yet an important item, the 1976 assassination of Orlando Letelier and U.S. citizen Ronni Moffitt, has not been resolved. Americas Watch is concerned that there may be substantial delay in its resolution. As impressive as President Aylwin's leadership has been, and as difficult as are the limitations he inherited, Americas Watch does not believe U.S. military aid should have been renewed before the Letelier case was, at a minimum, securely in civilian jurisdiction and under civilian investigation. As this report is completed, half a year after the lifting of aid restrictions, this has yet to be achieved. If the struggles of the new government prove anything, it is that victories cannot be taken for granted in the aftermath of dictatorship.

II. TRUTH ABOUT PAST ABUSES

A. Redefinition

In an atmosphere which permits open discussion of human rights issues, Chile's media, politicians, victims, armed forces and general public have struggled to create a definition of the truth about past repression. It was no accident that, as the Aylwin government took office, the nation's best-selling book -- indeed, the best-selling book in Chilean history -- was an investigative reporter's account of a series of massacres committed in October 1973, in five northern cities.¹ In the course of the year under review in this report, a stream of testimonies has filled the daily press: torture victims have described their ordeal and named their tormentors; exiles, returning and often facing problems of employment and adjustment, have spoken of the loneliness and nostalgia they felt abroad. Even a few collaborators and former secret police agents have exposed their betrayals of friends and participation in cruelty, to ease their sense of guilt. This testimonial sort of truth, often mediated by the shame of the teller, may be partial, but it is invaluable for its portrait of individual and collective damage.

The emergence of the truth has also been mediated by political factors. For the most hard-line elements of the military, all events subsequent to September 11, 1973 must be viewed through the prism of the coup's immediate "purpose," which was allegedly to prevent a Marxist-provoked internal war. Repression of the Allende government's functionaries, supporters and sympathizers, in this version of the truth, constituted an undertaking of war; the dead among the military were martyrs to the cause of anti-communism, the dead among civilians -- a notably greater number -- were war casualties. As former Army Gen. Manuel Contreras Sepúlveda, director of the regime's first secret police, the DINA, put it in an interview in March 1991, "In a war there are dead, wounded, missing [*desaparecidos*] and prisoners, but there are no disappeared detainees [*detenidos desaparecidos*]...There are no disappeared detainees in a subversive war, and this was a subversive war."² Only slightly more diplomatic were the comments of retired Army Col. Cristián Labbé, widely regarded as speaking for Pinochet when he stated publicly that the Army "has always contributed to reconciliation and everything it does is inspired by the spirit of

¹ Patricia Verdugo, *Los Zarpazos del Puma*, Ediciones ChileAmérica CESOC, Santiago, 1989.

² Interview given to reporter Pablo Honorato, *Channel 13* (Catholic University Television), March 25, 1991; full text reprinted in *El Mercurio*, March 26, 1991.

reconciliation.³ "In the Army we have nothing to repent," added Labb  , in anticipation of the tough and uncompromising response that Pinochet himself would give, on the Army's behalf, to a government commission's report on past abuses.⁴

The military's version of the past has been shared and projected by conservative parties, and those parties' criticism of the 1970-73 Allende government's socialist rhetoric has been partially accepted by spokesmen for the governing coalition, the *Concertaci  n de Partidos por la Democracia*. At the same time, the military regime's imposed "truth" has been widely challenged in the press, where the public statements of victims' organizations have appeared regularly and government gestures of respect for victims have received wide coverage. President Aylwin broadcast his intention to honor victims in the first massive public event of his government, a gathering of 80,000 people in the National Stadium. This stadium had been converted into a detention camp and place of execution after the coup, and the March 12, 1990 event was intended as a rite of exorcism for the stadium and a recognition of past abuses. As part of the ceremony, a group of relatives of the disappeared walked into the center of the stadium floor. As they performed a dance of mourning, the electronic scoreboards were lit with the names of the disappeared, which scrolled down as the women received, for the first time, official recognition of their tenacity and suffering, and public support in the ovation of the crowd.

Among other important events in this subjective process of redefining the truth was the funeral awarded, with State support if not full State honors, to former President Salvador Allende on September 4, 1990.⁵ Organized by Allende's family, the funeral nonetheless included a speech by President Aylwin, the presence of the entire Cabinet, support of official infrastructure and police, and the highest level of protocol. The remains of the former President, buried for 17 years in a borrowed grave in Vi  a del Mar since his death in the presidential palace on the day of the coup, were brought to a mass

³ *La Segunda*, March 21, 1991.

⁴ *La Epoca*, March 22, 1991. Details of Pinochet speech are below.

⁵ The military were so opposed to full honors for Allende, which would have required their participation, that the government did not insist. September 4 was chosen for its symbolic importance as the traditional election day in Chile; although Allende died on September 11, the family did not wish to underscore confrontation by holding the funeral that day.

in the Santiago Cathedral and then to a family mausoleum in Santiago's General Cemetery, where thousands of supporters paid their respects. In Allende's "rehabilitation" was symbolized the larger intent to honor all those who had lain, ignored or hidden, in known or unknown graves during the Pinochet era.

Inasmuch as history is written by the winners, the historical "truth" emerging in Chile is not absolutely of any sector; it has, rather, elements favored by various sectors, in a mixture not quite to the recipe of any. This does not imply it is "more" or "less" true for being unorthodox, but only that no sector is fully satisfied with it. Because the political balance includes an unrepentant and undefeated military, a civilian Right with leverage in Congress, a mass of victims who are mainly voiceless, an extreme left resorting to violence, and a governing coalition in which some sectors were more victimized than others, the debate over human rights violations of the past regime has frequently been softened in order to maintain public civility and at least the appearance of consensus. The dictatorship is customarily and blandly called, in public discourse, "the previous government," even when the issue under discussion is its abusiveness. Journalists are officially cautioned against "inflammatory" language and revelations. Conservatives argue that to sustain public discussion of past abuses is to "pick at a scab" and to encourage acts of vengeance by armed leftist groups; they began arguing this as early as three months after the new government took office, when the first large clandestine grave was opened and shocked the nation.⁶ Rightists also argue that any analysis of the Pinochet regime's violations of human rights must begin with a critique of reformist politics beginning in the 1960s, with the first agrarian reform under the Christian Democratic government of Eduardo Frei -- such that political centrists as well as leftists may share blame for creating the monster, while rightists bear blame for maintaining it. The very concept of reconciliation attests to the multitude of sectors which demand satisfaction on the human rights issue -- from the military that wants guarantees of impunity to the relatives of disappeared who continue to seek their loved ones' remains. This government cannot readily impose a vision, as the dictatorship did. Given that reality, there is a sometimes angry debate as to whether the government has tried hard enough to air the facts, or responded firmly enough in setting out its views. The official communications secretariat, for example, is criticized by human rights activists as too cautious and passive on the issue of the military's abuses.

⁶ Pisagua; see below.

Still, the "official" truth, as outlined in the report of the National Truth and Reconciliation Commission (or Rettig Commission), goes a long way to rectifying past distortions. The Commission's limitations, of mandate and authority, derive from the limitations of the government itself. The period for investigation was quite short, for example, given the number and magnitude of crimes under study, because the government intended to deal with the human rights issue early on, and in its second year "move" to other reform issues. This meant that important categories of abuse such as torture were not studied -- that is, victims were not officially identified and legal cases not promoted -- although torture is impermissible under all human rights instruments and was practiced systematically in Chile over many years.⁷ On the other hand, the Commission was mandated to explore fatal attacks by leftist groups, a manageable universe of cases and one on which the armed forces were eager to offer information.⁸

The Commission benefitted from the information gathered, virtually since the day of the coup, by Chilean human rights activists. Far more than in other countries of the region, Chile's dictatorship was documented, catalogued, legally denounced and analyzed by a variety of highly professional groups, and the Commission received thousands of files on which to base its inquiries. Some of this information had been known before, but not gathered in one place, not available to the entire country, and certainly not with the State's imprimatur.

A profoundly legalistic country, Chile's definition of its human rights

⁷ There were other arguments for not attempting an official study of torture: cases are hard to verify long after the fact, many cases had not been denounced legally, some victims might have declined to offer statements because to testify is to relive the experience; also, any attempt to define "torture" in order to define the study's universe would have generated political disputes. But one overwhelming reason for excluding this grave abuse from the Commission's mandate was simply that the cases were too many to verify in the time allowed.

⁸ The government bent over backwards to be even-handed and to condemn political violence from any quarter, although, under current international law, terrorist actions by groups not under government control and not under a unified command and without control of population or territory are not defined as human rights violations. The acts of such violent opposition groups are criminal matters left to domestic law. However, in order that the Commission attract conservative members and obtain credibility, in a nation where Pinochet won more than 40% of the vote in a 1988 presidential plebiscite, the government ignored these distinctions. For the Chilean public, too, the distinctions may have seemed academic, insofar as leftist armed groups had been guilty of murder, as had State agents.

history rests not only on public perception, memory and knowledge of events, but also on how the courts have pursued specific cases. Elsewhere in this report we discuss obstacles to justice, but it is worth noting here the importance that a change of judicial posture would have to the establishment of a fully-accepted, social truth about past abuses of human rights. The Rettig Commission's report, a responsible and meticulous work, respectful of all sides and yet firm in its statement of the verifiable facts, is nonetheless the object of criticism from some military sectors and, on the civilian Right, has been generally unsupported at best: the so-called moderate Right defended the judiciary from the report's and President Aylwin's criticisms; one member of *Renovación Nacional*, a columnist with the daily *La Segunda*, justified the bloody aftermath of the coup in a March 1991 column by arguing that, in September 1973, there were more than 10,000 Cuban mercenaries in Chile, a statement reminiscent of the military's own propaganda. Far-right Senator Jaime Guzmán reacted to the report by maintaining the same position he had taken before reading it, that abuses of the military period could be laid at the door of Allende's government. Court rulings do not invite such amoral judgments from Chilean politicians. The final phase of redefinition, then, will await the possibility of justice.

Below are summarized two elements in the process of redefining the past: clandestine graves discovered during 1990, which presented mute testimony of murder in an undeniable way, and the Rettig Commission's report -- President Aylwin's great contribution to establishing the truth, a document whose impact has been sadly brief in public debate but whose effect may, one hopes, be greater over time.

B. The Graves

In March 1990, barely two weeks after the civilian government took office, the remains of three bodies were found in Colina, not far from Santiago. By sheer happenstance, workers laying a road through land formerly owned by the Army, and forced to pass through a stone wall or *pirque*, removed the stones to find skeletons interred there. Two of the three would be identified: Eduardo Canteros Prado, 43, detained-disappeared on July 23, 1976, and Vicente Atencio Cortés, 47, detained-disappeared on August 11 of the same year. Atencio had been a member of the Chamber of Deputies at the time of the coup. The third victim, evidently a younger man, was found apart from the other two and was believed to have been killed separately. At this writing he has not yet been identified.

The Colina victims had been disappeared by DINA -- Dirección de Inteligencia Nacional -- the secret police that operated between 1974 and

August 1977, responsible directly to Pinochet. They are the only disappeared victims of DINA to have been found.⁹ Whereas, in 1973-74, the armed forces' intelligence services shot supporters of the previous government and dumped their bodies in rivers or by roadsides or outside morgues to be found, or buried them carelessly, the DINA's methods of clandestine burial were efficient and designed for absolute secrecy. Had the workers in Colina torn down the wall a few meters to one side or the other, the bones would have remained as they were.

Human rights organizations did know of other sites, however, based on survivors' testimony, and had been waiting for the change of government to begin excavations. What they unearthed in early June, near the northern town of Pisagua, shocked the nation profoundly. In a deep oblong grave, stacked in rows and in layers, were 19 bodies, not yet skeletal because the desert soil had preserved them largely intact. Some still wore blindfolds; the hands behind their backs were still held with intact rope. Entry and exit wounds were easily visible, and some faces, though no longer recognizable, retained expressions of panic or protest. A Santiago newspaper published the photograph of one such face, on its front page, with the headline, "Look at me - I am a disappeared person." Other media too publicized the discovery, and the nation began a visceral confrontation with the crimes of the past.

In addition to the 19 entire bodies found, all of men, a bag was unearthed containing the remains of two or three persons. Investigators called it "Bag 20."

The 19 victims were identified forensically, among them eight disappeared, of whom five were not political detainees but persons accused of some involvement in drugs; they had evidently been killed as a "clean-up" measure. The other eleven identified victims were either persons already known to have been executed by orders of wartime courts martial (*consejos de guerra*) in late 1973 and early 1974, or persons the Army had claimed to have killed while they were fleeing. Dates of the known executions range from late September 1973 through February 1974, indicating that the grave must have been reopened several times with the addition of fresh bodies.

Pisagua has a long association with repression. This frontier army post,

⁹ The graves opened in 1990 were not the first discoveries of clandestinely buried remains. Several other graves were found in the late 1970s, all containing remains of persons detained by the military rather than DINA -- that is, detained in the aftermath of the coup, before DINA began to operate. See, for example, Americas Watch, *Chile in Transition: Human Rights since the Plebiscite, 1988-89*, New York, 1989, pp. 79-80 for a description of the Lonquén grave and the legal case emerging from its discovery.

near the northeastern border with Bolivia, is a place where leftists were internally exiled under a national-security law banning Communist activity in the 1950s; much later, in 1983-85, opponents of the Pinochet regime were banished there again and held under army control. In between, in 1973-74, Pisagua was a concentration camp. Prisoners held there came before wartime courts martial responsible to the Army's zone command in Iquique, where the commander was Gen. Carlos Forrestier.

The devastating impact of the Pisagua discovery was not surpassed in any other excavation, but each of the nearly twenty clandestine graves opened during 1990 contributed to a portrait of the months following the coup. In the southern hamlet of Chihuío, where a clandestine grave was opened in late June, it was discovered that the bodies of 18 campesinos known to have been buried there by the Army in October 1973 had been moved; only a scrap of clothing remained. In Copiapó, in the north, 16 bodies were sought in the municipal cemetery; the victims had been executed in two groups on the same day, in October 1973, coincident with a visit from a delegation led by Army Gen. Sergio Arellano Stark, an emissary from Pinochet to five northern cities. One group of 13 victims in Copiapó was found and identified, but the remaining three bodies were not.

Among the other places Gen. Arellano's delegation stopped, and where 26 prisoners died, was Calama. In July 1990, after years of digging in the desert, searching for the missing bodies, relatives reported finding remains. As in the Chihuío case, however, it became clear the bodies had been removed; probably a mechanical fork-lift had been used, for only a few small bones were found. From one finger, on which skin remained -- mummified by the minerals of the desert soil -- the print was forensically reconstructed to identify its origin. It had belonged to Aroldo Cabrera, manager of the Chuquicamata copper mine nearby. This, to date, is the only identification from Calama, one of the most emotionally-charged cases from the months following the coup.

Excavations took place along the length of Chile in mid- and late 1990. Four executed Communist leaders' remains were unearthed in the municipal cemetery of Concepción, in the central south. Three victims were identified in Talca, in the central north. In Paine, outside Santiago -- the town with the highest ratio of disappeared to population -- the search for victims required excavations in three cemeteries and the recovery of the remains of 14 persons stored for years in a bag in the Forensic Institute in Santiago. In all, 20 victims from Paine would be identified, and three more would be recovered but not identified as of this writing. The victims were mainly campesinos who had been active in agrarian reform organizations.

In 1991 there have been no major discoveries of graves, but efforts

continue to recover remains of victims so that their relatives may bury and mourn them.

All the graves, except that in Colina, held evidence of crimes from the early months of the military regime, when violence was openly carried out by the military under a "state of siege in time of war." These crimes were later amnestied under an April 1978 decree-law.¹⁰ They were also, in the military's view, acts of service in time of war, such that the dead were war casualties. The military had long argued, for example, that the *consejos de guerra* were entitled to eliminate due process and right to appeal because of wartime conditions, and this argument had been endorsed by the Supreme Court.¹¹ When the graves were discovered, however, public revulsion was predictably strong. Military spokesmen therefore revived their defense of the post-coup bloodshed, and warned against going "too far" in the exposure of past abuses.¹² The military courts would demand jurisdiction over the Pisagua and Chuhuío cases before the end of 1990, the Supreme Court would acquiesce, and the Pisagua case would be closed, by virtue of the amnesty law, in March 1991 before the remains in "Bag 20" could be identified and without key military figures having been questioned. The same result is expected in the other cases.

¹⁰ See Section III-A.

¹¹ The Court has, actually, been of two minds concerning the question of whether the nation was at war in 1973. For purposes of declining to oversee the courts martial, it concluded that war conditions prevailed. Where the Geneva Conventions have been invoked as an argument for punishing cruelty to non-combatants, however, the Court has decided there was no war and the Conventions do not apply. See Section III-A.

¹² In the aftermath of the Pisagua disinterments, on June 13, 1990, the Army issued a statement calling the dead prisoners legitimate casualties of war, a position echoed by the civilian far-right. Shortly thereafter, on July 9, an interview appeared in the northern newspaper *El Magallanes*; an unnamed army officer called the 1973 coup a revolution to which the rules of war did not apply and warned that "one must be careful" not to seek too much truth about human rights abuses. The Army's regional commander, Gen. González Samohod, was relieved of his post by Pinochet as a result of this incident; it is generally believed that he was the official interviewed. At this same time, the Army circulated criticisms of human rights organizations and revived old tales about the 1973 political situation such as the so-called "Plan Z," a supposed blueprint for an armed takeover by adherents of Allende.

C. The National Commission on Truth and Reconciliation (Rettig Commission)

In April 1990, President Aylwin announced his creation of a special, eight-member commission to "contribute to the global clarification of the truth about the most grave violations of human rights committed in recent years" -- specifically, between September 11, 1973, the date of the military coup, and March 11, 1990, the date when the current government took office.¹³ As stated in Decree No. 355 establishing the Commission, "only on the basis of the truth will it be possible to satisfy the basic demands of justice and create indispensable conditions for achieving true national reconciliation."¹⁴

Headed by respected lawyer and former Senator Raúl Rettig, the Commission included human rights figures as well as former officials of the Pinochet government.¹⁵ It was formally established on May 9 with a mandate to complete its work within six to nine months -- that is, by February 8, 1991.

Like the commissioners, the staff was conscientiously selected to avoid even the appearance of political bias. It was believed that anyone, no matter his or her opinions, would be moved by the material that the Commission would be receiving, and this was in fact what occurred. Commissioner Ricardo Martín, now an appointed Senator and formerly president of the Pinochet government's ineffective human rights commission, told the press, "What I know now, I would not have imagined" and stressed the importance of the courts' reopening cases in which the Commission had gathered new information.¹⁶ The Commission's report is a consensus document without being a weak one.

On February 8, 1991, President Aylwin received the report in a solemn ceremony broadcast live on nationwide television. A bit less than a month later, on March 4, having read the report, Aylwin presented it to the nation with a televised speech. The President reviewed briefly the report's contents and then, reflecting on its significance, spoke of forgiveness. To make

¹³ Art. 1 of Decree No 355 dated April 25, 1990, published in the *Diario Oficial* on May 9. Full text appears in "Exordio," initial section of the report of the National Truth and Reconciliation Commission.

¹⁴ *Ibid.*, Considerando 2.

¹⁵ The members were: Raúl Rettig Guissen, president; Jaime Castillo Velasco; José Luis Cea Egaña; Mónica Jiménez de la Jara; Ricardo Martín Díaz; Laura Novoa Vásquez; Gonzalo Vial Correa; José Zalaquett Daher.

¹⁶ *La Epoca*, February 9, 1991.

forgiveness possible, he said,

one must begin by specifying who are the offended parties called upon to forgive and who are the offenders to be forgiven. I cannot forgive for another. Forgiveness is not imposed by decree. Forgiveness requires repentance on one hand, and generosity on the other.

When agents of the State were those who caused so much suffering, and the relevant organs of the State could not or did not know how to avoid it and punish it, nor was there the necessary social reaction to impede it, the State and the entire society are responsible, whether by action or omission. It is Chilean society that is indebted to the victims of human rights violations.¹⁷

He then, in his capacity as representative of the society, asked pardon of the victims, and requested of "the Armed Forces and forces of order, and all who have had participation in the excesses committed, that they make gestures of recognition of the pain caused and cooperate in diminishing it."¹⁸

1. Mandate and method

Its founding decree stated that the Commission would:

- (a) Establish the most complete possible framework about grave [human rights violations], their background and circumstances;
- (b) Gather material which would permit individualization of victims and determine their fate and whereabouts;
- (c) Recommend measures for reparation and restoration [of honor] so as to create justice;
- (d) Recommend legal and administrative measures which, in its judgment, may be adopted to impede or prevent the commission of the acts referred to in this article.¹⁹

For the purposes of the Commission's work, the gravest human rights violations were defined as "situations of disappeared detainees, the executed and those tortured to death, in which the moral responsibility of the State

¹⁷ Full text reprinted in *El Mercurio*, March 5, 1991.

¹⁸ *Ibid.*

¹⁹ Decree No. 355, Art. 1, *op. cit.*

appears involved through acts of its agents or persons in its service, as well as kidnappings and attacks against the lives of persons committed by individuals under political pretexts."²⁰

To carry out its task, the Commission was authorized to receive information from victims, their relatives and representatives; to solicit information from human rights organizations within and outside Chile; to seek documents from the State; and, as a result, to produce a report which would be presented to the President. The President would make the report available to the public and decide how to act on the Commission's recommendations.

The Commission was strictly limited to gathering information; it was not, legally, an investigative body, as this would have impinged on the authority of the judicial branch. Thus, although the Commission passed to the courts any new information it received on criminal activity -- and urged that closed cases be reopened -- its founding decree explicitly prohibited the Commission from reaching conclusions as to the responsibility that individual persons might have for specific crimes. This constraint on the Commission was controversial with organized groups of victims, whose experience with the court system has been one of unrelieved disappointment; but it was appropriate, given the need to safeguard the right to due process of would-be defendants. The Commission devised a partial resolution of this quandary by not naming names, but in its descriptions of the system of repression attributing responsibility to specific organs of repression, military units, and offices of the military government -- whose maximum authorities and most notorious agents are known -- so as to present a clear picture of institutional responsibility for types of abuses.

The Commission received archival material and lists of victims from national human rights groups and from the military. It published advertisements in newspapers around the world soliciting information from exiles, and international organizations were asked to contribute information on cases and recommendations for preventive and reparatory measures. In June 1990 it began hearings with victims and their relatives and representatives, first in Santiago and later in provinces, gathering direct testimony on a universe of

²⁰ *Ibid.* By "individuals" is meant members of the various far-leftist armed groups, which began to appear in the early 80s as a response to the military regime and gradually shifted from sabotage to assassinations and more indiscriminate terrorist violence. One of these was the *Frente Patriótico Manuel Rodríguez* (FPMR), whose split-off, the FPMR (Autónomo), is still openly dedicated to violent activity. Others have included a section of the *Movimiento de Izquierda Revolucionaria* (MIR) party and an organization variously called the *Movimiento Juvenil Lautaro*, the *Movimiento Lautaro*, the *Mapu-Lautaro* and the *Fuerzas Rebeldes y Populares Lautaro* (FRPL).

some 3,400 cases. In provinces, the hearings were held in municipal buildings -- places which, in many cases, had served as detention and interrogation centers during the dictatorship.

The Commission could not compel testimony; this would have been to take on the attributes of a court. It did not, therefore, receive much cooperation from the military on cases not involving military victims. Some individuals connected with the military, however, did voluntarily assist the Commission. At this writing, the one whose cooperation has become public knowledge is Luz Arce Sandoval, a former DINA collaborator, whose testimony enabled the Commission to forward new information to the courts on numerous disappearance cases.

2. Format

The report is divided into two volumes. The first of these contains essays, analysis and case-listings corresponding to chronology, as well as an explanation of its method, selected quotations from the testimony of victims, and its suggestions for reparatory measures.

Part I of the first volume outlines method and conceptual foundations; Part II, the framework of the Commission's analysis of events, that is, essays on the circumstances leading up to the September 1973 coup and the legal and juridical circumstances that prevailed from September 1973 to March 1990. Part III takes the events by period: the end of 1973, when repression was most indiscriminate and the majority of extrajudicial executions took place; 1974 through August 1977, the period when DINA was the principal instrument of repression and systematically caused detainees to "disappear" as part of a policy of elimination; and August 1977 through March 1990, when disappearances were rare and executions selective, with DINA replaced by the CNI (*Central Nacional de Informaciones*), and when political violence emerged -- both in suppression of massive peaceful demonstrations and in armed opposition to the regime. In each of these period-essays, the report takes note of the responses to repression by important actors such as the Church, human rights organizations and the international community, and lists victims in chronological and regional order.

Part III also contains a section titled "Family and Social Effects," composed of brief quotations from the testimonies the Commission received. Part IV presents the recommendations for reparation and prevention.

The second volume comprises an alphabetical case-listing of victims. After each name comes a brief paragraph describing the circumstances of disappearance or death.

3. Findings

The report is a massive document, more than 2,000 pages long. It is also a richly detailed document, often moving and, despite its subject matter, written to be readable. In one sense, the entire contents of the report constitute its findings, for the decision to include a case or a historical detail in the report confers a certain judgment on its importance and veracity. Thus, it is meaningful that, in describing the context in which the coup took place, the essay on "Historical Framework" in Part II includes material on factors internal to Chile and factors external, such as U.S. covert intervention; that it begins with the situation facing the country in 1973 and not before, as the Right had demanded; and that the essay is careful to clarify that all political actors played a role in a polarization that invited extreme "solutions." The report answers questions about famous cases, such as the circumstances of Salvador Allende's death -- the Commission became convinced that the former President took his own life, rather than surrender -- and devastates some of the military regime's central justifications for its repressive policy, such as the concept that, in September 1973, the country faced an "internal war."²¹

The Commission's emphasis on certain aspects of responsibility for abuses served to direct national attention, for example to the role played by the Judiciary and the special importance of the DINA as a repressive entity. Of the Judiciary, almost more than the armed forces as institutions, the report presents harsh judgments. It notes, for example, "the feeling of sympathy that the majority of the members of the Supreme Court showed for the new regime,"²² and describes the conduct of the courts unsparingly:

During the period which concerns us, the Judicial Power did not react with sufficient energy when faced with human rights violations...

The Judicial Power was the only one of the three Powers of State that continued functioning without being intervened or dissolved...Interest in

²¹ "The 11th of September of 1973 having occurred, the Armed Forces and forces of order achieved their immediate objective -- effective control of the country, without pockets of armed activity by the deposed government's supporters -- in very few days. It is possible to say truthfully that such action was minimal; irregular, with respect to its location, form and armaments used; uncoordinated, and without the least possibility of success, even at the local level...It is notable, equally, that in the whole country the general rule was that the deposed authorities turned over their posts to the new ones, without difficulty and even in a formal manner; and that those called by decree to offer themselves for detention did so, a large number voluntarily." Volume I, Part III, Chapter I, A.1.(a).

²² Volume I, Part II, Chapter I, B.1.

maintaining a structure or an image of legality, on the new military authorities' part, made them especially careful with members of the judiciary...This would have permitted the Judicial Power to assume a more resolute attitude in defense of the human rights that were being violated. However, and although jurisdictional activities continued functioning normally in almost all areas of national concern whose conflicts arrived at the courts, in the area of human rights violated by agents of authority in a magnitude unknown before, jurisdictional oversight was notoriously insufficient...

The attitude adopted during the military regime by the Judicial Power produced, to an important and involuntary extent, an aggravation of the process of systematic violations of human rights, both in the short term -- in not lending protection to detainees in denounced cases -- and insofar as it offered repressive agents an increasing certainty of impunity for their criminal actions, whatever form of aggression might be employed...

The Courts, in spite of not being able to ignore the existence of centers like the National Stadium, the Chile Stadium, the Air Force War Academy, [and DINA centers] Villa Grimaldi, José Domingo Cañas 1367, Londres 38 and many other places in Santiago and provinces -- including, in the early period, centers belonging to military institutions -- where detainees were kept and where torture was common practice, did nothing to remedy this illegality, nor to denounce it, despite continuous complaints formulated in writs of *habeas corpus*.²³

Of DINA, the report describes it as an organization

whose functioning was *secret and above the law...*; its internal organization, composition, resources, personnel and actions escaped not only public knowledge but also the control of any legality. Even more, DINA was *effectively protected from any control*, not only that which the Judicial Power might have exercised, but also that of the other aspects of the Executive Power, of high officials of the Armed Forces and including of the Governing Junta; in effect, although formally the DINA was subordinate to the Junta, in practice it was responsible only to the President of the Governing Junta, later President of the Republic.²⁴

²³ Volume I, Chapter IV, A and B.1.(b.3).

²⁴ Volume I, Part III, Chapter II, A.1.(b.1.). Emphasis in the original.

At its peak, the DINA employed thousands of persons ranging from DINA agents as such -- civilians as well as military and police personnel -- to paid advisors, collaborators and contacts in government institutions and the press. It also maintained contact with the secret services of neighboring dictatorships and foreign terrorist groups.

In all structural descriptions of DINA, the report makes clear that the organization reported to the President of the Junta and Commander in Chief of the Army and was the principal agent in a "pattern of previous planning and central coordination which reveal, in combination, a will to exterminate certain categories of persons: those considered to be politically highly dangerous."²⁵

It is also unsparing in its description of what DINA did to the "disappeared." The Commission "reached moral conviction that so-called 'disappearance' was not that...[but rather] a detention accompanied or followed by measures of concealment and official denials; detention during which, in general, tortures were applied; and of which there is a moral certainty that it concluded in the victim's assassination and the disposal of his remains in such a way as not to permit them to be found."²⁶

Similarly, the report explores the phenomenon of torture at length in its discussion of the 1974-77 period, including descriptions of the secret interrogation centers of DINA and the types of torture in which each center specialized. Methods described include the *parrilla* (electricity applied while prisoner tied to metal bed; literally, "the grill"); prolonged suspension of the victim by wrists or knees; the *submarino* (repeated submersion of head in liquid, generally mixed with feces or urine, until moment of near-suffocation); beatings; psychological torture; breaking of bones or aggravation of existing wounds by, for example, driving a vehicle over the victim's limbs; rape and other sexual abuse, which in some interrogation centers was practiced regularly.²⁷

In its description of the final period, late 1977 to March 1990, the report focuses partially on defining circumstances of "political violence," whether police abuse at anti-government demonstrations (shootings leading to death) or confrontations between armed leftists and security forces where death resulted. The State agents in situations of political violence were generally police; the armed individuals belonged principally to three groups, the pre-existing

²⁵ Volume I, Part III, Chapter II, A.1.(a).

²⁶ Volume I, Part I, Chapter II, A.2.(a).

²⁷ Volume I, Part III, Chapter II, A. 1. (e.2.).

Movimiento de Izquierda Revolucionaria (MIR), the *Frente Patriótico Manuel Rodríguez* (FPMR) with links to the Communist Party, and, later, the *Movimiento Lautaro*. Each of these groups has undergone splits and variations of tactic over time.

During the period studied in this portion of the Rettig report, there also were continuing human rights violations. The report defines some actions by the extreme-left as human rights violations, but the bulk of human rights abuses was carried out by the State, principally CNI, the security police that replaced DINA. The false "clash" with leftists was one scenario for murder; there were also cases of detention-disappearance and of kidnapping followed by mutilation and execution. Torture was often a prelude to the execution of members of armed groups. Terrorist actions committed by leftist opponents of the regime that the report defines as human rights violations included assassinations of government agents and the indiscriminate killing of bystanders or accidental victims.

Much of the report is devoted to case descriptions, the accumulated bulk of which -- each case with its details of occupation, age, civil status, home town, number of children -- constitutes the basic message of the Commission's endeavor. These are individuals with private histories and families, whose absence, and the way they were removed from life, has traumatized the society. The majority of victims were humble people, and young; the largest category of victim was workers and campesinos, and more than 60% were younger than 30 years of age. Nearly 95% were men, and 46% had no known party affiliation.²⁸

The statistics emerging from the Commission's work are necessarily conservative, given the shortness of the period it was given to carry out its task, the selectiveness of its mandate, and its inability to compel cooperation from the armed and security services. Here are not counted the tens of thousands who were either forced formally into exile or fled the country under harassment; the further tens of thousands detained in massive sweeps, right after the coup and in the later years of the regime; those who were tortured but survived. The wounded are not represented; only the dead, of both "sides," and the disappeared, who are presumed dead.

The Commission found what it considered convincing evidence that 2,115 persons had been victims of human rights violations and an additional 164 had been victims of "political violence," such that the total number of victims -- as defined within the mandate of the Commission: the dead -- was 2,279.²⁹

²⁸ Appendix II, "Estadísticas."

²⁹ The Commission examined an additional 641 cases in which it could not determine

Half (1,068 cases, or 50.2%) of the persons whose deaths are deemed human rights violations in the Commission's report were those killed by agents of the State or persons in their service. These were victims sentenced to death by *consejos de guerra* in the months following the coup, shot while supposedly trying to escape imprisonment at that time, killed during the protests that became frequent after May 1983, or -- the most numerous -- "other executions and deaths from torture."³⁰ A further 45.2% (957 cases) are also attributed to State agents; these are the disappeared detainees of whose fate the Commission considered it had substantial evidence. Individuals acting on political pretexts -- that is, leftist armed groups -- are held responsible for 90 deaths, or 4.3% of deaths qualified as human rights violations.

Finally, there are 164 cases considered "victims of political violence," a category which contains both victims of State policy and victims of violent opposition to the regime. Thus, uniformed personnel killed in 1973, during the coup and immediately after, are in this category. The Commission considered, meanwhile, that a person shot by police or security agents during a peaceful political protest or during an armed confrontation was a victim of political violence.

4. Testimonies of damage

A singularly moving section of the report is "Family and Social Effects of the Most Serious Human Rights Violations," which allows those who testified to the Commission to be heard directly, if in briefest form.³¹ As the report notes, "During all these years, these testimonies, this pain, has been little listened to." The experience of offering testimony to official representatives who, for the first time, neither scoffed at it nor harassed the relatives for having brought it forward, who on the contrary listened and were moved and showed respect for the pain being exposed -- this experience in itself, as relatives said publicly and privately, had been a step toward healing. The Commission notes

exact circumstances of victimization but wished the cases registered; the report also notes 508 other cases that were presented but fell outside the Commission's mandate, and 449 in which survivors were able only to provide the name, without further elements on which to base investigation. *Ibid.*

³⁰ The report's Appendix II lists 59 dead due to *consejos de guerra*, 93 killed during protests, 101 whom the former authorities claimed to have killed because they tried to escape, and 815 in the final category; total 1,068.

³¹ Volume I, Part III, Chapter IV. The chapter has no subdivisions; all quotations below are from the chapter.

that most of the quotations come from relatives of persons murdered by the State because, first, their numbers were far greater and, second, "there are certain expressions of damage like uncertainty facing a disappearance or the experience of marginalization, which affected some families [that is, the families of one group of victims] and not others." Nonetheless, the report is careful to emphasize, here as elsewhere, that the respect for loss and suffering must be the same for every family, no matter the identity of the victim.

Among the effects that relatives described was a feeling that the death was a punishment. "The majority of victims were authorities of the deposed government; leaders of social organizations; leaders, militants or sympathizers of a political project. With their death, their adherence to the project seemed to be punished...Relatives of members of military institutions and security services who have been killed by political groups show this same perception of punishment." Another was that the death had no reasonable explanation: "I had to tell my five-year-old son that, as they do with animals and flowers, people sometimes kill other people." For families of disappeared detainees, the uncertainty has become permanent pain, or, as the report notes, "There is no possibility of rest, the sense of impotence has become chronic." For relatives who imagined or experienced somehow the torture of their dead loved ones, the pain is like nightmare: "I had looked for him so much. I went to cry by the sea and there he was all puffed up, with bullet wounds. They had taken out his teeth." "I could hear his sobs and screams of pain. When I stopped hearing them, I knew he had died." "When they took my father, they took my husband and me too. A whole group that guarded me raped me. I never told my husband. It's been fifteen years." "They have told me that he smoked his last cigarette with his hands cuffed, they shook, he couldn't inhale well. This is the image that won't let me die in peace."

Each of these brief glimpses suggests an entire life permanently affected. So too are the lives of the following generation. "Our children are different from the rest. We hid the truth from them so they wouldn't suffer and then they were pointed at in school for being the children of an executed prisoner [*fusilado*]." "When they came looking for my husband our little boy threw himself at his feet. They kicked him away, they broke his head. The other [children] cried out and wept. They often have nightmares, I don't see them as like other children..."

The sequelae of such experiences are eloquently and simply described in the relatives' words: fear that does not diminish with time or change of government; hatred that "is like a disease;" a sense of guilt and impotence: "I sent word to my son to give himself up, that nothing would happen to him." "They came to my house and asked for some chains to put on the wheels of the

truck, and later we learned that with those chains they had tied his hands." The testimonies are of families placed in desperate economic difficulty at the same time that the woman is seeking her detained husband and is shunned, out of fear or mistrust, by neighbors, institutions, and above all the authorities of the State. Survivors feel "like pariahs in our own land...," the objects of contempt by those who possessed power of life and death: "They told me he was fine, watching television. At that moment he was already dead." They recall ridicule: "I went all over the country looking for him. When I would come back they would laugh at me. One time I came back from the Island, and got off the bus in the plaza, and they laughed at me." "At school they said to me: they killed your papa for his politics. They called us the little extremists." "In the courts they called us liars."

5. Proposals for reparation

The report ends with recommendations for both symbolic and legal measures of reparation. On the symbolic plane, the Commission emphasized the importance of gestures to rehabilitate the good name of the victims, and to ensure that the rehabilitation be made as public and national as possible. Suggestions such as erecting a monument naming all the victims of both sides, building a public park in memory of the victims, and organizing cultural events to create a climate of national reconciliation, echoed ideas that had surfaced in public discussions during the year.

In terms of economic reparation, the report proposes a single-amount pension for each family victimized, as well as special health benefits for those who have suffered extreme trauma, including survivors of torture. In addition, pointing to problems faced by relatives who have no proof of death on which to base claims for pensions and other benefits, the report proposes that the State create a procedure by which to declare a disappeared person presumed dead, and to speed a relative's access to a declaration of presumed death if he or she should solicit it.³²

Preventive measures proposed by the Commission include modifications in national law to bring it into line with international human rights law; a strengthening of the judiciary's role as a protector of human rights; commitment by the armed and security forces to a role concomitant with respect for human rights; the creation of an office of Ombudsman (*Defensor*

³² The horror of this situation, and the limits to which it stretches existing law, are suggested by the report's proposal that, for legal purposes, death be presumed as of the date of last news of the detainee -- "of his existence" -- and that, as proof of death, the victim's inclusion in the Rettig report be considered sufficient. Volume I, Part IV, Chapter I, C.2.(c).

del Pueblo) to protect citizens from abuses of their fundamental rights by the State; the legislation of greater guarantees of protection from abuse for detainees and prison inmates.

Two recommendations drew special public attention: the proposed creation of a State-sponsored foundation which would assist in searching for the remains of disappeared victims, maintain an archive of the Rettig Commission's files and offer legal assistance to the relatives; and the proposed criminalization of the act of holding back information which could determine the whereabouts of disappeared persons' remains. The report stresses that, in legislation to penalize the withholding of information, there must also be a guarantee of absolute confidentiality for the informant, to prevent possible reprisals, and the Church, in endorsing the proposal, offered to serve as intermediary and recipient of the information.

Perhaps most profoundly, the report speaks of the achievement of "Truth, Justice and Reconciliation as Measures of Prevention." To fulfill a preventive function, truth must be "impartial, complete and objective, in such a way as to create a conviction in the national conscience of how the events took place and how they unduly affected the honor and dignity of the victims."³³ About justice, notes the report, "consulted opinions diverge. Some regard the application of sanctions as an indispensable measure of reparation and prevention. Others, on the other hand, consider that, given the time that has gone by, the form and context in which events took place, it is not advisable to open or reopen legal cases, as this could produce effects contrary to what is sought [presumably, reconciliation]."³⁴

The Commission formed a judgment on this point:

From the strictly preventive point of view, this Commission considers that an indispensable element for the achievement of national reconciliation and thus avoiding the repetition of the events which occurred, would be the State's complete exercise of its punitive faculties. Complete protection of human rights is only conceivable where the rule of law actually prevails. And the rule of law presupposes the submission of all citizens to the law and the courts of justice, which involves the application of sanctions foreseen in penal legislation, equal for all, to transgressors of the norms that require respect for human rights.³⁵

³³ Volume I, Part IV, Chapter II, D.2.

³⁴ Volume I, Part IV, Chapter II, D.3.

³⁵ *Ibid.*

The Commission was also aware of what the report calls "the practical difficulties of all kinds which may impede or block the full realization of this important goal...", principally the position relative to the amnesty of 1978 adopted in "standing decisions of the Supreme Court."³⁶

Testimonies offered to the Commission are cited as evidence that the victimized do not seek vengeance. If all will contribute -- for example, if those who can, offer information on the whereabouts of the disappeared -- the report projects the possibility of reconciliation.

6. Impact of the report

Very few copies of the Rettig report were printed, and these went to officials and embassies. The Chilean public had access to the report through abridged or complete reproductions of its text in several newspapers, however, as well as through debate programs on television. Special editions of the State newspaper, *La Nación*, which reprinted the entire report on March 5 and 6, sold out early and have since been reprinted for sale on downtown streets.

An intervening event may have blunted the report's impact somewhat, especially with the Chileans most likely to resist its findings: on March 3, 1991, in Rancagua, a retired Army doctor and his wife were assassinated. The doctor had been censured by the Chilean Medical Association, some years earlier, for having participated in torture sessions. On March 5, photographs of the doctor's funeral, attended by Pinochet and other senior Army officials, competed for front-page space with photographs of Aylwin presenting the Rettig report. Another terrorist attack, on March 15, took the life of an *Investigaciones* prefect in Concepción. This man had no record of involvement in human rights abuses, and his killing was, like the doctor's, widely condemned. The April 1 assassination of Senator Jaime Guzmán, as noted below, effectively ended public discussion of the Rettig report after only three weeks.

Public reaction to the report is difficult to gauge in that it occupied the nation's attention for so short a time. One limited indication, however, is a poll released on March 7, based on a universe of 300 Santiago residents of various ages and social strata. According to this poll, President Aylwin's March 4 speech was seen as "positive" by 91%, although 69% believed that the report "does not contain the whole truth of what happened." Eighty percent of respondents favored continuing judicial investigations of the cases forwarded

³⁶ *Ibid.* See Section III below.

to the courts by the Rettig Commission, while 15% did not. And 70% did not consider the report a definitive solution to the problem of human rights violations.³⁷ Another poll, released a month later and highlighted in the Sunday edition of the conservative *El Mercurio*, asked the question, "In your view, does the Rettig report contribute to reconciliation?" and obtained quite even responses: 42.5% answered yes, 39.5% said no.³⁸

One immediate effect of the report was to bolster the credibility of legal cases before the courts. The Commission forwarded information on some 230 victims to the civilian courts with requests that existing cases be reopened on the basis of the new data or, in some instances, that cases be initiated for the first time. A list of the cases forwarded was leaked to the press; it included the names of witnesses to the detentions of the victims, a summary of each case, its court of jurisdiction, date of detention and date of death if known.³⁹ At this writing, it is unclear what the legal future of those cases may be. However, another important result of the Commission's work -- public criticism of the Supreme Court -- may end by improving somewhat the chances for investigation.

President Aylwin, in presenting and commenting upon the Commission's findings, was emphatic in criticism of the Judiciary, and in particular of the Supreme Court. We review some of the bases for that criticism, which we find legitimate, in Section III below. The Supreme Court, at first offended and defensive, waited several weeks before responding to a formal request from the President that it support the reopening or initiation of legal cases as

³⁷ Telephone poll conducted by *Base de Información, Comunicación y Análisis* (BASICA), reported in *La Epoca*, March 8, 1991. On a related matter, 71% believed the armed forces bore a great responsibility for human rights violations, while 17.7% believed their responsibility was minor.

³⁸ Bestland poll reported in "El Test del Primer Año," *El Mercurio*, April 14, 1990.

³⁹ *Las Ultimas Noticias*, March 4, 1991. Prominent among the witnesses are two former agents of the repression, Andrés Valenzuela -- an Air Force intelligence officer who participated in the *Comando Conjunto*, a squad linked primarily to the Air Force and specializing in disappearances from late 1975 to late 1976 -- and Luz Arce Sandoval, a torture victim who became, and remained for several years, a collaborator of DINA, denouncing former friends and allegedly participating in their interrogations under torture. Valenzuela came forward in 1985, sharing information which enabled an investigating judge to indict 40 military and civilians for a group disappearance (See Section III, "Cerda case."); Arce testified to the Rettig Commission. Both now live abroad. Arce's testimony too found its way into the press in March 1991, and caused a considerable impact.

recommended by the Rettig Commission. In April the Court acted favorably, instructing lower courts to reopen cases forwarded by the Rettig Commission, including cases previously closed by virtue of the 1978 amnesty law. This gesture does not indicate that the Court will change its position fundamentally, but it does permit fresh examination of evidence in new political conditions.

The Commission's recommendations were generally well received, but the first to be given legislative form became extremely controversial. A special interministerial committee, created to follow up on reparatory measures, produced a proposal to declare the disappeared presumed dead, to create a National Corporation for Reconciliation (the State-sponsored foundation recommended in the Rettig report), to fix a pension for the survivors, and other related matters. The Relatives of Disappeared Detainees objected that a declaration of presumed death would suggest that disappearance cases were somehow "resolved" and remove incentive for the State to locate remains, pursue the truth about the victims' circumstances of death and seek justice. Pensions, they believed, should be set for each family depending on the number of members and not, as the government proposed, with a set amount applied to all. They considered the Corporation as proposed inadequate, because it would have no authority to investigate the whereabouts of the disappeared and locate their remains, but only to advise relatives in these tasks. Given that the State has an obligation to locate the missing, as part of its obligation to do justice, the relatives considered the proposal window-dressing.

Instead, the relatives have proposed that the Corporation be responsible to pursue investigations, not only as to the whereabouts and fate of the disappeared but also regarding the cases in which the Rettig Commission could not reach a firm determination for lack of data. This proposal would give the Corporation some attributes of a court, and is therefore unlikely to find support in Congress. The other proposals are less problematic, however. For example, as to the provisions on presumed death, the relatives considered existing law sufficient and emphatically rejected the State's political "solution" to the uncertainty with which they have lived for over a decade.

The government's proposal would have declared all male children of disappeared detainees exempt from military service. The relatives objected to this, and their reasons reveal much about an experience of marginalization that the Rettig Commission understood and the government then proceeded to oversimplify. The relatives did not wish, one more time, to be marked off as a special group, excluded from patriotic duty and thus somehow lesser patriots, lesser citizens than other Chileans. They did not wish their children to be pointed at as exceptions any more. In small towns all over Chile, military service carries a certain status; and the military institution is, generally,

distinguished from Pinochet. What the relatives proposed, rather, was that the Corporation to be created have, as one of its functions, to make representations to the armed forces in those cases in which, because of extreme trauma, the son of a disappeared person is not in condition to perform military service. They wished, for a change, to have options. At this writing the government's proposed law is under discussion in the Chamber of Deputies.

The reactions of the guilty parties, however, took longer to emerge. While Air Force commander Gen. Fernando Matthei readily accepted the report's findings, he personally had not been implicated in human rights abuses, and his service -- whose command he assumed in 1978, after the most widespread abuses were over -- had not been implicated in the gravest human rights violations of the later years. Likewise, the relatively mild reaction of Carabinero commander Gen. Rodolfo Stange came as no surprise; Stange, like Matthei, was neither an original member of the junta nor personally tainted. The Army and Navy waited and let supporters speak for them, however, in an atmosphere of increasing tension, until on March 27, more than three weeks after the report was released, both Gen. Pinochet and Adm. Martínez Busch explained their positions to a meeting of the National Security Council and later in more detail publicly. Both criticized the report as inaccurate and unjust, Pinochet in the more strident terms.

Stating the Army's "fundamental disagreement" with the report, Pinochet called its findings:

personal and precarious convictions [which] have been transformed into condemnatory sentences against many persons, outside due process, opening the way to their discredit before public opinion and exposing them to terrorist vengeance.

The Army of Chile solemnly declares that it will not accept being placed as if on trial before the citizenry [*en el banquillo de los acusados*] for having saved the freedom and sovereignty of the homeland at the insistence of the civilian population. Even less will it tolerate this when, among those who attempt to elevate themselves through moral judgments of other men, are those who were principally responsible for the tragedy experienced [by the nation] in their capacity as senior leaders of the Popular Unity [Allende's coalition].⁴⁰

Among the Army's nine objections to the report was the contention that an

⁴⁰ Portions of text reprinted in *El Mercurio*, March 28, 1991.

internal war did exist in 1973; another was the alleged bias of some Commission members; a third was the report's alleged lack of "historical validity." According to the Army, the regime completed its mission, "reestablishing social peace and democracy and returning political leadership to civilians, in a country free and reconciled."⁴¹

Nor did the Army ignore the report's call for national determination that *nunca más*, never again, should such crimes occur in Chile. Pinochet responded to this with a somewhat contemptuous threat:

For an important part of the nation, which understood the task of the 11th of September of 1973, the true "*nunca más*" must come, before anything else, from those who, with their different ideological experiments, brought the country to an unavoidable reaction of legitimate defense before the open illegitimacy which had been produced. It is necessary that *nunca más* does anyone propose to initiate in Chile an experiment of the nature and scope of the Popular Unity. In such circumstances, it will be impossible to prevent the experience that legitimate use of force -- by its nature -- stimulates or makes difficult to avoid.⁴²

As defiant as these statements were, they did not include denials of any specific crimes. Also, it was understood that they would be the armed forces' last criticisms of the report, that the subject was closed.

Beyond its immediate political significance, the Rettig report had been conceived as an educational and ethical document, and might have had profound impact as such. Human rights activists and government officials had planned wide dissemination and discussion of the report, including distribution of mass editions, days of reflection, community gatherings to remember victims and explore continuing fear or other trauma. At this writing, however, Chile's national debate on the Rettig report has been cut short by an act of terrorism, the April 1 assassination of far-right Senator Jaime Guzmán. Two days after the killing, a prominent conservative politician stated in an opinion article, "...[L]et's be practical. ...Things will not be as they were. The opposition, with reason, will now demand resolve in the government so that once and for all the truth may govern, looking forward, constructing the future, instead of continuing to turn our backs on tomorrow with our eyes focused on

⁴¹ *Ibid.*

⁴² Quoted in María Irene Soto, "*El 'pronunciamiento' de las Fuerzas Armadas*," *Hoy* magazine, No. 715, April 1-7, 1991, p.8.

the past and seeking wounds in order to know how deep they are, making them bleed again." The writer added that the killing "puts a final end to the Truth and Reconciliation Report which, though a moral condemnation of human rights violations -- with regard to which no one could disagree -- was being transformed by some people into a false historical judgment that those of us who have our ideas clear and a coherent knowledge of history will never accept."⁴³ Another rightist politician stated, soon after, that "the killing of Jaime Guzmán has buried the Rettig report" in terms of public debate and "if it reappears, it will be perceived very differently by the public."⁴⁴ These are easy remarks for the Right to make, and convey something of relief. The Rettig report, in its sober and moderate way, had outlined the active and passive responsibility of the civilian Right in the horrors of the dictatorship. While that "historical judgment" may have been uncomfortable for the so-called "renovated" Right, it was not incorrect, and while public debate on the report may be closed at the moment, the underlying reality requires continued attention; too many people were affected for it to be forgotten after a mere three weeks of debate and in the absence of legal judgments and reparations.

President Aylwin had asked all social sectors to seek pardon from the victims. Few public figures did so, and those who assumed responsibility for their actions or omissions were generally those who did not need to -- among Supreme Court justices, only a frequent defender of human rights, Rafael Retamal; among criminal court judges, outstanding investigator Germán Hermosilla; Air Force Gen. Matthei among the military leaders, and so on. Divisions the President had hoped to overcome with a call to ethical responsibility go as deep as 16 years of dictatorship and earlier years of social tension go in the Chilean experience. With the assassination of Guzmán -- himself a symbol from the past, Pinochet's principal civilian political advisor and the architect of the Constitution that still governs Chile -- reconciliation would seem, for the moment at least, too great a challenge.

⁴³ Francisco Javier Errázuriz, "El asesinato de Jaime Guzmán," *La Epoca*, April 3, 1991.

⁴⁴ Andrés Allamand, president of the *Renovación Nacional* party, statements reported in *El Mercurio*, April 10, 1991.

III. JUSTICE IN HUMAN RIGHTS CASES

A. Obstacles to Justice

The Chilean court system has traditionally commanded public respect, but the conduct of the courts during the military regime aligned them so clearly with the policies of the dictatorship that now, as the Rettig report notes, "there still persists...a national distrust of the Judiciary as an institution protective of fundamental rights."¹ Anecdotes which have become justly famous include the Supreme Court president's response at a meeting with relatives of the disappeared, in 1981: "I'm fed up with the disappeared," said Justice Israel Bórquez.² Such denials of reality -- and responsibility -- were common. A portion of the speech given in March 1975 to inaugurate the judicial year, by the then-Supreme Court president, appears in the Rettig report by way of example:

With respect to torture and other atrocities, I can affirm that here there do not exist firing-squad walls or iron curtains, and any statement to the contrary is due to a proselytizing press, promoting ideas which could not and will not be able to prosper in our homeland....The Appeals Court of Santiago, and this Supreme Court, have been overwhelmed in their work by numerous *habeas corpus* [*amparo*] petitions, submitted under the pretext of detentions decreed by the executive power. This has caused disturbances in the administration of the justice system, depriving the Superior Courts, especially in Santiago, of the chance to attend to urgent issues...³

In the press of more "urgent" business, the civilian courts, including the Supreme Court, rejected nearly 9,000 writs of *amparo* (*habeas corpus*) for Santiago alone, during the dictatorship, and accepted 30.⁴

¹ Volume I, Part II, Chapter IV, A.

² "Los desaparecidos me tienen curvo." *Curvo* is a Chileanism, meaning literally to be bent over with an irritating burden. The quotation has been widely repeated. See, for example, Hernán Millas, "Chile no es una tierra de bárbaros," *La Epoca*, March 10, 1991.

³ Report of the National Commission on Truth and Reconciliation, Volume I, Part II, Chapter IV, A.

⁴ The *Vicaría de la Solidaridad*, human rights office of the Santiago Archdiocese, presented a total of 8,908 writs of *amparo*, just for Santiago, from October 1973 through the end of 1989. The organization records twenty-eight accepted in the 1985-89 period; before

The Inter-American Commission on Human Rights of the Organization of American States (OAS), in its landmark 1985 study on Chile, notes that the Government Junta's decree-law No. 1, issued the very day of the coup, fixed the limits of the judiciary's independence: the junta, according to this decree, was to guarantee the "full effectiveness" of the Judiciary, and would "respect the Constitution and the laws of the Republic," but only "insofar as the present situation of the country so permits for the better achievement of the goal it pursues."⁵ The Government Junta then became the legislature and immediately invented crimes such as "illicit association"⁶ and, where new decree-laws conflicted with the democratic Constitution of 1925, declared that all measures adopted by virtue of the state of siege then in force were automatically to "have the status of amendatory rules."⁷ Having decreed the dissolution of existing channels of organization and expression -- Congress, the political parties, the central labor federation, etc. -- the Junta also decreed limits on the exercise of basic rights to speech, association, assembly, collective bargaining. In every area of law the military made alterations to protect their agents against accusations of abuse, in part by limiting civilian court jurisdiction over human rights cases. That is, the initial repression was achieved by force, then perpetuated by decree such that it became "legitimate." As time went on, in 1980 the Governing Junta approved a new Constitution, in order further to legitimize its authority, and, with Pinochet as President of the Republic for an intermediate period starting in 1981, his army representative joined the other two chiefs of the armed services and the commander of *Carabineros* to form the Legislative Power.⁸ In the meantime, the military courts' jurisdiction was steadily expanded, changes in the penal code included harsher sentences for dissent

1985, according to the department of statistics, the organization does not record the number accepted but it is either two or three.

⁵ OAS, *Report on the Situation of Human Rights in Chile*, Washington, D.C., 1985, p. 151.

⁶ Decree 77 of 1973.

⁷ Decree Law 788 of 1974.

⁸ The Political Constitution of 1980, which in slightly modified form still governs Chile, was approved finally by plebiscite, in September 1980. The entire process of its development denied public participation, however, and the fairness of the vote itself has been called seriously into question. See Americas Watch, *Chile: Human Rights and the Plebiscite*, New York, 1988, pp. 19-26.

and arms possession, and new legislation broadly defined the crime of terrorism or its promotion.

There is considerable debate in Chile today about the extent to which the civilian courts were forced to bend to these new legal norms or whether they passively accepted the distortion of their function. What is evident, however, is that when lower-court and appellate judges attempted to investigate human rights abuse, the Supreme Court not only failed to support them, but in some cases actually punished them.

Reform of the judiciary is a goal of the Aylwin government for 1991. During the past year some of the most repressive political laws imposed by the dictatorship have been modified, but much more needs to be done to ensure that military courts do not continue to infringe on areas properly within civilian jurisdiction and cease to deny due process. In addition, because of the role of military courts and legislation decreed by the Pinochet regime, there is little prospect that the human rights violations of the military regime will be completely investigated or that those responsible will be prosecuted. Under current conditions, Chile's victims of human rights abuse lack effective legal recourse, for three reasons.

1. Military jurisdiction

(a) Scope and lack of independence

Military jurisdiction in Chile is traditionally broad. Even before the 1973 coup, the Code of Military Justice conferred authority on the military courts to judge certain crimes by civilians and extended to civilians as partners in crime with military personnel or as accessories. The 1958 State Security Law and the 1972 Arms Control Law also conferred broad authority on the military courts in situations of sedition and violence that disturb public order.⁹

Under Pinochet, through amendments to existing laws and through new decrees, the military courts' jurisdiction came to include political and security-related charges against civilians in a wide range of circumstances, whether these were alleged members of armed opposition groups, or politicians deemed too outspoken, or journalists who published material "offensive" to the armed forces. By the late 1980s, military courts were almost exclusively dedicated to trying civilians for crimes of dissent or alleged violent opposition to the regime. Delays in trials were long; defendants had no effective recourse

⁹ A detailed discussion of military jurisdiction, before and after the coup, can be found in Organization of American States, *op. cit.*, pp. 177-85.

against mistreatment or torture, which were common; standards of proof were inadequate, such that confessions obtained under torture were routinely admitted; and defense attorneys had only the most limited access to their clients or opportunity to prepare a defense.

The courts' composition made them dependent on the military command, at all levels. Military prosecutors were designated by their superiors and possessed military rank. Military judges were officers in active duty, accountable to their superiors. A majority of the appellate court or *Corte Marcial* was composed of three active-duty officers whose membership in the Court depended on their superiors' approval. There was, then, no question of insubordination in the meting-out of this "justice." The military courts' traditional function of enforcing military discipline was largely replaced by their political task.

During most of the period covered by this report, that distorted legal situation prevailed, though under challenge in the new government's legal reform package described below (the "Cumplido Laws"). If the military courts acted less frequently against peaceful critics during 1990 than in previous years, it was because the armed forces, in particular the Army -- whose power here, as elsewhere, overshadows that of the other services -- were not disposed to confront public criticism too often.

When sufficiently angered, however, the military used the courts in their customary fashion. A series of cases was opened against journalists in military courts during 1990, on charges of "offense" to armed or police institutions and "incitement to sedition," because of revelations about past human rights abuses or corruption. The contradictions this provoked are suggested in an uncomfortable episode: on September 24, 1990, Interior Minister Enrique Krauss, finding himself at a public event with a journalist, Juan Pablo Cárdenas, who was evading arrest on one such charge, felt compelled to leave the event -- so as not to appear to countenance a defiance of the law -- but also felt compelled to explain to Cárdenas and the others present that the government disagreed with and was trying to change that same law, and that Cárdenas had every right to be there.¹⁰

Even after the government's legal reform package was passed, military courts retained jurisdiction over civilians in many cases involving armed activity, as described later in this section. As yet it is early to determine whether military courts and the reformed *Corte Marcial* will respect the rights of defendants with more care than in the past. As to treatment of detainees,

¹⁰ For more detailed discussion of journalists' cases, see Section V below.

however, cases of torture denounced during 1990 contributed to the passage, in the legal reforms, of safeguards for detainees' medical attention and access to their lawyers.¹¹

(b) Treatment of past abuses

The issue of jurisdiction also affects accountability in cases of past human rights abuse. Military court jurisdiction was expanded by the Pinochet regime to cover most criminal acts committed by uniformed personnel. Article 5(3) of the Code of Military Justice defines military jurisdiction as covering

proceedings for common crimes committed by military personnel during time of war, being in the field, in an act of military service or occasioned by such service, in the barracks, camps, bivouacs, forts, military works, stores, offices, premises, foundries, workshops, factories, parks, academies, schools, vessels, arsenals, lighthouses and other military or police establishments or premises of the armed forces.¹²

When the armed forces wish to contest civilian jurisdiction, the Military Prosecutor General argues that the crime involves military personnel and took place in military or police quarters of some kind. For crimes occurring between 1973 and 1978, while the country was decreed to be in a state of internal war, the argument of war-time was used, but this was sufficient only for crimes such as the killing of a civilian -- allegedly a combat death. Cases of denounced disappearance or torture from this period, generally involving DINA (*Departamento de Inteligencia Nacional*), were transferred to military court even where the crimes may have been committed by civilian agents, on the basis that detention had been carried out by a military institution and that the denounced acts took place in "military" centers. Villa Grimaldi, for example -- originally a clandestine DINA center -- was qualified as a military "office" for purposes of securing jurisdiction over disappearance cases in order to close them.

In the period after 1978, when the country was governed under the state of

¹¹ See discussion of these safeguards below, and on torture cases see Section V.

¹² In 1984, Law No. 18,342, which amended the Code of Military Justice, the State Security Law and the Arms Control Law, expanded military jurisdiction to include the phrase "military or police premises." The law then defined such premises as "any duly delimited space, vehicle, vessel or aircraft in which a military or police authority performs his specific functions." See *Ibid.*, p. 182.

emergency rather than state of siege and the state security police (*Central Nacional de Inteligencia* or CNI) was subordinate to the Ministry of Interior rather than the military junta, jurisdiction was kept consistent with the pre-1978 practice. To that end, the junta decreed that civilians working for CNI should "be considered members of the Armed Forces for all jurisdictional and disciplinary purposes."¹³

Thus, torture and extrajudicial execution cases begin in criminal court but it is only a matter of time before they shift to military jurisdiction and languish or are ordered closed. During the Pinochet regime it was unusual for a civilian judge to investigate vigorously, conditions of pressure being what they were. But if, as occasionally happened, a human rights investigation was initiated in civilian court and pursued by a dedicated judge, it invariably was halted and transferred once military personnel were formally accused. Sooner or later a military court would close it, and the closure in due course would be upheld on appeal to the next level, the *Corte Marcial*. The victims' lawyers would challenge the appellate rulings, taking technical complaints (*recursos de queja*) against the *Corte Marcial* to the Supreme Court. But such efforts were fruitless.

In the Aylwin government's first year, as in the years of the dictatorship, human rights cases continued to pass to military jurisdiction once military personnel were indicted -- or once it was alleged that those responsible for the crime were members of the military; that is, the Supreme Court continued to approve military demands for the transfer of human rights cases, and often it was not even necessary to have reached the stage of formal indictment. For example, after the Pisagua grave was uncovered in June 1990, victims' relatives launched a criminal case for illegal burial.¹⁴ In August, just two months after the 19 corpses had been unearthed, and before key military figures had been questioned and all remains identified, the Military Prosecutor General demanded jurisdiction. Though no one had been indicted as yet, the military argued that the location of the grave suggested army involvement in the events being investigated; Pisagua, as an army camp, fell within the scope

¹³ Decree-Law 2,882 of 1979. The law was enacted specifically to protect from prosecution a civilian collaborator of CNI, a doctor who had certified the good health of a torture victim, Federico Renato Alvarez Santibáñez, soon before the victim died. See *Ibid.*, pp. 59 and 153.

¹⁴ See Section II-B. The relatives focused their case on the burials because earlier cases, seeking to investigate the executions themselves, had already been closed by virtue of the 1978 amnesty, described below.

of the relevant law. The Supreme Court accepted this argument, as it had so regularly in the past, and almost immediately after transferral, a military judge closed the case. An appeal is pending.

The "Cumplido law" reforms have not affected military jurisdiction with regard to the prosecution of military personnel for human rights violations. Indeed, the government did not even propose this crucial change.

Given the legalistic nature of Chile's transition to democracy, the conduct of the military courts can lead to bizarre contradictions. An illustrative case is that of Carmen Gloria Quintana, a young woman who, in July 1986, at age 18, was detained by an army patrol in a Santiago slum street, and, along with a young man arrested at the same time, was set afire, then transported by the soldiers to a remote area of Santiago and left to die. The case of the *jóvenes quemados*, the burned young people, became one of the most widely-known and repudiated abuses of the dictatorship's later years. The young man, U.S. resident Rodrigo Rojas, died of his burns; Carmen Gloria Quintana survived the atrocity severely disfigured, and thereafter, despite physical weakness, survived hostile questioning and other pressures while pursuing the case under military jurisdiction.

In January 1990, a military court ruled that the burning she and Rodrigo Rojas had suffered was accidental, caused by Carmen Gloria herself.¹⁵ While awaiting the outcome of her appeal to the *Corte Marcial*, and without undue expectations of justice on appeal, Carmen Gloria Quintana petitioned the new civilian government for reparations in July 1990. The government's legal counsel, the *Consejo de Defensa del Estado*, rejected her petition on the grounds that her legal recourse was not exhausted and that the judgment of the lower military court did not support her claim to have been deprived of her rights by agents of the State. A separate reparation claim by Rojas's mother has not yet received a response.

The ruling against Quintana's claim was insensitive to what everyone, victim and government, knows about the "legal recourse" provided by military courts and the "justice" to be expected there. Moreover, this unfortunate and embarrassing decision by the legal agency of the Executive branch, contradicts the conclusions regarding the *quemados* case in the report of the Rettig Commission, another voice of the Executive branch. The Commission's report acknowledged that the circumstances of the burning had been "controversial in the courts," but insisted that "whatever may be the extent and nature of the

¹⁵ The court reproached the patrol leader -- the only military participant even to be indicted for this crime -- with failing to take Rojas to a hospital, but otherwise absolved him of criminal responsibility.

individual responsibility of those involved," Rodrigo Rojas died a victim of human rights violations by State agents.¹⁶ Carmen Gloria Quintana does not appear in the Rettig report because she did not die, but the conclusions applicable to Rodrigo Rojas are also applicable to her.

The *Corte Marcial* has since upheld the lower court decision in the *quemados* case. Carmen Gloria Quintana's "legal recourse," therefore, as this report is written, consists of a *recurso de queja* to the Supreme Court challenging the military judges' comportment and attitude toward the case and a *recurso de casación* to the Supreme Court challenging the earlier ruling on its merit. The two petitions, already filed and due to be heard together at some undetermined future date, are not expected to prosper given the Supreme Court's past decisions.

2. The 1978 amnesty law

For the first eight and a half years of the military regime, legislation was enacted by decree of the Government Junta. Thus, the amnesty that became law on April 18, 1978 was a decree-law. It covered criminal acts -- implicitly including disappearances, extrajudicial executions and torture -- committed by uniformed agents between the date of the coup and March 10, 1978. Decree Law 2,191 reads, in pertinent part, as follows:

The Government Junta has agreed to dictate the following:

Article 1: that an amnesty be extended to all persons who, as principals or accessories, have committed criminal offenses during the period of state of siege, between 11 September 1973 and 10 March 1978, unless they are currently on trial or have been convicted.

Article 2 applies the amnesty also to those convicted by military tribunals before March 10, 1978. By including this provision the military could appear to be benefiting both sides equally, and the regime accordingly released several hundred persons imprisoned without trial. Article 3 lists common-crime exceptions to the amnesty's application, not including homicide, kidnapping or assault, and Article 4 makes a special exception of anyone involved in the assassination of former Defense Minister Orlando Letelier.¹⁷

¹⁶ Report of the National Commission on Truth and Reconciliation, Volume I, Part III, Chapter III, C. 2.

¹⁷ See Section III-B.

The Supreme Court's current posture on the amnesty law dates from 1986. A case involving the disappearance of 13 Communist leaders was being investigated thoroughly by the Appeals Court judge assigned to it, and in August 1986, that judge, Carlos Cerdá Fernández, indicted 38 retired and active-duty military officers and two civilian collaborators. When a group of the accused contested the indictment, the Appeals Court ruled that, under the 1978 amnesty, they were relieved of criminal liability even before being found guilty. A month later the Supreme Court -- which earlier had supported Cerdá's investigation -- ordered it closed in accordance with the Appeals Court ruling. Since then, the Supreme Court has permitted the military courts to apply the amnesty to close cases prior to full investigation. Typically, execution and disappearance cases from the years before 1978, which are the vast majority of human rights cases before the courts, have been closed without indictments by the *Corte Marcial* by virtue of the amnesty, and the Supreme Court has rejected *recursos de queja* that challenge the *Corte Marcial*'s position. In a few cases, the Supreme Court has explicitly ratified the amnesty's pre-indictment application.

In 1989, in a rush to tie up loose ends, the *Corte Marcial* rejected appeals in some 100 disappearance cases amnestied without full investigation by the lower military court.¹⁸ *Recursos de queja* in these cases are pending before the Supreme Court.

3. Non-recognition of international law

Where the amnesty is concerned, the Supreme Court has taken the position that not even international human rights treaties ratified by Chile, which prohibit the amnesty of crimes against humanity, override the junta's decree-law.

In July 1989, as a product of negotiations between the Pinochet regime in its final year and the combined parties of the Aylwin coalition and the less-extreme Right, a plebiscite was held on 54 constitutional reforms, and passed overwhelmingly. Among the reforms was an amendment to Constitutional Article 5, to establish the government's duty to act in conformity with international human rights instruments ratified by Chile.¹⁹ These include,

¹⁸ Prior to 1989, the *Corte Marcial*'s policy had been to close such cases "temporarily," pending further evidence. The 1989 group of cases were closed definitively, however. The *Corte Marcial* may revert to its former position, however; in September 1990 it ruled for temporary closure in two disappearance cases.

¹⁹ Details on the language of the article before and after the change may be found in Americas Watch, *Chile in Transition, op. cit.*, p. 57.

among others, the Covenant on Civil and Political Rights, ratified in February 1972, and the American Convention on Human Rights, ratified in August 1990.

For purposes of application as national law, the Supreme Court does not recognize either of the two ratification dates, but only the dates on which the respective instruments were published in the *Diario Oficial*: April 29, 1989 for the Covenant on Civil and Political Rights, and January 5, 1991 for the American Convention. In the first case, the 17-year delay between ratification and publication was due to the dictatorship, and offered the Supreme Court an excuse for ignoring human rights concerns even while Chile appeared, internationally, as a party to the Covenant. In the second case, the six-month delay was due, according to officials of the current Foreign Ministry, to inefficiency and errors.

Two attempts have been made, during the new government, to apply the reformed language of Constitutional Article 5 to the amnesty law; both have failed.

(a) The case of the 70

Pinochet's original secret police, DINA, established formally in 1974 and headed by former Army Gen. Manuel Contreras Sepúlveda, was the principal agent of the disappearance policy in force through 1977. Due to application of the amnesty as a means to block investigation, no disappearance has been legally clarified, although in many cases strong evidence exists as to circumstances of detention, places of confinement, torture of the victims and specific DINA agents and officers responsible.

In 1978, the Relatives of Disappeared Detainees grouped together seventy of the best-documented cases and submitted them as a single case to ordinary courts. The principal defendant was Gen. Contreras. In due course, the case passed to military jurisdiction, where the judicial investigation remained virtually paralyzed for a decade. In December 1989, military courts closed 35 of the 70 cases, without indictments, by virtue of the amnesty law. The plaintiffs appealed to the *Corte Marcial* in those cases; the appeal is still pending.

In the meantime, the plaintiffs presented a *recurso de inaplicabilidad* to the Supreme Court in January 1990, two months before the Aylwin government took office. The petition sought a ruling that the application of the 1978 amnesty was unconstitutional by virtue of a variety of principles, some involving international human rights law. It was rejected by the full Supreme Court in August 1990. The Court argued that the Geneva Conventions did not apply to conditions in Chile in the mid-1970s because the country was not at

war,²⁰ and that the Genocide Convention, ratified by Chile in 1949, did not apply because it was not implemented by any Chilean domestic law.

The plaintiffs tried again, but in September 1990 the Court rejected their petition for clarification. Due to the exhaustion of domestic remedies, Americas Watch and an international consortium of human rights organizations, the Center for Justice and International Law, have taken the case to the Inter-American Commission on Human Rights on behalf of the Relatives of Disappeared Detainees.

(b) The case of the 13 - or, "the Cerdá case"

In late November and early December 1976, 13 Communist leaders disappeared in Santiago, and the government maintained that they had freely left the country for Argentina. The Supreme Court designated a special investigating judge (*ministro en visita*) from the Appeals Court in January 1977, but he suspended the investigation three days later, repeating the official version of events. The amnesty law was decreed in April of the following year. In 1979 the case passed to a second *ministro en visita*, who did little more than leave it open. In 1983, Appeals Court judge Carlos Cerdá Fernández was made the third *ministro en visita*, and the following year, when a former Air Force intelligence agent defected and confessed his knowledge of several disappearances, Judge Cerdá came into possession of decisive information on two of the 13 victims.²¹

The agency responsible for the disappearances was the *Comando Conjunto*, a squad composed mainly of Air Force intelligence agents and operating from late 1975 to late 1976. In 1986 Judge Cerdá was able to indict, first, a civilian collaborator of the *Comando Conjunto* and then, an additional forty persons -- two civilians and 38 retired and active-duty military officers, including former junta member and Air Force Commander Gustavo Leigh -- as accomplices. As noted in the section above, the Appeals Court accepted the

²⁰ This directly contradicts the Supreme Court's landmark ruling of August 1974, which held that the Court could not supervise, or accept appeals against, decisions of the *consejos de guerra*, on grounds that the country *was* at war. The 1974 ruling had opened the way for Article 79 of the 1980 Constitution, which excluded military courts from Supreme Court supervision, though not from appeal.

²¹ The defector's name is Andrés Valenzuela Morales. His sworn statement describes, among other things, victims being dropped out of helicopters into the sea, the collaboration of civilian extreme-rightists, the murder of a DINA agent by his own colleagues, and the digging of a clandestine grave. The text was reprinted in full in *Mensaje* magazine, No. 336 of January-February 1985.

complaint of a group of the accused, and demanded their release by virtue of the amnesty law. In September 1986 the Supreme Court agreed and ordered the case closed definitively.

Judge Cerda did not consider the Supreme Court's order consistent with his duties as a judge, and prepared a confidential document respectfully setting out the legal reasons for his position. In summary, Judge Cerda argued that under the Code of Criminal Procedure's Article 413, a judge is not permitted to close a case until the investigation has been exhausted. The Supreme Court suspended Judge Cerda for two months and charged him with insubordination. A replacement judge ordered the case closed and, when closure was challenged, the Appeals Court supported this order. The plaintiffs' lawyers, from the *Vicaría de la Solidaridad*, made a final challenge in 1987 arguing the applicability of the Geneva Conventions as superior to the amnesty law; the Supreme Court rejected the argument in August 1989. As a result, Judge Cerda, once again responsible for the case, received the record with instructions to mark it closed.

The amendment to Constitutional Article 5 became law in August 1989, just as the final appeal in this case was lost. Considering that the force of international law and of the Constitution overrode the amnesty, Judge Cerda filed the case away without marking it closed. The fact that the case remained open became known, by happenstance, in July 1990 and the Supreme Court threatened to expel Judge Cerda from the bench. Cerda prepared a report arguing the applicability of international law as established in the Constitution, but he was nonetheless ordered to mark the case closed, and reluctantly did so in August.²²

It is telling that the Supreme Court shifted to supporting the amnesty as a means to block investigations -- a shift dramatically evident in its change of attitude toward Cerda's investigation -- in September 1986, that is, the month when a commando of the *Frente Patriótico Manuel Rodríguez* attempted to assassinate Gen. Pinochet and just weeks after a massive cache of arms, brought into Chile by the FPMR, was discovered in the northern desert. This was one of the identifiable moments during the dictatorship when shifts of attitude took place, on all fronts. The military courts' attitude toward accused

²² Despite his ultimate compliance, the Supreme Court punished Cerda in January 1991 by suspending him for two months on half salary, the same measure it had taken against him in 1986. Indeed it was only after Cerda submitted an apology that the Court refrained from expelling him. This shameful episode only did the Court's public image greater harm in Chile and abroad. Cerda, having served out his suspension, is currently president of the Appeals Court for the judicial year 1991.

terrorists became more abusive, a state of siege was declared and lasted several months. The Supreme Court was responsive to such things, and remains so, as suggested by a case described below.

4. Military resistance

In 1989, during the period preceding the December parliamentary and presidential elections, Gen. Pinochet was asked about possible future prosecutions for human rights violations and declared, "No one is going to touch my people. The day they do, the rule of law will come to an end."²³ On this issue, the various armed services stand firmly together. Air Force commander Gen. Fernando Matthei, although often more moderate than Pinochet, stated in the same year, "If they are going to put us in the pillory, as in Argentina, that will bring the gravest consequences."²⁴

During the civilian government's first year in office, the public visibility of the military leaders, even Pinochet, has been lowered as the style of leadership has changed; as negotiation replaces harangues and authoritarianism, Pinochet's weaknesses as a political actor have become more obvious. When the Executive determined to recover the presidential mansion in Lo Curro, Santiago -- built by Pinochet at a cost of US\$15 million, supposedly for future presidents, but transferred into army hands just before the change of government -- Pinochet's response was: "Let them come and get us out!"²⁵ Such statements still provoke public anxiety, but they do not gain him support. To some extent, Pinochet is his own worst enemy in the new political scenario.

The military services as institutions, on the other hand, remain strong and undefeated, their version of "democracy" in place defined by their Constitution, their allies occupying nearly half of the Senate, their budget virtually untouchable and their intelligence apparatus -- the Army's in particular -- far more sophisticated than that which the civilian government can count on from the police. They are determined to resist Constitutional reform that would diminish their autonomy from civilian control. They also want it understood that they acted only with the highest motives of patriotism, not for personal gain or love of power; hence their sensitivity to the allegations of corruption that surfaced during 1990.

²³ Press conference, October 13, 1989, cited in Americas Watch, *Chile in Transition, op. cit.*, p. 73.

²⁴ Interview in *El Mercurio*, July 30, 1989, cited in *Ibid.*, p. 73.

²⁵ Quoted in *La Epoca*, September 15, 1990. Comment made a few days earlier.

Most fundamentally, the Army, still loyal to Pinochet, refuses to be criticized for what it considers the patriotic labor of shooting, torturing, clandestinely burying, kidnapping and otherwise tormenting or eliminating certain citizens. With the announcement of the Rettig Commission, the Army showed its touchiness in officers' public statements referring to a "campaign of discredit" against the armed forces, and in stage whispers about human rights organizations, government officials and terrorism. When called upon to respond to the Rettig Commission's findings, the Army's and Navy's responses were hostile, as noted in Section II above. And when describing terrorism in Chile, Army intelligence spokesmen refer to it as the second stage of a subversive war -- an analysis that, incidentally, serves to justify the Army's actions during the "first" stage.

Two examples suggest the military's power to interfere with judicial processes to ensure impunity. The first involves a criminal matter, not strictly related to human rights. In 1989, Pinochet's son Augusto received cheques totaling US\$3 million for purchase of a bankrupt arms manufacturing company that the Army's logistics specialists had qualified as a poor investment. The company had received credits from the State Bank without offering documentation to justify the loans; indeed, its operating procedures were obscure at best, as was the role of young Pinochet. When this scandal surfaced in September 1990, it seemed at first that the transactions were technically legal. As a congressional committee investigated, however, it became evident that the former President and continuing Army Commander risked indictment on charges that could send him to prison along with his son.

Congressional investigators gave the public impression that they would recommend judicial action. But on December 19 -- reacting in part to a leak of damaging testimony about him before the investigative committee -- Pinochet called a state of alert in the Army, and for twelve hours the nation wondered what he would do next. A coup would be almost unimaginable under current political conditions, but a coup was not necessary. Once he had made his point, the gesture was euphemistically called a "readiness exercise" -- since a state of alert in such circumstances was unconstitutional -- and the government played it down.²⁶ There was debate as to whether the only partial obedience of certain Army units should be interpreted as good news, or whether the extent of

²⁶ At the same time, Pinochet trumpeted his belligerence: asked by the press why he had not informed the government in advance of plans for the "readiness exercise," he responded, "We don't have to inform the government of our exercises, mister. Those are army things. [The Army] has not bothered anyone, it hasn't gone out into the street." *La Epoca*, December 21, 1990.

adherence in other units should be considered bad news. Subsequently, however, the congressional committee investigating the "cheques scandal" produced a thorough but studiously bland document that reached no firm conclusions, and the case was passed to the Comptroller-General's office, where it has been under study and out of the news since January 1991.

The second example is a human rights case. On April 5, 1991, the Supreme Court made public a ruling by one of its chambers that seemed to reverse the Court's post-1986 position on the amnesty law. The Fourth Chamber had ruled favorably on a *recurso de queja* against the *Corte Marcial* for closing a case that involved seven executions in the northern city of Calama; the *recurso de queja* sought to reopen the investigation, and this, apparently, would now be possible.

But within days, the Army's Auditor General, its representative on the Supreme Court, brought a technical objection to the ruling: it had been recorded without noting the vote of the Auditor General, who had not been present. Normally, his vote would have been added and the ruling, if unchanged by his vote -- as in this case -- allowed to stand. Instead, at the insistence of the Army's representative, the decision was made to nullify the ruling, bring the case before the chamber again and take a new vote.

Although issued in April, the ruling had been made at the end of 1990, when the Fourth Chamber comprised two liberal members. The composition of the chambers changes with the new judicial year in March, however. Thus, the case is to be reconsidered by a different set of justices. In the meantime, the victims' lawyer has submitted a motion to reconsider (*recurso de reposición*) challenging the decision to nullify the earlier ruling, and the *recurso*, like the final ruling, is not expected soon. The gain that seemed to have been made proved illusory.

B. Attempts at Justice and Reform

1. Government position on the amnesty law

In its 1989 campaign document, "Platform of Government," the multiparty coalition led by Patricio Aylwin committed itself, once in power, to "seek the repeal or annulment of the Decree Law on amnesty." The *Concertación* pledged that the amnesty law "will not be able to impede the establishment of the truth, the investigation of the facts and the determination of penal responsibilities and consequent sanctions in cases of crimes against human rights, such as detentions followed by disappearances, crimes against life and the gravest physical or psychological damage."²⁷

²⁷ Quoted in Americas Watch, *Chile in Transition*, *op. cit.*, p. 82. Translation from the

In practice, given the makeup of Congress, the government has been able only to establish a generic truth. The permanence of the amnesty law is taken as a matter of fact, because the legislative leverage of the Right makes annulment a close call in the Senate -- and because legislators fear confrontation with the armed forces. Proposals to annul or limit the law have not prospered even in the Chamber of Deputies.

At various moments, there has been discussion of the government's becoming a party to human rights cases subject to amnesty, like the cases arising from the discoveries of clandestine mass graves in 1990, but to date the government has decided against this. Nor did the Truth and Reconciliation Commission confront the amnesty law head on. Despite the fact that such a law is manifestly illegitimate under international instruments to which the Rettig report makes reference, and despite the report's insistence that the law not be used to impede investigation, the Commission did not go so far as to suggest annulling the amnesty as one of its reparatory recommendations.

President Aylwin, in presenting the Rettig report to the nation on March 4, 1991, challenged the Supreme Court to change its position on applying the amnesty:

Today, I have sent the Supreme Court a message to which I have attached the text of the Report and I ask that...they instruct the relevant courts to activate with greatest expediency the cases which are pending on human rights violations and those which must be heard as a result of the information that the Truth and Reconciliation Commission has forwarded to them; informing it [the Supreme Court] that in my view, the amnesty in force, which the Government respects, cannot be an obstacle to the realization of a judicial investigation and the determination of responsibilities, especially in the cases of disappeared persons.²⁸

This gesture was popular: a poll released in late March, gauging public perceptions after the Rettig report, showed that 72% of respondents felt the judiciary had performed poorly during the military regime, and that 57% believed that the judiciary bore major responsibility for past human rights violations.²⁹ Aylwin's critique was also consistent with the government's insis-

original document by Americas Watch.

²⁸ Full text of speech reprinted in *El Mercurio*, March 5, 1991.

²⁹ Poll by Centro de Estudios de la Realidad Contemporánea (CERC), released March 25, 1991, as reported in *La Epoca*, March 26, 1991. As to who bore important responsibility

tence that the courts be the final arbiter in human rights cases. And the President went farther than many observers expected him to go, defining the issues not on the basis of expediency or prudence but on the basis of principle.

At this writing, the full Supreme Court has not yet considered an amnestyed case since the President's speech. It has answered the President's message, however, with an instruction to the lower courts to pursue the cases forwarded to them, reopening those which have been closed. There are indications that lower-court judges are taking advantage of this permission to pursue investigations more aggressively than in the past.

2. The "Cumplido laws"

The flagship legislation of the new government, this package of legal reforms was intended to rectify the worst distortions of due process and to resolve the quandary of Chile's political and security-related prisoners, of whom more than 350 remained in prison when the government took office.³⁰ In addition to the prisoners incarcerated, well over 1,000 former prisoners out on bail still faced charges for politically motivated offenses, including persons accused of crimes of opinion and association.

The three-part package, colloquially named after Justice Minister Francisco

for human rights violations, the largest group, 76%, answered DINA; the Army came next with 75.3%; and Pinochet next with 71.5%; the judiciary was fourth, followed by the other armed and police services and the ultra-left.

³⁰ According to the *Fundación de Ayuda Social de las Iglesias Cristianas* (FASIC), there were 435 incarcerated political and security-related prisoners at the end of 1989. In January 1990, 47 escaped from the Santiago Penitentiary. As one of his first acts, President Aylwin pardoned another 47, of whom 19 were actually incarcerated at the time; the rest had served their sentences or were on parole. And on March 31, 1990, a total of 335 remained in prison.

In the United States, the term "political prisoner" is frequently equated with "prisoner of conscience," that is, the person imprisoned for nonviolent political activity, or for expression or belief. In Chile, as in Latin America in general, the term "political prisoner" is also applied, by the Relatives of Political Prisoners and often by the Aylwin government, to persons who are accused or convicted of violent crimes, as direct authors or accomplices, as long as the motivation for those crimes is political.

Americas Watch does not presuppose the guilt of these detainees, including those convicted in military courts; nor would the guilt of any prisoner justify or balance out the lack of due process to which all have been subjected. Nevertheless, if in addition to being accused of arms-related acts, these prisoners are aligned with the armed organizations that opposed the Pinochet regime and subscribe to those organizations' programs, we call them security-related prisoners.

Cumplido, sought: (1) to eliminate the death penalty; (2) to amend the 1984 Law on Terrorist Conduct, commonly called the Anti-Terrorist Law; and (3) to reduce penalties and reexamine offenses set out in the various laws affecting politically-defined crime, such as the Law on Internal State Security, the Arms Control Law, and portions of the Criminal Code and the Code of Military Justice, as well as offering detainees some basic guarantees of decent treatment.³¹

Providing fair and speedy trials for political and security-related prisoners was incorporated into the third part of the package, in transitional articles which, if passed, would apply only to those persons imprisoned for crimes occurring before March 11, 1990. These prisoners had been violently detained, most had been extensively tortured. A high percentage, coming before the military justice system, had not had access to an adequate defense, and prisoners in general were forced to await trial for long periods. Even apart from the need to protect their basic rights and recognize their suffering, it was evident from the beginning of the Aylwin government's term that, the longer these prisoners remained in detention, without access to fair legal process, the more complex would become the political problem they represented, for the armed groups continued to operate and their activity bolstered rightist arguments against the prisoners' release.

(a) Elimination of the death penalty

This first aspect of the "Cumplido laws" appeared to be the simplest, politically, of all the reforms proposed. It became the government's most obvious defeat. A series of changes in laws that required the death penalty, the measure passed through the Chamber of Deputies with the assent of the Right, only to meet resistance in the Senate: in November, by a vote of 19 to 18, the Senate rejected the reform proposal and upheld the death penalty for 37 crimes. A joint Senate-Chamber committee drafted a compromise bill that the Chamber passed by a large margin but, once again, the Senate rejected, in December, by a close vote of 16 to 14. The bloc voting of the appointed Senators decided the outcome. Because the legislation had originated in the Chamber of Deputies, the Senate was the revisory body; its rejection, therefore, was definitive. The new law, No. 19,029 of January 23, 1991, struck the death penalty for more than 30 offenses but retained it for a similar number.

³¹ The proposals are numbered, above, in the order in which they became law.

(b) Political laws & "political" prisoners

The second and third portions of the package were designed to modify various laws to better guarantee personal rights. For technical reasons, the Anti-Terrorism Law required separate treatment from the other laws. Most politically complex was the proposal for changes in permanent articles of several security-related laws -- the Arms Control Law, Law on Internal State Security and others -- such as to redefine crimes and bring sentences into realistic relation with the seriousness of the offenses.

The Law on Terrorist Conduct, or Anti-Terrorist Law, was heavily modified and reconceived, so as to define terrorism in more limited and concrete terms. In general, the new law, No. 19,027 of January 24, 1991, penalizes actions which are penalized in ordinary law -- homicide, assault and battery, kidnapping, arson and a host of others -- if the methods used produce "in the population or part of it a justified fear" of becoming a victim, and if the actions follow a "predetermined plan" to create such effect; if the targets are strategic locations; if the actions seek to impose a demand on the government or conditions on its policies; or if the elements used include explosives or heavy arms. "Illicit association" is penalized when its purpose is to perform terrorist acts.

The other laws, modified in Law No. 19,047 of February 14, 1991, dealt with crimes such as organization of a paramilitary group, serving as accomplice (wittingly or not) to such a group, arms possession, violent attack on a member of the armed forces or police, threats or offenses to the armed forces or police. In addition, Article 5 of the Code of Military Justice defined military jurisdiction. The new law modified that article, shifting the jurisdiction for all future Anti-Terrorist Law cases into civilian courts, as well as certain cases under the Arms Control Law and Code of Military Justice.³²

The new law also redefined and reduced the penalties for a variety of crimes. Two examples:

- ▷ To be guilty of serving as accomplice (*ayudista*) to a violation of the Arms Control Law, under the new legislation, one must now be aware one is aiding a criminal; under the old language, persons who generously took in a relative's friend for a night could and did become prisoners under Article 8 of the Arms Control Law. The new law also penalizes this offense less harshly.

³² Examples under the Arms Control Law: possession of permitted arms; transportation of permitted arms, abandonment of arms. Examples under the Code of Military Justice: threats or offenses to the armed forces, threats or offenses to the police.

▷ The notorious "threats, offenses or injuries to the armed forces" or police, a crime of which both journalists and political figures were frequently accused under the Code of Military Justice even during the past year, now shifts into civilian jurisdiction if committed by civilians. The maximum penalty has also been lowered, from five years to three. The penalty is still harsh, although human rights lawyers point out that any sentence less than three years is considered minor, and in such cases judges grant freedom on bail almost automatically.

Some extraordinary distortions required attention. A portion of Article 6 of the Law on Internal State Security, for example, had penalized the calling for a demonstration by as much as five years in prison, if the gathering "facilitate[d] alteration of public tranquility." This offense was excised. The composition of the *Corte Marcial* was also addressed and important changes made: for example, all military members have tenure for three years, so that even if removed from active duty they cannot be replaced during that period, an important advance. This change entered into force with the publication of the new law in mid-February 1991.

At the same time, where armed opposition activity was concerned, some of the sternest measures were left unaltered. Penalties, definitions and jurisdiction remain the same for possession of prohibited arms, for the fabrication and stockpiling of arms, and for the organization, membership in or financing of a paramilitary group under the Arms Control Law, as well as for attacks on uniformed personnel under the Code of Military Justice.

There was an effort to review and improve safeguards for detainees accused of security offenses. Among the permanent articles of Law No. 19,047 is the provision that, if security agents wish to hold a detainee *incommunicado* after the first two days in detention, the judge who approves the request must designate a doctor to examine the detainee, as a protection against mistreatment.³³ In addition, the law provides that from the moment of detention, even if *incommunicado*, a detainee is to have daily access to his lawyer for up to 30

³³ In Chile, 48 hours is the maximum period of initial detention before the detainee must be arraigned. However, in cases involving terrorism, a judge may permit police to hold a detainee for up to ten days before he is presented to the court. In cases not involving terrorism, five days is the maximum initial period of *incommunicado* detention permitted, and this period may be renewed once by judicial order. Thus, in terrorism cases, it is possible for a detainee to spend up to twenty days *incommunicado*. The Penal Code has been modified, however, to remove language that permitted extensions of *incommunicado* detention for "the time prudently necessary." (Art. 299)

minutes, though not in private conference, for purposes of verifying the detainee's physical state. And a transitory article provides that Pinochet-era prisoners may make new statements on the charges they face.

The new law No. 19,047 contains eleven transitory articles which apply solely to political and security-related prisoners -- incarcerated or in conditional liberty -- whose cases predate the inauguration of the new government on March 11, 1990. The purpose of these transitory provisions is to speed trials and transfer cases from military to civilian jurisdiction.

The transitory articles affect jurisdiction by:

- ▷ requiring that a case, under any of the political laws discussed above, be transferred to a minister of the Appeals Court if it has been under investigation (*in sumario*) without resolution for more than a year; and by
- ▷ requiring that the same kinds of cases, if they have reached the open trial stage (*plenario*) in military court, be concluded -- that is, the prisoner sentenced or freed -- within 30 days, or the case is to pass to a minister of the Appeals Court.

The transitory articles also establish a time-limit for the physical transfer of cases: five days in cases of incarcerated prisoners, 30 days in the cases of prisoners out on bail.

Among those in the latter category are some two dozen journalists, facing pending charges of "offenses to the armed forces" or "offenses to the police" for publishing articles or editorials on human rights or corruption. Although many had spent time in prison, all were in conditional liberty when the new laws passed. Some journalists faced more than one charge, and generally, more than one journalist was implicated in each case either as defendant or as witness under risk of incurring charges. Of 31 cases pending in mid-February 1991, 29 passed to civilian court by virtue of Law No. 19,047.³⁴ It is one of the ironies of transition that the State television's nightly-news anchorman and its news director face charges, as does the director of the government newspaper *La Nación*.

Though not technically part of the Cumplido package, another law relates to the reform's central concerns and was developed specifically because of debate on the Cumplido proposals: to address the situation of prisoners convicted of Anti-Terrorist Law violations, Law No. 19,055 of April 1, 1991, was passed to modify Article 9 of the Constitution. The new law permits

³⁴ Two journalists face charges of "incitement to sedition," which kept their cases in military court. See below, Section V.

presidential pardons for these prisoners and makes it possible for a judge to consider freedom on bail in their cases.

(c) The legislative process

The political cost of achieving these reforms was quite high for Aylwin's government, particularly in regard to the second and third laws. The Right wanted no reduction of penalties for arms-related offenses. And debate was bitter on the transitional articles relating to current prisoners, most of whom are accused of direct or indirect involvement in armed activity. The government's original proposal was to shift all these cases out of the military courts, where due process was not obtainable. For those convicted in military courts, the government's initial intent was to offer a review procedure. The government was also open to pardoning those convicted of crimes other than direct involvement in *hechos de sangre*, or fatal crimes and woundings; under Article 9 of the Constitution, the President could pardon prisoners convicted under the Penal Code and Arms Control Law, among others, but not those convicted of offenses under the Anti-Terrorist Law. President Aylwin pardoned 47 convicted security-related prisoners in the early weeks of his government, the majority of whom had served their sentences or were on parole.

These signals of good will backfired politically, however. Using the terrorism issue as their standard, the rightist members of Congress opposed clemency for convicted prisoners and criticized Aylwin's early pardons and the "Cumplido laws" as encouraging terrorism.³⁵ The Supreme Court opposed the government's proposal to offer revision of sentences for convicted prisoners who could prove they had been denied an adequate defense or had confessed under torture, and this proposal was deleted almost immediately, removing the chance for persons convicted unfairly to clear their names. Easily obscured along the way was the fact that these prisoners had received unacceptably brutal treatment and had been denied due process and thus qualified as victims deserving clemency, quite apart from their beliefs or future conduct or the conduct of their co-religionists in the active armed groups. Even within the *Concertación* there were legislators who found it difficult to distinguish between the current prisoners' rights and the issue of terrorism as an ongoing problem. Among those few who consistently championed the prisoners' cause as a moral and legal priority was deputy Andrés Aylwin, a human rights lawyer and the President's brother.

The government was forced on the defensive, early on, by the March 21,

³⁵ The issue of terrorism is further discussed below, in Section IV.

1990 assassination attempt against former Air Force Commander and junta member Gen. Gustavo Leigh. Leigh and a colleague survived the shooting, but just two months later, on May 10, terrorists were successful in killing retired police Col. Luis Fontaine, former director of DICOMCAR (*Dirección de Comunicaciones de Carabineros*), a special police anti-subversion unit. DICOMCAR had been implicated in a March 1985 triple assassination, the *degollados* (beheaded ones) case, one of the most serious abuses of the dictatorship's later years, and had been dissolved as a result of the ensuing revelations. Fontaine had been implicated, as well, in another well-known case, the 1985 torture-murder of student Carlos Godoy Echegoyen, although a military court had recently acquitted him. He was murdered one day after the Rettig Commission was formally established, and his killing further complicated the political moment, with rightist politicians attacking the Rettig Commission and claiming terrorists were infiltrating the schools, while pro-government politicians protested the aggressive tone of these statements and accused the Right of seeking to destabilize the government. On May 12, UDI deputy Andrés Chadwick and general secretary Joaquín Lavín gave a three-part response to the "Cumplido laws" proposals: no reduction of sentences for violent acts; a special police force to combat subversion; and no new pardons. The same day, *Renovación Nacional* proposed that terrorism be taken up in a special session of the Senate. Neither party let the issue rest thereafter.

As overwrought and opportunistic as its handling of the issue was, the Right's concern about terrorism reflected growing public concern. The same cannot be said for its other perspective on the "Cumplido laws": the Right was committed to protecting the military from accusations on human rights abuses; with the Rettig Commission recently formed, in late May the RN/UDI alliance in the Chamber presented a "framework agreement" to take advantage of the Cumplido proposals on sentence reduction for prisoners by also including reductions in sentences for any military personnel convicted of human rights abuses committed before March 11, 1990. Under this proposal, crimes carrying penalties of less than 60 days imprisonment -- such as torture, under the proposed reductions of sentence -- would not be investigated. This both-sides strategy gained some acceptance in the Chamber, even among deputies of the *Concertación* parties, but caused such an outcry from human rights organizations and victims of human rights abuse that it was abandoned.

By June 1990, it was clear that the prisoners' status would not be resolved easily; in fact, it took almost nine more months to find a complete formula, with political confrontation at every step. At the committee stage in the Senate, for example, UDI Senator Jaime Guzmán managed to add two amendments to the third law, to facilitate temporary closure of a legal investigation. The

Senate's Commission on Constitution, Legislation, Justice and Regulation presented these amendments to the full body as benefits for political prisoners held for long periods without being indicted. But the benefits would not have actually accrued to any current political prisoners; all of those in prison at the time had been indicted. When the government realized that the beneficiaries of Guzmán's amendments would be mainly drug-trafficking suspects and those accused of economic crime, President Aylwin vetoed the amendments and his veto was sustained.

Throughout, the Right insisted that releasing any prisoners linked to armed groups was dangerous, while the relatives of the prisoners pressed for immediate release of all of them, staging public protests and prison occupations to emphasize their impatience. The last problem to be solved was how to assist prisoners convicted under the Anti-Terrorist Law. Agreement was reached in December 1990, when *Renovación Nacional* proposed that President Aylwin assume full responsibility for any convicted prisoner's release. That is, RN proposed that Article 9 of the Constitution, which outlines the circumstances for a presidential pardon, be expanded to cover the Anti-Terrorist Law prisoners. The government had hoped to end the year with a "Christmas without prisoners"; this would not be possible, but RN's proposal was the price of its support in other areas of the package, and the government accepted it.

Under the new law on pardons, the President is required to send the Senate, in confidential form, a copy of each pardon decree affecting an Anti-Terrorist Law offender; may pardon only those Anti-Terrorist Law offenses committed before March 11, 1990; and, regarding offenses committed after that date, may commute the death penalty to life imprisonment. At the time the expansion of Article 9 was passed, in late March 1991, ten prisoners were eligible to benefit immediately from a pardon under the new procedure; several others convicted under the Anti-Terrorist Law would not be eligible to benefit because they faced other charges as well.

(d) Short-term effects

The formal transfer of cases did not automatically resolve prisoners' problems. Cases transferred to civilian jurisdiction are to go to the Appeals Court, which is to send a message to the Supreme Court, which designates the judge to investigate. The *Corte Marcial*, the military appeals court, sent more than 800 cases to the Appeals Court as soon as the Law No. 19,047 deadlines passed.³⁶ Yet in late March, in the first weeks after the Supreme Court

³⁶ Interview, *Vicaría de la Solidaridad*, April 17, 1991.

received messages from the appellate court, it was designating only five to ten judges a week.³⁷ Meanwhile, the universe of cases affected by the "Cumplido laws" -- combining incarcerated prisoners, former prisoners free on bail, and cases of persons affected by the arms-related laws outside a political context (e.g. persons accused of illegal arms possession without a political purpose) -- is larger than 2,000 cases, according to the estimates of human rights lawyers. At the beginning of April 1991, FASIC records 184 prisoners in prison; those out on bail -- including persons accused of non-violent political opposition activity such as "offenses against the armed forces," *ayudismo* and other crimes -- number well over 1,000. At this rate, prisoners can expect substantial delays.

In Anti-Terrorist Law cases, moreover, there are restrictions that will delay cases still further: to order a prisoner's release on bail requires a unanimous vote of the Appeals Court, and the votes of all members; that is, if a judge is absent for any reason and designates a court-assisting lawyer, or *abogado integrante*, to replace him, as is common, the vote cannot take place.

Some prisoners, however, did benefit immediately from the shift in jurisdiction, including several who, after years of detention without charges, were released unconditionally; civilian judges determined there was no basis on which to charge them.

The pardons permitted under the expanded Article 9, meanwhile, became even more politically risky after the new legislation was passed by the full Congress, due to the April 1 murder of Jaime Guzmán. At this writing, there have been no pardons under the expanded Article 9.

The "Cumplido laws," held politically hostage for almost a year, became a shadow of what the Justice Ministry had hoped to achieve. This, although the government did not even attempt a thorough reform of military jurisdiction that would have passed human rights cases -- i.e., cases in which State agents are responsible -- into civilian courts. According to officials in the Justice Ministry, it was never the goal of the "Cumplido laws" to fully reform jurisdiction, but only to return it to a state similar to that which prevailed in 1973, mainly by reducing military jurisdiction over civilians. Only one case of human rights abuse by the dictatorship, the assassination of Orlando Letelier, passed out of military hands by virtue of the "Cumplido laws," and this because of special factors which have made the case exceptional all along. We discuss that case below.

³⁷ *Ibid.*

3. The Letelier case

On September 21, 1976, in Washington, DC's embassy neighborhood, a car-bomb killed Chilean exile Orlando Letelier and a colleague, Ronni Karpen Moffitt, as they drove to work with Moffitt's husband, who was wounded. The bomb had been detonated by Cuban-exile terrorists, according to a 1978 U.S. grand jury, but the preparations had been laid by an agent of Chile's DINA on higher DINA orders. Letelier, an economist who had served as Allende's ambassador to the United States, Foreign Minister and Defense Minister, was the third prominent victim of DINA assassination plots abroad, one during each September since the coup.³⁸ The grand jury indicted four men from DINA: agent Michael Townley, who was turned over to the Justice Department; Army Capt. Armando Fernández Larios, who later defected to the United States to confess under an unbearable burden of guilt; Army Col. Pedro Espinoza, DINA chief of operations, and DINA director Army Gen. Manuel Contreras Sepúlveda. The latter two remain at large.

The prosecution of the Letelier case in Chile was initiated in 1978 as an investigation into Townley's and Fernandez Larios' falsification of their passports for their clandestine entry into the United States, this being the crime which occurred in Chile. A military court closed the case "temporarily" (absent new evidence) in 1984 without complete investigation or indictments.³⁹ An appeal of that decision to the *Corte Marcial* was pending when the new government took office. Under pressure from the United States to show legal progress in the case in order to receive military aid, and under pressure as well to meet national expectations on human rights, the government was committed to reopening the investigation in civilian court.

The Foreign Ministry of the new government drew public attention to the case in its first months by launching an administrative investigation into the falsification of passports between 1975 and 1977. In an April 23, 1991 interview with Americas Watch, a Foreign Ministry official reported that the

³⁸ Former Army Commander Gen. Carlos Prats and his wife were killed by a car bomb in Buenos Aires, in September 1974; Christian Democratic figure Bernardo Leighton and his wife survived a shooting attack in September 1975, in Rome, although Leighton never fully recovered.

³⁹ Along the way, Guillermo Osorio, the Consular Director who had reviewed and approved the passports, met death strangely in 1977 -- officially by heart attack, but people nearby heard shots. He had been much disturbed by the assassination, and the role he had played. Two other officials capable of giving information to an internal Foreign Ministry investigation underway about the passports also met violent deaths at this time. Like so many others, these deaths remain to be fully investigated.

investigation uncovered some 2,000 irregularities, including about 600 falsified passports.⁴⁰ For the next twelve months, as the United States lifted the ban on military aid and one of DINA's Cuban-exile accomplices was arrested in Florida, the case awaited a ruling from the *Corte Marcial*.⁴¹ Had this court ruled to close the case definitively, as was possible, the government would have had little prospect of winning an appeal to the Supreme Court -- the Court had already rejected an earlier *recurso de queja* against the lower court decision.

The last of the "Cumplido laws" to be passed, Law No. 19,047, provided that one type of case that must pass to the Appeals Court -- if without resolution of *sumario* after more than a year -- was any case in which a member of the military used the passport of another member of the military. This provision shifted the so-called "passports case" into civilian courts. Another provision of the same law required that "crimes within the jurisdiction of the Chilean courts, when they may affect the international relations of the Republic with another State," must be adjudicated in the Supreme Court. Thus, the government requested that the Supreme Court designate one of its own members, a *ministro de la Corte*, to carry out the investigation.

In March 1991, the government ordered the case transferred to the Supreme Court, but the Court, on receiving it, sent it back to the *Corte Marcial* on grounds that the military appellate court must rule before jurisdiction could be changed. The Supreme Court's position was legally defensible, but not the Court's only option. Occurring as it did, in the midst of the Court's confrontation with President Aylwin over the Rettig report, and while the Court's response to Aylwin's message was in doubt as concerned its attitude on cases forwarded to civilian courts by the Rettig Commission, the decision to ensure further delay in the Letelier case was a gesture of disrespect to the government.

On April 9 the *Corte Marcial* upheld the lower court's 1984 temporary-closure decision by a vote of three to two -- that is, the three military judges against the two civilians, who argued that new evidence abounded and required investigation.⁴² The ruling was appealed -- by the military, for whom

⁴⁰ These numbers are markedly lower than those cited in early June 1990 press accounts, based on Foreign Ministry spokespersons' comments. The press reported then that the investigation uncovered over 3700 false diplomatic, official and special passports. This sum represents approximately 35% of all passports then issued. Of the some 3700 false passports, at least 200 were completely falsified and of those, 50 were issued under assumed names.

⁴¹ The second Cuban sought by the FBI was arrested in Florida in late April 1991.

⁴² In April 1990, a woman had come forward claiming, apparently truthfully, to be a

temporary closure was not sufficient. The Supreme Court will hear this appeal, but the date for its decision is difficult to predict. If the Court does not accept the military's position and close the case definitively -- a possibility always -- then the way will finally be opened for the naming of a *ministro de la Corte* to undertake a civilian investigation. The case's resolution may take quite some time, in the best of circumstances.

4. Freedom of expression law

The transfer of journalists cases out of military court was one result of the "Cumplido laws." In addition, a separate law, No. 19,048 on freedom of expression, was published on February 13, 1991, reiterating the principle of speech and expression as matters for civilian jurisdiction. Among other things, this law also repealed a 1987 regulation which punished the media for publishing statements by politically-excluded groups or figures.⁴³

5. Colonia Dignidad

In February 1991, the Executive ordered the cancellation of legal status for the Sociedad Benefactora y Educacional "Dignidad," a closed German community in Chile's central-south. Established in 1960, Colonia Dignidad had been implicated in human rights abuse and in oppressive practices against its members. The West German government and Amnesty International had brought criminal complaints against the colony, but during the dictatorship these inquiries were not aided by local authorities, with whom Colonia Dignidad's director Paul Schaeffer had close relations.

The Justice Ministry decree canceling the colony's legal status was based, according to an official statement, on the discovery of "various infractions in educational, labor, tax, recruitment, health and other areas..."⁴⁴ It was the result

former DINA employee who had had a tangential involvement in the assassination plot: the infamous and hitherto unidentified "Liliana Walker." She had opened new lines of inquiry for the case.

⁴³ Law No. 18,662 of 1987 was legislation complementary to then-Article 8 of the Constitution, the ideological-exclusion provision. If an individual or group were ruled unconstitutional by virtue of his or their ideas, under Article 8, this law made it illegal for the excluded group or person to "exercise the right of public opinion through the communications media" (Art. 1) and severely punished media that accepted "representations" from the affected person or group. See Americas Watch, *Chile: Human Rights and the Plebiscite*, New York, 1988, pp. 139-142.

⁴⁴ *La Epoca*, February 2, 1991.

of an investigation begun in 1988, under the military regime, an investigation which even then had detected problems. As the government's statement noted, Colonia Dignidad is "an enclave which ...has attempted to make itself a State within the State, imposing on its members a system of life completely in conflict with our Western Christian concept of the family and avoiding, moreover, regard for laws which apply to all the inhabitants of the Republic."⁴⁵

The community, as escaped members have attested in sworn statements, is dominated completely by Schaeffer, parents and children separated, a rigid discipline employed. Former members who have fled have denounced mistreatment ranging from labor exploitation to homosexual abuse to torture, and in Germany cases have been filed on these charges, on charges emanating from the forced separation of children from their parents, and on charges of torture of political prisoners by DINA, the latter case brought by Amnesty International. Suspicion as to the inner workings of the closed community surfaced as early as 1968, when a Senate investigative commission produced a critical report -- written by then-Senator Patricio Aylwin.

The February 1991 decree directed that the community's assets be transferred to the Methodist Corporation, although the government reportedly had detected the transfer of many assets recently into businesses controlled by a few leaders of Colonia Dignidad.

During February 1991, a Chilean doctor, Enrique Peebles, testified in the Amnesty International case in Bonn, stating that he had been tortured in Colonia Dignidad, which he later recognized by its special characteristics, and a former DINA agent, Samuel Fuenzalida Devia, testified to having transferred political prisoners to and from the colony in 1974, when he was assigned to the DINA center Villa Grimaldi.

In March, the government's measure was challenged. Seventeen rightist elected and appointed Senators petitioned the Constitutional Tribunal to find the Justice Ministry decree unconstitutional. The initiators of the effort were Senators Sergio Jarpa of RN and Beltrán Urenda, then an independent, since become a member of UDI. Careful to say they were not defending Colonia Dignidad, the senators presented their petition as an effort to be rigorous about constitutional protections.

While this issue was under study, in early April, there were gunshot attacks on the homes of two local leaders of the PPD in Parral, a town near Colonia Dignidad. One of the targets was a lawyer formerly involved in the Amnesty International case, and investigation revealed that the authors of the attacks

⁴⁵ *Ibid.*

were members of a local group calling itself "Friends of Colonia Dignidad."⁴⁶

6. Women's rights⁴⁷

Under Pinochet, the movement for democracy in Chile owed much to women's organizations. This fact became evident to male politicians when, against all expectations, women registered for the 1988 presidential plebiscite as heavily as men, voted in numbers just as high (87.9% of registered women, 87.2% of registered men) and the women's vote went against Pinochet, making the difference between loss and victory. Nonetheless, women's organizations, especially those not linked to a party apparatus, found it difficult to get a hearing in the *Concertación* for long-range women's goals; women party activists found little or no enthusiasm for women's congressional candidacies; and, to the irritation of the women's movement generally, the Aylwin Cabinet on March 1990 contained no woman.

This last became a sore enough point that three women were appointed to second level ministerial jobs -- including the Undersecretary post in the Ministry of Justice. Also, Chile having ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in December 1989, the new government in May 1990 proposed creation of a *Servicio Nacional de la Mujer* (SERNAM) to promote the advancement of women. The proposal did not receive urgent attention in Congress, and during 1990 SERNAM functioned informally, its staff working without officially existing, until in January 1991 SERNAM became a legal entity and its director became the first woman member of the Cabinet.⁴⁸

SERNAM has made its priorities the economic betterment and legal protection of women, in particular the poorest women. Twenty-one percent of Chilean households are headed by women, Chile's poorest, least-protected sector. Of the approximately 650,000 women heads of households, 63% have only basic education or less, and their access to services, credit and day care is extremely limited. In 1988, one-third of the economically-active population were women, heavily represented in public-service jobs, domestic labor and

⁴⁶ Further details on this incident appear in Section IV.

⁴⁷ Unless otherwise noted, all statistics cited here are from official sources, the majority from the National Statistics Institute dating from 1989, and taken from M. Eugenia Hirmas and Enrique Gomariz, SERNAM/Comunicaciones, "*La Situación de la Mujer Chilena, en Cifras*," (paper) Santiago, 1990.

⁴⁸ Law No. 19,023, published in the *Diario Oficial* on January 3, 1991.

other low-paying, relatively powerless positions; although half of Chile's professionals were women, they earned less than men for the same work.

Abortion is illegal in Chile, even to save the life of the mother. The law was given its present form by the military junta in its last months in power, but no less restrictive legislation is expected during this government, as the subject remains taboo. SERNAM has not taken up the abortion issue -- nor the divisive issue of divorce in this heavily Catholic country. However, the office worked successfully with the Ministry of Education to develop a regulation permitting pregnant adolescents to continue attending school -- a gesture of decency that has met with opposition from some sectors of the Catholic Church.

Domestic violence is another area where SERNAM is active. As SERNAM's director, Soledad Alvear, noted recently, there are areas of Santiago in which 80% of women have suffered some form of domestic violence, as well as a large proportion of children in the same circumstances.⁴⁹ The office is developing legislation to protect -- indeed to define -- the victim; in Chilean law the crime of domestic violence does not exist, such that, unless there are wounds, a legal denunciation cannot be filed. The special situation of the victims, including psychological abuse, is not handled sensitively either by the police or the courts. SERNAM has offered instruction to Santiago police on humane treatment and evidence-gathering in situations of domestic violence and has undertaken to educate the public on this issue.

⁴⁹ Comments reported in *La Epoca*, May 11, 1991.

7. General pardon law

The overcrowding in Chile's prisons became public knowledge with the change of government. Between 1981 and 1989, for example, the common inmate population had increased by 71.5%, while the number of prisoners sentenced rose only .5% in the same period, and those submitted to trial rose little more, by 1.2%.⁵⁰ Compared to an historical average of 12,500-13,000 inmates, Chile's prisons held 26,000 when Aylwin's government took office. The largest penitentiary in Santiago, designed for 800 prisoners, held 3,300. No more than half the inmates of Chile's prisons had been sentenced; others were serving more time than their prospective sentences.⁵¹ The inhumanity of these conditions, produced in part by the harsher laws of the military regime, presented the new government with long-term challenges ranging from penal and judicial reform to the construction of new prison facilities.

As a short term measure, however, the government opted for clemency, an ethical decision that would also reduce the risk of prison riots. Law No. 18,978 of May 8, 1990 extended pardons to 9,000 prisoners and benefits such as bail or less-restrictive conditions of confinement to 2,000 more.

8. Judicial reform proposals

The government expects to spend most of 1991 attempting to pass its reforms of the Judiciary. Constitutional reforms, dealing with such issues as appointed senators, the electoral system and the civil-military balance of authority, have also been planned, although at this writing their presentation to Congress has been stalled by rightist opposition.

While on judicial reform there is broader consensus than in any other area, the package sent to Congress will undergo major changes. Already, the proposed National Justice Council, which was to have brought prestigious figures to oversee the judiciary, has met with strong opposition not only in the courts and the Right but also in the *Concertación*, and it is expected to be transformed. On the other hand, the proposal to add four members to the Supreme Court, for a total of 21, is supported across the political spectrum and by the Supreme Court itself.

Some of the proposed changes seek to limit abuses of judicial authority: the system of "qualifications," by which the Supreme Court annually reviews the competence of each judge and can end a career with a low qualification, is to be modified. Dozens of changes are proposed for facilitating and improving

⁵⁰ Interview, Justice Ministry, April 19, 1991.

⁵¹ Carlos Monge, "Vivir en la Cárcel," *APSI*, No. 346, April 11-24, 1990.

investigative and administrative procedures, with an aim to making the bureaucracy more flexible and accessible for the citizen who needs it. The proposals also create new institutions, such as the Ombudsman's office recommended by the Rettig Commission.

IV. TERRORISM AND THE GOVERNMENT'S RESPONSE

A recent report by the *Asociación Latinoamericana para los Derechos Humanos* (ALDHU) ranks Chile in third place, behind only Colombia and Peru, among Latin American countries with terrorism problems. ALDHU's report, according to the Chilean press, points to more than one hundred terrorist actions, including bomb attacks, execution attacks on military personnel and police, attacks on judges, and the murder of a Senator since the inauguration of civilian rule in March 1990.¹⁰⁷ A recent report in the important and conservative Chilean daily *El Mercurio* put the number far higher: during "the first year" of civilian government, 386 violent actions, more than one a day, including 14 deaths -- five of those police, and four prison guards. It is unclear whether the first year includes all of 1990 or only the nine months of civilian government, and also unclear how the newspaper distinguishes between, for example, robberies committed with political motives and those which are not. In the first quarter of 1991, according to the paper, three police were killed, and there were four selective assassinations: a retired army doctor and his wife in Rancagua, an *Investigaciones* official in Concepción, and Senator Jaime Guzmán of UDI. As other media pointed out in response, the figure 386 should not be taken apocalyptically; although the Right has frequently claimed that recently political violence breaks all records, in 1984 there were 465 acts of political violence officially recorded and in 1985 the number was 401. What has happened, in fact, is that violence has become more selective and in some cases more sophisticated.¹⁰⁸

The *El Mercurio* analysis of terrorism is unabashedly the analysis of the former regime: its sources are former CNI personnel who identify themselves as such, reviving the identity of the disbanded organization.¹⁰⁹ These professional subversion-fighters assure the paper's wide readership that one reason it is sometimes hard to tell common crime from terrorism is that the terrorist uses petty criminals to his purposes, "as was seen in the protests during the military regime;" and that we are seeing "the third phase of the process" of terrorism, "labeled 'acute violence'" whose principal characteristic is selective terrorism like the recent killings. This third phase, say the former doyens of State terror

¹⁰⁷ *La Epoca*, April 6, 1991.

¹⁰⁸ Editorial, "La prensa y el violentismo," *La Epoca*, May 13, 1991.

¹⁰⁹ "Terrorismo: la Visión de la ex CNI," *El Mercurio*, May 5, 1991.

in Chile, belongs to the "insurrectional period," while the fourth is the phase labeled "annihilation and consolidation," wherein there is control of territory in the style of Sendero Luminoso, and political anarchy reigns. The reason that terrorism has grown so quickly in Chile, say these disinterested parties, is that the CNI was dissolved just before the new government took office. But a mistake was made even further back, they say: the state of emergency in force until October 1988 should not have been lifted.¹¹⁰

This sort of hysteria-provoking reportage would not be featured on the Sunday edition's most important page if public anxiety were not already high. The phenomenon of political violence in Chile is complex and, although not nearly comparable with the widespread opposition and drug-related violence of Colombia or Peru, an increasing problem for the whole society. At the same time, the ex-CNI's presentation of terrorism, which mirrors that of the armed forces, has its own political motives. By linking terrorism with the broad opposition to the military regime, history is re-revised, post-Rettig report. By criticizing the "Cumplido laws," blame for terrorism is assigned to due process-minded democrats; forgotten is the fact that, under Pinochet, not only was terror a state policy but acts of extreme political violence took place on both left and right, including even an attack on Pinochet himself while the country was, yes, still under state of emergency.

Terrorism is a subject that attracts disinformation. Dealing with the phenomenon in Chile is, therefore, not only a matter of hunting those involved in current violence but of understanding that terrorism brings together past and present.

A. Background

The military government, from the very beginning, described opposition activity as violent by calling the crisis an internal war. Recently, for example, information revealed in the Rettig report was used to file a criminal complaint for the murder of a young man who, killed in custody in December 1973, was described in the press of that time as having clashed with soldiers while participating in a terrorist "Plan Leopardo," installing dynamite and planning to

¹¹⁰ The CNI sources argue this because, they say, under the state of emergency they had up to five days before passing a detainee to the courts and now, under the "Cumplido laws," police and *Investigaciones* only have 24 hours to interrogate before showing a detainee to a judge. This is patently false on both counts. Until the day of Aylwin's inauguration the CNI used, not five but up to twenty days *incommunicado* detention under Transitory Art. 24 of the Constitution, described below; and under the "Cumplido laws," for better or worse, police still have up to ten days before a terrorist suspect sees a judge; see Sections III and V.

attack "opponents of Marxism."¹¹¹ As the regime consolidated in the late 1970s, the state of siege was replaced by the state of emergency, but permanent legislation made up for this slight easing of control. Among other measures, the anti-terrorism Decree-Law 2,621 of 1979 is notable in that it increased penalties for arms possession, illicit association and a variety of other acts and created a legal obligation to inform; that is, the law was directed at far many more citizens than the actual members of a terrorist organization, and it threatened all members of any organization in which one member was accused of terrorism. The Chilean Minister of Justice said of D.L. 2,621: "[I]t will no longer be for the judge to prove guilt in order to convict but for the accused person to prove his innocence."¹¹²

The Political Constitution of 1980, which entered into force on March 11, 1981, contained a transitory article which stipulated that, in the event of a "risk of disturbance to internal order," the President was authorized to declare a six-month, renewable state of exception under which persons might be held in their homes or places other than jails -- e.g. CNI secret interrogation centers -- for up to twenty days "upon occurrence of terrorist acts of grave consequence." Pinochet declared the "state of risk" on the day the new Constitution was promulgated, and renewed it regularly thereafter.¹¹³ As the UN Special Rapporteur on Chile observed of the so-called state of risk:

The simultaneous existence of two states of emergency restricts individual rights in the same way as would the state of siege provided for in case of civil war or domestic unrest, and judicial protection is virtually non-existent, since judges have no means of verifying the merits of measures

¹¹¹ Case filed on behalf of Alejandro Patricio Gómez Vega, 22 years old, arrested December 14 or 15, 1973 by agents in civilian dress. Summarized in *La Epoca*, May 8, 1991. Quotations are from the army communiqué published in the press on December 22, 1973.

¹¹² See Americas Watch, *Chile Since the Coup: Ten Years of Repression*, *op. cit.*, pp. 12-13.

¹¹³ Transitory Article 24. It was supposedly brought into force in response to terrorism, but only six persons were even charged with terrorist acts in 1982, and the law was more often used to justify repression against peaceful critics: it also permitted restrictions on the rights of assembly and free expression; summary exile of political opponents; and administrative exile for up to three months. Transitory Article 24 ceased to apply on March 11, 1990.

imposed by the authorities.¹¹⁴

The Constitution's permanent Article 8, meanwhile, punished persons or groups that "intended" to spread doctrines of violence against the State, rather than punishing acts of violence. The penalty was ten years' exclusion from political life.¹¹⁵

The measures described above were developed while organized armed opposition to the regime was negligible. The pre-existing Movement of the Revolutionary Left (MIR), a far-left party which advocated armed struggle in the early 1970s only to be crushed after the coup, began infiltrating militants back into Chile during 1980. That year, as the Rettig report points out, the death toll due to terrorist actions -- direct attacks or bombs -- was six, then in 1981 and 1982 there was a lull, with no deaths due to terrorism reported.¹¹⁶ The MIR's infiltration plan, "Operation Return," was discovered by the CNI and a large number of militants killed, a defeat that later provoked the group to split three ways and diminished its importance.

A new armed opposition group, the Manuel Rodríguez Patriotic Front (FPMR), was formed in 1983. When the 1984 Anti-Terrorist Law was promulgated, armed attacks were notably on the rise and the FPMR was on its way to eclipsing the MIR. The Anti-Terrorist Law defined as crimes of terrorism many acts which can legitimately be called terrorist but also included the "apology for terrorism," for a terrorist act, or for a person who "appears" to be participating in such an act.¹¹⁷ Woundings or murder of military or police

¹¹⁴ Special Rapporteur on Chile, *Report of the Economic and Social Council*, United Nations, A/36/594, November 1981, p. 183, cited in Americas Watch, *Chile Since the Coup*, *op. cit.*, p. 16.

¹¹⁵ "Any action by an individual or group intended to propagate doctrines which are antagonistic to the family, or which advocate violence or a concept of society, the State, or the juridical order of a totalitarian character or based on class warfare is illegal and contrary to the institutional code of the Republic." It was applied against a Communist-Socialist coalition, the MDP, in 1985 and, in 1987, against Socialist leader Clodomiro Almeyda. This article was eliminated in the reform plebiscite of July 30, 1989, and new, narrower language was drafted to modify Article 82 to define groups that are unconstitutional by virtue of their "objectives, acts or conduct". See Americas Watch, *Chile in Transition*, *op. cit.*, pp. 55-57.

¹¹⁶ Volume I, Part III, Chapter III, B (b).

¹¹⁷ This language was eliminated and replaced in Law. No. 19,027, the second "Cumplido law." See Section III-B above.

personnel also came under this law, and for certain crimes the death penalty was required.

In 1986, it became evident that the FPMR was sophisticated and enjoyed foreign support in training and matériel. That August, a large quantity of arms was discovered in Carrizal Bajo, in the north; it was traced to Cuba. And in September, an FPMR commando squad nearly succeeded in killing Gen. Pinochet. The military-style operation involved M-16s, LOW rockets and other heavy arms obtainable only from abroad.¹¹⁸ These two events shifted the political balance in Chile: Pinochet declared a state of siege that lasted several months, the treatment of captured FPMR suspects was extremely harsh, the issue of terrorism became paramount in the regime's approach to opposition, and the political opposition movement responded accordingly, with splits between the center and center-left, on the one hand, and the traditionalist Marxist left on the other. The Communist Party, which advocated "all forms of struggle" against the dictatorship and apparently sponsored the FPMR -- although it denied any direct link -- found itself increasingly isolated. After 1986, which had been a year of significant demonstrations and a general strike coordinated by centrist and leftist political forces, the mass protests that had carried the pro-democracy movement since 1983 lost momentum; centrists sought alternatives to allying with the Marxist left, and the politics of defeating Pinochet shifted to developing a strategy for the 1988 plebiscite that would not involve traditionally leftist forms of protest. After three years of demonstrations, the public was exhausted by the physical and emotional cost of confronting State reprisals and by confrontation generally; likewise, there was little support for the actions of the armed groups, though the groups themselves believed they could foment a popular uprising.

The *Concertación de Partidos por la Democracia*, the current governing coalition, was formed in this context. Because the Communist Party (PC) refused to reject "self-defense" and other euphemisms for armed action, it was not included in the *Concertación*, and its traditional Socialist allies (the Almeyda faction of the Socialist Party) occupied the odd position of belonging both to the *Concertación* -- having rejected political violence and endorsed the plebiscite strategy -- and to a coalition with the PC because of old loyalties. The success of the *Concertación* relied on its following the rules set out by

¹¹⁸ Several of the participants in "Operation Twentieth Century," the attempt against Pinochet, were later executed summarily, as noted in the Rettig report. A dramatic account of the planning, the attack itself, and its aftermath, based on court documents and interviews, is found in Patricia Verdugo and Carmen Hertz, *Operación Siglo XX*, Ornitorrinco, Santiago, 1990.

Pinochet and, once the plebiscite of 1988 was won, attempting to revise those rules (i.e., the 1980 Constitution) to liberalize an authoritarian structure of government. The entire method of the *Concertación* is gradualist, reformist, consensual to a large degree -- although internal tensions often leak out -- and organized from the top down, with little taste for mass agitation or anything resembling populist politics. In Chile, this method is known as the "politics of agreements." The results of the agreements often fail to satisfy social demands, but the government's emphasis on calm and reason is immensely popular after the harangues and tension of the military years.

One point of tacit consensus within the *Concertación* has been a perception of the Communist Party's position and of the armed groups' past actions as unacceptable but logical outgrowths of State violence under Pinochet. Having been historically a party that rejected armed struggle for electoral politics, it was also logical that the PC eventually supported the *Concertación's* approach in the 1988 plebiscite; it even presented some congressional candidates in 1989, though with notable lack of success. Once Aylwin took office, the Communists pledged support for the consolidation of democracy and the *Concertación*, began proceedings for legalization as a party again, and in an ambiguous way distanced themselves from the "all forms of struggle" doctrine. Concurrently, under intense persecution by security police, the FPMR also suffered a split, with the FPMR-Partido following a more "political" line. The split-off group, the FPMR-Autónomo, has staged attacks on officials of the military regime, allegedly including the March 21, 1990 attack which nearly cost of the life of former Air Force Commander Gustavo Leigh. Over the years, as the Rettig report notes, the FPMR has assassinated individuals as "punishment" for their roles in the military regime, and its bombing attacks have killed innocent people.

It is difficult to be precise about responsibility for terrorist actions in the mid-80s. The Rettig Commission established the responsibility of armed opposition groups in 93 deaths of members of the *Carabineros*, armed forces, security police (CNI) and civilians after 1983, but there were dozens of other incidents each year during the regime's latter period whose origin remains obscure. They may well have been staged by the leftist groups. One reason public condemnation of terrorist acts has been somewhat hesitant in Chile, until recently, however, is that the military regime engaged in "terrorism" itself. That is, CNI staged shoot-outs in order to murder detained MIR or FPMR suspects and frequently set up "terrorist" bombings as a way to destroy evidence or corpses. A former CNI agent confessed recently and at length to a Santiago daily what many Chileans had suspected, that numerous bombings between 1983 and 1986 -- including a bomb attack on a branch of the State

Bank -- were the work of his closest colleagues and himself. A student arrested by these agents was murdered, according to the testimony, then tied to a live bomb and left in a slum neighborhood to explode, later to be accused of planting the bomb and dying in the attempt.¹¹⁹ Because of this sordid history, many in Chile did not leap to blame the far-left for every incident publicized by the regime during the 1980s.

At the end of the 1980s, another factor entered this equation. A group using the name of Lautaro, a hero in the long fight against the Conquistadores, emerged in various guises: as the Lautaro Youth Movement (MJL), the MAPU-Lautaro (combination of a pre-1973 party and the new Lautaro name), the Lautaro Popular and Rebel Forces (FPRL). Its ideology is vaguely anarchistic, its members appear to be very young and predominantly from the slums and to have little political background. Its targets range from banks and stores to uniformed personnel. If it has any models or recognizes any guides, the most frequently mentioned is *Sendero Luminoso* of Peru, although the differences between the two groups are perhaps larger than their similarities.

When the Aylwin government took office, it lacked the intelligence capability to control these groups. Part of the military regime's strategy had been to turn over a government in shambles -- no telephones or computers in the presidential palace, no paintings on the walls or furniture in the offices of the ministry buildings, millions of dollars worth of government property shifted into army hands, and so on -- and among the more important aspects of this strategy was the transfer of CNI personnel, documentation and computers into Army Intelligence, where civilian access to the information is severely limited.¹²⁰ The civil detective force, *Investigaciones*, had some intelligence and forensic capacity, but like *Carabineros* it had been used for nearly 17 years primarily to manhandle the people it investigated rather than outthink them.

The new government may have hoped that it would have time for the training of these two security forces, or that terrorist actions would diminish as the armed groups accepted current political conditions and recognized their lack of public support. But the attack on former Air Force commander Gustavo

¹¹⁹ Confession of "Pedro," *La Epoca*, April 15, 1991. The student was Tatiana Fariña, a member of the Communist Youth. The Rettig report lists hers as a case in which it did not have sufficient information on which to base a conclusion; recently her case has been reopened on the basis of this and other new evidence.

¹²⁰ Under Law No. 18,667, secret documents belonging to the armed forces or police, if required for a legal case, must be requested from the head of the relevant institution, who is entitled to refuse the request.

Leigh and his business partner, another retired general, in late March 1990 was an early sign that the groups intended to continue. Other successful and unsuccessful attacks on representatives of military or police authority followed, sometimes also affecting bystanders.

An increase in the police budget was one effort to confront the problem and served an additional purpose: it solidified a friendly relationship with *Carabineros*, important in the effort to balance out Pinochet. Though subordinate to the Defense Ministry like the armed services, the police should come under Interior Ministry authority, and the government has projected that shift. Meanwhile, the government's relations with police seek to reinforce them in all areas of law enforcement and maintenance of public order. In May 1990, therefore, the government created a police intelligence unit, *Dirección de Inteligencia Política de Carabineros* (DIPOLCAR), to focus on terrorism. The government-police alliance cut two ways, however. When denunciations of torture were presented against DIPOLCAR, or when police violently dispersed peaceful demonstrations, government reaction was muted, as if careful not to offend.

One target group for armed opposition groups was persons connected with U.S. interests or Northamerican businesses in Chile. According to a U.S. Department of State document, Chile headed the world in attacks against U.S. interests, like Mormon Churches or U.S.-Chilean binational centers. The document cites in particular a bomb hidden in softball equipment which exploded at an American Chamber of Commerce softball game in the National Stadium, killing a Canadian businessman and injuring a U.S. embassy official; and the bombing of a restaurant in the central-coast resort city of Viña del Mar, which seriously wounded three U.S. sailors and five others. Both incidents are attributed to the FPMR-Autónomo. Of a total 130 terrorist incidents against U.S. interests in Latin America during the year, 61 occurred in Chile, according to the document.¹²¹

As the Right in Congress demanded more action to control political violence, and in particular in March 1991, when a series of attacks coincided with the release of the Rettig report,¹²² President Aylwin asked for a coopera-

¹²¹ *Patterns of Global Terrorism: 1990*, April 1991. Reported also from news agency cables in *La Epoca*, May 3, 1990.

¹²² Principal among these was the murder of a retired army doctor, Carlos Hernán Pérez Castro, and his wife in Rancagua on March 3; and the murder of a regional *Investigaciones* chief, Héctor Sarmiento, on March 15. At this writing, the government claims to have solved the doctor's case, attributing it to two FPMR-A members killed in a clash in early April, as well as another detainee in custody, and others allegedly linked to the FPMR-A.

tive effort of all parties represented in Congress to develop an anti-terrorism strategy. It was shortly after this policy proposal that Senator Jaime Guzmán, a civilian member of Congress, was assassinated on April 1, and his murder provoked a frenzy of activity, declarations, blueprints and accusations. Gen. Pinochet was the person who, emerging from Guzmán's hospital room, made the public announcement of his death. That night, supporters of Guzmán and the extreme-right *Avanzada Nacional* gathered outside the hospital calling for a coup.

The presence of *Avanzada Nacional* at this tense moment, after a year in which it had been nearly invisible, highlighted the potential for rightist terrorism in reprisal. Founded by former CNI operations chief Alvaro Corbalán, *Avanzada Nacional* is the very expression of how, under Pinochet, the armed Right could be both official and extra-official, depending on the requirements of a situation. Thus, after April 1, not only rightist politicians went in fear -- RN Senator Sergio Jarpa denounced receiving a death threat, UDI Senator Beltrán Urenda's house was nearly bombed -- but leftist politicians did also.

Far-right violence appeared in two April incidents. On the night of April 5-6, in the central-southern town of Parral, the most senior local leaders of the center-leftist Party for Democracy (PPD) were the targets of shooting attacks. During a suspicious blackout of the city's electricity, the windows along the street side of PPD vice-president Guillermo Ceroni's house were shattered by an explosion; later, assailants returned to shoot into the open windows. The home of PPD local president Guillermo Belmar was attacked similarly, except that the shots entered his and his wife's bedroom. Ceroni had served as lawyer for the German government and Amnesty International on the case against Colonia Dignidad, the closed German community, which is located near Parral;¹²³ at that time, Ceroni had been watched and followed. Within days of the April attacks, police had identified the culprit as a local man belonging to the self-styled "Group of Friends of Colonia Dignidad" and Ceroni recognized him as one of the men who had shadowed him.

On April 9, the vice-president of the FECH, the student federation of the University of Chile and the nation's largest student organization, was kidnapped and tortured by three men wearing hoods and the emblems of *Patria y Libertad*, a paramilitary group active in the early 1970s against Allende. Arturo Barrios, 23, was abducted outside his home in downtown Santiago, blindfolded, and taken to an unknown place where, tied with wire,

¹²³ See Section III on Colonia Dignidad.

he was interrogated by five men about his student activities. His captors beat his face and body and burned him with cigarettes before leaving him near his house that evening. A medical examination verified the blows and burns.

These incidents were unusually violent for the period under review here, but lesser incidents attributable to the extreme Right occurred throughout the year. Members of the non-armed section of the MIR, and two journalists with MIR-associated newspapers, were named in a July 1990 death-threat letter from the *Comando Gabriel Rodríguez Alcaino*, a group that had not appeared before.¹²⁴ Santiago newspapers occasionally carried items on death threats reported in the provinces, like the case of a women's rights leader from Arica, in the north, who after participating in a demonstration repudiating the coup on its seventeenth anniversary, received a phone call from a man who said: "Have you bought your coffin? Your days are numbered."¹²⁵ Deputy Jorge Schaulsohn, chairman of the congressional committee investigating 1989 Army payments to Pinochet's son, received death threats as the investigation neared its close. Though not to be compared with the campaigns of intimidation in previous years, these threats served to keep activists and public figures on notice that their home telephone numbers and movements were known.

At the time when CNI was dissolved and its personnel passed over into Army Intelligence, on the occasion of the 1990 change of government, the security police reportedly employed 760 uniformed staff and 1,256 civilian employees, as well as other civilians contracted with secret funds.¹²⁶ According to official documents revealed by *Hoy* magazine, when the dissolution of CNI was being discussed and planned during 1989, its replacement was also planned: a "political-strategic" organization that "cannot be subordinate to a civilian minister or ministry" but rather should be led by an active-duty general and "directly subordinate to the junta of commanders in chief or joint command of the Armed Forces, due to the [armed forces'] responsibility to guarantee institutional order."¹²⁷ In the *Estado Mayor de*

¹²⁴ The letter addressed a total of 20 MIR activists, including *Página Abierta* editor Libio Pérez and *Punto Final* editor Manuel Cabieses. The commando's namesake was a policeman killed in a clash with MIR members in 1975.

¹²⁵ *La Epoca*, September 14, 1990. The target was Aury Fredes.

¹²⁶ María Irene Soto, "Los servicios secretos chilenos," *Hoy* magazine, No. 718, April 22-28, 1991.

¹²⁷ *Ibid.*

Defensa Nacional, in the Defense Ministry, now functions an agency answering to this description, the *Dirección de Inteligencia de la Defensa Nacional* (DIDENA), directed by an army colonel, comprising agents of the Army, Navy, Air Force, and *Investigaciones*, and reporting to the head of the *Estado Mayor*, Army Gen. Luis Henríquez Riffó. Henríquez himself was recently revealed as a former member of DINA, Pinochet's 1973-78 secret police, and has not denied the charge.¹²⁸

The various service branches maintain their own intelligence capabilities, as well; most CNI agents were absorbed by the *Dirección de Inteligencia del Ejército* (DINE), Army Intelligence, of which one particular unit, the *Batallón de Inteligencia* (BIE-2), reportedly is the operational group on terrorist counter-intelligence.

B. The Government's Response

The government of Patricio Aylwin had taken terrorism seriously before the Guzmán assassination -- it had been seeking European training for the police, and had begun planning for a special anti-terrorism office within the Interior Ministry during February 1991, according to the press -- but after April 1 the pace of activity and declarations grew almost frantic. Special meetings between Cabinet ministers and both houses of Congress; congressional votes of repudiation of the assassination; proposals to criminalize press reporting on terrorism, or any kind of propaganda for terrorism; an RN demand that all terrorist groups be declared unconstitutional; accusations against the Communist Party and demands that it offer information on the FPMR-Autónomo. The first two weeks of April were occupied with a daily barrage of proposals and conflicting information.

Army sources, for example, leaked two different estimates on the armed strength of the far-left groups to two Santiago newspapers a week apart: the first, that there were 2,000 *frentistas* and 700 *lautaristas* in arms; the second, that the number was 1,500 in total, or a forty percent reduction. Army sources also circulated the story that these combatants were armed with the remains of the arms interred in Carrizal Bajo, the arms not discovered in 1986, including M-16s, FAL rifles, rocket-launchers, sub-machineguns. But as *La Epoca* editorialized, "What is not clear is how, between 1986 and 1989, while they

¹²⁸ *Equipo Apsi*, "El regreso de la DINA," *APSI*, No. 382, April 8-21, 1991. The revelations were based on documents from the Comptroller General's office, according to which Henríquez served in DINA between October 31, 1974 and January 2, 1976. Other former DINA officers command regiments, serve as military attaché in South Africa, continue in Army Intelligence.

were carrying out government functions, they [the Army] were not capable of finding the remaining arms. It must be a military secret."¹²⁹ Nor was it clear how so many armed fighters had gone undetected and undetained for so many years.

Investigaciones spokesmen, on the other hand, put FPMR-Autónomo armed strength at fewer than 100 and *Lautaros* at fewer still.¹³⁰ Although army documents leaked to the press declared that the two groups had established systematic cooperation, the press and *Investigaciones* pointed to evidence of mutual suspicion between the groups. By mid-April, the working hypothesis was that the FPMR-A had split and a faction of it had reactivated an old, previously abandoned plan to kill Guzmán.

In seeking concrete solutions to the general problem, the armed forces and their allies on the civilian Right favored a partnership between the government and the military. Its physical expression would be a special anti-terrorism office in the presidential palace and directly under presidential authority -- such that the armed forces' intelligence apparatus would bypass its accountability to the Defense Ministry. To promote this option, Pinochet invited Cabinet ministers and top congressional representatives to the War College to hear the Army's analysis of the terrorist threat. Government officials were not impressed. The Army presented the armed actions of the FPMR-A and *Lautaros* as the second phase of a subversive war -- the "first" phase was tacitly understood to have been 1973-1990. This presentation actually damaged the Army's credibility widely, as portions of the text were leaked.

Instead, the government created a Coordinating Commission on Public Security within the Interior Ministry, with a mandate to coordinate intelligence and policy proposals. The office is headed by civilians, with operative participation from *Carabineros* and *Investigaciones*; the armed forces' representatives sit on a consultative committee. In this way the government addressed fears that a "new CNI" might be created and that the armed forces might enter the political arena as they evidently wished to do. The Commission on Public Security, headed by former Under-Secretary of the Navy Mario Fernández, was established on April 26, and the various military services publicly announced their intention to cooperate with it.¹³¹

¹²⁹ "Informes de Inteligencia," *La Epoca*, April 19, 1991.

¹³⁰ The government echoed these figures, although other observers find them somewhat optimistic regarding the FPMR-A.

¹³¹ The ex-CNI sources quoted so extensively by *El Mercurio* on May 5 were not impressed by the Commission, however, considering that "what is needed is a thinker at the

The Ministry of Interior also took legal action against both the Lautaro movement and the FPMR-A for breaches of the various national-security statutes. Another government response has been to speed up plans for expanding the police force: some 4,400 new police are to be hired in 1992, to address both the increasing violence of common crime and the aspect of terrorist violence which is street crime, such as store robberies and bank robberies.

The third "Cumplido law," in one of its transitory articles, provided that anyone possessing prohibited arms could turn them in to any public authority within 90 days -- that is, before May 15, 1991 -- without criminal liability.¹³² This measure was the side of the government's response which was intended to encourage "reintegration" by members of armed groups. Public statements by former MIR leader Andrés Pascal Allende and by FPMR spokesmen to the effect that arms should be laid down and fighters should join the political mainstream, reinforced this message.

Finally, the government proposed a two-part law which immediately caused debate within the *Concertación*. Dated April 9, 1991, the proposal sought to add to the Penal Code a crime of misprision, (the failure to report a crime, known in Chile as *delito de omisión*) and to modify Art. 4 of the Anti-Terrorist Law to create "more flexible mechanisms" in the struggle against terrorism. The modification of Art. 4 would permit reduction of sentence for members of armed groups who provide sufficient evidence concerning imminent actions to permit identification of the perpetrators; or who cooperate in judicial investigations of terrorism; or who, without having participated in criminal actions, renounce links to a terrorist organization. Plea-bargaining of this kind would be an innovation in Chilean law.

Americas Watch does not, in principle, object to plea-bargaining, either as a legal option for the defendant or as an aid to intelligence-gathering, so long as the defendant's physical integrity and right to due process are protected. In Chile, however, the plea-bargaining proposal has been colloquially renamed *delación compensada*, or "compensated snitching," to convey the disgust commonly felt for informers of all stripes. We are more concerned about the proposed inclusion in the Penal Code of misprision, which would create an obligation to inform and appeared to spread that obligation widely.

top [*cabeza pensante*] who knows everything, and that he be advised by analysts, archives" and so on -- as it was in the CNI. These sources said the armed forces cannot be helpful, really, unless they are gathering information; consultation is not enough.

¹³² Transitory Art. 10, Law No. 19,047.

Controversy over this proposal became so heated that in May the government withdrew it. Government spokesmen did not rule out the possibility that such an obligation to inform would be included in future broad security legislation, however. We therefore consider it still relevant to state our concerns.

The proposal as submitted to the Chamber of Deputies was very generally worded, and while we do not assume that the government intended to infringe on civil rights, such legal norms require very careful application if they are not to endanger the right to due process. Both the potentially denounced defendant and the citizen potentially offering information require protection: the defendant from arbitrary deprivation of liberty based on inaccurate information, and the denouncing citizen from possible reprisals. Any new legislation must contemplate a situation like that which actually exists today in certain slum neighborhoods, in which a community's residents may have general knowledge of activities by armed groups but not necessarily support them in a material way; in such circumstances the obligation to inform could be used, with abusive potential, to justify detaining any member of that community under broad investigating orders. Any future proposal should take care to prevent the new crime's becoming a catch-all for security investigators.

Including misprision would be, as a legal advisor in the Interior Ministry put it privately, "quite a brutal change" in existing law. Chilean jurisprudence does, of course, contemplate the crime of cover-up or *encubrimiento*, but the crime requires not only general knowledge but active participation in a cover-up. Many legislators within the *Concertación*, with concerns along the lines described above, considered the new *delito de omisión* too vaguely conceived, potentially more damaging than useful.

In Section V below we note the damage done to the reputations and well-being of detainees accused publicly of terrorism without proof, and the lengthy *incommunicado* detention permissible in terrorism cases. As this report is completed, an incident in Santiago would appear to confirm the danger of denunciation if not handled with extreme care: on May 4, in the Santiago slum neighborhood Estación Central, a group of Communists gathered in the street for an homage to four disappeared party members. A neighbor denounced the gathering to police as an FPMR show of strength, and the approximately 300 peaceful demonstrators were attacked by police who left three wounded. PPD deputy Jorge Schaulsohn, who went to the area immediately after the events, denounced the police's use of "the type of vehicles used to put down a revolt."¹³³ Americas Watch is aware of the need for public cooperation to

¹³³ *La Epoca*, May 5, 1991.

eliminate terrorism, but a criminally enforceable obligation to inform is highly susceptible to abuse. We are pleased that the proposed crime of misprision (*delito de omisión*) has been reconsidered, for the present, and urge that in any future legislation it be approached with due caution.

V. ABUSES BY STATE AGENTS

The abuses and legal complaints described in this section do not, we believe, reflect repressive policies of the Aylwin government. In some instances we record events which indicate tendencies but do not constitute consistent practices of abuse. There are also some areas in which the government could take steps to improve conditions, however, and we urge that it do so.

A. Torture and Mistreatment in Detention

1. Cases denounced

Thirty-five criminal complaints of torture have been filed since the new government took office.¹ This figure should not be considered exhaustive. It is typical for torture cases to be underreported even to human rights groups and even less frequently denounced to the courts; moreover, a number of complaints, involving both political and non-political detainees, have been handled discreetly through administrative referral to the services responsible for the detention, and thus are not included in the public figure. Of the legal denunciations, all but two attribute the torture to *Carabineros* -- many of these, to DIPOLCAR. The remainder involve *Investigaciones*. Most, though not all, of the plaintiffs have been political detainees arrested as suspects in terrorist crimes or for interrogation about their possible sympathies with terrorism.

Methods of torture denounced in the complaints include the application of electricity, the *teléfono* (blows to the ears), prolonged suspension by the wrists, beating about the head, near-strangulation, deprivation of rest, food and water, and psychological pressure (threats, prolonged *incommunicado* detention used as punishment).

The denunciations first became widely known in October 1990, with a magazine report that described in some detail the case of Roberto Pardo Ramírez, detained at 4:00 a.m. on October 2 in his home. Blindfolded and handcuffed, he was allegedly taken by five policemen and two agents in civilian dress to an unidentified place where he was hung in the *pau de arará* (parrot perch) position and his captors beat the soles of his feet, then forced him to walk on bottles, provoking extreme pain. During the alleged torture he was interrogated about his knowledge of one "Alejandro" accused of killing a policeman. Once it was established that he knew the suspect only very slightly, Pardo was transferred to the Central Headquarters of *Investigaciones* and

¹ As of April 20, 1991.

released at approximately 8:00 p.m. the same day.²

Three other denunciations, involving detainees suspected of direct involvement in terrorist activity, may serve as examples:

► Lino Palma Insulza was detained the day the new government took office, held in two different police stations and allegedly tortured in both. The *teléfono*, blows to the head, electricity applied to chest and abdomen, threats of sodomy, and near-suffocation by strangulation are the tortures he reported. He was held on suspicion of violating the Anti-Terrorist Law.

► Jorge Antonio Espínola Robles was wounded by gunshot during his detention by *Carabineros* on May 19, 1990, and was briefly hospitalized that day. Later, a medical examination ordered as the result of a *habeas corpus* petition established that after ten days of confinement in a police precinct he bore marks consistent with torture.

► Rodrigo Morales Salas was examined by two doctors as a result of his detention. One, a police doctor, pronounced him in perfect health; the other, from the Forensic Institute, noted evidence of physical damage.³ Morales, a member of the FMPR-Autónomo accused of participating in the 1987 abduction of Army Col. Carlos Carreño and other crimes, was detained on July 30, 1990, and held first in a police precinct, then by DIPOLCAR. He denounced blows to face and stomach, prevention of sleep for 72 hours and threats that police would torture his sister, who was also detained at the time.

Morales also denounced another type of mistreatment. On July 2, the military prosecutor's office authorized extension of his *incommunicado* detention. Three more times, at the requests of various military prosecutors, Morales's *incommunicado* detention (*incomunicación*) was extended, until he had remained *incommunicado* for a total of 26 days. *Incommunicado* detention is intended as a period when investigators may keep a detainee from conferring with his partners in crime and may pursue their inquiries; it is not intended, in Chilean law, as a punishment in itself. When extended beyond a certain limit,

² Originally reported in Rodrigo de Arteagabeitia, "Hoy en Chile se tortura," APSI No. 365, October 22 - November 5, 1990.

³ At this writing, the Chilean Medical Association is about to consider a complaint against the police doctor presented to it by Morales's lawyers.

it does become punishment, however. In the five cases that the Chilean Commission for Human Rights submitted to the Chamber of Deputies' Commission on Human Rights in January 1991, the length of *incommunicado* detention ranged from seven to eighteen days.

In cases of terrorism, the total period of *incomunicación* permitted under the Code of Penal Procedure -- this was not affected by the "Cumplido laws" -- is twenty days: ten days of administrative detention approved by a judge, which applies only in cases of terrorism; also the normal five days' *incomunicación judicial* after which, if the judge indicts the detainee, he may renew the *incomunicación* once for five more days. Thus, although in normal criminal cases the detainee must be seen by a judge after 48 hours, a detainee suspected of terrorist activity may be in custody for up to ten days before he is physically presented to a judge. This ten-day period is, in our judgment, an invitation to engage in physical abuse. Cases of lengthy *incomunicación* are not numerous in Chile at this time, but the norm should be changed. The third "Cumplido law" provides that an *incommunicado* detainee's lawyer must have access to his client every day for up to half an hour, in the presence of a guard, to discuss the prisoner's treatment and physical wellbeing; this will mitigate against torture during *incomunicación*, but Americas Watch is aware of three prisoners who, in the first two months of the new law, have been prevented from seeing their lawyers as it requires.⁴ Moreover, even if the daily-access provision is respected and reduces the likelihood of torture, that does not ensure that *incommunicado* detention itself is not misused, for example extended arbitrarily. Americas Watch opposes *incomunicación* as a condition that invites abuse.

In the course of the year under review here, denunciations of torture suggest that methods of interrogation and intimidation may have been modified in response to the publicity given to early cases and in response, presumably, to government pressure for improvement. The methods denounced become gradually less violent, with two results: physical damage is less easily verifiable; it is also less severe. Thus, denunciations of the use of electricity are grouped in the early months of the new government, while in more recent cases a pattern of interrogation emerges which can be summed up as follows:

- ▷ **Violent arrest:** regular police and DIPOLCAR in particular tend to conduct an aggressive raid on the house of a suspect before roughly

⁴ The Ortiz brothers and Francisco Garrido; see below.

subduing him.⁵

▷ **Psychological pressure:** the detainee is blindfolded and taken to an unidentified place. He is kept separate from other detainees and may be threatened with extreme forms of torture.

▷ **Prolonged deprivation:** the detainee is forced to stand for long periods, up to three days, which exhausts him but deprives him of rest or sleep; food and water may also be withheld for a similar period.

The aim of these techniques is evidently to disorient the detainee and thus encourage him to offer information or a confession. The government has an obligation to demonstrate its rejection of such methods, which violate due process and border on torture. Full investigation and punishment of these practices are essential to restore public confidence in police investigative methods and to prevent future abuse.

In addition to the emerging pattern of treatment during detention and interrogation, as described above, there has been brutality during arrest in one recent case: that of the brothers Patricio and Pedro Ortiz Montenegro, members of the FPMR-Autónomo arrested on February 28, 1991 -- that is, two weeks after the publication of the third "Cumplido law." Despite that law's requirement that a detainee see his lawyer daily to discuss his physical condition, *Carabineros* prevented access by the Ortiz brothers' lawyer for over ten days. It was urgent, in these cases, that the right to conference be respected, for both detainees had been beaten during detention and Patricio hospitalized. Pedro, arrested first, was beaten in the face and later in less sensitive parts of the body, according to his legal complaint. Patricio Ortiz, when his house was surrounded by police agents in civil dress, drew a weapon; in the firefight that ensued, a policeman was killed. Once disarmed, Patricio Ortiz was allegedly held and beaten about the head severely enough to cause skull damage and spinal dislocation, which were medically verified. He alleges that he was also subjected to a mock execution and beaten unconscious. Pedro Ortiz alleges that during his initial detention he was seriously mistreated: forced to stand for two days and threatened with reprisals against his family, his detained brother in particular. The brothers attest that while in confinement thereafter they were not tortured, however. They have since been accused of infractions of the Arms Control Law and are among the accused in the government's case against the FPMR-A.

⁵ This is justified behavior in some cases, where the detainee may be armed, but in others it is plainly abusive, unnecessary and counterproductive, evidence more of weak intelligence capabilities than of determination or efficiency. See the Francisco Garrido case below.

2. Context

Americas Watch is encouraged that over the past year the security services are gradually treating detainees less brutally. We believe that the credit for this is shared by a few government officials, the press, and the human rights organizations that have brought cases forward. CODEPU and the *Vicaría de la Solidaridad* have filed denunciations in the courts, and the Chilean Commission for Human Rights successfully urged the Chamber of Deputies' Commission on Human Rights to denounce torture cases in January 1991. It is also noteworthy that *Investigaciones* has a good record of addressing torture complaints. Retired Gen. Horacio Toro, the director of *Investigaciones* appointed by the new government, is praised by human rights lawyers for taking complaints seriously and conducting several effective internal investigations.⁶ *Investigaciones* has also provided its ascending officers with courses on detainees' rights, taught by human rights activists; and Gen. Toro's aide on this issue is a lawyer formerly on staff with a human rights organization. These signs are strongly encouraging.

Carabinero authorities have displayed a quite different attitude, however. Despite generally good relations with the government, the police publicly refuse to acknowledge any abuse or torture of detainees, and were angered by the criticisms of the Chamber of Deputies' Commission on Human Rights. Human rights lawyers have not been kept informed of the results of internal investigations carried out by the police, though some such inquiries have been initiated. Government officials admit privately that relations with *Carabineros* have been strained over the issue of torture and mistreatment.

Nor have the courts responded quickly to torture complaints, as a rule. Where *Carabineros* are the accused, the case is taken up in military courts, and attitudes in these courts have not changed notably since the military regime. There have been delays in judges' requesting the results of medical examinations, there is judicial skepticism about examination results, and when police fail to cooperate fully with judicial demands for information, a judge may not insist. Of 23 cases handled by CODEPU at this writing, including three from April 1990, none has passed beyond the *sumario* stage. The same is true for the six torture complaints filed by the *Vicaría*, covering the same period.

At the April 24, 1991 session of the United Nations Committee against

⁶ Torture victims, especially those without political background, are often reluctant to file legal complaints due to feelings of shame or fears of reprisal. Some of these victims prefer to pursue recourse through administrative complaints to the responsible security service.

Torture, representatives of Chile acknowledged the presentation of the 35 legal complaints and explained the measures taken by Aylwin's government to prevent a recurrence of torture. Those measures include the positive performance of *Investigaciones*, as well as the guarantees that detainees enjoy of medical examination and access to counsel under Law No. 19,047, the third "Cumplido law."

The political climate does not favor respect for the physical integrity of these detainees, however, and the government has already come under pressure to take short cuts in pursuing terrorists. A usually moderate RN deputy, Evelyn Matthei, was quoted as saying in the aftermath of the Guzmán assassination that the nation would have "to grit our teeth and turn to all necessary methods to combat terrorism, including tough interrogation [methods]."⁷ While Americas Watch condemns terrorist activity, the existence of terrorist groups does not justify removing restraints on security agents, but demands, rather, that those agents become adequate to the task.

Chilean human rights organizations, condemning the political stance and violence of the armed groups, take cases only to protect detainees from torture and do not defend them against terrorism charges. Nonetheless, human rights lawyers are concerned about the legal isolation of these suspects: of 51 security-related prisoners accused of crimes post-dating March 11, 1990 and currently incarcerated, up to 20 lack legal representation.

B. Abuse of Power

Americas Watch is aware of two denunciations of excessive force involving the spectacular deaths of two members of armed groups filed against *Carabineros* and *Investigaciones*, respectively. The more recent is the case of FPMR-A member Luis Antonio Rodrigo González Rivera, in which the official version is suicide and his brother's legal complaint cites witnesses who allegedly tell a different story; the complaint also mentions multiple chest wounds and other forensic evidence allegedly at odds with the police version of events. After González's death on December 13, 1990, police revealed they had been seeking him as one participant in a museum robbery and murder of a guard in Talca, near where he died.

In the earlier case, that of Lautaro Youth Movement leader Marcos Ariel Antonioletti, who died on November 16, 1990 in an alleged firefight with agents of three different units of *Investigaciones*, the dead man's father chal-

⁷ Quoted in "El Plan Abril," *APSI*, April 22 - May 5, 1991.

⁸ CODEPU, "Listado de Presos Políticos Pos-11 de Marzo de 1990," April 12, 1991.

ges the official version based on the bullet holes at the site and the site's physical characteristics, and accuses *Investigaciones* of having murdered Antonioletti after surprising him unarmed. The dead man had been in custody until November 14, indicted for membership in an armed combat group and suspected in some twenty criminal incidents since mid-1987 including bombings of Mormon temples, robberies, and killings and woundings of police in the course of those crimes. On November 14 he was "rescued" by some of his fellows, an episode in which four prison guards were killed.

Both complaints are in *sumario*, the first in military court, the second in civilian court. In the González case, plaintiffs are asking for an exhumation of the corpse, as no autopsy was done, and in the Antonioletti case an effort is under way to verify bullet trajectories. Americas Watch urges that these deaths be thoroughly investigated.

1. Violent arrests

Newspapers have carried occasional reports of arbitrary detention accompanied by mistreatment. These detentions have generally followed acts of political violence by extreme-left groups, and interrogation has reportedly focused on any knowledge the detainee may have about the groups or individuals involved. Because they are rarely denounced to the courts, it is difficult to analyze or quantify these detentions. Evidently they do not reflect a policy of the Aylwin government. We note a few recent examples, however, to illustrate the procedures followed in anti-terrorism arrests.

The Guzmán assassination on April 1, 1991 led to police sweeps in several Santiago slums. Witnesses describe violent, forced entry into houses and petty destruction of belongings. Lilian Mathilde Guerra Cordero, a resident of the *población* Joao Goulart in La Granja, made a legal complaint against the police for bursting into her home, searching it, then detaining her in a police wagon with her head wrapped in a blanket as a blindfold. Berta Adasme Adazme denounced an April 2 raid on her home in *población* Herminda de la Victoria, Cerro Navia: *Carabineros* and men in civilian clothes broke down the door, searched her home and took her common-law husband to DIPOLCAR headquarters. In the La Bandera slum, in San Ramón, an April 12 raid resulted in the arrest of Jorge de la Fuente Llanos, whose mother denounced that a family friend taken along with her son was released the same day on instructions to inform on his neighbors for the police, under threat of death; meanwhile police denied holding Jorge and refused to tell his mother where he was being detained, according to her complaint.

The raids occurred sporadically during the first two weeks of April. Though few people made the effort to file formal complaints, human rights

lawyers estimate that up to 500 people were detained altogether, most of them held briefly for review of their police records. The authority for these arrests came from general investigating orders issued by the courts, which permit the police to search, detain and hold *incommunicado* at their discretion. The arrests cannot be called arbitrary in the strictest sense, therefore. However, it is evident from the complaints presented that the police campaign against terrorism has recently been carried out in a way that abuses and alienates the population rather than creating an alliance with it.

The police undermine public confidence in the State generally when they abuse an innocent citizen, as in the widely-publicized case of Francisco Javier Garrido, a philosophy student at Santiago's Catholic University, where Sen. Jaime Guzmán had taught law. Garrido's parents' house was violently invaded by police in the early hours of April 13; agents shot off the front door lock and burst in, dressed in combat uniforms. Four days later Garrido was violently arrested on the UC eastern campus by men in civilian clothes and taken to the 3rd Precinct, home of DIPOLCAR. Although not subjected to physical torture, he was blindfolded during his entire day-long detention and, an odd touch, was forced to cut off his beard. Also, according to his complaint, he was photographed repeatedly.

Held overnight, Garrido was then released on April 18 free of any charges. His lawyer had been refused access to him by police at the 3rd Precinct, who claimed to have no authority over the practices of DIPOLCAR. And he had not been brought before a judge, nor was there any warrant for his arrest; it was authorized under a broad investigating order. When the Chilean Commission for Human Rights took up Garrido's case, the *ministro en visita* for the Guzmán investigation subsequently defended the arrest's legality.

The requirement that a judge issue a specific arrest warrant, ordering arrest of an individual by name and with good reason, is an important principle of due process. In the cases described above, and many others, that safeguard has been set aside. Americas Watch is concerned that, given the abusive habits of the Chilean police, judges who sign broad investigating orders are tacitly tolerating the practice of intimidation as a substitute for sound investigative methods. It should be the burden of the police to identify suspects with sufficient evidence to justify individual arrest warrants.

2. Public accusations

During the later years of the military regime it was common for groups of detainees to be exhibited to the press as terrorists well before the judicial investigation of their "crimes" had been concluded. If, as sometimes happened, these people were later released without charges, the regime had created

publicity for its hard line against subversion at enormous cost to their well-being and reputations. This deprivation of due process, prohibited by the Code of Penal Procedure, has been repeated under the new government in some cases of terrorism. Both *Carabineros* and *Investigaciones* have exhibited detainees to the press after the initial period of detention and have described their alleged involvement in serious crimes before a judge had thoroughly examined the evidence or handed down any indictments.

Both police services have announced in recent months that they will no longer exhibit detainees, in order to safeguard their rights. The case responsible for this change of posture was one that covered *Carabineros* with embarrassment.

Claudio and Camilo Cavieres Montañares, both university students, were violently detained by police on February 28, 1991 in their Santiago home. After *incommunicado* detention of seven days (during which they were allegedly forced to stand for 72 hours, denied all food for three days, blindfolded at all times), they were presented to the press and officially declared to be FMPR-A members involved in a plan to injure or assassinate two members of the Supreme Court. Once a military prosecutor examined the evidence against them, however, he could find no reason to hold them, and ordered them released immediately. The gratuitous damage done to the brothers' reputations was widely criticized.

Although the practice of exhibiting detainees has been foresworn, it is disturbing that, after the Guzmán assassination, Secretary General of Government Enrique Correa rushed to make public statements on April 15 inculpating the FMPR-Autónomo, forcing the investigating judge in the case to deny that there was yet evidence to support any such conclusion. Political pressures may explain this indiscretion, as no doubt they played a role in the Cavieres brothers' cases and in others. The effect of such gestures, however, is to reduce public sensitivity to the due process rights of detainees whose cause and methods are unpopular.

3. Unnecessary force against demonstrators

Incidents of police brutality against demonstrators have received national attention, provoked condemnations from political parties in the governing coalition and led to lawsuits against *Carabineros* by affected groups and individuals. As early as the end of March 1990, when relatives and friends of three Communists murdered together in 1985 staged a small memorial gathering in downtown Santiago, near the presidential palace, they were denied authorization and roughly treated by the police guards assigned to the area. Similar treatment has been given to other, but not all, human rights

demonstrations.

The most serious incident occurred on September 11, 1990. When a crowd of some 3,000 persons arrived in the Santiago General Cemetery to mourn victims of past repression, on this seventeenth anniversary of the coup, the marchers encountered police in riot gear. This, despite the fact that the march had been authorized. The hostile appearance of the police angered demonstrators, but when the march's leaders attempted to reason with police, they refused to withdraw. When some demonstrators threw rocks at police, they opened fire, reacting with excessive force. Although the marchers fled or tried to hide behind tombs, two people were wounded, 146 briefly arrested. Carabinero authorities initially stated that their personnel had entered the cemetery only after hearing shots, and had not used their weapons; that the shots came from unknown civilians. The next police version of events suggested uncertainty as to who had fired shots. The government, meanwhile, had received reliable information as to police responsibility, and Interior Minister Krauss stated as much in public.

Similarly, the same day, a group of 30 women was violently dispersed, next to the presidential palace, when they attempted to read a declaration welcoming "an 11th of September in democracy." The group, Women for Life, had been promised authorization, but *Carabineros* arrested eleven of the women and two male supporters and held them briefly. By contrast, when UDI demonstrators had gathered without authorization in front of army barracks -- to thank the Army for democracy -- and in downtown Santiago near the presidential palace, police did not interfere with them at all.

In some cases, it is difficult to determine the extent to which police are provoked. On March 8, 1991, International Women's Day, a large public celebration was dissolved after provocation within the crowd and police reprisals. A few days earlier, on March 4, when a crowd gathered in downtown Santiago near the presidential palace as Aylwin presented the Rettig report on television, a group of demonstrators threw stones and bottles at the policemen guarding the palace building, and the crowd of 500 was dispersed by water cannon. The aim of the gathering had been to light candles for the victims whose fates would be described in the Rettig report.

Incidents of police abuse of force are not frequent or consistent enough to constitute a policy of the *Carabineros*. Nor is there any indication of a government policy to impede freedom of assembly. Police brutality appears, rather, to be a residual habit of the military period which the government condemns but is not always able to anticipate or control. Deliberate provocation of the police also has played a role in some cases.

C. Attempts to Restrict Free Expression

The Aylwin government does not restrict the news media or other forms of public discourse, and has in fact shown a strong inclination to depoliticize even those news organs over which the State traditionally has control.⁹ The most serious cases noted below involve hold-over powers that the military and police enjoyed before the promulgation of the "Cumplido laws" and the free expression law. There is also a pattern of government ambivalence about certain areas of news reporting, however, notably the military's responsibility for human rights violations.

1. Attempts by the armed forces and police

In the early months of the civilian government, the armed forces and police launched criminal complaints against, or demanded legal statements from, journalists from a variety of media.

Examples:

▷ *El Siglo*, the Communist party newspaper, in mid-April 1990 published an apparently authentic internal CNI document, some years old, listing the names of 900 CNI personnel. On April 25, journalists at the newspaper began receiving death threats, which they denounced in a petition for protection. Seven of the staff were granted temporary police protection in June. On May 12, the newspaper's director, Andrés Lagos, was detained on charges of offense to *Carabineros* for an article about a human rights case in the same mid-April issue; he was held five days. On May 15, that issue, already in its third printing, was ordered confiscated by the police prosecutor. Andrés Lagos was detained again on September 21 and formally charged on September 26 with offenses to the armed forces and instigation to sedition. *El Siglo*'s editor, Guillermo Torres, was charged with the same offenses, under the Code of Military Justice. Both were released on bail.

▷ Manuel Salazar, director of the daily *La Epoca*, was arrested on May 2 and held 24 hours *incommunicado* after the newspaper revealed the identity, and published the statements, of "Liliana Walker," a missing link in the Letelier assassination case. The military prosecutor handling the reopened investigation accused the newspaper of abducting and coercing the woman. Public outcry over Salazar's detention included an expression of disgust from President Aylwin.

⁹ Channel 7, National Television; the daily newspaper *La Nación*; and *Radio Estatal*.

▷ Osvaldo Murray, police editor for the daily *Fortín Diario*, was detained on May 16 for two days, for offenses against *Carabineros*. He had been in charge of his paper's coverage of a reporter's death in police custody. (It was determined that police treatment had not been the cause of death.) Although *Carabineros* desisted from charges against Murray after his detention, the military prosecutor pursued them anyway.

▷ On June 10, the director of the weekly magazine *Análisis*, Juan Pablo Cárdenas, revealed publicly that he had received a death threat. On September 26, Cárdenas was arrested for offending the armed forces. He had been sought for several days but had refused to present himself for detention on the recommendation of the Chilean Journalists Association. (Guillermo Torres, of *El Siglo*, did the same.) Alfonso Stephens, a lawyer and occasional columnist for the magazine, was charged with offending the armed forces on the same day.

The September arrests of the *El Siglo* and *Análisis* journalists marked the high point of controversy over press freedom. The Chilean Journalists Association announced in September that, the previous month, 18 journalists had been subpoenaed to give statements before various military courts due to pending cases from the military period. The Association protested both this holdover harassment and the new cases. It called on the armed forces to cease persecuting the press and on Congress to speed passage of the reform laws. The reforms eventually transferred most of the old and new cases into civilian courts, the exceptions being the "instigation to sedition" charges against Lagos and Torres.

2. Attempts by the government

There has been occasional tension between the press and the government regarding, in particular, human rights reporting and the military's responsibility for past abuses. The government's occasional discouragement of human rights reporting in the press cannot be described as a policy of restraint; certainly these actions do not compare with the daily instruction sheets, or *pautas blancas*, handed down to the officialist press during the military regime. The Aylwin government has committed itself to a certain detachment from the media, including State media. Thus, we include the following examples to indicate a sensitivity that human rights reporting provokes in official circles. That sensitivity can lead to a bending of principles, and we are concerned by a pattern of official arguments which, if taken to their logical conclusions, would indeed imply restraint. A few examples:

▷ In mid-April 1990, when *El Siglo* published the list of CNI personnel, the government called this reporting an invitation to reprisals against the named agents or former agents. The Chilean Journalists Association supported *El Siglo*, on the grounds that the document it had published appeared to be genuine and qualified as news.¹⁰

▷ In July 1990, when the northern weekly *El Magallanes* published a threatening interview with an unnamed army officer, government officials stated that freedom of expression should not be utilized to destabilize the State and that the interview constituted an abuse of press freedom.¹¹ The Chilean Journalists Association sided with the newspaper's publication of the interview and with its right to keep the name of the officer confidential.

▷ In March 1991, former DINA collaborator Luz Arce Sandoval's testimony to the Rettig Commission was reprinted in the newsmagazines *APSI* and *Hoy*. The government's reaction included a public statement by the Secretary General of Government that issues of the magazines would be confiscated by judicial order. There was no judicial order and the statement was misleading, but the government was arguing, once again, that to publish names of torturers, as identified and described by Luz Arce, would expose such people to reprisals and the press would bear part of the blame.

▷ After the Guzmán assassination, some members of Congress, including some representatives of *Concertación* parties, showed interest in a suggestion to prohibit publication of news items on terrorist incidents. This was firmly opposed by the press and taken no further.

▷ Also in April, however, acting Interior Minister Enrique Correa publicly criticized *APSI* magazine for an article exposing the current (important) posts held by certain former DINA agents still in active army service.¹² Correa argued that the magazine's reporting violated the rights of the persons mentioned. *APSI* defended its reporting.

¹⁰ The mid-April *El Siglo* issue was, in fact, widely criticized, outside the government as well as within. Articles it contained on various human rights cases were inaccurate in many details; the reporting was careless and outraged the relatives of the victims described. But the authenticity of the CNI list has not, to our knowledge, been impugned.

¹¹ For some detail on this interview and its implications, see Section III-A.

¹² The most senior of these, Gen. Luis Henríquez Riffó, is the current chief of the *Estado Mayor*. Official documents identify him as working for DINA between the end of October 1974 and early January 1976.

Chile's press is extremely aware of its responsibility not to assign blame for or association with past abuses frivolously. *APSI* in particular, and the newsmagazines that emerged as opposition press under the dictatorship and continue to pursue human rights issues vigorously, go out of their way to apologize for any mistaken or misleading identifications, and they print detailed, explicit retractions of any errors. This indicates that they are aware of the danger of disseminating names and photographs of alleged violators of human rights.

The government's argument in the *El Siglo*, Luz Arce and post-Guzmán cases is also specious, for two reasons, one circumstantial and one of principle. The first is that the identities of senior and middle-level officers involved in repression are well known to those who study such things; a vast human rights archive exists on the Chilean dictatorship, and if an armed group wished to select a target, the articles printed in the newspapers over the past year would offer little new information. The second reason is that this information is part of the truth that Chile's population deserves to know about its past, and the press is fulfilling its proper function in revealing what it learns of that truth.

VI. ROLE OF THE UNITED STATES

In the past two decades, U.S. Administrations' policies toward Chile have run the gamut from interference with Allende's assumption of the Presidency to covert CIA destabilization of his government to support for Pinochet's consolidation and, gradually in the mid-1980s, to disenchantment with Pinochet. At the same time, Chile was the nation whose human rights crisis first produced U.S. human rights legislation in 1974 and 1975. A strong human rights constituency in the U.S. Congress during the 1970s and 80s worked consistently on behalf of Chile's victims. By the time of the 1988 presidential plebiscite in Chile, U.S. relations with the military regime were strained, and the Reagan Administration supported the manner in which Chile's then-opposition moved toward the democratic transition. The Aylwin government expected, therefore, that the Bush Administration would support it in any way possible.

The U.S. Embassy in Chile has not been especially visible under Aylwin, but relations are evidently cordial. The main irritant, during 1990, was the fact that the United States did not rush to lift sanctions on aid to Chile which had been imposed due to human rights violations during the Pinochet regime. These sanctions involved bilateral economic and military aid, under Section 726(b) of the International Security and Development Cooperation Act of 1981, and -- what proved to be a more difficult problem -- trade benefits under the Generalized System of Preferences (GSP). The first had been withheld since 1976 on general human rights grounds and because the Chilean government had achieved no legal progress on the Letelier-Moffitt assassination case. The second had been withheld since 1987 due to violations of labor rights.

The Aylwin government did not appreciate the United States's delay in lifting the restrictions, and the focus of United States-Chile relations during 1990 was negotiations for lifting them. This was finally achieved on November 30, although the "solution" appears to Americas Watch to have been precipitate.

As President Bush was preparing an early December visit to Chile -- less than 24 hours, as part of a Latin American tour -- rightist members of the Chilean Congress made it known that they would boycott or seek to block Bush's planned speech to the Congress unless aid restrictions were lifted. Soon before the trip, State Department officials approached key members of the U.S. Congress to convince them that this was the moment to support Chilean democracy by lifting the ban on bilateral aid. The law governing U.S. aid to Chile contained a requirement that the Chilean government must "ha[ve] taken

appropriate steps to cooperate to bring to justice by all legal means available in the United States and Chile" the DINA officers indicted by a U.S. grand jury in the Letelier-Moffitt assassination case. In late November, all that had occurred was that the Aylwin government had proposed, in the third "Cumplido law," to transfer the case to civilian court;¹ the law had not yet been passed, and in the meantime the case ran a risk of being definitively closed in the *Corte Marcial*.

Nonetheless, the Bush Administration certified Chile for aid on November 30, and President Bush's speech went forward without incident. At this writing, half a year after the certification, the Letelier case has yet to be taken up by a civilian court. While Americas Watch is fully conscious of what certification meant to the Aylwin government politically -- Defense Minister Rojas traveled to Washington with a military delegation to talk about aid in March 1991, with much fanfare -- we question the timing of the U.S. decision and its immediate motives. It is not, for example, immediately clear to us why, in the words of the certification document, enabling the United States and Chile to "reestablish a normal relationship" would automatically "help to develop the Chilean armed forces as an institution subordinate to and supportive of democratically elected, civilian government." Certainly the Aylwin government deserved to be free of the stigma attached to Pinochet on general human rights grounds, but we believe that the Letelier case is far from completed and requires continuing U.S. concern.

The Bush Administration has since proposed \$1 million in military aid for Chile and \$150,000 in military training funds (IMET). It is hard to quarrel with small amounts of military aid, especially as the thrust of the Aylwin government's aid requests is toward supporting the Air Force, the service which has most consistently acted well on human rights during the past year. It would be another matter, however, to direct aid toward the Army while Pinochet's position *vis à vis* the civilian government remains so competitive and his stance on human rights so unrepentant. Americas Watch urges that aid amounts be kept minimal and that the type and recipients of aid be selective.

As to the Generalized System of Preferences, the most difficult issue between the United States and Chile has not been labor rights (the reason GSP benefits were suspended) but intellectual property rights, and this delayed a change in U.S. policy until recently. Those difficulties have not yet been fully resolved, but Chile nonetheless was reinstated for trade benefits by order of President Bush in February 1991. Americas Watch considers that, given the

¹ See Section III-B above.

improvement in respect for labor rights and the fact that Chile's labor federations support reinstatement of GSP, this change of policy is justified.