

CHILE

The Struggle for Truth and Justice for Past Human Rights Violations

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I. Summary

For more than sixteen years, September 1973 to March 1990, Chileans experienced the first sustained military dictatorship in their history and saw relatives, political leaders, unions, parties and the institutional structure of their former democracy come under attack. The use of political executions, disappearances, systematic torture, violent activity by paramilitary groups, forced exile, blacklisting, censorship, internal banishment, and massive searches without warrant was characteristic of official policy during the regime of Gen. Augusto Pinochet. Yet from 1973 to the present, military officials have systematically escaped full prosecution for human rights charges, although in a handful of cases there are hopeful recent developments. Moreover, an amnesty law decreed by the military government in 1978 automatically pardoned human rights abuses during the regime's first five and a half years, such that a conservative Supreme Court — sympathetic to the military during the former government — applies the amnesty to forestall

investigations into human rights abuses for that period, including the bulk of political assassinations and virtually all disappearances.

Exhumations of unmarked graves, which began with the advent of civilian rule, have continued in the Aylwin government's second year; a total of 117 bodies were unearthed in the largest investigation, that of Patio 29 of the Santiago General Cemetery, and are in the process of identification. Despite such constant reminders of the past, however, and the continuing human rights-related stories in the national press, public debate about human rights violations during the military regime has virtually ceased since March 1991. At that time an official commission released its magisterial report on past abuses and issued recommendations on several issues: reparations to survivors, broad education on human rights, and measures (including full prosecutions) to prevent any repetition of past crimes. That report — colloquially known as the Rettig Report, after the chairman of the commission that produced it¹ — was a landmark worthy of note and congratulation. But the public discussion and reflection that had been planned as a follow-up to the report were cut off abruptly after only three weeks: on April 1, 1991, a prominent opposition senator was assassinated, apparently by extreme-leftists, and the issue of terrorism was cited by the rightist opposition as reason to back away from the wounds that the Rettig Report had exposed. One opposition leader wrote at the time that the assassination "puts a final end to the Truth and Reconciliation report."²

The government seemed to agree, for the Rettig Report, with its deeply disturbing revelations and conclusions, has not re-surfaced since. Indeed, so cautious has the government been to avoid the political divisions reflected in the issue of past abuses, that tens of thousands of copies of the report are reported to remain warehoused in the Presidential palace, held back from circulation. Findings by a human rights group that suggest the Rettig Report figures on dead and disappeared may be substantially lower than the actual incidence of these crimes, have not received public attention, although they may be investigated in the coming year.

Today in Chile, human rights are not abused as a matter of policy. Patricio Aylwin's government, within the legal limits established by the out-going military regime, strives to be representative, responsive, and just. Aylwin himself enjoys broad public support, and has shown a remarkable capacity to communicate his ethical commitment to a fairer society even when promoting policies that may frustrate social expectations, like aspects of the neoliberal economic program. This does not mean, however, that the past has been either forgotten or overcome; a significant portion of the citizenry considers that further action — full prosecution of military, police and civilian violators of human rights — is needed.³

There have been advances in this regard, in a few cases not covered by the 1978 amnesty. In

¹ The eight-member National Commission on Truth and Reconciliation, selected and sponsored by President Patricio Aylwin, was chaired by Raúl Rettig, lawyer and former Senator of the centrist Radical Party. After nine months of intensive work, including interviews with survivors throughout Chile, the commission delivered its report to President Aylwin on February 8, 1991. The President presented the report to the nation in a televised address on March 4, after which the government-owned newspaper, *La Nación*, published the lengthy report in full, in special supplements, and other newspapers also published parts of the document. The report was later issued as a two-volume book.

² Francisco Javier Errázuriz, "El asesinato de Jaime Guzmán," *La Epoca*, April 3, 1991.

³ See findings of the *Participa* poll, described below.

recent months, several civilian judges have shown determination to resolve exemplary cases; they face severe handicaps, due to legal and political pressures on their jurisdiction, as noted below, but their efforts are a positive sign. Less positive is the length of time that the court system has taken to adjudicate the cases of about 45 security-related prisoners held over from the military period, who have not been convicted but some of whom have already served more than their potential sentences.

The legacy of political violence left by the military government, and the destitution in which some five million Chileans (close to 40 percent of the population) continue to live, have produced terrorist movements and a rise in common crime. In this context, police powers are being broadened, and there are frequent reports of police abuse of power, although this is evidently not a policy of the government. And, although there is no evidence of a systematic policy of extreme physical abuse, some security-related and even common-crime detainees have credibly denounced torture and serious ill-treatment, primarily by police.

Chile's civilian government inherited a system, designed by the military and articulated in its 1980 Constitution, which ensured that the rightist opposition would have disproportionate representation in Congress⁴ and, among other limitations, stipulated that the new President would not have the authority to remove the commanders of the three armed forces. The institutional reforms the Aylwin government has undertaken have all been cut back drastically in Congress by pressure from the political Right and, in some particularly dramatic cases like the judicial reform package currently in limbo, not only have lost much of their meaning but, through political mismanagement, have foundered even in reduced form. Where the government approaches the military's "territory" — whether by proposing a new Armed Forces Law to increase civilian authority or by strengthening the civilian intelligence agency — some reprisal from the Army is not long in coming, and although the government has responded to military pressures with agility, the presence of Pinochet as Army commander continues to limit the government's options. Americas Watch has analyzed the Constitution's restraints on civilian authority in earlier publications,⁵ and here we limit ourselves to noting that the civilian government that currently governs Chile does not enjoy all the attributes of a full democracy; this is a reality recognized by human rights advocates in Chile and government officials alike. Some of the costs can be measured, such as the votes belonging to eight senators appointed by Gen. Pinochet. Other costs, like the recent, Army-engineered resignation of the chief of the civil-detective force *Investigaciones*, are beyond easy measurement.

This update examines the past year and complements our most recent report on Chile, published in July 1991.

⁴ The "binomial" system, created by the military regime for the 1989 elections, favors third-place winners over second-place winners in a system that requires each contending force to present two candidates per race. In order to win both 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 gain fifty percent of the representation; this is what rightist parties did in many races in 1989. See Americas Watch, *Chile in Transition: Human Rights since the Plebiscite, 1988-1989* (New York: Human Rights Watch, 1989), pp. 60-62.

⁵ See, for example, *Human Rights and the "Politics of Agreements": Chile During President Aylwin's First Year* (New York: Human Rights Watch, 1991).

II. Truth and Justice Regarding Past Human Rights Abuses

The Rettig Report found a total of more than 2,000 cases in which the military government was, in its judgment, responsible for extrajudicial executions and for disappearances leading to presumed death.⁶ To this number might be added some 200 cases that have reached human rights organizations since the Commission completed its work and which are under examination. Further, a study by the Chilean Commission for Human Rights (CCDH) and based on death certificates filed between September and December 1973 in the country as a whole, establishes that there are 648 cases of death by gunshot which do not appear in the Rettig Report.⁷ CCDH is careful to note that these may not correspond to human rights violations, but given conditions at the time — state of siege, curfew from dusk to dawn — and the distribution of the corpses — nearly half were found in public byways, 19 in military hospitals, 37 in the Mapocho River that runs through Santiago and another 33 in other rivers and canals, favorite dumping grounds for the official forces — it seems likely that the actual number of deaths, in the regime's early months, was substantially higher than the Rettig Commission was able, in its short tenure, to establish.⁸ It will be important to establish the true details of these deaths, just as it is important to continue seeking the remains of the dead.

A. Social justice and reparations

Following the recommendation of the Rettig Commission, the Chilean government has created a Corporation on Reparation and Reconciliation, headed by a prominent human rights advocate and with a politically diverse board of advisors.⁹ This is the first such institution in Latin America. The Corporation has a two-year mandate¹⁰ to

- promote reparations and other forms of aid to victims;
- assist in the search for remains of the disappeared and clarification of the circumstances of their presumed deaths, including maintenance of an archive on pending disappearance cases;

⁶ The total number of victims of human rights violations, according to the Commission, was 2,115, but this included 90 deaths caused by armed oppositionists; there were a further 164 cases defined as victims of political violence, which included both victims of State violence and victims of violent opposition to the regime. Details on the Rettig Report findings are in Americas Watch, *Human Rights and the "Politics of Agreement,"* pp. 17-35.

⁷ Some of these 648 no doubt duplicate the cases being brought forward by relatives.

⁸ Comisión Chilena de Derechos Humanos, "Investigación sobre las Muertes por Heridas de Bala Registradas entre el 11 de Septiembre y 31 de Diciembre de 1973," Santiago, 1991, pp. 15 and 19.

⁹ The corporation's president is Alejandro González, former executive secretary of the *Vicaría de la Solidaridad*, human rights office of the Santiago archdiocese. The board of advisors is composed of Germán Molina, Rodolfo Armas, Carlos Andrade, José Luis Cea, Jorge Correa and Carlos Raymond.

¹⁰ A one-year extension is permitted.

- organize and maintain the files of the Rettig Commission as well as its own case files;
- pursue conclusive information on, and resolve for purposes of ensuring reparation where appropriate, cases about which the Rettig Commission could not form definite conclusions (these totaled 634), as well as those cases (reportedly several hundred) which have been filed with human rights organizations since the Rettig Commission completed its work;
- secure medical and other services pertinent to the corporation's responsibilities for administering reparatory benefits;
- formulate proposals for the consolidation of a culture respectful of human rights.

The reparations specified by the law include a fixed pension — a lump sum plus monthly stipends — for spouses and parents of the disappeared and executed, and a smaller amount for children under age 25 or, if handicapped in any way, offspring of any age. Of the 140,000 pesos in the monthly payment (approximately \$420.00), forty percent is allotted to the surviving spouse; thirty percent to the mother of the victim, or, if she is not living, to the father; fifteen percent to the mother (or father if appropriate) of any surviving children of the victim; fifteen percent to each child under 25 years old, or of any age if handicapped — even if there is more than one child and the amount to be paid therefore exceeds the standard monthly pension. The law provides for numerous contingencies; and, although the amount to be distributed is not large, there is an attempt to compensate by including the broadest possible categories of persons, in such situations as the remarriage of the spouse, the illegitimacy of offspring, the existence of children conceived before the victim's death or disappearance though born afterward, etc.

In addition to financial reparation, the law provides for medical attention without charge and scholarships for children until they are 35 years of age. Finally, in one of several improvements made in the law since the initial draft last year, children of victims of disappearance or political execution at the hands of the military government are not required to perform military service but may make themselves available for conscription if they wish; relatives had not favored inflexible exemption, and had requested the option to participate in this aspect of national life like any other citizens.

The corporation is expected to dedicate much of its time to seeking new information on the remains of the disappeared and referring that information to the courts so that exhumations may be ordered. Under current conditions, however, it seems unlikely that this, or the referral of now-pending cases to the courts, will lead to full prosecution of those responsible.

B. The rule of impunity

In a poll conducted by Chile's three major polling concerns in early 1992, Chileans were asked what was lacking in the democracy they had enjoyed for the previous two years. Choosing among such possibilities as "changing the electoral system" and "eliminating appointed senators," the largest group of respondents answered that what was lacking was "that those guilty of human rights violations be brought to judgment."¹¹ The poll also demonstrated deep

¹¹ "Estudio Sobre Valores Democráticos," poll conducted for *Participa* by FLACSO, CERC, and CEP-Adimark, dated March 30, 1992. This answer was given by 26

public dissatisfaction with the judicial system, which at the highest levels has notoriously failed to prosecute violators of human rights. A recent example:

In December 1991, lower-court judge Raúl Beltrami of Quillota, in the south of Chile, ordered an excavation within the grounds of the Army's cavalry regiment there. The judge had reason to expect to find the remains of three men disappeared since January 1974, whom the military government had accused of attacking a group of soldiers and escaping afterwards. The regimental commander, Gen. Francisco Pérez Egert, refused the judge access — despite a law, passed during the new government, that expressly authorized lower-court judges to carry out preliminary investigative procedures on military property¹² — and was charged with failure to cooperate with a judicial official. This was especially delicate as the government had recently approached General Pérez for the post of military attaché in London. Military courts sought and received jurisdiction of the case against General Pérez and in May 1992 the Supreme Court accepted two technical complaints against Judge Beltrami and reprimanded him for pursuing his duty. The charge against General Pérez was dismissed. A legitimate inquiry was prevented, the offending party let off, and civilian judges in general were warned not to press in human rights cases.

The Quillota case reflects realities that influence all human rights prosecutions in Chile. When military personnel are charged or likely to be charged, military courts seek jurisdiction under a broadly-worded article of the Code of Military Justice,¹³ and the case passes into investigative limbo or is "resolved" in the military defendant's favor. Combined with the amnesty of 1978, which is misapplied by the Supreme Court to terminate vigorous investigations into disappearances and early executions, the military's jurisdiction has ensured that — with few exceptions, some of which are noted below — human rights prosecutions are not adequately pursued.

Even when evidence is overwhelming, and a special investigating judge has delivered indictments, he cannot expect support from the Supreme Court. One well-known case, which enjoyed the benefits of broad public exposure and political pressure for a thorough prosecution, is that of José Carrasco.

In the early morning of September 9, 1986, just hours after a squad of the far-left Manuel Rodríguez Patriotic Front attempted to assassinate General Pinochet and killed instead five of his bodyguards, José Carrasco, international editor of *Análisis* magazine, and three other men seemingly unrelated to him or each other, were dragged from their homes and executed by multiple bullet wounds. The group that took responsibility, a paramilitary unit calling itself the September 11th Command, was traced to the security police CNI (*Central Nacional de Informaciones*, the security police operative between 1978 and 1990). In 1990, with the civilian

percent of respondents. In second place, with 24 percent, came "changing the electoral system." By contrast, "freeing the so-called political prisoners" was considered a priority by only 3.7 percent.

¹² This authority was established in the "Cumplido laws," named for Aylwin's minister of justice, which were the new government's broadest attempt to protect individual rights and amend the military's most repressive legislation. See Americas Watch, *Human Rights and the "Politics of Agreements,"* pp. 52-60.

¹³ Article 5(3). See discussion of this issue in *Ibid.*, p. 40.

government installed, the special judge assigned to investigate the case indicted Jorge Vargas Bories, a known CNI agent, and held him in custody from December 1990 through April 1991. The defense appealed, and when the appellate court confirmed the indictment and the judge's refusal to grant bail, a technical complaint was submitted to the Supreme Court. Vargas was freed and exonerated when the Supreme Court accepted this complaint, and the case has stalled since, in part due to lack of funds; the families of the victims, who must pay the costs of the prosecution, cannot afford some of the procedures that would move it forward.

The vast majority of human rights cases have even fewer prospects than this one. There are only a few exemplary prosecutions, virtually all from the post-amnesty period, which are viewed as potentially successful. Each has special features that render it unique.

C. Progress in key legal cases

1. The Letelier-Moffitt case

In September 1976, in Washington, D.C., exiled former Foreign Minister Orlando Letelier, driving to work with an American co-worker and her husband, was assassinated by car-bomb. Ronni Karpen Moffitt also died; her husband Michael survived. A U.S. grand jury indicted Cuban-exile terrorists and four members of DINA (*Dirección de Inteligencia Nacional*) Pinochet's first security police, including the agency's chief of operations and its director, both active-duty Army officers at the time. In Chile, an investigation into falsification of passports began in 1978 in military jurisdiction (the two lower-level DINA agents had traveled to the United States under false identities); the case was specially exempted from the amnesty of 1978, under pressure from the United States, but the investigation languished for twelve years nonetheless.

In 1991, as a result of a new law,¹⁴ the case was given special status once again and, after delays, was transferred out of military hands. A newly-appointed member of the Supreme Court, Justice Adolfo Bañados, took over the investigation and, in September 1991, indicted both the DINA's former director, retired Army Gen. Manuel Contreras Sepúlveda — until then considered untouchable — and the agency's former operations chief, Army Brig. Pedro Espinoza. The two remained in custody for three months before Justice Bañados considered his interrogations complete and closed his investigation, releasing the two on bail. At the defense's request, the inquiry has been reopened to pursue issues raised by the defense, principally Contreras's contention that the killing was ordered by the CIA.

The Letelier-Moffitt case enjoys a unique position among Chilean human rights cases: virtually since the day of the crime, its prosecution has been a key element in U.S.-Chile relations. The case has been granted — as an exception — guarantees that should be integral to all human rights cases, and therefore has a chance of bringing the guilty to justice. The thorough investigation conducted by Justice Bañados has, moreover, permitted this exceptional case to benefit investigations into other abuses. For example, the ex-wife of former DINA agent Michael Townley (he is a principal in the case) revealed publicly, as a corollary to her statements to Bañados, that in the basement of their DINA-donated house Townley and others not only worked on the development of a poison gas to be used in stealthy executions, but also held detainees in

¹⁴ No. 19,047, the last Cumplido law to be passed. For discussion of the treatment of the Letelier-Moffitt case in this law, and the reasons for delay in its transferral into civilian courts, see *Ibid.*, pp. 62-63.

makeshift cells. One such detainee, according to evidence first uncovered in the Letelier-Moffitt case, was United Nations employee Carmelo Soria, whose lifeless body was recovered from a Santiago canal in July 1976 and whose death was never fully clarified, although the courts rejected the official version that it was a drunk-driving accident. There is evidence to suggest that two of the principals in the Letelier assassination, a Cuban exile and DINA's chief Contreras, had direct involvement in the Soria execution.¹⁵ Similarly, progress in the Letelier-Moffitt case has opened possibilities for prosecutions of two other landmark actions of DINA, the September 1974 car-bomb assassinations of former Army commander Gen. Carlos Prats and his wife in Buenos Aires and the September 1975 attempted assassination, in Rome, of Christian Democratic leader-in-exile Bernardo Leighton, who with his wife survived the attack.¹⁶

2. The "degollados" case

Degollar means to slit the throat. In March 1985, while the country was under state of siege and movement by unauthorized persons was tightly controlled, three men were kidnapped — two together, one separately — and killed by this method, their bodies left by the desolate road to the Santiago airport. All three were Communists, but it remains unclear why they in particular were selected.

A civilian judge, José Cánovas, established that a group of related kidnappings had been carried out by a group within DICOMAR (*Dirección de Comunicaciones de Carabineros*), an intelligence unit within the militarized police, and indicted seven police officers including retired Col. Luis Fontaine, former DICOMAR director; the resulting scandal forced the Carabinero member of the military junta, Gen. César Mendoza, to resign. The case was so politically sensitive that when Cánovas offered to give up jurisdiction to the military courts, they refused to handle it; meanwhile, the Supreme Court ordered all indictments dropped. Cánovas attempted then to focus in on the three homicides, but encountered resistance from the police. In early 1992, the investigation received new impetus. Judge Milton Juica has since indicted twenty members of the police; sixteen were retired from the force, three were active-duty, and one had been dismissed but may be reinstated for purposes of his defense. Of the many officers indicted, the highest ranking is a retired major.¹⁷

Two Socialist Party senators recently called for the resignation of Carabinero Commander

¹⁵ The Soria case is in its own way exceptional: a naturalized Chilean of Spanish origin, Soria's diplomatic status may exempt his killing from the 1978 amnesty law. Soria's daughter, with support from the Economic Commission for Latin America — the U.N. agency in which Soria worked — has succeeded in convincing the government to seek a *ministro de fuero* (member of the Supreme Court as investigative judge, the same procedure followed in the Letelier case) to pursue the inquiry.

¹⁶ Unlike in other human rights cases, the government has made itself a party to the Letelier-Moffitt and Leighton cases, adding its weight and prestige to the prosecution.

There have been no convictions in the cases of either Prats or Leighton; the assumption that DINA was responsible is based on evidence possessed by human rights organizations and published in the Rettig Report.

¹⁷ Initial breakthroughs in this case were due to cooperation from CNI, whose competition with DICOMAR made it eager to clarify the killings.

Gen. Rodolfo Stange, who was deputy director of the police at the time of the murders but has consistently denied knowledge of police involvement. The two senators who called for his resignation subsequently received death threats. It is widely recognized that the police, as an institution, have been shaken by the indictments, but it is also evident that the police leadership — when it could and should have investigated the case in the late 1980s — either failed to pursue the evidence or covered it up.

3. Tucapel Jiménez

Centrist labor leader Tucapel Jiménez, who originally did not oppose the military government but became disillusioned and called for independent labor action, was murdered in 1982 with particular violence, his throat slit and five shots to the head. The investigation undertaken by a special judge revealed that he had been under surveillance by CNI agents and that his murder was part of a plan to intimidate the labor movement. But in 1983 the dead body of carpenter Juan Alegría was found in Valparaíso, at his side a flashlight of Jiménez's and a note "confessing" the murder of Jiménez. The deaths of Jiménez and Alegría were henceforth considered a single combined case. In the face of non-cooperation from the intelligence community, the case was temporarily closed from 1985 to 1990 but has been pursued vigorously since. The May 13, 1992 arrest of former CNI operations director Alvaro Corbalán, after three months in which Corbalán evaded the police, brings it significantly closer to resolution. Corbalán has been charged with the murder of Juan Alegría, and the Army has decided not to pay his legal costs. Two other ex-CNI agents are also charged.

Like the Letelier-Moffitt case, the case of Tucapel Jiménez may lead to revelations concerning other crimes, inasmuch as Corbalán and his close associates in the CNI have been linked to the four September 1986 executions (cf. Carrasco, above), the street assassination of leftist political figure Jécar Neghme in 1989, a CNI operation code-named "Albania" that took the lives of 12 persons linked to the Manuel Rodríguez Patriotic Front in 1987, and other grave abuses of the Pinochet regime's later years.

D. Challenge to the 1978 amnesty

In April 1992, a legislative proposal was placed before Congress, by four Socialist senators, three of their Christian Democratic colleagues and a senator of the center-left *Partido Por la Democracia* (Party for Democracy or PPD), to annul the effects of the 1978 amnesty law, Decree-Law 2191, regarding grave abuses of human rights. The aim of the proposal is consistent with the 1989 electoral platform of the governing coalition. The sponsors' presentation argues that annulling the effects of the 1978 amnesty is in conformity with existing international human rights and humanitarian law.

The legislation is controversial even within the governing coalition, in part because annulling the amnesty is an extremely difficult political battle to win in Congress and in part because the proposed legislation emphasizes Article 3 common to the four Geneva Conventions (also known as Common Article 3), which is applied in the event of internal armed conflict and seeks to prevent cruelty to non-combatants and those combatants who have laid down their arms. The legislative sponsors consider that Common Article 3 is relevant because, according to the legal order imposed by the military regime, an internal armed conflict was "juridically" extant in Chile between the date of the 1973 coup and the day that President Aylwin took office, even though in fact there was no significant armed opposition at any time; thus, it is argued, infractions of Common Article 3 should be punished under national law, including homicides, executions

following the decisions of improperly constituted courts, and torture.

The proposal declares crimes against humanity, such as disappearance, to be outside the scope of amnesties or statutes of limitations. The various organizations of victims' relatives have announced plans to mount a national campaign for the gathering of one million signatures in support of the legislation.

III. Prisoners Held Over from the Pinochet Period

There are currently, in Santiago prisons, fewer than 50 persons accused of security-related offenses under the military regime.¹⁸ This number stands in contrast to the more than 350 incarcerated when President Aylwin took office. The majority of remaining prisoners are those accused of the most violent security-related crimes, and are also persons who were subjected to torture when first detained. Their public image is not helped by continuing violent actions of groups associated with the extreme left,¹⁹ whether or not individual prisoners agree with ongoing anti-government violence; they are therefore politically isolated, held over in circumstances very different from the ones that prompted them to take up weapons.

Conditions of confinement for these prisoners are considered relatively good; the men in Santiago's former Public Jail, who constitute the vast majority of these prisoners, have arrived at terms of coexistence with their guards, and enjoy frequent family visits and other basic considerations. The difficulty facing the prisoners is that, although the government appears disposed to pardon them for humanitarian reasons, this cannot occur until defendants have been convicted, and the cases against these prisoners have proceeded slowly in spite of government efforts to streamline the judicial process for them.²⁰ As of the end of March 1992, three prisoners had spent more than nine years in prison without completion of trial; three others have spent nine years, and the bulk had spent between three and four years.²¹

The prisoners also face limitations on their right to due process. As of March 31, 1992, there were 39 cases underway against Pinochet-era prisoners in military court (some of these being second, third or even fourth charges against a single detainee); this constituted more than one-third of the total cases underway against this group of prisoners.²² Those with cases in military court — for example, those charged under the Arms Control Law — lack the guarantees of

¹⁸ As of March 31, 1992, according to the *Fundación de Ayuda Social de las Iglesias Cristianas* (FASIC), which maintains detailed information on remaining prisoners, there were 51 incarcerated; that number has since been reduced as defendants have been convicted and pardoned. Of the 51 in prison as of March 31, 46 were men and 5, women. See FASIC, "Presos Políticos del Régimen Militar, Nóminas y Cuadros Estadísticos al 31 de Marzo de 1992," (Santiago: 1992) Table 3, p. 10.

¹⁹ The Aylwin government has confronted terrorist activity by several small groups, the most important of which have been the *Frente Patriótico Manuel Rodríguez* (*Autónomo*) and the *Movimiento Juvenil Lautarista* and other faces of the so-called *Lautaro* movement. These groups kill policemen, rob banks and businesses, attack police stations. Their activity routinely places innocent persons in danger and in some cases has caused the deaths of bystanders.

²⁰ The political debate surrounding the prisoners, and the government's efforts to speed up their cases, are discussed in Americas Watch, *Human Rights and the "Politics of Agreements,"* pp. 54-57.

²¹ See FASIC, Table 7, p. 12.

²² The number of cases underway in civilian courts was, at the same date, 91. Although most prisoners face only one charge, ten faced 2 charges, two faced 3, three faced 4, and so on, with three prisoners facing 8 charges each. See *Ibid.*, Table 12, p. 14.

adequate defense they would enjoy in civilian jurisdiction. Military courts remain sensitive to the wishes of the military command, despite reforms achieved in the Aylwin government's first year.²³ Military courts also tend to apply the harshest possible sentences to security offenses, while civilian judges have taken advantage of the more proportional sentences made possible under the new government's legislation.²⁴

Meanwhile, for any prisoner whose original statement was extracted under torture, the new laws provide only a partial protection: the prisoner may revise that statement, but both the original and new statements may be counted as evidence; evaluation of the weight of evidence is a matter left to the judge's discretion. It is heartening when a judge explicitly refuses to admit a coerced confession into evidence, but the law does not require this sensitivity. Americas Watch believes, however, that international law requires that evidence obtained under torture be excluded as evidence.

Human rights lawyers working with prisoner cases believe that the problem of the "political prisoners" will not be fully resolved before early 1993 because of the slow pace of judicial investigations. The years that these defendants have spent behind bars, waiting for trial, make a sad contrast to the impunity that members of the military, police and intelligence establishment of the dictatorship continue to enjoy.

IV. Denunciations of Torture, Cruel Treatment, Abuse of Power

As we noted in our July 1991 report, the Aylwin government has not been associated with a policy of torture. There have been, however, more than fifty complaints of serious ill-treatment of detainees since the new government took office, of which fifteen were filed since July 1991.²⁵

²³ See Americas Watch, *Human Rights and the "Politics of Agreements,"* pp. 54-57, for discussion of the legal reforms affecting security-related prisoners in the civilian government's first year, for example a measure to increase the autonomy of judges in the military appeals court or *Corte Marcial*.

²⁴ One prisoner, Félix Madariada, accused of the crimes of belonging to a militarily-organized party and possessing a weapon (i.e. not charged with direct participation in any violent crime), faces a possible sentence in military court of twelve years.

In another case, in which a policeman was killed in a shootout following an attempted robbery — the "Lautaro Bakery case" or "Vicaría case" because it represented the Pinochet government's most sustained attack on a human rights organization — two prisoners accused as accomplices are facing the possibility of life imprisonment and a third, fifteen years. [For background on the case see Americas Watch, *The Vicaría de la Solidaridad in Chile* (Americas Watch: New York, 1987) pp. 38-42].

A contrasting example, in civilian court, would be the case against persons charged with involvement in the September 1986 attempt to assassinate Pinochet; this case was transferred out of military court by the "Cumplido laws." One defendant, a doctor accused of attending to wounded terrorists, now faces a four-year sentence, down from the 18 years requested in military court.

²⁵ See CODEPU paper, "Relación de Denuncias de Tortura Recibidas por CODEPU Correspondientes al Período Marzo 1990-Abril 1992." CODEPU (*Comité de Defensa de los Derechos del Pueblo*, or Committee for the Defense of People's Rights) is a legal-aid organization which, as a matter of policy, does not represent persons accused

Of the 55 complaints filed under the Aylwin government, not one has gone beyond the investigative stage as yet, despite the existence of medical corroboration in some cases. Of the 15 cases occurring after July of last year, the majority involve police and the police's anti-terrorism unit, DIPOLCAR — which is consistent with the practices of the first year of civilian rule — but in two recent cases, electric current was allegedly used on detainees in custody of Investigaciones, the civil-detective force.²⁶

The most common form of ill-treatment is beatings, and the most commonly beaten detainees are those accused of security-related offenses, but there is evidence that ill-treatment extends to persons picked up as supposed delinquents and to persons who, while not engaged in any violent activity, are considered politically undesirable by the police.²⁷ Human rights lawyers are aware of more cases than they file, and in fact many victims prefer to seek vindication, if not redress, by asking lawyers to present their complaints privately, through administrative channels. Investigaciones has generally been responsive to such quiet complaints. Not only have administrative proceedings gone forward, but it is known that Investigaciones agents have been punished. Under retired Gen. Horacio Toro, indeed, Investigaciones gained a reputation for cleaning its house of abusive personnel and reforming its interrogative practices; the recent denunciations of the use of electricity, which suggest a possible reversal of this trend, are of great concern. A political scandal that led to Toro's removal made clear that, within Investigaciones, there are still many agents sympathetic to the Army and Pinochet;²⁸ the recent denunciations of

of security-related offenses under the new government, but does file complaints on behalf of such persons when there is reason to believe they have been physically abused in custody.

²⁶ Cristián Cárdenas Jofre, detained on March 9, 1992, denounced beatings with palms of the hand, fists, and feet and the application of electricity to various parts of his body, while in custody at the main holding center of Investigaciones in Santiago. In the same place, on the night of March 6, Ana María Sepúlveda Sanhueza has stated that she was blindfolded, threatened, stripped and subjected to electric shock. The only other denunciation of electricity during this period also involves Investigaciones, this time in Concepción during July 1991: five persons accused of having participated in the murder of an Investigaciones officer were allegedly subjected to electric current on various parts of their bodies, as well as blows and threats in the presence of relatives, and denied access to their lawyers; they were held incommunicado for between 20 and 30 days. (Jaime Pinto Celis Adasme, Jaime Iván Pinto Angloni, Patricio Alejandro Gallardo Trujillo, Julio Ricardo Prado Bravo, and Magdalena de los Angeles Gallardo Bórquez.)

²⁷ Thus, when various activists of the more leftist victims' groups staged a demonstration on November 25, 1991, to protest the prisoners' situation and the impunity enjoyed by violators of human rights, and the demonstration was suppressed, various of the 21 persons arrested denounced beatings, insults and threats by police while in custody and, in the case of eight women, additional mistreatment: they were allegedly obliged to undress and placed blindfolded in a cell with persons charged with common crimes.

²⁸ The leak of a secret Investigaciones document concerning political espionage, which had been drawn up as an advisory to the civilian government, led to Toro's resignation in April 1992. The leak was quickly traced to DINE, Army intelligence. It was well known that DINE regarded Toro with hostility, not only because he had clearly given his loyalty to the civilian authorities and shown no sympathy to abusive personnel, but also because Investigaciones was developing an

torture are further evidence that the housecleaning begun by Toro should be continued.

The *carabineros*, or uniformed police, have been markedly less responsive to administrative complaints of mistreatment. This situation is difficult to change without a demonstration of political will by the government. But, as human rights lawyers note, the police provide a counterbalance to the influence of the Army, and in the battles against terrorism and common crime their allegiance is obviously crucial. So far, internal police investigations appear to be somewhat superficial. But even these can have some effect. For example, in November and December 1991, the legal-aid group CODEPU received information on a dramatic increase in shooting deaths from police fire in Santiago's poor neighborhoods. In the two-month period, the group tabulated 21 gunshot deaths from such abuse of power. For example:

Fifteen-year-old Rodrigo Gallardo was driving with friends in his neighborhood in La Florida, Santiago, on November 29, 1991, a few minutes after a group of armed men had attacked the local police station, a crime which set off an exchange of gunfire and a massive police operation. Because the boys were in a white van like that used by the attackers, police opened fire on them; Gallardo was hit ten times in the chest. While it appeared that the van driver did flee, and may have heard and failed to obey police warnings to stop (he was driving without a license), it was also noted that the van bore no bullet marks around the tires; police apparently shot at the occupants without trying first to detain the vehicle and verify their identities.

A supposed shootout on December 14 in the Cerro Navia neighborhood, after an attempted robbery, led to the deaths of two young men, one a philosophy student named Juan Francisco Fuentes Rojas, aged 19. His fellow students at the Metropolitan University held protests against police allegations of his involvement in any armed activity, and the president of Chile's largest student federation decried the killing. It seems Fuentes was expected at a party and wandered into the cross-fire.²⁹

Complaints to the carabinero leadership about this extreme situation led to noticeably more restrained use of deadly force, although slumdwellers continue to report police arrogance and routine beatings of young men in brief, informal police custody. The attitude of which they complain is summed up in an unfortunate statement made last November by the second-ranking man in the police force, subdirector Gabriel Ormeño: "Let's not worry so much about the rights of undesirables in this country."³⁰

On the basis of a general investigating order, rather than a warrant for a specific person's arrest, police have broken into homes and caused substantial damage, terrifying the occupants, only to find they have no evidence for an arrest.³¹ Given that such behavior is not uncommon,

intelligence capability that, at the service of the civilian government, might have made the government as well informed as the armed forces.

²⁹ Juanita Rojas, "La Ley de la Calle," *Análisis*, January 6-19, 1992, pp. 14 and 15.

³⁰ He stated: "No nos preocupemos tanto de los derechos de las personas indeseables en este país." *Ibid.*, p. 14.

³¹ On April 2, 1992, police intelligence agents with a broad investigating order relating to a criminal case searched the house of Juan Armando Ortega

human rights monitors note with concern the August 1991 passage of a law which permits police to enter a closed space (e.g. a home) without judicial order if attempting to stop a crime and if "there are well-founded suspicions" that those responsible for that crime are inside.³²

Security forces' use of disproportionate violence became, briefly, a national obsession when, on January 22, 1992, live television coverage brought into Chilean homes the drama of two young would-be robbers, Alex Muñoz Hoffman and Fabián López Luque, and the family into whose house they had fled from Santiago police.

The two armed men, aged 22 and 25 years old, were identified as members of the Manuel Rodríguez Patriotic Front. The drama of their occupation of the family's house lasted several hours and, though cameras were stationed at some distance from the house, could be followed in detail from the policemen's end. The two trapped men first freed the small children of the family and finally their parents, without having harmed them and, according to the family's account, having treated them gently and calmly. Public opinion was affected not only by this image but by doubts surrounding the procedures used as the two men emerged from the house and police opened fire. The two were shooting, said police, although television cameras near the scene did not pick up any sounds of gunfire from their direction. Photographs published in a major newspaper showed the youths' bodies, with the majority of wounds being in the head, evidence that suggested police had not intended to wound and detain but to kill immediately.³³

The case is under investigation.

V. Due Process Concerns

During 1991 and 1992, according to police statistics, there has been a decline in criminal assaults and robberies as well as a reduction in terrorist violence. Terrorist actions, for example, declined from 254 in the first three months of 1991, to 169 in the same period this year, representing a decrease of more than 33 percent. Armed robberies, which totaled 381 between January and April 1991, stood at 242 for the same months of 1992, a drop of 36 percent.³⁴ Meanwhile, police budgets and personnel have been boosted dramatically. The rightist opposition nonetheless continues to press for legislation expanding police powers and to accuse

Carrasco in the Cerro Navia neighborhood of Santiago at 5 A.M., detained Ortega and damaged the building. A few hours later Ortega was released for lack of evidence. According to CCDH, complaints of incidents like this one arrive at its legal department regularly.

³² Police and Investigaciones, "en caso de delito flagrante y siempre que hubieren fundadas sospechas de que responsables del delito se encuentren en un determinado recinto cerrado, podrán, para los efectos de proceder a su detención, efectuar el registro de inmediato y sin previa orden judicial." Art. 1(5), Law no. 19,077, published in the *Diario Oficial* on August 28, 1991.

³³ The photos, which appeared in *Las Ultimas Noticias*, were taken by a policeman to whom a reporter had passed his camera; the policeman was removed from the force.

³⁴ Official statistics reproduced in "Pizarro acusó a la UDI de actuar en forma irresponsable, incitando a delincuentes," *La Epoca*, May 27, 1992, p. 10.

the government of being soft on crime. And while preoccupation with terrorism appears a low priority in public opinion polls, urban Chileans are very concerned about violent common crime.

In this climate, the use of broad investigating orders as substitutes for individual arrest warrants continues to be a concern. As we noted in our July 1991 report:

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...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.

Cases of mistaken arrest and of ill-treatment in detention only tend to strengthen this argument, in our opinion. Once again we urge the Chilean authorities to reconsider the use of broad investigating orders.

Another concern is the lack of adequate legal representation for up to half of those persons currently imprisoned for alleged security offenses under the civilian government. Some 60 current prisoners, principally members of the Lautaro movement, face security charges, many of them in military court. Their cases, particularly those in military jurisdiction, require specialized legal knowledge and a certain commitment to overcome the obstacles to due process inherent in the military justice system. Yet few of these prisoners can afford private counsel, and the remainder must accept whomever is assigned to them by the state's *Corporación de Asistencia Judicial* (Judicial Assistance Corporation), whose lawyers are recent law-school graduates or lawyers on rotating duty with little involvement in their cases. Human rights groups active during the dictatorship, on the other hand, will not take these cases for a variety of reasons, primarily rejection of political violence. The prisoners' political isolation thus translates into extreme legal vulnerability. Americas Watch condemns the violent crimes with which these people are charged, and recognizes the political unpopularity of their cases. Whereas it is the obligation of the state to provide adequate defense to the accused, where such assistance is inadequate we urge Chilean bar associations to act to ensure protection of their right to due process.

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Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights. Americas Watch is one of the five regional divisions of Human Rights Watch. The Chair of Americas Watch is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez.

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