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ADVANCES AND SETBACKS IN HUMAN RIGHTS CASES IN CHILE

Horman Case Indictment

A case on behalf of a well-known US victim of the Pinochet regime has made progress in the Chilean courts. On December 12, 2003, Judge Jorge Zepeda indicted Chilean intelligence agent Rafael Gonzalez for his role as an accomplice to the murder of Charles Horman. Horman, an American journalist and filmmaker, was killed in September 1973, shortly after Pinochet's military coup. The story of his murder was told in the Costa Gavras film "Missing." The indictment was based, in part, on information from US documents that were declassified in response to Pinochet's detention in London.

Full text of the indictment

Gonzalez told reporters in 1976 that Horman had been murdered because he "knew too much", a statement some believe referred to Charles' knowledge of US involvement in the Chilean coup. Horman had also been investigating the 1970 assassination of Chilean General René Schneider prior to his death, a crime that has led to the filing of civil charges against former Secretary of State Henry Kissinger in the US Courts. As part of the investigation into Horman's death, a Chilean judge sent a questionnaire to Kissinger and other US officials regarding their knowledge of the Horman murder. Although Kissinger responded to several of the questions, his answers have not been made public.

For more information:

Peter Eisner **A Widow's Missing Link** Washington Post, 4 January 2004

Charles Horman Case: Uncovering Secrets of a Secret Agent memoriayjusticia.cl

CNN.com **1973 slaying of American journalist probed** CNN, 13 March 2004

The Guardian **Case of Slain Filmmaker Horman Gets Boost** The Guardian, 12 March 2004

Chilean Court Cites International Law to Uphold Sentencing of Manuel Contreras, Other Military Officers

The following is an excerpt from "The Ripple Effect of the Pinochet Case" by Stacie Jonas, **Human Rights Brief**, Volume 11, Issue 3 (Spring 2004), reprinted with permission from the editors.

On January 5, 2004, the 5th Bench of the Santiago Appeals Court upheld the conviction of [former Pinochet secret police chief Manuel] Contreras and four other military officers for the 1974 forced disappearance of Miguel Angel Sandoval. This was the first appellate level decision upholding the interpretation of forced disappearance as an ongoing, non-amnestiable crime of aggravated kidnapping in the sentencing phase. Although the decision was founded on domestic law principles, it broke new ground in Chilean jurisprudence by also extensively relying on international law.

Full text of the Sandoval decision

In the 2-1 decision, the Court noted that the Inter-American Convention on Forced Disappearances, signed by Chile in 1996, defines forced disappearance as an ongoing or permanent crime as long as the fate of the victims is unknown and obliges signatories to punish those responsible. Although the Convention has not yet been ratified by the Chilean Congress, the judges highlighted Chile's obligations under Article 18 of the Vienna Convention on the Law of Treaties stipulating that a State that has signed or expressed consent to a treaty is "obliged to refrain from acts which would defeat the object and purpose of a treaty," even when it is still awaiting ratification.

The judges further noted that forced disappearances have been defined as a "crime against humanity" by a number of international instruments including the UN Declaration on the Protection of All Persons from Forced Disappearance and the Rome Statute of the International Criminal Court. They pointed out that these and other international instruments require both the investigation and punishment of crimes against humanity.

The Court cited both Article 5 of the Chilean constitution and international law to uphold that Chile is bound by international treaties and that domestic legislation cannot override treaty obligations.

The decision also cited the Inter-American Court of Human Rights' March 14, 2001 decision in the Barrios Altos case (Chumbipuma Aguirre et al. v. Peru), which affirms that amnesties and statutes of limitations cannot be applied to grave violations of human rights, including forced disappearance.

Contreras is now seeking a hearing by the full Chilean Supreme Court on the Sandoval decision, an appeal that would ordinarily be heard by the five-member "Criminal Chamber."

Chile is governed by a civil law system, and judges are therefore not obliged to follow legal precedents. However, the Appeals Court decision in the Sandoval case has already been cited by other judges working on human rights cases in Chile. For example, Judge Gerardo Bernales of Talca, Chile, appointed last year to work exclusively on human rights cases, recently cited the Sandoval decision to justify the indictment of a Chilean policeman (carabiniero) for the murder of a 6-year-old girl and her parents shortly after the coup.

Proposed Sentencing Law, Changes in the Santiago Appeals Court, Could Affect Human Rights Cases

In February 2004, Chilean on-line newspaper El Mostrador reported that the benches of the Santiago Appeals Court had been re-assigned through an annual lottery system. The bench reassignment came after the landmark Appeals Court decision in the Sandoval case. After the lottery, the benches that had been assigned to hear a number of human rights cases were left with a majority of judges unfriendly to human rights prosecutions. Many judges in the new majorities have either supported the application of the amnesty law, opposed the concept of disappearances as ongoing, permanent cases of kidnapping, or supported statutes of limitations for human rights crimes.

Although human rights cases have recently made great strides in the Chilean courts, the changes in the Appeals Court benches could have a negative impact on this progress. Shortly after the reassignment, the new benches granted the release on bail of former secret police chief Manuel Contreras and Brigadier Pedro Espinoza for certain charges brought against them. Although the two are still under house arrest due to administrative complications and other cases pending against them, one Chilean human rights lawyer believes this move signals a new trend in the Appeals Court.

The Santiago Appeals Court bench re-assignment is not the only potential challenge to human rights cases in Chile. Although some of the particularly contentious provisions of President Lagos' human rights plan, first proposed in August 2003, have been amended or removed due to pressure from human rights lawyers and organizations, the Chilean Congress is still considering a series of measures that would commute or reduce the sentences of military officials that provide useful, verifiable information to the courts. Human rights groups in Chile have criticized these provisions as a serious setback in the struggle against impunity.

Full text of the original proposal

According to the most recent version of the sentencing plan, civilians participating in military service who provide information to the courts could have their sentences eliminated altogether, as long as the judge determines that they were "following orders that they could not fail to carry out without putting their own life or physical integrity at risk." Other career military officials could have their sentences reduced, but not commuted altogether.

The current language of the legislation excludes those persons who "forced, induced, instigated, ordered...[or]... participated in the organization or planning" of crimes including homicide, illegal detention, kidnapping, removal of minors, and illegal burials or exhumations committed during the dictatorship.

On March 31, the Chilean section of the American Association of Jurists issued a statement condemning the proposed law. Among other things, they point out that judges have, in the past, partially applied statutes of limitations in certain serious human rights cases, resulting in the reduction of sentences. The new legislation, AAJ argues, could allow already reduced sentences to be reduced even further, resulting in extremely low sentences for

people who committed terrible crimes.

Full text of the AAJ statement

Representatives of the Association of Families of the Disappeared in Chile have also told press that they will appeal to international and regional human rights bodies if the sentencing law is passed, arguing that the provisions are in violation of Chile's treaty commitments.

Late last year, the Chilean Congress approved several other elements of Lagos' proposed human rights plan, including increased reparations for families of human rights victims and the creation of a commission to investigate crimes of torture committed during the dictatorship. The commission has received information on approximately 15,000 cases since it began functioning in December 2003. The deadline to submit information to the torture commission is May 11, 2004.

More information

Justice Too Little Too Late for Thousands Analysis of the commission by Codepu-Valdivia

UPDATE ON PINOCHET CASES AND PUBLIC APPEARANCES

Testimony, Document Link Pinochet to Operation Albania Murders

In testimony this week, retired intelligence agent Col. Iván Quiroz testified that the Chilean secret police agency known as CNI was under the direct supervision of Augusto Pinochet. Quiroz, a former CNI agent, is indicted for his role in the 1987 extrajudicial killing of 12 people as part of "Operation Albania". Quiroz told the court that he carried out the Operation Albania murders under orders from CNI director Hugo Salas and that Salas, "couldn't do anything without consulting with my General Pinochet."

Quiroz also testified that General Pinochet met with CNI director Hugo Salas on the very day that the Operation Albania murders were being carried out. He explained that the meeting was not out of the ordinary given that "the CNI depended upon and had a direct relationship with [Pinochet]."

Quiroz's testimony confirmed evidence provided by a 1980 document uncovered during the judicial investigation that directly linked Pinochet to the CNI and the Army Anti-Terrorist Unit (UAT). The UAT was responsible for crimes including Operation Albania and the 1986 murder of journalist José Carrasco. The document, signed by Pinochet's Defense and Interior Ministers, states: "when the situation requires, the [CNI] will also use antisubversive units of the Armed Forces in the region and the Anti-Terrorist Unit, at the discretion of His Excellency the President of the Republic."

Full text of Quiroz's testimony is available at www.elmostrador.cl (subscription required).

Pinochet Interview Prompts New Trial Efforts

Last October, the Chilean Supreme Court upheld the August 2003 Santiago Appeals Court decision refusing to strip General Pinochet of his immunity from prosecution to stand trial for the 1974 disappearance of 10 Communist Party members. Both the Supreme Court and the Appeals Court pointed to Pinochet's allegedly poor mental health as the grounds for denying the petition to strip his immunity.

Just a month after the Supreme Court confirmed Pinochet's inability to stand trial and a week after Chilean newspaper La Nación published an investigative report about how the bodies of at least 400 disappeared people were dropped from helicopters into the ocean during the dictatorship, the former dictator gave an hour-long interview to the Miami television station Canal 22 WPDL. Throughout the course of the interview, the 87-year-old General responded easily to questions about events that occurred over thirty years ago. He also shared the following views:

- Regarding his 17-year rule in Chile: "I never aspired to be a dictator. Dictatorships always end badly. I always acted with a democratic sensibility, and that's why I called for elections...I am good, I consider myself an angel...I don't want future generations to think poorly of me and I want them to know what really happened, that I always abided by democratic principles.... Look, in all political struggles, throughout the world, there are excesses and people who get out of control...There are people who get out of control, subordinates who do things and don't report them."
- When asked if he would ask for forgiveness: "Forgiveness? For what? For the fact that we were going to become another Cuba? Forgiveness for what? They should ask me for forgiveness...the Marxists, the Communists... I don't have any remorse...I haven't murdered anyone, I never gave the order to assassinate anyone..."
- Regarding the case against him in Spain: "The courts were unfair with me."

Lorena Pizarro, President of the Association of Families of the Disappeared, responded to the interview by agreeing that Pinochet was an angel-"an angel of death." A representative of the Chilean government called Pinochet's statements "pathetic."

Human rights lawyers seized upon the interview as evidence that the former dictator is fit to stand trial. They again approached Judge Juan Guzmán with a request to strip Pinochet of his immunity from prosecution. In December 2003, Judge Guzmán once again asked the courts to strip Pinochet of his immunity, this time for crimes committed by Operation Condor, the coordinated campaign uniting the security forces of Southern Cone dictatorships to carry out joint operations against political opponents. The request will be heard by the Santiago Appeals Court.

Meanwhile, Pinochet continues to make public appearances and receive visitors. Despite a broken shoulder, he received over 250 guests in his home to celebrate his 88th birthday on November 25th. Dozens of supporters also gathered outside his home during the birthday celebration bearing signs that read, among other things, "Pinochet immortal."

For more information:

Festejos marcados por polémica entrevista: Pinochet celebró cumpleaños 'íntimo' con 260 invitados El Mostrador, 25 November 2003

Alejandra Seibert, "Entrevista para televisión de Miami Pinochet: "No ordené asesinar a nadie," El Mercurio, 25 November 2003

Pinochet creates uproar with 'angel' comment CNN, 25 November 2003

Fury Over Pinochet 'Angel' Claim BBC, 25 November 2003

Pedirán que Pinochet sea Sometido a Nuevos Exámenes Médicos El Mostrador, 25 November 2003

Judge Requests New Pinochet Trial BBC, 23 December 2003

OTHER DEVELOPMENTS

Argentina Takes Further Steps Towards Justice

On March 24, 2004, in commemoration of the 28th anniversary of the military coup, Argentine President Nestor Kirchner presided over a ceremony creating a "museum of memory" at the notorious Navy School of Mechanics (ESMA) that was used as a clandestine detention and torture center during the dictatorship. In his remarks, Kirchner asked for forgiveness on behalf of the Argentine state for dictatorship crimes and re-emphasized the need for justice. Several children of disappeared parents, including one young man who recently discovered that he had been born to a political prisoner in the ESMA and then kidnapped and placed with a military family, also spoke at the event.

Pictures and audio recordings of the event are available at the website of Argentine paper Pagina 12

Argentine General Roberto Bendini also removed portraits of military junta leaders Jorge Rafael Videla and Reynaldo Bignone previously on display at the Military Training School on the anniversary of the coup.

The events surrounding the coup anniversary were just one more example of the extraordinary activity on human rights and justice that has taken place in Argentina in the past year.

In August 2003, Pinochet Watch-52 reported the arrest of dozens of Argentine military officers in response to an international arrest warrant issued by Spanish Judge Baltasar Garzón. Following the arrests, the Argentine Congress annulled the Argentine amnesty laws, deeming them unconstitutional. Two weeks later, arguing that the men could now be tried at home, the Spanish government refused to transmit Judge Garzón's extradition request, and the military officers were released. Spanish human rights attorney Joan Garcés called the Spanish government's move premature, explaining, "It is a clumsy error...to weaken the current efforts of the Argentine Government and Parliament when the Supreme Court of that country has still not agreed that the crimes of terrorism and genocide will [be punished]."

Shortly after Congress annulled the amnesties and the Spanish government ended the extradition process, several human rights cases were re-opened in the Argentine courts, and a Federal judge issued new arrest warrants for dozens of the released officers. In the past several months, military officers have also been indicted for their role in kidnapping the babies of political prisoners. There is case regarding the constitutionality of the amnesty laws pending before the Argentine Supreme Court, as well.

In March 2004, Argentine Judge Rodolfo Canicoba also ruled that two pardons issued in 1989 and 1990 by former

Argentine President Carlos Menem were unconstitutional, allowing for the arrest of one former Argentine military officer, Jorge Olivera. Two other military officers affected by the ruling, Carlos Suárez Mason y Juan Bautista Sasiañ, are already under arrest for other human rights crimes.

For more information, go to:

Elliott Gotkine [Judge annuls "Dirty War" pardons](#) BBC, 19 March 2004

Elliott Gotkine ["I was one of Argentina's Stolen Babies"](#) BBC, 31 March 2004

[Argentine Junta Officials Guilty of Baby Theft](#) Reuters, 29 March 2004

Allstair Scrutton [Argentina turns Dirty War "Auschwitz" into museum](#) Reuters, 24 March 2004

[Argentina Confronts Past on Coup Anniversary](#) HRW, 24 March 2004

Paraguay Creates Truth and Justice Commission

In February 2004, Paraguayan civil society organizations and representatives of the Paraguayan Government celebrated the creation of an official Truth and Justice Commission designed to investigate human rights crimes during the 35-year dictatorship of Alfredo Stroessner. Although human rights activists and churches documented dictatorship human rights violations in the 1990 report *Paraguay Nunca Más*, the Truth and Justice Commission is the first state-sponsored initiative designed to investigate human rights abuses.

The Paraguayan Congress passed [Law 2225](#) authorizing the creation of the commission on October 13, 2003. The commission, which will function for 18 months, will investigate acts of grave human rights violations committed by state or "para-state" agents during the 1954-1989 Stroessner dictatorship. It will attempt to identify the individuals who committed human rights crimes and will also try to determine the official number of persons disappeared during the dictatorship. Although several of the commissioners that will head up the investigations have been appointed, the Paraguayan Congress still has not appropriated the money necessary for the commission's activities.

In March 2004, Paraguayan human rights lawyer and Truth and Justice Commission advocate Martín Almada presented evidence to a court in Spain regarding Stroessner's involvement in Operation Condor. Almada urged the Spanish courts to request Stroessner's extradition for the murder of hundreds of Spanish citizens in Argentina, carried out as part of Operation Condor. Stroessner currently lives in exile in Brazil. The Brazilian government denied previous requests to extradite the former Paraguayan dictator to Paraguay. At this point, explains Almada, "it doesn't matter where he is tried, what matters is that justice is done."

For more information:

ABC Color, "Investigarán Atrocidades del Stronismo," March 27, 2004

Oviedo, Susana, "Cuenta regresiva para la impunidad," *Diario Ultima*, February 4, 2004

ABC Color, "La canciller pide que nunca más haya una dictadura stronista," February 4, 2004

Spanish Supreme Court Upholds Jurisdiction in Case Against Pinochet's Defense Minister

In March, 2004, the Spanish Supreme Court upheld the jurisdiction of the Spanish Courts in a case against General Hernan Brady, who served as Minister of Defense under Pinochet.

[Full text of the decision](#) [Spanish; PDF document]

The following is an excerpt from the American Society of International Law, *International Law in Brief*, April 7, 2004:

Tribunal Supremo (Supreme Court) of Spain: Judgment in the Case of General Hernán Julio Brady Roche, Judgment No. 319/2004 (March 8, 2004)

The Supreme Court of Spain upheld jurisdiction over claims for torture of Spanish nationals allegedly committed by Chilean former Defense Minister Hernan Julio Brady Roche.

The Audiencia Nacional having declined to exercise jurisdiction over the claims, an appeal was brought by Laura González Vera, the widow of the Spanish diplomat Don Carmelo Soria, in addition to other individuals and a group called "Izquierda Unida" ("United Left"). Don Carmelo Soria, who was in Chile at the end of the 1936-1939 Spanish Civil War, was kidnapped on July 14, 1976, and his body, showing signs of torture, was later found in Santiago.

At issue was the scope of jurisdiction under Article 23.4 of Spain's *Ley Orgánica del Poder Judicial* (Law on Judicial Power), which provides that Spanish courts shall have jurisdiction over international crimes including genocide and

terrorism, committed by Spanish or foreign citizens, outside of Spain. The appellants claimed that by virtue of the above-mentioned law, Spanish courts could exercise jurisdiction over their claims for torture.

The Supreme Court noted the reasoning of the Guatemalan Genocide Case ([42 ILM 683](#)) and upheld jurisdiction over the claims connected to Spanish nationals.

PAPERS AND TRANSCRIPTS AVAILABLE

February 2004 Roundtable Confronting Challenges to the Pinochet Precedent...

On February 3, 2004, IPS and American University Washington College of Law co-sponsored a roundtable talk on "Confronting Challenges to the Pinochet Precedent and the Globalization of Justice." Panelists included: Reed Brody, Special Counsel for Prosecutions, Human Rights Watch; Joan Garcés, attorney who led the prosecution team in the Spanish case against Pinochet; Prof. Diane Orentlicher, American University Washington College of Law; Peter Weiss, Vice President, Center for Constitutional Rights; Prof. Richard Wilson, American University Washington College of Law; and Moderator Stacie Jonas, Director, Pinochet Case Project, Institute for Policy Studies.

More information

An audio recording of the event is now available for \$15. A video recording is available for \$30. These prices include shipping and handling charges. Please contact Amy Fuhrman, Audio Visual Systems Manager, Washington College of Law, for more information: amy@wcl.american.edu, 202-274-4024.

If these costs are prohibitive, or to request an electronic copy of the background materials distributed to conference attendees, please contact [Stacie Jonas](#) at IPS, 202-234-9382, ext. 258.

November 2003 Conference: El Caso Pinochet: Lecciones de 30 años de una lucha transnacional contra la impunidad. On November 14, 2003, IPS and FLACSO-Chile co-sponsored a day-long seminar "El Caso Pinochet: Lecciones de 30 años de una lucha transnacional contra la impunidad". [Papers from that event are available online](#) Please note that this page currently is not accessible with a Netscape Browser. We hope to have a Netscape version of the page available soon.

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