



January 2008

country summary

## Chile

Since the death of former dictator Gen. Augusto Pinochet in December 2006, Chilean judges have continued to prosecute and convict former military personnel accused of committing grave human rights violations under the military government. The Supreme Court's criminal chamber, which issues final verdicts in these cases, has begun to rule that neither amnesties nor statutes of limitations may block trials or punishment for these crimes.

In September 2007 a landmark Supreme Court criminal chamber ruling ordered the extradition of former Peruvian president Alberto Fujimori to stand trial in Peru on charges of human rights violations and corruption.

### Prosecutions for Past Human Rights Violations

In the pursuit of accountability for human rights abuses under military rule, as of July 2007, 458 former military personnel and civilian collaborators were facing charges for enforced disappearances, extrajudicial execution, and torture; 167 had been convicted; and 35 were serving prison sentences.

At the time of his death from a heart attack while he was under house arrest, Pinochet was facing criminal prosecution for torture, enforced disappearances, tax evasion, and forgery. The courts had closed three previous human rights cases against him after deciding that mild dementia rendered him unfit to stand trial. However, Chile's judges had come increasingly to doubt that assessment: two judges who interrogated Pinochet in August and November 2005 in connection with more than 125 secret bank accounts found the 90-year-old general to be lucid. In October 2007 the court investigating that case indicted Pinochet's widow, their five children, and 17 close military and civilian collaborators, for embezzlement of public funds. However, the Supreme Court's criminal chamber later struck down the

charges against four of the children on grounds that embezzlement only applies to government officials.

Chilean courts have almost overcome legal obstacles to human rights trials, including an amnesty law in force since 1978 whose purpose was to shield state agents from prosecution for human rights abuses. In March 2007 the Supreme Court's criminal chamber unanimously overturned a court decision applying the amnesty to former Brig. Víctor Pinto Pérez, who was facing charges for the murder in 1973 of an army reservist. It stated unequivocally that the amnesty is inapplicable where any war crime or crime against humanity is involved, and that such crimes cannot be subject to a statute of limitations. However, in November 2007 the Court applied a statute of limitations and absolved an army colonel who had been convicted for killing three peasants in 1973.

President Michelle Bachelet announced in October 2006 that she would present a bill to prevent the amnesty law from being applied in cases of grave human rights abuse. Her announcement came in response to a ruling of the Inter-American Court of Human Rights that the law was incompatible with the American Convention on Human Rights. However, the bill has been delayed by differences of opinion on its necessity given the advances in the courts and the possibility that legislation might be challenged in the Constitutional Court.

The ruling in the Supreme Court's criminal chamber approving a Peruvian request for the extradition of former President Fujimori was the first time anywhere in the world that a former president has been extradited to stand trial in his home country for human rights violations.

A bill to ratify the Rome Statute of the International Criminal Court stalled when the Constitutional Court, ruling on a petition by a group of opposition senators, declared it unconstitutional. A bill to reform the constitution to allow ratification of the Rome Statute has been in the Senate since April 2002.

## **Prison Conditions**

Chile has more prisoners per capita than any other country in South America, and the prison population continues to grow by 8 percent a year. Despite the opening of six new privately contracted prisons (three of them in 2007), overcrowding remains a serious problem. In the older prisons, which house 80 percent of Chile's prisoners, sanitation and hygiene are often deplorable, there are insufficient doctors and medicine, and food is poor.

## **Military Justice**

Even though Chile has completely overhauled its criminal justice procedure in recent years and reinforced due-process guarantees, military courts still have wide jurisdiction over civilians and also over human rights abuses committed by the uniformed police, Carabineros, which is part of the armed forces.

In June 2007 the government presented a bill to Congress to undertake initial reforms of the system of military justice. It also set up a commission to prepare more comprehensive reforms for presentation in 2008. However, the bill leaves the most serious problems unchanged: if approved as written, military courts will continue to deal with assaults by civilians against police (the most common use of military courts at present) as well as abuses committed by the police against civilians while carrying out orders or on military premises.

## **Non-Discrimination**

As of November 2007 a bill that would establish measures against discrimination was under congressional consideration. It creates a specific civil action for acts and omissions considered "arbitrary discrimination," and includes a broad and detailed range of categories of social and individual characteristics for which non-discrimination must be assured. There are concerns, however, that due to pressure from religious groups, the Senate might strike sexual orientation from among the categories for protection, leaving the bill incomplete in its goal to protect all people against discrimination.

## **Access to Public Information**

Since the restoration of democracy in 1990 Chile has passed laws, including a constitutional reform, protecting the right of access to public information. However, officials continue to use the wide powers they have to deny requests for information. The current government has undertaken to increase transparency in public administration. A bill presented by the government in December 2006 guaranteeing access to public information proposes the creation of an independent Council for Transparency, which would be empowered to order officials to make information available to the public, as well as to impose sanctions if they fail to do so. As of November 2007 the bill was in the final stages of debate in the legislature.

## **Key International Actors**

The special rapporteur for women of the Inter-American Commission on Human Rights visited Chile in September to observe and receive information on the situation of women's rights, in particular their right to be free from discrimination.

The United Nations Working Group on the Use of Mercenaries visited Chile in July. The working group collected information on the recruitment of Chileans to work with private security companies in Iraq. It noted that, although contracted as security guards, the recruits were given military training in the United States, Jordan, or Iraq and eventually performed military functions not covered in their contracts.