

late June, however, the U.S. government dropped its objections to Brazil's successful anti-AIDS effort.

### **European Union**

Bilateral trade between Brazil and the members of the European Union (E.U.) remained substantial, with Brazil being the E.U.'s principal market in Latin America. The E.U. committed 150 million euros to cooperation projects in Brazil in 2000.

## **CHILE**

**T**he landmark indictment of former dictator Gen. Augusto Pinochet and its confirmation by the Santiago Appeals Court were the year's signal human rights achievements. Yet the suspension of criminal proceedings against Pinochet in July, ostensibly for medical reasons, undermined hopes that all Chileans were genuinely equal before the law.

Encouraging, but partial, progress was also made in the area of freedom of expression. Congress repealed several objectionable provisions of the State Security Law, and took steps toward ending film censorship.

### **HUMAN RIGHTS DEVELOPMENTS**

On December 1, 2001, Judge Juan Guzmán indicted Pinochet on eighteen counts of aggravated kidnapping and fifty-seven counts of homicide. The former dictator was accused of ordering killings committed by the "Caravan of Death," a helicopter-borne military squad that toured the country in October 1973, removing political prisoners from their cells and secretly executing them. Pinochet's lawyers appealed the indictment, arguing that Judge Guzmán had failed to take a deposition from Pinochet before charging him, as the law required. On December 20, the Supreme Court upheld the appeal, annulled the indictment, and ordered Judge Guzmán to question Pinochet within twenty days. The court did not make it a requirement, as Pinochet's lawyers had urged, that Pinochet undergo medical tests *before* the deposition. Six days later, however, the Supreme Court issued a "clarification" of its earlier ruling that said that the medical tests had to be conducted beforehand, giving Pinochet's defense another opportunity to fend off criminal charges.

Between January 10 and 13, a team of six psychiatrists and neurologists, with one expert observer from either side, examined and tested Pinochet at the military hospital. They found him to be suffering from "light to moderate" sub cortical dementia caused by a series of mild strokes (in their final report, they termed the dementia "moderate"). Reviewing the team's report, Judge Guzmán concluded that

Pinochet's disability was not severe enough for him to be exempted from trial since under Chilean law defendants must be found to be "mad" or "demented" before trial proceedings are suspended for mental health reasons. On January 23 the judge finally obtained Pinochet's deposition at his Santiago residence. Five days later he indicted Pinochet a second time, placing him under house arrest.

Chilean society, though it was divided over Pinochet's legacy, absorbed this momentous episode without violence or political instability. Nor did the political branches of government put overt pressure on the courts. Nonetheless, it was no secret that the government hoped to see Pinochet eventually exempted from trial on humanitarian grounds.

On March 8, a Santiago Appeals Court panel confirmed Pinochet's indictment, but reduced the charges against him from kidnapping and murder to concealment of the crimes. Both sides appealed. A week later, another panel of the court permitted Pinochet to be released on bail. It also ordered Judge Guzmán to take Pinochet's fingerprints and photographs, a formal requirement in Chile following criminal indictment. Pinochet's defense lawyers insisted that even this brief procedure would endanger the defendant's health. They made strenuous efforts to delay the procedure in the hope that the case would be closed on health grounds and fingerprinting would be unnecessary. Eventually, they succeeded: on July 9, the Sixth Chamber of the Santiago Appeals Court suspended the proceedings, ruling by two votes to one that Pinochet was too infirm to stand trial.

The appellate court ruled that if the terms "madness" or "dementia" (grounds for exemption from trial under the code of penal procedures in force) were interpreted in the light of modern medical science (as the court believed they should be) Pinochet's condition should bar his trial. Moreover, the court held, to try Pinochet in his condition would violate the due process guarantees of the Chilean constitution and its new code of penal procedures.

The decision gave norms of due process precedence over written laws for the first time in Chilean legal history. It also relied in part on a code of penal procedures that had not yet entered into force in Santiago, where Pinochet's trial was to be held. (In December 2000, the new code of penal procedures entered into force in Chile's Fourth and Ninth regions, but it was not scheduled to become effective in Santiago until 2004. The code allowed judges to suspend trials if the due process rights of a defendant cannot be guaranteed). Prominent justice officials, including representatives of the Council for the Defense of the State and the Public Defender (*Defensor Público Penal*), declared that the application of the new code in Santiago was illegal and unconstitutional.

Subsequent court rulings confirmed fears that the Sixth Chamber's decision was a special concession to Pinochet, and not would benefit other mentally challenged defendants. In July, the Legal Assistance Corporation, which provides free legal representation to poor defendants, asked a different panel of the Santiago Appeals Court to grant the same rights to a hundred of its clients who were facing trial on a variety of felony charges. The court rejected the petition on grounds that the new penal procedures code was not in force. As of this writing the Supreme Court was due to hear the petitioners' appeal, as well as an appeal alleging the Sixth Chamber's misapplication of the new code in the Pinochet case.

Continued progress was made in other prosecutions of Pinochet-era officials. In August, Judge Sergio Muñoz charged sixteen army officers, most of them members of the Army Intelligence Directorate (Dirección de Inteligencia del Ejército, DINE), with the 1982 murder of trade unionist Tucapel Jiménez. Among the accused were four retired army generals. The investigation, which had been thwarted for years, progressed rapidly after Judge Muñoz took over the case in 2000 and several of the soldiers confessed. Interior Ministry officials confirmed that judges and police officers investigating human rights violations committed during the Pinochet era had been followed and threatened by individuals believed to be former members of the National Information Center (Central Nacional de Informaciones, CNI), a secret police force that operated during the 1980s.

In January, the armed forces and uniformed police, whose representatives had participated in a civil-military roundtable initiated in August 1999, acknowledged for the first time that the bodies of 151 prisoners who “disappeared” after the September 1973 military coup had been thrown from aircraft into the sea, rivers, and lakes of Chile. Unfortunately, the importance of the revelation was overshadowed by numerous errors in the information provided by the military regarding two hundred “disappearance” cases. The errors added to the trauma of relatives of the “disappeared,” and confirmed the expectations of many relatives who had opposed the civil-military dialogue from the outset.

Out of two hundred victims whose fate was revealed, the final resting place of forty-nine was given with sufficient precision to make it possible, in theory, to find their remains. Yet in more than fifty cases the dates given for the arrest and death of the victim did not tally with the facts known to human rights organizations. The body of trade unionist Juan Rivera Matus, described in the round table list as having been thrown into the sea near the port of San Antonio, was found in April buried in an army compound at Fort Arteaga. Some dental fragments and pieces of bone found in a disused mineshaft near Santiago were believed to belong to Communist Party leaders Horacio Cepeda and Fernando Ortíz, detained in December 1976, and whose bodies were listed in the armed forces document as having been buried at the site. However, relatives still awaited conclusive identification in October. After months of searching, investigators could not find the remains of four other party members whose bodies, according to the Navy, were also thrown down the shaft. The discovery only of small bone fragments suggested that the mine had been visited at some subsequent date and skeletal remains removed to conceal the crime.

After years of debate, Congress finally enacted reforms benefiting freedom of expression, although many legal restraints remained in place. In April, it repealed article 6b of the State Security Law, a 1958 statute that allowed top judges, military chiefs and members of congress to bring charges of contempt of authority against their press critics.

Other provisions of the State Security Law—including article 16, which allowed the seizure of publications considered insulting by public officials—were also abolished. Legislators refused to accept more sweeping reforms, including a government proposal to repeal three articles of the criminal code that cover defamation and libel of public officials in terms similar to article 6b.

Journalist Alejandra Matus, who left Chile to avoid arrest in April 1999 after her book *The Black Book of Chilean Justice* was seized under article 16, returned to the country for the first time in July. During her visit she petitioned the Santiago Appeals Court to allow the distribution of her book, since the law under which it had been confiscated was no longer in force. The court rejected her writ, and in August the Supreme Court dismissed her appeal of the rejection. In October, however, appeals court judge Rubén Ballesteros finally lifted the ban on the book and ordered the confiscated copies returned to the publisher. He also suspended Matus's prosecution on other charges related to the book.

The State Security Law amendments were part of a comprehensive new law regulating the press and protecting the rights of journalists, first proposed by the Aylwin government in 1993. It shielded journalists from having to reveal their sources, and stripped courts of the power to gag press reporting of controversial criminal cases. It also stripped military courts of jurisdiction over cases involving criticism of the military. However, the law was by no means a panacea ending all of Chile's freedom of expression restrictions, and in some areas it made matters worse. For example, it discriminated against journalists without recognized university degrees. And even with the reforms, Chile's privacy laws failed to sufficiently protect those responsible for disclosures in the public interest.

In July, Congress approved a constitutional amendment eliminating prior censorship of the cinema. The reform was expected to come into force as soon as Congress approved a bill changing the powers and composition of the film classification council. That bill, introduced by President Lagos in March, restricted the council's powers to the certification of films for age-group suitability, and eliminated the representation of the armed forces and the police on the council.

On May 20, twenty-six inmates died in a prison fire in the northern city of Iquique. Prison officials were reported to have mistaken the fire for a riot and failed to call the fire brigade in time to rescue the victims, while fire-fighting equipment in the prison failed to work. The prison, constructed for a maximum of 1,000 inmates, held 1,700 at the time of the tragedy. Minister of Justice José Antonio Gómez announced that the government was planning to build ten new prisons to alleviate overcrowding.

On May 28, President Lagos signed into law the abolition of capital punishment. The death penalty was replaced by life imprisonment, with a minimum forty-year prison sentence for the most serious crimes. The new code of penal procedures entered into force in two regions in December 2000, replacing written with oral proceedings and strengthening the due process rights of defendants. The new code was scheduled to enter force progressively across the country.

## **DEFENDING HUMAN RIGHTS**

Attorneys representing relatives of the victims in the "Caravan of Death" case litigated tirelessly to hold Pinochet accountable for the crimes committed by the military death squad. The Council for the Defense of the State, an autonomous body representing the interests of the state, made itself a party to this and several other human rights cases.

Relatives of the “disappeared” and other human rights defenders did not report any direct threats or harassment, in contrast to previous years. However, a website believed to be linked to former members of the CNI, the military government’s intelligence agency, carried spiteful attacks on the president of the Association of Relatives of the “Disappeared,” Viviana Díaz, and publicized her private address and telephone number.

## **THE ROLE OF THE INTERNATIONAL COMMUNITY**

### **Organization of American States (OAS)**

In February, the Inter-American Court of Human Rights found that Chile had violated article 13 of the American Convention on Human Rights by refusing to allow the public exhibition of Martin Scorsese’s film *The Last Temptation of Christ*. The court ruled that Chile must amend its domestic law to eliminate prior censorship and allow the film to be screened. The decision, which was unanimous, was the court’s first ruling in a contentious case involving freedom of expression, and its first ruling against Chile.

### **United States**

In November 2000 the Clinton administration fulfilled its promise to release more than 16,000 secret documents on U.S.-Chilean relations before and after the military coup that brought General Pinochet to power in September 1973. The release included some seven hundred Central Intelligence Agency (CIA) records, which the CIA’s Directorate of Operations agreed to release only after pressure from the White House. These dealt with covert operations to prevent the election of President Salvador Allende, to destabilize his government, and to bolster that of Pinochet.

On the basis of new information from the declassified documents, in October and December 2000, Judge Guzmán opened investigations into the “disappearance” and murder of two North Americans, Boris Weisfeiler and Charles Horman. Weisfeiler, a Russian-born mathematician, “disappeared” in January 1985 while hiking in southern Chile. Horman was executed in the National Stadium days after the military coup. In July, Judge Guzmán sent a letter rogatory to the State Department, requesting depositions on the case from former Secretary of State Henry Kissinger and from officials of the U.S. embassy in Chile at the time of the coup.

### **Argentina**

In October 2001, Manuel Contreras (former director of Pinochet’s secret police, the DINA), and five former DINA agents were arrested in Chile at the request of Argentine federal judge María Servini de Cubría, pending a hearing on their extradition to Argentina. They had been charged in Argentina for the 1974 assassination in Buenos Aires of former Gen. Carlos Prats and his wife Sofia Cuthbert, but the Chilean Supreme Court had earlier denied their extradition on procedural

grounds. In August, the Supreme Court had rejected Judge Servini's request that Pinochet be extradited for ordering the assassination.

In April, Argentine federal judge Rodolfo Canicoba issued another international warrant for the arrest of Manuel Contreras with a view to his extradition for organizing Operation Condor, a secret plan of South American military governments to track, kidnap, murder, or illegally deport persons seeking refuge from repression in neighboring countries. In July, Justice Alberto Chaigneau of the Chilean Supreme Court ordered that Contreras be placed under house arrest. The following month the Santiago Appeals Court denied Contreras' bail request. Chilean Supreme Court judge Domingo Kokisch denied a similar request by the Argentine judge for the arrest, pending extradition, of General Pinochet. In both the Prats and Condor cases the Chilean courts held that Pinochet still preserved his parliamentary immunity from prosecution. Unless the Supreme Court lifted his immunity, Pinochet could not be questioned or charged in either case, a necessary prerequisite to his extradition.

### **Relevant Human Rights Watch Reports:**

*Progress Stalled: Setbacks in Freedom of Expression Reform, 3/01*

## **COLOMBIA**

**N**egotiations between the government and leftist guerrillas reached an impasse in 2001 as both sides traded accusations of bad faith and broken promises. Political violence increased for the second consecutive year and became increasingly urban, with clashes and selective killings occurring in cities. Colombians continued to flee their homes and even their country in record numbers, facing hunger, the elements, and disease in desperate efforts to save themselves and their families.

In the first ten months of the year, the office of the Public Advocate (Defensoría del Pueblo) recorded ninety-two massacres, which they defined as the killing of three or more people at the same place and at the same time. Most were linked to paramilitary groups, followed by guerrillas. Both paramilitaries and guerrillas reportedly moved with ease throughout the country, including via helicopter.

One of the year's worst massacres occurred on January 17, in Chengue, Sucre. Witnesses told government investigators that several Colombian navy units looked the other way as heavily armed paramilitaries traveled past them to the village. Paramilitaries assembled villagers in two groups, the *Washington Post* later reported. "Then, one by one, they killed the men by crushing their heads with heavy stones and a sledgehammer. When it was over, twenty-four men lay dead in pools of blood. Two more were found later in shallow graves. As the troops left, they set fire to the village."

The authorities subsequently arrested Navy Sergeant Rubén Darío Rojas and