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I. Introduction and Summary

On December 11, 1993, Eduardo Frei Ruiz-Tagle, the candidate of the center-left *Concertación de Partidos por la Democracia*, the current governing coalition, won Chile's first presidential elections held in democracy, with 58 percent of the vote. Although Frei won a record majority, there was little change in the balance of forces in Parliament. The Concertación held onto its comfortable overall majority in the Chamber of Deputies, with seventy seats over fifty won by the *Unión por el Progreso*, the rightist opposition bloc. In the senatorial race, in which only eighteen seats were up for re-election, both contenders won nine seats. In the new Senate the balance of power will rest, as before, with eight non-elected senators who were appointed under the military government to serve until 1998.¹ Shortly before the elections, the presidential term was reduced from eight years, as envisaged in the 1980 Constitution, to six.

This report examines human rights during the final period of the Aylwin government (from June 1992 to March 1994) and complements our two earlier reports on Chile after the military regimes, published in July 1991 and July 1992.²

Under Aylwin's four-year "transitional" administration, Chile has taken notable steps toward consolidating democracy, reestablishing civil and individual rights, and healing the wounds caused by decades of political strife and gross human rights violations under military rule. However, many of the political reforms advocated by the Concertación since it defeated former dictator General Augusto Pinochet's bid to stay in power in the 1988 referendum, still remain to be accomplished. As we noted in our last report, Chile still does not enjoy all the attributes of a full democracy. Apart from the constraints of the present voting system and the persistence of a partially designated Senate, the elected President still does not enjoy power to dismiss and reappoint the commanders-in-chief of the armed forces and the police, and Pinochet will continue as army commander under Frei until 1998. Since constitutional reforms require a four-sevenths majority in Parliament, changing these institutional legacies of military rule will pose as great a political challenge for Frei as it did for Aylwin.

With regard to the human rights legacy, President Aylwin's greatest accomplishment was the formation of the Rettig Commission, whose report on human rights violations under the military government was published in March 1991. This comprehensive three-volume work placed the truth about these violations on public record (no one has seriously challenged its findings), helped to rehabilitate the victims and their families, and made detailed recommendations on reparation and prevention (including full prosecution of those responsible by the courts). Under the 1992 Reparation Law, more than 4,000 relatives of the victims identified in the report are now receiving monthly benefits from the government, 821 are receiving educational grants and sixty-three have been provided homes under an assistance scheme set up in February 1992.

¹ The Concertación parliamentary vote was adversely affected by the "binomial" voting system, created by the military regime for the 1989 elections. This system favors third-place winners over second-place winners. Each contending force is required to field 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 50 percent of the representation.

² Americas Watch, *Human Rights and the "Politics of Agreements": Chile During President Aylwin's First Year*, (New York: Human Rights Watch, 1991) and Americas Watch, "Chile: the Struggle for Truth and Justice for Past Human Rights Violations," July 1992. During the Pinochet era, Americas Watch published ten reports, beginning in 1983.

The work of the commission has been continued by the National Corporation of Reparation and Reconciliation, set up in February 1992. Like the Rettig Commission, the corporation has to determine whether agents of the state were responsible for cases of denounced human rights violations. These fall into three categories: first, cases on which the commission had insufficient information to reach a final conclusion; second, those which, although registered with the commission, are not mentioned in its report for lack of details; and third, new cases reported to the corporation within a ninety day period, from July 15 to October 13, 1992 (this time-limit was extended for a further sixty days, from April 20 to June 19, 1993). In total, the corporation is dealing with 2,227 cases, which are additional to those catalogued by the Rettig Commission. Of these, 964 are new cases, while 1,263 are in the two categories inherited from the commission.³ Relatives of victims who are classified by the corporation as victims of human rights violations automatically qualify for the financial and other benefits provided under the Reparation Law. The corporation is also charged with investigating the fate of the "disappeared," and has a special team devoted to this task. Progress, however, has been slow, and without spectacular results. Investigations are still in progress to identify the remains of 126 victims buried anonymously in "Patio 29" of the Santiago General Cemetery. While most of the names of those buried there are now known, the task of identifying the remains, being performed by staff of the Medical Legal Service, is proving to be an arduous task. So far, twenty-two have been identified.

The corporation delivered a preliminary report to President Aylwin on January 31, 1993. Although the document has not yet been published, the corporation's president, Dr. Alejandro González, said that 850 of the cases reviewed by the corporation had been classified as human rights violations. This brought the total number of cases resulting in death under the military regime (including those catalogued by the Rettig Commission) to 3,129. Among these are 2,032 killings (including 444 cases attributed to circumstances of political violence, such as people accidentally killed in cross-fire, in armed clashes, or in street demonstrations), and 1,097 disappearances. On the assumption that none of the disappeared are still alive, it can be concluded that at least 2,685 people were killed deliberately under General Pinochet's 17-year government, the great majority executed by agents of the state.

The work of the commission and the corporation is particularly important in view of the enormous difficulties which have confronted judicial clarification of past human rights crimes. The Aylwin government did little to challenge the legal obstacles left in place by Pinochet to prevent court investigations, preferring to leave the matter to the judiciary in the hope that some justice, however limited, would be achieved.⁴ The two major obstacles to prosecutions, an amnesty law decreed by the military government in 1978 and the broad jurisdiction of military courts over crimes committed by members of armed forces, have been left untouched. At the close of the Aylwin government twenty-three former members of Pinochet's security forces were in prison awaiting trial for human rights violations. Eighteen were accused in a single case, the murder of three Communists in 1985.⁵ Five former intelligence agents, including the head of Pinochet's secret police, the *Dirección de Inteligencia Nacional* (National Intelligence Directorate,

³ Interview with the corporation's president, Dr. Alejandro González, November 1993.

⁴ This was the government's own phrase: "*la justicia en la medida de lo posible.*"

⁵ The so-called *Degollados* case is discussed below, p.19.

DINA), had been convicted of human rights crimes and sentenced to prison terms. However, four of them remained at liberty pending final hearings, and it was far from certain that any of them would go to prison.

Court investigations of more than a 1,000 "disappearances" listed in the Rettig Commission report continue to be hampered by the application of the amnesty law, which for years was interpreted by military tribunals and the Supreme Court as a justification for refusing to complete investigation of these cases. However, during the first months of 1993 there were encouraging signs of a reversal of this trend, as well as a more positive and professional approach to investigations on the part of *Investigaciones*, the civil police force. In several cases, such as the murder of international civil servant Carmelo Soria in July 1976 and the disappearances of student leader Alfonso Chanfreau in July 1974, and the brothers Juan Carlos and Jorge Andrónico Antequeray in Santiago in October of that year, civilian judges were able to clarify the crimes and identify some of the DINA agents responsible.

These advances were due in part to the testimony of former DINA agents who were traced and arrested in neighboring countries. But equally important was a forceful plea from Aylwin himself, encouraging civilian judges to follow a more flexible doctrine on the amnesty law, rejecting applications for amnesty until the crimes had been investigated as fully as possible. The "Aylwin doctrine," as it was called, even gained adherents in the Supreme Court, which had earlier proved inflexibly opposed to such investigations. The impeachment and dismissal of a Supreme Court judge for "gross abandonment of duty," in part for transferring the *Chanfreau* case to a military court, also contributed to the changed atmosphere.⁶

By early 1993, court proceedings were well advanced involving about twenty military officers in killings and disappearances. However, this momentum was not maintained in the second half of the year. Military courts claimed — and with the Supreme Court's support, won — jurisdiction in key cases, including all three mentioned above. In the *Soria* case, the military judge applied the amnesty law and closed the case permanently in a matter of days, a decision which was upheld by a Supreme Court judge who had been appointed to continue the investigation. In the case of the 1975 murder of General Carlos Prats and his wife, the Supreme Court refused to designate a civilian judge to investigate, despite a parliamentary vote urging it to do so. According to the Foundation for Social Assistance of the Christian Churches (FASIC), an ecumenical human rights organization,⁷ fourteen cases were closed by military courts in 1993, and in seven cases the application of the amnesty was confirmed on appeal by the Supreme Court.⁸

The reasons for this apparent change of direction are not entirely clear. According to FASIC, the change can be dated from the so-called *Boinazo* of May 1993, when heavily armed soldiers appeared in the streets to signal, among other grievances, the army's anger at the evolution of

⁶ The military judge presiding over the case applied the amnesty and closed the case.

⁷ FASIC's legal team is assisting relatives in more than 200 cases inherited from Chile's largest non-governmental human rights organization, the Vicaría de la Solidaridad, which closed in December 1992.

⁸ See Part II.

the trials.⁹ It is evident that there is continuing confusion and disagreement in the judiciary about how the amnesty law should be applied. It is arguable that this has made the courts more vulnerable to political pressures.

It was, in fact, army pressure which induced Aylwin to go back on his earlier non-interventionist position and to seek a political solution to the problem of the trials. The so-called Aylwin law — legal proposals which sought to reconcile the demands of the army and the relatives of detainees by streamlining court investigations while keeping them secret — collapsed in a storm of disagreement among the parties of the ruling coalition. The measures advocated by Aylwin had serious disadvantages and in our view, would have gravely compromised the transparency of the trials. As public opinion surveys have shown, a significant sector of Chilean society still believes that those responsible for human rights violations should be brought to justice.¹⁰

It will now be up to the Frei government to ensure that the debt of justice is not buried beneath other urgent political priorities in the years to come. The key issue during the Aylwin administration were the circumstances which persuaded the government not to press ahead with a law to make the "Aylwin doctrine" mandatory. That decision, however reasonable the political arguments behind it, is in large part responsible for the confusion and conflicting expectations which continue to surround the trials. As individual judges have maintained, it is unfair to lay blame solely on the courts when neither the government nor the legislature has proved able to resolve the issue. So far, Frei's electoral promises on this point have been vague, and human rights is not envisaged as a priority area by the new government. Human Rights Watch/Americas believes that the Frei government should introduce legislation limiting the effects of the amnesty law so that it cannot be used to foreclose investigations into former human rights violations until the full facts of the case and the identity of those responsible have been established.¹¹

Under the present military penal code, military courts exert jurisdiction over common crimes committed by military personnel on active service or on military premises. In practice this means that once a civilian court has established that a crime was committed by a member of the armed forces on duty, or even merely when the evidence suggests this, a military court claims jurisdiction. In cases of disputed competence, the Supreme Court has usually ruled in favor of the military courts. As shown clearly in the *Soria* case, military judges then rapidly apply the amnesty law and close the investigation. Experience in many countries has shown us that military courts do not offer the guarantees of impartiality necessary for the investigation of

⁹ The incident was, in Chilean style, quickly dubbed the *Boinazo*, a reference to the black berets (*boinas*) worn by the Army Special Forces.

¹⁰ The depth of feeling on the issue was brought home sharply by the events of September 11, 1993, the twentieth anniversary of the military coup, which saw the worst street violence since the elected government took office.

¹¹ Human Rights Watch believes that those who commit gross abuses of human rights and are shielded from prosecution by a complicit government must be held accountable for their crimes when democratic institutions are restored. In our view, decree laws or amnesties which prevent or erode accountability are null and void if promulgated by the perpetrators themselves to prolong impunity, or if they are applied to crimes against humanity, such as disappearances or extra-judicial executions.

human rights violations, and this has been borne out amply in the Chilean case. Although the Aylwin government limited the jurisdiction of military judges over civilians accused of political or security offenses, it left untouched the wide powers of military courts to deal with criminal offenses committed by military personnel on active service. The Rettig Commission recommended that the competence of military courts should be limited to "purely military offenses, that is, crimes committed in acts of service by personnel of the armed forces and the Carabineros (uniformed police) and against persons belonging to these institutions." Human Rights Watch/Americas urges the new government to adopt such a recommendation in its program of judicial reform.

Judicial investigations into human rights crimes post-dating the amnesty law continue. On March 31, sixteen former police agents were convicted of kidnapping, murder and terrorist conspiracy in connection with the abduction and extrajudicial execution of three members of the Communist Party in March 1985. The convictions (which include life-sentences for three of the agents) represent a dramatic, if belated, breakthrough for the courts. Until that moment, only three people had been convicted of human rights crimes, and at this writing all of them are still at liberty.¹²

Although cases of torture and ill-treatment of detainees by police diminished notably after the change of government, the recurrence of such allegations in 1992 and 1993 indicates that the practices have not yet been eradicated, and the problem requires the new government's urgent attention. As noted in our earlier reports, torture is no longer practiced systematically and receives unequivocal condemnation by the government. However, while Justice and Interior Ministry officials recognize in private that cases of torture continue to occur, the government has often reacted skeptically to allegations in advance of internal investigations to clarify them. In addition, police officials continue to resort to legal threats against those who denounce torture and their legal representatives. Human Rights Watch/Americas was concerned by a significant increase during 1992 of allegations of torture by Investigaciones detectives, particularly of detainees suspected of participation in the armed MAPU-Lautaro group.¹³ Many of these young people alleged that they were beaten, that physical threats were made against them and their families, and that they were administered electric shocks while held at Investigaciones headquarters on General McKenna Street in Santiago. Other practices, such as blindfolding and handcuffing of detainees for long periods, are so commonly denounced that they appear to be normal practice.

The blindfolding of criminal suspects during and after their arrest is a form of cruel, inhuman and degrading treatment and should be prohibited by law. All complaints of torture or ill-treatment should be promptly and thoroughly investigated, and those officers about whom there exist *prima facie* suspicions of responsibility, or whom a court has charged with offenses, should be suspended until the investigation has been completed.

The government has also been slow to admit that the police might be at fault concerning allegations of the use of unreasonable force in crime control and the policing of demonstrations. In the most notorious recent case, seven people were killed and sixteen wounded by gunshot in

¹² See pp. 15-18 for a description of the cases.

¹³ We noted our concern about these allegations in our July 1992 report, since which time the number of cases has increased.

October 1993, when police pursuing terrorist suspects opened fire on a passenger bus in a crowded thoroughfare in Las Condes, a Santiago neighborhood. Despite the gravity of the incident, President Aylwin himself reacted over-hastily in defense of the police. Only when subsequent inquiries revealed that all but four of the victims were innocent civilians did the government request the courts to appoint a special judge to investigate.

There are, however, heartening signs. Police officers are now appearing before the courts to answer charges, and there have been several indictments for human rights abuses. Police officers who commit abuses are a minority; the issue is how to further strengthen accountability in a force which is not accustomed to public questioning.

Institutional arrangements inherited from the dictatorship partly explain the absence of effective channels of accountability. No government ministry currently exercises direct responsibility over the police.¹⁴ The Carabineros, whose Director General Rodolfo Stange was a member of the military junta for seven years, is a branch of the armed forces and is run in military style. It is nominally under the authority of the Defense Ministry (not the Ministry of the Interior) although the minister of defense does not in practice exercise operational control of the force, since the chain of command ends with the director general. Investigaciones, a detective force, has a different structure. The current director is an Aylwin appointee, and the government had a strong influence over this force in the early years of the Aylwin administration.

At that time, ministers also sought to cultivate a good relationship with the Carabineros, seeing their cooperation and support as essential to the stability of the transition.¹⁵ By 1993, not only were 5,000 new recruits added to the payroll, but infrastructure and working conditions were notably improved. Yet the "understanding" carefully nurtured by Aylwin's government was not an adequate substitute for direct oversight, and government-police relations have been strained by the recurrence of allegations of abuse. In such cases, the Ministry of the Interior is unable to intervene directly; its action is usually limited to requesting an internal report from the Carabineros, and it is not able to order further investigations if the reports provided are incomplete or insufficiently thorough. Under these circumstances, the Interior Ministry's policy is to urge those with grievances to lodge a criminal complaint.

Privately, government officials acknowledge that much still needs to be done to "demilitarize" police operations and increase accountability. In November 1993, in the wake of the

¹⁴ Chile has two police forces, the Carabineros, the uniformed branch, whose main function is public order and crime prevention, and Investigaciones, which is dedicated primarily to criminal investigation and operates in plain clothes. In practice, during the military government these functions became increasingly blurred. Both forces have special units (such as the Carabineros' DIPOLCAR and OS7, and Investigaciones' *Prefectura Investigadora de Asaltos*, PRIA) which investigate armed criminal and terrorist activity, and arrest and interrogate suspects. Relations between the two forces have been strained for years, and occasionally erupt into public altercations and even violence.

¹⁵ The relationship between the Aylwin government and the Carabineros is analyzed in our 1991 report, *Human Rights in Chile and the Politics of Agreement*. On taking office, the Concertación was entirely reliant on the Carabineros to combat left-wing armed groups. Under the military government, intelligence information on these groups was gathered by the DINA's successor, the *Central Nacional de Información* (CNI) which was disbanded in February 1990, a month before Aylwin assumed office. All its personnel, files and computers were transferred to Army Intelligence where civilian access to the information is severely limited.

Las Condes incident and other examples of police violence, six Carabinero generals were retired in the biggest police reshuffle in years. In March 1994, Deputy Director of the Carabineros General Alfredo Núñez also resigned. Most of the departing officers had previously worked in Special Forces or anti-protest units and were considered hard-liners. The new appointments are expected to open the way for a more "democratic" style of policing.¹⁶ In order to strengthen administrative control over the police, the government introduced a bill in January 1992 to bring the Carabineros under the Ministry of the Interior, but it failed to pass the Senate. Following the controversy provoked by the Las Condes incident, the government announced that it would reintroduce police legislation before the end of its term, but failed to do so.

The police were at the center of President Frei's first political crisis, which erupted in the first week of April 1994, only weeks after he was sworn in. In his verdict, issued on March 31, the civilian judge responsible for the *Degollados* case recommended that Gen. Stange be prosecuted by a military court for obstructing justice and hindering clarification of the crime. Under these circumstances, and given the notoriety of the *Degollados* case in Chile, the government believed that police credibility demanded Stange's resignation. However, Stange rejected Frei's appeal "to examine his position in conscience" and insisted on retaining his post. The government was confronted by a police high command united behind Stange, and the rightist opposition bloc, which insisted on his right to stay. After a week of deadlock, Stange agreed to go on "vacation," and was temporarily replaced by his deputy, Gen. Fernando Cordero. At the time of writing, disagreement between the government and the police continued over whether Stange would eventually return to his post. The incident brought home more sharply than ever the continuing constitutional limitations on democratic accountability in Chile. The elected government has no powers to dismiss its chief of police; Stange's trial, if it proceeds, would be conducted by a police prosecutor junior to him in rank. In the event, at Stange's own request, the case was referred to a civilian member of the Corte Marcial, under a novel procedure introduced in 1991.

Effective monitoring of police practices in democracy requires clear lines of political and administrative responsibility to an elected authority. We welcome President Frei's proposals to bring both the Carabineros and Investigaciones under the direct authority of the Ministry of Interior, and we hope that this will be accomplished as soon as possible. As part of a general review of police procedures, the government should examine current operating procedures for the use of lethal force in order to ensure that the principles of necessity and proportionality are strictly observed and enforced.

II. Progress in Human Rights Trials

Investigation of Human Rights Cases Predating the Amnesty Law of 1978

In 1992 and early 1993, the courts reopened approximately thirty cases covered by the 1978 amnesty law out of a total of some 200 that the courts had been investigating since the Rettig Commission report was released. A major impetus to these investigations was given by the testimony of three former civilian DINA agents, Luz Arce, Marcia Merino and Osvaldo Romo; the latter is currently in detention, after he was deported from Brazil to face trial in December 1992.

On the basis of Romo's testimony, former agents including retired army officer Fernando Gómez Segovia were charged for the disappearance in 1974 of Alvaro Vallejos Villagrán, a

¹⁶ "En búsqueda de una nueva doctrina policial," *La Nación*, November 14, 1993.

member of the *Movimiento de Izquierda Revolucionaria* (Movement of the Revolutionary Left, MIR). In June 1993, another former agent, Samuel Fuenzalida, testified that he and Gómez had taken Vallejos to the Colonia Dignidad, a secretive German immigrant settlement in the south of Chile, alleged to have been used by the DINA as a torture center. He said that Vallejos was executed there.

In another key case, an arrest order was issued by Judge Ismael Contreras of the Fourth Criminal Court in San Miguel against a senior officer on active service. Lt. Col. Fernando Laureani Maturana, currently attached to the army garrison in the southern city of Temuco, was cited in connection with the kidnapping and disappearance in October 1974 of the brothers Juan Carlos and Jorge Elias Andrónico Antequera, but had failed to appear in court. A January 1993 ruling by the Supreme Court had rejected application of the amnesty law while the investigation continued.

The reopening of these cases and the acceptance of legal appeals against the amnesty law appear to reflect a wider acceptance in the judiciary of the "Aylwin doctrine." Although this doctrine has never been defined in precise legal terms, its basic sense is that the existence of an amnesty applicable to certain types of crime or offender is not sufficient grounds for courts to close investigations until every effort has been made to clarify the crime, the circumstances in which it was committed, and who was responsible.¹⁷

In one of the cases in which Romo was accused, the disappearance in July 1974 of student leader Alfonso Chanfreau Oyarce, the Supreme Court's decision to hand over the case to the military courts provoked an impeachment motion in Congress against three Supreme Court judges and the General Auditor of the Army, Fernando Torres Silva, who had supported the decision. The judges were accused of gross abandonment of their duties and denying the right to justice. On January 20, the charges were upheld in the Senate against one of the judges, Hernán Cereceda, who was expelled from the judiciary.¹⁸ There is little doubt that his expulsion was another factor which perceptibly changed the attitude of the ordinary courts, and even the military appeals courts and the Supreme Court, toward these cases.

¹⁷ Despite being named for Aylwin, this interpretation of the law has been argued consistently by human rights lawyers in Chile and also by a handful of judges, but it was consistently opposed by the Supreme Court. Santiago Appeals Court Judge Carlos Cerda was suspended for two months by the Supreme Court on two occasions (in 1986 and 1991) for refusing to close an investigation into the disappearance of ten Communist leaders in 1976. Cerda had argued that Article 413 of the Code of Criminal Procedures prohibits a judge from closing a case until the investigation was complete, and that such closures were inconsistent with Chile's international human rights treaty obligations. Following the publication of the Rettig Commission's report, new evidence in about 220 cases was transmitted by the commission to the courts. Before the release of the report, Aylwin wrote to then-President of the Court Luis Maldonado urging him to instruct the courts to reopen the investigations. When presenting the report on television, Aylwin said "I hope they (the courts) duly exercise their function and carry out an exhaustive investigation, to which in my view, the amnesty law in force is no obstacle."

¹⁸ The motion against Cereceda won because three opposition senators belonging to *Renovación Nacional* crossed the floor and voted with the Concertación in his case. This gave the Concertación the minimum number of votes needed for the accusation to be upheld — the first such decision in 125 years. It later transpired that other irregularities had weighed heavily against Cereceda, whereas the opposition members did not support the basis of the charges against the other judges and Torres.

The Boinazo and the "Aylwin Law"

The army's reaction to these developments was not long in coming. On May 28, while President Aylwin was on a state visit to Scandinavia, unusual troop movements were reported in the vicinity of the armed forces headquarters in Santiago, where the Council of Generals was holding an emergency meeting, presided over by General Pinochet. Soldiers in full camouflage combat gear, and some carrying bazookas and other heavy equipment, were posted on guard duty outside the building, while armored vehicles from other army units cruised the streets. In one incident, photographers covering the movements were attacked and their cameras were destroyed. Among the main reasons for the army protest was the spate of new prosecutions of army personnel for human rights crimes.¹⁹ The case of Lt. Colonel Laureani, the first serving officer wanted for arrest, was said to be one of the triggers.

Amid rumors that the army was pressing for an Argentinean-style *'punto final'* (full stop law) to cap court investigations once and for all, Aylwin categorically rejected a direct impunity statute.²⁰ Nevertheless, it quickly became apparent that the government was considering an intermediate solution, which without closing trials or imposing any time limit on them, would meet some of the army's objections. A civil-military group was formed to analyze the actual state of judicial investigations across the country, on which statistics given by the army and those given by the government were widely at variance.²¹

During July, Aylwin held a series of meetings with Pinochet and carried out wide-ranging consultations with political leaders, the judiciary, human rights groups and the Organization of Relatives of the Disappeared (*Agrupación de Familiares de los Detenidos-Desparecidos*). Aylwin stated that the trials could be speeded up significantly only if the army could be induced to collaborate with the investigations. The thrust of the measures he proposed in these meetings was to provide special judges who would be devoted exclusively to the investigations, while

¹⁹ The immediate pretext cited was the reopening by the Council of State (an autonomous body which represents the legal interests of the State) of a judicial investigation into the receipt by Pinochet's son Augusto of checks totaling \$3 million for the purchase of a bankrupt arms manufacturing firm. (See *Human Rights and the Politics of Agreements*, p. 49-50, for a summary of the case). What seems to have given offense was a headline in *La Nación*, the government-owned newspaper, announcing the court decision to reopen the case, which the army attributed to a government "campaign" against the army. (Since the change of government, *La Nación*, which was previously controlled by the military government, has been independent.) In a press conference on June 1, Santiago Sinclair, formerly vice commander in chief of the army and currently one of Pinochet's hand-picked senators, gave other army grievances, which included objections to the pardoning of political prisoners sentenced for violent crimes, and Aylwin's proposed reforms of the laws governing appointment and dismissal of armed forces personnel.

²⁰ President Aylwin had consistently opposed a new amnesty law to cover crimes committed after 1978, and in meetings with opposition leaders after his return, he announced that opposition leaders also rejected such an alternative.

²¹ The group included Minister of Justice Francisco Cumplido and the army's auditor general, Fernando Torres Silva. Jorge Burgos, currently Undersecretary of War at the Ministry of Defense, and a member of the working group, told Human Rights Watch/Americas that the total number of cases was between 800 and 900, of which the majority had been closed by military courts. Approximately 250 cases were lodged in civilian courts, and most of these were still open in the investigative phase (*sumario*).

introducing guarantees to army witnesses and defendants to encourage them to testify. One of these guarantees was that former military witnesses or suspects would be allowed to give evidence in secret, and their names would not be made public. Aylwin stressed that without the army's cooperation, the most likely prospect was that the trials would continue indefinitely in suspension.

Aylwin's bill, which was presented to the Chamber of Deputies on August 4, contained the following proposals:

- ◆ Up to fifteen appeals court judges would be appointed as *ministros en visita* (special investigating judges) to take charge of all cases involving kidnapping, illegal arrest, torture and homicide, to which the amnesty law was in principle applicable (including those in military courts). The judges elected for this task would be replaced on the appeals court by fifteen judges designated by the President from a list of candidates submitted by the Supreme Court.
- ◆ Those witnesses and defendants who testified with "precise data or information which contributes to clarification of the crime and its circumstances" could have their declarations, as well as all pertinent legal rulings, kept off the public legal record. Furthermore, such witnesses would be allowed to testify in a place other than the court.²²
- ◆ Court officials or lawyers who violated confidentiality would be subject to a penalty of imprisonment.
- ◆ The *ministros en visita* would be appointed within two years from the date of publication of the law.

Aylwin's proposals aroused fierce disagreement within the governing coalition. Only the Catholic Church and the Christian Democrat Party, the biggest partner in the Concertación, expressed unqualified support.²³ Justice Minister Francisco Cumplido praised the initiative as the "last chance" to find out the truth about the disappeared; Gabriel Valdéz, the president of the Senate, who had himself earlier proposed that the trials be subject to a three month deadline, said he found the measures "very balanced and sane." Some left-wing parliamentarians also gave qualified support.

Although the proposed law was far from a simple impunity statute, it had grave implications for the transparency of the investigations proposed, and many of its critics believed it would merely give the courts a fresh pretext for closing the investigations. The use of secret dossiers to which the public would not have access and the closing of cases by the courts on the basis of such information, would have been a serious erosion of the principle of accountability, since it

²² The secrecy provisions were considerably broadened by the Constitution and Justice Committee of the Chamber of Deputies to include declarations merely "intended to contribute to the clarification of the crime." The committee also amended the status of cases in military courts, such that they would be investigated, not by civilian judges but by members of the *Corte Marcial* (military appeals court).

²³ Andrés Aylwin, the President's brother, a Christian Democratic Member of Parliament and a respected human rights lawyer, was one of the few exceptions.

would allow the acquittal of criminals without their public identification. (Earlier, Aylwin had defended the Rettig Commission's policy of guarding the identity of human rights violators, on the grounds that guilt could only be established by courts of law). The law would also have contradicted due process guarantees by denying the victim's legal representatives the right to see all evidence. As several critics, including Aylwin's former Education Minister Ricardo Lagos, pointed out, it was highly questionable whether the military would volunteer information they had kept secret for years.

On August 10, a group of relatives of the disappeared began a fast in protest of the proposals. FASIC, in whose headquarters the protest was held, issued strongly worded statements attacking the law as a "major deception of the Chilean people." Members of the left-wing Concertación parties — the Party for Democracy (PPD) and the Socialist Party — who had previously been undecided on the issue, joined ranks against the secrecy proposals. After a stormy debate in Congress, PPD and Socialist deputies, with opposition support, voted against the provisions. The text that emerged contained merely measures to speed up the trials, obviously frustrating the objectives of the bill. Further negotiations between Concertación leaders failed to resolve the disagreement within the Concertación, and on September 2, Secretary General of Government Enrique Correa announced that the project had been withdrawn.

Adverse decisions on a number of key cases, particular the *Prats* and *Soria* cases, discussed below, indicate that the momentum of the changes in court decisions noted earlier in the year has abruptly halted since the *Boinazo*. The following cases are indicative.

- ◆ In July 1993, the Supreme Court handed over the *Andrónico* case to a military court. (Two years earlier it had rejected a claim for military jurisdiction.) The military court absolved Laureani and closed the case under the amnesty law.
- ◆ Also in July, the Corte Marcial reopened the case of Francisco Aedo, who disappeared after his detention by the DINA in 1974, but the Second Military Court later closed it, declaring the crime subject to a statute of limitations.
- ◆ The case of Eduardo Paredes, who disappeared after being detained in the Moneda palace on the day of the 1973 military coup, suffered a similar fate. In August 1993, a military court granted amnesty to Osvaldo Romo and Fernando Gómez, accused in the *Vallejos* case, and closed it.

While it is difficult to establish that there has been a simple reversion to the jurisprudence on the amnesty law established under the military government, it is quite clear that sharp disagreements currently prevail in the courts about how the law should be interpreted. Numerous cases have been closed and reopened, then closed again. Courts have reversed decisions they themselves took in earlier years. Cases have been kept open whose circumstances appear identical to those of cases which have been closed. There have been continuous battles for jurisdiction between civilian and military courts. This long, silent struggle for accountability has consumed enormous judicial resources, to say nothing of the expense and frustration of the relatives of the victims, with little tangible result.²⁴ Without a clear legislative directive on the

²⁴ Five cases closed under the amnesty law by the Supreme Court have been presented by lawyers to the Interamerican Commission of Human Rights. They include a case against Manuel Contreras, former director of the DINA, for the disappearance of seventy people in 1974-1978, in which the Supreme Court ruled in 1990 that the

amnesty law, one which prohibits the permanent closure of cases before they have been clarified and the culprits identified and the transfer of the cases once and for all to civilian courts, this situation may continue indefinitely.

Progress in Pre-1978 Cases

Letelier-Moffitt

The 1976 assassination of former Foreign Minister Orlando Letelier and U.S. citizen Ronni Moffitt was expressly excluded from the amnesty law, and uniquely, the investigation was taken out of military courts and entrusted to a *ministro de la corte*, in this case Supreme Court Justice Adolfo Bañados. It is the only case from the military period in which suspects have been convicted and sentenced.²⁵

On November 12, 1993, Justice Bañados sentenced Gen. Manuel Contreras Sepúlveda, former director of DINA, and Brig. Pedro Espinoza Bravo, DINA's chief of operations, to seven years and six years imprisonment respectively, for the car-bomb assassination. Both Contreras and Espinoza benefitted from a rule allowing a reduction of sentence if more than half the time had passed between the date of the crime and the entry into force of a statute of limitations. They were absolved on charges of issuing false passports to two DINA agents (Armando Fernández Larios and Mónica Lagos) who traveled *incognito* to the United States to prepare for the assassination, on the grounds that a statute of limitations applied to those charges.

Most of the details of the murder conspiracy were already known from trials in the United States that had convicted the principals, U.S.-born DINA agent Michael Townley, Armando Fernández, and their Cuban accomplices. Under a plea-bargain arrangement with the U.S. government both Townley and Fernández had made detailed confessions implicating Contreras and Espinoza in exchange for reduced sentences and federal witness protection. Justice Bañados, however, also obtained additional evidence. Witnesses included former DINA agents, Townley's secretary, and employees of the Townley house in the well-to-do Santiago neighborhood of Lo Curro (which was purchased by the DINA and used as a DINA operations center). From the evidence Bañados was able to refute conclusively the DINA chief's contention that Townley was no more than a paid informer; the evidence proved Townley to be an operational agent with important tasks and responsibilities. In summing up his verdict, Bañados stated that five "presumptions" of Contreras' and Espinoza's guilt emerged from the evidence:

application of the amnesty law was constitutional. In 1991 Americas Watch and the Center for Justice and International Law (CEJIL) submitted the case jointly to the Commission on behalf of the Relatives of Disappeared Detainees. The other cases are those of Juan Alsina, a Spanish priest executed after the coup; Aniceto Meneses and Ricardo Lagos Salinas, leaders of the Radical and Socialist Parties, respectively, who disappeared in 1974 and 1975; and Pedro Vergara Inostroza, who disappeared after being detained by Carabineros in Conchali in April 1974.

²⁵ The background and evolution of the case are described in several of our earlier reports. Because Letelier was murdered in Washington, D.C. and Moffitt was a U.S. citizen, the case affected U.S.-Chilean relations for years, and it was chiefly pressure by the U.S. government which ensured that it was not included in the amnesty of 1978. It languished in military courts until July 1991 when, under a special clause in one of the new government's judiciary laws, it was transferred to Bañados, as the most junior member of the Supreme Court.

- ◆ Contreras exerted total control over the DINA and its operations, Townley was a DINA agent with important responsibilities, and Townley had confessed and been convicted of the murder.
- ◆ Townley testified that Espinoza transmitted Contreras' order to him to carry out the killing.
- ◆ Fernández testified that he had been sent by Espinoza to the United States to carry out surveillance on Letelier and to contact Townley in Kennedy Airport to brief him on the results.
- ◆ Townley's wife testified that he (Townley) had told her of Contreras' orders, and she had relayed Townley's messages about the progress of the plan to his DINA controller. (Both Fernández and Townley were later ordered by Contreras to lie to the courts).
- ◆ Contreras and Espinoza had "engaged repeatedly in inexactitudes, contradictions and false excuses" throughout the trial.

Contreras and Espinoza were detained for interrogation on military premises in September 1992, and are currently free on bail. Far from disappearing from public view, Contreras continues to appear at public functions and gives press interviews, boasting that he would never spend a day in prison for the Letelier killing. The prison sentence will not come into effect unless it is confirmed by the Supreme Court. On being notified of the sentence, both men insisted again on their innocence and appealed, claiming that the evidence on which they were convicted — essentially Townley's and Fernández's testimony — is inadmissible in Chilean courts. Lawyers for the Letelier family have also appealed for the sentences to be increased to life imprisonment. Before hearing the appeals, the Supreme Court must first rule on an earlier appeal by both men claiming that the case's exemption from the amnesty law is unconstitutional. This will mean further delays, and a final verdict is not expected for months.

Carlos Prats González

Gen. Carlos Prats González, former commander in chief of the army and minister of defense under the Allende government, and his wife Sofía, were killed on September 30, 1974, in Buenos Aires, when a bomb exploded under their car. The Rettig Commission report concluded that the bomb had been attached to the vehicle by "agents of the state, presumably of the DINA."

Unlike the *Letelier-Moffitt* and *Soria* cases, the *Prats* case had never been investigated by a Chilean court, and attempts by the Prats family during 1992 and 1993 to initiate a judicial investigation were unsuccessful; the Supreme Court refused to assign a special judge to the case.

In May 1993 the Chamber of Deputies supported a petition by the Prats' daughters, Sofía Angelica and Cecilia, for the case to be investigated by the Chamber's Human Rights Commission, so that it could establish whether or not Chilean state agents had participated in the crime. The commission reported its findings to the Chamber in September. From its inquiries with the Ministry of Defense and the Foreign Ministry, it confirmed that nothing had been done in Chile to investigate the crime, despite its gravity and the high government office held by the victim. An investigation had been opened in the Argentine courts but had failed to bring results. A warrant had been issued for the arrest of Enrique Arancibia Clavela, former head of DINA's Buenos Aires operations, but he escaped arrest.

Important leads on the Prats assassination emerged from the Letelier-Moffitt investigation, to which the Chamber's commission had access. These included testimony by Michael Townley that in 1974, Manuel Contreras had ordered Pedro Espinoza to have Prats eliminated, and that the mission had been entrusted to the chief of DINA's external operations, Raúl Iturriaga Neumann, and to Armando Fernández Larios. Townley admitted also that days before the assassination he had met with Iturriaga in Buenos Aires; copies of flight documents (to which the commission had access) showed that Townley, traveling under the alias of Kenneth Enyart, entered Argentina on September 10, 1974 and left on September 30, the day of the assassination. Evidence was shown that the Chilean Foreign Ministry had abetted the crime by refusing to issue passports to Prats and his wife, who had received repeated death threats in Buenos Aires and knew they were under surveillance.

In October, citing this evidence of the DINA's involvement, the Chamber of Deputies voted to request the Supreme Court to appoint a ministro en visita to open a judicial investigation, on the grounds that there had never been an official investigation, or a judicial inquiry in Chile. Regrettably, the court rejected the request unanimously, arguing that the case was not under Chilean jurisdiction, since the evidence of the Chamber of Deputies' commission was insufficient to establish that Chileans were involved.

Carmelo Soria

Carmelo Soria, an official of the United Nations Latin American Center of Demography (CELADE), of dual Spanish-Chilean nationality, was found dead next to his car in a Santiago canal on July 16, 1976, apparently the victim of a driving accident. A court investigation into his death was closed the same year without result. The case was reopened in March 1991, following the publication of the Rettig Commission report, which concluded that he had been kidnapped by DINA agents while driving home from work on July 15, and that he was subsequently killed and his car and body dumped in the El Carmen Canal, in Conchalí, Santiago, to make his death appear an accident. Accounts of the circumstances in which he died were given by key witnesses in the *Letelier-Moffitt* case, including Townley and his secretary, who testified that Soria had been taken after detention to the Townley house in Lo Curro.

Following pressure by the United Nations and the Spanish government, in May 1992, the Chilean Ministry of Foreign Affairs requested the Santiago Appeals Court to appoint a ministro en visita to continue the investigation, considering Soria's status as a representative of an international organization. Judge Violeta Guzmán was assigned the case. In July 1993, the Supreme Court upheld a ruling by Judge Guzmán denying application of the amnesty law. Details of Guzmán's investigation, published in the press in November 1993, revealed that six soldiers, including two currently high-ranking army officers on active service, Cols. Pablo Belmar and Jaime Lepe Orellana, the latter is General Pinochet's secretary, were directly implicated in the crime. According to a key testimony, Soria was stopped in his car by two of the men, including Lepe, who were wearing police uniforms, and he was driven in his own car to the Lo Curro house, where he was interrogated under torture and later killed by having his neck broken. Meanwhile, a group was sent to the area of the El Carmen Canal to prepare the ground for the faked "accident."

In August 1993, the military courts claimed jurisdiction over the case. Judge Guzmán refused to surrender it, and on November 16, the Supreme Court ruled in favor of the military court. This decision provoked a strong reaction by the Spanish government, which formally asked the

Chilean Foreign Ministry to request the appointment of a Supreme Court judge to investigate, based on the same formula applied in the *Letelier-Moffitt* case (that is, on the grounds that diplomatic relations between the two countries were affected). The Chilean government eventually agreed to this request and asked the Supreme Court to appoint a ministro de la corte. The Supreme Court refused and as a gesture of protest, the Spanish ambassador was recalled to Madrid. Given this new development, the Chilean Foreign Ministry asked the Supreme Court to reconsider, and this time the court, by a large majority, gave way. On December 10, Supreme Court Justice Marcos Libedinsky was assigned the case.

The tug-of-war did not end there, however. Immediately after taking over the case in November, the military court applied the amnesty and by December 6, the case had been closed. That decision was made on the basis of photocopies of the original documents, since the military court had already passed the file onto the Supreme Court. Claiming this practice to be irregular, the Chilean Foreign Ministry appealed to the Supreme Court to annul the military court's decision, but the Court ruled that it was up to Justice Libedinsky to decide on the merit of the appeal. Unexpectedly, and to the consternation of human rights workers, Libedinsky upheld the military court, confirming its decision to amnesty and close the case.²⁶

Libedinsky argued that the military court had not exceeded its mandate in closing the case, since the Code of Military Justice allows military courts to continue acting, short of a final verdict, even when jurisdiction is under formal dispute. In a later interview, he claimed that the closure decision was a *fait accompli* which ruled out any further investigation. He also insisted, as a secondary argument, that the application of the amnesty was legitimate. Since the DINA's responsibility was established by the evidence already before the court, the amnesty was applicable even though the identity of the individuals responsible had not yet been established and no formal charges had been made. (In fact, several important pieces of crucial evidence, including the testimony of Manuel Contreras and Virgilio Paz, one of the Cubans convicted of the Letelier assassination and present in the Townley house at the time of Soria's murder, had still to be obtained). Libedinsky upheld the view that the amnesty law applied to crimes, not to the people that commit them, and that the obligation of the courts to investigate did not extend to identifying the perpetrators, once it had been established that crimes had been committed which fell within the broad terms of the law.²⁷

The Soria family appealed to the Supreme Court with a detailed refutation of Libedinsky's arguments. The plaintiffs argued that the application of the amnesty in this case is a violation of Article 2 of the Convention of Vienna on crimes committed against international civil servants and other diplomatic officials, ratified by Chile in 1977, which requires states to punish those responsible for such crimes.²⁸ On April 6, 1994, in a surprise decision, the Supreme Court unanimously accepted the appeal, and ordered the case reopened. It pointed out that the

²⁶ The consternation was all the greater because Libedinsky was an Aylwin appointee with a reputation as shrewd investigator and a pro-human rights record. In 1990 and 1991, he conducted a meticulous investigation of a major financial fraud by former CNI agents which led to several indictments.

²⁷ *El Mercurio*, January 9, 1994.

²⁸ Under Article 5 of the Constitution, Chile's international treaty obligations have the status of constitutional law, giving them precedence over domestic legislation such as the amnesty law of 1978.

investigation was incomplete and should be continued "whatever consequences it may finally have." Judge Libedinsky was assigned back to the case.

The *Soria* case illustrates the depth of the legal disagreement caused by the absence of a mandatory and unambiguous interpretation of the amnesty law for the courts to follow. Libedinsky claimed that the Soria investigation met the criteria of the "Aylwin doctrine" on the amnesty law, since it had established that a crime had been committed and that the perpetrators had been military personnel acting on higher orders. Yet he did not consider that the court's responsibilities extended to identifying those responsible before applying the law. It is difficult to escape the conclusion that the government's reluctance to deal with this conflictive issue in Parliament has left the courts to shoulder a political burden which neither the government nor the legislature has been willing to assume. The fate of the Soria investigation also reinforces the case for an urgent and long-overdue reform of the current system of military justice.²⁹

Post-1978 Cases

Court investigations into several notorious human rights crimes committed after 1978, to which the amnesty is not applicable, continue to progress even though the number of cases with real advances is low. There have been only three convictions, all involving deaths under torture.

Mario Fernández López

Two former CNI agents, Maj. Carlos Herrera Jiménez and Armando Cabrera Aguilar, were sentenced on December 17, 1991, by the Corte Marcial to ten years imprisonment for the torture and murder of Mario Fernández López, a transport worker, in the northern city of La Serena in October 1984. After his indictment, Herrera jumped bail and fled to Argentina under a false identity, where he was arrested for illegal entry and given a three-year suspended prison sentence. For more than a year, the military judge of Santiago failed to process a request by the Fernández family's lawyer for his extradition, and he did so only after being threatened with legal action. Herrera's extradition has also been requested in relation to the abduction and murder of trade unionist Tucapel Jiménez in 1982.³⁰ Armando Cabrera is currently imprisoned in

²⁹ According to Libedinsky, the Supreme Court was unaware, at the time it finally agreed on December 9 to appoint a special judge to continue the investigation, that the military court had already closed the case for good, thereby making the appointment redundant. As the judge described the sequence of events: "When the Court designated me, it was not aware that the case had been closed. On December 2, the Court gave its ruling rejecting the appointment of a ministro en visita. I had been in favor of the appointment. We were all under the impression then that the case was still being processed. Afterwards the Foreign Ministry asked for a reconsideration and on December 9 — when I was absent — the Court agreed to this. On the night of December 9, the lawyer Insunza (counsel for the Soria family) made it known that the military court had closed the case definitively. And the Court took its decision and appointed me without knowing this."

- "So your appointment was due merely to a breakdown of communication?"

- "You could say that. Because, according to the chronology of events, you have the absurd situation in which the Court designates a ministro en visita to take over a case which has already been closed."

El Mercurio, January 9, 1994. (compressed by author)

³⁰ Jiménez, a key figure in efforts to reunite the trade union movement, was murdered with particular violence — his throat slit and five shots to the head. For a description of the case, see Americas Watch, "Chile: The Struggle for Truth

a military barracks awaiting trial in the *Tucapel* case, but his prison sentence for the Fernández crime will not come into effect until the court investigating the Tucapel murder has given a verdict. Also accused in that case are two other CNI agents, Alvaro Corbalán Castilla, former head of operations, and Osvaldo Pinchetti Gac. Both are currently detained in military barracks.

Carlos Godoy Echevoyen

Carlos Godoy, a twenty-three year old Socialist, died under torture in a police station in the port of Quintero in February 1985, shortly after returning from exile in Cuba. After a drawn-out investigation, the Corte Marcial sentenced a former captain of the Carabineros, Héctor Díaz Anderson, to three years imprisonment for the crime, and in December 1993, the Supreme Court upheld the sentence on appeal. However, Díaz is not yet serving his sentence. He remains at liberty pending a request by the Supreme Court to the Corte Marcial for a "pre-sentencing report." Because of the lenient sentence, the court may allow Díaz one of several alternatives to prison, such as nocturnal detention, Sunday release or a suspended sentence. Human rights sources consider it very likely that one of these alternatives will be granted. Díaz had belonged to the notorious police intelligence unit known as the *Dirección de Comunicaciones de Carabineros* (DICOMCAR) implicated in the murder of three Communists during the same year. He was released from charges in that case, which is described below.

The Degollados Case

In March 1985, while the country was under a state of siege, police agents kidnapped three Communists, took them to a clandestine detention center, interrogated them under torture, and then took them secretly to a deserted spot near Santiago's airport where they killed them by cutting their throats.³¹ Investigation of the case began in April 1985 when Judge José Canovas was appointed by the Supreme Court as ministro en visita. Aided by an intelligence report implicating members of a secret Carabineros unit, DICOMCAR, in the crimes and a series of related kidnappings, Canovas charged four Carabineros, including the head of DICOMCAR, Luis Fontaine with the killings. Canovas' investigation, one of the most courageous undertaken under the military government, was ultimately unsuccessful. In January 1986, the Supreme Court ordered the unconditional release of Fontaine and another of the agents. The police stonewalled (Fontaine swore under oath his unit was not involved) and in January 1987, Canovas, unable to progress further, closed the investigation. The following year he retired from the judiciary for health reasons. In May 1989, the case was re-opened and passed to judge Milton Juica. In April 1992, Juica charged twelve Carabineros with kidnapping and murder, and former Director General of the Carabineros César Mendoza Durán with covering-up the crimes (Mendoza, a member of the military junta which took power in September 1973, had resigned in August 1985 as a result of the uproar over the murders). The Supreme Court, however, promptly ordered the charges against him dropped. In September 1993, Juica concluded his investigations and indicted

and Justice," pp. 8-9.

³¹ The victims were José Manuel Parada, an archivist at the Catholic Church's human rights organization, the Vicaría de la Solidaridad; Manuel Guerrero, a teacher; and Santiago Nattino, a graphic artist. While the motives for their abduction are not clear, Parada and Guerrero appear to have been killed to silence revelations about the activities of the Combined Command, predecessor of DICOMCAR, on which Parada was doing research at the time. For a summary of the case, see our earlier reports, *Human Rights and the "Politics of Agreements"* and "Chile: The Struggle for Truth and Justice for Past Human Rights Violations."

eighteen former DICOMCAR members and a civilian agent, Miguel Estay Reyno, for the murders, the related kidnapping of five members of the teacher's union AGECH, and the attempted murder of teacher Leopold Muñoz who had tried to prevent the abduction of two of the victims from a Santiago school. Miguel Estay, a defector from the Communist Party, had a long history as an agent for the Combined Command, DICOMCAR's predecessor. In December 1992, he was located in hiding in Paraguay and brought to Chile to face trial.

Precise details of the planning and execution of the crime, including the names of the five policemen who executed the men, became known when ten of the accused decided to confess. The brutal details of the murders and elaborate efforts to cover them up were described in the press when Judge Juica lifted reporting restrictions in April 1992.

The major question mark remaining in the case was how much Carabinero chiefs knew early on of the police involvement and subsequent cover-up. The prosecution was based on the charge of illegal terrorist association, which implies that DICOMCAR's activities were never officially authorized. Moreover, the Carabineros' repeated denials that the police were involved ensured that the case was retained throughout under civilian jurisdiction. The key defendant who might have revealed the source of the orders for the killings, DICOMCAR chief Luis Fontaine, was assassinated by a far-leftist hit squad in 1990. Mendoza's deputy, Gen. Rudolfo Stange, the current director general of the Carabineros, denied knowledge of the police involvement at the time of the crime. However, retired Col. Guillermo González Betancourt, the most senior of the defendants, is reported to have handed over to Juica a tape recording of a meeting between Stange, Fontaine and himself, in which Stange offered both men the Carabineros' legal support. (Stange later acknowledged that the voice on the tape was his.) González has insisted on DICOMCAR's official status, and his lawyer attempted to have the case transferred on these grounds to a military court, but the court was unwilling to accept jurisdiction.

Despite Mendoza's acquittal, subsequent revelations strengthened suspicions that senior police officials participated in a cover-up of the crime. Toward the end of the hearings, Juica received testimony from Ramón Miranda Gálvez, whose brother, police sergeant César Miranda Gálvez, died of a stroke in January 1992, while the judge was questioning him. Ramón Miranda testified that in 1990, all of those accused in the *Degollados* case, including his brother, were transferred to districts outside Santiago; that they were later pressed to resign for personal reasons; and that after their arrest the Higher Advisory Council of the Carabineros crafted declarations and alibis for them to present to the judge.³²

Apart from DINA agents Osvaldo Romo and Miguel Estay Reyno, who do not have military rank, all those currently in detention facing charges for human rights violations are being held in police or army installations.³³ Some of them are reported to have used their rank to obtain special privileges. According to the lawyer for the Jiménez family and other sources close to the case, former CNI chief Alvaro Corbalán hosts parties at night and conducts business by cellular phone from the Army Provisions Command where he is being held, and has been seen in

³² "Testigo dice que triple crimen fue encubierto," *La Epoca*, February 13, 1994.

³³ Under Article 137 of the Code of Military Justice, introduced by the military government when police officials began to appear before the courts, military personnel may be held prior to sentencing in a military barracks or police station. Together with the police immunity from prosecution by ordinary courts for service-related offenses, this norm was left untouched by the Aylwin government.

Santiago night spots in the early hours.³⁴

On March 31, 1994, a day after the ninth anniversary of the murders, Judge Juica announced his long-awaited verdict. All but two of the eighteen men accused were convicted. DICOMCAR agents Guillermo Betancourt, Patricio Zamora Rodríguez, and Alejandro Saez Mardones were sentenced to life imprisonment for terrorist kidnapping and homicide. Police agent José Fuentes Castro and Miguel Estay received lesser sentences of eighteen years on the same charges. Their evidence was considered to have been important enough for them to qualify for mitigation under an arrangement similar to a plea bargain. Another policeman, Claudio Salazar Fuentes, was sentenced to fifteen years. Five of them had confessed to participating directly in the killings. The remaining ten were convicted of terrorist association and kidnapping and received sentences ranging from five years to forty days imprisonment. In addition, all of those convicted were ordered to pay compensation totalling millions of dollars to the relatives of the victims (including the victims of the other kidnappings and attempted murder.) The money is to be paid out of public funds.

Chilean law prescribes capital punishment for the crime of kidnapping and murder. However, the death penalty was rejected on the express wish of the relatives of each of the three victims.

The verdict, although expected, had a profound impact in Chile. It breached a wall of impunity which held intact for more than twenty years. Despite the long delays, a Chilean court had at last handed down a sentence commensurate with the gravity of a human rights crime. For the first time, a scrupulous judicial investigation had proven that state officials had conspired to commit acts of terrorism. Furthermore, Juica accused Gen. Mendoza, Stange, and five other high-ranking police officers of "serious neglect of military duty (*incumplimiento serio de los deberes militares*)" for failing to prevent or investigate the crimes, and called for their prosecution by a military court. The judge found it "incomprehensible" that a string of previous crimes attributed to DICOMCAR had passed unnoticed by their superiors "in an institution bound by military discipline like Carabineros." He showed officers consistently obstructed clarification of the crimes, failed to carry out investigations, and lied when they claimed to have done so. "The great majority" of culprits testified that the high command knew early on their involvement, had warned them not to incriminate themselves and ordered them to give false information to the court.³⁵

The current director general of the Carabineros, as well as his predecessor and several other high-ranking officers, will now face trial by military court. The offense of which they are accused is equivalent, in the military penal code, to the crime of "*incubrimiento*" (cover-up).

Operation Condor Revisited

A secret intelligence network to help and conceal members of the South American military fraternity affected by human rights accusations is now widely believed to have been in operation for at least a decade. It is believed to have its origins in Operation Condor, a scheme

³⁴ "La Prisión de los ex-Agentes de Inteligencia," *La Epoca*, March 14, 1994.

³⁵ "Principales aspectos del fallo del Ministro Juica," *El Mercurio*, April 1, 1994.

implemented by Manuel Contreras to coordinate Southern Cone intelligence operations in the mid-1970s.

There is evidence that former agents or officers currently facing human rights prosecutions have received direct or indirect financial support or legal advice from official military contacts, in some cases while they were in hiding abroad and wanted for arrest. Evidence in the *Degollados* case shows that Miguel Estay (who had previously been an agent for the Combined Command and had been indicted in 1985 in relation to disappearance cases) had reportedly received monthly payments in dollars in Paraguay from an office set up to give legal assistance to accused officers and headed by a retired Chilean air force. In April 1992, an air force officer was sent to give money to Estay and warn him to flee from Paraguay. In December 1992 the operation was discovered, Estay's contact was arrested and confessed, and Estay travelled to Chile to give himself up.³⁶

Correspondence marked "secret" and addressed by Carlos Herrera Jiménez to the head of the CNI and the Director of Army Intelligence, part of which was published in the press, indicates that Herrera may have received economic help from the CNI and the army while undergoing trial in the *Fernández* and other cases. The correspondence refers to promises made by senior army intelligence officials to send him abroad with false documentation, to arrange his trial by military court, and to send him money in installments.³⁷

In June 1993, it became known that Enrique Berríos, an industrial chemist wanted for questioning in the *Letelier* case, had lived for months under secret military protection in Uruguay. According to testimonies, Berríos, a close associate of Michael Townley, had been employed by the DINA to work on the development of a poison gas, "Sarin," in the basement of the Townley house. Orders for his arrest had been issued by Justice Bañados in December 1991, as a key witness in the *Letelier* case, but Berríos vanished. In June 1993, following an anonymous tip, it was discovered that in November 1992, Berríos had sought help from local police in Parque del Plata, Uruguay, claiming to have been kidnapped by Chilean and Uruguayan military agents. He is reported to have claimed that his captors wanted to kill him because of his knowledge of chemical weapons in Chile. The local police chief initially heeded his request, but later handed him back to his Chilean "protectors" at the insistence of higher Uruguayan military intelligence authorities. Clumsy efforts were made to conceal the incident, after which Berríos disappeared and was not seen again.

Several police and military authorities, including the head of Uruguayan military intelligence, Gen. Mario Aguerrondo, were dismissed in the political storm which followed these revelations. Several Chilean consular officials, who had concealed their knowledge of Berríos' presence in Uruguay, were also dismissed or disciplined. According to subsequent investigations, Berríos had been brought to Montevideo under Chilean military protection and with support from Uruguayan military intelligence, in order to protect him from arrest and interrogation in the *Letelier* case. After eight months confined to a dingy hotel with his escort, he contacted the Chilean consulate to request a safe-conduct to enable him to return to Chile, but

³⁶ "Caso Degollados: la Historia Oculta de la Confesión de 'El Fanta,'" *La Epoca*, October 21, 1993.

³⁷ Information from documents viewed by the author and published in the national press. Herrera wrote the memos to complain that the promises had not been kept.

the request was not acted on. Berríos' current whereabouts, if he is still alive, are a mystery.

III. Allegations of Torture and Abuses of Power

Torture and Ill-treatment

Responding effectively to crime and terrorism continued to challenge the Aylwin government in 1993, and opinion polls repeatedly confirmed that security was a major topic of public concern. Although there are said to be up to six armed opposition groups currently operating, most violent political crimes were committed by two, the Manuel Rodríguez Patriotic Front-Autonomous (FPMR-A), and the MAPU-Lautaro. The former group, composed of hard-core remnants of the main armed opposition group under Pinochet, and originally allied with the Communist Party, was responsible in 1990 and 1991 for the assassination of figures associated with military repression. Members of this group are currently serving life sentences for the murder of rightist Senator Jaime Guzmán Errázuriz, in April 1991. The MAPU-Lautaro's armed wing, the Lautaro Popular and Rebel Forces (FRPL), has recently specialized in armed bank robberies. These attacks are sometimes extremely violent. On September 10, 1992, for example, three Investigaciones detectives were gunned down by members of the group during an attempted robbery of the home of the *intendente* (mayor) of Santiago, Luis Pareto. The robberies continued through 1992, but appeared to decline somewhat in 1993. Nevertheless, during 1992 and 1993, the activities of the Lautaro movement posed a greater threat to the authorities than did those of the FPMR-A, which had been seriously weakened by internal splits and by the arrest of its key leaders. During 1993, many *Lautaristas* were killed and detained as a result of intense police intelligence work, carried out mainly by special units of Investigaciones.

The murder of Senator Guzmán marked a watershed in the government's response to terrorism. Advisory bodies were set up to process information and study alternative strategies for combatting terrorism, and a special judge was appointed to investigate the activities of the FPMR-A, the prime suspect in the *Guzmán* case. Similar measures were taken later against the MAPU-Lautaro. In May 1992, Judge Arnoldo Dreyse was appointed to investigate the group, and his investigation, completed in August 1993, resulted in sixty-eight criminal prosecutions. In addition, as we have noted in earlier reports, legislation was passed broadening the powers of police in pursuit of terrorist suspects, in particular, allowing police to conduct raids without warrant and to detain on suspicion without an individual warrant, requiring only general investigating orders issued by judges.

In earlier reports we have drawn attention to continuing denunciations of torture and ill-treatment of suspects held in the context of these investigations. We continue to be concerned about reports received during 1992 and 1993. The Committee for the Defense of the Rights of the People (CODEPU), which regularly visits detainees held incommunicado for terrorist offenses, filed more than forty criminal complaints against the Carabineros and Investigaciones in the course of 1993. It has also made direct complaints to the police on a roughly similar number of cases of abuse of power, a wider category that includes torture.³⁸

³⁸ To place these figures in context, in a report published in September 1991, Amnesty International documented forty cases since Aylwin assumed office in March 1990, and an update released in March 1993 gave details of almost fifty further cases. In May 1992, CODEPU presented fifty-five cases to the U.N. Special Rapporteur on Torture, Mr. P. Kooijmans. The Rapporteur's preliminary report, presented to the U.N. Human Rights Commission in December 1992, gave details of seventeen cases.

Most of the complaints seen by Human Rights Watch/Americas mention beatings; the use of physical constraints, such as handcuffs, for prolonged periods; threats against detainees or members of their families; and deprivation of food, water, clothing, and sleep. There have been a substantial number of denunciations of physical torture and the use of electricity, particularly against detainees held by Investigaciones. The practice of blindfolding detainees for long periods, which has been explicitly condemned by the United Nations Rapporteur on Torture, remains in general use.

During the second half of 1992 and early 1993, there was a significant increase in the number of cases attributed to Investigaciones, a trend which was noted from its inception, in our 1992 report. Under former Director Horacio Toro, notable efforts were made to overhaul and remodel Investigaciones, which had acquired an egregious reputation over the years for corruption and human rights abuses.³⁹ Investigaciones subsequently began to play an increasingly prominent role in counter-terrorist activities. The torture allegations were made, in particular, against a specialized anti-terrorist division, the *Prefectura Investigadora de Asaltos* (PRIA), originally based in the Investigaciones headquarters on General McKenna Street, and subsequently decentralized to several Santiago police stations. In our 1991 report we pointed out that Investigaciones previously had a good record on investigating human rights complaints and includes courses on detainees' rights, taught by human rights advocates, in its training programs.

According to CODEPU lawyers, the number of reports of torture by Investigaciones declined significantly during 1993, apparently as a result of an internal probe into the PRIA, after which the unit was disbanded and its operatives transferred to local police stations. Such administrative investigations are undertaken by a special Investigaciones unit known as the Department of Internal Affairs. According to CODEPU, one detective, Jesús Silva, who had been repeatedly named in torture complaints, was withdrawn for service for medical reasons. However, Investigaciones has not, to our knowledge, made public any disciplinary proceedings or legal action taken against abusive officers as a result of its inquiries. While CODEPU continues to document allegations of beatings and ill-treatment by the Carabineros — particularly of petty criminals and residents of poor neighborhoods — there are signs of greater accountability compared with earlier years. According to CODEPU, at least twenty Carabineros have been charged by military courts for abuses which include torture. Policemen facing such charges are, however, rarely suspended from active service pending their trial.⁴⁰

The police, however, have not yet fully adjusted to public scrutiny of their operations. Hostile police reactions to allegations of torture reported in the press indicate that their underlying attitudes towards human rights critics have changed little since the dictatorship. On more than one occasion Investigaciones personnel have threatened lawyers and human rights advocates with legal action for publicizing complaints. The use of legal threats to silence victims or their legal representatives can only reduce the likelihood of an effective investigation. Unfortunately, the Ministry of the Interior has often supported the police before investigations have been conducted to establish whether the allegations were well-founded. The following cases are just an example:

³⁹ Toro resigned in April 1992, the victim of an espionage scandal. See "Chile: The Struggle for Truth and Justice."

⁴⁰ Interview with CODEPU lawyer Hugo Pavéz, March 22, 1994.

- ◆ **Evaristo Godoy Godoy**, a member of the Socialist Party and former political prisoner, was detained by Investigaciones on September 29, 1992, and taken to the PRIA headquarters. He was held there until October 8, when he was released without charges. In a criminal complaint lodged with the Third Criminal Court he alleged that he had been blindfolded and tortured for two days with electric shocks and beaten and threatened in an effort to make him confess to crimes he had not committed. In his affidavit he said that there was a room in the General McKenna building which was expressly equipped for torture.
- ◆ **Marco Antonio Villanueva Vinnet**, a twenty-six-year-old mechanic and former political prisoner, was arrested on October 1, 1992, after he had gone to Investigaciones headquarters on General McKenna Street, escorted by an official of the Chilean Commission of Human Rights, to complain about police harassment. Investigaciones officials pursuing the *Pareto* case⁴¹ had arrested several people in the La Victoria slum where Villanueva lived. He was placed in custody after being identified by one of the suspects, and released without charge around 12:00 P.M. the following day. In a court complaint he alleged that he had been tortured with electric shocks on his temples and tongue, that a plastic bag had been placed over his head, and that he had been beaten. A medical report prepared out by a CODEPU doctor found bruising on his lower back and spine, and severe bruising and enlargement of the tongue.
- ◆ **Tania María Cordeiro Vas**, a thirty-eight-year-old Brazilian psychologist, was detained on March 28, 1993 at her home in Rancagua, a town south of Santiago, by detectives stationed in the First Police Station for the Investigation of Robberies (*Primera Comisaría Investigadora de Asaltos*, CINA). Her thirteen-year-old daughter was abducted with her. They were released the following day, but detectives returned to her home and re-arrested them both. They were taken to the CINA headquarters at the First Police Station on Pedro Alessandri Avenue in Santiago, where other detainees were being held. The daughter was eventually handed over to her step-father and later repatriated to Brazil by the Brazilian Consulate. Cordeiro was held incommunicado at the police station for several days, until she was charged with robbery and intimidation and transferred to a prison in Rengo.

During the first week of August, Cordeiro presented a formal complaint to the 14th Criminal Court in Santiago in which she alleged she had been tortured with electricity and sodomized and raped by Investigaciones officials while held incommunicado. Her testimony, which included graphic details of the alleged sexual abuse, was widely published in the Chilean and Brazilian press.

Officials of the Brazilian Consulate were the first to visit Cordeiro after she had been transferred to the prison in Rengo, reportedly finding her in poor physical condition and in need of urgent medical attention, as well as extremely distressed. Subsequent gynecological examinations suggested the possibility of sexual torture. The Brazilian consul took up the case with the Chilean Foreign Ministry. The Aylwin government submitted the complaint to Investigaciones, which categorically denied any abuse, claiming that Cordeiro was legally arrested with a warrant from Judge Dreyse and held incommunicado on his orders. According to Investigaciones, a medical examination had shown no evidence of ill-treatment,

⁴¹ The murder of three policemen during an attempted robbery of the home of the mayor of Santiago, Luis Pareto. See Part III.

and the Cordeiro's daughter had been detained "for humanitarian reasons" at her own request. Investigaciones insisted that Cordeiro had been treated "with deference and respect." The government did not press the matter further. After several months had passed and diplomatic initiatives had failed to produce a serious investigation, a criminal complaint was lodged and the case was made public in early August. The government's refusal to accept the credibility of Cordeiro's denunciations caused a sharp deterioration of diplomatic relations with Brazil, and to avert a crisis, the Aylwin administration requested the appointment of a ministro en visita to investigate. On August 12, Judge Alejandro Solís was assigned the case by the Supreme Court.

On November 23, Judge Solís charged the head of CINA, Zvonco Farías, with illegal arrest, the use of violence and falsification of records. Seven other Investigaciones officials also were charged with illegal arrest.⁴² The judge found evidence that both Cordeiro and her daughter had been arbitrarily detained without a warrant, that a record of their first detention had not been kept (her daughter's presence in the police station was never officially recorded), and that the record of the date of their second arrest had been falsified. The charge of violence referred to the use of the child's detention to pressure her mother into making a confession. Judge Solís told reporters that there was not sufficient evidence to confirm Cordeiro's allegations that she was raped. The incriminated officers immediately appealed. Investigaciones issued a statement claiming that the verdict vindicated them and "reserving the right" to sue Cordeiro and her lawyer for making false allegations.

Following the verdict, Cordeiro's lawyer appealed for her unconditional release on the grounds that the circumstances of her arrest and treatment in detention invalidated the evidence on which she had been charged. The appeal was denied, both by the Rancagua court and by the Appeals Court. Despite the charges, all of the officers involved were still on police duty at the time of writing. One of the defendants, Saturnino Silva López, is reported to have been charged in addition in a cocaine-trafficking case. On March 3, 1994, almost a year after her arrest, the Supreme Court dismissed the charges against Cordeiro and ordered her unconditional release. Shortly afterwards, she returned to Brazil.

This was not the first occasion during the Aylwin government on which human rights lawyers had been threatened with legal action for making torture allegations public. In the case of Ana María Sepúlveda,⁴³ the deputy chief of PRIA told reporters, "I won't allow insults of that

⁴² The officers were charged with infractions under Articles 19 and 21 of the Organic Law of Investigaciones, said to be the most serious offenses in the force's codebook. The charge of violence to obtain a confession carries a five-year prison sentence.

⁴³ Ana María Sepúlveda Sanhueza, a photographer and mother of three, was detained violently in her home on March 6, 1992, and taken to the PRIA on General McKenna Street, where she was held incommunicado. According to her affidavit, she was blindfolded and taken from her cell to another room, where she was stripped to her underwear and made to sit on a chair. Her feet were soaked with water and she was given electric shocks at least ten times. Her interrogator stood on her feet while questioning her. On the following day she made a complaint to the official in charge. She was suffering from nausea, respiration difficulty, and an abnormal and painful menstrual flow. She was given an examination by a person she took to be a police doctor, who told her that "it was normal for her to feel like that because of the contractions her body had suffered." The judge, whom she also told, did not appear to believe her story and told her to tell the truth. A CODEPU doctor who examined her found her condition consistent with psychological torture and believed that she had also been tortured by electricity although there were no physical sequelae. Other complaints of torture with electricity in Investigaciones custody reviewed by Human Rights Watch/Americas were strikingly similar in detail.

kind against a detective. I'm not going to accept anyone staining the honor of my detectives." Investigaciones immediately opened libel proceedings against CODEPU lawyer Hugo Pavéz. The libel suit was subsequently dropped, and the court investigation of the criminal complaint lodged by Sepúlveda against Investigaciones was closed after the judge found the evidence insufficient to press charges.

The legal harassment of human rights lawyers continues, however. On April 14, 1994, a military prosecutor charged Héctor Salazar Ardiles, the attorney for the relatives of the victims in the *Degollados* case, with sedition, citing comments critical of the police high command he made in a press article and television interviews. The prosecutor claimed that Salazar's remarks were intended to break police discipline and induce disobedience. He was detained overnight and later released on bail after expressions of solidarity from parliamentarians and other human rights lawyers. His prosecution, to which HRW/Americas strongly objects as an unwarranted attack on freedom of speech, was continuing when this report went to press.

Killings in "Shoot-outs" and Other Disputed Circumstances

Robberies carried out by armed groups in Santiago often end in pitched battles between gunmen and police. The combination of nervous gunmen and police accustomed to military-style confrontations contributes to a high fatality rate on both sides. Often the circumstances in which police open fire are confused or disputed. In the closing months of 1993, the Carabineros came under heavy criticism for an alleged "shoot first, ask questions later" policy, following the Las Condes incident described below. Although the number of innocent civilians killed and seriously wounded in that incident shocked the Chilean public, similar but less noticed cases had been reported before.

On several occasions in 1993, Carabineros shot dead alleged members of armed opposition groups in circumstances that were officially explained as "shoot-outs" or "repelling aggression" but were subsequently disputed by relatives of the dead, who alleged that the police had not been attacked or under threat when they opened fire. In some of these cases, lawsuits opened by relatives led to indictments of the officers responsible. In one case, one of the victims belonged to neither of the above categories, but was an off-duty detective working for the airport police.

These investigations and indictments are an encouraging sign. However, assessment of internal police investigations into this type of allegation is complicated by the lack of information on current police regulations regarding use of firearms and lethal force. The public interest would be served if this information was available rather than treated as a military secret. The review and monitoring of police operating procedures is an essential democratic function which should be exercised on a permanent basis by an elected authority, and the public has a right to be informed.

- ◆ **Norma Elisa Vergara Cáceres**, aged twenty-eight, was shot and killed on March 26, 1993, by Carabineros belonging to the Stolen Vehicles Recovery Service. Before her death she had been named repeatedly in the media as involved in the murder of three detectives in the September 10, 1992 robbery attempt. According to her father's affidavit, moments before she was killed she had been drinking with two companions in a bar, and the three had left hurriedly for their car when they were intercepted by the police. The Carabineros claimed that she was shot during an exchange of fire, but her father testified that she was shot at point blank range while sitting in the car, and that neither she nor her companions had fired a shot. The family filed a lawsuit against the Carabineros in April 1993 in the 8th Criminal Court.

- ◆ **Rigoberto Edmundo García Alfaro** and **Fernando Orellana Bravo** were killed in August 1992, in the Recoleta neighborhood of Santiago. According to the police, they had gone out on the night of August 12, accompanied by a friend, and were shot and wounded by a police officer after they had attempted to rob him. García Alfaro was found dead on the following day, and Orellana's body was found at the same spot several days later. According to press reports, their relatives alleged that their bodies bore marks of torture.
- ◆ **Cristián Andrés Videla Gatica**, aged fourteen, was shot dead by Carabineros on the night of March 1, 1993, in the district of Quilicura, Santiago. According to court testimony, he had gone out with a friend to buy food in a taxi. The driver, an Investigaciones official, thought he recognized Videla as a young offender he had arrested previously and ordered the youths out of the car. When they refused to leave, he told them he was taking them to a police station. When the car was held up in traffic, the two got out and ran away. According to the police version, the taxi driver reported an attempted robbery, and the Carabineros later tracked Videla down to a nearby empty house where he had taken refuge. The officers surrounded the building and Videla was shot and killed when they broke in. According to the police he had armed himself with a knife and was trying to resist arrest. However, Videla's father claimed that he had been unarmed. The position of bullet holes found in the floor of a bedroom of the house suggested that he was shot on the ground, presumably after being found hiding under the bed.

In September 1993, the press reported that two Carabineros had been charged with "unnecessary violence resulting in death" in connection with these three killings. In the case of Cristián Videla, the charges were filed in a military court. A different military court charged another Carabinero with the unjustified killing on June 26, 1990 of Osmán Yomans Osorio, a young Communist Party member who was surprised by police while painting a mural to commemorate the birth of Salvador Allende. CODEPU subsequently reported that none of the officers had been dismissed despite the charges.

- ◆ **The Las Condes Incident:** On October 21, 1993, seven people were killed and sixteen wounded in the aftermath of an armed raid by alleged members of the Lautaro Popular and Rebel Forces on a bank in a crowded avenue in Las Condes, a well-to-do area of Santiago. The robbers drove up in stolen taxis, three of them entered the building and one shot dead a guard who tried to resist. After emptying the tills, the attackers fled in the taxis. One of the taxis stopped in full flight and the occupants abandoned it, crossed the road on foot and boarded a bus, ordering the driver at gunpoint to keep driving. A police van then drove across the path of the bus, forcing it to stop outside a crowded shopping mall. A police officer who got out of the van was shot dead by gunmen firing through the windows of the bus. According to eyewitnesses, other police raced to the scene and began firing indiscriminately on the stationary bus, in which there were about fifteen terrified passengers. Three alleged Lautaristas and three innocent passengers were killed by police fire.

The police made a serious error by alleging that all of the six killed in the bus were terrorists. However, according to press reports, within twenty-four hours the government had received information from Investigaciones identifying three of the victims and all of the wounded as innocent passengers. The Investigaciones report also stated that almost all the "innumerable" bullet holes in the vehicle had been caused by shots fired from outside it. President Aylwin publicly supported the police without reservation, dismissing criticism as "irrational and emotional." However, a few days later, in the face of mounting public concern,

the government announced measures to compensate the victims and pay their medical costs, and asked the Supreme Court to appoint a ministro en visita to investigate possible criminal liability. The Minister of Interior also called on the Carabineros for a detailed report on the incident and the procedures followed. In November 1993, the investigating judge, Rafael Huerta, charged four alleged members of the Lautaro group in connection with the bank robbery (all four were simultaneously facing charges by the military prosecutor in a parallel investigation). There were no reports of any prosecutions of police and the full findings of Huerta's investigation are still awaited.

- ◆ **Fernando Castro Vásquez:** Within days of the events in Las Condes, on the night of November 3, 1993, Francisco Castro Vásquez, a twenty-two-year-old Investigaciones detective, was shot dead by Carabineros belonging to the special plainclothes OS-7 unit, in the Central Station district of Santiago. According to a probe by Investigaciones, Castro, who was off-duty at the time, was shot while he was searching for thieves who had tried to break into his car. His wife, who was with him at the time, testified that three patrolmen in civilian clothes had spotted Castro with his revolver drawn and had fired at him repeatedly with a machine gun and a pistol, without giving any warning. After Castro's wife had told the patrolmen that he was a detective, they fled, leaving Castro prostrate and without giving him first aid or calling an ambulance. The Carabineros claimed that Castro had fired first, wounding one of their men and that they had fired in self-defense. But this was refuted by the Investigaciones inquiry, and subsequent investigations by Judge Gloria Ponce of the Fifteenth Criminal Court showed no clear evidence that Castro had fired a shot. Judge Ponce charged a lieutenant with homicide and his two companions with covering up the crime. All three were dismissed from the service, after an internal report by the Carabineros concluded that the operation had not "fully complied" with regulations.

In parallel with the investigation conducted with Judge Ponce, a military prosecutor was also heading an investigation by OS-7 (the incriminated unit) into possible injury to the police, committed by the detective. According to press reports, several of the witnesses called by Castro's family in the case told the court they had been intimidated by OS-7 officers to change their story. In November 1993 it was reported that Judge Ponce had charged a second policeman with homicide after forensic tests suggested that he had fired at Castro while he was lying wounded on the ground.

Unnecessary Force Against Demonstrators

In our 1991 report we noted that "incidents of police abuse of force are not frequent or consistent enough to constitute a policy of the Carabineros. Nor is there any indication of a government policy to impede freedom of assembly. Police brutality appears, rather, to be a residual habit of the military period which the government condemns but is not always able to anticipate or control. Deliberate provocation of the police also played a role in some cases."⁴⁴ Similar incidents were reported in 1992 and 1993, when police efforts to enforce government bans on unauthorized demonstrations overstepped the limits of reasonable force.

- ◆ On September 30, 1992, **Karin Mondaca Gotelli**, a twenty-two-year-old student, was struck in the head by a teargas grenade when police were dispersing a peaceful demonstration by students close to the headquarters of the army's Intelligence Battalion (DINE) in central

⁴⁴ Americas Watch, *Human Rights and the Politics of Agreement*, pp. 93-94.

Santiago. According to CODEPU, which opened a lawsuit on behalf of her parents, the grenade had been fired from a police vehicle directly at her body, although at the time she was standing outside the area of the demonstration. The impact of the blow to her head caused serious brain injuries, and she was reported to be suffering from epilepsy and speech difficulties.

- ◆ The most serious street violence of the Aylwin presidency occurred on September 11, 1993, the twentieth anniversary of the military coup. Anger and disillusionment on the left had grown notably in the preceding weeks, due to what it felt to be Aylwin's capitulation to the army's show of force in May, and further disparaging and provocative comments by Pinochet about the disappeared. Days before the anniversary, Channel 7 television, the state channel, screened a documentary about Allende's suicide in the Moneda (the Presidential palace), providing young viewers with their first opportunity to see live footage of the air force attack on the day of the coup. Aware of the danger of serious disorder from past anniversaries, the government refused permission for a march organized by the Committee for the Annulment of the Amnesty Law, and the Communist Party, to pass by the Moneda, and gave the police instructions to enforce the ban strictly.

The violence began when a group of marchers tried to break through the police barrier around the Moneda and the police responded with teargas and water cannon. Young demonstrators went on the rampage, throwing stones and sticks at the police, breaking store windows and erecting barricades. One policeman lost an eye after being struck in the face by a stone. During the two-hour pitched battle that ensued, **Sergio Calderón Beltramis**, a sixty-six-year-old technician from the Ministry of Agriculture, who was hard of sight and hearing, was run over and killed by a riot control vehicle in the center of the Alameda, Santiago's main thoroughfare.

When the bulk of the marchers reached their destination in Santiago's General Cemetery, there was more violence. Police are said by witnesses to have attacked the gathering (which was authorized) with rubber bullets and teargas, dispersing the crowd. Some young people retaliated by rushing the police, pelting them with stones. At that point, a policeman was reported to have gotten out of a police car and fired his service revolver directly at the crowd, hitting nineteen-year-old **José Araya Ortíz** in the neck and fatally wounding him. (The police claimed later that the shots were fired into the air.) Altogether, some thirty people were injured, some seriously, by gunfire, rubber bullets, and teargas grenades, and 215 were arrested.

Interior Minister Enrique Krauss firmly supported the police action, and some Concertación leaders, as well as the rightist opposition, blamed the Communist Party for the violence. However, others in the Concertación thought the police had over-reacted and called for a full inquiry. In response, the government requested the appointment of a ministro en visita. Relatives of Calderón and Araya filed criminal complaints alleging wilful homicide, and several of the wounded also filed lawsuits. In the case of Calderón, witnesses insisted that the driver of the vehicle drove deliberately at him, and that the Carabineros had made no effort to assist him after he had been hit. Some of the witnesses applied for legal protection, alleging that they had been intimidated anonymously to prevent them from testifying.

In January 1994, the ministro en visita, Humberto Espejo, indicted a Carabinero with homicide for the death of José Araya, and two others with seriously wounding (*lesiones graves*). Four demonstrators, including Araya's half-brother and one of the wounded, were

also charged under the Law of Internal State Security. However, the appeals court lifted the charges against three of the civilians. The circumstances of the death of Sergio Calderón were said to be still under investigation as of March 1994.

IV. Prisoners Held for Security-related Offenses

Political Prisoners Detained under the Military Regime

On March 15, 1994, six of the remaining nine prisoners accused of security-related offenses under the military regime had their sentences commuted to exile by presidential decree. Two days later, four of them, Héctor Figueroa Gómez, Héctor Maturana Urzúa, and Juan Ordenes Narváez, former members of the Manuel Rodríguez Patriotic Front who had been sentenced to life imprisonment for an attempt on the life of General Pinochet in September 1986, boarded a plane for exile in Belgium. Of the more than 350 "political" prisoners incarcerated when President Aylwin's term began, more than 140 have been released by presidential pardon, and of these, nineteen had their sentences commuted to exile. Of the three prisoners left in Santiago's Santo Domingo jail, two still await a sentence in one of the cases against them, after delays of more than three years. Until they are convicted, they are not eligible for pardon. President Frei has undertaken to review their cases one by one.

In releasing the three into exile, President Aylwin made good a promise to obtain the release of those who took up arms against the military government, by the time he left office. He did so against the persistent attacks of the rightist opposition, which criticized the releases as contradictory and dangerous at a time of continuing left-wing terrorism. Most of the prisoners had been tortured and been subject to gross infringements of their right to due process.

Despite President Aylwin's efforts to leave a clean slate, it is probable that his successor will inherit more prisoners from the dictatorship, as exiles still facing charges opt to return to the country and face the courts. There are at least 180 people outside the country facing charges, according to FASIC. In December 1993, eight former FPMR members announced their wish to return. Vice-Minister of the Interior Belisario Velasco promised that they would receive a fair trial. Earlier that month, seventy-year-old Juan Abarzúa Rojas was detained by *Investigaciones* at the airport on his arrival from Argentina, taken to a military court, charged with importing and storing weapons for the FPMR in 1986, and taken to prison. Abarzúa must now await a verdict in his case before he is eligible for pardon; justice in these cases has been notoriously slow.

Prisoners Arrested since March 11, 1990

Currently about 150 people are incarcerated for violent political crimes or membership of armed opposition groups after the return to democracy, the two largest groups being members of the MAPU-Lautaro (68) and the FPMR (47). Most of these prisoners are currently being held in two Santiago prisons, Santiago South, formerly known as the *ex-Penitenciaría*, and San Miguel.

In February 1994, forty-two of the prisoners were transferred to a purpose-built, high security wing inside the Penitenciaría compound. The prisoners promptly went on hunger strike in protest at the new prison regime which they claimed violated their basic rights.

The new regime involves a drastic reduction in prisoners freedom to mingle with other prisoners, as well as curtailment of the relatively relaxed atmosphere in which family visits have taken place in the past, and to which inmates had grown accustomed. According to prison

officials, the new security measures are intended to minimize escapes, political proselytization, and the transmission of information in and out of the prison. Prison officers also say that segregation is necessary to protect the right of prisoners to do their time quietly without interference or pressure from their political group- in other words to weaken group cohesion and control. Rumors of these arrangements were already circulating in the final months of 1993, provoking declarations from the prisoners themselves that they were ready to die rather than be moved. CODEPU, which described the regime as dehumanizing, applied to the courts for a writ of protection in favor of the forty-five prisoners held in the unit. (Three inmates are held on ordinary criminal charges.) They argued that prisoners were denied rights to confidential legal consultations, and that the harshness of the regime constituted double punishment. In March, while the prisoners were on hunger strike following their transfer, the unit was visited by a delegation of the International Committee of the Red Cross, and shortly afterwards by the Chamber of Deputies Human Rights Commission, accompanied by dozens of reporters. The commission's president told the press he was fully satisfied with the visit and that the commission had had full access to inspect the facilities and listen to the prisoners' complaints.

While the commission had not yet reported its findings at the time of writing, some details of the prison regime became known from press accounts. The physical conditions, the prisoners themselves admit (as reported in the press), are very good by the standards of Chile's prison system: prisoners sleep in centrally-heated individual cells with private washbasins and toilets; they have access to television and newspapers and limited recreational facilities; they may exercise in courtyards for up to fourteen hours a day; plans are in progress to introduce voluntary work programs; and the unit is equipped with an emergency clinic. Unlike their previous regime, however, prisoners are segregated from one another (in groups of twenty-four) on penal criteria, in order to "minimize criminal contagion" and prevent the "implantation of coerced loyalties."⁴⁵ Furthermore, visits from relatives and lawyers are monitored by video camera and conducted by microphone through glass screens — restrictions which are entirely new in Chile. Prisoners are allowed to receive visits from their children in special play areas, but lose this right when the children reach the age of fourteen. Critics maintain that this combination of segregation and intense surveillance is inherently dehumanizing.

While the classification and segregation of prisoners is permitted by the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Rules state that "interviews between the prisoner and his legal advisor may be within sight but not within the hearing of a police or institution official."⁴⁶ HRW/Americas believes that the use of video equipment to monitor such interviews would endanger this important principle.

Although full details of the prison regime have not been made public, the head of the prison service (*Gendarmería*) has revealed that its purpose is to eliminate escapes and to prevent "security-related" prisoners from leading and organizing the other inmates. The government says that inmates have been using prison as a base for plotting terrorist activities. During 1992 a new slogan, *Carcel Combatiente*, literally translated as "Combatant Prison," came into currency among prisoners. Its essence, according to prison service officials, is to foment armed opposition

⁴⁵ According to the director of the prison service, Claudio Martínez Cerda, as quoted in "Derechos Humanos y Alta Seguridad," *La Epoca*, March 21, 1994.

⁴⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners, Part 2, C93.

from the prison itself. The authorities claim that in 1992, inmates in the ex-Penitenciaría from rival opposition groups began coordinating terrorist actions from the prison, and there were frequent escapes, allegedly abetted by information transmitted by relatives. (In fact, according to prison service figures the number of escapes during 1993 (179) was down by a fifth from the previous year.)

Although the great majority of the prisoners are awaiting sentence, several have already received life sentences for serious crimes such as murder and kidnapping. Rafael Escorza Henríquez was sentenced to death for his role in a notorious kidnapping case, but the Santiago Appeals Court commuted the sentence to life imprisonment, and it was upheld by the Supreme Court. Other members of the FPMR and Lautaro movement have been sentenced for life for the murder of Jaime Guzmán and the three detectives in the Pareto incident. By the standards of the military courts under Pinochet, these trials have been conducted with surprising speed. Compared with the voluminous comment in the press on human rights trials, very little has been written about the degree to which due process has been followed and respected. One reason information is lacking is that the established non-governmental human rights organizations in Chile have decided not to give legal assistance to security-related prisoners detained since the return to democracy.⁴⁷

We continue to be concerned about these prisoners' difficulties in obtaining adequate legal representation. At present, the majority who cannot afford private lawyers must rely either on themselves or on lawyers assigned by the state with little involvement in their cases. Instances were reported to HRW/Americas in which prisoners were given a succession of attorneys after each one refused to take on the assignment. A small number of private lawyers and human rights volunteers work energetically on the cases but with precarious resources. We repeat the plea in our 1992 report urging Chilean bar associations or human rights groups to monitor these trials and take initiatives to ensure that the rights to due process are respected.

V. Civil Rights and Due Process

Due Process Rights

Access to Lawyers

During 1992, human rights lawyers continued to lodge protests when police or judges refused to grant access to lawyers for detainees held for terrorist offenses (although in general the new norms established by the Aylwin government in February 1991 have been respected).⁴⁸ The Corte Marcial (military appeals court), two of whose five members are civilian judges, has played a constructive role in upholding this right. In July 1992, in response to a *habeas corpus* petition on behalf of two detainees filed by CODEPU, the court rebuked the Carabineros' anti-terrorist unit DIPOLCAR and a military prosecutor for their failure to grant access. In a later decision it again accused them of "ignoring the legal norms in force for the protection of

⁴⁷ As already noted CODEPU intervenes to protect their physical integrity and right to due process, but does not officially engage directly in legal defense work, although some individual lawyers do so.

⁴⁸ The "Cumplido laws" allow detainees in incommunicado detention to be visited by a lawyer, but the interview must be held in the presence of a police officer.

detainees" and insisted that it was up to the police to ensure lawyers were admitted, regardless of whether the file had been referred to the prosecutor. In practice, this safeguard has proved extremely important; several cases of torture have been detected by CODEPU lawyers visiting detainees in the first days following their arrest.

Right to the Presumption of Innocence

We noted in our 1991 report that in the first year of the democratic government both police forces continued the practice of exhibiting groups of detainees to the press as terrorists before the judicial investigation of their "crimes" had been concluded, but that there were encouraging signs of a decline in this practice. In July 1992, the government for the first time issued a formal order to the police to stop it.⁴⁹ Some newspapers, such as *La Epoca*, had independently chosen to refuse to carry such pictures. We welcome these developments.

We consider, however, that the official statements that follow serious crimes, as well as the way they are reported in the media, are sometimes insufficiently guarded and confuse presumptions with proven guilt. A case in point was that of Sergio Olea Gaona, a twenty-three year old who was falsely charged by Investigaciones as a principal suspect in the assassination of opposition senator Jaime Guzmán, on April 1, 1991. For two years the government pursued extradition proceedings against Olea, who left Chile for Spain shortly after the murder and was arrested there and charged with several common criminal offenses. The government persisted in its accusations, and the political impact of the crime ensured that they received extensive and prolonged press coverage. Not only did the Spanish courts initially turn down the extradition request for lack of evidence, but two Chilean judges in succession found the case against Olea too flimsy to press charges. In October 1993, Judge Alfredo Pfeiffer dropped the charges against Olea. The government appealed, and Pfeiffer's decision was upheld unanimously by the Appeals Court and later by the Supreme Court. Much earlier, a report by an Investigaciones unit independent of the investigating team had concluded that the evidence linking Olea to the group responsible for the assassination was unreliable, but the government pressed ahead regardless. At this writing, Olea's lawyer is studying proceedings for compensation for the damage done to his client's reputation.⁵⁰

Arrests on Suspicion

Legislation is still pending to amend antiquated laws which allow police to detain citizens without charge on ill-defined grounds of suspicion. According to one report as many as 1,000 people, mainly young, are detained on the street every week and eighty percent are innocent of any offense and subsequently released without charge. The arrests often bring an unpleasant conclusion to a harmless night 'on the town,' and because they occur mostly on weekends, may mean several days in detention in Santiago's main prison before a judge is available to order the

⁴⁹ Human Rights Watch/Americas was told this by the head of the Ministry of the Interior's legal officer, Luis Toro.

⁵⁰ It was also reported that a friend of Olea, Sergio Barrientos Hernández, testified to the judge that Olea was with him doing house repairs on the day of the assassination. In a statement before public notary made in November 1992, Barrientos alleged that he had been arrested by Investigaciones in June that year and beaten and tortured with electricity in an attempt to force him to retract the alibi. "Testigo en caso Guzmán acusa a detectives de torturarlo," *La Epoca*, October 8, 1993.

detainee's release.⁵¹ Until that happens, detainees are usually denied access to parents or family. Police have wide discretion in making such arrests; suspicion aroused by appearance, dress, or demeanor seems to count as much as any sign of law-breaking, and the young and the poor are especially vulnerable.

Two human rights groups, CODEPU and CODEJU (Commission for the Rights of Young People), have presented a bill to Congress to reinforce safeguards and the procedural rights of detainees held on suspicion. Among the reforms proposed are a requirement that police specify in writing the time, place, and reason for arrest; the right of detainees to communicate as quickly as possible with relatives; and a requirement that detainees be read their rights at the moment of arrest.

In July 1993 the government proposed several amendments to the bill, also aimed at reducing abuse of the law. Among other changes, it recommended that detainees should have access to lawyers as well as their families, that they should be segregated from other detainees, and that failure to carry ID should not be grounds for arrest once identity had been established in a police station. We hope that the new government will give these proposals high priority in their legislative program, and adhere to the principle that arrest without specified charge should be limited to strictly controlled circumstances.

Rights of Sexual Minorities

During the second half of 1993, disturbing reports reached Human Rights Watch/Americas of the activities of a clandestine group calling itself "Carlos Ibañez del Campo," which appears to be dedicated to attacking and harassing members of Chile's gay community. In the early hours of September 4, a gay discotheque in the port of Valparaíso, known as "Divine," burned to the ground and nineteen young people who were trapped inside perished in the flames. Firemen and police investigators blamed the fire on overloaded electrical cables, but subsequent evidence strongly indicated the possibility of an arson attack: the club's electrical installation had been recently renewed; the fire started while the power was turned down; and the light and sound continued functioning while the fire was burning. Moreover, several witnesses claim to have seen some individuals, who had been expelled from the club by bouncers, drive past and hurl an object from their car at the club's entrance. The discotheque had previously received anonymous threats, and a few days after the fire a call was received at the headquarters of the Green Humanist Party in Valparaíso from an individual claiming responsibility for the fire on behalf of the Carlos Ibañez group.

Since the fire, a gay rights group, the Movement for Homosexual Liberation (MOVILH), has denounced other incidents. On September 9 two young homosexuals leaving a Santiago restaurant were allegedly attacked by individuals who descended from a car brandishing baseball bats. On December 14, a simulated bomb was discovered by police at a Santiago radio station after broadcasters had received an anonymous warning during the transmission of a program by MOVILH. According to the International Gay and Lesbian Human Rights Commission, AIDS service providers have also received death threats.

⁵¹ Data from the Green Humanist Party, whose presidential candidate Cristián Reitze visited the ex-Penitenciaría in February 1993 to interview young people detained on suspicion.

Gay support groups campaigned for the government to appoint a ministro en visita to investigate the Valparaíso fire, but despite the appalling death toll and the suspicious circumstances mentioned, it failed to take action. We consider this to be an unjustifiable omission, and urge the new government to conduct an independent inquiry as soon as possible. We are also concerned at allegations that several witnesses who came forward to testify were harassed and ill-treated by Investigaciones police, including by having their sexual preferences recorded on file.⁵²

Freedom of Expression and Information

Since the "Cumplido laws" removed from military jurisdiction the prosecution of offenses involving "insults against the armed forces" — military courts had used these powers to prosecute numerous journalists for critical articles on human rights — the number of such prosecutions has significantly declined. However, cases continue to occur. In September 1992, for example, the army filed charges before a military court against *Televisión Nacional* (TVN, Channel 7) and the newspaper *La Nación* respectively for sedition and espionage. The charges concerned an interview broadcast on TVN's "24 Hour" news program with a former army intelligence agent, who claimed that the Army Intelligence Battalion was systematically eavesdropping on telephone conversations of ministers, politicians, businessmen and church leaders.⁵³ Since the army often appears to attribute adverse press comment to an orchestrated campaign, government authorities have had to stress repeatedly that the press is independent, while dissociating itself from army retaliation against individual journalists.

Reporting Bans on Human Rights Cases

In Chile judges have discretionary powers to prohibit media coverage of sensitive criminal cases if publicity is likely to affect the success of the investigation. In theory, criminal investigations at the *sumario* stage of proceedings are secret in Chile, but in practice courtroom leaks often result in the publication of sensitive testimony and evidence, even including the names of suspects for whom arrest warrants are pending. Under these circumstances the judge may impose a reporting ban for reasons material to the success of the investigation, such as to avoid the risk of suspects absconding. Defense lawyers may also request a ban to protect their clients' reputation or to avoid harmful publicity. While it is clear that these bans may be justifiable in certain circumstances, their abuse may seriously interfere with press responsibilities.

⁵² According to a MOVILH representative, homosexuals were particularly persecuted under the dictatorship of Gen. Carlos Ibañez (1923-1931), when, he says, many were arrested and thrown in the sea. In general, attitudes to gays are authoritarian in Chile, and sodomy is still prohibited by law. Thus, the entry on "Homosexual" in the 1991 edition of the *Diccionario Policial* (Police Dictionary), which is widely used by the Carabineros, recommends that "parents and teachers intervene in time, encouraging children in healthy and sporting hobbies which help the development of normal habits."

⁵³ On September 15, 1993, Christian Democrat youth leader Eduardo Abedrapo was arrested and charged with "grave insults against the Commander-in-Chief of the Army and the generals of the army high command" for remarks he made in a radio interview after the May *Boinazo*. Abedrapo had accused army leaders of behaving "like a gang of delinquents headed by a gangster." The civilian appeals court judge responsible for the case said "it would be preferable if we didn't have to deal with this type of case." Abedrapo was promptly released on bail and the army subsequently dropped the charges.

In fact, the majority of the most sensitive human rights cases have been subject to reporting bans, in some cases extending for years. In both the *Tucapel Jiménez* and *Degollados* cases, important advances in clarification of the crimes were made while bans were in force. For months journalists got into the habit of referring to the *Tucapel Jiménez* case obliquely rather than by name. In the *Degollados* case, Judge Juica lifted reporting restrictions only when his eighteen suspects had been arrested and charged. The ban had been observed by the media for a full eighteen months.

In other cases, however, reporting bans seem far more difficult to justify. In October 1993, for example the Corte Marcial finally lifted a reporting ban on the Operation Albania case, after a long legal battle by lawyers representing the families of the victims to have it removed. They had repeatedly accused the military court of maintaining the ban purely in order to conceal its failure to advance the investigation.⁵⁴

On November 22, a military prosecutor ordered the confiscation of that day's issue of the newspaper *La Epoca*, for allegedly violating a reporting ban on the *Soria* case. No further legal action was taken against the newspaper, which denied breaking the ban, but according to *La Epoca* no explanation or apology was made for the confiscation. In this case the ban had been imposed by a civilian judge in August 1993, and was renewed by the military prosecutor when he took over the case in November. However, as noted above, rather than advance the investigation, all the military court accomplished was to close it as rapidly as possible. *La Epoca* concluded in an editorial that "the silence imposed on the press had no other purpose than to prevent the public being informed of the details of the case. In other words, on this occasion the reporting ban was used as an extension of the amnesty, an extension which now affects not only judicial procedures, but also the public's right to be informed."⁵⁵

The misuse of this discretionary power poses a threat to freedom of information, and the government should urgently consider reforms to ensure that the present powers of the judiciary to restrict court reporting are carefully circumscribed and kept under review.

Censorship: The Case of Humberto Palamara Iribarne

Captain Humberto Palamara Iribarne, a naval officer from Punta Arenas, was detained for ten days by naval police in March 1993, and charged with disobedience and failure to comply with military duties for refusing to hand over copies of a book he was proposing to publish. The book, *Ethics and Intelligence Services*, is said to contain a chapter condemning methods such as torture and assassinations and to discuss the relationship between military intelligence and the State. According to our information, no specific cases or procedures are mentioned and the book had previously been approved by naval intelligence experts. After Palamara refused to surrender the remaining copies of his book, they were confiscated from his home, and the text was said to have been wiped off his computer. While free on bail, Palamara was re-arrested on

⁵⁴ Operation Albania was the CNI code name for an armed attack in July 1987 that took the lives of twelve persons linked to the Manuel Rodríguez Patriotic Front. In January 1994, after that ban was lifted, it was reported that the military judge had refused to allow a reconstruction of the crime, a decision which would have provoked adverse press comment had it been possible to report it at the time.

⁵⁵ "La ley del silencio," *La Epoca*, January 9, 1994.

July 12 and held for four days on a charge of contempt of court due to an interview he gave a local newspaper about his case. His trial continues.



This report was written by Human Rights Watch/Americas research associate Sebastian Brett. It is the sixteenth report on Chile published by Human Rights Watch since 1982. This report was edited by Human Rights Watch Program Director Cynthia Brown and Cynthia J. Arnson, Human Rights Watch/Americas Acting Director.

Human Rights Watch/Americas (formerly Americas Watch)

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