CHILE
Transition at the Crossroads
Human Rights Violations
under Pinochet Rule Remain the Crux

Introduction

Chile's transition to democracy is at a crossroads. Whilst democratically elected governments have been in office since March 1990, in recent months the Chilean Government has publicly discussed the remaining obstacles to a full transition, which it openly admits is incomplete. Central to these discussions, and the focus of intense debate in Chilean society, is the question of human rights violations under the government of General Augusto Pinochet (1973-90), the future of investigations into them and the prosecution of those found responsible.

Much attention has focused on the Supreme Court's May 1995 confirmation of seven and six year prison sentences for General Manuel Contreras and Brigadier Pedro Espinoza for the assassination of former Foreign Minister Orlando Letelier and US citizen Ronnie Moffit in Washington DC in 1976, which sparked intense and continuing protest from the Armed Forces. Amnesty International is concerned at moves to speed the definitive closure of all court investigations into human rights violations from the period of military rule.

Three main legislative proposals on this matter have been mooted in the Chilean Senate since July 1995 :

- A proposal from the right-wing National Renovation *Renovación Nacional*, RN, and the Independent Democratic Union, *Unión Democrática Independiente*, UDI, opposition parties in July to effectively close all court investigations into human rights violations that are covered by the 1978 Amnesty Law within a 90 day period of the proposed law being passed, and close other human rights cases where there has been no progress for one year.

- A broader legislative package proposed by the Government in August included: provisions for the further investigation of "disappearances" without the prosecution of those found responsible; reforms to the Military Structure Law and the Constitution which would extend civilian influence over military appointments, and extend civilian representation in the Constitutional Court, the National Security Council and the Senate. The government has presented this proposal as an essential element in furthering the transition to democracy.

- A third proposal resulting from negotiations between the government and the right wing Renovación Nacional party presented in November which focuses only on court proceedings in human rights cases from the 1973-1978 period. This Figueroa-Otero Bill would prevent prosecutions, restrict judges investigations to locating the remains of the "disappeared", ensure total secrecy for these investigations, and allow cases to be closed before remains are located or the full truth is established.

On 5 December 1995 the Senate's Constitution, Legislation and Justice Committee voted to pass the Figueroa-Otero Bill to the plenary of the Senate for discussion. On 7 December it also forwarded the government's proposals for constitutional reforms to the full Senate. Congressional consideration of these proposals is likely to continue into January 1996.

The transition began on 5 October 1988 when a plebiscite held to confirm General Augusto Pinochet as President until March 1997 received a resounding 'No' vote. Presidential elections were held in December 1989 and won by the Christian Democrat candidate, Patricio Aylwin, leader of the Coalition for Democracy, *Concertación para la Democracia*. Before leaving office, the military imposed restrictions on the power of civilian governments, guaranteeing military representation in key institutions, that General Pinochet would remain as Commander of the Armed Forces until March 1998, and that he would appoint nine members of the Senate with mandates until that date. During the Aylwin administration a number of steps were taken to address the human rights legacy from the period of Pinochet rule, including the setting up of a Commission for Truth and Reconciliation, *Comisión Nacional de Verdad y Reconciliación*. After further elections in 1993, President Eduardo Frei Ruiz-Tagle inaugurated a second Coalition for Democracy government in March 1994.

Monument to the "Disappeared" and Executed in the General Cemetery - Santiago

The present government and parties of the governing coalition asserted that their August 1995 legislative package had to be taken as a whole, and that concessions on the prosecution of those responsible for human rights violations will not be made in the absence of wider institutional provisions to address "authoritarian enclaves remaining in our society". However, legislation on

human rights cases will only need a simple majority in Congress, whereas modifications to the Constitution with regard to the Armed Forces, the Constitutional Court and National Security Council require a two-thirds majority which will be more difficult to obtain. In the interim the Figueroa-Otero Bill is a result of further government concessions to the parties of the right. Continuing debate and negotiations on both Government and opposition proposals has been heated. Further amendments to the Figueroa-Otero Bill and to the proposals for constitutional reforms are likely to be presented as they pass through the Senate and Chamber of Deputies.

Much of the debate on investigations into human rights violations has focused on the interpretation and application of Chile's 1978 Amnesty Law (from which the Letelier/Moffit case was specifically excluded). This law, imposed by decree during military rule, prevented prosecution of individuals implicated in certain criminal acts committed between 11 September 1973 and 10 March 1978 the first period of Pinochet rule when a state of siege was in force and repression was harshest. This report analyses the application of this law to hundreds of cases of grave human rights violations which occurred in this period of greatest repression, 1973-1978, and examines a number of key cases that have had repercussions in the courts and in Chilean society.

Amnesty International believes that both the 1978 Amnesty Law and the way it has been applied are contrary to international human rights standards and has consistently called for it to be repealed. The organization believes that details of individual cases of human rights violations during the military period have yet to be fully established. Therefore Amnesty International opposes any further restriction on the investigation of these violations or on the prosecution of those found responsible.

Opposition legislative proposal

In July 1995 Senators from the right-wing opposition parties proposed legislation in the Senate's Constitution, Legislation and Justice Committee to interpret Chile's 1978 Amnesty Law which would, if passed, effectively close all investigations by the courts into human rights violations during the Pinochet Government.

The proposal by Senators from the National Renovation, *Renovación Nacional*, RN, and the Independent Democratic Union, *Unión Democrática Independiente*, UDI, opposition parties would provide a uniform interpretation of Chile's 1978 Amnesty Law and pave the way for a definitive closure of all court investigations into human rights violations in the period 1973-1978. The proposed legislation would ensure:

• the definitive closure of all cases which have been temporarily suspended, if no new facts have arisen in the last year.

• the closure within 90 days of all cases involving crimes covered by the 1978 Amnesty Law.

• the restriction of further investigation by the courts into "disappearances" soley to the location of remains, with informants guaranteed anonymity.

According to human rights groups, the proposed opposition legislation would affect nearly a thousand cases still pending before the courts: there are approximately 800 cases temporarily suspended[1], which might thereby be definitively closed, and 180 cases that remain active before the courts, involving human rights violations against 550 individuals, to which the 1978 Amnesty Law might be applied immediately. The opposition draft legislation, called by critics - "a thinly-veiled Full Stop Law" (in reference to the December 1986 *Ley de Punto Final* in Argentina which set a 60

Under the Chilean legal system it is possible to temporarily close a case - *sobreseer temporalmente* - which means that active investigations and proceedings are suspended but can be reopened on the decision of the courts, and to definitively close a case - *sobreseer definitivamente.* Once a case is definitively closed it may not be reopened.

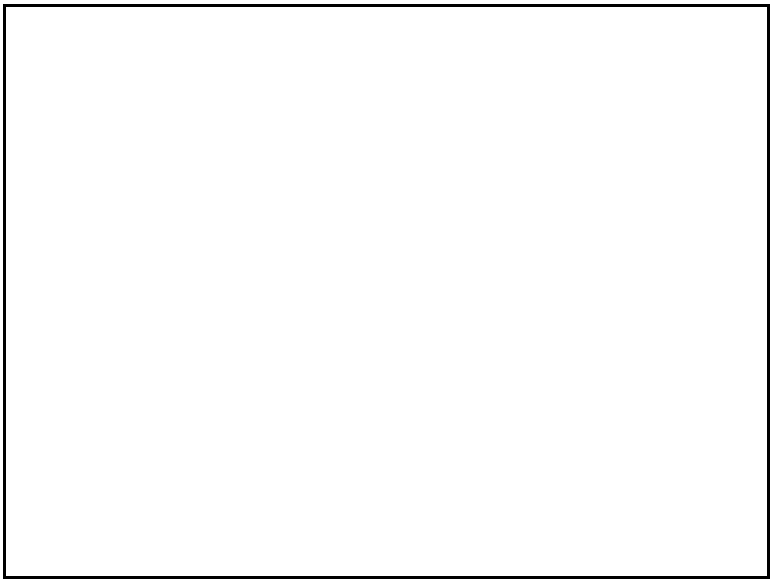
day deadline for courts to initiate prosecutions in human rights cases[2 3]), has been roundly condemned by human rights groups, groups of relatives, and politicians from different parties.

In fact the Argentine courts reacted quickly and by March 1987 some 300 members of the police and armed forces had been issued with new summonses by Appeals Courts throughout the country. Following a series of military revolts, a further law restricting human rights trials, the Due Obedience Law, *Ley de Obediencia Debida*, was passed in June 1987. Under this law any person under the rank of full colonel was automatically presumed innocent on the grounds that they were obeying orders from a superior and proceedings against them were closed. In 1989 and 1990 President Menem issued a series of pardons for those convicted or still awaiting trial for human rights violations. In April 1995 the United Nations Human Rights Committee noted that "the Full Stop and Due Obedience Laws deny effective remedy to victims of human rights violations during the period of authoritarian rule, in violation of articles 2 (2,3) and 9 (5) of the International Covenant on Civil and Political Rights. The Committee expresses concern that pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. The Committee voices its position that respect for human rights may be weakened by impunity for perpetrators of human rights violations."

In October 1992 the Inter-American Commission on Human Rights issued two resolutions in relation to laws exempting perpetrators of human rights violations from prosecution in Uruguay and Argentina. In response to several petitions, the Commission gave it's opinions on the *Ley de Caducidad*, Law of Caducity, passed in Uruguay in December 1986 and the *Ley de Punto Final*, Full Stop Law of December 1986, *Ley de Obediencia Debida*, Law of Due Obedience of June 1987 and Presidential pardons of 1989 and 1990 in Argentina. The Commission found that by passing these laws Uruguay and Argentina had contravened the right to judicial protection (article 25) and the right to a fair trial (article 8) of the American Convention on Human Rights. It noted that these laws were passed after the Convention had come into force in Argentina (1984) and Uruguay (1985). In both these resolutions the Commission cited extracts from the Inter-American Court of Human Rights's judgement of 29 July 1989 in the Velásquez Rodriguez case from Honduras : *"...The state has a legal duty to take reasonable steps to prevent human rights violations, and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishent and to ensure he victim adequate compensation....If the state apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the state has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."*

Government legislative proposals

On 22 August President Frei forwarded a package of draft legislation to the Senate that would, in his words, address unresolved issues in the transition to democracy. Commonly referred to as the 'Frei Bill', *Proyecto Frei*, this entailed three separate pieces of legislation:

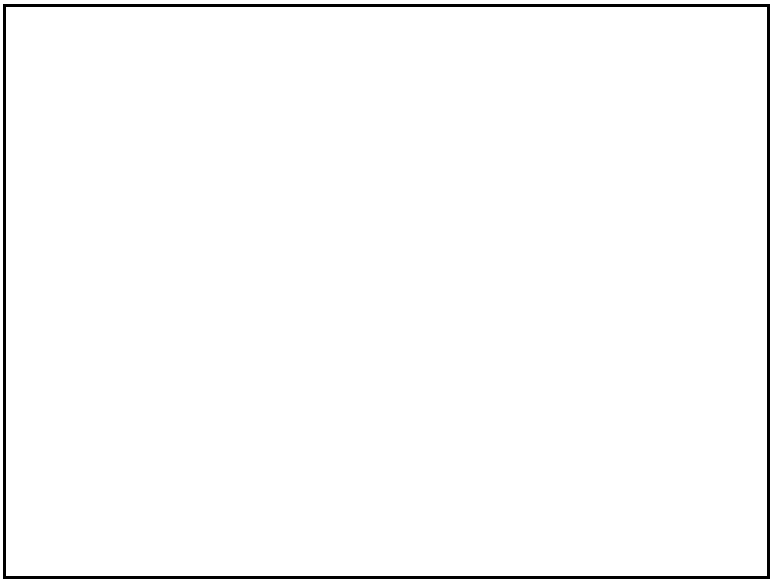


A hunger-strike in 1978 to protest against the Amnesty Law for those responsible for "disappearances" and other human rights violations. c. Helen Hughes O'Brien.

1) A bill to establish mechanisms for the continued investigation of cases of "disappearances" from the period of military rule but prevent further prosecutions. Within a 15 day period all cases pending before military courts would be transferred to civilian courts. Up to fifteen Appeals Court Judges, *Ministros de la Corte de Apelaciones*, would be appointed to work exclusively on pending "disappearance" cases for a period of two years. The Appeals Court Judges would be asked to clarify the fate of the "disappeared" and locate their remains. In order to do this they could undertake investigations in military establishments. However, the judges would not be allowed to establish responsibility for these crimes or bring prosecutions. They would be required to annul detention orders against those awaiting trial. Suspects would not be required to attend court hearings and information could be provided in places other than the courts. Special procedures would be established to ensure confidentiality for those providing information on the whereabouts of the remains of the "disappeared". The identity of those providing relevant information and anything that might lead to their identification would be registered in a special book. On the definitive closure of each case, this book would be destroyed. There would be penal sanctions against those, including the press, revealing such information. Cases could be definitively closed either when the whereabouts of the remains of the "disappeared" had been established, or when the exact circumstances of death were determined. Cases in which the fate of the victim had not been clarified within the two-year period would remain open, or be temporarily closed. These would remain under the jurisdiction of Appeals Court Judges, but they would return to their normal duties and no longer work exclusively on them.

2) A bill altering the Law governing the structure of the Armed Forces, *Ley Orgánica de las Fuerzas Armadas*, to allow the President to choose the Commanders of the Armed Forces, and dismiss military officials.

3) Constitutional amendments to alter the composition of the National Security Council, *Consejo de Seguridad del Estado*, to create a civilian majority by including the President of the Federal Chamber of Deputies, to establish that the Council can be convoked only by the President of the Republic and not by its members; to allow the President to participate in the nomination of members of the Constitutional Court (which decides on the constitutionality of pieces of legislation); and to end the mandates of Pinochet's appointees in the Senate in 1996, rather than 1998.[4]



Photographs of "disappeared" prisoners on the walls of a Santiago street - part of the effort to ensure that they are not forgotten c. Pilar Vergara.

The Figueroa-Otero Proposal

On 1 November 1995 the Government presented a revised proposal for legislation on judicial proceedings in human rights cases, which was the result of negotiations with the opposition parties. The new proposal named the Figueroa-Otero Bill after the Minister of the Interior, Carlos Figueroa and the leader of the National Renovation Party, Miguel Otero, refers only to cases between 1973 and 1978 that might be covered by the 1978 Amnesty Law. Under its provisions the Supreme Court would appoint one or more ordinary criminal judges (not 15 Appeals Court Judges) to work exclusively on cases regarding "disappearances" (not also extrajudicial executions) for a one-year renewable period. All prosecutions related to such cases would be closed. Judges would be

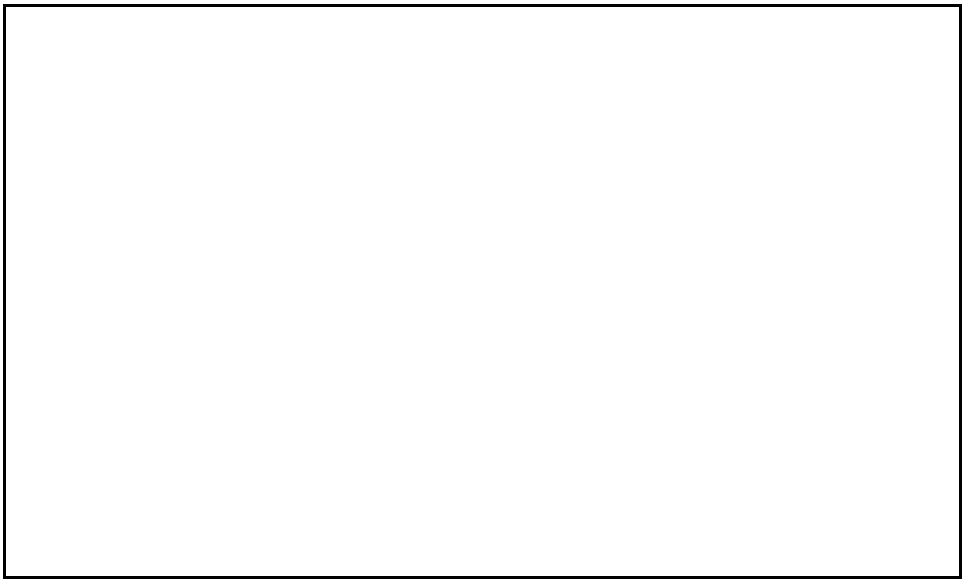
Before leaving office in 1990, President Pinochet appointed nine Senators, *Senadores Designados*, with mandates in the Senate until 10 March 1998. Of these, one has died and eight remain. These appointed Senators have combined with Senators from opposition parties to block the civilian government's legislation in the Senate, such as, for instance, attempts in 1991 to abolish the death penalty.

restricted to investigating the location of the "disappeared". There would be provisions for the secret submission of evidence in places other than the court and for information leading to the whereabouts of the "disappeared" to be kept in a secret book, and subsequently destroyed. Judges would be instructed that they are prohibited from writing down - even in the secret book - any information about the source of the information or about those who may have been involved in the "disappearance". The bill emphasises that once a case is definitively closed it may not be re-opened on any account, no matter what new information subsequently arises.

Some of the crucial differences between the Figueroa-Otero proposal and the Frei Bill are that:
- there are no provisions for transferring proceedings from military to civilian courts;
- there are no provisions specifying the conditions under which cases may be definitively closed. (Under the Frei Bill, a prerequisite for definitively closing cases was either the discovery of the remains of the "disappeared" or substantiated evidence of their fate). Thus under the Figueroa-Otero proposal cases may be closed when the fate has not been established;
- cases that are currently temporarily closed would only be reopened on specific request of relatives, and when there was new information to justify this.

The Socialist Party, part of the governing coalition, declared its opposition to the Figueroa-Otero Bill and presented 16 amendments which would transfer cses from military to civilian courts and allow cases to remain open before the courts until the fate of each “disappeared” person was established.

On 5 December 1995 the Senate’s Constitution, Legislation and Justice Committee voted 3 to 2 to approve the Figueroa-Otero Bill. None of the Socialist Party’s 16 amendments to the bill were accepted. On 7 December 1995 the same Committee, voted 3 to 2 in favour of allowing the government’s proposals for constitutional reform to be submitted to the Senate for consideration. The Figueroa- Otero Bill then passed to the Human Rights Committee for further consideration before passing to the full Senate.



A 1985 demonstration by relatives of the "disappeared". The banner calls for "truth, justice and punishment of those responsible". c. Juan Carlos Cáceres

For either proposal to become law they would need to pass in the plenary of the Senate and the plenary of the Chamber of Deputies. Significant amendments to the proposals by the Chamber of Deputies would need to return to a mixed Committe with representatives of both houses. However, the Figueroa-Otero Bill, being ordinary legislation, will only need a simple majority in Congress, whereas modifications to the Constitution with regard to the Armed Forces, the Constitutional Court and National Security Council require a two-thirds majority which will be more difficult to obtain.

The governing coalition has to-date maintained that if the constitutional reforms are not passed it will withdraw the Figueroa-Otero Bill. Many members of the right-wing National Renovation *Renovación Nacional*, RN, and the Independent Democratic Union, *Unión Democrática Independiente*, UDI, opposition parties remain firmly opposed to the Constitutional reforms. The Socialist Party has declared its intention to presents its amendments to the Figueroa-Otero Bill again in both Chambers.

Government statements

During June and July the Chilean press reported a number of statements by the President of the Supreme Court, Marcos Aburto, calling attention to conflicting rulings in the application of the 1978 Amnesty Law and suggesting the need for Congress to legislate on what he saw as a political issue.

President Frei and ministers of his government repeatedly asserted their objections to the opposition's July legislative proposal which would interpret the 1978 Amnesty Law, on the grounds

that this was a matter for the courts. On 20 July 1995 José Joaquín Brunner, the Government's Secretary General stated in press interviews "It is not the government's intention to promote a law interpreting the 1978 Amnesty Law, since this is a subject exclusively within the remit of the courts", *"No es intención del gobierno propiciar una ley interpretativa de la amnistía por cuanto es una materia que corresponde exclusivamente hacer a los Tribunales de Justicia."* The Secretary General further affirmed, "Human rights will never be negotiated", "*Jamás se va a negociar con los derechos humanos*". Nevertheless, by putting forward the Figueroa-Otero Bill in November, the government has agreed to interpret the 1978 Amnesty Law and to increase restrictions on the courts. The Figueroa-Otero Bill if passed, would thus dramatically increase the negative effects of the military's own 1978 Amnesty Law, with regard to investigations and prosecutions of human rights violations.

In his presentation of the legislative package to the Senate on 22 August President Frei wrote:

> *"I must say that this historic opportunity that all we Chileans have within our grasp could be seriously threatened if as a nation we do not resolve these two serious problems in our transition: on the one hand, the question of human rights violations committed in the past; and on the other, the clear deficiencies in our democratic institutions.*
> *To deal wholly with the pending questions of the transition... points to definitively pulling down the wall that still divides Chileans. A wall which expresses itself in human rights questions, but also in defensive institutional barriers that the drafters of the 1980 Constitution used to protect themselves from the majorities whom they viewed as a threat.*
> *This situation has generated a problem that impedes the healing of wounds from the past. On the one hand, pending proceedings involve a certain number of military personnel in trials that are not advancing, and on the other, we see a number of Chilean men and women who have not managed to determine the destiny of their loved ones or give them a dignified burial.*
> *Blotting out the past by decree through a Full Stop law seems to me neither just nor ethically acceptable.*
> *The government understands that after twenty years, the objective of truth is ethically superior in the national soul than penal sanction against those responsible. We do not seek vengeance; we seek a new opportunity for the truth that has not yet been attained."*

The President of the Corporation for Reparation and Reconciliation, *Corporación de Reparación y Reconciliación*, a government body continuing the work of the former Truth and Reconciliation Commission [5], Alejandro González stated on 20 August:

> *"It is unacceptable to try to put an end to the investigations and the state's duty to re-establish the truth. Time might be a means of lessening the pain, but it is never a reason for the state to close the investigations. This would mean recognising that more than a thousand perfect crimes were committed, without authors, in Chile, a country with a tradition and capacity to investigate.*
>
> *"In our history there have been few crimes without author, except during the dictatorship. It will be very serious if the state gives up. There was no war here; there was a policy of state terrorism. Therefore, to me, it is essential to continue demonstrating the will to investigate. Impunity is a very bad signal from an educative point of view, it is not healthy. It is a very dangerous lesson for future generations to remember that nothing happened in relation to the crimes committed."*
>
> *"People talk of 'pending human rights problems', almost like a euphemism. The pending problems are kidnappings and murders committed by agents of the state."*

Statements by relatives of the dead and "disappeared" and by members of human rights organizations

a) Statement by the Group of Families of the Detained Disappeared, *Agrupación de Familiares de los Detenidos Desaparecidos*, on 23 July after the presentation of opposition parties' proposal to close human rights cases, and statements by the President of the Supreme Court seeking a law interpreting the 1978 Amnesty Law.

`The Courts exist to Implement the Value of Justice'

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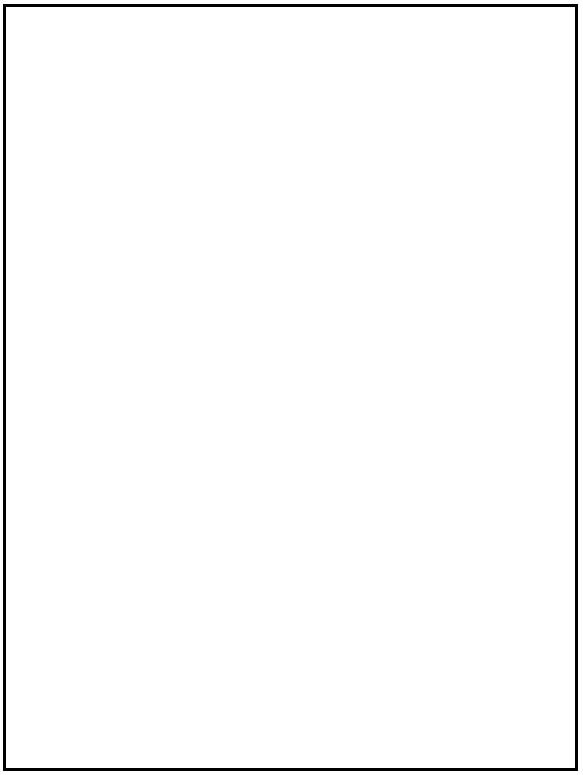
"In our country, the coup d'état put the courts in a complacent and passive position regarding abuses and crimes that were massively and systematically committed by agents of the state...
Nonetheless, even during the darkest days of the dictatorship, there was always a judge or a judicial officer who welcomed us as people and who supported and sympathized with our pain and our demand for justice...
The recurso de amparo (appeal for protection), and the punishment of those responsible, were the two fundamental instruments that the Judiciary had at its disposal to prevent or curb human rights violations, and we the relatives used them from the moment our loved ones were abducted and made disappeared, because we hoped that it would be the judicial system that would find and give us replies to the "where are they?" that we have been demanding for more than 20 years.
Our position on the problems of human rights violations is basically legal, ethical and preventative. No healthy, solid, stable democracy can build itself upon a foundation of forgetting the most serious crimes against the right to life, integrity and freedom committed in Chilean history and within a policy of state terrorism that unleashed maximum political violence against society. We reaffirm that there is no ethical nor judicial reason why crimes of human rights violations should remain in impunity.
We are asking that crimes against humanity be punished in the same way that common ones are.
Constitutional and present legal standards, that incorporate the most noble [elements] in the evolution of International Human Rights Law following that mighty civilian endeavour, the human rights treaties, empower our judges with the necessary instruments to do justice. The country will testify whether our judges allow their consciences to be influenced by political debate that only aims to cover up the delinquents or whether, inspired by a constant and perpetual willingness to do justice for everyone, they fulfill their duty to interpret and apply the law. This is to do justice. They have the final say."

b) Public Declaration on the Frei Bill by the Legal Team of the Christian Churches Foundation for Social Assistance, *Equipo Jurídico de la Fundación de Ayuda Social de las Iglesias Cristianas (FASIC)*, lawyers of which have presented a number of the petitions currently before the Inter-American Commission on Human Rights, listed in Appendix 1.



Memorial to 15 "disappeared" prisoners whose remains were found in Lonquén. Engraved on the tombstone is a quotation from the Chilean poet Pablo Neruda: "A thousand years of footsteps may tread this space but the blood of those who died here will not be wiped away, and the hour of their death will not be forgotten, though a thousand voices may break the silence". c. Associated Press.

"In this context, and for the first time during the transition, the Republic's maximum authority has recognised that "Chilean society has not achieved complete national reconciliation".

We appreciate the explicit recognition of this situation and [we think that] based on this it will be possible to start on a path destined for the reconciliation of Chileans.

But learning the truth regarding each Detained Disappeared case cannot be avoided.

The truth needs to be clear and precise. It implies knowing:

Where they were detained or abducted,

where they were taken to,
where they were killed,
where they were hidden,
who did it, and
why they did it.

Inherent in a truth of this sort is the issue of Justice, which implies establishing penal, institutional and ethical responsibilities.

So then, following such principles, the project must be examined thoroughly: this legal initiative abdicates from Justice. It only aims to achieve miserly quotas of truth through mechanisms of hypothetical efficiency and it guarantees intolerable degrees of impunity for those responsible.

It is a precarious foundation for reaching the intended goals and a blatant demonstration that pressure has been yielded to. Thus, we believe that a well inspired initiative may result in new failures and frustrations.

We deplore that Justice, a supreme value that we should aspire to and which is deeply rooted in the conscience of our people, neither features in the message nor the project's articulation of the law in question. In this manner we perceive a significant retreat by those who have been responsible for leading the transition: first they spoke to us of Justice -in so far as it is possible - and today, all they can simply propose to the country is Truth."

After President Frei presented the Government's legislative package to Congress on 22 August, Sola Sierra, President of the Group of Families of the Detained "Disappeared", publicly expressed regret that the relatives were never consulted.

c) Public Declaration by the *Comité de Defensa de Los Derechos Del Pueblo* (CODEPU), *Centro de Salud Mental y Derechos Humanos* (CINTRAS), *Fundación de Ayuda Social de Iglesias Cristianas* (FASIC) and *Servicio Paz y Justicia* (SERPAJ) on the eve of the vote in the Senate's Constitution, Legislation and Justice Committee on the Figueroa-Otero Bill.

"We are convinced that the bill confirms the highest level of impunity possible, and it will mean there will be no justice, there will be no truth and it will not even guarantee that we really learn the fate of the "disappeared".

National reconciliation can neither be completed nor attempted through legislation alone, since it is an ethical, cultural, political and juridical process

in which all the affected sectors must participate. In particular the view point of the families of the victims must be respected and they should be appropriately consulted."

Public Opinion

Public Opinion Surveys by the Contemporary Studies Centre, *Centro de Estudios de la Realidad Contemporánea, CERC*, and the Chilean Human Rights Commission, *Comisión Chilena de Derechos Humanos, CCDH*, published in July and August respectively, concluded that large majorities of the population favoured continued investigation into human rights violations (75% and 80%) and a sizeable percentage (62% and 70%) favoured continued prosecutions of those responsible for human rights violations. Whilst the methodology of these opinion surveys in terms of wideness of the sample has attracted criticism, their results at least call into question assertions that the majority of Chileans wish for investigations into human rights violations under the military period to be closed. A further public opinion survey conducted by CERC and published on 9 October reported that 79.3% of respondents believed that democracy was not fully consolidated in Chile.

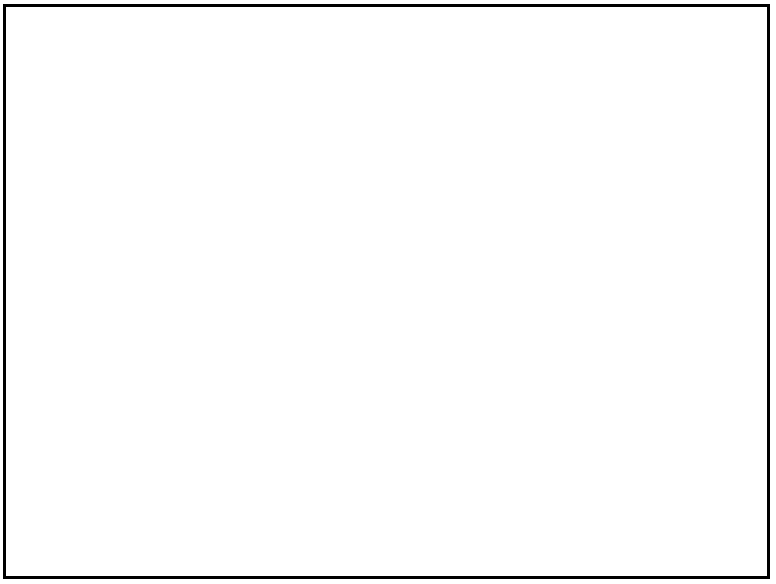
Application and effect of the 1978 Amnesty Law

a) During the period of military rule

The military government introduced the 1978 Amnesty Law (Decree Law 2.191) by decree. It prevented prosecution of individuals implicated in certain criminal acts committed between 11 September 1973 and 10 March 1978. This was the period of the state of siege which saw the harshest years of repression in Chile, when thousands of Chileans suffered grave human rights violations including torture, execution and "disappearance" at the hands of Chilean security forces, and in particular the *Dirección de Inteligencia Nacional, DINA* (Directorate of National Intelligence). Several hundred political prisoners also benefitted from the 1978 Amnesty Law and were released.

Chilean courts - both civilian and military - have systematically closed judicial proceedings in hundreds of cases involving human rights violations that occurred during the first five years of the government of General Pinochet by applying the 1978 Amnesty Law. However, a number of cases remain open, and there have been conflicting rulings on the applicability of the 1978 Amnesty Law.

The stage of the investigations at which the 1978 Amnesty Law can be applied has been a major point of contention. Immediately after the introduction of the law some military courts tried to close cases without investigation. These rulings were challenged, and some cases reopened. Human rights defenders in Chile and some judges held the view that the 1978 Amnesty Law should not be applied until the investigation was completed and the full criminal responsibility of any suspect was clearly established. This view was also publicly supported at the time by the Minister of Justice in office at the time of the passing of the Amnesty Law in 1978, Monica Madariaga. In 1979, the Supreme Court itself ruled that, despite the 1978 Amnesty Law, investigations into "disappearances" should be continued. Cases nevertheless made little progress, except in rare instances through the courage and determination of individual civilian judges.



Santiago - the day of the coup, 11 September 1973. Soldiers round up the staff of the overthrown President, Salvador Allende. c. Chas Gerretsen.

However, from 1985 the Supreme Court began confirming rulings by lower courts to apply the 1978 Amnesty Law, even in cases involving "disappearances" before the facts had been established in full. One of the most striking rulings of this kind was in October 1986 after a significant investigation by Santiago Appeals Court Judge Carlos Cerda into the "disappearance" of ten prisoners in 1976. This led to charges against 38 members of the armed forces and two civilian collaborators. The Supreme Court closed the case and twice sanctioned Judge Cerda with two months suspension in 1986 and 1991 because he had contested the closure of the case and application of the 1978 Amnesty Law by a lower court. In 1989 after the victory of the 'No' vote in the 1988 plebiscite, Military Judge Carlos Pareira applied the 1978 Amnesty Law to close 100 cases.

The Supreme Court has also in the main ruled in favour of the jurisdiction of the military courts, when they have claimed jurisdiction for such cases, and once passed from civilian

to military courts, these cases have been systematically closed through application of the 1978 Amnesty Law.

b) Since the return to civilian rule

After the return to civilian rule in 1990, the government of President Aylwin set up the Commission for Truth and Reconciliation, *Comisión de Verdad y Reconciliación*, known as the Rettig Commission. The Rettig Commission was charged with gathering information to establish the truth in cases of "disappearances", illegal execution and death resulting from torture carried out by agents of the state. It was also asked to investigate death resulting from politically motivated violence by private individuals between 11 September 1973 and 11 March 1990. Cases of torture not resulting in death were not investigated. The Commission spent nine months cross-checking cases from previous submissions to the courts and interviewing survivors from different regions in Chile. On 4 March 1991, President Aylwin presented the Commission's findings to the nation in a momentous televised broadcast. The Commission had confirmed 979 cases of "disappearances" and 1,319 deaths through torture or extrajudicial execution. The full report was reproduced by the newspaper La Nación, and extracts were published in other print media and achieved a wide circulation. The full two-volume 887-page report, known as the Rettig Report, was then published. The findings and new evidence on some 220 cases were passed to the courts for judicial investigation. President Aylwin had previously written to the then President of the Supreme Court Luis Maldonado urging him to instruct the courts to reopen the investigations. In presenting the report in a nation-wide television broadcast, President Aylwin stated "I hope they [the courts] duly exercise their function and carry out an exhaustive investigation, to which in my view, the 1978 Amnesty Law is no obstacle", *"Espero que estos [tribunales] cumplan debidamente su función y acojan las investigaciones, a lo cual - en mi concepto - no puede ser obstáculo la ley de amnistia vigente"*. The principle that courts should investigate cases up until the point at which the circumstances of the crime or "disappearance" were clarified and individual criminal responsibility established, before application of the 1978 Amnesty Law, became known as the 'Aylwin Doctrine'.

Nevertheless, the Supreme Court continued to confirm the transfer of cases to military jurisdiction and the closure of cases through application of the 1978 Amnesty Law. In

August 1990, for instance, the Supreme Court upheld a decision by lower tribunals to close a case which had originated in 1978 with a criminal complaint against senior members of the *DINA* concerning their responsibility for the "disappearance" of 70 people between 1974 and 1976. The Military Appeals Court, *Corte Marcial*, had in 1983 ruled to re-open the investigation of 35 of these cases, but these were definitively closed again in the first year of civilian government. Also in 1990 the military courts successfully contested the jurisdiction of a civilian court to conduct investigations arising from the discovery of a clandestine grave in Pisagua, northern Chile.

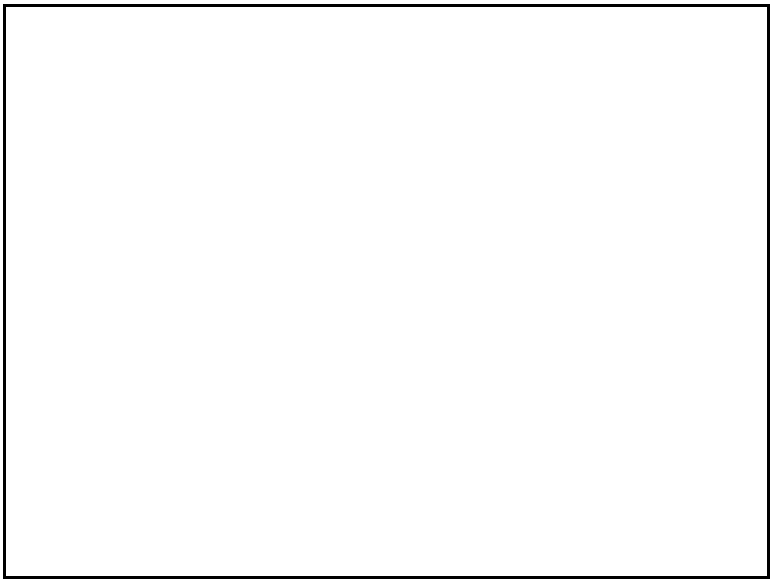
Previous legislative attempts to speed up the closure of cases

The last time the government attempted to introduce legislation to streamline court procedures for the investigation of cases involving human rights violations in the 1973-1978 period was in August 1993. This followed public protest by members of the armed forces in May that year, when military personnel in armoured vehicles returned to the streets of Santiago for several hours to protest at advances in prosecutions of army personnel for human rights violations. This military protest became known as the *Boinazo*[6].

The *Boinazo* occurred on 28 May 1993, the day that a criminal judge ordered the detention of a military officer in connection with the October 1974 "disappearance" of the brothers Juan Carlos and Jorge Elias Ardonicos Antequera and Luis González Manriquez in October 1974. Within two months, the Supreme Court ruled in favour of military jurisdiction for the case (contrary to an opposite Supreme Court ruling on the case in 1989). The next day the military prosecutor lifted proceedings against the officer concerned. Although this was contested in the Military Appeals Court, *Corte Marcial*, the same court later ratified the definitive closure of the case.

[6] The *Boinazo* was so called, after the berries "*boinas*" worn by armed service personnel.

The Aylwin Government presented draft legislation for new procedures for the investigation of all cases that might be covered by the 1978 Amnesty Law. These would be examined by Appeal Court Judges appointed as special investigating judges (*Ministros en Visita*) for two years, and evidence on the location of the "disappeared" could be submitted in secret. This legislation failed to gain agreement of parties in the governing coalition, in particular that of the Socialist Party, and was thus never enacted. The crucial difference between this earlier proposal and the August 1995 Frei Bill is that the latter would allow for investigations of cases not resolved within the two year period to continue indefinitely. However the Figueroa-Otero proposal makes no such provision, and its restrictions on investigations by judges are more severe than the Aylwin Bill of 1993.



Relatives ask "Where are our relatives"?

Although the Aylwin Bill was not passed, a hardening of the line of Supreme Court rulings in transferring jurisdiction to military courts, and confirming the application of the 1978 Amnesty Law in important human rights cases, was noted during 1993. For instance, the Supreme Court first agreed to transfer the investigation into the 1974 abduction, torture and "disappearance" of Alfonso Chanfreau Oyarce from a civilian to a military court, and then ratified the military court's closure of the case. The Supreme Court justified its decision arguing that the case had occurred at a time of internal war.

The impact of the Letelier/Moffit case, and subsequent military protest

The current proposals come in a period of intense debate in Chile over investigations into human rights violations during the military period. Military unrest has focused on the confirmation of prison sentences for General Manuel Contreras, former Director, and Brigadier Pedro Espinoza, former Chief of Operations of the *DINA*, for planning the

assassination of former Foreign Minister Orlando Letelier and US citizen Ronnie Moffit in a car bomb explosion in Washington DC, USA in 1976. Brigadier Espinoza was an acting army officer until his discharge from the Armed Forces in June 1995, whilst General Contreras had retired. General Contreras and Brigadier Espinoza had been sentenced by a lower court in 1993 to seven and six year prison terms respectively.

The Supreme Court's hearing of their appeal during 1995 was the focus of intense national interest. Appeal hearings were broadcast live on television - the first time that any Chilean court proceedings had been televised. In the weeks leading up to the Court's ruling the media gave coverage to considerable national speculation as to both its outcome and the reaction of the Armed Forces.

On 30 May 1995, the Supreme Court confirmed prison sentences for General Manuel Contreras and Brigadier Pedro Espinoza. Shortly afterwards on further appeal, the Supreme Court ruled to reduce their sentences by one year. This was to take into account the time they had spent in detention in 1978 pending unsuccessful proceedings for their extradition to the United States of America.

The Letelier/Moffit assassination had been exempted from the 1978 Amnesty Law by the military government at the time it was enacted, because of its implications for Chile's international relations. However, *DINA*'s former Director and its Chief of Operations have never been convicted of the crimes relating to human rights violations committed in Chile, although they have been cited in a number of cases before the courts.

There has been considerable military protest and insubordination in response to the sentences. As Commander of the Armed Forces, General Pinochet stated shortly after the ruling that whilst it deeply wounded them, the Armed Forces would respect the verdict. However, he was reported in an interview published in the newspaper *La Tercera* on 26 June as labelling the judgement 'unfair and politically motivated', *'este es un proceso muy injusto' que 'ha teñido de una aguda politización"*. In June 1995 the Army did accede to the Ministry of Defence's decision to discharge Brigadier Espinoza from the Armed Forces. This resulted in his eventual detention and transfer to the Punta Peuco prison to begin serving his sentence. In December 1994, the government had introduced legislation to construct a special prison to house military personnel convicted of crimes, and the Punta Peuco prison was completed for this purpose in June 1995.

The question as to whether General Manuel Contreras would or would not serve his sentence in prison became the next focus of controversy. For nearly five months General Manuel Contreras was not transferred to serve his sentence in prison. In June he evaded court officials who were about to deliver his detention order to his ranch in the south of the

country, and was transported in a military aircraft to the Naval Hospital of Talcahuano 400 kilometres from Santiago, where he underwent medical tests for a variety of complaints and received surgery for a hernia. In an interview in *La Tercera* General Pinochet confirmed that the Armed Forces had aided General Manuel Contreras' flight from court officials in what he termed "a demonstration of efficiency, since we could not allow a General of the Republic to be humiliated", *"una demonstración de eficiencia porque no podíamos permitir que se humillara a un general de la República"*.

On 22 July some 1,500 people attended a rally outside the Punta Peuco prison in solidarity for Brigadier Espinoza, who has been serving his sentence there since 20 June. The majority were reportedly members of the Army, including some 100 serving army officers ranking from lieutenant to general.

On 13 September, two days after the 22nd anniversary of the military coup, General Augusto Pinochet delivered a speech to businessmen in which he emphasised the need to forget the past, "The only thing left my friends, is to forget. And you forget not by reopening a court case, by throwing someone in jail. No, F O R G E T [he spelt out the letters]. That is the word, and to achieve that, both sides have to forget", *"Hay que guardar silencio y olividar. La única cosa que queda, señores contertulios, es olvidar! Agrego que no es manera de hacerlo abriendo procesos judiciales o metiendo a la cárcel. No, Ol-vi-do!, y para eso hay que por ambos lados olvidar."*

Months passed as the Supreme Court requested medical reports on the General and negotiations were held with the Armed Forces, resulting in a proposal for the Punta Peuco prison to be administered through "mixed custody" *(custodia mixta)* by personnel from both the prison service (*gendarmería*) and the Armed Forces. General Contreras had himself made several public declarations that he would not spend one day in prison. As late as 19 September 1995, General Pinochet stated on television, "I just cannot conceive of General Contreras going to jail". On 10 October the Supreme Court gave a definitive ruling that General Contreras should be transferred to the Punta Peuco prison, and his transfer to the prison was finally carried out on 21 October.

Conflicting court rulings and interpretations of international standards

Prior to the Letelier/Moffit ruling there had already been considerable contradictions in rulings by several courts, including the Supreme Court, on cases involving human rights violations and on the applicability of the 1978 Amnesty Law in particular. In Chile, jurisprudence is not binding, and each case is resolved on its own merits.

Since the Letelier/Moffit case had been excluded from the 1978 Amnesty Law, the Supreme Court ruling on this case did not in itself set a precedent for further sentences. Nevertheless, it evoked hopes in many families of the "disappeared" and victims of extrajudicial executions that justice would be done in the cases of their relatives. At the same time it also evoked fears among groups of relatives and human rights organizations that the authorities might capitalize on the resonance of the Letelier/Moffit case as a means of closing the chapter on all further investigations into human rights violations from the period of military rule.

The Carmelo Soria Case

On 23 May 1995 the II Chamber of the Supreme Court gave a surprise decision to reject an appeal for the application of the 1978 Amnesty Law in the case of dual Chilean-Spanish national Carmelo Soria, a United Nations official, whose dead body was found in a canal in Santiago in July 1976.[7] Numerous attempts had been made to apply the 1978 Amnesty Law to the case and it had been closed and re-opened on several occasions. During the latest appeal, lawyers for the Soria family had argued that the Vienna Convention on Crimes Committed against International Civil Servants and Other Diplomatic Officials (which requires states to punish those found responsible for such crimes) applied in this case. The convention had been ratified by Chile in 1977 and therefore took precedence over the 1978 Amnesty Law. Whilst the Supreme Court did not explicitly mention the Vienna Convention in its 23 May ruling, it allowed proceedings to continue. Defence lawyers for the military accused in the case have petitioned for the initial investigatory phase of proceedings to be closed (*cierre del sumario*). A further ruling on the case is expected shortly.

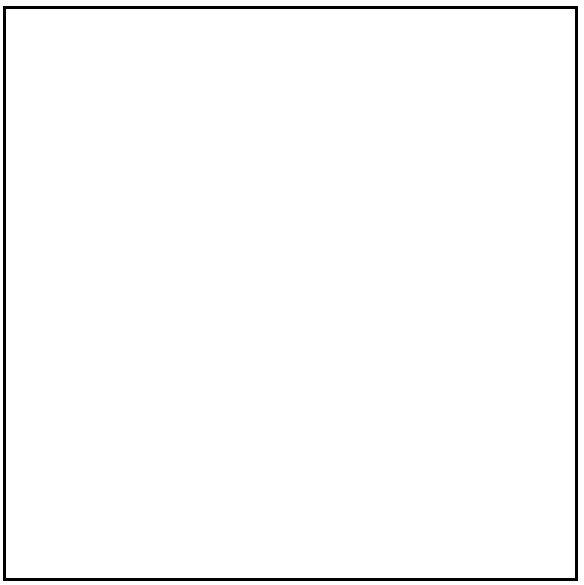
Amnesty International has consistently argued that Chile's 1978 Amnesty Law and the way it has been applied contravenes international human rights standards. This argument has also been strongly used by human rights lawyers acting for families of the "disappeared" in appeals against the closure of cases, and in a number of petitions to the

See also 'The case of Carmelo Soria : A United Nations Official' AI Index AMR 22/05/95.

Inter-American Commission on Human Rights (IACHR) contesting the 1978 Amnesty Law[8]. The argument has also been applied by a number of judges.

The Alfonso Chanfreau Oyarce case

Other controversies have surrounded judicial rulings on the applicability of international humanitarian law. Previous Supreme Court rulings had argued that during the 1973-78 period an internal state of war applied, which meant that all acts by military personnel were in the course of military duty, and normal criminal responsibility did not apply. This argument was used notably in the November 1993 ruling to confirm the closure by a military court of the investigation into the 1974 "disappearance" of Alfonso Chanfreau Oyarce.



Alfonso Chanfreau Oyarce who "disappeared" in 1974.

The Luma Videla, Bárbara Uribe and Edwin van Yurick cases

However, in 1994, in two cases Chambers of the Santiago Appeals Court used the argument that Chile was in a state of internal war to the opposite effect - ruling that international humanitarian law thus applied and therefore the 1978 Amnesty Law could not be used to close cases, since under the Geneva Convention war crimes and crimes against humanity can have no statute of limitations.

On 27 September 1994 , the Third Chamber of the Santiago Appeals Court ruled to keep open the case of the abduction, torture and killing of Lumi Videla, on 10 July 1974 - whose battered corpse was dumped into the patio of the Italian Embassy, where many Chileans were taking refuge. On 3 October the Eighth Chamber of the Santiago Appeals Court ruled to keep open the case of the 10 July 1974 "disappearance" in Santiago of Bárbara Uribe and Edwin van Yurick.

See Appendix 1 List of cases pending before the Inter-American Commission on Human Rights.

Among the considerations of the two rulings were that, pursuant to article 5 of the Constitution, amended in 1989, international treaties were hierarchically preeminent over national legislation. The 1949 Geneva Convention had been ratified by Chile in 1951, and was thus already incorporated in the Chilean legal order prior to the 1978 Amnesty Law. The Court based its citing of a state of war on a series of decrees issued between 22 September 1973 and 11 September 1974 decreeing a state of siege on the basis of "state or time of war" *"estado o tiempo de guerra"*.

The Eighth Chamber further argued in its ruling that in the case of the "disappearance" of Bárbara Uribe and Edwin van Yurick the crime was one of kidnapping, which is a permanent crime "*secuestro es un delito que tiene características de permanencia*". The argument that "disappearances" are an ongoing crime and therefore not subject to the period covered by the 1978 Amnesty Law, had been one used by several human rights lawyers and a few court judges on many occasions.

Both these rulings were drafted by Humberto Nogueira Alcalá attorney to the Santiago Appeals Court (*abogado integrante de la Corte de Apelaciones de Santiago*). Following the rulings, he was reallocated to other duties and is no longer a member of the Appeals Court. His transfer has been interpreted as a reprisal.

A controversy over the supremacy of international treaties and the hierarchy of laws in Chile, ensued after the Santiago Appeals Court rulings in the Bárbara Uribe and Edwin van Yurick and Lumi Videla cases. Jurists debated in the Chilean press in anticipation of a ruling by the Second Chamber of the Supreme Court on the case. Because of its implications for Chile's international human rights obligations, this ruling was also awaited with interest by the international community. Among the issues at stake were the date in which international obligations, some ratified several decades ago, were considered binding and took precedence over domestic legislation.

On 26 October 1995 the Second Chamber of the Supreme Court ruled to reject the Santiago Appeal Court's arguments and definitively closed proceedings into the "disappearance" of Bárbara Uribe and Edwin van Yurick. The court ruled that at the time of their detention Chile was not in a state of armed conflict within the terms of the 1949 Geneva Convention, that the Geneva Conventions do not prohibit amnesty laws, and that a series of international standards cited by the Appeals Court were not ratified by Chile at the time of the crime and could not therefore be retroactively applied [9].

The following international standards were ratified by Chile and published in the official gazette on the following dates: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 26 November 1988; The

The court did agree, however, that kidnapping was a permanent crime until it ceased. *"Que es efectivo que el delito de secuestro tiene carácter permanente, y se continua consumando mientras no cese la actividad delictual."* Nevertheless, the court went on to argue that it was impossible to suppose that the accused, Osvaldo Romo, continued practising the crime for several years, and thus decided that the date of the crime fell within the period before 10 May 1978 and was covered by the Amnesty Law. The court applied the same argument to charges of illicit association facing Osvaldo Romo. In justifying the definitive closure of the case, the court cited the drafting commission of the Penal Code that an amnesty has the effect of wiping out the crime and, "leaves its author in the same situation as if they had not committed it". *"la amnistía tiene la virtud de borrar el delito, lo que previó la Comisión Redactora del Código Penal al senalar que deja "a su autor en la misma situación en que estaría si no lo hubiere cometido".*

The court did nevertheless state that, "it is a universally recognised principle that civilized nations cannot invoke internal law to avoid the obligations and undertakings assumed in such treaties, and if that occurred, it certainly would weaken the rule of law." *"Pues, es un principio reconocido universalmente que las Naciones civilizadas no pueden invocar su Derecho Interno para eludir las obligaciones y compromisos internacionales asumidos por dichos tratados, lo que, ciertamente de producirse sí debilitaría el estado de derecho."*

Prosecutions in cases of human rights violations between 1978-1990 - not covered by the 1978 Amnesty Law

Cases of human rights violations committed in the twelve years of the Pinochet government since 1978 are not covered by the 1978 Amnesty Law, and prosecutions in such cases have proceeded. During 1995 the Supreme Court gave rulings confirming prison sentences in notable cases.

On 30 October 1995 the Supreme Court confirmed prison sentences against sixteen members of the *DICOMCAR* unit of the *Carabineros* police found guilty of the 1985 abduction and killing of three members of the communist party. During 1994 the refusal by the then director of *Carabineros* police, general Rodolfo Stange, to resign over an alleged cover-up of the crime, known as the '*Degollados*' (throat-cutting) case, had been the source of considerable tension between the civilian government and the military. General Stange retired in November 1995.

International Covenant on Civil and Political Rights - 29 April 1989 and the American Convention on Human Rights - 5 January 1991.

On 6 December 1995 the Supreme Court confirmed a 600-day prison sentence for an ex-Army officer, Pedro Fernánez Dittus for the death of Rodrigo Rojas Denegri and serious wounding of Carmen Gloria Quintana in 1986, in what is known as the '*Quemados*' (burning) case. During a protest demonstration on 2 July 1986 the two had had petrol poured on them and were set alight. Rodrigo Rojas Denegri had died of his injuries and Carmen Gloria Quintana was badly scarred.

The acceleration of case closures by the courts - and some exceptions

Whether or not legislation is passed to interpret the 1978 Amnesty Law, there are well-grounded fears that the immense pressure surrounding the issue of former human rights violations, and overt pressure by the Armed Forces on the civilian government in this regard, will result in the courts giving a restricted interpretation of the 1978 Amnesty Law, and issuing hurried rulings to close human rights cases definitively. The 26 October 1995 ruling of the Supreme Court in the Bárbara Uribe and Edwin van Yurick case is a foretaste of such a restricted interpretation. The day before the ruling one of the members of the Supreme Court's Second Chamber, Judge Roberto D'Avila was reported in the press as having commented that he expected the pending cases to be resolved within a fortnight.

Indeed since July 1995 a dramatic change in the nature of Supreme Court rulings has been noted, with the Supreme Court definitively closing 14 cases involving 104 victims. On the question of civilian versus military jurisdiction, the Supreme Court has since May 1995 ruled in favour of military jurisdiction in eight cases in contrast to eight rulings in favour of civilian jurisdiction from December 1994 to March 1995.

María Eugenia Martínez Hernández who "disappeared" after her detention by DINA agents on 24 October 1974.

Nevertheless despite this trend there have continued to be some progressive rulings.

For instance, on 4 September 1995 the Supreme Court gave a surprise ruling to re-open proceedings into the 1974 "disappearance" of María Eugenia Martínez Hernández, after her detention by *DINA* agents on 24 October 1974. A lower military court had definitively closed the case in July 1993. In accepting the appeal against this closure, the court ruled that the head of the Alamos Department and subordinates be questioned in relation to the fate of Eugenia Martínez Hernández, who, after her detention, had been seen for the last time in the *Cuatro Alamos* detention camp. Prior to the Uribe/Van Yurick ruling, the María Eugenia Martínez Hernández ruling encouraged human rights lawyers to hope that the Penal Chamber of the Supreme Court, dealing with such cases, might still not take a restricted interpretation of the Amnesty Law.

The most unexpected and unprecedented ruling took place, however, on 5 December 1995, the day the Figueroa-Otero Bill was being voted in the Senate's Constitution, Legislation and Justice Committee. The Penal Chamber of the Supreme Court ruled to confirm the first ever conviction in a "disappearance" case in Chile. Two former police officers and a civilian had been convicted in September 1993 by a civilian judge for the "disappearance" in Lautaro in Chile's IX region in 1974 of two Mapuche Indians, Juan Chequepan, aged 15, and Jose Llaulen, aged 39. The defendants were found guilty of 'kidnapping and kidnapping a minor', *'secuestro y sustraccion de menor'*. The Appeals Court of Temuco *Corte de Apelaciones de Temuco* upheld the ruling and did not apply the Amnesty Law, on the grounds that kidnapping was an ongoing crime. In December 1995 the Penal Chamber of the Supreme Court rejected the appellants call for application of both the Amnesty Law and the statute of limitations in the case. The Court also confirmed civilian jurisdiction in the case, arguing that the crimes could not be considered to have been carried out in the course of duty (*'por no haber resultado probado que los procesados Ponce y Campos hubieren participado en los delitos con ocasion de actos de servicio'*). The original sentence of three years' imprisonment and a fine of US $ 12,000 was confirmed.

The existence of such rulings shows that there is scope for bringing perpetrators of human rights violations to justice in Chile, if the courts have the courage to fulfill their moral and legal duty. Should the Figueroa-Otero Bill be passed by the full Congress, and without amendment, these possibilities will be snuffed out.

International judgement

While progress in any cases of investigations of human rights violations is welcomed, it is a sad indictment of Chilean justice that cases with specific international implications have made more progress than the hundreds of other cases presented to the courts. The Letelier/Moffit case is the only case of political execution to have occurred in the 1973-1978 period which has resulted in a conviction and prison sentence. The case of dual Spanish/Chilean National and United Nations Official Carmelo Soria remains open. In December 1994 United Nations Secretary General Boutros Boutros Ghali issued a press release which noted inter alia "Since the day of Mr Soria's death the United Nations has actively followed the results of the investigation into the circumstances of his death, and demanded that there is full justice in this case". Meanwhile, an Italian court has brought a conviction against General Manuel Contreras and another military officer in relation to a further assassination attempt in Rome in 1975.

The Bernardo Leighton case

On 23 June 1995, a court in Rome condemned general Manuel Contreras and colonel Raúl Eduardo Iturriaga Neumann to 20 years' imprisonment for coordinating the assassination attempt against Christian Democrat politician and former Vice-President Bernardo Leighton. He and his wife, Ana Fresno, were shot and seriously wounded in September 1975 in Rome. Ana Fresno never fully recovered the use of her legs. The Italian Prosecutor in the trial, Giovani Salvi, had travelled to the United States of America, Chile and Argentina to collect evidence on the activities of the *DINA* and the involvement of General Manuel Contreras in ordering and planning the assassinations of Orlando Letelier, Bernardo Leighton and General Carlos Prats.

The General Prats case

General Prats, predecessor to General Pinochet as Commander in Chief of the Armed Forces under the Allende government, was living in exile in Argentina. On 30 September 1974 General Carlos Prats and his wife Sofia Cuthbert were killed by a car bomb in Buenos Aires. On 8 August 1995, the Penal Chamber of the Chilean Supreme Court denied a request to send relevant items from court proceedings from the Letelier/Moffit case to the Argentine courts investigating the Prats assassination.

Several petitions are pending before the Inter-American Commission on Human Rights in which Chilean human rights lawyers have claimed that Chile has denied the right of effective remedy in cases of extrajudicial executions and "disappearances", and challenged the 1978 Amnesty Law and its application. (See Appendix 1).

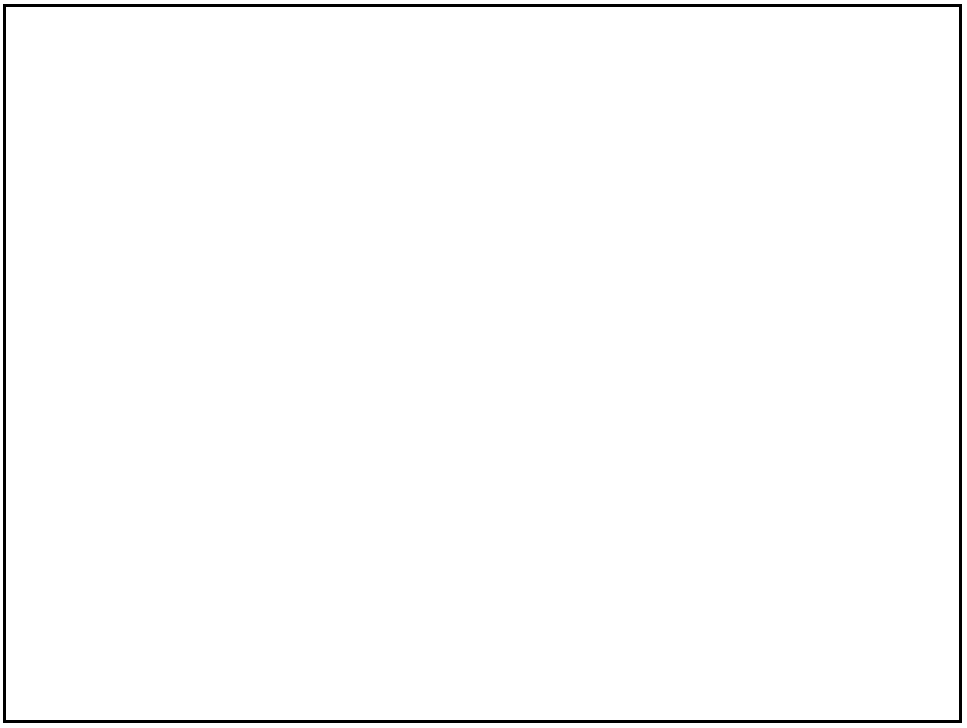
Excavations continue

Meanwhile, excavations into mass burial sites and sites suspected of holding bodies of the "disappeared" have continued, as has forensic work to identify those remains that have been exhumed. In total some 175 bodies of "disappeared" individuals have been positively identified and the remains of 419 persons extra-judicially executed have been recovered and identified. Following each identification or group of identifications burial ceremonies have been held, and these have continued to resonate through Chilean society. During the Aylwin government a special memorial to the dead and "disappeared" was constructed at the Central Cemetery of Santiago, and many of those identified have been laid to rest there.

The work of the Corporación de Reparación y Reconciliación

As recommended by the Truth and Reconciliation Commission, legislation was submitted to Congress creating a successor body. The Corporation for Reparation and Reconciliation, *Corporación de Reparación y Reconciliación*, was established under Law 19.123 on 8 February 1992. It was charged with continuing investigations on the 641 cases the Rettig Commission had been unable to resolve, and receiving and investigating those cases which had not been presented during the Rettig Commission's one year period of operation. Its mandate was limited to 15 July 1993, but was extended on several occasions and currently runs until the end of December 1995. In the three years to February 1995 the Corporation officially recognized a further 123 "disappearances" and 776 extrajudicial executions or deaths under torture during the military period. Combined with the findings of the Rettig Commission this brought the number of "disappearances" to 1,102 and extrajudicial executions and deaths under torture to 2,095, making a total of 3,197 cases that were officially recognized by the state. The Corporation's mandate to recognize such cases ended in February 1995, but its mandate to investigate the location of the "disappeared" continues to 31 December 1995.

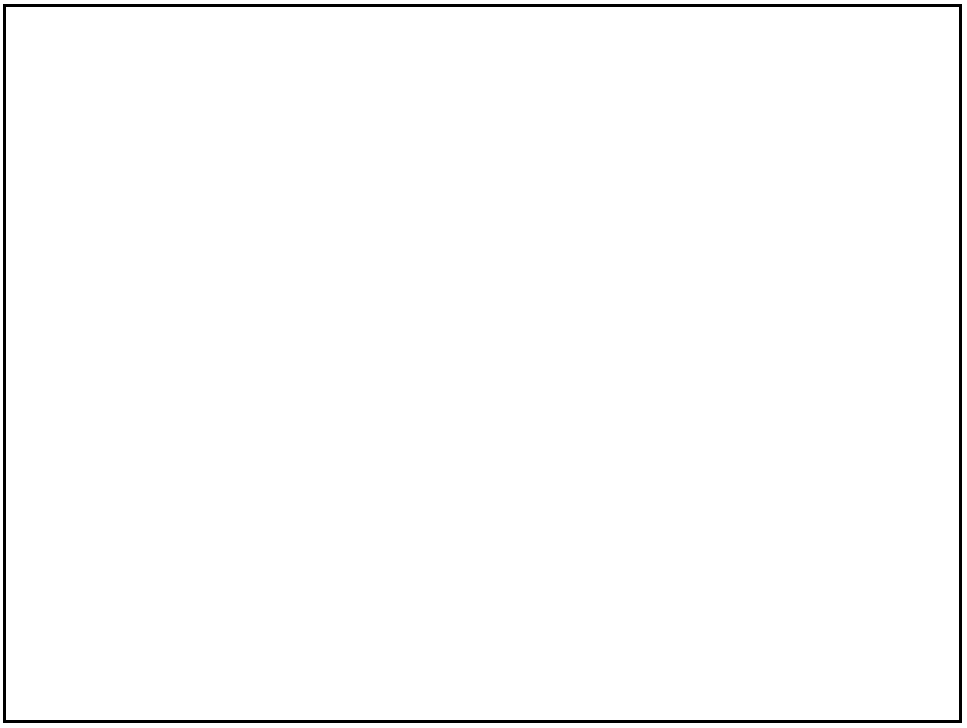
Law 19.123 established mechanisms for granting initial sums of compensation, and regular pensions to relatives of victims officially recognized by the state in either the Rettig Report or subsequent Corporation investigations. It further established the right of free medical assistance for families and educational grants until the age of 35 for children of those named in the investigations.



Here relatives show how they felt after realizing that their missing relatives were being tortured in closed detention centres.

In 1991 the Health Ministry had also established a Program for Reparation and Integrated Health Provision, *Programa de Reparación y Atención Integral en Salud* (PRAIS) with a wider brief to provide medical assistance to relatives of the "disappeared" and of the extrajudicially executed and to those who suffered the traumas of detention and torture, and those who have returned from exile.

The Corporation for Reparation and Reconciliation was further mandated to coordinate and promote preventive action to improve the regulation and protection of human rights and the consolidation of a culture respecting human rights. The Corporation has promoted human rights education and seminars and publications on issues of human rights protection and the functioning of the judicial system.



"In the search we found each other". In this drawing, the relatives show how families from all over Chile met each other while searching for missing relatives in detention centres, hospitals, morgues, courts of justice, and on the road to Santiago.

The Corporation has played an important role, which will not be completed with the termination of its mandate in December 1995. As the courts have increasingly ruled to close cases definitively before the full truth has been established, the efforts of the Corporation in locating remains and pursuing investigations will be all the more important. Amnesty International hopes that the Chilean Government will accord the Corporation permanent status.

Amnesty International's concerns

Amnesty International is deeply concerned at current attempts in Chile to curtail investigations into hundreds of "disappearances" and extrajudicial executions that occurred during the period of Pinochet rule. The organization is concerned both by legislative proposals which would effectively seal cases from prosecution and further investigation, and by the apparent undue haste with which Chilean courts have been closing cases definitively before the full truth has been established.

It would seem clear that both these moves have arisen from military pressure to obtain total immunity from prosecution for perpetrators of human rights violations.

There are three elements in the internationally recognised right of effective remedy for human rights violations: truth, justice and compensation. Although Chile has made significant steps towards addressing relatives' rights to compensation, it will be ranked alongside other countries that have denied the right of families to truth and justice if it allows human rights cases to be prematurely closed in the ways outlined above.

Amnesty International has therefore respectfully reminded the Chilean executive, legislature and judiciary of their international obligations to ensure that human rights violations are investigated and those found responsible brought to justice, since legislating for impunity or ratifying it in the courts may encourage or facilitate future abuses.

Amnesty International has consistently called for the 1978 Amnesty Law to be repealed[10], and for those found responsible for human rights violations to be brought to justice. Amnesty International does not have a position on the granting of post-conviction pardons, once the judicial process has been completed, and the facts and responsibility have been established in courts of law. However, the organization opposes any measures that impede clarification of the truth in cases of human rights violations, and prevent those responsible being brought to justice. The organization believes that the way in which the 1978 Chilean Amnesty Law has been interpreted in recent years contravenes international human rights standards.

The organization believes that details of individual cases of human rights violations during the military period have yet to be fully established, and therefore strongly opposes any further restriction on the investigation of these violations or on the prosecution of those found responsible.

With regard to the government's Frei Bill of 22 August, Amnesty International welcomed provisions for investigations to be transferred from military to civilian courts and for these to be investigated exclusively by Appeals Court Judges for a period of two years, with provision for indefinite investigation of unresolved cases. In accordance with Article

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See Amnesty International documents AMR 22/23/78, AMR 22/78/86, AMR 33/83/86, AMR 22 WU 05/86, AMR 22/05/87, AMR 22/01/88, AMR 22/WU 02/89, AMR 22/03/90, AMR 22/ WU 01/90 AMR 22/07/90, AMR 22/10/90, AMR 22/01/91, AMR 22/02/92, AMR 22/06/92, AMR 22/09/92, AMR 22/17/92, AMR 22/12/92, AMR 22/15/93, AMR 22/05/95.

16 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Amnesty International believes that military courts are inappropriate for such investigations. In Chile this has been demonstrated by military courts' record to date of systematically closing cases of "disappearances", before the facts have been established. Amnesty International further believes that investigations into the circumstances of individual "disappearances" and into location of remains should not be closed until the fate of the individual concerned has been fully clarified. This is in accordance with Article 13 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

> *"An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified."*

Amnesty International believes that the recent Figueroa-Otero proposal has neither the benefit of transferring cases from military to civilian courts nor provisions for maintaining cases open until the truth of the fate of the "disappeared" has been established. The proposal would place an unacceptable burden on relatives of the "disappeared" who, in order to maintain any prospect of a continued investigation of the fate of their loved ones, would be obliged to petition the courts for temporarily suspended cases to be reopened, and these would only be reopened if there was sufficient information, including new information, in order to justify this. However, in accordance with Article 13, Paragraph 1 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, it is the obligation of the state to take the initiative in investigating "disappearances" where there are reasonable grounds for believing they have occurred.

Furthermore, the provisions in proposed legislation to prevent courts from establishing penal responsibility for grave human rights violations would inhibit the independent functioning of the judiciary. Such restrictions on prosecutions and investigations would run counter to several international standards, including the United Nations Declaration on the Prevention of All Persons from Enforced Disappearances and the United Nations Basic Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. It is the duty of governments to ensure that those responsible for "disappearances", extrajudicial executions and torture are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed.

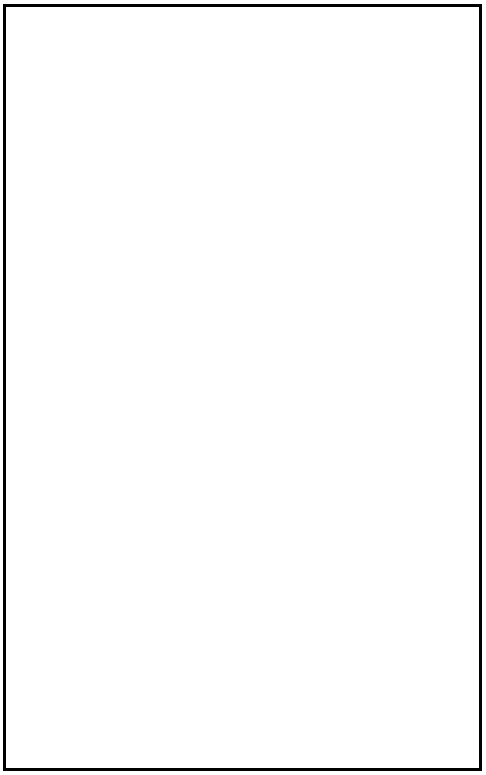
Amnesty International is therefore concerned that the issuing of any special measures which restrict the powers of the judiciary to carry out its functions and conduct investigations may deprive relatives of victims of extrajudicial executions and

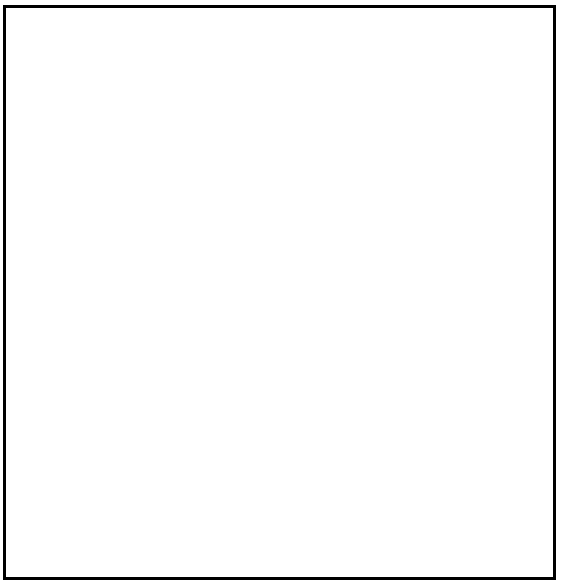
"disappearances" of any legal means to establish the truth about what happened to their loved ones.

Provisions in the legislative proposals for keeping information relating to the fate of the "disappeared" secret, and for the eventual destruction of such evidence where it may lead to the identification of the source, runs contrary to the principle that relatives should have access to information relevant to investigations into the fate of their loved ones, and that the results of all human rights investigations should be made public.

During the military period the state acted systematically to hide information about the fate of those it detained and made "disappear". For the civilian government to prohibit prosecutions and legislate for secrecy in relation to the fate of hundreds of individuals strikes at the heart of the principles of truth and justice. Amnesty International believes that the courts should be the first to uphold these principles.

Amnesty International's experience, based on the following up of thousands of cases of "disappearances" and extrajudicial executions around the world, indicates that partial solutions that do not meet the right to justice and moral redress of the families or that appear to sanction impunity, invariably fail to turn the page on the issue of "disappearances" and extrajudicial executions.





Monument to the "Disappeared" and executed in the General Cemetery - Santiago.