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U.S. Department of State

Chile Country Report on Human Rights Practices for 1998

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CHILE

Chile is a multiparty democracy with a constitution that provides for a strong executive and a bicameral legislature. Approved by referendum in 1980 and amended in 1989, the Constitution was written under the former military government and establishes institutional limits on popular rule. President Eduardo Frei, a Christian Democrat, began his 6-year term in 1994. The National Congress comprises 120 deputies and 48 senators. The government coalition of six parties holds a majority in the lower house. An opposition coalition, including several independent and many of the 10 nonelected senators, controls the upper chamber, although the senate president is from the ruling coalition. Former president General Augusto Pinochet retired from the army on March 11 and assumed a lifetime senate seat. The Constitutional Tribunal rejected a lawsuit that sought to prevent Pinochet from entering the Senate. Following his assumption of the seat, the Chamber of Deputies on April 9 rejected an attempt to remove Pinochet from the Senate. Turnover in the courts has led to a significant diminution in the influence of General Pinochet's appointees over the constitutionally independent judicial branch.

The armed forces are constitutionally subordinate to the President through an appointed Minister of Defense but enjoy a large degree of legal autonomy. Most notably, the President must have the concurrence of the National Security Council, which comprises military and civilian officials, to remove service chiefs. The Carabineros (the uniformed national police) have primary responsibility for public order and safety and border security. The civilian Investigations Police are responsible for criminal investigations and immigration control. Both organizations--although formally under the jurisdiction of the Ministry of Defense, which prepares their budgets--are under operational control of the Ministry of Interior. The security forces, mainly the police, committed a number of human rights abuses.

The export-led, free-market economy experienced its 15th consecutive year of expansion, but growth moderated in 1998 due to the impact of the Asian and global economic crises. The most important export remained copper; salmon, forestry products, fresh fruit, fish meal, and manufactured goods were also significant sources of foreign exchange. Gross domestic product (GDP) grew at a 7.1 percent rate in 1997, and inflation fell to 6.6 percent. Unemployment stood at 7.2 percent, although it was expected to rise. From 1987 to 1997, the percentage of the population living below the poverty line decreased from 45 to 23 percent. Annual per capita GDP rose to approximately \$5,300 in 1997.

The Government generally respected its citizens' human rights; however, there continued to be problems in some areas. The most serious cases involved torture, brutality, use of excessive force by the police, and physical abuse in jails and prisons. Discrimination and violence against women and violence against children are problems. Discrimination against the disabled and minorities persists. Many indigenous people remain marginalized. Child labor is a problem.

Almost all other human rights concerns are related to abuses during the former military government, primarily between 1973 and 1978. In October the United Kingdom detained retired General Pinochet pending resolution of an extradition request from Spain on charges of genocide and murder. The British High Court originally ruled that Pinochet had immunity as a former head of state; however, a November Law Lords panel overturned that decision. In December the Law Lords set aside their previous ruling and agreed to reconsider the case. At year's end, another panel was to hear the case, and Pinochet remained under house arrest in England.

The detention of General Pinochet led to a reexamination of what, if anything, could and should be done to deal with the sometimes conflicting demands for justice and for national reconciliation. Efforts to bring abusers to justice in cases dating back to the early years of the military government often have been stifled by the judiciary. The military authorities continued to resist a full accounting of the fate of those persons who had disappeared, and the courts continued to close, without investigation or prosecution, many cases of abuse that occurred during the first 5 years of military rule, citing the 1978 Amnesty Law. Over the past 6 years, the Government and opposition parties have debated various proposals that effectively would close all cases covered by the Amnesty Law that are still under judicial investigation. These efforts largely have stalled, and the judicial system continued to investigate and either prosecute or close pending human rights cases.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political killings.

On January 12, taxi driver Raul Palma Salgado died while in police custody, allegedly as a result of torture. Four National police members implicated in the death are under arrest, and the case is in the courts. The Committee for the Defense of People's Rights (CODEPU) identified Palma's death as the third instance of suspects dying while in police custody due to torture or excessive force since 1990. The other two alleged cases occurred in 1995 and 1997. Legal action continued in these two earlier cases.

Police used water cannons and tear gas when violence broke out during demonstrations on the anniversary of the September 11, 1973 coup against the Allende government. Two persons died. One was a Communist Party official who apparently suffered a stroke while marching; party officials

claimed that the stroke was brought on by tear gas. The other was a 25-year-old woman who was shot under unclear circumstances; at year's end her death was under investigation (see Sections 2.a. and 3).

In December 1996, Pedro Soto Tapia, a 19-year-old military conscript, disappeared from his regiment at San Felipe after having written many letters to his family describing mistreatment at the hands of his superior officers. In March 1997, his remains were found in a cave in San Felipe, accompanied by what was purportedly a suicide note. In February the judge handling the case fell ill and a series of temporary substitutes were named. In September the family's attorneys, assisted by the CODEPU, succeeded in having a new permanent judge named. They continue to allege that Soto's death was a homicide.

Important advances were made in clarifying events surrounding "Operation Albania," the June 1987 killings of 12 "Manuel Rodriguez Patriotic Front" (FPMR) members. The authorities brought charges of use of unnecessary violence against nine former and current intelligence and security officers; all were in custody. At year's end, the judge was considering a motion to raise the charges to aggravated homicide.

Proceedings against General Pinochet continued in Spain for his alleged responsibility in the deaths, torture, and disappearance of Spanish and other citizens. On October 16, authorities in the United Kingdom detained General Pinochet, who was recovering in London from a back operation, following the UK's receipt of a Spanish arrest order sent via Interpol. An extradition request followed. The Spanish request grew out of two separate Madrid court proceedings (consolidated into one on October 20 under Judge Baltasar Garzon) involving persons who were killed, tortured, or who disappeared in Chile during the military regime. One investigation had focused on those killed in Chile during the military era, while the other focused on persons killed outside of Chile in "Operation Condor," an undercover operation in which several military governments in the region, led by Chile, cooperated to eliminate leftist opponents. Judge Garzon and a colleague had spent the past 2 years collecting evidence and taking testimony regarding human rights violations in Chile and Argentina during the military dictatorships.

The British High Court ruled on October 28 that Pinochet enjoyed sovereign immunity as a former head of state. This decision was overturned on November 25 by the House of Lords' Law Lords panel, and on December 9 the British Home Secretary decided to allow the extradition process to proceed. On December 17, the Law Lords set aside their previous ruling and agreed to reconsider the case following an appeal from Pinochet's lawyers that one of the deciding judges had not revealed a potential conflict of interest involving his links with one of the parties that supported the Spanish request. At year's end, Pinochet remained in England under house arrest.

Former Chilean intelligence agent Enrique Arancibia Clavel continued to be detained in Argentina after an Argentine judge denied his January request to be set free; this decision was reaffirmed in another court decision in September. Arancibia is charged with involvement in the 1974 car bombing in Buenos Aires that killed former Chilean army chief Carlos Prats and his wife, Sofia Cuthbert. The case was reopened in 1992 as a result of a petition filed by the Prats family containing new evidence. The Chilean Government has agreed to be a coplaintiff in the Argentine trial of Arancibia. Legal efforts to gain the testimony of retired General Manuel Contreras and retired Brigadier General Pedro Espinoza, former director and operations director, respectively, of DINA (the army intelligence branch during the military regime), allegedly implicated in the killing, continued. Contreras and Espinoza had been convicted in 1993 of the 1976 killings in Washington, D.C. of former Chilean foreign minister Orlando Letelier and his assistant Ronni Moffitt.

On November 6, the judge investigating the 1982 death of labor leader Tucapel Jimenez and the related homicide of carpenter Juan Alegria Mundalca closed the case, ruling that there was insufficient evidence to bring anyone to trial for the murders. This decision is being appealed. Four former agents of the

National Intelligence Center (the successor to DINA) had been under investigation for the killings.

Some alleged perpetrators of human rights abuses during the military regime remain on active duty in the army. Army General Sergio Espinoza Davies, who commanded the United Nations observer mission along the India-Pakistan border, was accused of being involved in an October 1973 "war council" that sentenced five socialists to death without due process. Following the UN's announcement that it would investigate the charges against him, the Government consulted with the UN. The issue became moot when General Espinoza Davies, promoted to army Inspector General, returned to the country in December.

In September Swiss authorities denied the Government's request for extradition from Switzerland of a member of the FPMR terrorist group who escaped from prison in December 1996. The individual was convicted in Chile of killing a police officer in 1991 (see Section 1.e.).

b. Disappearance

There were no reports of politically motivated disappearances.

The major human rights controversy involved past disappearances and efforts by political forces and the Government to reinterpret the 1978 Amnesty Law in such a way as to achieve both justice and national reconciliation. As interpreted under the so-called Aylwin doctrine (named after former President Patricio Aylwin), the courts should not close a case involving a disappearance until either the body is found or credible evidence is provided to indicate that an individual is dead. This could affect over 500 cases, which cover about 1,000 persons still classified as "detained or missing" from the early years of the military regime. However, application of the Aylwin doctrine has been uneven, as some courts continue the previous practice of applying the 1978 amnesty to disappearances without conducting an investigation to identify the perpetrators.

On December 29, a Supreme Court panel overruled a 1997 application of the Amnesty Law to the August 1974 disappearance of Alvaro Miguel Barrios Duche. The Supreme Court ruled that the law could be applied following the completion of a full criminal investigation and the identification of the guilty parties and ordered the military court to begin an investigation into the case. According to the Social Aid Foundation of Christian Churches (FASIC), 2 disappearance cases were pending before the Supreme Court at year's end, with 12 cases having been closed in 1998 through application of the Amnesty Law; 4 other cases were closed for other reasons, including 1 temporarily closed and subject to being reopened. Application of the Amnesty Law was denied in five cases, with four of these cases reopened; another case involving a disappearance was reopened under a different legal doctrine.

The Supreme Court had sometimes ruled in the past that when judges receive criminal complaints related to actions by armed services members in the period covered by the amnesty (September 11, 1973 to March 10, 1978), they were required to close the case immediately without further investigations. In September the Sup