

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The Chilean Experience ]



# CONTENTS

<b>TRANSFORMATION OF THE POLITICAL SYSTEM . . . .</b>	<b>3</b>
<b>DISMANTLING THE STATE SECURITY APPARATUS . . . . .</b>	<b>8</b>
<b>ARCHIVES OF THE REGIME . . . . .</b>	<b>16</b>
<b>LUSTRATION . . . . .</b>	<b>24</b>
<b>INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME . . . . .</b>	<b>28</b>
<b>REHABILITATION OF VICTIMS . . . . .</b>	<b>31</b>
<b>EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE . . . . .</b>	<b>38</b>
<b>TIMELINE OF THE MAJOR EVENTS . . . . .</b>	<b>46</b>
<b>SOURCES USED AND FURTHER READING . . . . .</b>	<b>49</b>

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CEVRO would like to express its gratitude to the Museum of Memory and Human Rights in Santiago de Chile for its support when preparing the Chilean case study.

This case study is a part of the publication "Memory of Nations: Democratic Transition Guide" (ISBN 978-80-86816-39-5). This publication is available to download at [www.cevro.cz/guide](http://www.cevro.cz/guide).

# TRANSFORMATION OF THE POLITICAL SYSTEM

MIREYA DÁVILA

## INTRODUCTION

This chapter deals with the main transformations of the Chilean political system during the transition from dictatorship to democracy at the beginning of the 1990s. The military dictatorship that ruled Chile for 17 years (1973–1990) introduced deep transformations in Chilean society that impacted on the transition process itself, as well as on the political system inaugurated in March 1990. The main changes introduced by the dictatorship included a new political Constitution and the introduction of pro-market reforms in the economic sphere, a change in the territorial organization of the country (with the creation of new administrative), a new binominal electoral system, reduced powers for Congress and therefore, a hyper-presidential system. These changes constituted the framework within which the political system has had to process subsequent political dynamics and conflicts over social, economic, and political change.

## INITIAL CONDITIONS

The initial conditions of the transition process in Chile were influenced by the particular characteristics of the Chilean military dictatorship, including the nature of military rule, its long duration, and the transformations it introduced.

The Chilean military dictatorship began on September 11, 1973 with a coup. All three branches of the Armed Forces, plus the Carabineros (uniformed police) participated in the coup. The ensuing dictatorship, led by the Army, and its Commander-in-Chief, General Augusto Pinochet, was characterized by massive political and social repression. This included violation of the human rights of the population in general, and members of left-wing political parties in particular.<sup>1</sup> A new political order was centered on Pinochet, and founded on deep neo-liberal economic reforms.<sup>2</sup> Although the first military *junta* had four members (the heads of each of the three Armed Forces, plus the uniformed police) *de facto* powers of government soon came to be concentrated in the hands of Pinochet and the Army High Command. Economic management was meanwhile delegated to neo-liberal civilians (Varas, 2017). Pinochet simultaneously served as President of the Republic, President of the Government Junta (until 1980) and Commander-in-Chief of the Army. The Military Junta became the legislative branch of government.

The coup of September 1973 also meant the end of the institutions and organizations typical of a democracy. Congress was closed; the political parties that had made up the overthrown previous governments were banned,<sup>3</sup> and other parties were obliged to go into recess; the electoral rolls were burned; press freedom was restricted and censorship was established; and public universities were intervened and radically modified. The trade union movement was persecuted.

During the 1970s, the dictatorship developed a strategy for political legitimization that sought to embed the authoritarian regime on a basis other than the previous one of fear. This strategy

embraced attempts to create historical legitimacy by deploying anti-Marxist and anti-Communist discourse to condemn the deposed socialist government of Salvador Allende (1970–73).<sup>4</sup> It also sought legal and constitutional legitimization by imposing a vision of an authoritarian and protected democracy, and pursued economic legitimization based on the success of a new, neo-liberal, economic model.<sup>5</sup>

New rules of the political game were a fundamental part of the changes introduced during the dictatorship. The new institutional design was enshrined in the new, 1980, Constitution, which began to be implemented in 1981.<sup>6</sup>

A set of institutions established in this 1980 Constitution gave the Armed Forces an important role in the political order, and placed them in a privileged situation relative to other state organizations. Dispositions included dissolving civilian authorities' power to remove commanders-in-chief of the Armed Forces or internal security agencies; plus the creation of a National Security Council, an advisory body of the President of the Republic on national security matters, in whose decisionmaking the Armed Forces were to play an important role. In addition, the Constitution established a set of rules that favored a concept of so-called "protected democracy". This involved the creation of non-elected (designated) Senators, whose number was to include former commanders-in-chief of the armed forces and security services.<sup>7</sup> Other aspects included the introduction of high quorums, designed to make any future reform of this Constitution and associated constitutional organic laws more difficult. A new, binominal, electoral system was also introduced. This tended, at least in the early years of its operation, to favor the political Right, who were political allies of the military and the dictatorship.

1 The Dictatorship had two agencies responsible for repression: the National Intelligence Directorate (Dirección Nacional de Inteligencia, DINA), created *de facto* in 1973 but formalized in 1974, and the National Information Center (Centro Nacional de Información, CNI), created in 1977 to replace the DINA.

2 Carlos Huneeus, Carlos Huneeus, *The Pinochet Regime*. Boulder: Lynne Rienner, 2007.

3 Outgoing parties that had formed part of the deposed Popular Unity government (Unidad Popular) were banned: Decree Law 77 of the Military Junta banned the Communist and Socialist parties, the Popular Socialist Union (*Unión Socialista Popular*), the Unitary Popular Action Movement (*Movimiento de Acción Popular Unitario*, MAPU), the Radical and Christian Left parties, Independent Popular Action, and "all organizations that promoted Marxism".

4 For more details see: Carlos Huneeus, *The Pinochet Regime*. Boulder: Lynne Rienner, 2007; Ricardo Ffrench-Davis, *Chile entre el Neoliberalismo y el Crecimiento con Equidad. Reformas y Políticas Económicas desde 1973*, Santiago: J-C.Sáez Editor, 2008.

5 The exception was the national copper company, CODELCO, which continued in the hands of the State.

6 It was ratified in a plebiscite in September 1980.

7 The Constitution of 1980 established the figure of designated senators, appointed by the President of the Republic. The categories of person eligible for these senatorships were: former presidents of the Republic; two former Supreme Court judges; a former comptroller-general of the Republic; former commanders-in-chief of the Armed Forces; a former rector of a state university; and a former Minister of State.

The design of the new political system also included new laws governing political parties and the electoral roll.

One of the singular features of the Chilean Dictatorship is undoubtedly the fact that it came to an end as a result of following its own institutional standards, as established in the Constitution of 1980. This set down regulations for a long transition period, with Article 25, for example, stipulating that, as of March 11, 1981, General Pinochet was to continue in office as President for at least eight more years, i.e. until March 1990. The transitory provisions established that the commanders-in-chief of the Armed Forces, plus the General Director of the Carabineros (i.e. the members of the military Junta) would then propose a new candidate, to be ratified or otherwise via a citizen plebiscite. This candidate, if ratified by the plebiscite, would occupy the position of President of the Republic in the subsequent presidential period, which was to run between March 1990 and March 1997. On August 30, 1988, the Governing Junta nominated Augusto Pinochet as their candidate for the plebiscite.

The plebiscite was duly held on October 5, 1988, after campaigns involving the regime and a now-tolerated political opposition. Against all odds, the “NO” vote won,<sup>8</sup> with 55.99 % of the votes, to the 44.01 % obtained by the “YES” vote that would have confirmed Pinochet in the presidency for seven more years.<sup>9</sup> Accordingly, Pinochet would continue only for another year, at which point – in 1989 – open presidential and parliamentary elections would be called.<sup>10</sup>

The plebiscite and subsequent electoral process were notable for the large size of voter turnout, are despite the years of dictatorship, fear and repression. For example, 7,435,913 citizens registered to vote in the plebiscite, a figure that represented 97.5 % of all citizens theoretically eligible to vote that year. This represented a first in the country’s history: never before had such a large percentage of eligible citizen actively registered to vote.<sup>11</sup>

## THE TRANSITION PROCESS

The Chilean Transition was an orderly process that occurred according to a timetable laid down by the dictatorship. The Army, and especially General Pinochet, retained control of the process due to the institutional power that was vested in them by the Constitution, combined with Pinochet’s by then unquestioned authority over the other branches of the Armed Forces and security services.

Despite the abundance of scholarship on the process of transitions from authoritarian to democratic regimes, there is no single agreed definition of “transition”.<sup>12</sup> In the case of Chile, the concept of transition (defined as the change from one political regime to another) is often applied to the period between October 5, 1988 and March 11, 1990, with the latter constituting the date on which the first democratically-elected government took power after 17 years of dictatorship. Following a similar logic, one might instead argue that Chilean electoral democracy fully restarted in March 1994, the date on which the second President elected in this new democratic cycle took power. Others feel, however, that the democratization process cannot yet be considered fully complete, as there has not yet – as of 2019 – been a process of creation of a new constitution, one that fully meets democratic standards and has been debated and approved by the country’s citizens.

However, we could date Chile’s transition as a process that was at least begun with the October 1988 plebiscite, and whose first stage lasted until March 1990, when Patricio Aylwin, leader of

the opposition, took office at the head of this first democratically-elected government since 1970.

The creation of a political opposition to the Chilean dictatorship had in itself been a lengthy and contested process. As far back as the early 1980s, a range of political groups attempted to constitute a cohesive opposition, capable of confronting Pinochet and recovering democratic rule. The opposition tendency that finally gained the ascendant was one that proposed accepting the rules of Pinochet’s game, i.e. the Constitution of 1980, and the schedule set down in it for a return to electoral democracy schedule. Other alternatives, including outright rejection of the 1980 Constitution and a strategy of taking up arms against the regime, did not in the end attract majority support. The political coalition that became the main official opposition to the dictatorship, demanding free elections, was mainly formed along an axis taking in Christian Democrats and a renewed group of Socialists. Broad international political support was decisive for strengthening this opposition movement. The role played towards the end of the regime by the US<sup>13</sup> also helped in allowing the emergence of an effective political opposition, avoiding the danger of counter-reaction by regime forces seeking an excuse to cancel the plebiscite.

Once it became clear that the opposition had triumphed in the 1988 plebiscite, opposition parties began preparing to compete in the presidential and parliamentary elections of December 1989. A broad coalition was formed, the *Concertación de Partidos por la Democracia*, known as the *Concertación*. This coalition brought together Christian Democrats and Socialists,<sup>14</sup> plus other groupings including the Radical Party (*Partido Radical*, PR), the newly-formed Party for Democracy (*Partido por la Democracia*, PPD) and 13 other parties.

The political right-wing, which had supported and defended the dictatorship, organized itself into two political parties for the 1989 presidential and parliamentary electoral campaign: the Independent Democratic Union (*Unión Demócrata Independiente*, UDI) and National Renewal (*Renovación Nacional*, RN).

Meanwhile, the military government devoted the time between October 1988 and March 1990 to creating a set of legal

8 “Estudio Nacional de Opinión Pública, Septiembre 1988”, Documento de Trabajo 1, Santiago: Centro de Estudios Públicos, 1988; Felipe González, Mounu Prem, “¿Por qué ganó el NO? La historia detrás de la historia”, Santiago: CIPER Chile, 2019, [www.ciper.cl](http://www.ciper.cl)

9 In 1985, the Electoral Registration Tribunal (*Tribunal Calificador de Elecciones*, TRICEL) had been put into operation, and in 1986 the electoral register had been reopened.

10 Had the Yes (*Sí*) option triumphed in the plebiscite, the existing President of the Republic, i.e., Pinochet, would have taken office once more, with an additional eight year mandate.

11 “Plebiscito de 1988 marca el fin del régimen military”, [www.bcn.cl](http://www.bcn.cl) At the time, Chile’s electoral system was based on voluntary registration.

12 Juan J. Linz, Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-communist Europe*, Baltimore: The Johns Hopkins University Press, 1996.

13 See: Report of the US Senate Investigation Commission on undercover actions in Chile, 1963–1973; Peter Kornbluh, “Desclasifican nuevas conversaciones entre Nixon y Kissinger para derrocar a Allende”, CIPER-Chile, 2008, <https://ciperchile.cl/2008/09/10/desclasifican-nuevas-conversaciones-entre-nixon-y-kissinger-para-derrocar-a-allende/>

14 During the dictatorship, Chilean socialism experienced a difficult process of division focused, among other things, on disputes about strategies to deal with the dictatorship. One important current underwent a process of ideological renewal that involved reconciling socialism with a commitment to liberal democracy. This was the tendency around which the Concertación was founded.



provisions that granted privileged positions to those who had been in power for seventeen years. Examples include the binominal electoral system, and a decree preventing 35,000 civil servants from subsequent dismissal. In addition, constitutional reforms carried out in 1989 boosted the autonomy of the Armed Forces by investing laws and regulations on issues such as military career structure, and the military budget, with constitutional rank. This protected existing favourable arrangements, by increasing the legislative quorum necessary for any subsequent reform.<sup>15</sup> In the December 1989 elections, the opposition candidate, Patricio Aylwin, won with 55.7 % of the vote (against 29.4 % for the pro-military government candidate, Hernán Büchi). A second right-wing candidate, Francisco Javier Errázuriz, obtained 15.4 % of the vote).

The Congress that came into session in 1990 did so according to the new regulations established by the 1980 Constitution. Under these provisions, 120 lower house deputies and 38 senators were elected. The former would all serve for four years. Senatorial terms meanwhile differed according to the district that was represented: half would serve an eight year term, half, only four years. Nine designated (non-elected) Senators made up the full strength of the upper house. Ninety-five per cent of the country's 7,557,537 eligible citizens emitted a valid vote in the 1989 elections: a total of 7,158,422 votes. Overall, the Concertación obtained 51.49 % of the votes in the legislature, compared to 34.18 % of the right-wing. Considering the non-elected senators, the right nonetheless controlled 50 % of the upper house. The Christian Democratic Party was the major political force, with the Concertación overall obtaining 69 (of 120) elected deputies and 22 (of 38) elected Senate seats.<sup>16</sup>

The first administration of this first transition period lasted for four years (1990–1994), and was a transitional government in many senses of the term, including the need for careful handling of countervailing political tendencies in Chilean society if economic, political and social stability were to be achieved. The government promoted a set of socioeconomic policies aimed at increasing public resources for social policy targeting education, health, and the reduction of poverty.

In the sphere of human rights, Patricio Aylwin's government introduced a set of State policies in truth, memory, reparations, and justice. During his first term, President Aylwin created a truth commission, despite resistance not only from the right-wing and the Armed Forces, but also from some within his own coalition. The National Commission on Truth and Reconciliation – known as the Rettig Commission after its chairman, lawyer Raúl Rettig, was charged with establishing the historical truth about human rights violations, including the number of victims killed and forcibly disappeared during the Dictatorship. In 1991, President Aylwin informed the country of the Commission's results, apologizing to the country on behalf of the Chilean State and setting in motion the drawing up of reparations policies. Right-wing sectors and the Armed Forces sectors nonetheless rejected the report's conclusions. General Pinochet, who was to continue in his post as Commander-in-Chief of the Chilean Army between 1990 and March 1998, stated that: "The Chilean Army certainly sees no reason to apologize for having participated in this patriotic work." [i.e. the military regime] ... "[The Army solemnly declares that it will not accept being placed in the dock for having saved the freedom and sovereignty of the country, in compliance with the repeated requests of citizens."<sup>17</sup>

Military civil relations during these first years of transitional government could be described as a "tense calm". There were, however, two episodes that increased tension, making headlines and grabbing public attention. In the first episode, which became known as the "Pinocheques" case, Pinochet had the Army called to battle stations, in December 1990. The move was intended to send a signal to the government that a corruption case, in which one of Pinochet's sons was involved,<sup>18</sup> should not be reopened before the courts. The second case, which occurred in 1993, came to be called "*el Boínazo*" (named for the black berets, or *boínas*, worn by troops). In May 1993, the newspaper *La Nación* reported that the case related to Pinochet's son, involving fraudulent checks, would be reopened. In response, Pinochet again pressured the government to ensure his son was not investigated. This time, Pinochet called other military officials to the Armed Forces headquarters – symbolically located directly in front of the Presidential palace – escorted by armed soldiers in combat dress.

The democratic electoral process was deepened, under the first transitional government, by the holding of mayoral elections (during the dictatorship, mayors had been directly appointed by Pinochet). The elections returned 334 municipal mayors and their respective town councils, made up of 6, 8 or 10 councillors, depending on the number of voters in each district. In these elections the Concertación again obtained a majority of votes cast, with the highest vote for a single party going to the Christian Democrats, who obtained almost 29 % of the votes.

March 1994, saw the accession of the second democratic administration elected since the Dictatorship, after scheduled elections in December 1993 saw Christian Democrat candidate Eduardo Frei Ruiz Tagle elected with 57.98 % of the votes, defeating both the the right-wing, and alternative, more left-wing, candidates fielded by other parties of the Concertación.

This first democratic election since transition marked the process of democratic consolidation in Chile. Although important areas of Chile's institutional and *de facto* power structure still remained unchanged since the dictatorship, democratic elections finally became the only possible way to formally gain power.

## THE PRESENT-DAY POLITICAL SYSTEM

From the point of view of stability, the Chilean political system is secure. One requirement of democracy is successful alternation in power. The Concertación ruled for 20 years, between 1990 and 2010. In 2010, right-wing candidate Sebastián Piñera, was elected president. In 2014, a new version of the Concertación coalition took back government, this time with the inclusion of the Communist Party in the ruling coalition. In 2018, Sebastián Piñera was elected once again.

Although democracy is consolidated, some democratization processes remain pending. These include a new Constitution, and mechanisms allowing greater citizen participation in public

15 Claudio Fuentes, "Mirando el pasado, definiendo el futuro: Diseño Constitucional en Chile 1980 – 2005", Paper presented at the 28th Congress of the Latin American Studies Association, LASA, Rio de Janeiro, June 11–14, 2009.

16 [www.bcn.cl](http://www.bcn.cl)

17 Minutes of a session of the National Security Council, held on March 21, 1991, [www.latercera.com](http://www.latercera.com)

18 Augusto Pinochet Hiriart

policy formation.<sup>19</sup> As elsewhere, Chilean democracy has also had to contend with dwindling political participation, and a crisis of legitimacy of essential institutions of the democratic system, such as political parties and the legislature.

Between 1994 – the year in which the second democratically-elected government took office – and the present (2019), a range of important changes have affected issues that remained pending at and after transition. As has already been stated, Pinochet remained as Army Commander-in-Chief until March 1998. Upon retiring from that post he became a designated Senator, as laid down in the 1980 Constitution. However, his arrest in the UK in 1998 became a turning point for the balance of power, in terms of the transition and the sway that the Armed Forces and Pinochet continued to hold in Chilean society. The arrest, over allegations of human rights violations being investigated by a Spanish judge, led to extradition wrangling that was to last for a year and a half. While the incident at first generated an intense and polarized reaction in Chilean society, it ended up removing Pinochet from the political scene, and amplifying legal proceedings already open against him in domestic courts. Finally, the 2004 discovery that the General had a large personal fortune hidden in the US Riggs Bank weakened Pinochet's domestic image.

In addition, in 2005, an important set of reforms to the Constitution put an end to the designated senator system, restored the power of the president to remove Commanders-in-Chief of the Armed Forces, and modified the composition of the National Security Council.

Chile's political party system is consolidated. New parties have emerged alongside the two, center-left and center-right, coalitions that emerged during the dictatorship. The new movements and parties include, on the right-wing, a movement known as Political Evolution (Evópoli). On the left-wing, a group of parties created a grouping called Frente Amplio, ("Broad Front"). This coalition, similar to others in the region, such as Uruguay's Frente Amplio, brings together left-wing parties and movements that propose deeper reforms to the neo-liberal development model. On Chile's extreme right-wing, meanwhile, José Antonio Kast was (in 2019) in the process of creating the Republican Party.

In electoral terms there have been two major changes. The first was the replacement of the previous system of voluntary registration and mandatory voting. The new system features automatic registration, combined with voluntary voting. The change has however led to a large decrease in electoral participation. The second change is a new, proportional, electoral system. In the most recent round of parliamentary elections, this system allowed for a greater representation of citizen diversity in Congress. Since the system also incorporates gender quotas, the number of female legislators also increased.

One problem facing the Chilean political system – one which it shares with many other countries – is a decrease in citizens' electoral participation. For example, 51.02 % of those authorized to vote in the second round of the 2017 presidential elections did not do so. The percentage of abstentionism is even higher among the younger population. In fact, more than 62 % of people between 20 and 29 years of age who were eligible to vote, did not do so.<sup>20</sup> This tendency toward decreasing political participation has been a steady trend since the return to democracy.<sup>21</sup>

Other political system issues that have been on the agenda in recent years include scandals linked to illegal financing of political parties. In response, there have been important changes to campaign financing, and moves to improve transparency in

the use of public resources for political representation. Corruption scandals linked to political financing also led to the creation of a special commission: in 2015, the second presidential administration of Michelle Bachelet (2006–10; 2014–18) established the Presidential Advisory Council against Conflicts of Interest. This Commission, colloquially called the Engel Commission after its chairman, economist Eduardo Engel, was to propose regulation of the relationship between money and politics.

Despite this decrease in electoral participation, Chilean society is however still active in mobilization around particular demands or issues that attract public attention. Concerns around education, and over the environment, for instance, have created sustained periods of citizen mobilization over the past decade (since 2010). There is also a noticeable organized civil society around issues such as sexual and gender diversity.

## LESSONS LEARNT

Like any complex political and social process, the Chilean transition and its impact on the political system contains areas of light and shade. We might highlight, for instance:

- The democratic political system was installed and consolidated in Chile against a backdrop of economic, political and social stability, and with very little violence. On the other hand, the political costs of this stability included reduced levels of participation on the part of the civil society groupings that fought for the return of democracy, with a concomitant growth in the domination of politics by an elite political class.
- The prioritization of stability, and the particular public policies implemented in economic matters, allowed for a reduction in poverty and the generation of greater well-being for Chilean society. However, objectives and principles such as stability were prioritised while others, such as reforms to the economic model, the deepening of political participation, or greater justice regarding human rights, were left aside.
- The balance of power in the dictatorship and during transition was clearly tipped in favor of the military and its political allies, who did not want human rights violations to be addressed. Nonetheless, the first transitional administration chose to move forward with the National Commission on Truth and Reconciliation, which at least established a first step for human rights policies.
- One warning note, or negative learning point, should be struck as regards the institutional and *de facto* power preserved by Chile's Armed Forces – especially by the Army, and General Pinochet. While this was perhaps unavoidable during the first transition government, subsequent administrations failed to generate greater civilian control of the Armed Forces. This failure

19 To this day there is a discussion in Chile about whether the reforms of 2005 were sufficient for the post-2005 Constitution to be considered qualitatively distinct from the one imposed in 1980. Then-President Ricardo Lagos chose to replace the existing signature in the preface of the text – that of General Pinochet – with his own, a symbolic attempt to mark a distinction. Nonetheless, the post-2005 text still contains dispositions that are at odds with a fully democratic Constitution, for example in relation to the Armed Forces and the concept of National Security.

20 [www.serve.cl](http://www.serve.cl)

21 "Diagnóstico sobre la participación electoral en Chile", Project Promoting Electoral Participation in Chile, Santiago: United Nations Development Program (UNDP), October 2017.

encompassed not only human rights, but also defense-related matters including the military budget, education, and weaponry.

- The incoming authorities faced a tension between political and economic stability, versus pressure for transformation of the economic model, since the latter had been an initial component of social and political opposition to Pinochet. In the end, a subsidiary State model was imposed. Neo-liberal reforms introduced in the dictatorship, such as the privatization of basic services including water and electricity, were maintained. Tax changes that might have increased the tax base, or tax revenues, were not implemented.

## RECOMMENDATIONS

Based on the experience of the Chilean case, the following recommendations can be made:

- Transitional coalitions that achieve a social majority are needed. It is important to build spaces of cooperation between the groups that demand democratization. This implies

generating strategies for cooperation strategies, and compliance mechanisms for any agreements that are reached.

- Representative democracy needs to be valued, as a fundamental tool for resolving conflicts.
- Human rights should be addressed and defended. Transitional justice policies should be designed in a way that takes political and social viability into account, without compromising on essentials. Policy design requires information-gathering and analysis, which will require state capacity and financing.
- It should be understood that transition processes are multi-dimensional, involving political and socioeconomic aspects. This should be taken into account when governance strategies and public policy are drawn up.
- There is a need for those who take charge of government in transition contexts to have technical and political knowhow.
- For effective administration, priorities need to be established within the government agenda. Governing is always difficult: it is doubly so, in transitional contexts.
- The participation of civil society and citizen movements in policy design should be encouraged and institutionalized.

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# DISMANTLING THE STATE SECURITY APPARATUS

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## INTRODUCTION

This paper examines the process of adaptation and reform of the armed forces and public order following the political transition in Chile in 1990. The case is particularly noteworthy because the Chilean political transition is usually considered to be “successful” in terms of the peaceful process by which the transfer of power from military to civilian authorities occurred, in addition to the way in which the armed forces were accommodated into the democratic process. In the case of Chile, it was an agreed transition, in which the military regime imposed the rules of the constitutional game and established a series of privileges for the armed forces, and where minimum conditions were negotiated by the opponents of the regime.<sup>1</sup>

This chapter analyzes the political and institutional conditions that favoured such an outcome. It will be argued that the transition process involved the acceptance by the civilian political elite of a number of conditions for military autonomy. In addition, a gradual process of institutional-legal reform was initiated, which gradually reduced the room for military autonomy. Usually these changes occurred due to corruption scandals that weakened the negotiating capacity of the military and police with respect to civilian authority.

## POLITICAL-INSTITUTIONAL CONTEXT OF THE MILITARY REGIME

The military dictatorship in Chile (1973–1990) was established by a coup d'état against the constitutionally elected regime of Salvador Allende (1970–1973). The three branches of the armed forces and the uniformed police, the Carabineros,<sup>2</sup> assumed total control of the country by establishing a military government junta. Early on, Army General Augusto Pinochet took over the leadership of this military junta, establishing a mechanism to concentrate the executive actions of the regime in Pinochet and the function of issuing regulations and decrees in the military junta composed of the military heads of the three armed branches and the director of the Carabineros. The regime established a commission that proposed a new constitution, which was promulgated in 1980. The Constitution itself established an itinerary that considered a plebiscite to ratify the permanence of the regime, which took place in October 1988.

Unlike other countries in Latin America, the Chilean military regime was characterized by: (a) single-member power concentrated in the figure of General Pinochet with respect to the regime; (b) the institutionalization of the regime on the basis of a series of constitutional norms and other bodies of law and order that would endure over time after the political transition; and (c) the establishment of alliances with civilian political and economic groups—mainly right-wing political parties and businessmen—who supported the regime from the beginning until the handover of power in March 1990.<sup>3</sup> In addition, (d), from the point of view of public opinion, from March 1990 onwards, there was increasing

support for the professional role of the armed forces in addition to an increasing rejection of the figure of General Pinochet and the violation of human rights.

The military regime maintained its political itinerary for the holding of a plebiscite in 1988, where civil society would be consulted on whether or not to accept the continuity of the regime for another eight years. The opposition agreed to participate in this plebiscite but requested some conditions, such as the existence of electoral rolls, the possibility for the opposition to use the media and allowing the presence of international observers.<sup>4</sup>

Pinochet's narrow defeat at the polls in 1988 opened up the possibility of negotiating some constitutional reforms. Although the opposition rejected the 1980 Constitution, it agreed to abide by it and called for a series of reforms to the regime. Some of these proposals were submitted to a new plebiscite in July 1989. The reforms affected some minimal, though relevant, aspects of the Constitution. For example, the original version of the 1980 Constitution established a National Security Council that had broad powers and was composed of four uniformed members and only three civilian members. The proposal approved in the 1989 plebiscite incorporated another civilian, leaving a composition of 4 to 4. In addition, an article was removed from the Constitution that excluded the Communist Party from participating in the political system.

Subsequently, in December 1989, presidential and congressional elections were held, and Patricio Aylwin (55.2 %) was elected, representing a coalition of moderate centre-left parties. Consequently, before the transfer of power, the military regime approved, within the military junta, a series of laws of a constitutionally organic nature (with a qualified quorum of  $\frac{4}{7}$  for their approval), with the aim of protecting some of the legal prerogatives, and room for military autonomy, including military justice and what it says about military careers.

The military regime designed a new framework for the insertion of the armed forces into the state apparatus, combining high political-institutional interference with a high level of autonomy in their own management. These regulations were not affected by the process of the transition to democracy or by the reforms of 1989. Therefore, the Chilean transition had this particular condition for the transfer of power from the military regime to the civilian authority, while they remained relevant actors from

1 Cristóbal Rovira, “Chile: transición pactada y débil autodeterminación colectiva de la sociedad”, in *Revista Mexicana de Sociología*, 2007, Vol. 69, No. 2, 243–372.

2 In the case of Chile, the armed forces are considered to be the Army, Navy and Air Force. The forces of law and order are considered to be the uniformed police, which has the structure of a military nature (Carabineros), and the investigative or civilian police (Investigaciones). We usually talk about the armed forces and security.

3 Carlos Huneeus, *The Pinochet Regime*, Santiago: Editorial Sudamericana, 2001.

4 The plebiscite was held on October 5, 1988 and the option “Yes” for Pinochet lost against the “No” vote (44 % vs. 56 % respectively). The foregoing compromised the holding of free elections the following year, which were held in December 1989.



the institutional and, as we will see later, the political point of view. The legal framework at the beginning of the transition established the following conditions:<sup>5</sup>

**a/ High political-institutional interference.** The armed and security forces participated through the National Security Council in the designation of authorities; they could bring to the attention of the civil authority their concerns on any subject that in their opinion affected or constituted a risk to the institutions, since they were, according to the Constitution, “guarantors of the institutions”. This council was composed of 4 uniformed and 4 civilian members and participated in the appointment of some members of the Constitutional Court and the members of the Senate. There were 9 senators in total, representing 19 % of the upper house, of which 4 were to be former members of the armed forces and law enforcement agencies, and the rest were appointed by the regime.

In addition, a provision was established in the Constitution that former presidents could serve as senators for life, thus allowing General Pinochet to serve for eight years as Commander in Chief of the Army (until 1998) and later as a senator for life.

**b/ Civilian control of appointments and removals.** The civilian authorities would have limited control over the appointment and recommendation of uniformed personnel, since the Constitution established that the Commander-in-Chief of the Armed Forces and the General Director of the Carabineros were irremovable. In addition, promotions and retirements of officers were to be proposed by the military authority to the civilian authority, with no possibility for civilians to remove them.

**c/ Civilian control over institutional management.** The armed and police institutions were linked through the Ministry of Defence to the presidential authority. The Ministry of Defence did not have the capacity to control the institutional management of arms, since it only exercised administrative control.

**d/ Control over the intelligence apparatus.** Autonomy also extended to the intelligence services that depended directly on the military chiefs and there was no capacity for civilian legal control by either the executive or the legislative branch. Nor was there a civilian intelligence agency to coordinate intelligence efforts.

**e/ Control over the military budget.** In the case of the military budget, a minimum floor was established for the regular expenditure of the armed forces and of internal security agencies, which was set at the equivalent of the year 1989, with a mechanism for updating it according to inflation; the same equivalent was established for a minimum floor for reserved resources that were transferred to the commanders in chief of the armed forces and to the heads of the police for expenses that did not require accountability; and it was established that 10 % of the foreign sales of the state-owned copper company CODELCO would be allocated annually to the armed forces for the acquisition of armaments. This fund also had a minimum floor equivalent to US\$ 180 million per year. Legal and operational capacities for civilian control over military spending were non-existent at the beginning of the transition.

**f/ Control over education systems.** Legally, the armed forces and the Carabineros had full autonomy to define their educational plans and programs. It was also established by law that armed institutions could issue professional titles within their armed institutes.

**g/ Control over social protection systems.** The armed and security forces have their own social security system, which includes a social welfare system for their members, where the State is responsible for the pension costs of its members, and a health system is also defined for the armed institutions themselves.

**h/ Control over military justice.** Finally, the armed institutions have a military justice system that allows for any violation of the law committed by a member of the military to be tried by military courts, regardless of whether the violation occurs during the exercise of military duties or whether the incident is of a civilian nature.

## ACCOMMODATION AND INTERACTION AT THE BEGINNING OF THE TRANSITION

From a political point of view, the first and second governments of the transition (Aylwin 1990–1994 and Frei 1994–2000) did not advance any institutional reforms in relation to the armed forces. These governments decided not to open up an area of conflict with the armed forces or security agencies since they favoured other reforms associated with the economy, social policies and the re-establishment of cooperative relations at an international level.

The main tensions in the relationship to the armed forces and internal security agencies occurred in relation to General Augusto Pinochet, who was in charge of the Army. The Chamber of Deputies in the first year of government began a parliamentary investigation into possible irregularities in the sale of weapons by the Army. In December 1990, General Pinochet pressured the government into hastily closing this investigation by calling for a quartering to barracks of the armed forces. There was an agreement between the government and the Army that ended up closing the case in the Chamber of Deputies without clarifying responsibilities. A new quartering to barracks took place in 1993 when the same case started to be investigated by an independent state body (the Comptroller General’s Office), which began the study of the irregular sale of arms in which General Pinochet’s son was involved.<sup>6</sup>

Subsequently, in 1995, a new incident occurred when the Justice Department decided to prosecute the retired Army General Manuel Contreras, who was in charge of the National Intelligence Directorate of the military regime (DINA). On this occasion, the Army negotiated with the government the establishment of a special prison for those military personnel who were eventually prosecuted and sentenced for human rights violations.

The centre-left governments did not have a legislative majority in the Senate. The military regime appointed senators for 8 years (1990–1998) which meant there was a right-wing majority. In addition, in the future, at least 3 appointments had to be former military personnel. Added to which, General Pinochet could be appointed for life as a senator and the National Security Council, where the armed forces represented 50 % of the council, could appoint 3 other senators. Therefore, the governments of the ruling coalition (Concertación) opted for the pragmatic policy of using the few mechanisms it had to reduce the influence of the military and contain conflicts with the military.

5 Claudio Fuentes, *El Pacto*, Santiago: Universidad Diego Portales, 2012

6 Claudio Fuentes, *La Transición de los Militares*, Santiago: LOM ediciones, 2006

Another issue that caused great tension was the new government's approach to human rights. The first government's political decision to establish a Truth and Reconciliation Commission that would compile a report (1991) on human rights violations that had occurred in Chile between 1973 and 1990 provoked strong tensions with the military, who publicly questioned the results and submitted an alternative report. The government also had a relatively limited policy in this area (see Cath Collins' chapter on human rights).

## INITIAL REFORMS (1990–2000)

The main changes in the first decade after the transition were linked to increased staffing and resources for the police, reform of the intelligence structure and some changes associated with the operational dimensions of the armed forces.

The democratic government progressively increased the number of Carabineros and Investigative Police. During the military regime, priority was given to increasing the size of the armed forces, while from 1990 onwards the resources and facilities of the police were increased. In addition, citizen security plans were established that sought to rationalize resources, establish institutional objectives, and link the Carabineros to the communities in which the police stations operated.<sup>7</sup> It should be mentioned that the police institution in Chile is centralized and depends directly on the central government. There are no police forces dependent on regional authority, so all public security activities are organized centrally.

As for the intelligence system, as a result of the assassination of the right-wing Senator Jaime Guzmán<sup>8</sup> by extreme left-wing groups at the beginning of the political transition, the government established (1991) a Public Security Coordination Council. It was an entity dependent on the Ministry of the Interior whose objective was to propose policies associated with public security. Criticism of this body by human rights organizations for its infiltration of left-wing groups led to its replacement by a Public Security and Information Directorate (1993). This new body sought to coordinate intelligence measures and propose plans and programs for the government in matters of internal public security. An Advisory Committee on Intelligence was also set up with representatives from the Ministry of the Interior, the Ministry of Defence, the Ministry of Foreign Affairs and the armed forces and the Carabineros. This body only fulfilled the function of seeking to coordinate efforts, but not of establishing a national intelligence system.

In relation to defence policies, the most relevant policies referred to promoting measures for the strengthening of mutual trust with Argentina, encouraging the participation of the armed forces in United Nations peace operations, and promoting policies of transparency of defence definitions through defence white papers. The first of these was published in 1997 and since then, this tradition has been maintained by publishing them relatively regularly.<sup>9</sup>

## SECOND CYCLE OF REFORMS (2000–2018).

In 1999, the third presidential election since the return of democracy took place, and again the centre-left coalition, this time led by Ricardo Lagos (2000–2006) of the Socialist Party (PS), won.

A very significant fact affected the political scene and said relationship with the armed forces. In October 1998, the then Senator for life Augusto Pinochet, who had recently left the army's command, was arrested in London during a private visit he was making. Pinochet was arrested on a warrant issued by a judge in Spain to Interpol. The Spanish justice system argued that the conditions were not in place in Chile to prosecute General Pinochet for the execution of Spanish citizens killed by the dictatorship in Chile. Pinochet would be returned to Chile in March 2000, after being held under house arrest in London for 18 months. As a result, between August 1999 and June 2000, the civil authorities convened a dialogue table for dialogue between the police and the military in order to find out the whereabouts of the bodies of those who had been detained and consequently disappeared.

The case had three direct effects on civil-military relations in Chile: 1) General Pinochet would lose popular and right-wing political party support, particularly after allegations of corruption became known, 2) there was an increase in the number of complaints filed against him for human rights violations that kept him under house arrest until the day of his death in December 2006, and 3) the Lagos government would initiate a political dialogue with the opposition to carry out reforms to the Constitution to eliminate various clauses granting autonomy to the armed forces.

Three relevant institutional reforms were introduced during the government of Ricardo Lagos. In 2004, a new regulation was approved (Law 19.987), relating to the Investigative Police, which established, among other things, the obligation for the director of this police force to be an officer of that institution and not designated from outside it, as used to be the case. In addition, internal regulations were approved that established development goals and an institutional development plan. A few years earlier, the government had approved a reform to Chile's justice system, which established a public prosecutor's office, which would take over the investigative function in judicial proceedings. In the previous model, the judge had investigative and punitive functions. This reform involved modernizing the functioning of the Investigative Police to adapt it to a more demanding and professional system of judicial investigation. As a result, the training plan for this police force was modernized and institutional facilities and resources were increased.

That same year, 2004, a law was passed establishing the National Intelligence Agency (ANI), which attempts to coordinate the action of military and police intelligence within a democratic framework. This institution was created to process information and produce intelligence, generate reports, propose standards and procedures for the country's information systems, and request information from the country's police and military agencies regarding the actions of possible terrorist and/or transnational criminal groups. It is a relatively small institution with less than

7 Lucía Dammert, De la seguridad nacional a la seguridad ciudadana. Chile 1973–2003, in Lucía Dammert, John Bailey, *Seguridad y reforma policial en las Américas*, Santiago: FLACSO Chile y Siglo Veintiuno editores, 2005. In 1998, the number of Carabineros reached 34,000, and by 2018 it had reached 52,000, which represents a rate of one police officer per 339 inhabitants, ranking 37th from 148 countries. See: <https://www.pauta.cl/cronica/laduda-resuelta-cuantos-carabineros-hay-en-chile>.

8 Jaime Guzmán was a lawyer who participated in the creation of the 1980 Constitution and is considered one of the political ideologues of the regime.

9 He was killed in broad daylight after leaving classes at a university campus. Claudio Fuentes, *Militares en Chile: ni completa autonomía ni total subordinación*, in *Chile 96. Análisis y Opiniones*, Santiago: Nueva Serie FLACSO, 1997.

150 staff members who perform analytical but not operational duties (Law 19.974)

The most relevant change at this stage occurred in 2005 when a political agreement was reached between the government and the opposition to reform the Constitution. Among other things, the functions of the National Security Council were reduced, leaving it as an advisory body to the President. Its functions associated with appointing members of the Senate and the Constitutional Court were eliminated, and another civilian authority was added to give it civilian supremacy over the military, and it was established that it could be convened only by the President of the Republic and not at the request of the military, as had previously been the case. In addition, it was established that the President could remove the commanders-in-chief of the armed forces from their duties by informing Congress of the decision. In addition, appointed senators and senators for life were eliminated, allowing all representatives in Congress to be democratically elected by the citizens.

From the point of view of the institutional structure, the two most relevant reforms carried out to date have been the reform of the Ministry of Defence (2010) and the reform of the Ministry of the Interior (2011). In the first case, it was a relevant reform because since its consolidation in 1932, the Ministry of Defence had not undergone very significant changes. Before the reform, it was organized around five under-secretaries (Army, Navy, Aviation, Carabineros, Investigations), who played an essentially bureaucratic-administrative role in the link between the armed institutions and the State. The defence and public security forces depended administratively on the same Minister of Defence. There was no planning or policy making capacity.<sup>10</sup>

In 2010, a new organizational chart was established for the Ministry of Defence (Law 20.424). It was structured around a minister who had two undersecretaries (of Defence and of the Armed Forces), a joint general staff, and a board of commanders in chief who assumed an advisory role to the minister. The Undersecretary of Defence is in charge of preparing defence policy, military policy, international defence relations, proposals on acquisitions of the armed forces, and participating in the preparation of the annual budget of the ministry and its evaluation. The divisions of plans and policies, pre-project evaluation, international relations and technological development and industry were structured in this sub-secretariat. For its part, the Undersecretariat for the Armed Forces is the body that manages the administrative affairs of the armed institutions, in addition to its functions of coordinating sectoral policies, proposing recruitment policies, and participating in the financial and budgetary programming of the sector. This undersecretariat has the divisions of institutional affairs, administrative, legal, budget and finance, and audit. Finally, the Joint Chiefs of Staff is the advisory body to the minister in charge of issues associated with the preparation and joint employment of the armed forces.

A few months later, the Ministry of the Interior was reformed (Law 20.502), defining that the forces of public order (Carabineros and the Investigative Police) will depend on this ministry and not on the Ministry of Defence, as used to be the case. In addition, the Undersecretariat for Crime Prevention was established to develop and coordinate public policies aimed at preventing crime and rehabilitating offenders. Finally, the obligation to define a National Public Safety Policy was established at the regional, provincial and municipal levels, which is executed in coordination with each city council.

## TOPICS UNDER DISCUSSION

A number of issues are part of the current political discussion in Chile and are related to the security sector. The main issues under discussion are as follows:

- **The role of the armed forces: professional vs. multipurpose.** The large amount of resources invested in national defence, the fact of having a relatively stable neighbourhood, and with the resolution of border conflicts through diplomatic channels, has raised a debate on the use of the armed forces. The current right-wing government authorities (Piñera, 2018–2022), have maintained that the armed institutions should contribute to solving emergencies or natural disasters, and help in times of peace in terms of social policies and control of drug trafficking. A particularly sensitive issue for the public and politicians is the participation of the armed forces in public security operations (anti-drug policies, social protest control) which has been raised by some political actors.
- **Professional career of the armed forces and the Carabineros.** Another issue concerns the modernization of careers in the military and Carabineros. As careers in the military and Carabineros last approximately 25 years, retirement of personnel occurs when they are just over 50 years of age. To this, we must add the high cost to the State of the pension system since uniformed personnel receive a pension, which is similar to their last salary, something that does not happen in the civil sector. Thus, the political system has become concerned. A bill is currently being discussed to extend the length of a military career, and to seek more flexible mechanisms to allow for the hiring of professionals for more limited time spans. The debate on promotion on merit (by virtue of their achievements within their career) vs. on seniority (by virtue of their time in the institution) has also arisen.
- **Women's involvement in military careers and the prevention of abuse.** The inclusion of women in armed institutions has also been considered. Although the armed forces and public security forces have progressively incorporated women into their institutions over the last few decades. Pending issues in this area relate to their incorporation into functions beyond administrative matters, their greater incorporation into the line of command and the development of policies associated with the prevention of abuse and gender violence.
- **Abuses in the recruitment system.** Another relevant issue relates to the reporting of abuse by officers and non-commissioned officers with respect to conscripts, which has led to some allegations being made public.
- **Corruption control mechanisms in the armed forces and public security.** In recent years, judicial investigations have been initiated in relation to the misuse of public resources. Corruption scandals have mainly affected the Army and Carabineros. The *modus operandi* is of a pyramidal structure of operation involving generals, colonels and lower-ranking personnel. This has encouraged the revision of rules associated with the control of fiscal resources, the establishment of external and internal audits and the reformulation of some divisions within the armed and law enforcement institutions.
- **Reform of the financing of the armed forces.** The most significant change being discussed by the National Congress is

<sup>10</sup> Report on the Security Sector in Latin America and the Caribbean, Santiago: FLACSO-Chile, 2007



the revision of the armed forces financing system. The institutional conditions for financing the armed forces were defined on the basis of the following conditions, which have not changed to date:<sup>11</sup>

i/ General activities budget floor. It was established that for the expenditure of the armed forces, which would be considered in the budget law to be approved annually, “a contribution in national and foreign currency not less than that assigned in the budget law approved and executed for the year 1989, corrected by the factor resulting from dividing the value of the average consumer price index for the year in which the budget law applies and the average for the year 1989” (art. 96, Law 18.948). This floor is only granted to the armed forces, making the budget of the entire public apparatus in Chile exceptional.

ii/ Reserved copper grade for military procurement. It was established that 10 % of the income in foreign currency from the sale of copper production abroad, including the by-products of the state-owned company CODELCO, should be transferred to an account to be used for the purchase of weapons, which will be supervised by the Superior Council of National Defence.<sup>12</sup> This contribution also has a minimum contribution floor of US\$ 180 million per year.<sup>13</sup>

Since the return to democracy, cases of economic corruption have been revealed. The cases with the greatest impact were those discovered in 2015 where a media outlet revealed the existence of a network of members of the Army who used funds derived from the reserved Copper Law for the purchase of weapons for their own benefit, amounting to millions. The purchase of war materials was falsified, and the money was used for personal purposes in an ongoing investigation, although it is estimated that the amount defrauded exceeded US\$ 8 million.

Since 2009, several governments have presented proposals to reform the financing of the armed forces. The National Congress is currently discussing a project that aims to: (a) eliminate the reserved copper law, (b) establish a multi-year fund for military procurement, (c) establish a multi-annual fund for military acquisitions, (d) improve the control systems of the Ministry of Defence, the National Congress and the Comptroller General’s Office to authorize and control military purchases, and (e) establish another contingency fund for possible damage resulting from natural disasters.

## OUTSTANDING ISSUES IN THE FIELD OF DEFENCE AND PUBLIC SECURITY.

A number of issues have not been addressed or are pending on the institutional reform agenda in relation to the security sector (see Varas, Fuentes and Agüero 2017). These include:

- **Civilian professionalization of the Ministry of Defence and Public Security.** Neither in the defence sector nor in the public security sector has a professional capacity been generated to establish civilian human resources capable of designing, evaluating and leading these sectors. In general, civilian training programs have been sporadic, based on short courses, and existing programs have been associated with the military institutions themselves, which propose excessively conventional programs with a traditional security perspective.
- **Institutional capacities of the Ministry of Defence.** One problem with the institutionalization of the Ministry of Defence is that divisions are understaffed, and military or ex-military

personnel are usually called upon to perform these functions. No technical civilian staff has been created to lead the defence sector by the management of the Ministry of Defence, nor is there any capacity to generate information to contribute to decision making.

- **Institutional capacities of the Ministry of the Interior.** No institutional capacity has been developed to address the issue of public security in the Ministry of the Interior, either in terms of human resources or with respect to the gathering of information for decision-making. These two aspects are fundamental for providing guidance and generating sectoral policies. The weakness at the central level generates a dependence on public security institutions in terms of the incidence and trend of crime in policy definitions.
- **Joint Staff of the armed forces.** Although in the reform of the Ministry of Defence, a strengthening of the Joint Staff was considered, in practice today a relatively independent scheme of institutional development of the three branches is maintained.
- **Purchasing and accountability system.** Although the Ministry of Defence has made progress in controlling what should be authorized for purchase, the procedure for managing purchases continues to be the responsibility of the armed institutions and the Carabineros, which implies a serious vulnerability to possible cases of corruption due to illegal commissions that could become evident in the process of linking up with suppliers and developing tenders and contracts.
- **Coordination of defence and foreign policy.** Another area requiring attention concerns the need to establish more effective coordination between defence policy and foreign policy. Institutional definitions have tended to evolve in isolation, without much effective coordination. To solve this problem, some governments established the practice of appointing an official from the Foreign Ministry on a permanent basis in the Ministry of Defence. However, this is clearly not enough.
- **Education and training programs.** At present, the design and implementation of training and education programs are, by law, exclusively the responsibility of the armed institutions and the police. The programs developed in the democratic period have had a limited scope. This means that the State, through the Ministry of Education, cannot influence the curriculum taught in the training schools of these institutions. This is a pending issue since it is essential to develop a new curriculum that responds to the needs of the 21st century and that also meets the requirements of a democratic state.
- **Social security system.** As we indicated above, the social security system of the armed forces and the Carabineros (pensions and health system) burdens the State with a high expenditure because the early retirement conditions of the members of the armed institutions increase these costs, but also because the resources received once retired are favourable for them, in relation to what the rest of the society, who enroll in a different social security system, receives.
- **Militarization of social conflicts.** The strong militarization of social conflicts has been criticized, particularly in

11 Claudio Fuentes, Un enclave duro de eliminar: reforma al financiamiento de las fuerzas armadas, in *Piñera II. ¿Una segunda transición?. Barómetro de política y Equidad*, Santiago: Ediciones Sur, 2018, 47–64.

12 In February 2010, the institution was eliminated and replaced by the Ministry of National Defence

13 Mauricio Weibel, *Traición a la Patria*, Santiago: Aguilar, 2006



the Araucanía region where indigenous Mapuche community members have held protests seeking to recover their territory. The response of the political authorities has been to increase the police presence, which has used military tactics to deal with these protests, exacerbating the confrontation with the indigenous groups.

## LESSONS LEARNED AND RECOMMENDATIONS

### A/ CORPORATE RESISTANCE TO CHANGING THE *STATUS QUO*

One of the characteristics of the Chilean case has been the corporate resistance of the armed forces and public order forces to changes that would involve reducing their powers and authority. At the beginning of the transition, such resistance was openly expressed through public demonstrations of force and insubordination to political authority. However, as they lost political support as a result of Pinochet's arrest and also as a result of more recent corruption scandals, expressions of resistance to change have been less forthcoming.

In this regard, the armed forces in particular have used more informal channels of advocacy in the political process to make their views known. Usually, expressions of institutional discontent have been targeted at the issue of human rights and through, for example, the association of former generals of the armed forces. Recently an informal space was established for former commanders in chief of the armed forces who have made their apprehensions known on some issues—particularly those related to human rights.

In the case of the uniformed police of the Carabineros, no explicit expressions of insubordination have been generated. Usually the demands of the Carabineros have been targeted directly through the higher command. As the Carabineros exercise a crucial crime control function, civil authorities have tended to act very cautiously in their dealings with this police institution, anticipating that a conflict with the Carabineros could have very serious consequences for crime control.<sup>14</sup> Hence, institutional changes in civil control have not been as significant.

Thus, the generation of a broad political consensus on the direction of a reform reduces the ability of the armed institutions to oppose changes that reduce their power.

### B/ INSTITUTIONAL CONSTRAINTS LIMIT BUT DO NOT INHIBIT ACTION BY DEMOCRATIC GOVERNMENTS

The case of Chile is peculiar in Latin America because the rules of the game established under the dictatorship tended to endure for many years after the reestablishment of democracy. These institutional restrictions or limitations did not inhibit the action of the democratic governments. The first two post-transition governments opted to establish policies and programs aimed at setting career development goals for the forces. While legally the armed institutions and the police continued to enjoy high levels of autonomy, operationally the civilian authorities sought to encourage schemes that would help foster a greater control over them. The political authorities also encouraged symbolic manifestations of civilian control to reinforce their power in the face of possible military manifestations (subjective subordination).

### C/ MAKE REFORMS WITH ARMED INSTITUTIONS, NOT AGAINST THEM

The level of legal autonomy of the armed forces and the Carabineros in Chile is extremely high compared to other Latin American countries.<sup>15</sup> For the same reason, any initiative for change could hardly be imposed by the civil authority. The materialization of reforms such as the new Ministry of Defence, the new intelligence system or the new Undersecretary of Public Security and Crime could not have been done through imposition. In all these projects, the opinion of the armed branches themselves was included so that they felt that their requirements were heard and addressed. The option of seeking allies in the armed forces and Carabineros themselves to design and generate relevant transformations is vital.

### D/ GRADUALISM. IDENTIFY PRIORITY AREAS

In the case of Chile, power balance conditions made it difficult to establish significant structural reform at the beginning of the transition. Therefore, when such a limitation became evident, a gradual strategy of reforms was chosen that took advantage of any windows of opportunity that presented themselves. Even, with a favourable balance to the *pro-status quo* political forces, the change of context helped to install important reforms regarding civilian supremacy over the military. This implied having a clear objective and the availability of policy proposals or alternatives.

### E/ WHAT TO REFORM? LEVELS OF REFORM

There are three levels of reform in both the armed forces and the police:

- Those reforms that are related to **civilian supremacy** over the armed forces and police and that include regulations on the subordination of the armed forces and the Carabineros at the constitutional level, the appointment and removal of military and police chiefs, and regulations on Security Advisory Councils, among others.
- Those reforms that are related to **institutional management and planning** and that consider the structure of the Ministry of Defence and Ministries of the Interior or Public Security, definitions of strategic objectives in white papers, definitions that clearly distinguish and separate military functions from public security functions, among others.
- Those referring to **process controls** that consider definitions of process control mechanisms, internal and external control and accountability, among others.

Although it will be very complex and unlikely to establish simultaneous changes in all these areas, the important thing is to draw up a vision that one wants to have of the armed forces and the forces of law and order in terms of adequate civilian supremacy, the institutional design that stems from this principle, and the process control mechanisms that will guarantee that such supremacy materializes.

14 Claudio Fuentes, *Contesting the Iron Fist. Advocacy Networks and Police violence in Argentina and Chile*, New York & London: Routledge, 2004

15 *Report on the Security Sector in Latin America and the Caribbean*, Santiago: FLACSO-Chile, 2007

## **F/ PRIORITY AREAS FOR REFORM**

Although in each case an agenda of priorities must be structured that is contingent on the specific needs of each country, there are certain central critical nodes that are obvious in the case of Chile. We will mention those that are vital in our opinion (not in order of preference):

- Civilian supremacy over the armed institutions and the police. This is a key area. In the case of Chile, the legal-institutional starting point allowed for very high levels of autonomy of the armed institutions and the police with respect to civil authority. Restoring levels of effective supremacy (in legal and practical terms) has been a central issue and one that even, almost 30 years after the return of democracy, has not been fully achieved.
- The reform of the intelligence apparatus is a critical element that needs to be addressed by civil authorities. A second central area or critical element concerns the regulation, reform or structuring under civilian authority of a democratic intelligence system. In the case of Chile, it has been a very gradual reform that still lacks strong control and operational management. However, this area seems crucial because of the role that the armed forces themselves had during the previous regime, but also because the generation of intelligence is a relevant source of power that must be supervised democratically.
- Strengthening accountability systems. Another relevant dimension relates to accountability systems. The high corporatization of military and police institutions historically made it difficult to generate control mechanisms. In addition, the nature of the institutions means that special emphasis is placed on the secrecy and confidentiality of the decision-making process. This opacity generated important gaps that were not addressed early on in Chile. If there is one lesson learned from this case, it is the need to implement control systems over the management of the resources of the armed forces and the police. This implies creating internal control and audit systems, establishing external control mechanisms, and promoting the strengthening of the control capacities of Congress over the institutions of Defence and Public Security.
- A fourth area relates to the way in which defence and public security resources are managed, which are often characterized by their opacity. Encouraging transparency and control procedures is fundamental for the adaptation of the armed institutions to the democratic framework. But also, the discussion on *how much to spend* forces decision makers to define *what to spend on*, which implies targeting resources to strategic objectives.
- A fifth area relates to human rights abuses committed by military institutions and the security services in the past and extending to the present. Chile's experience is that it is not possible to restore trust between society and the armed forces and public order, nor is it possible to generate conditions of political stability, if the issue of truth, justice, reparation and the reconstruction of historical memory is not addressed.

## **G/ DIVISION OF DEFENCE AND PUBLIC SECURITY TASKS**

A fundamental question is to distinguish clearly between the functions of defence, as an institutions in charge of border protection and international projection, in matters of defence, and what concerns the internal security of the police. In Latin America, there has been a tendency to involve the armed forces

in tasks that are not related to defence and that directly relate to issues of internal security, which includes disaster assistance roles, social programs, and control of drug trafficking, among others. While the involvement of the armed forces in disaster situations is relevant, it should be considered the exception rather than the rule.

## **H/ INSTITUTIONALIZATION REQUIRES HUMAN CAPITAL FORMATION.**

Security sector reforms require institutional capacities, which implies the formation of a civilian contingent capable of generating knowledge, systematizing information and producing relevant knowledge for the implementation of policies in this sector. One of the problems that the case of Chile has faced is the lack of concern of the political elites for generating this human capital that is vital to give continuity to the policies that are implemented. At the beginning of the transition in Chile there was interest, accumulated knowledge and a certain amount of human capital that was motivated to generate ideas and contribute to the generation of policies. Over time and as other issues became more relevant, there was a clear reduction in interest in these topics. There are few institutions that deal with issues associated with defence and public security. In the university system there is even less interest in developing these topics.

## **I/ THE INTERNATIONAL CONTEXT AS AN OPTION FOR REFORM**

Another issue is related to the relevance that the international context acquires in generating standards to which the country aspires; the agreements signed with neighbouring countries that make reform options viable in the defence sector in particular; and the international trends that favour "importing" good practices to local contexts. In the case of Chile, for example, the cooperation agreements established with Argentina in the 1990s were very relevant, which included a series of measures of mutual trust between the armed forces that stimulated organizational and logistical changes in the forces themselves. In the 2000s, Chile became a member of the OECD, which stimulated the generation of international standards on transparency, which helped to generate state awareness of transparency. Finally, certain ideas such as the "white books" were replicated in Chile in the Ministries of Defence and Foreign Affairs, which also stimulated discussions and the need to specify the objectives of the defence policy that were reflected in such official documents.

## **J/ CIVIL SOCIETY AND MANAGEMENT CONTROL IN THE SECURITY SECTOR**

Another of the lessons from the Chilean case refers to the relevance of civil society proposing options and controlling the action of armed and public security institutions. This has been particularly relevant in the case of the defence of human rights; and perhaps something more significant in terms of generating systems of transparency and control. The case of Chile shows a greater weakness of this civil society in more technical but also relevant issues associated with the control of military spending, peace initiatives and international cooperation, and policy recommendations in matters associated with the "institutionality" of the sector.

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# ARCHIVES OF THE REGIME

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## INTRODUCTION

The image of La Moneda Palace in flames as a result of the bombing ordered by the military junta on September 11, 1973, to remove the constitutional president Salvador Allende, is probably the first document linked to human rights. It is the symbol of the breakdown of democracy and of a deep fracture in Chilean society. The beginning of a dictatorship that systematically violated human rights for 17 years.

The experience of those years has been recorded in various documents by those who were affected by dictatorial power, at different levels, such as those who protected the people, denounced the events, showed solidarity and mobilized within Chile and around the world, to demand the end of the dictatorship and a return to democracy. Those records constitute what we call the human rights archives.

When the transition process began, these archives were cited as fundamental pieces for the processes of truth, justice, reparation and memory. They allow the possibility to prove facts and victims, to contribute to the reconstruction of what happened, and to remember and learn from it. However, they face multiple difficulties, debates and dilemmas. In addition to the lack of collaboration of those responsible for human rights violations, to make available their archives, and the legal and institutional weaknesses that have hindered their protection and have prevented public access.

All these aspects are addressed in this chapter.

## CONTENTS OF THE SECRET SERVICE ARCHIVES

In Chile, the archives of the intelligence services have been systematically denied access to. The most frequent response to queries made by the truth commissions, other instances of judicial or extrajudicial investigations or from civil society, is that these archives do not exist, having been incinerated or destroyed after the legal period that allowed them to do so has elapsed. Regarding the participation of members of the armed forces (FFAA) in intelligence activities, the response has been that they are legally prevented from providing this information.<sup>1</sup>

Despite systematic denial, in the post-dictatorship years, some documentary pieces or fragmented files have been found that account for the actions of the intelligence services. These are findings within the framework of a judicial investigation, or in an unexpected and casual way. That is how, during a judicial case, the lawyer of an agent prosecuted for crimes against opponents, delivered to the court documentation and files related to interrogations of political prisoners, among them several disappeared detainees, seeking to obtain some benefit for his defendant and making this delivery look like collaboration.<sup>2</sup> This documentation, related to disappeared political prisoners, has been incorporated in diverse judicial investigations, however it is not known where their originals are, or the totality of the documentation delivered at that time.

The finding of documentation in other countries of the Southern Cone, have revealed the action of national intelligence agencies beyond the Chilean borders, in the persecution, surveillance, kidnapping, torture and extermination of Chileans and, especially, the coordination of intelligence between countries, known as Operation Condor. These archives have become evidence for investigations in Chilean courts and have played a relevant role in advancing the truth about these crimes.<sup>3</sup>

At the end of September 2005, carrying out architectural recovery work in a building where the Salvador Allende Foundation currently operates, at 475 República Street, a set of documents were discovered that formed part of the archives of the National Information Centre (NIC):<sup>4</sup> reports, a register of agents, telephone numbers, accounting with payments to CNI officials; charts (organization charts), trades and more than 400 telexes, among others. The Investigative Police (PDI) seized the documentation and handed it over to the courts of justice. After a few years the telexes were recovered by the Salvador Allende Foundation, and they are now publicly accessible in digital

1 In its report, the National Truth and Reconciliation Commission gives an account of certain nuances among the different armed forces: the Carabineros and the Army are the most voiciferous in denying the existence of documentation and to a lesser extent the Air Force, the Navy and the Investigative Police (Report of the National Truth and Reconciliation Commission, CNVR, Reissue December 1996, Volume 1, Chapter 1, pages 6 to 9). The National Commission on Political Imprisonment and Torture Report also states that the responses given to that commission when consulting them by background, records and information were similar. (The National Commission on Political Imprisonment and Torture Report, CNPPT, 2005, pages 53–67, 111 and following).

2 In the mid-1990s, lawyer Fidel Reyes, defence lawyer of the retired colonel of the Carabineros, Guillermo González Betancourt, prosecuted for the murder of three professionals, handed Judge Dobra Lusic a bag with documentation and follow-up files from the repressive body known as the Joint Command, which the defendant would have given him.

3 This has happened, for example, with the archives seized in Buenos Aires from the agent of the National Intelligence Directorate, DINA, Enrique Arancibia Clavel, and found by Chilean journalist Mónica González in the Buenos Aires Judicial Archive in 1986 (several years after her seizure by the Buenos Aires police), which were an important contribution to his book *"Bomba en una calle de Palermo"* (Bomb on a street in Palermo) about the assassination of General Carlos Prats and his wife Sofia Cuthbert in Buenos Aires in 1974 and later also to the investigations of journalist John Dinges for his book *"Los años del Cóndor"* (The Condor Years) about intelligence cooperation in the Southern Cone. They have also contributed to judicial investigations in Chile. Another important finding was that of the so-called "Archives of Terror" in Paraguay, discovered in 1992 at the Lambaré police station in that country. They found evidence of the coordination of intelligence services, from the call in Chile to the formal constitution of this coordination, convened by the head of DINA, Manuel Contreras, as well as a series of documentation of criminal actions and transfer of prisoners between countries. Within which the militant of the Revolutionary Left Movement (MIR) Jorge Isaac Fuentes Alarcón is counted, who was detained in Paraguay, transferred to Chile to the secret torture compound Villa Grimaldi, without his detention ever having been recognized until today, remaining to date as a victim of enforced disappearance.

4 The National Information Centre succeeded the DINA, which was dissolved in 1977, and lasted until 1990.



format, as well as the judicial report on the finding and characteristics of the documentation found.<sup>5</sup>

In 2014, Minister Jorge Zepeda, in charge of the judicial investigation into the events that took place at Colonia Dignidad (“Dignity Colony”)<sup>6</sup> announced the existence of more than 45,000 files and documentation found there in 2005 in underground graves.<sup>7</sup> Several human rights organizations criticized the fact that it had been kept secret for almost 10 years, as it could have been useful for the judicial processes on disappeared detainees and political prisoners, and their passage through Colonia Dignidad. The judge handed a copy of part of the documentation and files to the National Human Rights Institution (NHRI), to the Human Rights Program of the Ministry of the Interior and to some sites of memory. A television channel made an extensive report on the find and delivered digital copies of the files to human rights organizations, archives and the Museum of Memory and Human Rights (MMDH). Subsequently, the report issued by the Police Intelligence Leadership (JIPOL) of the Investigations Police of Chile (PDI) was made public, in which all the documentation has been analyzed, and the London 38, Memory Space<sup>8</sup> has made available to the public in the framework of a campaign for the end of the secret archives.<sup>9</sup> It remained in the hands of the JIPOL until December 2017, after which it was transferred to the National Archive of Chile.

Other documents related to victims of human rights violations were included as “evidence” in the memoirs<sup>10</sup> of Manuel Contreras Sepúlveda, who was Director of the National Intelligence Directorate (DINA). Although the fate of the documentation of the most important intelligence service of the dictatorship, which had the broadest powers and direct and daily contact with the dictator Augusto Pinochet, is unknown, the inclusion of a few documents to support his version regarding the detainees, is a demonstration that the head of intelligence did keep files in his possession which, however, have not yet been found.

All these findings show that the repressive measures, the persecution, control and registration of detainees, interrogations, itineraries or destinations, in short, the innumerable actions linked to the security services and the maintenance of a dictatorial state, were recorded, generating innumerable and diverse institutional archives, of which their existence has later been denied, or it has been affirmed that they were destroyed. Procedures, appeals, personnel were registered and controlled, and in the generation, the participation of diverse institutions and persons, who were more or less conscience of the relevance of their actions, were configuring the act of archiving, ordering, safeguarding, gathering, conserving and generating criteria for the access of all the information produced.

## ATTEMPTS TO DESTROY THE DOCUMENTATION OF THE POLITICAL POLICE OPERATION

In the judicial investigation into the death of former President of the Republic Eduardo Frei Montalva, important testimonies were obtained regarding the fact that the documentation found in the CNI offices was transferred to the Army Intelligence Directorate (DINE), remaining in its custody until several years after the end of the dictatorship. A police report contains statements that claim to have seen these archives on microfilm in a cellar in the underground vaults of the DINE, in the heart of Santiago. Adding that it should have been incinerated from 1999 to after

2000. However, there is no incineration certificate to verify this, as would have been the case.

Due to this discrepancy, the Ministry of Defence ordered an investigation, after which the Commander in Chief of the Army stated that there was no proof of the existence of such documentation, and that it was not possible, given the time that had elapsed, to bring criminal proceedings against those responsible.<sup>11</sup> The matter is currently awaiting the resolution of the justice system to criminally prosecute those responsible for the destruction of the archives of the CNI, as well as the concealment of the action of destruction, corresponding to the measures carried out between 1980 and 1982.

## USE OF ARCHIVES DURING THE TRANSITION

For the truth commissions,<sup>12</sup> the archives played a vital role. They constituted evidence to document the cases and qualify the victims (forced disappearance; executions outside the law, political imprisonment and torture). These archives were essentially formed by the backgrounds, documents and testimonies provided by the victims themselves, their families and human rights organizations. Throughout the dictatorship, Chile documented human rights violations, whether through national or international denunciations or through appeals brought before the courts of justice. Most of the complaints were brought before the courts and, as a result, their history was preserved both in the courts and in the human rights bodies that brought them.<sup>13</sup> Complaints to United Nations bodies or to the inter-American human rights system, as well as to international human rights protection organizations, were also highly relevant sources of documentation. It was not the archives from intelligence agencies

5 Judicial and police report on the discovery of documents from the National Information Centre (CNI), Recovered secret archives, London 38, Memory Space, <http://www.londres38.cl/1934/w3-article-97121.html>

6 German enclave in southern Chile related to abuses and slavery of its inhabitants, also with an active link to the dictatorship and its intelligence services. Colonia Dignidad was a place of detention, torture and extermination of political prisoners.

7 Carlos Basso Prieto, “Los secretos de las fichas de Colonia Dignidad”, in *El Mostrador*, 12. 12. 2014, <https://www.elmostrador.cl/noticias/pais/2014/12/12/los-secretos-de-las-fichas-de-colonia-dignidad/>

8 DINA torture centre from which most of the political prisoners who passed through disappeared and which was recovered by civil society as a memorial site.

9 Intelligence Report on Dignity Colony Archives, Recovered Secret Archives, London 38, Memory Space, <http://www.londres38.cl/1934/w3-article-97390.html>

10 Manuel Contreras Sepúlveda, *La verdad histórica: el ejército guerrillero*, Santiago: Ediciones Encina, 2000

11 “New Commander-in Chief of the Army signed report accrediting burning of CNI files”, in *Radio ADN 91,7*, 15. 11. 2017 <http://www.adnradio.cl/noticias/nacional/nuevo-comandante-en-jefe-del-ejercito-firmo-informe-que-acredita-quema-de-archivos-de-la-cni/20171115/nota/3638487.aspx>

12 National Truth and Reconciliation Commission; National Corporation for Reparation and Reconciliation; National Commission on Political Imprisonment and Torture; Presidential Advisory Commission for the Qualification of Disappeared Detainees, Political Executed and Victims of Political Imprisonment and Torture.

13 Committee for Peace in Chile; Vicariate of Solidarity; Christian Churches’ Social Assistance Foundation (FASIC); Corporation for the Promotion and Defence of Human Rights (CODEPU); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Chile’s Human Rights Commission. These were the main human rights bodies that collected and preserved this documentation.

or the armed forces that provided information for the investigation of these commissions.

For the National Commission on Political Imprisonment and Torture (CNPPT), the testimonies of the victims themselves and the documentation they presented were relevant for recognizing their detentions. It included detention centres, movement restrictions, visiting permits, correspondence with the family and humanitarian agencies such as the International Red Cross (IRC), among others.

The commissions made special mention of the archives, both in relation to their use and accessibility. The provisions and their scope have been different in each case.

In its recommendations, the National Truth and Reconciliation Commission (CNVR) expressed the need for an entity to centralize the accumulated information in a specialized library, given the future interest in knowing about human rights violations of investigators and the general public, which can be accessed under conditions regulated by law.<sup>14</sup>

The law that created the National Corporation for Reparation and Reconciliation (CNRR)<sup>15</sup> determined that it was appropriate to keep in deposit the information gathered by both instances, ensuring their confidentiality, but allowing access to the courts of justice.

At present, the archives on non-survivor victims under judicial investigation are in the Human Rights Program belonging to the Undersecretary for Human Rights of the Justice and Human Rights Ministry, which is responsible for monitoring judicial proceedings. The courts are the only user of this information; neither researchers, nor lawyers not belonging to this program, nor relatives of the victims have access to it.

The CNPPT initially noted in its recommendations<sup>16</sup> that the information collected was part of the nation's cultural heritage and should be subject to safeguarding measures. It recommended that, at the end of its activity, the collected documentary heritage be handed over to the NHRI or, failing that, to the body entrusted by law with the conservation of the documentary heritage of the Chilean nation, in order to protect it against all theft and destruction. It pointed out that the archive consisted of all documents in physical and digital form: personal files containing the background of the victims and the documents generated by the commission in the framework of its activity. It recommended, in relation to personal files, applying a special time limit for communication to the public of 30 years, in order to protect the privacy and honour of individuals.<sup>17</sup> But later, the law which approved the granting of reparation benefits<sup>18</sup> determined the confidentiality of all the documents, testimonies and background provided by the victims should have a time limit of 50 years, specifying that no person, group of persons, authority or magistrate will have access to these archives. Although, it recognizes the personal right of the owners to make them known.<sup>19</sup> Article 15 of this law provides that the documents, testimonies and background provided by the victims before the commission shall be secret. It adds that the members of the commission, as well as all the persons who participated in it, are obliged to maintain confidentiality with respect to the background and data that are of a secret nature.

The Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture (2010)<sup>20</sup> was authorized by the enactment of a law,<sup>21</sup> unanimously approved by Parliament, to review the documents, testimonies and background of the CNPPT. Only two commissioners and two professionals were authorized, with an obligation to respect the confidentiality, for the sole purpose of

qualifying the cases that arose, and only during the commission's period of operation. All the archives, as well as the officials of this commission, were finally subject to the obligations of confidentiality and sanctions established by Law 19.992.

Consequently, recognizing that the truth commissions, both in their reports and in their recommendations, gave explicit value to the collected archives, the need for their preservation was raised and reference was made to the issue of access. Noting in this an unprecedented process of assessing their impact on society and the country. The laws subsequently passed arrived at different results, especially on the issue of public access. The CNPPT exceeded almost twice the time limit for public access, as recommended in the report.

Human rights archives are also a source of ongoing consultation in judicial investigations. These archives, generated as a denunciation of violent measures, had a practical and urgent purpose in times when people's rights were violated in a systemic and massive way. Human rights bodies received a complaint either from a victim and/or his/her family, and tried to obtain as much background information, witness accounts, and fingerprints of all kinds, as much as possible. All this information was recorded in forms and files, following a protocol built from the need to cross-check information, data obtained from other sources, official responses, new antecedents, witnesses, etc. The sheer size, systematicity and frequency of the repressive acts made the agencies build protocols and rigorous records immediately after the events. Today they constitute proof and a unique record of the official version of the time.

They have also been relevant for the identification of victims, in the case of the findings of human remains illegally buried by the dictatorship in order to hide all traces of their crimes. As a result of errors in the identification of victims of enforced disappearance in 2007, there was a very strong need to gather the documentation dispersed in various public and private bodies; documentation contained information on the pre-mortem antecedents of the victims, circumstances of their detention and final destination, judicial investigations, examinations, expertise and identifying measures carried out on recovered remains. With the advice of experts, the forensic medical service began to work systematically to organize and systematize all documentary sources related to the victims of enforced disappearance and the possibility of finding and identifying their remains.

The post-dictatorship validation of these archives, both in extrajudicial mechanisms of investigation and in judicial action, as

14 Chapter III: Other Recommendations, under the subheading Centralization of Information Accumulated by the Commission (CNVR Report).

15 Law 19.123. February 8, 1992. At [www.leychile.cl](http://www.leychile.cl)

16 Chapter IX, Proposals for reparation, basis for defining proposals for reparation, recommended measures, the safeguarding and confidentiality of the information received is included as one of the institutional reparation measures (CNPPT report).

17 Assuming the time frame that has followed the world archival practice in this type of matters. The European Commission recommends a maximum period of 30 years for the maintenance of the confidentiality of records. This recommendation, however, is not applicable in all countries as the transition processes require quick access to documentation for the investigation and documentation of any type of human rights violation.

18 Law 19.992. December 24, 2004. At [www.leychile.cl](http://www.leychile.cl)

19 Law 19.992. Title IV, Article 15. At [www.leychile.cl](http://www.leychile.cl)

20 Contemplated in Law No. 20.405, Article 3 transitory and established by President Michelle Bachelet, by Decree No. 43 of February 3, 2010. At [www.leychile.cl](http://www.leychile.cl)

21 Law 20.496. February 5, 2011. At [www.leychile.cl](http://www.leychile.cl)

well as the growing recognition that they constitute an essential source for the reconstruction of the recent past and the preservation of memory, have been supported by the special mention of their role in transitional justice processes, with respect to the right to truth, the right to memory and the duty to remember in the instruments of the international human rights system.<sup>22</sup>

In 2003, the State of Chile declared that eight historical human rights archives<sup>23</sup> be declared heritage of humanity in UNESCO's Memory.<sup>24</sup> This was an important recognition and an impulse for the generation of initiatives and special declarations by the State.

The creation of the NHRI through Law 20.405 in 2009, stipulated that it should guard the background gathered by the truth commissions.<sup>25</sup>

The creation of the Museum of Memory and Human Rights in 2010<sup>26</sup> is undoubtedly the most important public policy in relation to memory and archives, taking charge of society's right to know what happened. This museum actively assumes the protection, preservation and dissemination of its archives. Its conceptual framework is based on the truth commission reports and from this perspective it fulfills the task of collecting, preserving and making accessible this invaluable cultural heritage for which, until then, there was no system to guarantee its physical and intellectual survival in the long term.

As the main depository of the collection, generated by different sectors of civil society that undertook actions of solidarity and defence of the victims of the dictatorship, the museum is unique in its class. Both in terms of its collections policy and through the means it explores ways to expand its services and users. It also collects documentation and archives generated by public entities that complement the stories for the reconstruction of the memory of the recent past. Recovering these primary sources, preserving them and making them accessible, is a valuable contribution to the country's historical memory, as well as a contribution to the knowledge, reflection and research on human rights violations in Chile between 1973 and 1990, and their effects and consequences.

Human rights archives have documented and supported the declaration of historic monuments in detention facilities or places where people's rights were protected and defended during the dictatorship. In the process of validating this nomination, the archives have played an essential role as proof of what happened in those places and the need for their protection as sites of memory. From 1996 to December 2018, nearly 40 places with these characteristics have been declared historical monuments.<sup>27</sup> Among them 4 human rights archives have been protected with this nomination between the years 2016 and 2018. These are the archives of Colonia Dignidad in 2016; in 2017 the archives of the Vicariate of Solidarity, which includes the documentary collections of the Committee of Cooperation for Peace in Chile and in the same year the archives of the Christian Churches' Social Assistance Foundation (FASIC). In 2018, the archives of the National Headquarters of Crimes against Human Rights and People of the Investigative Police was added to this list. It contains a collection of documents related to clandestine detention centres, structures of the intelligence services, statements and testimonies of victims, witnesses and victimizers, photographs of former agents, among others, and that which was generated from the work supporting investigations in human rights court cases.

The first National Human Rights Plan (2018-2021)<sup>28</sup> of the Undersecretary of Human Rights,<sup>29</sup> recognized the need to preserve the historical memory in the matter of massive and systematic

violations of human rights. Within this framework, the need to implement a public archives policy and coordinate the creation of a national memory archive was raised. To date, there has been no progress in this area.<sup>30</sup>

The uses of these archives have expanded over time. As they are promoted, public debates are set up throughout the country by citizens, victims and their families, movements which seek to recover sites of memory as well as to install memorials which remember the victims, carrying out social action work through cultural and educational measures, in which the archives are a source which is sought, claimed and appropriated from different spheres. They become means to work with the new generations, who look for sources and evidence to approach our recent past.

22 "Updated set of principles for the protection and promotion of human rights through action to combat impunity", Commission on Human Rights of the Economic and Social Council of the United Nations, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

23 Association of Families of the Detained-Disappeared (AFDD); Corporation for the Promotion and Defence of Human Rights of the People (CODEPU); Christian Churches' Social Assistance Foundation (FASIC); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Audiovisual Archives of Teleanálisis; Documentation and Archive Foundation of the Vicariate of Solidarity; Chile's Human Rights Commission; Corporación Justicia y Democracia (from this institution, 35 optical discs with information regarding the cases of victims presented to the National Truth and Reconciliation Commission).

24 Created in 1992, the Memory of the World Program (MoW) is a UNESCO initiative aimed at preserving the documentary heritage of the world, housed in libraries, archives and museums, as a symbol of the collective memory of humanity. This heritage reflects the diversity of the people, cultures and languages; it belongs to everyone and must be fully preserved, protected permanently and be easily accessible. At <http://www.unesco.org/new/es/santiago/communication-information/memory-of-the-world-programme-preservation-of-documentary-heritage/>

25 Article Three No. 6 expressly states that its functions shall include "Custody and storage of the records gathered by the National Truth and Reconciliation Commission, by the National Corporation for Reparation and Reconciliation, the Human Rights Program, created by Supreme Decree No. 1005 of April 25, 1997, of the Ministry of the Interior, once their functions have been completed; by the Commission on Political Imprisonment and Torture set up by Supreme Decree No. 1.040, 2003 of the Ministry of the Interior; and by the commission referred to in article 3 of the transitional regulations of this law, once its functions have been completed. It may also request information on the functioning of reparation mechanisms and promote, coordinate and disseminate cultural and symbolic measures designed to complement respect for human rights and to vindicate victims and preserve their historical memory. Likewise, to request, gather and process all existing information in the possession of public or private entities that relates to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission, without prejudice to the provisions of the first paragraph" Law 20.405, at [www.leychile.cl](http://www.leychile.cl).

26 Inaugurated on January 11, 2010 its mission is "To make known the systematic human rights violations by the Chilean State between 1973 and 1990, so that ethical reflection on memory, solidarity and the importance of human rights nationally will be strengthened so that never again will these events that attack human dignity be repeated".

27 Working Paper on Human Rights Heritage: Sites of Memory, Memorials, Archives and Objects of Memory, National Monuments Council, December 2018, 53-58.

28 Presented in December 2017, during the government of President Michelle Bachelet.

29 Law 20.885, article 8. At [www.leychile.cl](http://www.leychile.cl)

30 See *Reporte de seguimiento del Plan Nacional de Derechos Humanos (Follow-up report on the National Human Rights Plan)*, March 2018, Undersecretariat for Human Rights, Government of Chile, <http://ddhh.minjusticia.gob.cl/primer-report-de-seguimiento-del-plan-nacional-de-derechos-humanos/>



From the field of art and its different forms, these archives nourish creativity within the theatre, cinema, literature and visual arts, with greater frequency. In 2011, the television series “The Archives of the Cardinal”, inspired by the work of the Vicariate of Solidarity, had a great impact and a massive audience, bringing knowledge of the experience of the dictatorship and the work of human rights organizations to those who did not live in that era, and to those who did not want to know, or did not see what was happening in the country. To commemorate four decades of the coup d’état, the series “Chile: Forbidden images, 40 years later”, collected stories silenced in the media, rescuing images and photographs banned by censorship, especially records of social mobilizations in the 1980s. Recently the documentary “Las Cruces” supports its audiovisual story in the judicial file on missing detainees, forest workers of the commune of Laja. Visual artists have also worked with archives on their works. “*La geometría de la conciencia*”, by Alfredo Jaar at the Museum of Memory and Human Rights works from photographs, the silhouettes of victims.<sup>31</sup> Voluspa Jarpa has made use of the declassified archives of the CIA for the realization of several exhibitions, among those “*La biblioteca de la no-historia de Chile*” (2011) and “*En nuestra pequeña región de acá*” (2017). In the theatre, the play “No tenemos que sacrificarnos por los que vendrán” (We don’t have to sacrifice ourselves for those who will come) structures its script based on the minutes of the military junta’s sessions, to approve the labour plan proposed by its labour minister, to the detriment of workers’ union rights. The phrase which alludes to the title of the play is a textual phrase of A. Pinochet in those sessions.

These are just a few examples of the numerous cultural productions that, especially after the year 2000, have used archives linked to human rights violations under the dictatorship, in their broadest sense, as a source and inspiration.

## PUBLIC CONTROL OVER ARCHIVES

A growing awareness of the value of archives in transitional justice processes has allowed human rights organizations that existed during the dictatorship to seek safeguards to protect their archives. However, this has not been a quick or easy process, especially when it comes to organizations that existed outside the capital, or in small and geographically remote towns. However, the compilation and rescue work carried out by the Museum of Memory and Human Rights has been an important contribution.

With respect to the State archives, there has been no government policy to identify and safeguard these archives, despite the persistent demand of civil society and the recommendations of institutions such as the NHRI. In its Annual Report 2014, NHRI recommended to the executive branch an advancement in the elaboration and execution of a public archives policy that guarantees integrity and public access to the documentary heritage associated with massive and systematic violations of human rights.<sup>32</sup>

In spite of this, from the research work developed by the Museum of Memory and Human Rights in the process of its installation, it was possible to locate and rescue archives in different parts of the State, in order to preserve them and make them accessible to the public. At the same time, the very act of making its existence known has allowed its protection, or at least prevented its destruction. This was the case, for example, in the Library of Congress, where the minutes of the sessions of the military junta

were located. Subsequently, the Library of Congress itself digitized all the minutes and made them available online.<sup>33</sup>

Thus, the interest of institutions such as the MMDH, proactive public officials or researchers<sup>34</sup> has made it possible to identify and safeguard archives in other public departments<sup>35</sup> safeguarding them from severe risk of loss. There is no doubt that the dissemination of its existence reduces the risk of its elimination, since in Chile there is no specific rule, either for its protection or to ensure its public access.

## RIGHT OF ACCESS TO ARCHIVES

The enactment of Law No. 20.285<sup>36</sup> on Access to Information in 2008, during the government of President Michelle Bachelet, has at least established mechanisms for requesting documentation from public bodies that previously had no willingness to give this information, let alone respond to this type of request. This law contains the regulation related to the state administration, the Law on the Transparency of Public Functions and Access to Information, and establishes that information prepared with a public budget, and is in the possession of administrative bodies in any format and support, is public. This has resulted in citizens having real access to a large amount of information, that prior to the enactment of the law, was very difficult to obtain. The transparency law creates an autonomous public-law corporation called the Transparency Council<sup>37</sup> to promote transparency in the public service, monitor compliance with regulations and guarantee the right of access to information. However, when it comes to requesting archives and information on human rights crimes, the refusal of parties of the requested institutions always persists.

In 2015, the Chilean Air Force (FACH) refused to provide information on the pilots of the Hawker Hunter planes that bombed the Palacio de la Moneda on September 11, 1973. The Transparency Council ordered the FACH to hand over the background information, which this institution repeatedly refused to do.<sup>38</sup>

31 The Geometry of Conscience, Museum of Memory and Human Rights, <https://ww3.museodelamemoria.cl/exposiciones/la-geometria-de-la-conciencia/>

32 Annual Report 2014: Situation of Human Rights in Chile, National Institute of Human Rights (NHRI), <http://bibliotecadigital.indh.cl/handle/123456789/740>

33 Diaries of Parliamentary Sessions and Interventions, Legislative Corporations and Diaries of Sessions: 1973–1990, Library of the National Congress of Chile, [https://www.bcn.cl/historiapolitica/corporaciones/periodos\\_legislativos?periodo=1973-1990](https://www.bcn.cl/historiapolitica/corporaciones/periodos_legislativos?periodo=1973-1990)

34 Carlos Dorat Guerra, Mauricio Weibel Barahona, *Asociación Ilícita. Los archivos secretos de la dictadura*, Santiago de Chile: Ceibo Ediciones, 2012.

35 Ministry of Foreign Affairs, in whose Historical Archive there is a variety of documentation that accounts for the repressive action and control of the dictatorship; Ministry of Public Works, where a file was found on the construction of the Dawson Island Prisoners Camp, the southernmost in Chile, to which the top leaders of the Popular Unity party, ministers and collaborators of President Salvador Allende were taken; this camp was the first public work of the dictatorship in 1973; Ministry of Justice, in 2017 files of war councils against political prisoners at the beginning of the dictatorship were located, of which until that date their existence was unknown, are some examples of these rescues.

36 See <https://www.leychile.cl/Navegar?idNorma=276363>

37 Transparency Council, <https://www.consejotransparencia.cl/>

38 Transparency Council basis for requesting preliminary hearing from the FACH Commander-in-Chief, Transparency Council, 8. 7. 2016, <https://www.consejotransparencia.cl/fundamentos-del-cplt-para-solicitar-instruccion-de-sumario-al-comandante-en-jefe-de-la-fach/>



Faced with this situation, the Office of the Comptroller General of the Republic opened an administrative summary against the Commander in Chief of the Air Force, applying the provision to the effect established in article 49 of the same law.

## DECLASSIFICATION AND OPENING

In 2015, a bill was presented to Parliament to repeal Law 18.771, enacted by the dictatorship in 1989, which exempted the armed forces from the obligation that all public agencies have to deposit copies of their documentation in the National Archives of Chile, and authorizes them to destroy their documentation without consulting other bodies. The norm has served to prevent the delivery of information on the human and material resources that the armed forces assigned to repression, through their own intelligence agencies and others specially created, such as DINA and NIC. This project, which had the support of the National Archive and various civil society organizations, was approved in the Chamber of Deputies in November 2015, but to date has not continued in the Senate. In other words, it has stalled.

In relation to the law that established secrecy for 50 years for the archives of the CNPPT, there was extensive debate regarding the right to privacy of torture victims and their stories, and the collective right to truth and justice. Arguments were made in both directions. On the one hand, it was stated that those who had attended the commission were not asked whether they agreed to have their testimonies made public; on the other hand, it was argued that many people, who for the first time, many years after the events, related what they had experienced and the suffering to which they had been subjected, had expressed the wish that their testimonies should remain confidential.

In the context of this public discussion in 2014, a parliamentary motion was presented,<sup>39</sup> which ended up not being approved, to establish the public character of these documents. Subsequently, in 2016, emphasis was placed on the presentation of a bill to amend Law 19.992, and give access to the courts of justice. This bill is still in the legislative process.<sup>40</sup>

In 2015, groups of former political prisoners, together with a political artistic collective, began a campaign to access their testimonies presented to the commission, with the slogan “memory is ours”. An artistically disseminated media campaign, increased the demand for access to these files. Appeals were also filed to the courts to obtain the right to this information, which were granted, and the plaintiffs were able to access their testimonies.<sup>41</sup>

The NHRI, the custodian of these archives by law, requested the Comptroller General of the Republic to make a pronouncement to determine whether the agency could deliver the information it held to the judges who requested it. The Comptroller’s Office determined that this documentation could reach the judges investigating human rights cases.

At the end of 2015, the NHRI began to deliver only the documents contributed by each victim to the commission, to the holders that requested them, but the following year, it decided to deliver all the documentation contained in the personal files “taking care not to violate the rights of third party victims and of the declarants.”<sup>42</sup> The procedure used to protect the privacy of third parties has consisted of crossing out all personal data in order to anonymize them.

Currently the request of the organizations of former political prisoners, lawyers and other civil society organizations is to

obtain access to the digital databases of the CNPPT, so that it contributes to the processes of justice.<sup>43</sup> This request was rejected by the NHRI and the Transparency Council.<sup>44</sup> The requirement still continues, depending on the exercise of the right to justice that this information would provide.

In another field, the impact of the declassification in the United States of the CIA and U.S. State Department archives between 1970 and 1990 should be highlighted. Shortly after the arrest of A. Pinochet in London, researcher Peter Kornbluh<sup>45</sup> promoted, together with the National Security Archive,<sup>46</sup> a campaign for the declassification of more than 24,000 documents before the Clinton administration. Shortly afterwards, part of the documentation was handed over to the government of Chile and deposited in the National Library of Chile. Almost all these archives were crossed out, and in some cases almost all the documents were covered. Despite this, they revealed the role that the United States had played in the coup d’état, financing, responsibility, and complicity with sectors in Chile, such as the business sector, the press and the armed forces. Subsequently, new groups of documents were declassified and were valuable in clarifying, for example, the link between A. Pinochet and the crime of former embassy official Orlando Letelier in Washington, in September 1976, among others.

The request for the opening of the archives is permanent. In 2013, London 38, Memory Space, called for a public campaign “No more secret archives”, affirming that secrecy is anti-democratic, hinders the truth and justice processes, and perpetuates impunity for the guilty. It claimed that “the State has the obligation to provide all available information, and cannot rely solely on the assertion of the non-existence of the documents requested, or on restrictions to access, such as the privacy of individuals or national security” which are common grounds for denying access.

## CURRENT STATUS

The current levels of recognition and need for the protection of archives are closely related to the increased awareness of their value for truth, justice and reparation in transitional justice processes; as well as in the approach to the reconstruction of the historical memory of the recent past and its pedagogical value.

Communities are increasingly interested in gathering and compiling their archives, reconstructing the history of their struggles in different periods, especially those who focused on social

39 Newsletter No. 9598-17

40 Newsletter No. 10883-17

41 Desclasificación Popular has a website on which those who voluntarily so determined may publish their complete files or part of them. See <https://desclasificacionpopular.cl/>

42 Information Valech Commission, National Institute of Human Rights, <https://www.indh.cl/destacados-2/comision-valech/>

43 Rodrigo Fuentes, “Organizaciones de DDHH intentan desbloquear datos de Comisión Valech”, in *Diario Uchile*, 4. 5. 2017, <https://radio.uchile.cl/2017/05/04/organizaciones-de-ddhh-intentandebloquear-datos-de-comision-valech/>

44 Decisión Amparo Rol C3065-16, Transparency Council, [https://extranet.consejotransparencia.cl/Web\\_SCW/Archivos/C3065-16/DecisionWeb\\_C3065-16.pdf](https://extranet.consejotransparencia.cl/Web_SCW/Archivos/C3065-16/DecisionWeb_C3065-16.pdf)

45 Kornbluh has published several books on these documents, among them: Peter Kornbluh, *Pinochet: Los Archivos Secretos*, Barcelona: Editorial Crítica, 2004.

46 About Chile Documentation Project, National Security Archive, <https://nsarchive.gwu.edu/about-chile-documentation-project>

and political transformations in the country, and then the struggle for freedom and democracy under the dictatorship. There is a significant development of lines of historical research through oral proceedings, and a growing awareness of the urgency of rescuing and recording sources. Thus, strong archival work has been developed in student federations, contextualizing the social and political process of which they were a part: in the rescue of union histories, agrarian reform and in diverse communities of memory in different parts of the country, the formation of local archives, neighbourhoods, and social organizations. There is an increasing movement that not only places great value in it as an irreplaceable heritage for the reconstruction of historical memory, but also in its value for the strengthening of democracy.

Collaborative work gave birth, in 2011, to the Memory and Human Rights Archives Network RAMDH.<sup>47</sup> Initially made up of 11 institutions or organizations,<sup>48</sup> it develops various activities to make visible and promote the use of its archives.

Regarding the State, at the end of 2017, the Ministry of Foreign Affairs made available to the public, through its website, with the purpose of contributing to the knowledge of the historical truth, a sample of documents guarded by its General Historical Archive (ARCHIGRAL). The account is on exchanges between the Ministry of Foreign Affairs and the Ministry of Defence, the armed forces, police, and intelligence services between 1973 and 1990.<sup>49</sup> After this first publication, the documentary exhibition has not been enlarged.

The National Archive of Chile, in charge of the custody of the Colonia Dignidad Archive, provided for public access, according to its consultation protocols, after having carried out a work of conservation and description.<sup>50</sup> It also began work aimed at identifying and proposing ways of dealing with documentation related to human rights placed in this institution.

For some years now, the judiciary has been developing a digital platform called Historical Memory, which includes the executive sentences of judicial cases of human rights violations that occurred during the dictatorship.<sup>51</sup> The development of this resource undoubtedly marks some progress in the right to truth and information for all citizens.

However, it should be noted, that while there has been interest in preserving and making publicly accessible these archives in some state administration bodies, the reality is that these isolated and fragmented efforts are not enough. It takes political will and determination, and the investment of resources to catch up on this issue. There is still a great debt to the state archives linked to human rights violations, as well as in laws that protect them and ensure their public access.

## LESSONS LEARNED AND RECOMMENDATIONS

The documentation of events, by human rights institutions and victims' groups at the times when they occur, and the awareness of safeguarding these archives, protecting them from the risks of destruction during the dictatorship, have proved essential as evidence in transitional justice processes. However, it was not as clear in the final days of the dictatorship, to demand the protection of the archives of the intelligence services, in order to prevent their possible destruction or concealment. This request was not among the urgent matters at the end of the dictatorship, as it was in other parts of the world, in which citizens took action to request that they not be destroyed.<sup>52</sup>

As a result of the Chilean experience and the debates regarding the truth commissions archives, it is necessary that these commissions establish from the beginning, and in an informed manner, everything related to the documentation that they collect, compile and produce, both in relation to its subsequent destination, and the access that it will have, having as a support, the right to truth, justice and reparation.

Undoubtedly, the existence of the Museum of Memory and Human Rights, the sites of memory and civil society archives<sup>53</sup> are very relevant. There is a need for strong archival institutions, which can promptly take charge of locating, identifying, protecting and making publicly accessible, the documentation existing at the different levels of the state administration, which account for the repressive system and its actions. Having this institutionalization, resources and trained professionals will help prevent the risk of the disappearance of this documentation. Identifying, safeguarding and preserving it are permanent challenges.

There is an urgent need for specific laws on human rights archives that, on the one hand, protect them from possible destruction and, on the other, allow their access for the purposes of justice, research, historical memory, pedagogy or general interest. Safeguarding the dignity of persons and observing the protection of personal data, establishing terms and conditions for the responsible use of them, is critical. Chilean law has not established considerations regarding the right to historical truth, the right of access to public information, or the preservation of archives. This shortcoming should be remedied.

Finally, the appreciation of these archives as a source of knowledge, reflection, research and pedagogical value on the serious violations of human rights that occurred during the dictatorship, as well as their need for preservation and public access, should be understood as an element of the consolidation of democracy.

47 See <https://ramdh.cl>

48 University of Chile Students Federation Archive (AFECH); Archive of Graphic and Audiovisual Documentation of the University of Santiago de Chile (ArchivoDGA); Chilean Human Rights Commission (CCHDH); Parque por la Paz Villa Grimaldi Corporation; Christian Churches' Social Assistance Foundation (FASIC); Foundation for the Protection of Children Damaged by the State of Emergency (PIDEE); Salvador Allende Foundation (FSA); Documentation and Archival Foundation of the Vicariate of Solidarity (FUNVISOL); London 38 Memory Space; Museum of Memory and Human Rights (MMDH); Víctor Jara Foundation. In 2019, a representative of the National Archive of the Administration, dependent on the National Archive of Chile, was added.

49 Documentary of human rights. (1973-1990), Historical Archive of the Chancellery, Ministry of Foreign Affairs., <https://minrel.gob.cl/muestra-documental/minrel/2018-09-10/185924.html>

50 Colonia Dignidad collection: The value of documentary testimony, National Archive of Chile, <https://www.archivonacional.gob.cl/sitio/Contenido/Noticias/89605:Fondo-Colonia-Dignidad-el-valor-del-testimonio-documental>

51 Human rights sentencing system, Digital Historical Memory, <http://mhd.pjud.cl/ddhh/index.php>

52 As happened, for example, in 1989 in the former GDR, with the Stasi.

53 They retain their historical archives and continue to operate autonomously: Chilean Commission on Human Rights (CCHDH); Christian Churches' Social Assistance Foundation (FASIC) and Documentation and Archival Foundation of the Vicariate of Solidarity (FUNVISOL); groups of relatives of disappeared detainees and groups of relatives of political prisoners. Other institutions transferred their historical archives to the MMDH and assume current human rights issues in development in their archives; other institutions, their civil society organizations begin to develop and collect archives recently.

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# LUSTRATION

CATH COLLINS

## INTRODUCTION

Neither lustration – understood as “cleaning up” the civil service and other public institutions – nor vetting – understood as performing background checks to prevent “unsuitable” people being hired, promoted or elected – were carried out in Chile after the 1973–1990 Pinochet dictatorship. On the contrary, one remarkable feature of the transition from 1990 was precisely how little change there was to constitutional, administrative, economic, security, or judicial arrangements. There are two main, connected, explanations for this absence of real change. First, even though the military regime exited, it did not fall. This was a pacted transition, which happened according to the rules that the outgoing dictatorship had set down in its own, authoritarian Constitution, imposed in 1980. Newly democratic Chile did not replace that Constitution, unlike most Latin American states emerging from military rule at that time. Secondly, the authoritarian regime and its representatives remained popular and politically strong, buoyed up by a persistent though not entirely deserved reputation for economic success.<sup>1</sup> Even in the 1988 plebiscite that led eventually to the end of the regime, there had been a strong minority vote (44 %) in favour of keeping Pinochet in power. The two right wing political parties, made up of ardent supporters of the regime and backed by the business interests who had benefited from it, had enough representation in the new democratic legislature to block real change. They were certainly able to avoid any strong measures being taken to prosecute or investigate past regime crimes (see Collins, chapter on Investigation and Prosecution of the Crimes of the Regime). Many discussions of lustration take it for granted that transitional settings have new constitutional arrangements and strong social repudiation of the past order. Chile had neither.

## CHANGING TO STAY THE SAME

Far from being banned from public life, senior figures who had been civil servants, judges, army officers, police chiefs, diplomats etc. under the old regime almost all kept their jobs, their influence, and even their prestige after 1990. Very little stigma or shame attached to having been part of the dictatorship, which moreover was never described by this term (“military regime” or “military government” were usually preferred). Indeed, changes that Pinochet had put in place in his last year as de facto ruler kept many of his loyal followers in their posts. These changes were contained in so-called “mooring” laws (*leyes de amarre*). The objective, as Pinochet himself said, was to “leave the country tied up, and well tied up”.<sup>2</sup> The laws prevented the incoming government from removing Supreme Court justices, and other senior officials. Because the regime had been so long (17 years), these officials, like almost anyone in a senior public position, had been appointed by the regime, or had proved themselves loyal to it.

The terms of the Constitution meanwhile contained deliberately antidemocratic provisions, cemented in by making major changes subject to a large, almost unattainable, supermajority

in the legislature. These provisions included the concession of operational and financial autonomy and discretion to the armed forces and security services (see chapter by Claudio Fuentes, *Disassembling the State Security Apparatus*); plus, the establishment of nonelected lifetime seats in the Senate for some former commanders in chief and, eventually, for Pinochet himself. The Constitution had also explicitly consolidated a highly neoliberal economic model: health, education and pensions were deregulated and privatized.<sup>3</sup>

The model enshrined in that Constitution proved remarkably resilient throughout four consecutive periods of centre-left government after 1990, even though each was led by figures associated with opposition to the dictatorship, or even directly victimized by it.<sup>4</sup> As Claudio Fuentes describes in the chapter on security sector reform, authoritarian enclaves, common throughout the apparatus of state, were particularly pronounced and visible in the armed forces, police, and intelligence services. A law brought in just before transition, and still in force, exempted these services from sending records to the National Archive.<sup>5</sup> They were allowed instead to destroy old documents, giving them *carte blanche* to remove records that could be considered incriminating. Some of those who were closely involved in often tense negotiations between the incoming elected administration and the outgoing regime described outgoing officials as clearly concerned to prevent any kind of future investigation or scrutiny of Pinochet, his family or his inner circle.<sup>6</sup> Any sign of such intention was met with sabre-rattling and open threats of authoritarian regression. Pinochet used shows of strength to intimidate the new administration – on two occasions in its first years, troops were called to battle stations or sent out onto the streets in uniform.

Intelligence work was not significantly re-structured or brought under civilian control after transition. One figurehead from the notorious DINA secret police that had overseen the most brutal early repression was eventually tried and jailed. However, the CNI (Centro Nacional de Inteligencia), a less lethal but nonetheless feared replacement for the DINA that had operated through the 1980s, underwent only cosmetic changes. A substantial proportion of its agents were simply transferred into the official military after 1990. Prosecutions for dictatorship-era human rights violations that gathered pace after 1998 eventually

1 Alan Angell, *Democracy After Pinochet: Politics, Parties, and Elections*, London: Institute for the Study of the Americas, 2007.

2 Pinochet was echoing a phrase used by his hero, General Franco, about Spain.

3 The country’s entire water resources had already been virtually privatised by the Water Code, introduced by the dictatorship in 1981. The Code defines water as a commodity, allowing the state to sell off water rights, many of which are today concentrated in the hands of a few extremely rich businesses or individuals. This state of affairs, almost unique in the world, was one factor in the social and economic discontent that spilled over into widespread unrest in late 2019.

4 Including subsequent presidents Ricardo Lagos (2000–2006) and Michelle Bachelet (2006–2010 and 2014–2018).

5 Law 18.771, of 1988.

6 Rafael Otano, *Nueva crónica de la transición*. Santiago, LOM: 2006.



declared both the DINA and the CNI to have been “criminal associations”. Nonetheless, as late as 2018, the Army successfully defended itself against an Access to Information request that would have forced it to reveal the names of all former DINA or CNI agents who had been allowed to continue in service, and eventually promoted to the rank of General or above. In a similar case in the same year, the National Security Council was also allowed to keep secret minutes of its meetings in the early transition period. These included its highly critical and insubordinate responses to the Chile’s first Truth Commission, the Rettig Commission (carried out in 1990–91).<sup>7</sup>

In the year 2000, a decade after transition, a Roundtable Dialogue was set up between the government and the Armed Forces, under the chairmanship of the Catholic Church. The stated purpose was to discover the whereabouts of over 1,000 regime victims still missing (the “detained-disappeared”, *desaparecidos*). The fact that the initiative happened at all was due to the weakened position of the Armed Forces after former dictator General Pinochet was arrested in the UK in 1998 on an international arrest warrant issued in Spain.<sup>8</sup> The Armed Forces were persuaded that a gesture of good faith was necessary, given uncomfortable international publicity focused on Chile’s human rights legacy. Even so, the dynamics of the Roundtable were very conciliatory towards the Armed Forces. They were allowed to persist in their widely disbelieved position that they held no institutional records about repression, because they were not institutionally responsible for it.<sup>9</sup> Relatives of the disappeared did not accept the Roundtable or its meagre results, and still campaign against what they call a “pact of silence” that still prevails among former military, ex conscripts, and other regime agents.

In 2004 the Army released a much-publicised open letter supposedly acknowledging (for the first time) their involvement in past violations, and promising a definitive change of culture and outlook.<sup>10</sup> The letter – which echoed the popular sentiment “Nunca Más”, Never Again, used as a slogan by many Latin American truth commissions and human rights groups – nonetheless was not borne out by later actions. From 2010 onwards, former and serving commanders in chief made it their business to directly and indirectly criticize trials that sent former agents to prison for human rights crimes. Although a practice was introduced whereby officials charged with such crimes were sent into retirement – which could be seen as a weak form of vetting – it was soon revealed that various officials had been immediately re-hired as civilian consultants. Even former secret police agents now serving dozens of accumulated sentences for torture and crimes against humanity, still retain full military rank and generous pensions. A group of retired senior military officers formed an association for legal and public defence of their former comrades, describing them as “political prisoners”. Each year, on the coup anniversary, the association takes out a full-page advert in Chile’s main conservative newspaper. The ad defends the coup as a patriotic act that saved the country from Marxism, and denies or downplays killings, torture and disappearances by the regime.

The judiciary, a largely conservative body that was also never purged or significantly reformed in the immediate transition period, did finally undergo a gradual process of generational replacement, modernization, and code and system change.<sup>11</sup> A limited increased openness to international law, the demonstration effect of the “Pinochet case” in Spain, and the gradual rise to seniority of those few honourable judges who had in the past tried to rein in the dictatorship’s crimes, began to produce new openings

for relatives, survivors and human rights lawyers who continued to insist that past atrocities could not be amnestied and should be investigated. Although this opening up of the judiciary was cautious, slow and never fully consensual, by the mid-2000s it began to gather momentum. By 2019 over 1,000 criminal cases were open, with around 500 more concluded. Over 1,000 regime agents of all levels had been investigated and/or sentenced, with over 150 sent to prison.<sup>12</sup>

In recent years, prosecutions have begun to reach people who were close to the dictatorship, yet continued to be powerful and respected, at least on the political right. In December 2018, Juan Emilio Cheyre, the Army Commander in Chief responsible for the 2004 open letter that supposedly marked a definitive break with the Pinochet legacy, was found guilty of having covered up crimes of torture as a junior officer in 1973. Cristian Labbé, a former bodyguard of Pinochet’s who continued to vocally support Pinochet and his legacy, was four times elected mayor of a major district of the country’s capital after transition. In October 2019, he was sentenced to three years in prison for having tortured a political prisoner in the 1970s. Both Labbé and Cheyre had been given academic posts by universities well aware of their past histories. Cheyre was even the president of the country’s electoral service, Servel, when the first criminal allegations against him surfaced in 2013. He initially defended himself by stating that, since he had been questioned but not (at that time) charged, he should be treated as fully innocent of all blame or responsibility. His attitude basically dismissed questions of political or moral responsibility, insinuating that only those with a proven court case against them could be considered worthy of blame.<sup>13</sup> This legalistic attitude is still prevalent in Chile. Together with the continued electoral and social popularity of right wing and authoritarian views, it helps explain why there was never a stronger drive for any kind of lustration or vetting process.

The worst excesses of the dictatorship were briefly given renewed attention in the mid-2000s, when a second Truth Commission, focused on torture and political imprisonment, reminded Chilean society of the most depraved practices of the regime, such as the training of dogs to sexually assault defenceless

7 Observatorio de Justicia Transicional, “Negacionismo en la Era de la Post-Verdad: Verdad, Justicia y Memoria en Chile, a dos décadas del ‘Caso Pinochet’”, in *Informe Anual DDHH en Chile 2018*, Santiago: Universidad Diego Portales, 2018, 17–106. <http://www.derechoshumanos.udp.cl/derechoshumanos/images/InformeAnual/2018/Collins-Negacionismo.pdf>

8 Sebastian Brett, “The Pinochet Effect Ten Years On from London 1998”, Santiago, Universidad Diego Portales [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2628432](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2628432)

9 Cath Collins, “Human Rights Policy under the Concertación”, in Siavelis and Sehnbruch (eds) *Democratic Chile: The Politics and Policies of a Historic Coalition, 1990–2010* Boulder, Co.: Lynne Rienner, 143–172.

10 “Ejército de Chile: el fin de una visión”, published as an opinion column under the byline “Juan Emilio Cheyre, Army Commander in Chief”, in the newspaper *La Tercera*, 5 November 2004.

11 Paul Drake and Iván Jaksic, *El modelo chileno: Democracia y desarrollo en los noventa*. Santiago: LOM 1999; or Lisa Hilbink, *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*, Cambridge: Cambridge University Press, 2007.

12 Figures produced by the Observatorio de Justicia Transicional of the Universidad Diego Portales, based on judicial sources.

13 Collins, Cath “Truth Justice and Memory, 40 years after the Chilean Coup”, Transitional Justice Institute Research Paper No. 14-05, Transitional Justice Institute, Ulster University. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2628430](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2628430)

prisoners.<sup>14</sup> Around this time, the political Right again began to distance themselves from the regime. It began to be seen as a liability, rather than a badge of honour, to have served under Pinochet. Allegations of economic corruption were however more effective than human rights violations in creating repudiation: the personal reputation and popularity of Pinochet suffered most when, in the year 2004, it was revealed that he had millions of dollars in secret bank accounts in the US Riggs Bank. Pinochet died in December 2006. Although the Army gave him a funeral with full military honours, he was not given a state funeral. Serving President Michelle Bachelet did not attend, nor declare national mourning.<sup>15</sup>

Four years later, in 2010, Chile elected its first civilian right-wing administration for fifty years, when Sebastian Piñera won the presidential election. At first, Piñera tried to occupy the centre ground, declaring that he had voted against Pinochet in the 1988 plebiscite. In 2013, on the 40th anniversary of the coup, he gave a public speech strongly denouncing the regime's human rights crimes and its "civilian accomplices". These included many of the country's still-powerful economic elites, including Piñera's own business associates. The moderate tone of Piñera's first government however changed from 2018, when he was re-elected to a (non-consecutive) second term. A harder line was apparent from the very beginning, and he made various controversial ministerial choices, selecting people who had been very close to the dictatorship. As politics in South America in general swung toward the right, the Piñera government began to shed its earlier embarrassment about ties to the dictatorial past. Although rhetoric about democracy and the rule of law was still used, hardline law and order and anti-immigration policies were adopted. A far-right presidential candidate emerged, with a vocal and visible national following.

Throughout the whole post-transitional period Chile continued to be largely prosperous on a macroeconomic level, joining the OECD in 2010 and moving into the World Bank's classification of an upper-middle-income country. However, inequality, lack of cultural diversity, and the preservation of dictatorship-era neoliberalism, authoritarian police culture, and constitutional arrangements finally came to the surface in late 2019. A series of scandals also exposed widespread corruption in political campaign finance, big business, and the higher ranks of the armed forces and police. Many of these practices featured individuals from all sides of the political spectrum and in the case of the army and police, it became clear that a dictatorship-era culture of illicit enrichment had never been rooted out. Years of simmering discontent among secondary school pupils, students, Mapuche indigenous activists and others left behind by the country's

extractive economy and extremely regressive private pension, health and education system, exploded onto the streets in mid-October. The reaction of a visibly rattled president was to declare a state of exception and send tanks onto the streets, producing scenes reminiscent of the 1970s. The military and police brutality which followed left a significant number of people blinded, with police misusing supposedly dissuasive "plastic" bullets as attack weapons. Footage of apparently indiscriminate and senseless police violence, including credible allegations of torture and sexual assault against young women, exploded the carefully cultivated myth of Chile as the "perfect transition" that had evolved into a successful democracy. Protests were amorphous, acephalous and enduring. Efforts by the political opposition to broker an end to them by – finally – acknowledging that constitutional change was needed were met, at least initially, with skepticism and rejection. Disillusion with the entire "political class" finally seemed to expose a failed social contract behind the self-proclaimed Chilean success story.

## CONCLUSIONS AND RECOMMENDATIONS

It is impossible to say for certain that a lack of lustration or vetting contributed to Chile's late 2019 social and political upheaval. Nonetheless it is evident that incoming democratic forces in 1990 failed to install a clear and lasting break with dictatorship-era legacies and culture, particularly in policing, but also in public administration, educational practices, and economic and social policy. Compromises that may have seemed prudent in 1990, given real transition constraints, fast became a self-limiting and eventually self-defeating preference for maintaining the status quo. Chile became a byword for neoliberal experimentation under Pinochet, and continued to be so, less explicable, after he was long gone. At time of writing it is impossible to know what the outcome of the late 2019 protests will be, although a new Constitution has – finally – been promised. However, the episode certainly suggests that excessive post-transitional caution, consensus and elite bargaining can create anti-systemic forces.

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# INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME

CATH COLLINS

## INTRODUCTION

Chile's 11 September 1973 military coup led to 17 years of right-wing military rule under General Augusto Pinochet, who created an authoritarian police state. Grave human rights violations occurred throughout the 1973–1990 period, although most acknowledged disappearances and extrajudicial executions happened between 1973 and 1978. Many were carried out by a secretive intelligence agency, the DINA, which reported directly to Pinochet. The DINA ran dozens of clandestine torture and detention centres in Chile, and hunted down officials from the previous socialist government: left wing political party activists, student leaders and anyone else deemed a threat. It also instigated the conspiracy known as “Operation Condor”, in which South American military regimes collaborated to target dissidents and exiles.

Violations carried out by the regime included the suspension of civil and political liberties (including press censorship, curfews, and the banning of all political parties), massive social welfare cuts, and regressive privatisation of health, education and pensions. Over 3,200 people were forcibly disappeared or extra-judicially executed. Some violations were given spurious justification, using military tribunals to try civilians for imaginary crimes against the state. Others were denied, or attributed in regime propaganda to supposed armed left-wing guerrilla groups. At least 39,000 people survived torture and political imprisonment, and around 100,000 were forced into exile. In 1976, the DINA assassinated former Chilean foreign minister Orlando Letelier in Washington DC, creating a backlash from the previously supportive US government and leading to superficial reform. The DINA was replaced by a new agency, the CNI. Clandestine burial sites were dug up, and the bodies of the disappeared were removed and hidden elsewhere. An amnesty law was passed, for “politically motivated crimes committed between 11 September 1973 and 10 March 1978”. It was used solely to the benefit regime agents. A highly deferential court system invoked the amnesty to pre-emptively close or suspend investigations against members of the security services or police, none of whom were ever successfully prosecuted, even for atrocities which fell outside the amnesty law. In 1980, a new Constitution imposed by the regime passed many of its authoritarian innovations into law. Protests triggered by a 1983 economic crisis produced renewed repression, but eventually paved the way toward a return of elected democracy. A 1988 plebiscite, narrowly lost by Pinochet, led to democratic elections in 1989 and a controlled handover of power to a centre-left coalition, the Concertación, in 1990.

## LEGAL RESPONSES DURING THE DICTATORSHIP PERIOD

Legally framed defence of human rights was attempted almost immediately, spearheaded by the Catholic Church. The specially

created Vicariate of Solidarity, Vicaría, which provided social, medical and legal assistance to victims and relatives, emphasising legal responses in order to maintain an apolitical stance. Habeas corpus writs (*recursos de amparo*) were submitted to the courts in almost every known case of disappearance or detention, and the Vicaría carefully amassed documentation allowing it to denounce violations abroad. Although the Vicaría closed its doors shortly after transition, the human rights lawyers who had worked under its auspices, and its extensive archive of testimonies, and court documents, were key to the later revival of efforts at justice.

## TRANSITION AND TRANSITIONAL JUSTICE

Most centre and left wing political parties – except the Communist Party – had agreed to accept the legal and constitutional framework laid down by the outgoing regime. So although the incoming government had a clear opposition identity, it had limited freedom to act. Pinochet, who continued as Army Commander in Chief, famously threatened that “the day they touch any of my men, the rule of law is over”. Early revelations such as the discovery of mass graves therefore made headlines, but did not lead to prosecutions. Efforts to investigate financial fraud involving Pinochet's son meanwhile produced a virtual military rebellion. Newly elected president Patricio Aylwin dropped a campaign promise to repeal the Amnesty Law, declaring instead that justice would be pursued only “insofar as is possible” (*en la medida de lo posible*).

Instead of prosecutions, an official truth commission was held, and some financial reparations were offered to relatives of the dead and disappeared. Although human rights lawyers and relatives continued to demand justice, judges were unwilling. Aylwin's plea that amnesty should only be applied after investigations did, however, see some limited reopening of cases. One breakthrough came with the 1993 conviction of former secret police chief Manuel Contreras over the 1976 Letelier assassination. Military authorities, however, refused to hand Contreras over until a specially built military prison was provided. It was widely rumoured that the armed forces had also obtained guarantees that there would be no more prosecutions. The human rights issue was not given social or political priority. The new government and the public seemed preoccupied with other matters, while the military and the political right vigorously opposed the occasional efforts to revive prosecutions. Relatives' organisations grew steadily more disillusioned by the ruling coalition's refusal to act more strongly against the impunity. The courts, the civil service, the police and the military were not purged, and many former regime figures or supporters continued to hold political, social and economic power.

1998 was a pivotal year for transitional justice in Chile. Pinochet was due to retire from the Army in February 1998, and he made a lifetime “honorary Senator”. Disgust at this possibility led



to the first full criminal complaint ever lodged directly against Pinochet. It was brought by the president of the Communist Party (in her capacity as a relative of a victim of disappearance). In September that year, in a separate case, domestic courts upheld lawyers' long-standing argument that disappearance was an ongoing crime not fully covered by amnesty. On 16 October, Pinochet was arrested in the UK for human rights violations committed in Chile, against victims of Spanish nationality. The case was later expanded, invoking universal jurisdiction principles. It became a test case for the enforceability of international human rights law. The Chilean government invoked sovereignty and pressed for Pinochet's immediate return, offering veiled assurances that he would face justice at home.

Released by the British Home Secretary on medical grounds in March 2000, Pinochet flew home to a triumphant military reception. During his absence, however, victims and relatives had made hundreds of new or renewed criminal complaints against him, and human rights lawyers began to formally request his impeachment and indictment. In August 2000 the Supreme Court ruled that Pinochet could be charged in at least one case. In 2004, a US money laundering investigation revealed that Pinochet had secret million-dollar accounts in the US Riggs Bank. He was being investigated for financial crimes and tax evasion, as well as human rights crimes, at the time of his death, age 91, in December 2006. In conservative circles, the allegation of corruption was more damaging to Pinochet's prestige than accusations of torture and repression had ever been. He was not granted a state funeral, though he was afforded full military honours.

In the interim, the courts had finally been prodded into taking more decisive action. In 2001, a group of special investigative magistrates was appointed to oversee an ever-expanding case universe, involving not only Pinochet, but dozens of other former regime officials, some still in active military service. Renewed campaigning by survivors led to the holding of a second truth commission to document political imprisonment and torture. In the same year, 2004, the Supreme Court upheld for the first time, the argument that disappearance constituted both an ongoing crime and a crime against humanity, which could not be amnestied. By December 2006, this interpretation was extended to cases of extrajudicial execution. These majority (though not unanimous) progressive interpretations of international law were encouraged in September 2006 by the Almonacid verdict of the Inter-American Court of Human Rights. The Court ruled that Chile's 1978 self-amnesty contravened its international treaty commitments.

The part of the ruling requiring Chile to change the law was never complied with, but judicial interpretation continued, on balance, to favour the view that dictatorship-era violations can be investigated, and their perpetrators punished, if they constitute crimes against humanity, or war crimes. By September 2019 a total of 365 criminal cases involving such crimes had been resolved. The vast majority (322) were for victims of execution or disappearance, although cases are increasingly also brought by torture survivors.<sup>1</sup> Official data on the number of former regime agents charged, sentenced or imprisoned is not available, but by late 2019 over 150 individuals had served or were serving prison sentences. Around 300 more had been found guilty, but given lenient, non-custodial sentences, and approximately 1,000 had cases still ongoing or sentences pending appeal. Almost all were former intelligence service operatives with backgrounds in the armed forces or police.

## LEGAL INSTITUTIONS AND INVESTIGATIVE AUTHORITIES

Chile is a civil law tradition country. Until the year 2000, its criminal justice system was written and inquisitorial. Cases were conducted by investigative magistrates, with almost no role for state prosecutors. This system was reformed and replaced after 2000, but the old system is still used for dictatorship-era crimes. This system allows victims of crime to petition judges directly and to participate actively in subsequent investigations. It also allows a wide array of documentation and past witness statements, including the Vicaría archives, and first truth commission files, to be admitted as potential evidence. In these ways, the old system has been useful for prosecuting past crimes. However, authoritarian continuity, past judicial collusion, political pressure and lack of institutional replacement, or reform, impeded justice progress at and after transition.

From 1998, a mix of judicial reform, international attention, and renewed civil society justice activism, has produced gradual improvements. Removal of old cases from military court jurisdiction, and the designation of special magistrates for human rights cases, also helped, although case progress has been far too slow, with many cases taking decades. Cases also use criminal law prevailing at the time of the offence, i.e. during the dictatorship. This is often insufficient, leading to low sentences. Judges investigating human rights cases are assisted by specialized detective police and the state forensic service, Servicio Medico Legal. The higher courts, police and SML, have improved their treatment of witnesses and understanding of human rights principles through the investigation of these cases. This has been positive for rights progress and democratization in general.

## IDENTIFICATION OF THE CRIMINALS OF THE AUTHORITARIAN REGIME

Almost all perpetrators identified and convicted by post-transitional prosecutions were former military or security service (secret police) operatives. As of end 2019, only one civilian has been sentenced to a prison term, His crimes were committed in collusion with the police. Identification and prosecution of perpetrators has been done with little or no cooperation from the Armed Forces. Although they supposedly acknowledged, in 2004, their part in past repression, their position has been ambivalent, with many subsequent public statements and actions showing support and sympathy for perpetrators currently in prison. A roundtable effort convened in 2000, supposedly to help find the remaining disappeared, foundered when the information proved meagre and inaccurate. Military installations and training facilities still render tribute to Pinochet and other notorious human rights abusers. Right wing political parties also often defend the dictatorship and deny or downplay its crimes. Present-day policing of protests shows that the uniformed police also suffer from persistent authoritarian legacies. Evidence and testimonies for prosecuting dictatorship-era crimes have mostly come from survivors and civil society human rights organisations. Human rights lawyers acting for families, relatives' associations or survivors have been the main protagonists of justice progress.

<sup>1</sup> According to the Supreme Court, 1,459 criminal cases were ongoing at 30 April 2019.

Only after 2009 did the state begin to generate new cases *ex officio*; most current cases were instead begun by civil society petitions – *querellas*. A state Human Rights Programme does act on behalf of the state in prosecuting new and pre-existing cases. However, Programme lawyers only act in criminal cases for death or disappearance; they are not authorized to act in cases involving survivors. The archives of the first truth commission are fully available to the courts and the Programme, but those of the second commission (“Valech Commission”) are not. Moreover, state lawyers from another official institution, the Consejo de Defensa del Estado, “defend” the state against civil suits for damages brought by relatives or survivors. They argue that the state does not have liability, that the statute of limitations has lapsed, or that administrative reparations are sufficient. At present (2019) the courts do not accept these arguments and often award damages.

## THE RULE OF LAW AND THE PRESENT-DAY INVESTIGATION OF DICTATORSHIP-ERA CRIMES

Rule of law reforms in Chile gradually overcame some dictatorship-era legacies and allowed past impunity to begin to be dismantled. Subsequent prosecutions have been slow and uneven, depending on judicial discretion and interpretation instead of the active and thorough replacement of dictatorship-era laws and personnel. The long delays have led to “biological impunity” whereby elderly perpetrators and/or survivors are unfit to testify, or die before cases can be concluded. Early sentences were also very lenient. Recent sentences are more proportional to the gravity of the crimes committed, but guilty parties use delaying tactics, appeals to the Constitutional Court, or alleged illness to escape justice. They also serve sentences in privileged conditions in special prisons, and apply continually for sentence reductions or

early release on parole. Changes in the composition of the higher courts also affect prevailing interpretations of international law, and therefore change case outcomes, sometimes favouring accountability, sometimes favouring impunity. These dynamics, plus the secondary role played by the state in pressing for prosecutions, have muted the social impact of atrocity crime prosecutions. On the positive side, this gradual approach has led to Chile becoming a world leader in using domestic courts to successfully try international human rights crimes. The fact that verdicts are so conservative, careful to respect existing legality and perpetrators’ due process rights, makes them less susceptible than in other countries, including Argentina, to accusations of political bias.

## LESSONS LEARNT AND RECOMMENDATIONS

Chile’s cautious approach to transition and reform allowed authoritarian legacies, including impunity for past state crimes, to persist for too long. Although the gradual approach has allowed later change to be largely consensual or at least tolerated, justice has been too little, too late, for many victims and families. A more vigorous initial approach might also have helped change authoritarian institutions, including the Armed Forces and judiciary, more quickly, although reaction would also have been stronger. Emphasis on general democratization, and on generational replacement and technical improvements in the justice system, forensic medical service and detective police, helped to create a situation where continued impunity became indefensible. These emphases, combined with persistent civil society activism, also helped produce needed changes in institutional culture and behaviour, although these changes are still absent, and overdue, in some institutional and political sectors.

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# REHABILITATION OF VICTIMS

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## INTRODUCTION

In this chapter we will describe the rehabilitation, or reparation of victims and how the Chilean State has been able to take measures, during the transitional process, to carry out the process in the face of the diverse consequences of the dictatorial period, through public policies, between September 11, 1973 and March 11, 1990.

Related concepts will be explained, from the point of view of various actors and/or victim care bodies, in order to explain the context that leads to the promotion of public policies after the recovery of democracy, their progress in society, and the impact at the state level of the strategies suggested by the different truth commissions.

To conclude, we will look at the role played by civil society, and organizations of surviving family members and victims, in the development of compensation policies and the lessons they have learned during the democratic process, observing whether or not they fulfill their objective.

## WHAT IS REPAIR AND REHABILITATION?

In Chile, the concept of repair, to a greater extent, has been used; with respect to rehabilitation, since it has been understood that this second term is contained in the first, it implies a broader level of action. According to Alejandro Guajardo,<sup>1</sup> occupational therapist at the Centre for Mental Health and Human Rights CINTRAS: *“Rehabilitation refers to a concept that comes from medical practice in health and, in particular, from a specific level of care (tertiary). Tertiary care is understood to be the processes through which people whose performance has been affected by some morbid process are assisted. The aim is for the subject to function in the best possible way, deploying to the maximum his/her operational capacities, both in terms of cognitive functions and in emotional and interpersonal relationships, thus allowing the reconstruction of a life project that favours the capacity of the subject to be an active and productive being.”* Whereas, the same author defines reparation, as the following: *“It seems to be a broader concept, which escapes the scope of the actions of the health sector and positions the subject in a more encompassing field. [...] It implies the possibility of amending, correcting the damage caused, making reparations, satisfying, compensating and indemnifying the affected subject or group. In this sense, we could understand that reparation entails not only medical, psychological and social aspects, but also value, moral, cultural, political and material aspects that require much broader action than that of a specialized medical team.”*

Both concepts are necessary to develop in this chapter, since they focus on the same objective from different levels, and as these measures have been translated into reparation laws, they have historically been demanded by groups of victims’ family members and organizations of surviving victims.

On the other hand, with the intention of referring more specifically to the field of reparation policies in Chile, it is useful to review

the definition recognized by the United Nations, which indicates that reparation for human rights violations: *“are all those actions that are the result of recommendations, social policies, measures and laws aimed at restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition to family members and survivors”*.<sup>2</sup> The areas of reparation, according to this body, could be grouped into two fronts, the material and the symbolic. In the Chilean case, reparation policies have been carried out at both levels, on the one hand those that seek to improve the survival conditions of the families of those affected, as can be seen in the case of pensions, scholarships or other initiatives, and on the other hand the symbolic dimension referring to subjective aspects such as the recognition and awareness of the damage caused to family members, direct victims and society as a whole.

## POLITICAL CONTEXT

The coup d’état of September 11, 1973 marked the beginning of the military dictatorship in Chile, and of the systematic violations of human rights, which compromised state responsibility for crimes against the population by torturing, exiling, executing and making people disappear.<sup>3</sup> After the recovery of democracy and the discovery of mass graves, plus the pressure exerted by human rights organizations and the families of victims; initiatives were necessary to investigate and demonstrate these crimes that would lead to reports emanating from the truth commissions: The National Truth and Reconciliation Commission (1990–1991), the National Corporation for Reparation and Reconciliation (1992–1996), the National Commission on Political Imprisonment and Torture (2003–2005) and the Advisory Commission for the Qualification of Disappeared Detainees, Executed for Political Reasons and Victims of Political Imprisonment and Torture (2010–2011). As a result, these commissions officially established recognized numbers of victims,<sup>4</sup> to which was added a review of the social and political situation of the time, in addition to this, cataloguing the types of human rights violations that occurred,

1 Member of the CINTRAS-Tarapacá team. Paper on Rehabilitation and Reintegration presented at the International Conference “Consequences of Torture on the Health of the Chilean Population: Challenges of the Present” held by the Ministry of Health on 21 and 22 June 2001 in Santiago de Chile

2 Yuri Cristian Gahona Muñoz in his thesis “Reparation for human rights violations”, thesis for his master’s degree in Psychology, mention in Community Psychology, University of Chile, 2009, <http://repositorio.uchile.cl/handle/2250/105763>. He mentions Theo van Boven’s document. Study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. The document was submitted to the United Nations, Economic and Social Council, Commission on Human Rights, 45 sessions: 64

3 The texts of the truth commissions can be reviewed at: <http://www.cedocmuseodelamemoria.cl/otros-recursos/>

4 This number is used as a reference, since not all the families of victims testified and not all the surviving victims wanted to attend the call of the commissions to give an account of their cases. However, thanks to the archives of the human rights organizations that existed during the dictatorship and provided assistance to those whose rights were being violated, it is believed that the figures presented in the reports are reliable.

along with defining the different types of victims. These reports also establish a series of recommendations, addressed to the Chilean State, regarding material and symbolic reparations.

Some of these will be expressed in various initiatives, focused on policies that seek to recognize and mitigate the effects of repression, especially on victims and their immediate families.

The recommendations for material and symbolic reparation, addressed to family members of the disappeared, or executed, and victims of political imprisonment and torture, were added to others specifically designed for Chileans in exile: for farmers expelled from the land and for workers expelled for political reasons.<sup>5</sup>

## SCOPE AND TYPE OF REPAIR

Reparation can take various forms, since its scope is necessarily broad, in order to achieve its objective, and progress in the rehabilitation of those who have been harmed by human rights violations during the military dictatorship. What, how, who and for what? These are questions that the various transitional reparation policies have sought to answer on a permanent basis over time, and motivated both by the particular will of governments, and by pressure from civil society organizations that maintain current demands to this day.

The reparation proposals of the truth commissions establish the political and social responsibility of the State. In this way, it is pointed out that reparation is a task that must be intervened in a conscious and deliberate manner, and a series of measures<sup>6</sup> are proposed and implemented, aimed at victims qualified by the commissions and their family group:

- Reparation pension for family members of recognized victims (spouse, mother of children, children, mother of victim, father of victim, only if victim's mother waives the pension or dies).
- Scholarship for the children of victims recognized by the commissions.
- Exemption from compulsory military service includes grandchildren and nephews of victims.
- Health benefit through the Reparation and Health Care Program PRAIS, implemented by the Ministry of Health of Chile.
- A one-time bonus of US\$ 13,850 for the children of non-survivor victims who did not receive a reparation pension (because they were of legal age) and for those who stopped receiving it (because they reached the legal age), the difference was granted until the aforementioned amount was completed. This is done through the Social Security Institute.
- Scholarship for the surviving victim of political imprisonment and torture, or the possibility of transferring it to a child or grandchild.
- Elimination of entries in the records of surviving victims of political imprisonment and torture.

### Symbolic and collective reparation

- Creation of memorials and memorial sites for victims of human rights violations and political violence.
- Protection and safeguarding, declaring the main torture centres as national monuments.
- The creation of the Museum of Memory and Human Rights inaugurated on 11 January 2010, to raise awareness of the systematic violations of human rights by the State of Chile between 1973 and 1990, and to safeguard the archives of memory.

### Reparation from justice

- Creation of the Human Rights Program of the Ministry of the Interior.
- Forensic Identification Policy, in charge of the forensic medical service.
- Creation of the Undersecretariat of Human Rights, under the Ministry of Justice and Human Rights of Chile.

### Institutionality in the area of Human Rights

- Creation of the National Institute of Human Rights NHRI, Law 20.405 as an independent body of the government.<sup>7</sup>
- Principles, rules and legal mechanisms for the protection of the rights of individuals.

Among the recommendations of the truth commissions are considered measures that guarantee the non-repetition of human rights violations, through modifications to national legislation, and the incorporation of rules of international human rights law. The aim is to establish legal guarantees that refer to the situations described in the reports, as well as any other type of crime against humanity.

Through different initiatives, the necessary institutional framework was established to gradually implement the suggested reparations. To date, a series of reparation laws<sup>8</sup> have been enacted focusing on the relatives of disappeared detainees, the relatives of executed politicians, returnees and exonerated persons. In addition, other reparation measures have been provided through administrative channels, such as Law 18.979, enacted in May 1990, which restored Orlando Letelier del Solar's nationality. To date, no other similar actions have been taken for other Chileans who lost their nationality after September 11, 1973.<sup>9</sup>

## LEGAL FRAMEWORK FOR REPARATION

In 1990, a few months after Patricio Aylwin Azocar was democratically elected,<sup>10</sup> he created the National Truth and Reconciliation Commission (CNVR).<sup>11</sup> This commission conducted a 11 month investigation into the arrest, forced disappearance, post-arrest execution and torture resulting in death, committed by State agents or civilians in their service. It also investigated abductions and attacks carried out for political reasons, with similar consequences for people.

This commission had to gather antecedents that would allow for the identifying of its victims and determine their whereabouts. The investigation period covered by this investigation

5 Op.cit. Yuri Cristian Gahona Muñoz, thesis "*Reparación por violaciones de derechos humanos*", 2009

6 Several other remedial provisions had already been generated since 1990 for other areas. Exile, former political prisoners; exonerated persons, restitution of property, among others. Volume 2 Report of the National Truth and Reparation Commission, part IV, chapter I, p. 823

7 See <https://bibliotecadigital.indh.cl/bitstream/handle/123456789/75/ley20405.pdf?sequence=1>

8 Law 19.123 and others. At [www.leychile.cl](http://www.leychile.cl)

9 See Supreme Decree of the Ministry of the Interior No. 588, 1976 At [www.leychile.cl](http://www.leychile.cl)

10 President of Chile between March 11, 1990 and March 11, 1994. He died in 2016

11 Led by the radical politician Raul Rettig, who had also been an ambassador of the Popular Unity government in Brazil and in his capacity as such had known about situations of human rights violations in this country



was from September 11, 1973 to March 10, 1990. Once its work was concluded, it prepared a report that included 2,296 victims recognized by the State, which are categorized as follows:

Reparation measures were suggested, and the information gathered was sent to the courts of justice.<sup>12</sup> It was also recommended that all necessary measures be taken to prevent new episodes similar to those that had occurred.

The National Corporation for Reparation and Reconciliation, which operated for 4 years, was created accordingly. Its objective was to comply with the recommendations contained in the report of the CNVR, regarding the need for a state body to qualify the possible condition of victims of those for whom it was not possible to form an opinion, or whose cases it was unable to examine, due to a lack of sufficient information, and to implement reparation measures for the families of the victims.<sup>13</sup>

This second body recognized 899 victims of human rights violations and political violence, leaving a total of 3,195 victims recognized by the State.

Between August 1999 and July 2000, President Eduardo Frei<sup>14</sup> called for a “Human Rights Dialogue Table”<sup>15</sup> to make progress in the clarification of the final fate of the disappeared detainees. The proposed objective was to obtain from the high authorities of the country, civil, military, religious and ethical institutions, information to establish the whereabouts and fate of the disappeared detainees. During this instance Law No. 19.687<sup>16</sup> was approved that guarantees the obligation for confidentiality of those who received the contents issued by this body.

As a result, in 2001, the armed forces provided information on the whereabouts of approximately 200 disappeared detainees, 180 of them were identified, the rest were named N.N. The report acknowledges the illegal detentions, deaths, burials and exhumations, and details that most of these victims had been thrown into the sea, rivers, lakes, or would be in mass graves. To verify the information, the Supreme Court appointed judges with exclusive dedication, and the related cases were accumulated.

The results delivered by the armed forces and the Carabineros were rejected by the groups of family members of the victims and some human rights lawyers, due to the insufficiency of the information provided, it has not been possible to verify some of these antecedents, and in cases of disappeared detainees, errors have been detected.

In 2003, President Ricardo Lagos created the National Commission on Political Imprisonment and Torture (CNPPT), which functioned until May 2005. Its objective was to advance in the process of healing wounds produced by human rights violations, aiming to qualify, according to the antecedents they present, persons who suffered deprivation of liberty and torture, by the acts of State agents or civilians in their service, for political reasons.

The investigation covered the same period as the CNVR, and based on its results the National Commission on Political Prisoners and Torture Report (CNPPT) was prepared. This report includes 28,459 people recognized as surviving victims. It is fundamental to emphasize at this point that this commission determined by law,<sup>17</sup> the protection of the archives that conform it, for 50 years, which does not allow the dissemination of the knowledge of the testimonies and antecedents compiled during the investigation, until that term has expired. This situation is still widely questioned today, especially by organizations of the civil society, since it contradicts the principle of the search for justice.<sup>18</sup>

From this work it was possible to compile various testimonies of people who were arrested and tortured. Those who testified did

so, not only in reference to the suffering of physical and psychological torture, but also expressed themselves about the rupture of their life projects.

During the investigation carried out by the CNPPT, more than a thousand detention and torture facilities throughout the country were searched. Reparation policies were proposed at institutional, collective, individual and legal levels. There were also a series of proposals related to the prevention of human rights violations, through the incorporation of rules of international law. These laws aspire to guarantee that these events do not happen again: measures of diffusion, education in human rights, and the creation of a public law foundation in charge of reflecting and promoting initiatives that aim at a respectful coexistence of people’s rights, as well as to continuing the work aimed at discovering the truth about past violations and obtaining justice with respect to them.

During 2010, and until August 2011, the Advisory Commission for the qualification of disappeared detainees, politically executed and victims of political imprisonment and torture (colloquially known as the Valech II Commission) was reopened, recognizing 9,795 new victims of political imprisonment and torture, and 30 new cases of political executions and disappeared detainees.

As a result of the work of these four commissions, developed at different stages of the post-dictatorial period, a total of 3,216<sup>19</sup> disappeared or executed victims were qualified, as well as 38,254 victims of political imprisonment and torture. A summary table of truth commissions by year is presented below:

#### **Truth and Reconciliation Commission<sup>20</sup> (1990–1991)**

- Victims of serious human rights violations: **2,130**
- Victims of political violence: **168**

#### **National corporation for reparation and reconciliation (1992–1994)**

- Victims of serious human rights violations: **644**
- Victims of political violence: **255**

12 The CNVR handed over 221 cases to the courts of justice for investigation (most of these corresponded to the period covered by the self-amnesty law; that is, they were cases that were reopened but promptly amnestied). The records were sent without even, in most cases, personally notifying the families, who mostly found out when a court summons arrived, reviving their fears and insecurities.

13 The corporation became a party to the judicial proceedings investigating the forced disappearance of persons and to the trials resulting from the discovery of human remains. It was subsequently replaced by the Human Rights Program of the Ministry of the Interior, which exists to date, whose function is expressed in article 6 of Law No.19,123: “*the localization of disappeared detained persons and of the bodies of executed persons as well as the clarification of the circumstances of the disappearance or death constitute an inalienable right of the relatives of the victims and of Chilean society*”.

14 President of Chile from March 11, 1994 to March 11, 2000

15 It continued working during the mandate of Ricardo Lagos, who was president of the country from March 11, 2000 to March 11, 2006.

16 See Law No. 19.687, [http://pdh.minjusticia.gob.cl/wp-content/uploads/2015/12/Ley\\_19687\\_DeL\\_Secreto.pdf](http://pdh.minjusticia.gob.cl/wp-content/uploads/2015/12/Ley_19687_DeL_Secreto.pdf)

17 Law 19.992, Title IV of the secret, article 15, promulgated in December 2004. At [www.leychile.cl](http://www.leychile.cl)

18 For more information see chapter Archives of the regime

19 Between 2007 and 2009, a correction was made for qualification errors, reducing the total to 3,186 non-survivor victims. Reparation measures in Chile since 1990, Human Rights Observatory, Centre for Human Rights

20 Roblero Walter, “*Número de víctimas calificadas por las Comisiones de Verdad en Chile*”, Internal Working Document June 2019

### Dialogue Table (1999)

- Identified disappeared or executed detainees

### Commission on political imprisonment and torture (2003)

- Victims of political imprisonment: **28,459**
- 94 % victims of torture

### Presidential Advisory Commission for the qualification of the detained, disappeared, executed for political reasons and victims of political imprisonment and torture (2010–2011)

- Victims of political imprisonment and torture: **9,795**, totaling **38,254**
- **30** cases of new non-survivor victims (executed or disappeared detainees), totaling **3,216**

## EXPULSED POLITICIANS

One of the forms of repression was the dismissal of workers in public administration and from some companies intervened by the State during the government of popular unity, which were accused of being members or supporters of the Salvador Allende government.

Expulsion took various forms, whether through forced signatures of resignations, settlements or dismissal records, the elimination of charges, or the prohibition of entry to workplaces, in addition, detention and non-attendance were reasons for layoffs. The difficulty of finding stable jobs, or prolonged unemployment due to political persecution, meant years of unemployment, and jobs without welfare, so that the conditions for retirement were very precarious for the expelled.

According to the figures in Lira and Loveman's book<sup>21</sup> for 2003, the number of people who benefited in 1993 by Law 19.234 was 14,508, and those covered by Law 19.582 of 1998, were 59,444 people, according to a report by the Undersecretary of Social Welfare. In the presidential human rights proposal "*No hay mañana sin ayer*"<sup>22</sup> (There's no tomorrow without yesterday), between 1993 and 2003, 86,208 people were recognized as politically expelled.

It should be noted that those who qualify in more than one category of victim, for example as a survivor of political imprisonment and torture; and at the same time as expelled; the law states that they must opt for one of the economic benefits.

## HERITAGE DESIGNATION OF SITES OF MEMORY

*By heritage designation we mean the official recognition of values of various types attributed to a cultural good, and the application to it of specific procedures, protocols, modes of visibility and access included in its valorization, and which include a series of processes and interventions, including identification, registration, conservation and dissemination. (CNCA. UMDDHH, 2017:13; CNCA, 2017: 6)<sup>23</sup>*

Sites of memory are places that have managed to remain over time, and that have a history linked to human rights violations under a dictatorship. Broadly speaking, most of them were detention centres, both official and clandestine, as well as places where victims were found, such as mass graves.

It has been mainly civil society organizations that have maintained a constant demand for the protection and recognition of these sites, necessary to keep the memory alive, as spaces of record of our recent history.

In this sense, one of the first steps taken was by Sola Sierra and Viviana Díaz, who belonged to a group of family members

of disappeared detainees. They had warned about the Lonquén Furnaces<sup>24</sup> situation, which had already been damaged in previous years. The site was going to be sold to create a new landfill in Santiago. Under this context, the alternative of legal protection is stipulated by exemption decree No. 24.<sup>25</sup> The Furnace was later declared a monument.

From this first declaration, a registry of significant sites related to human rights violations entailed the identification of 21 monuments, which was carried out until 2016. This has made it possible to set up projects for sites of memory, organizing various activities to remember the victims.

According to Garretón, González and Laufan,<sup>26</sup> there is a record of 31 public policies, of line of heritage designation sites made between 1990 and 2009. It is also clear that 2006 marks the greatest number of initiatives registered under the first year of Michelle Bachelet's<sup>27</sup> presidential term.

Currently, they have been identified as sites of memory, spaces that made possible the social and political resistance to the dictatorial regime, which broadened the vision of a site of memory, and has allowed for the inclusion of new discourses. To date, there is no cataloguing of heritage, but civil society claims its protection and official valuation.

Sites of memory have been designated heritage sites throughout the country, which does not always imply the existence of resources for their maintenance and dissemination.

Public policies of memory have the purpose, not only to promote the memory and honour of the victims, but also to install a message of rejection of crimes that repudiate the conscience of humanity. At the same time, some sectors have argued that memory divides, that the memory of human rights violations during the 1973–1990 military dictatorship cannot be exposed without understanding the causes of the institutional breakdown. It must be recognized that Chilean society is divided, and that on certain commemorative dates, or in spaces that promote memory, there are confrontations relating to different positions and readings of the recent past.

## LAW ON PRESUMED DEATH

The disappearance of hundreds of people did not only have effects on human rights issues; along with the pain, the family

21 Elizabeth Lira, Brian Loveman, *Políticas de Reparación Chile 1990–2004*, Santiago: Editorial Lom, 2005

22 See <https://bibliotecadigital.indh.cl/bitstream/handle/123456789/183/no-hay-manana.pdf?sequence=1>

23 Gloria Elgueta, "*Institucionalización y patrimonialización de sitios de memoria en Chile. Una lectura desde la experiencia de Londres 38*", in *Aletheia*, volume 8, No. 16, June 2018, [http://www.londres38.cl/1934/articles-101160\\_recurso\\_1.pdf](http://www.londres38.cl/1934/articles-101160_recurso_1.pdf)

24 Lonquén Furnaces is a place where the remains of people who disappeared in Chile were found on November 30, 1978. These people had been arrested in the town of Isla de Maipo on October 7, 1973. After this discovery, the place that belonged to a private person, was put up for sale to transform it into a landfill. A situation that was stopped by a group of family members, opening the debate and demanding the safeguarding of sites like this one all over the country

25 Council of National Monuments "Heritage of human rights in Chile 1996–2016"

26 Francisca Garretón, Marianne González, Silvana Lauzán, "Políticas Públicas de Verdad y Memoria en 7 países de América Latina (Arg, Bol, Br, Ch, Per, Par y Uru)", Human Rights and Democracy programs, Centro de Derechos Humanos, Universidad de Chile Law School, Santiago, March 2011

27 President of Chile between March 11, 2006 and March 11, 2010 and then a second term between March 11, 2014 and March 11, 2018.

members also had to deal with legal, patrimonial and private issues.

After the end of the dictatorship, the only way to give legal status to the rights of family members over the property of a disappeared detainee was to acknowledge their natural or presumed death. Many refused to do so, since it was neither possible nor acceptable for them to acknowledge the death of their family members, without clarifying the circumstances and those responsible. They also pointed out that the use of this concept could also weaken the demand for truth and justice.

For this reason, in June 2008 the Executive proposed a bill establishing a new legal concept to regulate these issues: forced disappearance, a concept that was not recognized in national law, as defined in the international field of human rights.

Thus, Law 20.377, published in August 2009, defines enforced disappearance as *“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which occurred between 11 September 1973 and 10 March 1990”*.<sup>28</sup>

The law establishes that the spouse or children of the disappeared person may request a declaration of absence due to enforced disappearance, and if they do not exist, the descendants or their ancestors may request it, and in the absence of these, their collateral relatives.

With the accreditation of this application by means of the corresponding certificates issued by the Civil Registry and Identification Service, or by services of a similar nature of foreign states, the judge will decide on the admissibility of the application, within a maximum of 30 days.

Sufficient proof of enforced disappearance shall be the inclusion of a person in the report of the CNVR, or in the National Corporation for Reparation and Reconciliation report, as well as in reports of commissions of the same nature that may be created, either as a disappeared detainee or as having been executed, in the case in which a corresponding death certificate does not exist.<sup>29</sup>

## **SOCIAL SATISFACTION**

The idea of creating a Human Rights Institute was first born in a project presented by parliamentarians, and then by an executive proposal in 2005. This carried out part of the recommendations made by the CNPPT and sought to strengthen the institutionality of human rights, given the recent dictatorial experience in Chile. The purpose of this body is to deal with education, prevention, promotion and protection of human rights in the country. Law No. 20.405 created the National Institute of Human Rights, published in the Official Gazette on December 10, 2009.

## **EDUCATION PROGRAMS**

The National Human Rights Program PNDH stipulates the creation of the Undersecretary of Human Rights through Law No. 20.885. This law has the mission of proposing to the Ministry of Justice and Human Rights the definition and execution of the policies that are guaranteed in the promotion and protection of human rights. The law contemplates aspects

such as: *“guidelines on objectives and targets, identification of those responsible, financial resources available, and mechanisms for monitoring and evaluating results, in order to identify difficulties and take appropriate corrective or complementary actions”*.<sup>30</sup>

The PNDH will carry out the guidelines emanating from the NHRI and international organizations. Among the fundamental aspects we can emphasize the points aimed at the development of investigation, punishment and redress of crimes of the dictatorship (1973–1990), conservation and defence of the historical memory around the violations of human rights, education and formation in this matter, at the levels of kindergarten, primary, secondary and higher education. In addition to this, the training, formation and improvement programs of the authorities and officials of State bodies and armed forces, Carabineros, Investigations Police and Chilean Gendarmerie.

## **REHABILITATION STATUS**

There are no official figures. When consulting the NHRI, it was indicated that the responsible bodies should be notified, to gain more information on the use of the benefits of each one of the recommendations of the truth commissions indicated in the previous points. This is mainly due to the fact that the institutionality has concentrated on implementing the measures, and there have not yet been any analyse that officially define their level of impact.

The systematization of information on the use of reparation policies is a debt maintained by the agencies in charge of supervising their execution and implementation. Official information from the Transparency Council indicates that there are 613,460 users of the Reparation and Health Care Program PRAIS, while the body indicates that there are 784,300 beneficiaries, the difference of 170,840, is due to the prior registration of users, in the computer system of the National Health Fund FONASA.<sup>31</sup>

## **FORMER VICTIMS' ORGANIZATIONS**

Groups, both of families of the detained-disappeared AFDD, and of executed politicians of AFEP formed in the first days of the dictatorship, in order to respond and help those who were having their basic rights violated. Those who were looking for their family members found themselves in the small spaces of welcome that existed, first under the protection of the churches, and later over the years, thanks to the creation of different human rights organizations that were founded. The national dimension of the demand for truth and justice, carried out by

28 At [www.leychile.cl](http://www.leychile.cl)

29 “Law regulates property and family matters of missing detainees”. Chilean Chamber of Deputies, February 2010, [https://www.camara.cl/prensa/noticias\\_detalle.aspx?prmId=](https://www.camara.cl/prensa/noticias_detalle.aspx?prmId=)

30 First National Human Rights Plan, <https://planderechoshumanos.gob.cl/files/plan.pdf>

31 Boris, Yaikin, *“Las cifras ocultas del PRAIS: El programa de salud para víctimas de la dictadura con fecha de vencimiento”*, in El Desconcierto, 22. 8. 2016, <https://www.eldesconcierto.cl/2016/08/22/las-cifras-ocultas-del-prais-el-programa-de-salud-para-victimas-de-la-dictadura-con-fecha-de-vencimiento/>



the families of victims, grew stronger and stronger, and the body was formally established, with a central directive and regional representatives. This structure was maintained after the end of the dictatorship, and even managed to further consolidate, as many of these groups were establishing dynamics of increasingly systematic work, keeping to this day the demand for truth, justice and memory, as alive as in the early years of the dictatorship.

At the same time, during the 1980s, Groups of Families of Political Prisoners began to emerge, which organized themselves to take legal action, to raise funds to improve the quality of life of those in prison, and to help each other, especially those in the most vulnerable economic situations.

Part of the common work of these types of civil organizations, which had their origins during the dictatorship, some of which were maintained after the recovery of democracy, was the reporting of human rights violations that were experienced in Chile, and that the world should know about in order to support and apply pressure to end the dictatorship.

Subsequently, groups of former political prisoners, along with family members, and part of the community aware of the issue, began work to recover the historical memory of the various detention centres. According to the report of the CNPPT, there were 1,132 detention centres,<sup>32</sup> places that were intended for disappearance or simply demolition, as was the case of the barracks Terranova, better known as Villa Grimaldi.<sup>33</sup>

It should also be mentioned that the work of the truth commissions also motivated many former political prisoners to group together and present their demands for reparation to the State, jointly, in order to strengthen their resources and mutually support each other after the difficult process of reliving what they had experienced.

Currently, the majority of these groups work in different ways, but there are commemorative dates and places that bring them together in a transversal way. The struggle for truth, justice and memory is a common task, which is projected from different sides, especially aimed at educating about human rights, and increasing awareness among new generations.

## LESSONS LEARNED – EXPERIENCE GAINED

It is necessary to recognize that the greatest value of the truth commissions is the act of reparation. The fact that the State is in charge of recognizing the crimes and publicly reporting the facts, dignifying the victims and proposing reparation measures, has in itself a value and impact on society, and especially on the victims and their families.

The acceptance of monetary compensation by families was not easy. At the beginning there was resistance, since it was thought that it could be interpreted as a renunciation of justice. It has been recognized as a right of the victims and their families, and a responsibility of the State in the face of the damage caused.

## JUSTICE PROCESSES

Based on the truth reports of the commissions, judicial lawsuits were initiated on the particular decision of the family members and human rights organizations. In most cases, it has been the persistence of the family members that has allowed the processes to be carried out and the justice to be advanced.

The jurisprudence of the Chilean courts has developed progressively; first, by applying the amnesty law and not by processing the complaints of the families of executed and disappeared detainees; second, by applying the so-called “Aylwin doctrine”: that investigated the facts, and once established, the participation of persons applied for amnesty; third, it received complaints for the disappeared, understanding that the crime was of permanent execution, and therefore not covered by the amnesty of 1978; finally, after Pinochet’s arrest in London in 1998, judgments were issued that applied principles of international law; the most serious crimes were not considered to be subject to amnesty or the statute of limitations.

Convictions generally do not exceed 5 years, and those found guilty have easy access to prison benefits such as probation or house arrest. In this respect, civil society exercises control and denounces these irregularities.

There is a great annoyance expressed in demonstrations of repudiation rejecting the privileged locations that have been created in prisons for the criminals of human rights violations. Until September 2013, one of the prison facilities was located inside an army barracks. This was closed by President Sebastián Piñera,<sup>34</sup> due to the context of the 40 years of the coup d’état, and the condemned were sent to an exclusive facility for those accused of crimes against humanity.

## REPARATION MEASURES

The perception of reparation is diverse for the beneficiaries. For most of them, having been received, listened to, and recognized by the State that had previously acted against their dignity, and so severely and dramatically affected their lives, as well as receiving the reports of the truth commissions with their names or those of their families and the public recognition of the authorities, had a high significance, but at the same time regarding the issue; a critical stance is known. *“The reparation measures adopted by the Chilean government and parliament for people particularly qualified about political imprisonment and torture are flanked by permanent criticism by the victims, who find them insufficient, unsuitable and partial. This criticism may be seeming worthy of consideration, but it is not a fault that can be attributed to the commissions themselves”.*<sup>35</sup>

The reparation implemented attempts to compensate, in some way, these serious crimes. However, the challenge is to further integrate the victims, and create conditions that allow them to feel more and more part of the society that once excluded them. It is necessary to do so in the area of truth, justice and reparation.

## ADMINISTRATIVE PRACTICES OF THE STATE

It is necessary that the persons in charge of the administrative management granting reparation benefits to the victims know and assume the meaning of their role. Although it is a right, it is always painful for the victims and their families to face the formalities they must carry out. It is linked to trauma, pain, loss and therefore must be treated with respect and dignity.

32 The number increases as the years go by

33 See <http://villagrimaldi.cl/historia/>

34 President of Chile between March 2010 and March 11, 2014. He is currently serving his second term as president-elect.

35 Presentation Maria Luisa Ortiz Seminar on Truth Commissions, Brazil 2014



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# EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

OMAR SAGREDO MAZUELA

## INTRODUCTION

This chapter analyzes the general course followed by the social and political process of the preservation of sites of conscience and memory<sup>1</sup> in Chile between 1990 and 2018, emphasizing three aspects: the redefinition of the former repressive centres of the civil-military dictatorship (1973–1990); the role and main characteristics of the diversity of existing places of memory; and the development of educational proposals arising from both the State and the sites of conscience for the teaching of the recent past.

To address these issues, the paper describes three areas. First, the actions of civil society in terms of the creation of memorials and the recovery and repurposing of former detention and torture centres, under the demands for truth, justice and reparation. Second, the political-institutional provisions deployed by the State of Chile to address the protection of material memory from dictatorial repression. Finally, according to the Chilean experience, some lessons and recommendations are presented in the field of the heritage designation of memory, highlighting the main strengths and threats that exist in Chile with respect to the future of the various sites and their pedagogical proposals.

## HISTORICAL BACKGROUND

During the civil-military dictatorship, the State of Chile deployed a massive and transversal repressive policy, seeking to discipline society as a whole ideologically, articulating the application of repression with the introduction of its political project.<sup>2</sup> In order to meet that objective, it relied on the measures implemented by security agencies specializing in political persecution and torture: The National Intelligence Directorate (DINA) and the National Information Centre (CNI).

In 2004, the National Commission on Political Imprisonment and Torture Report addressed the existence of kidnapping, torture and extermination centres,<sup>3</sup> determining that during the years of the authoritarian government, a systematic policy of torture of opponents was pursued, identifying the existence of 1,132 centres (official and clandestine) used for these criminal practices. The fate of these places, during and after the dictatorship, has been diverse. Since the beginning of the transition to democracy, the recovery and public opening of these sites as sites of conscience and memory has been one of the main objectives of the human rights movement in Chile.

## TRANSITIONAL CONTEXT AND SITES OF MEMORY

During the dictatorship, and especially during the last years of government, the *de facto* authorities destroyed or covered up the centres used for kidnapping, torture and murder, through various mechanisms: intentional demolition, alteration of addresses of public office buildings, barred access through geographical

barriers (in sites located on islands in the south of the country), avoiding admitting their existence mainly due to the absence of surviving prisoners, the centres belonging to agents, mostly military, who are opposed to facilitating their access or the transfer of property to civil actors, who directly or indirectly prevent public actions on the site and overlapping efforts that attempt to annul the identity of the centres.<sup>4</sup>

Once the transition to democracy had begun, the recovery of the former repressive centres was not part of the measures proposed by the government of President Patricio Aylwin (1990–1994). The opening of the only memorial officially built in that period (the monument to the detained, disappeared and politically executed at Santiago's general cemetery), did not have official recognition of the government. During the presidency of Eduardo Frei Ruiz-Tagle (1994–2000), for the first time, a historic site related to human rights violations was declared a National Monument: Hornos de Lonquén.<sup>5</sup> However, this measure did not respond to a State policy on the recovery of historic centres associated with the humiliations of the recent past, but was an initiative of the National Monuments Council<sup>6</sup>

1 In conceptual terms, "sites of memory" means "any significant entity, whether material or non-material in nature, which by dint of human will or the passing of time has become a symbolic element of the memorial heritage of any community". Pierre Nora, *Les lieux de mémoire*, Paris: Gallimard, 1997, 17. As for the notion of "sites of memory": "physical spaces where serious human rights violations were committed, or where these violations were resisted or confronted, or that for some reason the victims, their families or communities associate with these events, and that are used to recover, re-think and transmit traumatic processes, and/or to pay tribute and reparation to the victims". Fundamental Principles of Public Policies on Memory Sites, The MERCOSUR Institute of Public Policies on Human Rights (IPPDH), Buenos Aires: Ediciones IPPDH, 2012, 12. Finally, regarding the definition of "sites of conscience": those in which history is reinterpreted through the relationship with spaces and materials; audiences engage in programs that foster dialogue on pressing social issues; opportunities are provided for collective participation in issues raised at the site; and democratic and humanitarian values are promoted as a fundamental objective. International Interpretation of Sites of Memory, Coalition of Sites of Conscience, online, 2018, 14–15.

2 In order to delve deeper into the political-institutional characteristics of Pinochet's regime, it is recommended reviewing the chapters "Dismantling the state security apparatus" by Claudio Fuentes and "Transformation of the political system" by Mireya Dávila, corresponding to this dossier.

3 National Commission on Political Imprisonment and Torture Report, National Commission on Political Imprisonment and Torture, Ministry of the Interior, Government of Chile, 2004, 261.

4 Macarena Silva, Fernanda Rojas, "El manejo urbano-arquitectónico de la memoria urbana traumatizada", in Carolina Aguilera, Carolina Cárcamo, *Ciudad y Memorias. Desarrollo de Sitios de Conciencia en el Chile Actual*, Santiago: Ediciones de la Corporación Parque por la Paz Villa Grimaldi, 2011, 78–84.

5 An old facility located on the outskirts of the city of Santiago, in which, in 1978, the remains of detainees murdered by the dictatorship were found.

6 Public institution, under the Ministry of Culture, Arts and Heritage, which aims to protect and teach about the cultural and natural heritage of a monumental character. See <https://www.monumentos.gob.cl/acerca/quienes-somos>

and the Directorate of Libraries, Archives and Museums (DI-BAM), which received a request from the Group of Families of Detained-Disappeared and the Group of Families of Political Prisoners Executed.<sup>7</sup>

In official terms, the 1991 National Commission on Political Imprisonment and Torture Report recommended publicly, referring to the good name of the victims and remembering what had happened, entrusting the State with the task of committing acts and creating symbols to give national meaning to reparation.<sup>8</sup> The National Commission on Political Imprisonment and Torture Report proposed the “[d]eclaration of the main torture centres as national monuments and the creation of memorials and memorial sites for victims of human rights violations and political violence.”<sup>9</sup> However, these approaches were not translated into specific regulations or public policies.

During the government of President Ricardo Lagos (2000–2006), in the framework of the second line of action (“Improving social reparation measures for victims”) of the policy entitled “*No hay mañana, sin ayer*” (There is no tomorrow without yesterday), an agreement was reached in 2003 between civil society human rights organizations and the Executive Branch to promote the construction of memorials. However, civil society has criticized this policy, since it did not involve the development of places that could be projected as sites of conscience. For the first time since the end of the dictatorship, the second term of President Michelle Bachelet (2014–2018) proposed in her government program, a plan of “recovery of all sites of historical memory where human rights were violated, ensuring their basic and permanent maintenance.”<sup>10</sup> However, there were no concrete measures that achieved that objective.

## THE NEED TO PRESERVE SITES OF MEMORY: CIVIL SOCIETY AND PUBLIC HERITAGE POLICIES

In the absence of an adequate law for the recovery of former detention centres and the opening of sites of memory, the protection of sites through existing regulations for historic monuments has been the main mechanism provided by the State to resolve civil society demands. In this regard, the most important task has been developed by the National Monuments Council,<sup>11</sup> through the implementation of Law No. 17.288 on national monuments, a regulation promulgated in 1970, which does not include references to historical sites associated with human rights violations.<sup>12</sup> The former repressive centres that have been recognized as national monuments, as historic monuments through this law, have followed an application process beginning with the entry of the application to the National Monuments Council by civil society organizations. The request is evaluated and if it is accepted, a resolution is issued that identifies delimitations and attributes of the site. Finally, the declaration must be ratified by the Ministry of Culture, Arts and Heritage.

After the first declaration issued (Lonquén furnaces in 1996), during the government of President Lagos, in 2002 and 2003, respectively, similar declarations were issued about the José Domingo Cañas and Estadio Nacional sites; two former detention, torture and extermination centres of the dictatorship. Both declarations were based on citizen movements composed mainly of survivors and their families, who put pressure on the State to protect and guarantee the sustainability of these sites.<sup>13</sup> In 2004, Parque por la Paz Villa Grimaldi was declared a national

monument, being the first place to receive this recognition when it was already a site of memory open to the community.<sup>14</sup>

In continuity with these experiences, subsequent national monument declarations have replicated the social and institutional procedures described above (i.e. through civil society denunciation campaigns, submitting the request for a declaration to the National Monuments Council and giving new meanings to the sites). Thus, more than 30 civil society organizations have been formed at the national level with the aim of recovering certain centres or installing memorials. These groups are characterized by being related: a) to repressive experiences (direct victims and/or families of victims); b) to some emblematic repression place (survivors and neighbours of the centre); c) to political militancy (militants who seek to value the memory of fellow party members who were victims); and d) to the promotion of human rights (extending the work of memory to more general issues such as justice and truth).<sup>15</sup>

7 Ángel Cabeza, “Introducción al Patrimonio de los Derechos Humanos en Chile”, in Ángel Cabeza et al., *Patrimonio de la Memoria de los Derechos Humanos en Chile. Sitios de Memoria protegidos como Monumentos Nacionales 1996–2016*, Santiago: Consejo de Monumentos Nacionales, 2016, 15.

8 National Commission on Political Imprisonment and Torture Report, National Corporation for Reparation and Reconciliation, Vol. 1, Vol. 1, Santiago: 1996, 824.

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10 Michelle Bachelet’s Government Program 2014–2018, 165, [http://www.subdere.gov.cl/sites/default/files/noticias/archivos/programamb\\_1\\_0.pdf](http://www.subdere.gov.cl/sites/default/files/noticias/archivos/programamb_1_0.pdf)

11 According to this law, what can be recognized as “Historical Monuments” are “those movable and immovable properties such as ruins, constructions and objects – among others – of government, municipal or private property, which for their historical or artistic value or for their antiquity must be conserved for the knowledge and enjoyment of present and future generations”. Law 17288, November 3, 2017, <https://www.leychile.cl/Navegar?idNorma=28892>.

12 At the time of preparation of this paper a bill sent by President Sebastián Piñera in May 2019 is under parliamentary discussion, which seeks to update these regulations. The objective of the bill is to modernize the institutional framework that regulates national monuments, update the categories and provide effective protection to the cultural heritage in Chile through its identification, preservation, enhancement, management and promotion. Sites of memory are defined as “goods of cultural interest”, meaning: “all places where serious violations of human rights have been committed, or where such violations have been resisted or confronted, or which for any reason the victims, their family or the community associate with such acts, declared such in order to provide symbolic reparation to the victims and their families, to stimulate knowledge and reflection on what has happened and to avoid its repetition; or which make it possible to promote processes for the construction of linked memories, such as human rights education” (see [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=13243&prmBoletin=12712-24](https://www.camara.cl/pley/pley_detalle.aspx?prmID=13243&prmBoletin=12712-24)).

13 Cabeza, op. cit., 59–73.

14 Villa Grimaldi, one of the most important repressive centres of the dictatorship, was recovered by a citizens’ movement. In 1994, by coordinating public denunciation actions and institutional dialogues with representatives of the Parliament and the Municipality of Peñalolén, it was possible for the State to expropriate the site and give it to a civil association composed mainly of survivors of the site. After a process of symbolic redefinition, in 1997 the site was inaugurated with the title of Parque por la Paz Villa Grimaldi. Corporación Parque por la Paz Villa Grimaldi, *20 Años Sitio de Memoria. Villa Grimaldi Parque por la Paz, Santiago: Corporación Parque por la Paz Villa Grimaldi, Consejo de la Cultura y las Artes*, 2017, 69–75.

15 Evelyn Hevia, Las organizaciones, los lugares y sus usos, in Isabel Piper, Evelyn Hevia, *Espacio y recuerdo*, Santiago: Ocho Libros, 2012, 32.

Until 2014, the reactive state provision regarding the protection of the sites was clearly observed, achieving under this scheme the declaration of twelve monuments. These places correspond to centres linked to the repression in the period immediately following the coup d'état and during the operation of the DINA. Of the twelve, ten are in the city of Santiago. In the period between 2015 and 2018, the situation has shown some changes. The National Monuments Council has implemented a participative methodology, through which it has worked with family members, groups and state agencies in order to generate a representative scheme at the national level of the different repressive periods.<sup>16</sup> Under this criterion, twenty-seven historical monuments relating to human rights violations have been declared; fourteen are in Santiago and thirteen in other regions and rural areas. Progress was also made in recognizing archives and centres that are still used by the armed forces as national monuments.

In addition to the National Monuments Council, two public bodies have contributed to the development of sites of memory. First, the Human Rights Program of the Justice and Human Rights Ministry,<sup>17</sup> which, especially through their projects, memorials and institutional management area, has generated funding for the preparation of memorials, testimonial archives, research and other initiatives to which sites of memory must have access through public procurement. Second, the Culture, Memory and Human Rights Unit of the Ministry of Culture, Arts and Heritage, a body that has developed extension and training opportunities for workers and site representatives, mainly in the cultural management area, with a special focus on direct dialogue with organizations.

Of the thirty-nine sites declared as national monuments, only seventeen have been recovered as sites of memory, after the Ministry of National Assets, through expropriations, swaps or purchases, acquired the properties to then deliver them in concessions or free loans to civil society organizations that have mobilized for their rescue. Among the latter, only thirteen sites are open to the public, with the development of commemorative and educational activities, in addition to other initiatives such as publications, archives and museum displays. The management of these sites of memory is carried out by non-profit private law organizations, which can access funding through two channels: collaboration agreements (signed with the former DIBAM, currently the National Heritage Service of the Ministry of Culture, Arts and Heritage)<sup>18</sup> and competitive funds (particularly through resources competed for by the Human Rights Program and the Heritage Fund of the Ministry of Culture, Arts and Heritage). The organizations that do not own the sites to which they appeal, in addition to not being able to access the centres, do not have concession contracts that allow them to obtain resources.

In 2018, during the second administration of President Bachelet, the National Human Rights Plan was designed and promulgated under Law No. 20.885, within which, with respect to the safeguarding of memory, the following goal was set: "To preserve the historical memory of massive and systematic violations of human rights, ensuring the safeguarding of historical heritage in this matter, and the articulation of public institutions dedicated to the rescue, conservation and dissemination of this heritage."<sup>19</sup> Within this objective, to date, five measures have been launched concerning the strengthening of the "Memory Routes";<sup>20</sup> the publication of texts on sites declared as National Monuments, the protection of heritage and the financing of new sites, and the transfer of some properties associated with human

rights violations owned by the Army to the Ministry of National Assets. On the other hand, five other committed measures have not yet been carried out, the most relevant being the bill that identifies and guarantees preservation and defines the management of sites of memory.

## TYPES OF SITES OF MEMORY AND NATIONAL AND INTERNATIONAL NETWORKS

Thanks to the conceptualizations proposed by the National Monuments Council, the patrimonialization of sites of memory in Chile has been generated from the notion of "human rights heritage", understanding places as "cultural heritage that corresponds to archaeological and systemic or contemporary sites, to movable and immovable property that are material and symbolic testimony of various processes related to human rights, civil and political from the point of view of their violation, defence and promotion in general terms".<sup>21</sup> In specific terms, the National Monuments Council has created a typology of Chilean sites of memory, based on the role they played during the dictatorship. This scheme is made up of five types of heritage: a) sites linked to intelligence and counterintelligence actions (barracks, brigades and intelligence schools); b) sites where repression was carried out (clandestine detention, torture and execution centres, burial/exhumation graves, prison camps, public prisons, military regiments and bases, stadiums, gymnasiums and public infrastructure); c) places where human rights violations were resisted (union and social headquarters, human rights NGOs); d) archives of repression and human rights memory; e) memorials and marks (informative plaques and memorials, sculptures and memorial sites).<sup>22</sup>

Most of these sites share the characteristic of being "site museums", i.e. spaces designed and organized to protect a cultural heritage, movable and immovable, preserved in its place of origin.<sup>23</sup>

16 Annual report on Human Rights in Chile 2018, Human Rights Centre, Santiago: Universidad Diego Portales, 2018, 100.

17 The Human Rights Program is an official body created to continue the work of the National Corporation for Reparation and Reconciliation, providing legal and social assistance to the families of disappeared detainees and political prisoners who have been described as victims of human rights violations, promoting, disseminating and supporting symbolic cultural and educational reparation actions. See: <http://pdh.minjusticia.gob.cl/verdad-y-justicia/>

18 This funding is discussed annually in the National Congress. Between 2010 and 2017, these resources were granted to the sites through the Directorate of Libraries, Archives and Museums (DIBAM). After the creation of the Ministry of Culture, Arts and Heritage, these funds were relocated to the National Service for Cultural Heritage, the successor to DIBAM.

19 National Human Rights Plan, <https://planderechoshumanos.gob.cl/plan-nacional-de-derechos-humanos>

20 The Memory Heritage Routes are schemes proposed by the Ministry of National Assets to know and visit various places of memory in the city of Santiago. *Ruta de la Memoria*. Santiago 1973–1989, Ministry of National Assets, Santiago: Government of Chile, n/f., 16.

21 Working Document on Human Rights Heritage. Sites of memory, memorials, archives and objects of memory, National Monuments Council, Santiago: Cultural Heritage Service, Ministry of Culture, Arts and Heritage, Government of Chile, 2018, 28.

22 *Ibid.*, 44–45.

23 The full definition of "site museum" proposed by the International Council of Museums is "Museum designed and organized to protect a natural and cultural heritage, movable and immovable, conserved in the place where this heritage has been created or discovered".



However, the definition of “museum” is a complex issue, some sites of memory reject the association of this term with memorialization work.<sup>24</sup> Although some sites have chosen to approach the definition of “museums”, only the Parque por la Paz Villa Grimaldi has developed museological management and organizational tools, being the only place of memory in Chile that has a conservation area. This definition has allowed this site to link with international networks through the International Council of Museums (ICOM), being part of this global conglomerate since 2010 and participating, in addition to the headquarters of ICOM-Chile, in two thematic bodies that have national representation: the Committee for Education and Cultural Action (CECA) and the International Committee for Memorial Museums in Remembrance of the Victims of Public Crimes (ICMEMO). In the same sense, not all sites of memory have decided to be called “sites of conscience”. Currently, in Chile there are only six sites affiliated to the International Coalition of Sites of Conscience.

In terms of collective organization, in Chile there is a network of sites of memory that brings together representatives of sites (recovered or not), and whose main lines of action are the recovery of former detention centres and the acquirement of guarantees for the survival of the recovered spaces, through stable state funding.<sup>25</sup> At a regional level, the Latin American and Caribbean Network of Sites of Memory (RESLAC) operates, a conglomerate in which most Chilean sites of memory participate.

## ROLE OF SITES OF MEMORY

In general, sites of memory in Chile highlight three key elements in their functioning. First, the representation not only of historical values associated with the recent past, but also the evocation of the cause for a public memory of respect for human rights in the present. With regard to the materialization of the right to the truth, certain sites have carried out public campaigns to gain access to the archives of former repressive bodies (as part of the demand for the opening of all sources of information on human rights violations held by the State),<sup>26</sup> the prosecution of all repressors who have not been convicted and the demand for the definitive clarification of the whereabouts of the disappeared detainees.<sup>27</sup> Another action to highlight in this sense, is developed by some collectives of activists and survivors who manage or participate in certain sites of memory, who have organized groups of “human rights observers”, with the aim of monitoring and reporting possible police abuses during the development of public demonstrations.<sup>28</sup>

Second, in terms of symbolic repair, commemorative actions and the development of audiovisual archives stand out. All Chilean sites have calendars to commemorate both emblematic events of their own history (for example, the date of its opening as a site of memory or certain repressive events that occurred while operating as detention centres), and to commemorate some victims who were killed or disappeared in their facilities during the dictatorship. Currently, all sites commemorate the day of the coup d'état with different activities, and many of them have joined the celebration of Cultural Heritage Day,<sup>29</sup> the International Day of the Disappeared Detainee and the International Human Rights Day. Recognizing that the main substance of the content at the sites is the testimony of the survivors and the families of the victims, several collections that tell the stories of these subjects have been put together by the management teams of

the sites of memory. These testimonial archives are often constituted to recreate the history of the sites, to identify the practices of resistance and solidarity of the detainees and, are being created on a biographical basis, to address the phenomenon of militancy, and the social and political activism of the actors who have fought to recover the sites. Currently, there is a conglomerate that brings together these initiatives: The Oral History Network and Oral Archives.<sup>30</sup>

Finally, in Chile there are two aspects of the role of sites that have not been addressed adequately. First, their function as judicial evidence of human rights violations. Recently, several investigations in the field of archaeology have been developed that have generated proposals on the preservation of remnants and the recovery of diverse materials, from a historical perspective (even, a specific section of this subject was created in the College of Archaeologists).<sup>31</sup> Second, the eventual contribution of national reconciliation has not yet been addressed. Although the sites have not yet stated that their objectives include the contribution to “reconciliation” (considered, in some cases, to be contrary to this idea),<sup>32</sup> their aims relating to the promotion of a “democratic and human rights culture”,<sup>33</sup> indicate an intention to influence the ethical-political future of Chilean society. However, there is not enough evidence to determine the extent to which sites are appreciated by society as spaces that work on a divided memory of the recent past.<sup>34</sup> Anyway, in practice, it is clear that sites of memory represent the public struggle between oblivion and the commemorative and pedagogical meaning of memory. Proof of this controversial situation is found in the attacks on the sites

24 In the discussion about its projection, the institution Londres 38 stated: “[...] a site of memory should not be a museum, understood as a place where there is an exhibition of objects and little interaction between visitors and these objects [...]”. Gloria Ochoa, Carolina Maillard, *La persistencia de la memoria: Londres 38, un espacio de memorias en construcción*, Santiago: Edición de Londres 38, 2011, 104-105.

25 Mariana Zegers, “Sitios de Memoria en Chile”, in *El Desconcierto*, 12. 14. 2017, <https://www.eldesconcierto.cl/2017/12/14/sitios-de-memoria-en-chile/>

26 “No more secret files. Interview with Gloria Elgueta”, in *Revista de Gestión Pública*, Vol. III, No. 1, Santiago, 2014, 199-206.

27 Cath Collins, Katherine Hite, *Fragmentos de memoriales, silencios monumentales y despertares en el Chile del siglo XXI*, in Cath Collins, Katherine Hite, Alfredo Joignant, eds., *Las políticas de la memoria en Chile: desde Pinochet a Bachelet*, Santiago: Ediciones Universidad Diego Portales, 2013, 178.

28 Human Rights Observers in Chile, <http://www.observadoresddhh.org/>

29 Official body inviting civil society to visit historical monuments, museums and public and private heritage zones or buildings. It is held annually, during the last weekend of May.

30 Oral History Network and Oral Archives, <https://rhoao.wordpress.com/>

31 Adriana Goñi et al., *Sitios de Memorias, Arqueología y Conservación Propuesta conceptual de orientación y directrices de trabajo*, Santiago: National Conservation and Restoration Centre, 2017.

32 The site of memory Londres 38 is the main exponent of the criticism of the politics of reconciliation that would have developed the State of Chile. Ver <http://www.londres38.cl/1937/w3-article-93690.html>

33 This objective is mentioned in the mission and vision of several memorial sites, such as the Parque por la Paz Villa Grimaldi, Paine Memorial, Ex Clínica Santa Lucía and Estadio Nacional-Memoria Nacional.

34 A pioneering study in this field was carried out in 2017 taking as a sample the Museum of Memory and Human Rights. Although it is not an investigation of a site of memory, the results of the study are relevant, pointing out that this museum moves visitors to less confrontational attitudes, beyond their ideological positions. Elsa Voytas, Laia Balcells, Valeria Palanza, “Do Museums Promote Reconciliation? A Field Experiment on Transitional Justice”, in *Empirical Studies of Conflict Project (ESOC) Working Papers* 10, 2018, online.

and memorials by individuals and groups who exalt the dictatorial government and criticize the use of public resources for the development of these initiatives. In 2018, the National Institute for Human Rights counted at least eight instances of attacks and vandalism on memorials and sites declared National Monuments in different cities of the country.<sup>35</sup>

## SITES OF MEMORY AND EDUCATION

The National Truth and Reconciliation Commission report recommended strengthening human rights education at all educational levels, as well as in the training of the armed forces and internal security forces, as a mechanism for contributing to the generation of a culture of peace, respect and tolerance.<sup>36</sup> This approach implied, in practice, reforming the Organic Constitutional Law on Education (LOCE), inherited from the dictatorial regime. This regulation established that the Ministry of Education (MINEDUC) could not prepare national programs and plans, and that the curricular framework (made up of transverse fundamental objectives (OFT) and mandatory minimum contents (CMO)) would be determined by the Higher Education Council (CSE), an autonomous body headed by the Ministry of Education, and made up of representatives of the armed forces, the Catholic Church and the Supreme Court, as well as academics and scientists.<sup>37</sup>

Particularly with respect to the teaching of the recent past, in 1999, as a result of the work of the Technical Advisory Committee for the National Dialogue on the Modernization of Chilean Education (a body created by presidential decree), an adjustment to the transverse fundamental objectives, and mandatory minimum contents of the History and Social Sciences courses was approved, determining the approach to the dictatorship in the sixth year of basic education, and the second year of high school education, in two units, respectively: “Democratic crisis and military regime: new political constitution and new economic model”, “The transition and the recovery of democracy” and “The twentieth century: The pursuit of economic development and social justice”.<sup>38</sup> The mandatory minimum content for the study of the recent past in the second year of high school indicated that the revision of the period of the dictatorship was not mandatory. Proposing instead, in case teachers deciding to work on the historical stage, the thesis of the report of the National Truth and Reconciliation Commission, about the polarization prior to the coup d’état, should be used. Regarding the contents of the sixth year of basic education, the approach to human rights violations, the operation of repressive bodies and the action of bodies for the defence of fundamental rights were approved.

This last situation generated intense polarization between the College of Professors, which defended the reform, and conservative sectors of the Chilean right, who objected to it. Faced with the demands of the Jaime Guzmán Foundation and the rejection of the application of historical content by various municipalities governed by right-wing mayors, in 2000, the Ministry of Education decided to replace the text for the sixth grade of basic education.<sup>39</sup> Despite this, between 2004 and 2007, new adjustments were introduced, and promoted in response to the massive student mobilizations that were generated in that period for the demand of better conditions for access to public education.<sup>40</sup>

In 2009, during the first administration of President Bachelet, the replacement of the Organic Constitutional Law on Education

by the General Education Law (LGE) was enacted. By means of these regulations, the Ministry of Education incorporated into formal education, at the basic and intermediate levels, a series of fundamental transverse objectives regarding the approach to human rights and the recent past. The training plans directly oriented to these courses are presented in the third and fourth years of high school education.<sup>41</sup> In response to these important reforms, in 2011, at the request of the Executive Branch, the National Education Council (the successor body to the Higher Education Council) approved a conceptual modification to the History texts that replaced the term “dictatorship” with “military regime”. The situation generated intense controversy both in society and in government, against which the Ministry of Education promoted the possibility of the texts mentioning the period 1973–1990 in both forms.

The National Institute for Human Rights has periodically issued criticisms of the State’s educational policy on human rights and recent history. Specifically, the primacy of these contents in the History course has been highlighted with concern (with the approach to human rights violations committed by the dictatorship on issues such as economic, social and cultural rights predominating) and the weak introduction of human rights in higher education, and in the training of the armed forces and internal security forces.<sup>42</sup>

However, regarding sites of memory, most declare that education is one of their main tasks.<sup>43</sup> The sites, in general, have adopted the definition of human rights education proposed by UNESCO.<sup>44</sup> However, the use of the concept of “memory pedagogy” has been consolidated among the educators of the sites, to refer to an “educational proposal that uses the memory of traumatic events for the teaching and promotion of peace and human rights, “focused” on the development of values and, therefore, with a strong component sustained in emotiveness, making it possible “that from the perspective of learning there is the need to

35 Annual Report. Human rights situation in Chile 2018, National Institute for Human Rights, Santiago: Ediciones del Instituto Nacional de Derechos Humanos, 2018, 91–92.

36 National Truth and Reconciliation Commission Report, op. cit., 1263–1264.

37 National Education Council, <https://www.cned.cl/quienes-somos>

38 Leonora Reyes, “A 40 años del Golpe de Estado: el debate curricular inacabado”, in *Docencia*, No. 50, 2013, 36.

39 *Ibid.*, 42–43.

40 These reforms to curricular frameworks were not limited to the History course, but also incorporated the Language and Communication, Orientation and Philosophy sectors, adding qualitative elements of learning, such as tolerance and skills for the exercise of rights. Enrique Azua, “Educación en Derechos Humanos en el currículum chileno”, in VVAA, *Pedagogía de la memoria. Desafío para la Educación en Derechos Humanos*, Santiago: Heinrich Böll Stiftung Cono Sur, 2010, 121–123.

41 In the first case, fundamental objective 4 of the History, Geography and Social Sciences course reviews humanity’s efforts to build a world of peace, following the horrors of world wars, genocides and totalitarianism. While in the second, in the framework of fundamental objectives 1, 3, 4 and 5 of the same course, learning about the rule of law is addressed as the legal framework that protects the exercise of human rights. Human Rights Report for Students, National Institute for Human Rights, Santiago: Ediciones del Instituto Nacional de Derechos Humanos, 2014.

42 Human Rights Annual Report 2012, National Institute for Human Rights, Santiago: Ediciones del Instituto Nacional de Derechos Humanos, 2012, 308–310.

43 According to a 2018 survey of sites conducted by the National Institute of Human Rights, 82 % of the sites recovered and open to the community put on tours for students.

44 UNESCO and human rights education, UNESCO, Digital Library UNES-DOC, [https://unesdoc.unesco.org/ark:/48223/pf0000131836\\_spa](https://unesdoc.unesco.org/ark:/48223/pf0000131836_spa)

build knowledge from the memory of the subjects.”<sup>45</sup> Particularly, in the Parque por la Paz Villa Grimaldi, this proposal has evolved, complementing itself with thematic activities for students of different educational levels, now called “pedagogy of place of memory.”<sup>46</sup> Similarly, Memorial Paine has developed areas of reflection around memory and human rights, conducting site tours and art workshops with mosaics, exploring with students the current state of human rights.<sup>47</sup> From the emergence of these and other educational programs at various sites, a collaborative work of teams and educational areas has been generated, which has materialized in the creation and management of the network of educational areas of Sites of Memory and Conscience.<sup>48</sup>

At the time of writing of this document, three issues are seen as relevant to the development of human rights education in Chile. First, its inclusion in the National Human Rights Plan, through the introduction of the citizen training plan, as a complement to the existing contents of the History course. Second, a proposal by opposition deputies for the incorporation of a compulsory course on human rights and historical memory in formal education is under discussion at the National Congress. Finally, there is a growing preference of students for a dictatorial regime over a democratic one.<sup>49</sup>

## LESSONS LEARNED AND RECOMMENDATIONS

In Chile, the development of sites of memory and the educational proposals associated with them on education of the recent past, and human rights has followed a complex process, relatively dissociated from the democratizing progress of the political transition. In this sense, the main lesson of the Chilean experience is the lack of a uniform and long-term public policy regarding both the recovery of the old detention, torture and extermination centres, and the opening and maintenance of sites and memorials. It is possible to affirm that sites of memory have developed in a context of “post-transitional justice”<sup>50</sup> that is, under a socio-political scheme in which memory initiatives are articulated not only by the State, but also in dialogue with civil society (and often under its leadership), through transversal organizations of activists, victims and family members, overcoming the political-institutional limitations and official reconciliation logics of the first stage of the transition.

This situation has generated at least two scenarios. On the one hand, that the process of rescuing material memory, its redefinition and opening as public historic spaces, is primarily a matter for civil society. Therefore, the work of “memory entrepreneurs” has been vital.<sup>51</sup> On the other hand, the official heritage designation of memory is a reactive policy, reducing itself to the application of the Law on National Monuments, decreeing expropriations, financing limited spaces and generating public procurements in which the sites must compete for resources.

Both situations have generated three determining consequences for the development of sites of memory in post-authoritarian Chile. First, a tense relationship between sites of memory and the State, characterized by the questioning by some representatives of the sites, and how they express the heritage designation process, considering it a demobilizing body of the political cause for human rights,<sup>52</sup> and an ineffective measure for concrete redefinition,<sup>53</sup> since the declaration as a National Monument does not guarantee access to space, nor does it guarantee permanent resources. Second, it has reinforced the differentiation

between sites of memory recovered and open to the public, and those that have only been declared as sites but whose access is not allowed. This makes evident the necessary participation of permanent actors in the management of the sites, so that they can operate as public spaces of historical redefinition and education in human rights. This last criticism also extends to the differentiation between recovered sites and memorials. Finally, due to the absence of effective punishment for those who damage national monuments, it has caused sites and memorials to be prone to political attacks.

However, the sites also face challenges, related to the impact of their messages and educational proposals. Some recent research has indicated that there would be difficulties for sites to activate memory and learning processes in people who are not victims or family members, and who did not live through the dictatorship or the first stage of the transition.<sup>54</sup> In this sense, it is important that sites constantly adjust their teaching strategies, trying to incorporate methodologies that strengthen the link between past and present, emphasizing the approach to current humiliating situations, and promoting open discussions on the socio-political divisions that exist about the understanding of the recent national past.

In summary, the Chilean experience in this field reveals: a) the need for an active role for both the State and civil society, with respect to the consolidation of protected and projected sites of memory; b) the dynamic reality of places of memory, associated both with the quality of heritage policies and with generational differences; c) the need for a Sites of Memory Law that guarantees the safeguarding of sites and considers civil society organizations

45 Luis Alegría, *Una didáctica posible para la enseñanza del terrorismo de Estado en Chile: fuentes para la enseñanza de la dictadura*, in Karen Cea, Roberto Retamal, eds., *Pedagogía de la memoria. Historia, memoria y derechos humanos en el Cono Sur*, Santiago: Ediciones de la Corporación Parque por la Paz Villa Grimaldi, 2012, 146–147.

46 Karen Bascuñán, *Educación en derechos humanos en el contexto de la post-dictadura en Chile. La propuesta desde el sitio de memoria Parque por la Paz Villa Grimaldi*, in Abraham Magendzo, Paulina Morales, eds., *Pedagogía y Didáctica de la Declaración Universal de los Derechos Humanos a setenta años de su promulgación (1948–2018)*, Santiago: Ediciones de la Universidad Academia de Humanismo Cristiano, 2018, 110–112.

47 Educational program for youth, Memorial Paine, a place for memory, <https://www.memorialpaine.cl/programa-educativo-jovenes/>

48 Education and memory, <http://www.educacionymemoria.cl/>

49 Paula Yévenes, “El 57 % de alumnos de 8º básico aprobaría una dictadura”, in *La Tercera*, 12. 4. 2018, <https://www.latercera.com/nacional/noticia/57-alumnos-8-basico-aprobaria-una-dictadura/131606/>

50 Cath Collins, *Post-Transitional Justice. Human Rights Trials in Chile and El Salvador*, Pennsylvania: Pennsylvania State University Press, 2010, 21–22.

51 “[...] subjects who act in a political scenario of the present, who through their actions link the present with the past (paying tribute to the victims) and the future (transmitting a message to the ‘new generations’)”. Elizabeth Jelin, *La lucha por el pasado*, Buenos Aires: Siglo XXI Editores, 2018, 163.

52 Gloria Elgueta, “Institucionalización y patrimonialización de sitios de memoria en Chile. Una lectura desde la experiencia de Londres 38”, in *Revista Aletheia*, Vol. 8, No. 16, 2018, online.

53 Daniela Bracchitta, Fernanda Espinoza, Valeria Godoy, Roxana Seguel, “Propuesta metodológica para el análisis de transformaciones diagnósticas en inmuebles utilizados como centros de detención, tortura y exterminio durante la dictadura cívico-militar en Chile (1973–1990)”, in *ROMVLA*, No. 17, 2018, 218.

54 María Reyes, María Cruz, Félix Aguirre, “Los lugares de memoria y las nuevas generaciones: algunos efectos políticos de la transmisión de memorias del pasado reciente de Chile”, in *Revista Española de Ciencia Política*, No. 41, 2016, 93–114.



in terms of site management and; d) the importance of the sites for human rights education, as a complement to official educational programs and a deepening of the approach to the past, through the testimony of the victims and their own dynamic strategies. The value of sites of memory lies in the realization of

citizens' efforts towards non-repetition and the promotion of human rights; therefore, their protection and enhancement should be a fundamental objective for any transitional government that seeks to ensure that its population values democracy over any form of authoritarianism.

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# TIMELINE OF THE MAJOR EVENTS

## BORIS HAU

<b>September 1970</b>	Socialist Party candidate Salvador Allende wins the presidential election, heading the Popular Unity coalition
<b>September 11, 1973</b>	A violent coup deposes President Allende, initiating right-wing dictatorship by a military junta, headed by General Augusto Pinochet
<b>June 4, 1974</b>	Creation of the DINA secret police, headed by General Manuel Contreras, to repress, torture, disappear and eliminate left-wing activists and other regime opponents
<b>January 1, 1976</b>	Creation by the Catholic Church of the emblematic human rights defence organisation the “Vicaría de la Solidaridad”
<b>August 13, 1977</b>	The DINA is replaced by a new organisation, the CNI. Disappearances and politically motivated executions become less frequent, though repression continues
<b>April 19, 1978</b>	Decree Law 2.191 extends amnesty to perpetrators of politically motivated crimes committed between September 1973 and March 1978. A clause excluding people currently under charges makes the law a self-amnesty, designed to protect regime agents while excluding opponents.
<b>September 11, 1980</b>	A new, authoritarian, Constitution is “ratified” by a fraudulent plebiscite
<b>January 22, 1982</b>	Christian Democrat politician and former president Eduardo Frei Montalva (1964–70) died in hospital. A later judicial investigation concluded, in 2019, that he had been poisoned by regime agents
<b>May 1983</b>	A wave of social protest and civil unrest in opposition to the regime began with a national strike day, called by the copper workers’ union
<b>September 7, 1986</b>	Assassination attempt on Augusto Pinochet by a left-wing armed opposition movement. Five of his bodyguards were killed, but Pinochet survived.
<b>October 5, 1988</b>	A second plebiscite narrowly rejects conceding eight more years in power to Pinochet, meaning open elections would be held.
<b>March 11, 1990</b>	After Chile’s first free elections in 17 years, centrist Christian Democrat candidate Patricio Aylwin became president, representing a 17-party centre left coalition known as the “Concertación”.
<b>April 25, 1990</b>	Presidential Decree No. 355 creates Chile’s first Truth Commission, the National Commission on Truth and Reconciliation (“Rettig Commission”), to document grave human rights violations and acts of political violence committed during the dictatorship. The “Rettig report” was published on March 4, 1991. Victims of extrajudicial execution or disappearance were individually named. Totals, updated in 1996, came to stand at 3,195 individuals: 2,008 people executed; 1,183 detained-disappeared, and 4 unborn children killed or disappeared along with their mothers.
<b>February 8, 1992</b>	Law 19.123, the first of various reparations laws, set out some entitlements for relatives, returning exiles, and others. It also created a National Corporation for Reparation and Reconciliation, which operated until 1996 to complete victim registers and administer reparations.
<b>1990, 1993</b>	Two sets of military manoeuvres were ordered by Pinochet, still the Army Commander of Chief, to express military disquiet over truth and justice efforts and to intimidate the new democratic authorities.
<b>May 30, 1995</b>	The first significant criminal conviction for dictatorship-era violations: former secret police chief Manuel Contreras and his second in command were jailed over the 1976 car bomb assassination, in Washington DC, of former Chilean foreign minister Orlando Letelier and a colleague.
<b>December 5, 1995</b>	For the first time, the Supreme Court upheld a guilty verdict that classified disappearance as an on-going crime, to which the 1978 Amnesty Decree Law could not apply.
<b>March 1997</b>	Inauguration of the Villa Grimaldi Peace Park, the first former clandestine detention centre in the Americas to be recovered by survivors and opened to the public as a site of memory.
<b>1997–1998</b>	Judicial reforms dilute the power of Pinochet-era appointees in the Supreme Court

<b>January 1998</b>	Criminal complaints naming Pinochet directly are admitted, for the first time, to the investigation stage. The two cases were brought by the Communist Party president, and by relatives of victims of the so-called “Caravan of Death” killings of 1973.
<b>March 1998</b>	Under the terms of the 1980 Constitution, still in force, Pinochet retires as Commander in Chief of the Army and becomes an honorary Senator.
<b>September 9, 1998</b>	The Supreme Court for the first time orders the reopening of a case previously amnestied by military courts: it rules that amnesty can only be applied after a full investigation, and that international human rights law requires that war crimes be punished.
<b>October 16, 1998</b>	Augusto Pinochet is detained in London, under the terms of an international arrest warrant requested by Spanish judge Baltazar Garzón. The request is for his extradition to Spain to stand trial for crimes against humanity, committed against Spanish citizens and others, during the Chilean dictatorship.
<b>August 21, 1999</b>	The Chilean government instigates a “Roundtable Dialogue” with the Armed Forces, the Catholic Church, and some human rights lawyers, supposedly to find the disappeared. Relatives’ associations refused to take part. The outcome was a list stating that dozens of victims had been “thrown into the sea”. Some of the information was later proven to be false.
<b>March 3, 2000</b>	After 503 days of house arrest in London, Pinochet was allowed to return to Chile for “humanitarian reasons” even though the UK’s highest court, the House of Lords, had approved his extradition to Spain
<b>December 1, 2000</b>	Pinochet was charged for the first time, by Chilean courts, for his part in the disappearance or execution of 74 victims of the Caravan of Death. The Supreme Court later named special investigative magistrates to investigate all open or reopened cases for dictatorship-era human rights violations, nationwide.
<b>August 2003</b>	In the run-up to the 30th anniversary of the military coup, Socialist President Ricardo Lagos proposed a second truth commission and expanded existing reparations programmes.
<b>November 2004</b>	The Army made its first ever explicit public recognition of involvement in “criminal and morally unacceptable acts” during the dictatorship
<b>November 17, 2004</b>	Investigative magistrate Alejandro Solís passed the first verdict explicitly recognising unresolved dictatorship-era “kidnappings” as enforced disappearance, which under international law cannot be subject to amnesty or statutes of limitation.
<b>November 28, 2004</b>	Chile’s second truth commission, the National Commission on Political Imprisonment and Torture, “Valech Commission”, published its report. Almost 29,000 individuals were named as survivors of political imprisonment and torture during the dictatorship. A new law, Law 19,992, provided reparations but set a controversial 50-year embargo preventing public or judicial access to the commission’s records.
<b>March 11, 2006</b>	Socialist Party candidate Michelle Bachelet, daughter of an Air Force General who died after being tortured by the regime, became Chile’s first woman president.
<b>September 26, 2006</b>	The Inter-American Court of Human Rights condemned Chile’s application of amnesty to the 1973 extrajudicial execution of Luis Almonacid. President Bachelet promised legislation to “bring the amnesty law into line with” Chile’s international obligations, but did not keep her promise.
<b>December 10, 2006</b>	Augusto Pinochet died, at the age of 91, under charges in 3 cases of crimes against humanity, and one case of tax fraud and money laundering (the Riggs Bank case).
<b>December 10, 2009</b>	Ley 20.405 created Chile’s first state National Human Rights Institute, and a new repetition of the Valech Commission (officially called the “Presidential Advisory Commission for the Qualification of Victims of Extrajudicial Execution, Disappearance, Political Imprisonment and Torture”, known as “Valech II”).
<b>January 11, 2010</b>	Inauguration of Chile’s national Museum for Memory and Human Rights
<b>March 11, 2010</b>	Sebastián Piñera became President of the first democratically-elected right wing administration in Chile for 50 years
<b>August 18, 2011</b>	The “Valech II” report added almost 10,000 names to the “Valech list”, and 30 victims to the “Rettig lists”. The final total became 38,254 acknowledged survivors of political imprisonment and torture, plus 3,216 acknowledged victims of disappearance and execution.

<b>August 28, 2013</b>	The Inter-American Court of Human Rights ruled, in the García Lucero case, that investigation of torture is a state obligation that should be done <i>ex officio</i> , without waiting for survivors to bring criminal complaints
<b>September 2013</b>	On the 40th anniversary of the military coup, Chile's Supreme Court issued its first ever <i>mea culpa</i> for its "actions and omissions" over human rights during the dictatorship.
<b>March 11, 2014</b>	Political alternation: Michelle Bachelet became President for the second time, heading a centre-left coalition which, for the first time, included the Communist Party.
<b>December 2014</b>	The Supreme Court decided to unify criteria in civil claims, declaring statutes of limitation inapplicable even in civil cases and awarding damages even if other reparations had been received.
<b>March 11, 2018</b>	Political alternation: Sebastián Piñera became President for the second time, heading a right-wing coalition.
<b>July and August 2018</b>	The " <i>Supremazo</i> ": Chile's Supreme Court controversially conceded early release or parole to six former agents in prison for crimes against humanity.
<b>August 10-13, 2018</b>	Mauricio Rojas, who had previously accused the Museum of Memory and Human Rights of falsifying history, was named Minister of Culture and the Arts but had to resign after only three days, due to protests.
<b>October, 2019</b>	Major social unrest, met with disproportionate police violence, threatened Chile's carefully cultivated image of success and stability. Political elites grudgingly conceded the need for a new Constitution, to replace the authoritarian-era one still in force.



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