

After Dictatorship

Instruments of Transitional Justice in Post-Authoritarian
Systems

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Chile: Report on the Democratic Transition Process after Pinochet

1 The Experience of Dictatorship

The long road that a society must travel down to heal and take ownership of the dramatic consequences left behind by mass systematic human rights violations at the hands of a dictatorial regime or a civil war is a complex and never-ending process. The case of Chile identifies key experiences and reveals lessons on the limits of transition processes by showing where these processes did or did not work in a certain instance.

In Chile, the concepts of democratic transition and post-dictatorship have been the subject of much debate. There is no political or academic consensus to define when democratic transition begins and ends, while the term ‘post-dictatorship’ is used on occasions to criticize continuities with the previous regime and imply that there is no true democracy in the country. In this text, we use both terms interchangeably and understand the democratic transition and consolidation process to refer to the space in time that starts when the government headed by General Augusto Pinochet came to an end (March 1990) and ends when the risks of return to authoritarian rule are overcome. Consolidation is the period that ensures the ongoing existence of the factors that made the change in regime possible: these are the basic consensus regarding the existence of human rights, the democratic regime and the basis of Chile’s economic and social policy. This period involves a verification of the processes aimed at perfecting democratic institutions, fighting poverty and strengthening the validity of the rule of law.¹

After the event known as the *estallido social* (‘social outbreak’) in the month of October 2019, the National Congress in November of that year gave way to a constituent process to draft a new constitution within a year, to replace the one in force from 1980. This process began through a plebiscite in which 78.27 percent approved the creation of a Constituent Convention of 155 members elected by vote, establishing that it should be equal in terms of gender composition (50–50), with participation from independents and with 17 seats reserved for representatives of native peoples². Undoubtedly, this process means the end of the dictatorial heritage ex-

¹ Edgardo Boeninguer, *Democracia en Chile. Lecciones para la gobernabilidad* (Santiago: Editorial Andrés Bello, 1997).

² These were divided into seven seats reserved for the Mapuche people, two for the Aymara, one for the Rapa Nui, one for Quechua people, one for the Atacameño, one for the Diaguita, one for the Colla, one for the Kawashkar, one for the Yagán and one for the Changó.

pressed in the 1980 constitution and the incorporation of new actors for the elaboration of a new social pact involving citizen participation for the first time in the history of Chile.

1.1 Relevant Period

On 11 September 1973, the three branches of the Chilean armed forces (FFAA) and police force (*Carabineros*) staged a military coup in Chile and proceeded in a military junta to designate their commanders-in-chief as the *Mando Supremo de la Nación*³ or supreme government body, concentrating the executive, legislative and constitutional powers in their hands.

The dictatorship lasted from that date until 11 March 1990. There were three distinguishable stages during this period:

One started with the military coup and ended with the dissolution of the *Dirección de Inteligencia Nacional* (Chilean Intelligence Agency; DINA) in 1977. This period can be defined as state terrorism, given the volume and intensity of systematic and planned human rights violations at the hands of state agents.

A second stage lasted from 1978 to 1988. This was a more extensive period that included the enactment of a new constitution in 1980. This stage was a direct civic-military dictatorship unilaterally led by General Pinochet in a sort of presidential Caesarism. The constitution adopted in 1980 ‘contemplated a transition period until its full implementation, a period that was designed to last for eight years. And this period was regulated by a set of transitory articles, whose general concepts and details basically reproduced the prior regime (1973–1980).’⁴ This stage culminated with the defeat of General Pinochet in the referendum held on 5 October 1988.

A third phase began after the referendum until the handover of the government on 11 March 1990. During this period, the opposition negotiated with the regime on 54 reforms to the constitution aimed at guaranteeing political pluralism and regulating states of exception. Meanwhile, the outgoing government enacted various organic constitutional laws that would require high quorums to be modified by the future National Congress. For some analysts, this period can also be defined as an ‘(incomplete) transition to democracy.’⁵

³ Accessed 11 April 2022, <http://www.memoriachilena.gob.cl/602/w3-article-92407.html>.

⁴ *Informe de la Comisión de Verdad y Reconciliación* (Report of the Chilean National Commission on Truth and Reconciliation), 34.

⁵ Manuel Antonio Garretón, *La posibilidad democrática en Chile* (Santiago: Flacso Chile, 1988).

1.2 Political Background

The military coup coincided with a general policy imparted by the United States in Latin America, which supported the installation of military dictatorships throughout the region. From a national perspective, this occurred within a context of acute political, social and economic crisis. The government of Salvador Allende – upheld by a coalition of left-wing parties known as *Unidad Popular* (Popular Unity; UP), which at the time defined themselves as Marxists and expressed a popular movement that had been gaining ground in Chilean society since the early twentieth century – sought to begin a political transition process towards a socialist regime that would maintain democratic freedoms and reject the use of armed force, which was predominant in Latin America at that time.

The electoral triumph of Salvador Allende in 1970 (at first with a relative majority of 36.6 percent of the votes) and the support of the Christian Democrats in the National Congress allowed him to be appointed president of Chile. The government made confident strides towards the implementation of its programme, which included the nationalization of the copper industry, until then in the hands of North American companies, and the nationalization of the banking industry and most of the larger companies in the country, as well as furthering the agrarian reform that had begun under the government of Eduardo Frei Montalva (1964–1970). These policies were pushed forward even though the UP did not have a political majority in parliament. This, in conjunction with the opposition resistance, began to generate a climate of growing political and social polarization. Three years into this government, there was a profound division between Chileans, a political crisis that was played out in prolonged middle-class union strikes and an economic disaster expressed in shortages and hyperinflation. As there were no institutional options available for putting an end to the government (in the parliamentary election in March 1973, the government obtained 40 percent of the votes, which prevented the opposition from reaching the quorum it needed to constitutionally indict the president), and as the UP lacked a parliamentary majority to approve its initiatives and was politically paralyzed as a result of its strategic divisions, violence emerged and the ghost of civil war loomed increasingly closer. In this context of a ‘catastrophic dead heat,’ the opposition majority chose to move forward on the military coup, implementing it with particular rawness and violence, shaking the entire world and installing a prolonged dictatorship.

1.3 Ideological Justification

From an ideological standpoint, the dictatorship sustained its discourse on two initial converging pillars: anti-communism and the Doctrine of National Security. Its *Declaración de Principios* (Declaration of Principles) (October 1973) proclaimed the need for a profound and prolonged intervention for the ‘moral, institutional and material

reconstruction of Chile and a change in the Chilean mentality,' affirming the need for a civic-military movement, a democracy 'more of substance than of forms' and armed and security forces that could 'guarantee' a 'broad concept of National Security.'⁶

The doctrine of national security pushed by Washington in the Cold War context, a military ideology shared throughout the Latin American region, proposed the existence of an internal enemy that had to be defeated by whatever means possible. In this sense, from the perspective of the regime, 'the repression was the legitimate response to overt or latent subversion and was exempted from respecting the human rights of people who only had themselves to blame for swelling the ranks of the enemy.'⁷

In terms of the economic project, the nationalist and corporatist currents at the heart of the regime, mostly represented by the military, were in conflict with sectors led by neoliberal economists, educated by the University of Chicago, who sought to create a market society model and reduce the role of the state to a minimum. This latter group gained the upper hand after successfully aligning with business groups and with Pinochet, supporting his personal leadership over the rest of the military junta and turning neoliberalism into a third ideological cause of the dictatorship.

1.4 Structures of Persecution

The regime was heavily repressive at the beginning (1973–1977) against *Unidad Popular* party activists and leaders and later, after 1978, against its democratic opposition, social leaders and human rights defenders.

During the first phase, the intelligence services of all three branches of the armed forces, sometimes separately and sometimes as a whole, imprisoned thousands of people in stadiums, concentration camps, military compounds and clandestine detention sites. After this initial period, on 14 June 1974, DINA was formed under the direction of Colonel Manuel Contreras, bringing personnel from the armed forces and military police together under a centralized command. This organism went on to be responsible for the executions and disappearances of activists from the *Movimiento de Izquierda Revolucionario* (Left Revolutionary Movement; MIR), communist and socialist parties, and members of the smaller UP parties and independent citizens. The DINA also acted outside of Chile under the auspices of Operation Condor⁸ in cooperation with the intelligence services from Argentina, Uruguay, Paraguay and Brazil, exchanging information and coordinating repressive actions, kidnappings and

⁶ *Declaración de Principios del Gobierno de Chile*, October 1973.

⁷ *Informe de la Comisión Nacional sobre Prisión Política y Tortura* (Santiago, 2004), 165.

⁸ Operation Condor was a secret network of repression formed by the security services of the Latin American southern cone countries, called together by the then director of the DINA Manuel Contreras in 1975 in Santiago, Chile.

assassinations of members of the opposition. Independent of this, the DINA, in alliance with local ultra-right terrorist groups, was responsible for assassinations and assassination attempts in Washington (Orlando Letelier, former minister under Allende, and Ronnie Moffit), Rome (Bernardo Leighton and his wife Ana Fresno, former *Demócrata Cristiano* vice-president during the government of Eduardo Frei Montalva), and Buenos Aires (General Carlos Prats, former commander-in-chief of the army and his wife Sofia Cuthbert).

Once the DINA was dissolved in August 1977 under pressure from the US government, which demanded sanctions for the crime in Washington, the *Central Nacional de Informaciones* (National Information Centre; CNI) was created in its stead and continued a more selective repression that did not resort to forced disappearances or terrorist attacks abroad. However, from 1980 onwards, due to the activation of social movements and armed movements against the government,⁹ there was an upsurge in crude and systematic repressive action, including assassinations, kidnappings and torture of activists. Together with this, independent groups from each branch of the armed forces and police continued to operate, committing crimes that carried high public repercussions during these years (*caso degollados*, Tucapel Jiménez, among others).

1.5 Victim Groups

Based on investigations conducted by the truth commissions and courthouses, the main victims of repression were government authorities and officials under Salvador Allende and leaders of UP parties and the MIR. Repressive actions resulted in several types of victims:

- Exiles (approximately 300,000 people)
- People dismissed from their jobs in public service (160,000 people)
- Tortured political prisoners (38,254 people)
- People executed (2,123 people)
- Detained-disappeared people (1,092 people).

Sixty-one percent of all political prisoners and torture victims (33,221 people) were concentrated in the first months immediately following the military coup.¹⁰

⁹ Notable among the armed groups was the *Frente Patriótico Manuel Rodríguez* (Manuel Rodríguez Patriotic Front, FPMR), stemming from the communist party.

¹⁰ *Informe de la Comisión Nacional sobre Prisión Política y Tortura*.

1.6 Those Responsible

All people identified and tried after the return to democracy were former members of the armed forces or agents of security organisms. The courts have identified perpetrators without the cooperation of the armed forces, which continue to pay homage on a regular basis to some of the main perpetrators or members of the military junta.

The primary political responsibility for human rights crimes and violations falls to Augusto Pinochet, who assumed indisputable and undisguised leadership in repressive actions, but this does not excuse the other members of the military junta: Gustavo Leigh (Air Force), José Toribio Merino (Armed Forces) and César Mendoza (*Carabineros*). Judicially, Pinochet was tried in, among other cases, the *Caravana de la Muerte* (caravan of death) case for directly instructing General Sergio Arellano to travel to different detention centers throughout the country and execute or orchestrate the disappearance of 94 detainees without trial.

The structure of the DINA, the main executor of human rights violations, consisted of a General Staff headed by Manuel Contreras and 74 officers belonging to different branches of the armed forces, *Carabineros* and *Gendarmería*, in addition to a contingent in each region of the country. The names of around a thousand agents who operated in the country and abroad are known¹¹.

Among the members of the General Staff were Rolf Wenderoth, Cesar Manríquez Bravo, Vianel Valdivieso, Raúl E. Iturriaga Neumann, Hernán Brantes Martínez, Marcelo Moren Brito, Maximiliano Ferrer Lima, Víctor Hugo Barría Barría and German Barriga Muñoz, among others, all officers in the Army.¹²

It is interesting to highlight the fate of some of the most notorious agents and managers of the security services during the dictatorial period:

- Manuel Contreras, Director of the DINA, sentenced to 526 years plus two life sentences, died in prison in 2015.
- Pedro Espinoza, Chief of Operations of the DINA, sentenced to life imprisonment.
- Marcelo Morén, responsible for the Villa Grimaldi or Cuartel Terranova detention center, sentenced and died in the Punta Peuco prison in 2015.
- People found responsible at the CNI:
- Odlanier Mena, sentenced to six years, imprisonment, committed suicide.
- Hugo Salas, sentenced to life imprisonment.

The DINA was organized into operating commands under the following agents:

- Miguel Krassnoff, sentenced to almost 300 years for multiple cases of detaining-disappearing opponents.

¹¹ Accessed 11 April 2022, <https://memoriaviva.com/nuevaweb/organizaciones/dina>.

¹² Accessed 11 April 2022, http://www.archivochile.com/Dictadura_militar/org_repre/DMorgrepre0004.pdf.

- Michael Townley, who carried out the assassinations of Orlando Letelier and Carlos Prats (he lives in the United States under the witness protection programme for providing testimony in the Letelier case).
- Álvaro Corbalán, agent and torturer, sentenced to life imprisonment.
- Osvaldo Romo, sentenced for his role as agent and torturer, died in prison.
- Armando Fernández Larios, perpetrator of several assassinations in the DINA, including his participation in the *Caravana de la Muerte* and the assassination of Orlando Letelier.

A list of 642 security service agents have all been found guilty of direct responsibility in human rights crimes and sentenced to imprisonment in Punta Peuco or in regular prisons. The full list of agents convicted of the crimes of kidnapping, torture or murder can be found on the website of the Museum of Memory and Human Rights, alongside 3,267 cases and the list of 386 Supreme Court judgments related to human rights violations.¹³

1.7 Places of Persecution

Persecution took place throughout Chile. Based on the *Comisión Nacional sobre Prisión Política y Tortura* (National Commission on Political Imprisonment and Torture; Valech Commission I), valid testimonies exist of the use of 1,132 sites as detention centres throughout the country (including police checkpoints). Prisoner camps were established between September 1973 and 1976 and people were detained for months without contact with their families and without being charged with any specific crime.

A number of political torture and detention centres cited in the Valech I Report can be mentioned:

- Arica and Parinacota Region: 14 sites. Notable among these is the DINA site in the former Citróen factory.
- Tarapacá Region: 16 sites, including the Pisagua Prisoner Camp.
- Antofagasta Region: 36 sites, including the former nitrate mine Chacabuco Prisoner Camp.
- Atacama Region: 20 sites, including the DINA site on the Copiapó Regiment land.
- Coquimbo Region: 30 sites, including the Infantry Regiment No.1, Arica in La Serena.
- Valparaíso Region: 95 sites, including the Cuartel Texas Verdes (where the DINA was born) and the training ship, the *Esmeralda*.

¹³ Both accessed 11 April 2022, <http://interactivos.museodelamemoria.cl/justicia/listadocondenados.php>, <http://interactivos.museodelamemoria.cl/justicia/listadosentencias.php>.

- Metropolitan Region: 165 sites, including Villa Grimaldi, Londres 38, Clínica Santa Lucía, Tres Álamos, Chile Stadium and National Stadium.
- O’Higgins Region: 47 sites, notably Infantry Regiment No. 19, Colchagua.
- Maule Region: 62 sites, notably the German colony Colonia Dignidad.
- Biobío Region: 112 sites, notably the CNI headquarters known as Casa de la Risa/ Casa de la Música.
- Araucanía Region: 66 sites, including the prisons of Temuco, Angol, Curacautín and Traiguén.
- Los Lagos Region: 34 sites, including the Isla Teja prison.
- Los Lagos Region: 60 sites, including the Puerto Montt prison.
- Aysén Region: 12 sites, notably the Investigations Headquarters in Coyhaique.
- Magallanes Region: 24 sites, notably the Dawson Island prisoner camp.

1.8 The Form in which the Regime Was Overcome

One of the transitory articles of the 1980 constitution established that a referendum should be held in 1988 in which the citizens should vote for or against a single presidential candidate proposed to the country by the junta of commanders-in-chief. Meanwhile, 1983 saw a wave of mass popular protests, as well as the reactivation of political parties that had been outlawed until then. These protests forced the regime to seek a political aperture, authorize the return of some exiles and grant guarantees for carrying out the 1988 referendum.

Most of the opposition, grouped under the *Concertación de Partidos por la Democracia* (Coalition of Parties for Democracy, *Concertación*), called on Chileans to register on the electoral roll in order to vote ‘NO’ in the referendum. This effectively occurred in October 1988, when 56 percent voted against the proposal of the armed forces, which was to prolong the mandate of General Pinochet for eight more years. This marked the beginning of a long journey that included reforms to the 1980 constitution and the presidential election of 1989, in which opposition candidate Patricio Aylwin was elected with 55.2 percent of the vote, heading a coalition party structured around the *Demócrata Cristiano* (Christian Democratic) and democratic socialists parties. On 11 March 1990, Patricio Aylwin (1990–1994) assumed the presidency of Chile, while Augusto Pinochet reserved the post of commander-in-chief of the army for himself.

The 1980 constitution, despite the rigidity under which it was conceived, has undergone 257 amendments via 57 laws throughout its 40 years in existence. The most important reforms were in 1989 (54 reforms) and 2005, which lifted what were known as ‘authoritarian enclaves’ under the government of Ricardo Lagos.

Currently, under a new reform to the constitution, a process has been initiated that is aimed at preparing a new constitutional text through a democratically elected Constitutional Convention, which must be ratified in a plebiscite in September 2022.

2 Transitional Justice

2.1 Political and Institutional Changes

The set of efforts undertaken by Chilean society over the past 30 years in the areas of truth, justice, reparation and memory form a foundation for the construction of broad cultural, political and social consensus directed at preventing the reiteration of experiences like those lived between 1973 and 1990. This takes place in the context of the reconstruction of a democracy in which – the still pending discussions of reform notwithstanding – the rule of law applies and there is equality under the law, respect for public freedoms, independence of the branches of government, and alternation of power through free and competitive elections.

In addition, two efforts are fundamental to strengthening these guarantees of *Nunca Más*: the creation of institutional structures for promoting and respecting human rights and the education of new generations about memory and human rights. There are serious deficiencies in regard to the latter.

In regard to the former, on 10 December 2009 Ley No. 20.405 was published, which created the National Institute of Human Rights, an autonomous public agency charged with promoting and protecting the human rights of all individuals living in Chile. The agency has been operational since July 2010. Its mission is described as protecting and promoting full respect for human rights in Chile. As an institution of the republic, it is responsible for observing, reporting and intervening in defence of human rights that are threatened or violated and for promoting the construction of a culture that recognizes said rights and promotes them in all areas of national life.¹⁴

Another key initiative was the creation of the Under-Secretary of Human Rights in the Justice and Human Rights Ministry. This was created to engage public institutions and organisms around the creation of policies and plans with a focus on human rights with social impact; and for cases on human rights violations, to establish the truth and guarantee that they will not recur. Its most important functions include preparation and proposal of the National Human Rights Plan and its presentation to the Interministerial Human Rights Committee. Likewise, it coordinates its implementation, monitoring and assessment with other ministries, acquiring the information it needs and providing technical assistance to the Foreign Affairs Ministry in court proceedings and with international human rights entities, as well as preparing and monitoring periodic reports.

In 1992, another institutional field, the Aylwin government implemented popular elections for municipal authorities (mayors and councillors) and members of regional councils. In 2005, under the presidency of Ricardo Lagos (2000 – 2006), constitutional reforms were enacted through Ley No. 20.050 to suppress some of the ‘author-

¹⁴ See INDH mission, accessed 03 November 2022, <https://www.indh.cl/mision/>.

itarian enclaves' inherited from the time of the dictatorship, such as the revocation of designated senators for life, a reduction in the power of the National Security Council with the president of Chile, and a reform of the system for appointing the members of the Constitutional Court. For some, these reforms meant the end of the 'protected democracy' where military and conservative sectors exercised a right to veto and altered the electorally constituted majority. However, other reforms remained pending, such as the reform of the binomial electoral system, which would only see the light of day in 2017.

Along the line of constitutional reforms, on 15 November 2019, under a scenario of major social protests, National Congress agreed to a constitutional reform to hold a referendum in which citizens could vote as to whether they did or did not support the drafting of a new constitution and whether this should be prepared by a mixed constitutional convention (half parliamentary leaders and half people elected ad hoc) or a body entirely elected with parity between men and women. 78.27 percent of voters opted for a completely elected constitutional convention with gender parity to draft a new constitution.

2.2 Prosecution

From the end of the dictatorship through to 1998, judicial investigations generally did not make a great deal of progress and courts tended to apply the 'three legal knots': the Amnesty Law (issued by the dictatorship), extinguishment of criminal action, and *res judicata*.

The judicialization of human rights cases in Chile began with a very small number of cases during the dictatorship through the decisive action of human rights defence attorneys, organizations that sought to protect and defend victims beginning in September 1973, and judges who dared to investigate the discovery of bodies, as in the Lonquén Case (1978). This judicialization extended to cases that fell outside of the Amnesty Law Decree either through express exclusion from the text of the law (as in the Letelier case) or due to the fact that the date of the crime was after 1978, the year that the Amnesty Law was issued. (This included crimes that occurred in the 1980s, such as the murder of union leader Tucapel Jiménez or the case of three communist professionals whose throats were slit in 1985.) These legal investigations led to the imprisonment in 1994 of Manuel Contreras, the main perpetrator of crimes during the period of the DINA.

However, the issuing of temporary and final stays of proceedings in human rights cases was standard procedure and was legally possible because the courts only applied national positive legislation in their rulings and interpretation of the law, refusing to accept the validity and jurisdiction of international human rights law.

Specifically, pro-dictatorship attorneys and jurists have argued that international human rights regulations are only programmatic and aspirational and reject the idea that these may be binding and mandatory in nature.

In 1998, during Pinochet's arrest in London and the Round Table Dialogue,¹⁵ new conditions began to emerge that have enabled slow but gradual and progress with judicial investigations and assigning responsibility to those who directly took part in human rights violations.

The first case against Pinochet was filed in 1998 by Gladys Marín, then-President of the Communist Party, for the disappearances of five Communist Party leaders. The case argued that crimes of genocide or multiple aggravated homicides, kidnappings, illicit association or illegal burial had been committed. By the end of the year, 17 cases had been filed and handled by jurisdictional judge Juan Guzmán of the Santiago Court of Appeal. (A total of 298 complaints against Pinochet were admitted, all of them added to the case referred to herein.)

In September 1998, a new case law stage also began when the final stay that had been issued based on the Amnesty Law was lifted in the Poblete Córdoba case. The court, interpreting internal regulations, found that, as of the date of the crime, the Chilean government was in a 'state or time of war' and that the Geneva Convention applied. The convention establishes the duty to ensure the safety of individuals, particularly detainees. The court added that international agreements must be carried out in good faith and that, based on their nature and purpose, they have preeminent application under Article 5 of the constitution. The Supreme Court ruled that, in order to issue a final stay under the Amnesty Law, the investigation must be exhaustive, that is, the circumstances of the disappearance of the victim and the identities of those who took part in the act must be established.

As aforementioned, in April 2001, following the end of the Round Table Dialogue, the government asked the Supreme Court to appoint special judges to investigate cases of human rights violations that remained open. The court accepted the request and appointed 60 judges to handle the processing of approximately 110 cases exclusively or preferentially.¹⁶ However, in 2007 – the year in which convictions were issued in 18 cases involving 66 victims – the Supreme Court began to apply the gradual extinguishment regulated by the Criminal Code.

As is evident, the application of justice has depended to a great extent on the criteria of the Courts of Appeal and Supreme Court, which have varied over time. This evolution also took place in the context of a society that was still strongly divided by the interpretations of the recent past and the enormous presence of the media, institutions and factions of representatives of the dictatorial power.

The Ministry of the Interior's human rights programme has played a key role in this process. The programme originally only handled cases of the detained-disappeared, but since the passage of Ley No. 20.405 it has also handled cases of persons

¹⁵ Round Table Dialogue will be explained later, in section 2.10.

¹⁶ Investigations into cases occurring during the dictatorship were made through the old criminal justice system, where there was no prosecutor's office and judges were the ones responsible for investigating and sentencing. This is an extremely slow system that is generally not public like the criminal justice system now in use.

executed for political reasons. Progress has been more challenging in regard to torture, and there are currently only a few open legal cases.

As of 2019, according to the Transitional Justice Observatory of the University Diego Portales, there are 1,469 human rights cases in process or under investigation against over 900 former agents of repression. By late 2019, we can consider the following summary table (Tab. 1):

Tab. 1: Convictions and convicted between 2010 and 2019 in final judgments of the Supreme Court cases of human rights violations between 1973 and 1990. Source: Transitional Justice Observatory, 2019. Universidad Diego Portales.

Number of processes completed in the Supreme Court	295
Total convictions	916
Total custodial sentences	642
Total non-custodial sentences	274
Total acquittals	272
Number of security agents involved in the processes	891
Number of security agents convicted	579

In keeping with international law, there has been a move away from amnesty or the extinguishment of cases involving crimes of humanity. However, the main weaknesses that remain in the Chilean justice system are its slow pace, low penalties, lack of transparency regarding the granting of intra-prison benefits, continued application of extinguishment to civil cases and gradual extinguishment of criminal cases, relative lack of legal protection for survivors of political imprisonment and torture, and refusal of the executive and legislative branches to fulfil their international responsibilities regarding the annulment of the 1978 Amnesty Law, all of which produce a lot of frustration in the world of victims.

2.3 The Replacement of the Elites

Chile presents a case of reinforced elitism, in other words, a situation where opportunities to reach positions of power are largely determined by family relations, gender, educational capital and association with institutionalized structures for selecting political staff: political parties, study centres and NGOs.

Since the mid-1980s, the technocratic character of state leadership has been strengthened with even more ties to the business world, a characteristic that continued and even grew deeper under democratic governments. The cross-cutting ties between the elite of economic professionals and the administration are especially important. If not a shared ideological matrix, at the very least they have a shared

sophistication and valuation of knowledge and tasks. The decisive influence of this technocracy has been indisputable since the era of the Chicago Boys during the dictatorship and, during democracy, from the *Corporación de Investigaciones Económicas para Latinoamérica* (Economic Research Corporation for Latin America; CIE-PLAN) of the former Finance Minister Alejandro Foxley and other centres that group together economists of former Finance Minister Andrés Velasco, such as *Expansiva*.¹⁷ This highly specialized social stratum, which draws upon elevated cultural capital and postgraduate training in North American and European universities and strong political ties to right-wing and *Concertación* political parties, exercises a hegemonic influence through the design and assessment of public policies, in the exercise of important government posts, in the lobby industry, in universities, in international organisms and in debate on public affairs via extra-parliamentary committees. Some authors have coined the term *Technopol*¹⁸ to define them, identifying a reduced number of professionals and political leaders who constitute this group, most belonging to Christian and socialist democratic parties and constituting what was known as the ‘transversal party’ of the *Concertación*.

Professional politicians are normally recruited from university student movements, especially from *Universidad de Chile* and *Universidad Católica*, as well as professional spheres, especially those of doctors, lawyers and economists.

With the arrival of democracy, a large number of people from human rights movements, NGOs and political parties in opposition to the dictatorship entered the political system (government and congress). In parallel, due to an electoral system that favored the minority, people who actively participated in the military regime also consolidated positions. Throughout two decades, a highly stable elite leadership remained in place at both government and parliamentary levels. Only after Michelle Bachelet took office (2006–2010) was there an attempt to renew the composition of the elite in the government through measures such as gender parity and the search for new young elements to cover government posts, a process that was only partially successful.

17 ‘The group known as the Chicago Boys were disciples of Milton Friedman, mostly educated at the University of Chicago, who controlled economic policy during most of the military dictatorship. CIE-PLAN, or *Corporación de Investigaciones Económicas para Latinoamérica* (Economic Research Corporation for Latin America), is a highly influential political think tank. Created in the 1970s, it included *Demócrata Cristiana* economists expelled from *Universidad Católica* and had a significant influence on the *Concertación* governments. *Expansiva* was a think tank created in the 1990s as a network of professionals with the goal of influencing public policy with a liberal focus. It had a significant presence in the first cabinets of the government of Michelle Bachelet (2006–2010)’ (De la Maza, *De la elite civil a la elite política*).

18 See Alfredo Joignant, *Las élites gubernamentales como factor explicativo de un modelo político y económico de desarrollo: el caso de Chile* (1990–2009) (Santiago, Chile: Carolina Foundation 2011) or Alfredo Joignant and Pedro Güell eds., *Notables, tecnócratas y mandarines: Elementos de sociología de las elites en Chile 1990–2010* (Santiago, Chile: Ediciones Universidad Diego Portales, 2011).

According to a poll of the political elite held in 2011, 93.5 percent of those polled were political party activists and 85.8 percent belonged to student organizations or professional colleges, while only 4.9 percent were from union organizations.¹⁹

Over time there has been a generational replacement of first-, second- and third-rank political-technical cadres (ministers, undersecretaries and heads of services), always with the technocratic characteristics described above: young people with post-graduate studies in government, public policy and economics. Normally these cadres are recruited by the senior public management system (or civil service), an autonomous service that evaluates CVs and proposes shortlists to the political entity.

It is important to note that the main political players during the transition were all people who played important roles in the *Unidad Popular* period and during the dictatorship. For example, Patricio Aylwin was president of the *Demócrata Cristiana* party in 1973, Gabriel Valdés (first president of the Senate in 1990) was Foreign Affairs Minister under the government of Eduardo Frei Montalva, José Antonio Viera Gallo (first president of the House of Representatives in 1990) was Under-Secretary for Justice in the government of Salvador Allende. On the right, the most important leaders, Sergio Onofre Jarpa, Andrés Allamand and Jaime Guzmán, were all important players in the fight against the *Unidad Popular* government and during the administration of the military regime. The leadership and predominance of this generation remained intact during the years of the *Concertación* government (1990–2010) and was only partially ‘biologically’ reproduced. Only after 2011 did the country begin to see the emergence of a new political generation tied to student movements, who developed new political parties and movements and joined parliament, making their own voices heard. However, this process made no essential modifications to the social characteristics of this possible new group of leaders, except in terms of creating a greater female presence.

2.4 Reparations

The fourth part of the Report of the Truth and Reconciliation Commission included a series of recommendations related to symbolic and material reparations for the victims and relatives of those who had suffered human rights violations and political violence. The following were among the proposals it made:

- Public reparation of the dignity of the victims.
- Recommendations of a legal and administrative nature to resolve the situation of missing persons.
- Recommendations of a social security nature: social security, reparation pension.

¹⁹ Gonzalo De la Maza, *De la elite civil a la elite política. Reproducción del poder en contextos de democratización* (Santiago, 2011).

- Health recommendations: free access to special health care.
- Education recommendations: support for and access to higher education for victims and their children.
- Recommendations regarding facilitating access to housing for victims and their families.
- General welfare recommendations: debt forgiveness, exemption from mandatory military service for victims' children.

These recommendations were implemented through the enactment of three main laws:

Ley No. 19.123 in 1992, which created the National Reparation and Reconciliation Corporation (CNRR), whose remit was to continue the investigations of the National Truth and Reconciliation Commission and to implement the reparation measures for the victims contained in Law No. 19.123 and the proposals made by the Truth Commission. Thanks to this law, the victims identified in the Rettig Report receive several different types of material and moral reparations. These include, in 1992, a monthly stipend of 140,000 pesos (368 US dollars) plus compensation for children up to the age of 25 (except in the case of disabled individuals, who receive a pension for life) and a 'one-time bonus of 1,680,000 pesos (4,418 US dollars)²⁰ for the children of non-surviving 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)'.²¹ The government also issued charity pensions to those who maintained emotional connections to or economic dependence on individuals who had been detained-disappeared and whose situation did not fall into the previous categories.

To address the physical and psychological aftermath of human rights violations, the *Programa de Reparación y Atención Integral de Salud* (Comprehensive Health Care and Reparation Programme, PRAIS²²) was created to provide free and preferential treatment to individuals who receive Rettig and Valech²³ pensions and their families, as well as returned exiles, dismissed individuals and their direct family members from all of Chile's public health services. Scholarships have been granted to the children of victims up to the age of 35. They include payment of enrollment and tuition for higher education and a monthly subsidy for secondary and university students at the undergraduate level and exemption from mandatory military service for the children, grandchildren and great-nephews and nieces of victims.

²⁰ In 1992, 1 US dollars = 380.22 pesos. Accessed 11 April 2022, <https://www.sii.cl/pagina/valores/dolar/dolar1992.htm>.

²¹ Maria Luisa Ortiz et al., 'Rehabilitation of victims,' in *The Chilean Experience, in Memory of Nations: Democratic Transition Guide* (Prague: CEVRO, 2019), 32.

²² As of February 2011, PRAIS had provided services to 606,347 accredited members throughout Chile with an annual budget of approximately 3.5 million US dollars (Ministry of Health data).

²³ Section 2.1 explains what the Rettig and Valech Commissions mean in detail.

Ley No. 19.234, of 1993, by means of which pension benefits were granted to people dismissed from their jobs for political reasons during the dictatorial period. Individuals who were dismissed for political reasons have been served through a special programme that has been in place since 1993. It is overseen by the Ministry of the Interior and regulated by Leyes Nos. 19.234 (1993), 19.582 (1998) and 19.881 (2003). It has established benefits for former public officials who were fired for political reasons. Its coverage was later extended to employees and workers from private firms in which the government intervened, members of the armed forces, and members of the judicial and legislative branches. Beneficiaries receive a ‘time stipend’ that complements their benefit contributions for up to 54 months, a pension to which they are not required to contribute, compensation for dismissal from their functions, and a pension for those who were forced to leave their posts. The programme has received nearly 250,000 applications, and 158,778 cases have been certified as qualifying for these benefits.

The time stipend: Ley No. 19.234 stated that people who had been dismissed from their job were entitled to a certain number of months of benefit contributions for each year of benefit contributions they had registered at the time of their being laid off, up to a maximum of 36 months. Ley No. 19.582 modified the maximum number of months to 54 in all cases, depending on the date of dismissal. The details are as follows:

- Those dismissed between 11.09.1973 and 31.12.1973 are entitled to six months of contributions for each year of contributions registered at the time of their being laid off.
- Those dismissed between 01.01.1974 and 31.12.1976, are entitled to four months for each year of contributions.
- For those dismissed between 01.01.1977 and 10.03.1990, the entitlement is three months per year.

The monthly stipend is a guaranteed minimum income, which is added to an indemnity for termination of duties equivalent to one year of pension, i.e. 2,160,000 pesos (2,803 US dollars). The monthly amount was 180,000 pesos in 2019 (233 US dollars).²⁴

Later, in 2004, **Ley No. 19.980** modified **Ley No. 19.123**, establishing new benefits for people included in the Report of the National Commission on Political Prison and Torture. The victims recognized in the Valech Report have also received reparations that include a monthly pension and a single payment of damages for children born in prison or detained with their parents or those who do not receive a pension. The government has granted other reparations in the area of healthcare, exemption from military service and scholarships for university study to victims, which can be transferred to a child and/or grandchild. A decision was made to remove annotations

²⁴ In 2019, 1 US dollars = 770.39 pesos. Accessed 11 April 2022, https://www.sii.cl/valores_y_fechas/dolar/dolar2019.htm.

from the criminal records of political prisoners regarding convictions issued by military or regular courts for acts that took place between 11 September 1973 and 10 March 1990. This Ley No. 19.980 of 2004 includes the right to receive a monthly pension of approximately 190,000 pesos (328 US dollars). Minors born in prison receive a bonus of 10,000,000 pesos (17,355 US dollars)²⁵ in addition to medical and educational benefits that include free access to all levels of education²⁶.

There are also other laws designed to increase the benefits, modify terms or grant supplementary extraordinary bonuses (Leyes Nos. 19.582 (1988), 19.881 (2003), 19.992 (2004), 20.134 (2006), 20.874 (2015)).

Symbolic and collective reparation involves the creation of memorials and memorial sites for the victims of human rights violations and the creation of the Museum of Memory and Human Rights Foundation by the State of Chile.²⁷ Following the recommendations of the Rettig Report, President Michelle Bachelet set up a foundation comprising a wide range of people from academia and the area of human rights to direct the museum, which was inaugurated in January 2010 and is publicly funded.

A set of reparation measures not directly related to the Truth Commission Reports has been introduced. These include the following:

The Programme to Support Political Prisoners (Ley No. 18.050, 1990). Approximately 350 people were in prison for political reasons in March 1990. A total of 119 received a presidential pardon and 26 had sentences commuted. Once they were free, the programme granted economic support and labour reinsertion to beneficiaries.

The National Return Office (Ley No. 18.994). This office, which was open from 1990 to 1994, was created for individuals who were exiled for political reasons. It supported labour and social reinsertion for individuals who returned to the country, recognized degrees or professional accreditations earned abroad, provided support for the transport of personal goods, and granted access to the PRAIS programme, legal aid and elementary and secondary school for individuals who had not finished their studies. The office served 52,557 people.

Restitution of Goods (Ley No. 19.568). Between 1998 and 2003, individuals and legal entities (political parties, unions, media outlets and others) received compensation or restitution for goods that had been confiscated by the government between 1973 and 1990. A total of 23 million US dollars in restitutions were made.

²⁵ In 2004, 1 US dollar = 576.17 pesos. Accessed 11 April 2022, <https://www.sii.cl/pagina/valores/dolar/dolar2004.htm>.

²⁶ As a reference, it should be taken into account that in Chile the legal minimum wage in 2020 is 320,000 pesos (421 US dollars) and the basic solidarity pension is 120,000 pesos (157 US dollars). In 2020, 1 US dollar = 760 pesos.

²⁷ See section 2.8.

Along with the above, it should be considered that, according to an official letter from the State Defence Council to the Chamber of Deputies of 2018,²⁸ the amount that the Chilean government has had to provide for reparations ordered by the courts in civil lawsuits against the state was 133 million US dollars between 1997 and 2017. In that period, the justice courts analysed 939 civil cases for human rights violations, with 538 being concluded by judgment or court settlement.

2.5 Reconciliation

The concept of reconciliation, of unmistakable Christian inspiration, was largely used by the first transitional government of Patricio Aylwin (1990 – 1994), responding to a need for moral healing across Chilean society, tired of the violence, the polarization and the dictatorial experience. It attested to the need to accept rules and shared values of coexistence, to respect the rights of every person and to restore a sense of community among Chileans. Under this idea, important strides were made in the valuation of democratic institutions. However, institutional limits persisted and there were open wounds that never healed, stemming from both the experience of human rights violations and the social and economic structure of Chile.

Aylwin's reconciliation policy stated that 'we must address this delicate matter of reconciling the virtue of justice with the virtue of prudence, and once personal responsibility has been assigned where it corresponds, the time will come for forgiveness.'²⁹ This led to the establishment of an official truth on human rights violations through the *Informe de la Comisión de Verdad y Reconciliación* (Truth and Reconciliation Commission Report, Rettig Report), morally penalizing the military regime, returning exiles home, enforcing social acceptance of policies aimed at making reparations to victims and freeing political prisoners. However, it was unable to 'assign personal responsibility,' much less bring about the time for forgiveness, which implied expressions of regret or compassion by the perpetrators.

In this connection, it was significant that the commander-in-chief of the army, General Emilio Cheyre, made a statement known as *Nunca Más* in 2003, in the context of the Round Table Dialogue, saying: 'Does the scenario of global conflict already described excuse the human rights violations that occurred in Chile? My answer is unequivocal: no. Human rights violations can never, for anyone, have an ethical justification.'³⁰ Yet the paradoxical truth that, in practice, annulled the political gesture is that Cheyre was the only commander-in-chief of the army condemned in a human rights case as an accessory after the fact.

²⁸ Accessed 11 April 2022, <https://www.latercera.com/nacional/noticia/fisco-ha-pagado-80-mil-millones-victimas-casos-dd-hh/154859>.

²⁹ Speech made by President Patricio Aylwin in the National Stadium when he took office in March 1990.

³⁰ Declaration of the commander-in-chief of the army. *Nunca Más*, 2004.

The causes of what could be seen as a failure of reconciliation are diverse. According to former president Ricardo Lagos, Chileans have learned to be tolerant of differences, but reconciliation cannot be considered successful while the limits of democracy established in the constitution are not overcome. In his words,

what I would say is that it is hard to think about reconciliation when someone is, in the opinion of others, taking advantage of an electoral system that was imposed by force (...) If no solution is found to these issues, if we are yet to finalize an institutional order that everyone can agree on, how can we process our differences? Can we internally move on to a more subjective sphere of reconciliation?³¹

Similarly, reconciliation politics also went head-to-head with the demands for justice from victims' groups. Under the idea of reconciliation, some sectors sought to pressure victims into forgiving both the regime as a whole and the perpetrators without waiting for recognition of guilt or responsibility. In the absence of self-criticism and regret on behalf of those who violated human rights and those who upheld these violators politically, the demand for reconciliation turned against the victims and became a sort of moral pressure to stop clamouring for justice; in other words, stop demanding exhaustive investigation into each case and sentence fitting the crimes committed. Lawyer and Communist leader Carmen Hertz suggests that if 'the state has wounded the condition of man, causing irreparable damage to both society and victims, it isn't up to the latter to generate reconciliation with the state.'³² From this perspective, the reconciliation policy ceased to be welcome in the world of the victims and those who support them.

For human rights defence jurist José Zalaquett, 'national reconciliation (...) will go on for years, in the best of cases.' In fact, there are those who say that it is not possible to fully attain this while the events of the past survive in 'living memory.'³³ It is clearly impossible to assert that the reconciliation policy has been a success: the parties that were in conflict have agreed to live together and respect the rules of democratic coexistence, but they are far from building ties of shared belonging, of civic friendship and solidarity. On the contrary, they continue to build confrontational memories, living on as heroes and villains, victims and executioners.

³¹ Ricardo Lagos, '25 años después, notas para una difícil reconciliación,' in *Las voces de la Reconciliación*, ed. Hernán Larraín Fernández and Ricardo Núñez Muñoz (Santiago: IES, 2013), 55–56.

³² Carmen Hertz, *Reconstrucción de la Convivencia Nacional*, in *Las voces de la Reconciliación*, ed. Hernán Larraín Fernández and Ricardo Núñez Muñoz (Santiago: IES, 2013), 123–124.

³³ José Zalaquett, *Reconciliación nacional como meta última de la reconstrucción política y moral del país*, in *Las voces de la Reconciliación*, ed. Hernán Larraín Fernández and Ricardo Núñez Muñoz (Santiago: IES, 2013), 140.

2.6 Laws Relating to Transitional Justice

The recommendations of the truth commissions included measures that prohibited the recurrence of these events through amendments to national legislation involving the incorporation of international human rights agreements. With this, the hope is to establish legal guarantees in reference to the situations described in the reports and to any other types of human rights violations.

In that context, Chile adopted various international agreements and ratified international human rights protection instruments, which today form part of its legal framework. These include the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the abolishment of the death penalty, and Agreement 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization (ILO).

One of the most complex and extensive items to address was the implementation of laws related to the situation for political prisoners who remained from the dictatorial period and the adaptation of the criminal statutes to international human rights standards. Issues such as pardon, the death penalty, terrorist behavior and amnesty were addressed in the following legal initiatives approved by the National Congress:

- Ley No. 19.027 (1991) amends Ley No. 18.314, which determines terrorist behavior and its penalties. This introduces important changes to the law that regulated terrorist behavior.
- Ley No. 19.029 (1991) amends the Military Justice Code, the Criminal Code, Ley No. 12.927 and Ley No. 17.798. This introduces changes to the indicated laws to eliminate references to the death penalty.
- Ley No. 19.047 (1991) amends diverse legal texts that best guarantee the rights of people (*Ley Cumplido*³⁴). The Law on State Security, the Military Justice Code, the Law on Weapons Control, Criminal Code, Criminal Procedure Code, Aeronautical Code and Organic Court Code were amended and several Decree Laws overturned. This law enabled the processes found in the military courts to be transferred to the corresponding Courts of Appeals and to accelerate the closure of these cases. As a result, sentences were commuted or reduced.
- Ley No. 19.055 (1991) amends the Political Constitution of Chile. This law amended the Political Constitution on matters related to pardon, amnesty and probation.
- Ley No. 19.123 (1992) created the National Corporation for Reparation and Reconciliation, mandated continuation of the investigations of the National Commission for Truth and Reconciliation and in dictates implementation of reparation

³⁴ Francisco Cumplido, Minister of Justice of the Aylwin government.

measures for victims contemplated in the same legal body and proposed by the truth commission.

- Ley No. 19.313 (1994) overturns the provisions of Ley No. 11.625 on antisocial states and security measures and modifies the Criminal Procedure Code. This eliminates regulations that established a criminal qualification against certain people due to their social characteristics.
- Ley No. 19.567 (1998) amends the Criminal Procedure Code and the Criminal Code on matters related to detention and sets forth standards for the protection of citizen rights, adapting these to international standards on justice and human rights.
- Ley No. 19.962 (2004) provides for the elimination of certain criminal records imposed by military courts between 1973 and 1990.
- Ley No. 19.980 (2004) modifies Ley No. 19.123, establishing benefits for persons included as victims in the Report of the National Commission on Political Prison and Torture (increases repair benefits).
- Ley No. 19.992 (2004) establishes reparation pensions and other benefits to qualified Valech Report individuals.
- Ley No. 20.134 (2006) grants an extraordinary bonus for workers dismissed for political reasons from the private sector and autonomous companies.
- Ley No. 20.874 (2015) legislates a Single Reparatory Contribution for qualified Valech Report individuals and surviving spouses: one million pesos (1,538 US dollars).
- Ley No. 21.124 (2019) aimed at substituting custodial sentences affecting the perpetrators of crimes against humanity, granting the benefit of serving sentences outside prisons to people who met two prerequisites: those who had already served two-thirds of their sentence and those who collaborated substantially with the investigation into the crime in question. This was approved by congress by a narrow margin and was enacted in January 2019.

2.7 Access to Files

Chile can be considered a paradigmatic case of files hidden by repressive organisms. A shroud of mystery surrounds the alleged destruction of the DINA and CNI files, whether through their effective destruction or inability to access them. Ley No. 20.285 on transparency and access to public information, enacted in 2008, has failed to break through the secrecy within the armed forces. This is why all studies into human rights violations during the dictatorship have been based on files from human rights defence organisms, on oral testimony, on reports from the truth commissions, investigations undertaken by the courts of justice and, most recently, testimonies gathered by the Museum of Memory and Human Rights.

An exception to this general scenario is the case of the *Archivos del Terror* (Archives of Terror): a random discovery of 700,000 documentary pieces belonging to

the Paraguayan secret service, which contained communications between repressive apparatuses in the region, in the context of Operation Condor, which has furthered different investigations in Chile, Argentina, Uruguay, Brazil and Paraguay.

Another important exception was the delivery of files from the German colony Colonia Dignidad to the National Human Rights Institute (*Instituto Nacional de Derechos Humanos*; INDH), with 45,608 files of individuals in alphabetical order. These files were seized in 2005 as part of an investigation into the disappearance of people in the colony, which reveals the link between Colonia Dignidad and the DINA in the exercise of repression and intelligence tasks.

Reports from the Rettig and Valech commissions contain relevant testimonies on repression. However, access to the archives from the Valech Commission I is subject to a 50-year legal prohibition under the rationale of protecting the privacy of victims who declared under this commitment. These archives are in the hands of the INDH and physically kept in the Museum of Memory and Human Rights. This protection of information goes so far as to prevent the law courts from gaining access to these testimonies.

There have been no public initiatives aimed at allowing access to the archives of the armed forces and intelligence agencies. On the contrary, Ley No. 18.771, issued in 1989 by the outgoing Pinochet government, allowed the elimination and destruction of documents every five years by the defence ministry and the armed forces, exempting them from the obligation to send them to the National Archive as other public bodies do. In 2005, a project was presented to the National Congress to remove this provision and establish the obligation to send the documentation to the National Archive, but the project has not been approved to date.

The Library of Congress has the minutes of the military junta and the laws adopted in the period 1973–1990, with the exception of around 150 laws that the military junta classified as secret. Likewise, the National Archive, holds the documentation of all the ministries, except for the defence ministry.

The main archives related to human rights and memory in Chile are:

- *Fundación de Documentación y Archivo* (Documentation and Archive Foundation) at the Vicaría de la Solidaridad. This institution keeps the archives of the *Comité de Cooperación para la Paz en Chile*, *Comité Pro Paz*, and *Vicaría de la Solidaridad*, which are especially relevant because these organisms assumed the legal defence of people persecuted between 1973 and 1990. <http://www.vicariadelasolidaridad.cl>.
- *Agrupación de Familiares de Detenidos Desaparecidos*, (Group of Families of the Detained-Disappeared; AFDD): With the technical support of the National Archive, the AFDD has created an archive with information on each of the detained-disappeared, as well as the actions developed in their defence. www.facebook.com/agrupacion-de-familiares-de-detenidos-desaparecidos.
- *Agrupación de Familiares de Ejecutados Políticos*, (Group of Families of the Detained-Disappeared; AFEP). This is an archive organized into diverse collections,

- containing information on people executed for political reasons and their aggressors. www.afepchile.cl.
- *Comisión Chilena de Derechos Humanos*, (Chilean Human Rights Commission; CCHDH). Created in 1978, the CCHDH has diverse collections of cases of victims of human rights violations and documents produced by the commission, as well as a collection containing personal documents from its founder, Jaime Castillo Velasco. www.cchdh.cl.
 - *Corporación de Promoción y Defensa de los Derechos del Pueblo*, (Corporation for the Promotion and Defence of the Rights of the People; CODEPU). Created in 1980 for the defence of human rights, it extended its work into different Chilean cities. Its archive contains files on legal assistance, bulletins, photographs and others. www.codepu.cl.
 - *Fundación de Protección a la Infancia Dañada por los Estados de Emergencia*, (Foundation for the Protection of Minors who have Suffered as the Result of States of Emergency; PIDEE). Created in 1979, this foundation advocated the protection of boys and girls whose parents suffered at the hands of repression. It helped some 12,000 children and created a shelter for them. Its documentation centre includes images and documents related to its work. www.pidee.cl.
 - *Fundación de Ayuda Social de las Iglesias Cristianas*, (Social Assistance Foundation of Christian Churches; FASIC). This foundation is dedicated to providing psychological, social and legal assistance to political prisoners. Its archives contain all the information related to its work in defence of human rights. www.fasic.cl.
 - *Programa de Derechos Humanos Ministerio de Justicia y Derechos Humanos*. The Documentation and Archives Area of the Human Rights Programme, in accordance with the provisions of Ley No. 19.123 (Article 2), is the custodian of the archives of the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation. Likewise, its mission is the conservation, collection, custody and protection of documents, such as: judicial decisions, official letters, testimonies, maps, photographs, among others. <https://pdh.minjusticia.gob.cl/area-documentacion-y-archivo>.

Archives from memorial sites

- *Fundación Museo de la Memoria y los Derechos Humanos* (Museum of Memory and Human Rights Foundation). The museum was inaugurated in 2010 and its collection includes archives declared Memory of the World by UNESCO and others compiled by the museum. Its archives include more than 1,500 personal and institutional donors and are divided into a documentary fund known as CEDOC and an audio-visual fund, the CEDAV. <https://web.museodelamemoria.cl/sobrelas-colecciones/>.

- *Corporación Parque por la Paz Villa Grimaldi* (Villa Grimaldi Park for Peace Corporation). Archive created in 2010, comprised of an oral archive, documentation centre and documentary archive. www.villagrimaldi.cl.
- *Londres 38, Espacio de Memorias*. Since 2007, Londres 38 has built a digital archive with images, texts and videos, which includes the archive of Colonia Dignidad files. www.londres38.cl.

In addition to the above, there are electronic digital documentation repositories. These include:

- *Memoria Viva* (Living Memory). Digital archive of human rights abuses under the military government in Chile (1973–1990). www.memoriaviva.com.
- *Archivo Chile* (Chile Archive). Site of the Miguel Henríquez study centre (founder and leader of the MIR). www.archivochile.com.
- *Arqueología de la Ausencia* (Archaeology of Absence). Site that seeks to preserve the stories of the detained-disappeared. www.arqueologiadelausencia.cl.

The archives of the foundations related to former presidents Aylwin and Lagos are noteworthy among the archives on the political process of the transition. They include documentary and visual archives from the dictatorial and transitional period.

- *Fundación Aylwin*: www.fundacionaylwin.cl.
- *Fundación Democracia y Desarrollo*: www.fdd.cl.

2.8 Memorial Sites

There are fundamental milestones in the implementation of a public policy of memory, i.e. a policy that seeks to remember the acts in order to extract lessons from them and give meaning to the experience. The most important such milestones in Chile have been the two Truth Commissions and public support for the installation of memorials that commemorate the events, which also could be considered policies of symbolic or collective reparations. A major part of these measures came from recommendations made in the Rettig Report, such as the creation of memorials, the recognition of the main torture centres as national monuments, support for cultural projects aimed at reclaiming the memory of the victims, and others that have emerged as a result of the pressure and actions of victims' groups that have not rested in their demands for truth and justice.

The first of these measures was the creation of the General Cemetery Memorial in Santiago, inaugurated in February 1994. In March 2003, in commemoration of the 12th anniversary of the Rettig Report, an agreement was signed between the government and Victims' Relatives Groups in order to build symbolic reparation projects in municipalities throughout the country including Tocopilla, La Serena, Los Ángeles, Coronel, Talca, Valdivia, Calama, Osorno, Peñalolén, Linares, Pisagua, Punta Arenas,

Chaitén, Parral, Paine and Chihuío. This policy seeks to recover the ‘places of memory,’ name them, identify them and give them a context.

The new relationship between human rights and historical monuments, understood as representative spaces of Chile’s cultural heritage, began in 1995 when the National Monuments Council took responsibility for protecting the Hornos de Lonquén (mine ovens where human remains were found). This is the initial milestone in this history of the relationship between cultural heritage and memorialization policies. Since that time, other political repression centres have been declared historical monuments. José Domingo Cañas 1367, Nido 20, Londres 40 (formerly 38) ‘Cuartel Yucatán’, Villa Grimaldi ‘Cuartel Terranova’, the National Stadium, Patio 29, various buildings in Pisagua, the Víctor Jara Stadium, the Rio Chico Prison Camp in Isla Dawson, and the administration house of the Tres y Cuatro Alamos Detention Centre have all received protection under the National Monuments Law.

The Museum of Memory and Human Rights (2009) represents the culmination of this effort to engage in memorialization and is the most important public mechanism of symbolic reparation for the victims. Its mission is to ‘increase awareness of the systematic human rights violations committed by the Chilean government between 1973 and 1990, and to generate an ethical reflection on memory, solidarity and the importance of human rights to ensure that acts that affect the dignity of human beings are Never Again – *Nunca Más* – repeated.’³⁵

Notwithstanding the above, there is no unified opinion among Chileans regarding whether the state should finance memorials or monuments that pay homage to the victims of human rights violations. According to the 2019 Bicentennial Survey conducted by the *Universidad Católica*,³⁶ 37 percent disagree with this idea, 35 percent agree and 25 percent are indifferent.

There are 215 memorials in Chile, which include museums, memorial sites, sculptures and street and avenue names, distributed throughout the country as follows, broken down by region:

- Arica and Parinacota Region: three
- Tarapacá Region: nine
- Antofagasta Region: thirteen
- Atacama Region: three
- Coquimbo Region: six

³⁵ The Museum of Memory and Human Rights defines its mission by emphasizing the idea that knowledge of the events that occurred during the dictatorship and recognition of the victims will create a collective conscience and a moral rejection of human rights violations. In a statement from its board of directors in 2011, it said that ‘the awareness that the museum promotes does not have a political but a moral purpose: to transform respect for human rights into a categorical imperative of our coexistence.’ Accessed 11 April 2022, www.museodelamemoria.cl.

³⁶ Bicentennial Survey 2019. The Bicentennial Survey is a project conducted by the Pontificia Universidad Católica since 2006, ‘whose purpose is to obtain highly reliable information over time on the state of Chilean society.’

- Valparaíso Region: ten
- Metropolitan Region: ninety-eight
- O’Higgins Region: twelve
- Maule Region: nine
- Biobío Region: twenty
- Araucanía Region: eleven
- Los Ríos Region: ten
- Los Lagos Region: six
- Aysén Region: one
- Magallanes Region: four

2.9 Commemorative Events

Different commemorative events have been held and special dates recognized in Chile’s civil society by custom or government initiative. For example, 10 December is Human Rights Day, 30 October is National Day Commemorating People Executed for Political Reasons (Decree 119, 2009), 26 June is International Day in Support of Victims of Torture (instituted by the United Nations in 1997), 30 August is National Detained-Disappeared Day (Decree 211, 2006).

There have been special commemorative and relevant events organized around 11 September.

In September 2011, former president of Chile Salvador Allende was officially buried in the Santiago General Cemetery. Until then, his body had been relatively hidden and anonymous in the Santa Inés cemetery in Valparaíso.

On 11 September 2003, in the context of commemorations of the 30th anniversary of the military coup, then President Ricardo Lagos opened a side door of the La Moneda Palace, where the lifeless body of Salvador Allende had been carried out and which had been bricked up in the reconstruction of the building. At the same time, inside the building, the *Salón Blanco* (white room) was inaugurated, a room dedicated to the memory of Salvador Allende.

On 11 September 2013, on the 40th anniversary of the military coup and in a context known as a ‘memory explosion’ on the part of civil society, President Sebastián Piñera (2010 – 2014) criticized those who in their sector had been ‘passive accomplices’ of human rights abuses.

2.10 Transitional Justice Institutions

2.10.1 The National Truth and Reconciliation Commission

A few weeks after taking office on 25 April 1990, President Patricio Aylwin issued Supreme Decree No. 355, which created the National Truth and Reconciliation Commis-

sion, known as the ‘Rettig Commission’. The constitutional decree established the need to know the truth about human rights violations that resulted in the deaths of thousands of people. The decree stated that the Commission would: a) establish the most complete picture possible of human rights violations; b) gather evidence to identify the victims and establish their whereabouts; c) recommend fair and just reparation measures; and d) recommend legal and administrative measures to be adopted in order to prevent human rights violations in the future. The Commission was not able to assume the functions of the courts, which meant that its report could not include the identities of government agents who took part in the acts under investigation. However, the Commission was able, based on the information it collected, to report 200 cases to the courts for investigation.

The Commission was composed of nine prestigious individuals who represented many sectors of Chilean society.³⁷ The forms of human rights violations cited in the report are those considered most serious: disappearances; executions in war councils with a lack of minimal guarantees of fair trial and conducted outside of any due process; undue use of force resulting in death; deaths occurring during curfew; deaths at the hands of government agents without political motivation, such as personal acts of vengeance; deaths resulting from torture; and deaths resulting from terrorist acts.

After almost a year of investigation, the Commission submitted its report in February 1991. It established two categories of victims: a) victims of human rights violations and b) individuals who died in armed confrontations who were victims of political conflict. The Commission received 3,550 cases, of which it found 2,298 cases to qualify under its mandate. In the development of proposals for reparations that would be symbolic and cultural, legal and administrative, and would provide assistance or benefits, it consulted with human rights organizations, the Catholic Church, universities and political parties.

The Commanders-in-Chief of the Army and Navy rejected its conclusions, claiming that they were the result of the Commission’s lack of objectivity. The Air Force and Military Police (*Carabineros de Chile*) claimed the need to contextualize the acts. The judicial branch took four months to respond to the report’s questioning of its failure to protect individuals, and, when it did respond, it defended its actions without denying the facts. President Aylwin asked for forgiveness in the name of the Chilean State (*Estado*), and the government began a gradual process of acknowledging the crimes that occurred under the dictatorship and reconstructing the collective memory under dispute.

³⁷ The members of the commission were: Raúl Rettig Guissen, jurist, former member of Parliament for the Radical Party; Jaime Castillo Velasco, a Christian Democrat and jurist; José Luis Cea Egaña, an independent jurist; Mónica Jiménez de la Jara, a political scientist close to the Christian Democrats; Ricardo Martín Díaz, former Supreme Court justice; Laura Novoa Vásquez, jurist; Gonzalo Vial Correa, conservative historian; José Zalaquett Daher, jurist and member of the Party for Democracy; and Jorge Correa Sutil, a Christian Democrat attorney (Secretary).

2.10.2 *Corporación Nacional de Reparación y Reconciliación* (National Reparation and Reconciliation Board, CNRR)

The *Corporación Nacional de Reparación y Reconciliación* (CNRR) was created through Ley No. 19.123 on 8 February 1992 upon conclusion of the work of the Commission and the submission of the Rettig Report. The purpose of this body was to provide reparations to the victims, continue and complete the investigations of the Rettig Report, and provide legal and social assistance to the families of victims identified in the report. This process ended in 1994, identifying a total of 3,195 officially recognized fatal victims.

In 1996, at the end of its legal term, CNRR submitted its report on the 'Identification of Victims of Human Rights Violations and Political Violence' to President Eduardo Frei Ruiz Tagle (1994–2000).

The ongoing discussion regarding the location of detained-disappeared and people executed for political reasons led to the 1997 establishment of the Programme of Continuation of Ley No. 19.123 through Supreme Decree No. 1005. The Programme incorporates the family members of people executed for political reasons and actively participates in hundreds of legal cases held in courts throughout the country, either directly as a complainant or as an intervening party.

Meanwhile, in 1994, the Supreme Court convicted and ordered the arrest of Manuel Contreras for his responsibility in the Letelier case. Contreras, defying the judicial system and the government, refused to surrender. President Frei ordered the arrest, thus constituting the first direct confrontation with the perpetrators of human rights violations.

2.10.3 Round Table Dialogue on Human Rights

During the Eduardo Frei Ruiz Tagle (1994–2000) administration, groups representing victims and family members actively sought to expose the reality of torture and recover spaces that had been used as detention or extermination camps, such as Villa Grimaldi Park for Peace. The struggle of the victims thus extended beyond the establishment of truth about fatal cases to incorporate things that, as we will see, had until that time been denied: torture, memory, and the demand for justice.

On 16 October 1998 there was an unexpected development that would end the impunity that Augusto Pinochet had enjoyed up until that point. He was detained in London as a result of an order issued by a British judge in response to a request from Spanish judge Baltazar Garzón. Irrespective of the outcome of this episode, which is well known (he was released due to his poor health), it had a significant impact in Chile, reopening the debate over human rights violations and the responsibilities of then-appointed Senator for Life, Augusto Pinochet. This led the government to propose the creation of a Round Table Dialogue on 21 August 1999 and the

courts to make important changes in the handling of cases of human rights violations, as we will explain below.

The Round Table Dialogue included 24 people from the government, religious organizations, human rights organizations (though the groups of relatives of the disappeared refused to participate), the military and academia.³⁸ Its mission was to receive information about the fate of the detained-disappeared. The results of this exercise constituted progress towards the establishment of a vision of the historical context in which human rights violations took place and the expression of a commitment to ensure that such events would not occur again in the country. For the first time, the Chilean armed forces recognized institutional responsibility for human rights violations, abandoning the prior discourse of isolated occurrences or excesses and validating the contents of the Rettig Report. As a result of the agreements reached during the Round Table Dialogue, the military and police provided information on 180 detained-disappeared and 20 unidentified individuals. This information signaled acknowledgement of the detention and death of individuals and admission that their bodies had been thrown into the country's sea, rivers and lakes.

President Ricardo Lagos (2000–2006) stated that the information would allow the justice system to ascertain the fate of the disappeared. Based on that information, and at the request of the Executive Branch, the Supreme Court proceeded to appoint special judges exclusively to handle these cases and ordered some cases reopened. However, information soon emerged that called into question the veracity of the information provided by the armed forces.

2.10.4 National Commission on Political Imprisonment and Torture (Phases 1 and 2)

As part of the commemorations of the 30th anniversary of the military coup, President Ricardo Lagos established the 'There is no tomorrow without yesterday' policy. The measure mainly took up the demands of the victims' groups, government and opposition political parties, and moral thought leaders such as the Evangelical

³⁸ The members of the Dialogue who signed the final agreement: Mario Fernández Baeza, Minister of Defense; Ángel Flisfisch, Under-Secretary of Education; Luciano Fouilloux Fernández, Under-Secretary of the Military Police; Sergio Valech Aldunate, Catholic Bishop; Neftalí Aravena Bravo, Methodist Bishop; Jorge Carvajal Muñoz, Grand Master of the Masons; León Cohen Delpiano, representative of B'nai B'rith; Rear Admiral Felipe Howard Brown, representative of the Navy; General Juan Ignacio Concha, representative of Aviation; General Reinaldo José Ríos Cataldo, representative of the Military Police; General Juan Carlos Salgado Brocal, representative of the Army; Pamela Pereira Fernández, human rights attorney; Jaime Castillo Velasco, jurist; Roberto Garretón Merino, human rights attorney; Héctor Salazar Ardiles, human rights attorney; Guillermo Blanco Martínez, journalist; Claudio Teitelboim (now Bunster) Wietzmann, scientist; Sol Serrano Pérez, historian; Elizabeth Lira Kornfeld, psychologist; José Zalaquett Daher, jurist; Jorge Manzi Astudillo, psychologist, Dialogue coordinator; and Gonzalo Sánchez García-Huidobro, attorney and Dialogue coordinator.

and Catholic churches, the Jewish community and the Masons, to investigate the fate of those who survived repression and other matters related to human rights. The policy's proposal contained four points: to fully disclose the truth, deliver justice, strengthen reparation measures and ensure full respect for human rights. The policy also established that the courts were free to interpret the amnesty law issued by the dictatorship, which was still in place. But the most important measure was the creation of the National Commission on Political Imprisonment and Torture, or Valech Commission, in 2003 through Supreme Decree No. 1040. The Commission was given six months to establish who had been imprisoned and tortured for political reasons by government agents between 11 September 1973 and 10 March 1990.

The Commission, which was presided over by former Vicar of Solidarity Bishop Sergio Valech, was defined as an advisory body to the President and was to be composed of eight individuals with human rights experience named by him.³⁹ It adopted a definition of torture which included elements from the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. The Commission collected the testimonies of nearly 35,000 people and produced a report that furthers the analysis of the institutional context in which systematic and generalized human rights violations took place. It concluded that there had been organized political repression on the part of the government, directed by its highest-ranking officials. It certified that 28,459 people suffered political imprisonment and torture in 1,137 facilities owned or operated by the police or security services of the dictatorship.

In May 2006, after the courts established that a significant number of remains of detained-disappeared individuals had been incorrectly identified, the *Comisión Asesora Presidencial para la Formulación y Ejecución de Políticas de Derechos Humanos* (Presidential Advisory Commission for the Formulation and Execution of Human Rights Policies; CPDDHH) was created through Ministry of the Interior Supreme Decree No. 533. The CPDDHH coordinated the efforts of a group of government agencies to create a forensic identification system that would provide family members and society with certainty regarding the identification of victims' remains. The results included the creation of an international committee of experts in the Legal Medical Service for the identification of victims' remains and a Genetic Database for victims and their relatives to facilitate the identification of remains. The CPDDHH also promoted the creation and installation of the Museum of Memory and Human Rights,

39 The members of the first Valech Commission were: Bishop Sergio Valech, who presided over the commission; María Luisa Sepúlveda Edwards, Executive Vice-President; Miguel Amunátegui, attorney; Luciano Fouilloux, attorney; José Antonio Gómez, attorney and former Minister of Justice; Elizabeth Lira, psychologist; Lucas Sierra, attorney; Álvaro Varela, attorney from the Pro Peace Committee; and Cristián Correa, attorney and Secretary of the Commission. The second Commission was presided over by María Luisa Sepúlveda following the death of Monsignor Valech and Mario Papi, attorney; Edgardo Riveros, attorney; and Carlos García Lazcano, attorney and Commission Secretary, were added.

pushed forward the bill to create the National Human Rights Institute, granted new reparation benefits to victims identified by the Valech Commission, and created the new Commission for Detained-Disappeared, Individuals Executed for Political Reasons, and Political Prisoners and Victims of Torture (Valech Commission 2).

The first administration of President Michelle Bachelet (2006–2010) made the decision to reopen the Valech Commission in order to hear new cases and evaluate and/or reevaluate testimony. The Commission submitted a report to President Sebastián Piñera (2010–2014) in 2011 with 30 additional cases of persons executed for political reasons and another 9,795 accredited cases of political imprisonment and torture.

According to the reports of the various commissions and investigative stages, the data on victims fully identified as having suffered human rights violations or political violence during the dictatorship is as follows (Tab. 2):

Tab. 2: Number of victims having suffered human rights violations or political violence during the dictatorship in Chile.

Human Rights Commissions	Persons detained-disappeared and executed	Victims of political violence	Victims of Political imprisonment and torture
Rettig Commission	2,130	168	
National Reparation Board	644	255	
Valech Commission I			28,459
Valech Commission II	30		9,795
Total	2,804	423	38,254

Source: Museum of Memory and Human Rights.

2.10.5 Other Relevant Institutions of Transitional Justice

- Supreme Court: Chile today is one of the countries with the most experience in processing crimes against humanity in local courts, as can be seen in the close to 350 sentences passed down between 2002 and 2019. In this sense, the Supreme Court and the Court of Appeals have played a decisive role by denying the applicability of the prescription of human rights crimes and the law of (self)-amnesty decreed in 1978 and assuming international legal standards on human rights issues, giving particular treatment to the cases of detained-disappeared persons and people executed for political reasons.

- Special Judges: Designated by the Supreme Court, currently (as of 2020) there are 13 visiting ministers designated to substantiate close to 1,500 cases throughout the country related to violations of the human right to life and/or physical integrity. An essential support to this task is undertaken by the recently created *Coordinación Nacional para causas de derechos humanos* (National Coordination of Human Rights cases), which reports to the Research Department of the Supreme Court.
- Inter-American Human Rights System: Both the Commission and the Inter-American Human Rights Court have acted to annul sentences of war councils and favour civil demands against the state of Chile. The relationship between the government and the court is not easy, and sometimes the government has claimed an invasion of attributes and spheres of competence that are exclusive to the Chilean courts. The current Chilean government, (Sebastián Piñera (2018–2022) together with the governments of Brazil, Argentina, Colombia and Paraguay, sent a letter drawing up these complaints, which was interpreted as an attempt to weaken the inter-American human rights system.
- The Constitutional Court has also played a significant role in human rights cases, having been used as a means of impunity, whereby the lawyers of people processed for crimes have presented applications of inapplicability due to unconstitutionality, arguing that the old justice system (there was a major reform to the criminal justice system in the 1990s) did not grant the necessary guarantees for due process. Some of these actions have been rejected by the court, and others have been declared admissible. The most serious issue has been the paralysis of the processes carried out by the courts of justice, which can sometimes be prolonged indefinitely, something the president of the Constitutional Court herself has denounced.
- Human Rights Programme: After the National Corporation for Reparation and Reconciliation (CNRR) reached the end of its remit and Ley No. 19.123 was passed, the Human Rights Programme of the Ministry of the Interior was created through Decree No. 1005 of 06.09.1997. This subsequently, in 2016, moved under the auspices of the Ministry of Justice and Human Rights.

The original functions of the programme were to assist victims of human rights violations in judicial and extrajudicial actions; provide social assistance to relatives and victims recognized in the Rettig Report and the CNRR so they could access reparation measures; preserve and guard the files generated by both instances; and promote cultural and educational actions to stimulate a culture of human rights.

Currently, the programme reports to the Human Rights Under-Secretary of the Ministry of Justice and Human Rights and is directed by an executive secretary. It is organized into a legal department, which follows the judicial processes for disappearances and executions; an archive and documentation department; a social department which deals with reparation policies; and a department that coordinates

memorial projects and institutional management, working on symbolic repair and the construction of memorial spaces.⁴⁰

2.11 Victims' Associations

After the mass detentions began, following the military coup, the families of victims organized under the auspices of organizations associated with the Church (*Comité Pro-Paz*, *Vicaría de la Solidaridad* and *Fundación de Ayuda Social de las Iglesias Cristianas*; FASIC) or lay organizations (*Comisión de Defensa de los Derechos del Pueblo*, CODEPU, *Comisión Chilena de Derechos Humanos*) dedicated to the defence of human rights. The *Agrupación de Familiares de Detenidos Desaparecidos* (Group of Families of the Detained-Disappeared; AFDD) was particularly important. This organization began in 1977 under the leadership of Sola Sierra, wife of the detained-disappeared Waldo Pizarro. This group filed a series of complaints in the courts through legal appeals and undertook bold non-violent action on the streets to draw attention to the fate of their family members, whose photographs group members wore on their bodies. Another organization is the *Agrupación de Familiares de Ejecutados Políticos* (Group of Families of People Executed for Political Reasons; AFEP). Under the leadership of Alicia Lira, this group filed claims of extrajudicial executions using methods similar to those used by the AFDD. Since the transition to democracy, this group has been a fundamental player in filing claims on cases of people executed for political reasons, which are in the hands of the courts. Both the AFDD and the AFEP exist in Santiago and elsewhere in Chile. Both groups remain active and government initiatives on justice or reparation related to human rights are obliged to engage with them.

Other organizations have also arisen, such as 'former political prisoners', 'former female political prisoners', 'children of political prisoners', beneficiary groups of different reparation programmes (*Exonerados*, PRAIS), 'former female political prisoner victims of sexual violence', 'group of victims of La Moneda', among many other local and regional groups.

There are also diverse victims' organizations related to memorial sites in Santiago and regionally, which work on the conservation and management of the site concerned and in some cases develop initiatives with the courts and/or stimulate public participation in political or social debates. The most active of these are: the *Londres 38 Espacio de Memoria* memorial house, the Villa Grimaldi Park for Peace, the National Stadium memorial group, the *Memorial de Paine*, and José Domingo Cañas' house. The following are among the notable initiatives outside Santiago: the *Asociación por la Memoria y los DDHH Colonia Dignidad* (Dignity Colony Association for

⁴⁰ Accessed 11 April 2022, <https://www.minjusticia.gob.cl/area-juridica>.

Memory and Human Rights), the *Palacio de la Risa* in Punta Arenas, as well as victims' organizations in La Serena, Concepción, Antofagasta and others.

2.12 Measures in the Educational System

As in other Latin American countries that have introduced human rights education in school, this has been done in Chile since the traumatic recent history. The recentness of these events may explain why this effort has sparked major controversy that has involved communities of historians and educators.⁴¹ Despite the controversies, based on reliable opinion polls, 69 percent of Chileans strongly agree that the events that took place between 1973 and 1990 should be taught in schools.⁴²

Human rights education in Chile has been incorporated into the school curriculum in 6th grade and 10th grade and includes chapters on the 1973 military coup and the democratic transition process. The current programme of study includes a review of recent history designed to boost students' appreciation of democracy, political pluralism and human rights.⁴³ In fact, in history and social sciences classes during the second year of high school, which focus on the history of Chile, the text specifies that its purpose is '(...) for students to develop a global vision on the development of national history and to understand that the current reality has its background in the historical processes that have shaped them.'⁴⁴ This study unit addresses 'The military regime and transition to democracy', which covers the political crisis in 1973 which led to the military coup and the ensuing transition to democracy starting at the end of the 1980s.

Even so, despite the option to incorporate human rights based on the experiences of individuals in the 1970s and 1980s, the testimony, and in a broader sense, the memory of people whose rights were violated have not been integrated to augment students' knowledge and comprehension of the recent past. The perspective has been historicist, assuming three theses as an explanatory framework of the military coup: the progressive crisis in Chile, the determinism and inevitability of violence and the Cold War.⁴⁵

The exception has been the Museum of Memory and Human Rights, which recounts the events based on testimony and memory and which is visited on an ongoing basis by thousands of students from public and private schools, providing an al-

⁴¹ As a reference, see Abraham Magendzo and María Isabel Toledo, *Educación en derechos humanos: currículum historia y ciencias sociales del 2o año de enseñanza media: Subunit régimen militar y transición a la democracia* (Valdivia: Revista Estudios pedagógicos XXXV, 2009).

⁴² Bicentennial Survey, 2019. Universidad Católica de Chile.

⁴³ Graciela Rubio, *La enseñanza del pasado reciente en Chile: Educación en Derechos Humanos en Chile* (Santiago: Red de Equipos de Educación en DDHH, 2014).

⁴⁴ Ministry of Education, 1999.

⁴⁵ Rubio supra 24, 97.

ternative way of opening a discussion about the period. The training schools of the police force (*Carabineros*) and investigations police (PDI) are also among the permanent audience of the museum. Likewise, the museum has, in conjunction with the Ministry of Education, participated in teacher-training cycles on human rights throughout the country.

Even so, the balance is not optimistic. The political and civic education of young people has significant gaps. Their understanding of the democratic system is weak and their perspective on the recent past is loaded with myths and taboos. In the meantime, teachers still prefer to avoid addressing the period so as to circumvent conflicts in the classroom.

2.13 Coming to Terms with the Past through the Media

Democracy arrived hand in hand with an intense debate on the role of the media and the policy that the new government should follow after 17 years of censorship and the predominance of an authoritarian account in the traditional written media and on television.

The Aylwin government overturned the principal provisions that were detrimental to freedom of expression and, to counter the recent policy of control over the press, assumed the thesis that the best communications policy for the government was the absence of a communications policy.

On the other hand, the transition to democracy in Chile temporarily coincided with a modernization and privatization process within the media that was already being felt in the latter years of the dictatorship. The traditional written press editorially supported the regime, but at the same time – in the later years – was sensitive to public opinion that, on the one hand, was critical of the military government and, on the other, sought to meet its expectations of information in increasingly broader fields. Meanwhile, in television, a privatization process began and two channels were acquired by Mexican and Venezuelan companies, which coexisted with state-run television. Currently, the main private channels available depend on the Chilean and North American station owners.

In parallel to this, from the 1980s onwards, various media arose that were in clear opposition to the regime, including the magazines *APSI*, *Cauce*, *Análisis*, *Hoy*, *La Bicicleta*, newspapers *La Época* and *Fortín Mapocho* and radio stations *Radio Chilena* and *Radio Cooperativa*.

Diverse trends converged during the post-dictatorship period: on one hand, the television privatization process was accentuated, while state television became public television. In other words, it became an autonomous company governed by a pluralist board, representative of the government and opposition currents, but without public financing. A second trend is the paradoxical disappearance of the written media that opposed the dictatorship. This is explained by their fragility, as they were basically supported by a political logic and with solidarity and support from

abroad. The government, on the other hand, made no efforts to sustain them, letting the ‘invisible hand’ of the market take care of them, causing them to disappear.⁴⁶ Finally, both the democratizing process and the modernization of the media drove a growing openness of information (this was not the case with the editorial lines, which were clearly conservative), especially in the field of politics. An example of this change in relation to the treatment of human rights issues is the fact that, during the authoritarian period, the press either denied the existence of detainees-disappeared or talked about ‘alleged disappearances,’ putting their existence into doubt, but after the Rettig Report it assumed the concept of ‘detained-disappeared’ persons.

Another relevant phenomenon is that contemporary technological advances at the time of democratic transition also notably influenced Chile’s media scene. In fact, currently 92 percent of Chileans have a mobile phone, 82 percent know and use Facebook, and 55 percent know Twitter and consider the radio (44 percent) and Twitter (40 percent) to be the most reliable sources of information.⁴⁷ Chileans have redefined ‘the relationship between the media and audiences and political players through the creation of new tools, which have enabled the diversification of sources of information and have provided more power and participation to the people.’⁴⁸ Proof of the power of social networks – Twitter, Facebook, Whatsapp and others – can be verified in Chile from the use of these networks by the student movements in 2006 and 2011, and most especially with the ‘social outbreak’ in October 2019.

2.14 Coming to Terms with the Past through Art

The dictatorial experience and critique of the transition have very much been present in the fields of literary and audio-visual creation, theatre, performance, cultural critique and visual arts. Although the shared diagnosis during the period from 1973 to 1990 was of ‘cultural blackout’ in Chile as a result of censorship, the exile of many creators and artists and the general cultural environment, it is also true that creative resistance was developed in music, theatre, literature and performance. A few comprised more noteworthy instances of these broader phenomena, whether through their mass impact or the artistic imprint they left. In popular music, Los Prisioneros became generational icons of the 1980s. In theatre, pieces that were critical of the dictatorship were noteworthy, from playwrights such as Marco Antonio de la Parra and Ramón Griffero to the groups ICTUS and Teniente Bello. In visual arts and performance, Gonzalo Díaz was noteworthy with his work *Lonquén*, as was the group

⁴⁶ Eugenio Tironi and Sunkel Guillermo, *Modernización de las comunicaciones y Democratización Política* (Santiago: Revista Estudios Públicos, 1993).

⁴⁷ Bicentennial Survey 2019.

⁴⁸ Patricio Navia and Aturo Arriagada ed., *Intermedios: Medios y Democracia en Chile* (Santiago: UDP, 2013).

CADA, made up of visual artists and poets who used street performance to set the trend for the development of Chilean art. The memory of singer and theater director Víctor Jara, who was assassinated in the days following the military coup, and the presence in exile of groups identified with the UP such as El Aleph, Inti Illimani or Quilapayún, also played an important role in collective memory. These and other movements and groups should be considered at the base of the ulterior artistic development of the post-dictatorial era.

The arrival of democracy has brought about the development of state initiatives aimed at strengthening the cultural and artistic space, such as the setting up of competitive funds for artistic creation and the production and the development of infrastructure for the arts at both municipal and central levels.

The dictatorial experience, exile, memory and human rights have been recurring themes in the development of arts in Chile. Due to its popular impact, it is important to draw attention to the audio-visual terrain, both in the field of television and of fictional and documentary film. During the first decade, there was no production or space for issues related to the dictatorial experience on television. However, towards the end of the 2000s and especially in the 2010s, television began to engage the period of Chilean dictatorship. Noteworthy within this milieu were *Los 80* (the 80s), which addressed the experience of a middle class family in Chile in the 1980s, and *Los Archivos del Cardenal* ('The Cardinal's Files'), which was inspired by the experience of the *Vicaría de la Solidaridad* in defence of human rights. Both series reached record audiences and paved the way for journalistic reports on television that referred directly to cases of human rights violations.

In fictional film, the Chilean production with the largest audience was *Machuca*, a film that addresses the UP period and the military coup from the perspective of a group of children from a private school; also noteworthy was *NO*, inspired by the publicity campaign for the 1988 referendum, along with movies that addressed new issues for the country, such as *El Club* ('The Club'), which deals sexual abuse by priests, or *La Mujer Fantástica* ('A Fantastic Woman'), 2018 Oscar Winner for best foreign film, which addresses the conflicts of transsexuality.

The area with the most audio-visual production has been documentary film, a genre that by far facilitated the largest part of the historical memorial work. Production in this genre began as early as the 1980s, both in exile and in Chile, with informal distribution networks outside the state, such as *Teleanálisis* (clandestine opposition news channel, declared Memory of the World by UNESCO) or *la Red de Video Popular de ICTUS* (Ichthus popular video network). The following are among the authors and works of greatest impact: Patricio Guzmán with *La Memoria Obstinada* ('Chile, the Obstinate Memory') (1997), *El Caso Pinochet* ('The Pinochet Case') (2002) and *Nostalgia de la Luz* ('Nostalgia for the Light') (2010), among others; Ignacio Agüero with *El Diario de Agustín* ('Agustín's Newspaper') (2008); Carmen Luz Parot with *Estadio Nacional* ('National Stadium') (2001) and *El Derecho de Vivir en Paz* ('The Right to Live in Peace') (1999); Carmen Castillo and Guy Girard with *La Flaca Alejandra* ('The Skinny Alexandra') (1994); Silvio Caiozzi with *Fernando ha*

Vuelto ('Fernando is Back') (1998); Pedro Chaskel and Pablo Salas with *Operación Condor* ('Operation Condor') (2005). There are many others that delve into diverse issues associated with human rights violations, especially the cases of the detained-disappeared.

In the field of artistic video, during the dictatorship, critical works were made by noted artists such as Juan Downey, Eugenio Dittborn, Lotty Rosenfeld and Tatiana Gaviola, and they have continued into the democratic period, broaching topics related to forced disappearance and memory.⁴⁹

It is impossible to refer to the democratic period without mentioning the presence of artists such as Pedro Lemebel, writer and performance artist, who uses his talent to shake things up on issues related to marginality and the sexual rights of minorities, a taboo topic in the political culture during the dictatorship, or the young playwright Guillermo Calderón and his works *Villa+Discurso* or *Clase*, which critically address essential topics related to the transition, or the Copal brothers and Visnu Ibarra, who through their work *Víctor sin Víctor Jara* ('Victor without Victor Jara') presented the most – watched theatre piece in the country in 2014.

In the area of poetry – always very important in Chile, which has produced two Nobel Prize winners in Literature – many voices have arisen, renovating poetic language, with names like Raúl Zurita, Elicura Chihaulaf, Rodrigo Lira, Enrique Lihn, Elvira Hernández, Soledad Fariña and obviously the antipoet Nicanor Parra.⁵⁰

In literature, democracy saw a powerful voice arise, that of Roberto Bolaño, who from his self-imposed exile became the most relevant Latin American author of recent years, with works like *Los Detectives Salvajes* (*The Savage Detectives*) or *2666*. His influence on the education of young Chilean authors is notable, in terms of the topics addressed and his critical vision of the country, and for his renovating language. Germán Marín and his trilogy *Historia de una Absolución Familiar* (*Story of a Family Absolution*) is another noteworthy author who is representative of the themes of the transition.

The genre of testimony has also been important. Witnesses and the protagonists of stories from prison and struggles have left a vast body of work. I highlight two of these that recount the experience of two women activists who were converted into DINA collaborators and who after the dictatorship became a key part of complaints lodged against the truth commissions and the courts. By Luz Arce, the book *El Infierno* (*The Inferno*) and Marcia Merino *Mi Verdad* (*My Truth*). Added to these is the extraordinary tale of Hernán Valdés *Tejas Verdes: diario de un campo de concentración en Chile* (*Diary of a Chilean Concentration Camp*).

In the visual arts, the most relevant voices have delved into an art related to memory, the prison experience and exile: Gonzalo Díaz, Lotty Rosenfeld, Gracia Bar-

⁴⁹ Audiovisual Archive. Collection from the Museum of Memory and Human Rights. 2016.

⁵⁰ See *Poesía Chilena en Dictadura y postdictadura*, varios autores (Santiago: Gramaje ediciones, 2020).

rios, José Balmes, Roser Bru, Guillermo Núñez and a new generation including Voluspa Jarpa, Enrique Ramírez, Máximo Corvalán and an accompanying long list of artists. Names from outside the country include Alfredo Jaar, Jorge Tacla, Iván Navarro and Cecilia Vicuña in New York and Fernando Prats in Barcelona.

3 Stocktaking: Successes and Failures of Transitional Justice in Chile

3.1 Successes in Coming to Terms with the Past and Their Causes

- Key Policies: Chile was able to end the dictatorship without bloodshed and to build a democratic regime thanks to i) the political unity of the forces opposed to the dictatorship, ii) the definition of a realistic strategy that used the institutional spaces available, and iii) the construction of politically and socially articulated solid majorities.
- Continuity and Rupture: The transition concentrated governmental effort in two key areas: ‘rupture on human rights issues and continuity of economic policy. This was expressed, on the one hand, in the creation of the truth commission, and, on the other, in high levels of economic stability and growth.’⁵¹ It produced results, but with low levels of participation by civil society.
- Armed Forces: The relationship between the government and the armed forces was marked by the retention of Pinochet as commander-in-chief of the army, creating moments of high tension. The main conflict revolved around the treatment of human rights. It was fundamental for the government to maintain a firm attitude regarding respect for institutions and the rule of law. The arrest of Manuel Contreras, who was held in contempt for resisting arrest as ordered by the Supreme Court, put an end to military actions that were openly divergent from institutionalized norms.
- Overcoming Poverty: Another key to success was that, despite the continuity of economic policy, the democratic governments of the *Concertación* installed strong social policies aimed at overcoming poverty. These policies resulted in a poverty reduction from 42 percent in 1990 to 8.6 percent in 2019.⁵²
- The Truth Commissions were instances of moral reparation and justice. Their reports give dignity back to victims and recognize their families’ fight for the truth. The repairs promoted in Chile are significant and large-scale, but always insuf-

⁵¹ Personal interview. Enrique Correa, former minister of the government of Patricio Aylwin. Santiago, September 2020.

⁵² Source: Ministry of Social Development.

ficient in the eyes of the victims. It must be assumed that the damage is irreparable, and these monetary or other compensations must never be presented as a total satisfaction given in exchange for not demanding justice.

- **Reparation Measures:** The climate in the country at the beginning of the nineties favored the discourse of reconciliation and overcoming violence and showed solidarity with the victims, especially those of forced disappearance. The reparation measures proposed by the Rettig Commission were adopted by the National Congress. The right wing supported the reparations, knowing there would be no criminal investigation.
- **Forensic Identification:** The development of a reliable forensic identification policy to identify without any margin of error bodies or body parts found over time was important for the victims. The creation of a DNA database of victims and their families has proven to be very efficient in the Chilean experience.
- **Victims' Associations:** The activism of the organizations of families of victims or of surviving victims themselves has been a key factor in pushing forth processes of justice and memory. These organizations have engaged with democratic governments, at times from a critical standpoint, at times from a collaborative one. It is important that they have managed to retain their autonomy so as to avoid being used politically and to conserve their vigilant and critical character.
- **Transitional Justice:** Transitional justice began with the coalition governments headed by the *Demócrata Cristiano* party, with an emphasis put on the most serious crimes in service of the search for truth. Government initiatives taken against the military sped up under socialist-led governments. However, this cannot be completely attributed to socialism. The most important changes were those that took place within the jurisprudence of the Supreme Court and those that accompanied the arrest of Pinochet in London, which put the country in an uncomfortable situation. Thus, from 2000 onwards, a solid body of jurisprudence has consolidated in the higher courts of justice to the effect that crimes of the state are tried as crimes without prescription or amnesty. Over the past few years, the higher courts of justice have cleared the way for establishing criminal responsibility and have normatively framed these criminal conducts as abominable events in light of international humanitarian law and human rights.
- **Memory:** The country has developed vast experience that has translated into memorials, memorial sites, events and commemorative dates. This policy, driven by victims with state support, has the merit of installing the memory of what happened into urban public space in response to a heartfelt need for symbolic repair on behalf of the victims. The creation of a state entity such as the Museum of Memory and Human Rights plays an important role in raising social awareness of the memory of the dictatorship beyond the victims' circle. This entity is managed by an autonomous foundation of the governments in office, integrated by people related to human rights, and has a publicly funded budget that is discussed on a yearly basis in Chile's budget law.

3.2 Failures in Coming to Terms with the Past and Their Causes

- Critiques of Democracy: Today, most Chileans – 76 percent according to the Bicentennial Survey – think that democracy is preferable to any other form of government, a number that has consistently been on the rise since 1990. However, the more politically active sectors of the population have been developing a critical discourse of the political transition process, some blaming human rights for difficulties in facing problems surrounding security and public order and others identifying the current democracy as a ‘continuance of the dictatorship.’ The new generation has raised critical voices around the failure to produce an insurrectionary exit from the military regime. In Cath Collins’ words, ‘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’.⁵³ The current presidential election (2021) has as options on the ballot the two candidates who represent the extremes of the political arc, both critical of the transition.
- Police: A need that the transitional process in Chile failed to address and for which it is now paying a high price is police reform. Preventing its autonomy, bringing transparency to its administration and a clear civil supremacy that includes its subordination to the political power are all essential if we are to avoid episodes of institutional corruption and excessive use of force, which carry serious political consequences,⁵⁴ as in fact happened in October 2019, when severe human rights violations were verified by the police in the context of the ‘social outbreak’ (*estallido social*).
- Human Rights: Contrary to what the country believed, human rights violations occurred once again at the hands of state agents in 2019, especially in police responses to demonstrators, which included practices of sexual abuse toward women, shooting at the faces of demonstrators and other practices that have been denounced by international organisms and the INDH.
- Ambiguity in the Behaviour of the State in the Recognition of the Right for Families to Receive Civil Compensation for Damages Caused: The behaviour of state organisms on this matter has been erratic. On the one hand, the position of the Council of Defence of the State is to systematically deny this right, and, on the other, the higher courts have not created a uniform jurisprudence that embraces the idea of integrally repairing the damage done.
- The Victims’ Opinion: According to victims, the most significant progress depended on the courts. Despite the fact that since 2000 processes have been underway and the main responsible parties have been convicted, the victims’ organizations ‘regret that these processes have been slow and late, the

⁵³ Cath Collins, *Lustration*, in *The Chilean Experience* (Prague: CEVRO, 2019), 24.

⁵⁴ Claudio Fuentes, *Dismantling the State Security Apparatus* (Prague: CEVRO, 2019), 13.

convictions have been minimal and the existence of networks that protect the accused, as well as the granting of prison benefits to inmates such as reduced sentences or early parole. Critical voices have also been raised that auxiliary organisms of justice (for example, Legal Medical Service; SML) are weak and slow. Victims also remain critical of impunity.⁵⁵ There is a social majority that supports punishing the perpetrators, but the general sense is that the punishment is too little, too late. Critical voices argue that there are no trials for civilians implicated in repression.

- **Armed Forces:** There is discontent among the armed forces and a sense of injustice or unilaterality. They maintain the discourse that they were fighting an enemy in defence of the homeland. There are periodic homages made to emblematic members of the military junta who are incarcerated.
- **Reconciliation:** Without self-critically assuming responsibility and assigning blame, there is no reconciliation. There is no interest in victims or perpetrators, no self-criticism; an entrenched and vindictive interpretation predominates.
- **Elite Renovation:** One of the probable causes of the crisis of representation in Chile's democracy and the critical assessment of the transition held by broad sectors of the population is probably the lack of renovation of the political and business elite, who are not only growing old but who also conserve their 'oligarchical' traits. The meritocratic promise that looks to place merit over inheritance in terms of social mobility, which should accompany the modernization of the country, does not appear to have been put into practice.
- **Memorials:** Despite a strong push towards commemorative initiatives and memorial sites, the memorials have no impact on society, but only serve to comfort the victims and their kin. They have become memorial sites and places of celebrations, with the exclusive exception of the Museum of Memory and Human Rights.
- **Human Rights Lessons:** There are no signs of a shared conscience within Chilean society regarding the political crisis prior to the military coup, nor an evaluation of the dictatorial period which is particularly evident among young people. This is because the educational system has not been able to address an issue that continues to divide Chileans, nor has it been able to provide adequate civic education to young people.

⁵⁵ Personal interview, María Luisa Ortiz, family member of victims and collection supervisor at the museum of memory and human rights. September 2020.

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