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FACULTAD DE DERECHO

"Que las promesas se vuelvan ciertas": Truth, Justice, Reparations, Memory and Guarantees of Non-Repetition in Chile - 25 years of Criminal Cases

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"Que las promesas se vuelvan ciertas": Truth, Justice, Reparations, Memory and Guarantees of Non-Repetition in Chile - 25 years of Criminal Cases

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Chapter prepared on the occasion of the 50th anniversary of the Chilean coup, for the Universidad Diego Portales' Annual Human Rights Report 2023[1]

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[1] Report originally published, in Spanish, as chapter two of the annual report Derechos Humanos en Chile (2023), produced by the Universidad Diego Portales, UDP and available at https://derechoshumanos.udp.cl/informe-anual/informe-anual-sobre-derechos-humanos-en-chile-2023/. This year's edition of the chapter was co-authored by Cath Collins and Andrea Ordóñez, in association with core team members of the UDP's Observatorio de Justicia Transicional (referred to below as 'Observatorio'), and with invited guests. This year's contributors were Observatorio team members Francisco Bustos, Boris Hau, Loreto López and Francisco Ugás; invited experts Pietro Sferrazza and Joaquín Rubio; and research assistants Felipe Bouey, Felipe Candia and Carla Osorio. Coordination, drafting and editing were undertaken by Andrea Ordóñez, lawyer, Observatorio team member, and editor of the Observatorio's termly news bulletin, and Cath Collins, Professor of Transitional Justice at Ulster University, Northern Ireland and director of the Observatory. Editorial responsibility for the analysis and opinions presented rests with Professor Cath Collins. Thanks are due to all the individuals, social organisations, and institutions who provided information, interviews and other assistance during the preparation of this year's report, and to all those whose co-operation has been vital to the Observatorio's work over its 15-year trajectory since 2008.

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ABSTRACT

The year 2023 marks various anniversaries relevant to transitional justice concerns in Chile: in particular, 50 years have elapsed since the 1973 military coup, and 25 years since criminal complaints brought by victims' relatives reactivated justice efforts in domestic courts for grave human rights violations committed during the 1973-1990 dictatorship. 1998 was also the year of the 'Pinochet case', which saw Chile's former dictator arrested in London under an international arrest warrant requested by Spain. This year's annual report chapter accordingly adds consideration of Chile's overall transitional justice trajectory since 1998, to its usual focus on the detail of recent events. It also contains detailed statistical comparisons for two twelve month periods: July 2022 to June 2023, inclusive; and July 2021 to June 2022.[3]

One notable trend in Chile's recent, and now mid-to-long-term, transitional justice trajectory has been a diversification in the types of transitional justice dilemma that arise, combined with a notable tendency to their judicialisation. The courts have become a first resort not only for criminal and civil cases, but also for actions primarily associated with the search for truth, symbolic reparations, public memorialisation, and prevention-oriented reforms. In the area of criminal justice we observe a consolidation in the courts' acknowledgement of the State's international obligations in issues ranging from reparations, to sexual violence. There has been less progress in ex officio prosecution of torture, the holding to account of civilian perpetrators, and preventing defendants going on the run once convictions are confirmed. Overall, however, the principal outer limit to a more complete criminal justice response is, increasingly, biological impunity, with perpetrators dying before their convictions are confirmed or sentences served. The courts are meanwhile increasingly called on to counter denialism, dissolve spurious dictatorship-era convictions of political prisoners, and 'purge' public spaces and military training facilities of symbols associated with the dictatorship and its protagonists. In civil claim-making, there has been an important recent breakthrough in interpretation of *cosa juzgada*, the prohibition on double jeopardy.

In the area of public policy, there are some signs of progress towards the fulfilment of longstanding promises. A National Search Plan was launched on 30 August 2023 to resolve remaining questions surrounding hundreds of cases of enforced disappearance, thereby contributing to truth and justice, and ideally leading to the recovery and restitution of at least some of those still missing. A legislative agenda announced in September 2023, to coincide with the 50th anniversary of the coup, promises measures in other long-running issue areas including the secrecy provisions that still surround the Valech truth commission archive; the introduction of enforced disappearance as a specific class of criminal offence, and attention to hitherto overlooked harms including the practice known as "irregular adoptions". There

[2] Taken from the song "Por si algún día", composed by the iconic Chilean folk group Illapu.

[3] The latter would normally have been covered by the Report's 2022 edition, in which this thematic chapter did not, however, appear. Previous editions can be accessed free of charge at https://derechoshumanos.udp.cl/informe-anual/ (Spanish only). An English translation of the 2013 edition is available at https://pure.ulster.ac.uk/en/publications/truth-justice-and-memory-for-dictatorship-era-human-rights-violat-3

is nonetheless a question mark over the likely viability of some of these measures, given a prevailing political climate that has seen a surge in far-right political currents unremittingly hostile to outstanding truth and justice matters despite their clear moral urgency. These promises however cannot wait any longer: in words often attributed to Seneca, "nothing is as akin to injustice, as justice long denied".

KEYWORDS: truth; justice; reparations; memory; guarantees of non repetition; Courts Martial ('Consejos de Guerra'); biological impunity; transitional justice; dictatorship; military coup; 50th anniversary; National Search Plan ('Plan Nacional de Búsqueda'); denialism; double jeopardy; fugitives from justice; Transitional Justice Observatory ('Observatorio')

INTRODUCTION

The confluence of multiple important anniversaries in the same year makes 2023 a natural point at which to weigh advances and identify remaining gaps. It has been half a century since the violent seizure of power that led to the longest single period of sustained state terror in Chile's recent history. That period forms the focus of the Transitional Justice Observatorio's work, which includes annual production of the present report.[4] This year also marks the passing of a quarter of a century since strenuous, and continuous, civil society-driven efforts to obtain justice finally began to produce some response, however limited and cautious, from the justice system. 1998 was an eventful year, beginning in January when the first criminal complaints against former dictator Augusto Pinochet Ugarte for human rights violations were admitted. Months later, Pinochet was detained in London in the course of a criminal investigation that had been initiated in Spain in 1996, invoking universal jurisdiction as one of its bases.

The regional and international reverberations of the Pinochet case and related phenomena were the subject of an academic conference held a decade later at the Universidad Diego Portales. The October 2008 conference and related publication, both entitled 'The Pinochet Effect', led directly to the founding of the Observatorio de Justicia Transicional to track, monitor, and accompany justice developments from within academia. 2023 therefore also sees the Observatorio celebrating its own anniversary of 15 years' continuous activity. Chile's neighbours are commemorating similar milestones, with 50 years since the Uruguayan military coup and 40 since Argentina recovered democratic rule, in 1983. Internationally, the United Nations is celebrating 75 years of the Universal Declaration of Human Rights, the first serious international effort to place the protection of human life and dignity at the heart of states' political, ideological, and economic concerns.

Identifying a suitable single focus in such a weighty agenda presents a challenge: space constraints prohibit an exhaustive account of all that has been done and remains to be done in truth, justice, reparations and GNR over any or all of those periods. There are also many more national, regional and international institutions monitoring these issues, and producing their own raw data or analyses, than when we began in 2008.[5] This chapter accordingly sets

[4] With the exception of 2022: that year's UDP Human Rights Report did not contain a thematic chapter on transitional justice.

[5] See, for example, Hugo Rojas and Miriam Shaftoe, *Human Rights and Transitional Justice in Chile,* London: Palgrave McMillan; Juan Pablo Mañalich. *Derecho Penal y Terrorismo de Estado: Problemas de justicia transicional a 50 años del golpe de Estado,* Santiago, Roneo, 2023; CECT, *La justicia en la balanza: Procesos, juicios y condenas por violaciones de los derechos humanos acontecidas en Chile entre 1973 y 1990,* Santiago, CECT, 2023; the online project platforms plancondor.org; Memoriaviva.org, expedientesdelarepresion.org , and Tecnologías Políticas de la Memoria; the webpages of memory site londres38.org and of Chile's Museum of Memory and Human Rights (Museo de la Memoria y los Derechos Humanos), and the Chilean judicial branch's own digital archive project, Memoria Histórica Digital. In terms of official data sources, the webpage of the state Human Rights Programme (Programa de DDHH del Ministerio de Justicia y DDHH) has had a chequered history in communicating the entity's own work in justice, memorialisation and social accompaniment. The same could be said of the Judicial Branch's own press office and the electronic portal where all final verdicts ought to be publicly accessible as soon as they have been officially announced. (Access to some case verdicts and files on the site, the Portal Unificado de Sentencias, has recently been affected by flawed new data protection regulations; see below, section on Truth).

itself just two principal tasks: first, to offer general observations under each thematic heading, and second, to discuss particularly illustrative recent events in more depth.[6]

1. TRUTH

1.1 Overview

Chile's official truth initiatives surrounding the dictatorship and its crimes are reasonably well known: they include two state truth commissions, one of which – the 1991/1996 Rettig Commission – forms the basis for the narrative presented in the national memory and human rights museum, inaugurated in 2010. Two and a half decades of additional drip feed of 'judicial truths' have subsequently been added, by painstaking case investigation generating abundant perpetrator testimony, including some confessions. None of this has however been sufficient to pre-empt a rising tide of denialism and obfuscation, challenging the very premise of the validity of empirical facts as a basis for truth. Examples unfortunately abound, and to reproduce them here would only serve to disseminate them further. Accordingly we limit ourselves to the observation that it is very difficult, at this 50th anniversary, to detect even the kinds of minimal gestures of civility and agreed common denominators that occurred around the 40th anniversary in 2013. The 'civilian accomplices' who were denounced in the presidential address given by right wing president Sebastian Piñera on 11 September 2013 still hold sway, and seem if anything increasingly unrepentant. Social repudiation is notable by its absence, meanwhile, as a worrying proportion of the population supports these same figures or at least shows no particular antipathy toward them.[7]

The current legislature and constitution-drafting body show few if any signs of being able to put aside ideology in order to rise to the occasion,[8] casting serious doubt on the realistic political prospects of a draft legislative agenda announced in September 2023 ever making it into law. This is a great shame given the progressive nature of some of the suggested measures, which include elimination of a rump of 'secret laws',[9] as well as the gradual and

[6] The second of these tasks is, as mentioned, the usual focus of this chapter in each of its previous iterations since 2011.

[7] A CERC-Mori poll carried out in May 2023 reported a 20% rise in support for the statement that those who carried out the 1973 coup "were right to do so" ("*tenían razón*") between 2013 and 2023 – from 16% to 36%. The numbers expressing point blank rejection of the validity of a coup meanwhile registered a sharp decline, dropping by 17% to rest on the smallest possible majority margin at 51%. (Barómetro de la Política CERC-MORI, "Chile a la sombra de Pinochet: La opinión pública sobre la 'Era de Pinochet'1973 -2023", Santiago, mayo de 2023). The CADEM polling firm's June 2023 report suggests that these changing views are not, either, because people no longer know or remember the facts, given that a full 71% of those polled by CADEM were perfectly prepared to describe the coup as a coup, while 56% were equally clear that the 17 year regime which followed is best described as a 'dictatorship'. 27% nonetheless approve of how the country was ruled during that time. https://cadem.cl/.

[8] On 22 August 2023, the right-wing contingent of Chile's Chamber of Deputies insisted on imposing the re-reading, out loud, of the text of an agreement from August 1973, which many sources have identified as the political declaration that paved the way for September's military coup. The line taken by far-right members of 2023's Constitution-drafting body can meanwhile be deduced from their actions in introducing a (later retracted) proposal for amendment that sought to introduce into a new constitutional text the immediate liberation of most of Chile's currently imprisoned perpetrators of crimes against humanity. See below, section 2.

[9] Unpublished laws introduced by the dictatorship, and still in force.

controlled lifting of the secrecy provisions that still surround the archive of the second truth commission ('Valech commission').[10]

Against this backdrop the launch of the National Search Plan for the Disappeared, like the announcement of initiatives to officially acknowledge previously overlooked categories of harm, are welcome but cannot fully reverse a general perception of backsliding in the matter of truth and its consequences. Above all in this symbolically charged year, the truths that are being commemorated and proclaimed, and the reflections and actions that the state initiates, cannot be treated as spaces for party political positioning, and should not either be dismissed as simple additions to a cultural and historical 'menu' that mistakenly treats variety as having inherent virtue. Democratisation is not a matter of simple diversification, with any and every version of events entitled to the same space or the same value. Nor are truths brought into being solely by popular assent or dissent. This anniversary has exposed the need for something that has long been absent: the drawing of clear dividing lines setting out what the Chilean state and its public actors – including its political parties- can responsibly and collectively recognise, enunciate, and subscribe to, as a prelude to inviting the nation to build on a public memory that is just and ethical.

1.2.1 Enforced Disappearance: Chile and the UN Working Group on Enforced and Involuntary Disappearances

In February 2023 the UN Working Group on Enforced and Involuntary Disappearances (henceforth, 'Working Group') held a session in Chile. The session examined cases from a range of countries (this general brief being what distinguishes sessions from missions or visits, whose brief if specifically to evaluate the situation in the host country). Nonetheless, the timing of the session so close to the official setting in motion of the National Search Plan gave it heightened profile and interest, as too did the fact that two of the Group's then members – all international experts on the issue – also operated as technical advisors to the National Plan at its design stage.

The Observatory supported civil society to prepare for the session, providing online information sessions for relatives, social organisations, and other potential participants to find out more about the Group and develop strategies around taking part. International input to the sessions was provided by the Working Group's executive secretary, and by relatives and activists from Mexican and Salvadoran associations with recent direct experience of engagement with the Working Group. The Observatory also worked subsequently with some national associations, on request, to develop or fine tune presentations or memoranda to be submitted to the Group.

The Observatorio also took part in the session in its own right, presenting a memorandum some of whose contents are summarised below under three main thematic headings: modification of domestic legislation, a register of forcibly disappeared persons, and the treatment of disappearance in existing criminal law. Other issues that were also raised before

[10] Gob.cl: "Gobierno presenta agenda legislativa de derechos humanos", 5 September 2023. https://www.gob.cl/noticias/agenda-legislativa-derechos-humanos-avance-gobierno-victimas-dictadura-delito-desaparicion-forzada/

the Group are mentioned elsewhere in this chapter: see sections on Search and ID, and on the National Search Plan, below.

As regards domestic legislation, it should be noted that enforced disappearance (ED) has still not been directly incorporated into Chile's domestic criminal code as an ordinary or autonomous crime. At the moment, ED is therefore only typified when committed in contexts that meet the crimes against humanity threshold, under the terms of a war crimes law introduced in 2009.[11] The omission of ED when committed in other contexts is the reason that the only case of post-transition (post-1990) ED for which anyone has yet been prosecuted culminated without any custodial sentences.[12] A draft bill which would rectify this omission was presented over a decade ago, but has not received official sponsorship from any of the executive branch administrations of the intervening period.[13]

It is therefore heartening to see this measure mentioned in the draft legislative package on transitional justice matters announced in early September (see above). Specifically, the official announcement promises to "typify [i.e. create a specific offence, with associated sanctions] enforced disappearance and extrajudicial execution" (*ausente por desaparición forzada*), and to introduce the legal status of "absent by reason of enforced disappearance", with an official register and certification regime.[14] It is also striking that the categories of harm slated to receive new or renewed attention – see section 1.1, above - include 'irregular adoption' *(adopción irregular).* This phenomenon, currently also subject to a criminal investigation, clearly shares characteristics with the category of enforced disappearance *sensu stricto* as currently defined under international law, not least since it is clear that the 'adoptions' – appropriations – in question were carried out with the connivence of state officials and institutions.

Other draft legislative projects that the Chilean State enumerated to the Working Group, in its 2012 submission, as indicators of progress in meeting its Convention duties regarding enforced disappearance show no appreciable recent forward momentum whatsoever.[15] Draft bill 4162-07, aiming to annul the effects of the 1978 Amnesty Decree Law, was suspended in 2022. Law 18.771 meanwhile remains intact: as modified in the final months of the dictatorship, it allows the Ministry of Defence and the Armed Forces to suppress and destroy records, exempting them from the legal requirement on other public bodies to send such

[11] Law 20.357

[12] The case of José Vergara. Although various police officers were found guilty, the charges used were insufficiently serious to attract a custodial tariff.

[13] Draft bill ('Boletín') 9818-17, 'Modifica el Código Penal, tipificando el delito de desaparición forzada de personas'.

[14] "Gobierno presenta agenda legislativa de derechos humanos", op. cit.

[15] ONU A/HRC/36/39/Add.3, Follow-up report to the recommendations made by the Working Group : missions to Chile and Spain, 28 July 2017. In particular, draft bill Boletín 1265-10, to approve the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, was introduced to Congress on 6 July 1994 and currently shows as in its second reading, but with no movement since October 2014. Draft bill Boletín 9748-07, which modifies the Constitution to stipulate that war crimes, crimes against humanity, and genocide cannot be subjected to either amnesty or statutory limitation, was introduced on 10 December 2014 and currently shows as in first reading before the Senate, but without movement since January 2018.

material periodically to the National Archive. The UN Working Group has previously recommended that Chile act over this matter.[16]

Another strand of outstanding truth deficit concerns the continued absence of a cumulative, publicly accessible, state-held register of all acknowledged victims of enforced disappearance, as pointed out by the Working Group a decade ago.[17] Although the legislative plans referred to above do mention a 'register', to be kept by the national Civil Registry (Registro Civil), this is treated in the announcement as an intra-state administrative measure. Whether the register's contents will be open to the public or not, is not made clear. Although the National Search Plan promises, as we will see below, to fill the gap, for the purpose of evaluating the initiative it would be important to know more about how it is proposed that the two entities – the Registro Civil and the Search plan - interrelate; what categories of victimisation they will cover (enforced disappearance only, or also extrajudicial execution, survived political imprisonment and etc.); and where within the State apparatus the necessary operations of (re)consideration and recognition of victim status will be performed.

Since the intention to produce an updated register of, at least, absent victims (victims of enforced disappearance and extrajudicial execution) was first announced in 2019, there has been little publicly visible progress beyond the preparation of series of draft documents.[18] While it is true that updating presents greater methodological and definitional challenges than is often appreciated, it is really essential that the state maintains an accurate official register of this sort. This is not solely for the purposes of (re)activating search, nor only to reconcile the inconsistencies and errors that appear within and between figures given by the Rettig and Valech truth commissions. It is (also) necessary for the purposes of acknowledging, and proactively delivering on, the rights and entitlements that proceed from recognition as a victim or survivor of enforced disappearance and/or other grave violations.[19]

In relation to the current criminal justice system's treatment of enforced disappearance, the Observatorio made representations to the Working Group over, first, the apparently small number of special investigative magistrates assigned to cover an ever-growing caseload, and second, concerns about proportionate sentencing and concession of benefits the detail of which can be seen below (section 2). One emerging practice that is particularly pertinent to the truth focus of this current section is retypification (altering the specific criminal charge) at the final verdict stage.[20] While dictatorship-era disappearances are almost invariably investigated under the 'best available' domestic criminal code equivalent of kidnap (*secuestro),* some recent sentences at appeals level have substituted homicide (*homicidio*). While there may be an apparent prima facie case for this, for example where the victimised

[16] A/HRC/22/45/Add.1, Report of the Working Group on Enforced or Involuntary Disappearances - Addendum - Mission to Chile, 29 January 2013.
[17] Ibid.
[18] One of these drafts, announcing new totals for disappeared and executed victims, was uploaded to an open access official website in 2021, but had to be later de-linked due to conceptual and methodological deficiencies.
[19] Something which in the case of the right to reparations would probably require additional legislation, to rectify deficiencies resulting from short termism in the drafting of laws currently in force, which did not foresee the possibility of new victims being acknowledged in the future.
[20] Examples include certain episodes of the Paine case, as well as the Calama episode of the Caravana de la Muerte: Supreme Court Rol 24.061-2019, 23 September 2022.

person's remains have been found and recovered, this practice risks erasing to an even greater extent the particular and specific gravity of the crime of enforced disappearance.

1.2.2 Search and Identification

The memo presented by the Observatorio to the UN Working Group in February 2023 highlights a number of themes related to search and identification (ID). These include current totals of identifications and criminal investigations; collection of reference samples from relatives; the treatment of recovered artefacts or fragments, and the corrosive effect of error, and of the perception or rumour of error, on trust in state identifications. The memo underlines the particular need for responsibility and restraint, given the high levels of personal and emotional investment in these sensitive matters. Personal and institutional considerations should not be allowed to enter the frame.

In the leadup to the formal launch of Chile's National Search Plan, approximately 20% of people forcibly disappeared by the Chilean dictatorship had subsequently been found, identified, and restored to their families or equivalent communities of reference. Criminal investigations had been concluded in cases involving around 40% of the same group.[21] No valid reference samples were yet on file for 242 of just over 3,200 people presently acknowledged as victims of disappearance or extrajudicial execution,[22] while the samples currently held for around 300 more are suboptimal in quantity or closeness of biological link.[23] Past public campaigns and family by family efforts to recruit donors of samples have also neglected, as a target group, relatives of people who fall into the category of 'victims of political execution whose remains were **not** withheld' (*ejecutados políticos con entrega de restos*). Both states of affairs may obstruct the establishment of new truths about identification, including through the ID of remains[24] already found and held by the state.[25]

[21] Data currently available supports this estimate, which is based on data provided by the Ministry of Justice on 30 August 2023, signalling that a total of 1,469 people were at some time submitted to enforced disappearance, 307 of whom have subsequently been located and restored to their families. These figures have been compared to Observatory records – presented in section 2.2, below- on completed cases. The discrepancy arises because the new category of victim of enforced disappearance represents a partial fusion of two existing categories, detained-disappeared person, and victim of political execution with no restitution of remains. For the present, the Observatorio only has disaggregated judicial data regarding the former category. When the new official registers that have been promised are delivered, the Observatorio will undertake the corresponding methodological adjustments (see section 1.4, below).

[22] For these purposes "valid" refers to samples collected after 2009.

[23] These gaps are increasingly - with the passage of time – resolvable only via posthumous sample taking, something which is self-evidently undesirable from various points of view including that of consent. Figures taken from a written report provided by the Human Rights Unit of the state forensic service, Servicio Médico Legal, dated 17 May 2023, in response to questions posed by the Observatorio. We would like to thank Marisol Intriago Leiva and her team for producing this report, replying to followup queries regarding its content, and in general for their continuing openness to providing information and answering queries within the limits of what their legal mandate permits.

[24] We are aware that the term 'remains' (*restos)* is controversial, and is rejected by some relatives. Nonetheless we consider it impossible to completely avoid its use for the purpose of precise use of language in regard to this issue in particular.

[25] This group of people is relevant for various motives. Its inclusion in the list of 'victims of politically-motivated execution with handover of remains' is based, in some cases, solely on the existence of an autopsy and/or burial certificate issued during the dictatorship or shortly thereafter. The present-day whereabouts of the person are not necessarily known, and it is also possible that commingling of remains has occurred between these people and others present in the same clandestine or anonymous burial sites.

Search operations undertaken to date have also led to the recovery of fragments of human remains too small to be tested. In a very few cases, no family or other community of reference can be identified that is willing and able to receive a person who has been recovered and identified. In others, new finds lead to the identification of additional fragments or personal effects belonging to people who have already been ID'd and restored.[26] Each of these situations requires a tailor-made solution, for which more stable, and continuous, channels of communication and decision-making responsibility need to be defined.

The question of error and reports or perceptions of error is particularly delicate because the uncertainty that is generated undermines the necessary preconditions of a state response that enjoys the confidence of the nation in general, and of families and other communities of reference, in particular. It is worth recalling from the outset that the primary responsibility for the uncertainty, ambiguity, pain and harm that surrounds disappearance must always lie with those decisionmakers within the dictatorial State, its agents, and the Armed Forces. These are the people and institutions who deliberately opted to sow terror, kill, and disappear and then to hide that fact through lies, cover ups and obfuscation. Search efforts began at that very same moment and have never ceased. The first efforts could be called 'resistant' search: actions carried out by relatives and other human rights defenders in the face of active repression and under threat. Some semblances or forms of official search did later come on stream: firstly administrative (search-focused) and, later, also judicial (prosecution-focused). All of these strands have produced occasional irruptions and controversies, some caused by errors in identification.[27] There have also been vigorous criticisms of the treatment given to human remains, or evidence that might contain them. The most recent examples date from June 2018,[28] and January 2023. The latter concerns a total of 89 boxes, containing material awaiting forensic examination, kept in a basement in the Legal Medicine department of the Universidad de Chile. The necessary tests were never done, and the boxes were stored in entirely unsuitable conditions.[29]

Concerns about possible deterioration or even loss of evidence led to the state forensic service - Servicio Médico Legal, SML – taking physical charge of the material in late 2019, after repeated requests. The whole subject came to prominence in early 2023 due to what was deemed excessive delay in completing the necessary examination of the contents, whether due to absence of the necessary judicial orders, lack of prioritization and resource assignation by the SML's directorate, and/or an impossibly heavy workload falling to the respective Unit within the SML (Unidad de Derechos Humanos, UDDHH). At time of writing (September 2023) the Unit had managed to complete an initial scoping study, despite major deficiencies

[26] For the present, some have been buried at the sites of memorials, in conversation with the respective relatives' association and, where necessary, preserving traceability for future forensic purposes.
[27] With Patio 29 as the best-known example: see previous editions of this report.
[28] Discovery made in the headquarters of the Santiago Association of Relatives of the Disappeared, Asociación de Familiares de Detenidos Desaparecidos, AFDD. Theclinic.cl: "Paradero de los restos óseos encontrados en la AFDD es un misterio", 14 June 2018.
[29] As far as we have been able to establish, this material was entrusted to the University by order of judge Juan Guzmán in the early 2000s, in theory so that forensic investigation could continue during a period in which the respective Unit of the state forensic service (SML) was being reorganised. The contents consisted largely of evidence collected during the investigation of case Rol 2.182-98, opened in January 1998 into various episodes of the Caravan of Death case.

in the indexing and cataloguing of the recovered material. This study revealed that the collection included teaching materials and non-human remains, alongside material of possible relevance to human rights cases. The Unit also renewed previous repeated requests to the Service's directorate for the person-hours and additional resources needed for full examination of the latter.

The episode provoked harsh criticisms of the Unit, and/ or the SML in general, with some even questioning whether the State could continue to be responsible for ID and other forensic analysis. The Observatorio's position is that particular contextual factors in Chile make it not only unavoidable but positively desirable that search, ID, recovery and restitution continue to be primarily in state hands. Some aspects of the episode also speak rather to the risks that are run when personal criteria prevail and material, and evidence, are dispersed across different institutions and places. It is also important to note that in the current, judicially-structured, mode of search forensic unit actions must be in response to a specific judicial order. We have also frequently pointed out the lack of any general judicial order or instruction to search, or of an overall investigative strategy that transcends the case-by-case or victim-by-victim approach. Our previous annual report recommendations have frequently included calls for urgent reinforcement and expansion of staffing levels in all relevant areas of the SML. This of course includes the Unit, which has been stretched to breaking point in recent years by a moratorium on new appointments; the loss of existing staff members or person hours;[30] growing numbers and accelerating pace of human rights investigations; the dilution of the Unit's caseload through the addition of complex ordinary criminal cases, and the impact of COVID. The pandemic led to a freeze on recruitment across the public sector, and the postponement of numerous field interventions,[31] many of which are now being revived by investigative magistrates, each of whom deems them to be urgent.

The National Search Plan currently being implemented will require continuous input from forensic specialisms, making it essential to reinforce state capacity and make the most of the accumulated knowledge and institutional memory built up by staff members in state agencies over the years. A Unit of this type also needs to be able to work with up to date specialist software, compatible with those used by international laboratories that the Unit needs to interact with for certain analyses. The very act of redoubling and intensifying national efforts to acknowledge cases, search for, identify, and recover disappeared people is itself likely to expose gaps and mistakes in what has been done to date, by both State and nonstate actors. It will be important to develop mechanisms for reporting and rectifying such errors and omissions that do not discourage further revelations, and prioritise constructive solutions aimed at improving outcomes and future practice. If self-reports of error generate punitive responses, it is likely that mistakes will be covered up and valuable information perhaps lost or destroyed. All parties concerned also need to be aware that all processes of identification, whether social or technological, contain margins of error. Every search office or similar mechanism ever set up in Latin America, and across the world, has had to confront errors, including erroneous identifications: since it can never be completely eliminated, best practice

[30] With a significant reduction in staffing levels between 2019 and 2023 amounting to up to 10 full time equivalent posts.
[31] See the 2021 version of this report.

suggests instead developing transparent processes for its early detection, recognition, and rectification.

A final general consideration is that non-state forensic teams have made significant contributions in post-atrocity crime settings around Latin America and further afield, including, at different times, in Chile.[32] Since around 2019, a Chilean nonstate forensic team, the Equipo Chileno de Antropología Forense no-estatal (ECHAF), has re-emerged and has provided advice and assistance to families and associations linked to the 2019 social protests as well as to dictatorship-era crimes. They have also acted as expert witnesses (*perito de parte*) at the behest of case actors, and have carried out interventions in municipal cemeteries. It is important to draw on as much expertise and commitment as possible for these tasks, and for the public and other interested case actors to become better schooled in how to correctly interpret the results and limitations of scientific techniques linked to identification, while appreciating that what is often referred to generically as 'forensic' work is in fact a broad field that includes genetics, human geography, social anthropology, and archive work. By the same token, forensic-scientific work has its own systems and practices of quality control and peer review, which need to be in place whether the work is being carried out under state auspices, or independently. This does not necessarily mean the rigid adoption of particular techniques, procedures or thresholds, in particular if this would create excessive technological or economic dependence,[33] or would obviate recognising identification as an inherently social rather than solely technical challenge. There are forms of accumulating and exchanging experience that allow common standards of reliability and mutual scrutiny to be created.. It may be possible, for instance, to explore working with the relevant national and regional professional associations to create systems of accreditation or registration.[34]

1.3 Recent Events in Identification and Restitution of Persons

The most recent of the two statistical periods covered in depth by the present report (July 2022 – June 2023 inclusive) did not see any new identifications of still-missing victims, ie of people currently recognised as victims of enforced disappearance or political execution, whose subsequent fate and whereabouts remains unknown. Two discoveries were made that merited further investigation: one, in Antofagasta, was later determined to be a case that fell outside the date parameters of the dictatorship era, most likely involving ordinary criminality. The second find was of remains that had been exhumed in the year 2000, but had since that date been held by the courts of Santa Juana without further examination. Once sent for the proper scrutiny, they proved to date from the early colonial era. As in the case of the finds recovered from the Universidad de Chile, these situations point up the importance of

[32] In the form of the Forensic Anthropology Group, Grupo de Antropología Forense, GAF.
[33] Exposed to external shocks and/or to political control via budget modifications, as has occurred in Peru over the course of 2023.
[34] As one example, the Latin American Forensic Anthropology Association, Asociación Latinoamericana de Antropología Forense (www.alafforense.org) , has introduced a process of certification and a programme of ongoing professional formation for members. This type of initiative allows for the creation and diffusion of autochthonous, region-specific professional standards and criteria. The International Committee of the Red Cross, in its turn, has a forensic area which brings together documentation and manuals showcasing good practice, in which the contribution of Latin American professionals is clearly and centrally visible:https://www.icrc.org/es/nuestras-actividades/ciencias-forenses-y-accion-humanitaria.

potentially relevant finds and evidence being correctly identified, registered, and centrally stored so that necessary followup is not overlooked.

The period did however bring further confirmations and notifications in cases of victims not currently recognised by the State, or cases where some level of information was already known. These cases are of course equally important for the families and communities concerned, who have been forced to endure decades of uncertainty. In December, investigative magistrate Carlos Aldana notified the family of a young conscript, disappeared from a naval base in 1975, of confirmation of an identification allowing the fact of his death to finally be reliably established. The case is that of Luis Alberto Villegas Meza, who began compulsory military service with the Marine Infantry Battalion of the Talcahuano Naval Base on 1 October 1975. Just one week later, a navy patrol informed his mother that Luis had (supposedly) deserted and gone missing. One year on, agents who claimed to be from the DINA told her that Luis had (supposedly) been found alive, but had then committed suicide. It has now become clear that both of those versions were false. Anonymous information that reached the family in 1990, suggesting that Luis had died under torture at the Borgoño Fort in Talcahuano, unfortunately seems more likely to be the truth, as remains recently exhumed from the Coronel municipal cemetery have now been identified as belonging to Luis. (It is known that the remains originally came from the Talcahuano naval base). The case was reported to the 1991 Rettig truth commission, but at the time was left inconclusive,[35] meaning Luis was not officially acknowledged as a victim of human rights violation. This makes Luis's case one of those in which recent forensic work prompted by the need to establish judicial truths provided the first real certainty about a person's actual fate, offering at least a the prospect of belated justice. It is also, however, an example of the administrative limbo into which such cases fall, as there is presently no state office or register that can formally add him to the list of those recognised as killed or disappeared, providing access to the respective entitlements. This underlines yet again the importance of the new register that has been promised in association with the new Search Plan (see below, section 1.4).[36]

In late January 2023, judge Vicente Hormazábal presided over the exhumation of remains believed to be those of José Segundo Rodríguez Torres, who was extrajudicially executed in the 21st 'Arica' Infantry Regiment headquarters in La Serena in November 1973. José's father, José Rodríguez Acosta, was also killed after he went to the Regiment in search of his son, and both men are long believed to have subsequently been buried in the same common grave in the Municipal Cemetery of La Serena. The exhumation was ordered owing to new information suggesting the possible presence of additional, as yet unidentified, victims in the same grave site. Forensic examination of the recovered remains was ongoing at time of writing. In another similar case, identification of remains belonging to four of the so-called "Tocopilla Twelve" were forensically confirmed. The case relates to a 1975 massacre, later covered up by the authorities on the pretext of a mass escape attempt. Ten of the twelve victims were not discovered until years later: the recent forensic procedures were able to

[35] Due to "lack of conviction" (*falta de convicción*), which usually means the information available to the Commission was deemed insufficient to allow it to reach a firm conclusion about the circumstances.

[36] At an academic conference held at the Universidad de Chile on 13 September 2023 Paulina Zamorano, head of the Human Rights Programme of the Ministry of Justice and Human Rights, confirmed that cases that the Rettig commission classed as "lack of conviction" will be reviewed by the new search office.

reconfirm the identity of a total of four of the twelve, as well as discounting the possible presence of the previously undetected remains of a fifth victim.

The official website of the new National Search Plan (see below, section 1.4) gave a total, at 30 August 2023, of 307 people found and restored to their families, from the universe of just over 3,200 people presently acknowledged by the State as detained-disappeared (*detenidas/os-desaparecidas/os*) or as executed 'without handing over of remains' (*ejecutados/as) sin entrega de restos*). The figure of 307 includes two people who were recovered alive.[37] This does not, however, coincide exactly with the number given by the state forensic service, SML, which put the figure at 303, stating that in the post-2009 period, 180 people have been identified using nuclear DNA and/or DNA in combination with other techniques, with a further 123 identifications considered complete and reliable, using other techniques.[38] The Observatorio is making ongoing efforts to reconcile the data.

A total of 22 field prospections or field visits were carried out in the period, each representing days or weeks of intensive work requiring the deployment in situ of a substantial team of technical, professional, and support staff from the Human Rights Unit. The demand for such interventions is moreover at an all time high, due to the combination of field deployments previously delayed due to Covid, plus an additional 17 similar requests made by prosecutors investigating complex ordinary criminal cases. The requirement to also attend to this second group of more recent cases inevitably affects the ability of the human rights unit to respond with equal promptness, or with a large deployment of staff, to each individual request. The Unit is also frequently called on to lend personnel for natural disaster responses, requests which are by their nature unpredictable.

It is simply not physically possible for any team or unit to carry out an ever increasing number of activities with ever diminishing human and other resources, and there is no sign to date of the actual implementation of any of the repeated official promises of reinforced capacity reported in previous editions of this chapter, in particular in 2022. To the contrary: the Human Rights Unit reports the loss, since 2019, of the equivalent of 10 full time posts (FTE), with particularly notable gaps in the areas of specialized IT, archaeology, anthropology, and forensic medicine (where there are currently only two remaining staff members, each on 0.5 FTE).[39] The Unit also pointed out the urgent need to reinstate specialized FTE posts currently vacant due to resignation or retirement, in genetic biochemistry and other essential fields, and to update obsolete specialized software. Some of the associated requests have been pending since 2016. In general terms, from the outside there is a strong sense of loss of the of the close, direct and transparent lines of communication that the Unit had so carefully constructed over years of interaction with judges, relatives, and other key actors. This is a troubling scenario given the concurrent launch of a major national search initiative that will require a strong, active and assertive Unit or other forensic capacity, fully trained and equipped to meet the challenges of the new period.

[37] Both are signalled in the Rettig report as Chilean nationals, disappeared in Argentina as minors together with their parents as part of the practice known as 'appropriation' of children.
[38] Written report dated 17 May 2023, op. cit.
[39] Written reply received on 15 July 2023 from the Human Rights Unit of the Servicio Médico Legal, responding to followup questions formulated by the Observatorio.

1.4 National Search Plan

The memo presented by the Observatorio to the UN Working Group on Enforced and Involuntary Disappearances depicts the changing nature and trajectory of search efforts in Chile over time, and identifies some of the particularities of enforced disappearance as practised by the Chilean dictatorship.[40] It is noticeable, for instance, that search in Chile has since 1998 been almost exclusively carried out in judicial mode, meaning that the rights to truth, and to be searched for, are subsumed under the requisites and dynamics of criminal investigation-which quite legitimately has a different main purpose, that of delivering on the right to justice. Judicial search organized on a case by case or victim by victim basis moreover faces particular challenges in Chile due to *remoción*, whereby the dictatorial authorities ordered subsequent removal and secondary reburial of remains initially hidden in secret mass grave sites. This pernicious practice extends the chain of events and multiplies the number of perpetrators who intervene at some point along the way. Consequently, the direct (physical) perpetrator of the kidnap or illegal detention with which an enforced disappearance begins, may be genuinely unaware of the current location of that particular person (victim). Conversely, soldiers sent to carry out later burial or reburial of hidden remains may have no inkling of the exact identities of the victims concerned. This is one reason why the Chilean state's recent decision to add administrative search efforts to judicial ones is welcome, belated though it may be. Administratively-organised search prioritises the discovery of new information about the trajectory of victims of enforced disappearance once illegally detained, allowing the generation of new hypotheses as to their possible current whereabouts. This work, while non-judicial, can nonetheless be performed in a way that is entirely compatible with, and complementary to, ongoing justice activity.[41] It responds to the imperative to construct reliable, accurate accounts of what happened to each person subjected to enforced disappearance, and in this way complies with the state's duty to satisfy victims' and society's right to truth, whether or not victims or their physical remains can in the end be recovered.

The announcement that existing judicial search for still-absent victims was to be complemented via the introduction of a specialized administrative entity was adopted as a recognized priority in human rights policy from the early days of the current government administration (2022-2026). While this is a longstanding demand of relatives, repeatedly recommended by international human rights bodies, it undoubtedly acquired particular connotations in the context of the 50th anniversary of the coup. The handover of the presidency in March 2022 gave rise to an active phase of discussion and planning, aiming for 30 August 2023 as a launch date, to coincide with the UN-instigated International Day of Victims of Enforced Disappearance. An official account of the planning and design process, and the current status of the Plan, can be found on the website of the Human Rights Subsecretariat (Subsecretaría de DDHH) of the Ministry of Justice and Human Rights,

[40] Memorandum presented by the Observatorio to the UN Working Group on Enforced and Involuntary Disappearances, February 2023, and Cath Collins, *Búsqueda e identificación de detenidos-desaparecidos en Chile 1990-2023*, Santiago: Universidad Diego Portales, 2023, https://derechoshumanos.udp.cl/observatorio-de-justicia-transicional/.

[41] On this concept, and its differentiation from search via judicial mode, see Pietro Sferrazza, "La búsqueda de personas desaparecidas en Chile: ¿necesidad de un complemento humanitario?", *Revista Mexicana de Ciencias Políticas y Sociales*, no. 243, 2021.

responsible for implementing the process.[42] According to the website, a preliminary proposal was approved on 28 July 2023 by the Inter-Ministerial Human Rights Committee. On 30 August 2023, the President of the Republic signed the decree officially enacting the Plan and opening its implementation phase. An official presentation, by the Justice Minister, of the new plan was subsequently circulated as a PDF document, entitled 'National Search Plan: A Permanent Public Policy-Guarantee of Non-Repetition' ("Plan Nacional de Búsqueda: Una Política Publica Permanente–Garantía de no repetición"). This document, and the content of the aforementioned website, are the principal sources for the information and observations that appear below.

Both sources state that the general objective of the plan is to 'shed light on the circumstances surrounding the disappearance and/or death of persons [who were] victims of enforced disappearance, [and to do so in a] permanent and systematic manner, in compliance with Chile's state obligations and international standards".[43] A figure of 1,469 people is given as the number of people being sought. Most of these (1,092) are people currently categorised by the state as detained-disappeared (DD), while the remaining 377 are categorised as victims of politically-motivated execution (ejecución política, EP) "without restitution of remains" ('*sin entrega de restos*').[44] A total of 307 is offered as the number of people classified as DD or EP who have already been recovered, identified and restored to families or other communities of reference since 1990. It should be noted that these figures, the totals of people restored, and even the exact definitions of the categories of DD and EP, and the boundary between them, are genuinely complex. The fact that figures offered around these issues at times vary between sources,[45] or even from the same source over time, therefore has various explanations, some of which do not necessarily represent carelessness or avoidable error on the part of their compilers. It is therefore also important to bear in mind that as the new Plan begins its operations, it is possible that these figures undergo additional modifications as existing information is collated, verified, and cross-checked and also, it is to be hoped, product of new finds and the restitution of more people.

[42] https://www.derechoshumanos.gob.cl/plan-nacional-de-busqueda/.

[43] "to clarify, in a systematic and permanent manner, the circumstances of the disappearance and/or death of people who were victims of enforced disappearance, in accordance with the Chilean State's obligations and international standards" ('*esclarecer las circunstancias de desaparición y/o muerte de las personas víctimas de desaparición forzada, de manera sistemática y permanente, de conformidad con las obligaciones del Estado de Chile y los estándares internacionales*').

[44] A category which as far as we have been able to be determine was adopted pre and post-Rettig Commission to refer to victims about whom there was some indication, at the time considered credible, that they had died despite the fact that their physical remains were not to hand nor was there reliable information as to the location of the same. The collective designation of these people as 'victims of enforced disappearance' for the purposes of placing them on the radar of the National Search Plan is, in the Observatory's view, the best available solution to the ethical and historical conundrum presented by the early installation in Chile of a practice of separating 3,200 victims of the dictatorship into two definite categories: detained-disappeared persons, on the one hand, and victims of politically-motivated execution, on the other. While the distinction is at times technically and/or juridically inexact, the social identities that have been constructed around it are by now deep-rooted, and so it is important for the new state search entity to respect it.

[45] See, in this regard, the figure of 303 suggested by data obtained from the SML (section 1.3, *supra*).

One of the Observatorio's most often-repeated recommendations, echoing many other sources,[46] has been the creation of an ongoing official register of names of victims of death and disappearance that – unlike the present registers – is open to amendment and new entries as new information comes to light and/or errors in the historical archives are identified. We have been given to understand that the National Search Plan will fill this gap.[47] It is vital that the Chilean state finally sees fit to dedicate official efforts to this necessary task, maintaining and making public a reliable register of people who are acknowledged as having been disappeared and giving an account of whether and in what circumstances they have subsequently been found, identified, and restored to their families or communities of reference.

An undertaking of this nature requires the bringing together of information garnered from a range of state sources, including ongoing and concluded judicial investigations. In order to lend this work the necessary credibility, legitimacy, and transparency, it would be useful if in due course additional methodological and definitional information could be made available to complement that currently offered by the two sources mentioned above. It will also be vital for any future dynamic victim total and associated register to be explicitly and clearly signalled as constituting a sole, accumulated, official source that other state entities actively draw on, on an ongoing basis, in order to proactively guarantee and implement the associated rights and duties. In this line the announcement, as currently formulated, that "a copy of the register" will be "sent to the administrative organs of the State" appears correct but insufficient.[48] A more promising mention is made, in the Ministerial presentation circulated after the 30 August launch, of the production of a 'single official register' ("*nómina única oficial*") to be adopted by all state entities, as well as of the definition of a procedure for the reception of information about possible new cases for inclusion on the register.[49]

The international obligations that Chile has acquired around this issue, by having opted to become a signatory to both of the principal relevant international instruments, require the state to guarantee rights in the area of truth, but also of justice, reparations, and guarantees of non repetition. This includes, specifically, provision of appropriate social security entitlements and the resolution of family law and family inheritance for immediate relatives and other direct and indirect victims. With this in mind it is promising that the objectives set down for the Plan are not restricted to discovering the circumstances of a disappearance or the current whereabouts of the person, but also include providing information, ensuring participation, and "implement[ing] reparations measures and guarantees of non-repetition". The fact that justice is not specifically mentioned in this part of the text can be explained by the desire to emphasise its complementary nature by accentuating deference to the role of the courts. The ideal is, also, that administrative and judicial efforts are not carried out in mutual

[46] See the 2019, 2020 and 2021 editions of this report for more detail and examples. See also the collection of rapporteur documents produced by the Observatorio since 2017, uploaded to the webspace http://ulster.ac.uk/disappearances, section 'Rapporteur Documents'

[47] Written reply received 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

[48] Written reply received 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

[49] Nonetheless, some doubt remains as to whether newly-reported cases will be fully incorporated into the register once acknowledged, and whether the register will be limited to victims of enforced disappearance or will include those currently referred to as "victims of politically-motivated execution".

isolation, but are done in such a way that each assists the other.[50] Sources close to the Plan and to the judicial branch have expressed concern that the relationship between the future office and the courts is precisely one of the issues where detail is currently lacking, which is worrying when we consider that the relationship between search offices, the courts, and public prosecutors has proven to a major Achilles heel for other, similar, efforts in the region and the world.[51]

It is worth mentioning that the website specifically mentions the participatory nature of the process, and includes an explanatory video describing how participation was designed and built in to the process. A total of 67 participatory encounters are mentioned, carried out over the course of eight months in different parts of the country and reaching a total of 775 participants. At these meetings, associations and relatives could share reflections, expectations, demands and ideas. Five public seminars were carried out, with in-person attendance and streaming to a total of 4,000 people. The contents of each seminar can be accessed via the website. Themes covered include: comparative models of search offices in Latin America; applicable international standards and public policy principles; [52] forensic science and archives used for search; the central place of relatives in search, and lessons from current search practices in Chile and beyond. The Observatory's view is that the seminars, important and necessary as they may have been, should not strictly speaking count as 'participation'. We also have reservations about the fact that the participatory meetings held around the country were in practice limited to relatives and their associations: while it is true that relatives are or ought to be central and fundamental to the Plan, since they are experts by virtue of long experience. They searched during times when the State was not only indifferent but actively hostile and threatening. Search is, notwithstanding, a challenge and a duty that the whole country should take on. It is also worth recalling that the UN defines the term 'victim' as referring to anyone who has suffered harm as a result of a particular disappearance. Accordingly, the right to participate extends to people beyond the immediate family circle of each victim, and refers to anyone who has been harmed by a disappearance. This means that the right to participation extends beyond the immediate family unit of a disappeared person, and can also be exercised by other civil society actors with relevant skills, knowledge and experience. It is therefore particularly welcome to see mention, in the ministerial presentation referred to above, of an advisory commission that will run in parallel to monthly meetings with relatives' associations, and will incorporate some of the other actors mentioned.

The official website already cited contains a document that uses narrative analysis to present an executive summary of some of the outcomes of the participation process to date, as well as spelling out certain themes or specific measures to be incorporated into the Plan.[53] These include, most notably, the drawing up of a national unitary list of people subjected to enforced

[50] A desire that can be discerned in the communication already cited, i.e. the written reply received 16 August 2023 from the Subsecretariat of Human Rights, op. cit.).
[51] Cath Collins (ed.), *An Innovative Response to Disappearances: Non-Judicial Search Mechanisms in Latin America and Asia*, Global Initiative for Justice, Truth and Reconciliation, 2022.
[52] In the interest of disclosure we would like to mention that both the Observatorio director and the thematic collaborator who supplied content for the present section of this report took part in the event as invited speakers.
[53] Ministerio de Justicia y Derechos Humanos, *Plan Nacional de Búsqueda. Proceso de Diálogos Participativos del Plan Nacional de Búsqueda, 2022-2023. Resumen Ejecutivo*, Santiago, 2023.

disappearance. Other initiatives mentioned include an audit of existing national archives, a list of georeferenced sites earmarked for further investigation and/or exhumations, the creation of a National Memory Archive and the provision of holistic accompaniment. Co-ordination with the judicial branch is identified as a priority, and it is noted that this would require the updating of a range of existing protocols that current guide the actions of the legal team of the Human Rights Programme of the Justice and Human Rights Ministry, the present institutional home of the PNB during its design and planning stages. The document also specifies that any eventual forensic work needed as part of the PNB's activities will be carried out by the national state medico-forensic service (Servicio Médico Legal). See, in this regard, the concerns raised *supra*, sections 1.22 and 1.3).[54] The document promises to create a protocol for continuing participation and the creation of working roundtables, using a differential focus. Communicational and educational activities are also contemplated, both as a contribution to memory and as practical tools to enhance the search for information, and for disappeared persons.[55]

1.5 Other News Related to Enforced Disappearance

In late 2022 judge Mario Carroza, Supreme Court National Co-ordinator for Human Rights Cases, and Haydee Oberreuter – then-Undersecretary for Human Rights – co-convened a web-based seminar to discuss the inter-agency Protocol for Search and Identification (full title, in Spanish, "Protocolo de búsqueda e identificación de víctimas de desaparición forzada ocurridas entre el 11 de septiembre de 1973 y el 10 de marzo de 1990"). As we have observed in previous editions, the title of the protocol is something of a misnomer as it is closer in nature to a 'protocol on finds and identification'. Its primary purpose is not to generate new search activities or hypotheses, but rather to spell out what steps the various state agencies involved should take if and when an accidental find of remains is made, or a apparently credible report of a possible clandestine burial site is received or generated during a criminal investigation. The seminar discussed, inter alia, the history of the Inter-Institutional Roundtable to Assist the Justice System, Mesa Interinstitucional para Auxiliar a la Justicia', which has existed in various configurations since 2016 to bring together all the state agencies and services whose work is relevant in disappearance case investigations. The Roundtable was set up in part due to the work of the Observatorio.[56] The seminar also heard presentations from Judge Marianela Cifuentes, investigative magistrate in human rights cases for the Appeals Court of San Miguel; from Marisol Intriago, head of the Human Rights Unit of the state forensic service, Servicio Médico Legal, and from Paulina Zamorano, head of the Human Rights Programme of the Justice Ministry. The Inter-Institutional Roundtable, like the protocol that it drew up, aims to draw together and co-ordinate the work of a range of state agencies whose functions include the provision of timely responses, information and data to contribute to investigations of dictatorship-era enforced disappearances. As Judge Carroza explained: "the Protocol aims to ensure that evidence associated with accidental finds, or finds made in the course of a judicial investigation, is correctly handled. The text

[54] Ibíd., pp. 4-10.
[55] Ibíd., pp. 11-14.
[56] Thanks to a joint project with Ulster University, driven by Macarena Arias, Joyce Stockins, and Lorena Albornoz of the Special Forensic Identification Unit (Unidad Especial de Identificación Forense) of the Servicio Médico Legal.

also commits to honouring the rights of relatives to participation, and to be provided with adequate information".[57]

On 15 December 2022 judge Carlos Aldana Fuentes, human rights case investigative magistrate for Concepción and Chillán, met relatives of former conscript Luis Alberto Villegas Meza, who disappeared in October 1975 while completing compulsory military service with the Marine Infantry Battalion at the Talcahuano naval base.[58] Luis's case was presented to the Rettig Commission in the early 1990s, but was classed at the time as "*sin convicción*", meaning that the Commission could not arrive at a determination due to a lack of what it referred to as "sufficient objective evidence" to declare that Luis had been a victim of grave human rights violations perpetrated by the state.[59] Judge Aldana accordingly investigated the case with a number of working hypotheses, amongst them the official version of the time, which was that Luis had deserted. However, remains exhumed in May 2022 from the Municipal Cemetery of Coronel – whose origin is known to have been the nearby naval base – have now been positively identified by the SML as belonging to Luis. Faced with this definitive proof of Luis's demise, the authorities should now seek those responsible for his death, attend to the rights and needs of his family, and consider how he can now be included among those people the Chilean state recognises as victims of enforced disappearance. As things stand, Luis's situation exemplifies the way in which newly-established judicial truths of this sort are left in administrative limbo: absent a permanent, dynamic register and/or an operational National Search Plan to maintain it, there is nowhere within the state where this new piece of information can be duly acknowledged as part of the official truth and a contribution to a more complete historical memory.

In 2023, the Transitional Justice Observatory suggested to other universities around Chile that each attempt to open a space of reflection and encounter around the search for the disappeared, under the tagline "#Todo Chile busca" ('All of Chile Searches'). The idea was to amplify existing demand for the new Search Plan, emphasising the need for search to be adopted as a shared social goal, priority, and concern rather than solely a matter for specialist attention by relatives and from the state. Various events have been carried out under the auspices of the initiative, which began in March 2023. These include a presentation of the memoir *La Búsqueda* in Valdivia, organised by the Universidad Austral de Chile; a showing of the documentary film "The Judge and the General" at the Universidad de Valparaíso; a screening and discussion of the film "Fernando ha vuelto" at the Universidad de la Frontera (Temuco), and a Memory Route event at the Universidad de Atacama. In October and November, related events involving members of the Chilean diaspora and solidarity organisations took place in London and Cambridge, UK and in Belfast, Northern Ireland. Among the many other initiatives organized by and in the UDP around the 50th anniversary,

[57] Observatorio JT, Boletín 74, noviembre-diciembre 2022.
[58] PJUD.cl: "Ministro Carlos Aldana informa a familiares resultados de peritajes a restos de conscripto desaparecido en base naval en 1975", 15 December 2022.
[59] The Rettig report entry on Luis Alberto Villegas Meza reads: "On 1 October 1975 he reported for military service. On the 8th of the month a naval patrol informed his mother that her son had deserted. Nothing more was heard until October 1976, when she was visited by agents who identified themselves as belonging to the DINA. They claimed to have found [Luis], and that he had committed suicide. In July 1990 his mother received an anonymous communication indicating that Luis had in fact died while being tortured, alongside Communist activists, in Fuerte Borgoño".

the Centre for Humanities and Digital Laboratory focused on young people who fell victim to dictatorship-era repression and have still not been brought home. Under the title "Vestigios" ('Vestiges'), a multimedia presentation was created in homage to the groups of around two dozen adolescents who were forcibly disappeared at between 11 and 17 years of age, and are still missing. The project homes in on the stories of six such young people, and the families and communities of reference who still feel their loss. Their life stories tell of childhoods lived in often precarious conditions, rendered socially vulnerable and therefore more exposed to the risk of repression by agents of the dictatorship. Their histories show the lineaments of a deliberate tactic of *razzia* or social 'cleansing', carried out under cover of political reprisal. It is important to keep these stories in the public domain, as eloquent testimony to the tragedy that ensues for collective and social life when democracy is lost. These are narratives that speak of the private losses of which public tragedies are made: how the intimate is inescapably also collective. The project's outputs include an animated film, a website, [60] and interactive profiles where visitors can listen to testimony from a family member of each of the young people featured. It was launched in the Cultural Centre below the Moneda presidential palace on 23 August 2023.

1.6 Supreme Court Decree Limits Public Access to Case Files and Verdicts

On 15 February 2022 a full sitting of the Supreme Court adopted Acta No.44-2022, entitled "Auto Acordado sobre criterios de Publicidad de sentencias y carpetas electrónicas". The stated purpose of the Act is to "harmonise" the online consultation tool currently offered by the Judicial Branch 'Virtual Office' with current principles and practice around privacy and the law of protection of personal data.[61] The impact most immediately visible to the public has been the appearance of explanatory notes within the Virtual Office itself, and in the margin of the results produced when the Jurisprudence Database is searched using the case search tool provided.[62] These two sets of annotations inform the reader, first, that "any interested party can request that the Supreme Court's Transparency Commission anonymise [their name] in a verdict that contains sensitive information, or establishes a decision or sentence now considered spent, or subject to a statute of limitation that has lapsed (Art. 6 Acta 44-2022. transparencia@pjud.cl)" [our translation], and, second, that any request for access to a case file falling under the new measure will be met with the news that "the case is reserved in accordance with the terms of Supreme Court Acta N° 44-2022. For the present, the practical implications are that public online access to the case and any associated documentation will be suspended. Any such suspension moreover risks being indefinite, as it has not yet been established when and by whom the required anonymization will be carried out, or access restored.

Art 1º of the new Acta stipulates as a general rule that human rights case verdicts should always be published in full. This could be interpreted as an express exception to the possibility of anonymization,[63] but there is no explanation of how, and by whom, the determination that a particular case counts as a "human rights case" is to be made. The

[60] https://vestigios.udp.cl/

[61] Acta No.44-2022, considerando 1. The relevant norms include Ley 19.628, the Law of Protection of Private Life, which contains the definition of "personal data" adopted by the Act.

[62] https://www.pjud.cl/portal-jurisprudencia

[63] Acta No.44-2022, Art. 1º, which makes reference to a range of international norms regarding access to justice, reparations, and access to information in order to justify the exception.

situation becomes even more unclear in respect of the electronic case files that contain copies of all the judicial documentation amassed in the course of the investigation. These files allow the reader to see the content of the statements and other evidence on which verdicts were based, something which is of particular importance in these sensitive cases as well as having an additional separate value as a contribution to truthtelling and the construction of historical memory. In this regard, although Art. 7 of the Acta established as a "general rule" that case files are to be accessible, a long list of exceptions immediately appears and human rights cases are not, this time, specifically exempted.

The Acta moreover confers on the court that emitted the sentence the power and/ or obligation to suppress ("suprimir") case files in certain specified circumstances. These include the commission of crimes with a sexual element, a description which undoubtedly applies to a large proportion of the human rights cases that have been initiated by survivors, particularly, by women survivors. The transitory arrangements set out in the Acta also order the anonymization of "all verdicts handed down in the pre-reform criminal justice system", i.e. the system in which dictatorship-era human rights cases are seen.

As the anonymization procedure does not seem to have yet been designed or activated, for the present the Acta has created a situation of absolute uncertainty, as well as generating certain presumably undesired or unforeseen side effects. The Observatorio has become aware, for example, of human rights case lawyers being left temporarily unable to access their own cases, something that Art. 7 of the Acta supposedly explicitly prohibits. Sources close to the process also report incidents whereby court staff have unilaterally decided to 'preventively' block access to one or more verdicts or files, impeding the work even of the Supreme Court's own Case Coordination Office.[64] At least one relatives' association has also seen its request for a list of case denied, on the grounds that in some cases, victims' names appear in the title that the judicial system appends to an investigation. The office con concerned has taken the view - unfounded, in the Observatorio's opinion – that these names may constitute "personal information" in the terms covered by the Acta, a position which moreover ignores the human rights case exemption that appears in the text.

This measure therefore amounts to a large step backwards in the hard-won advances in publicity and transparency that the judicial branch had implemented in recent decades. It also appears to be at odds with the plans announced in section 2.3.2, *infra,* to construct a physical and digital archive of all concluded cases. It is therefore positive to note that a full sitting of the Supreme Court in August 2023 took note of these problems and ordered a review of the content, interpretation and application of the measure.[65]

[64] Sources: in-person and written exchanges with judicial branch employees and authorities, and with human rights case lawyers, July and August 2023.
[65] Interview with judge Mario Carroza, Supreme Court human rights case coordinator, 25 August 2023.

2. JUSTICE

2.1 Overview

In mid-2021, the UN Special Rapporteur for truth, justice, reparation and guarantees of non-repetition published a report on criminal prosecution in transitional justice settings.[66] The report emphasized that States should "bring alleged perpetrators of gross human rights violations and serious violations of international humanitarian law to judgment and impose appropriate, effective penalties that are proportional to the gravity of the acts in question" (…) and should refrain from having recourse to "exemptions that shield perpetrators from criminal punishment", and to "legal, judicial or de facto obstacles to accountability, such as immunities, total or partial amnesties, pardons, the application of statutory limitations or of provisions of non-retroactivity in criminal law, *ne bis in idem* or res judicata, or dispensations or remissions that are at odds with the determination and execution of a quantum of the sentence".[67] It states that the imposition of unduly lenient sentences can amount to a form of de facto impunity,[68] notes that "nor is the early release of persons convicted of serious human rights violations consonant with international law",[69] as penalties "must actually be executed and served".[70] There is specific critical mention of recent attempts in Chile to extend proposed concessionary early release provisions to perpetrators of crimes against humanity.[71]

Observing that "Usually, only a small fraction of those who bear responsibility for international crimes or crimes against humanity are subject to criminal investigations",[72] the report names, among the causes of this insufficiency, the lack of adequate criminal law provisions and charges, legal mischaracterisation of crimes, and "destruction or obstruction of access to information held in military, police or administrative records that would be useful in documenting the responsibility and culpability of perpetrators".[73] The report remarks on the importance of the need for synergy and symbiosis between national and international law, offering the example of the use of interpretive criteria derived from international law to supplement gaps in domestic criminal codes, especially those that date from the time when historical crimes were committed.[74] It highlights exemplary interregional efforts such as the

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[66] UN, A/HRC/48/60, *Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes*, 9 July 2021.
[67] UN A/HRC/48/60, op. cit., para. 97. The excision is ours.
[68] Ibid., para. 25.
[69] Ibid., para. 27.
[70] Ibid., para. 87.
[71] Ibid., para. 39. The specific reference here is to (unsuccessful) attempts to instrumentalise the COVID pandemic (see milestone no. 49 in the document Observatorio de Justicia Transicional, 'Jurisprudential milestones in human rights cases: Chile 1990-2023' Santiago, Universidad Diego Portales, 2023 − henceforth Observatorio JT, "Jurisprudential Milestones"−, https://derechoshumanos.udp.cl/observatorio-de-justicia-transicional/). Subsequently, however, right-wing sources repeated these efforts by presenting a proposal to the constitution drafting body, the Consejo Constitucional, that would have conceded automatic house arrest to all prisoners over the age of 75, whatever the nature of their offence. In both cases, over half of those who would have benefitted from of these eventually fruitless efforts would have been perpetrators of crimes against humanity, currently imprisoned in Punta Peuco or Colina I. See Biobiochile.cl: "Republicanos buscan que mayores de 75 cumplan prisión en sus casas: incluye a presos de Punta Peuco", 19 July 2023.
[72] UN A/HRC/48/60, op. cit., para. 28.
[73] Ibid., para. 54.
[74] Ibid., para. 83.

Mercosur Condor document collection, of which Chile is part, and the existence in Chile of a specialised entity that takes on the task of criminal prosecution.[75]

Each of the issues raised by the Special Rapporteur resonate for Chile today, a quarter of a century after renewed attempts at justice saw the first domestic criminal complaints admitted against former dictator Augusto Pinochet.[76] In the initial post-1998 phase, the principal legal debates and challenges hinged on how to (re)establish criminal prosecution for the gravest crimes of repression, overcoming the three primary obstacles of statutes of limitation, the prohibition on double jeopardy, and military courts claiming jurisdiction.[77] In a second phase, from approximately 2004 to 2013, the universe of open cases grew exponentially[78] and new criminal law debates came into play, surrounding proportionality in sentencing and conditions in which sentences should be served. There was a clear early tendency toward leniency, with the automatic concession of 'half prescription' and multiple other sentence reduction formulae, mitigating circumstances, and a host of other pre and post-sentencing benefits. Over time, this trend was partially reversed by an increase in the number and proportion of final verdicts that were custodial in nature.[79] In parallel, the scene was set for an activation of civil law as a route to reparations[80] and the first impacts of recourse to the Inter-American Human Rights system made themselves felt.[81] This second phase culminated in 2013 with the fortieth anniversary of the coup, which triggered two historic acknowledgements. The first came from then-president Sebastián Piñera, whose anniversary

[75] Ibid., para. 67. The entity referred to is the body now known as the Human Rights Programme Unit of the Ministry of Justice and Human Rights, which previously (pre-2009) acted in a secondary role in privately-triggered prosecutions, and from 2009 has initiated criminal actions albeit solely for absent victims (people subjected to disappearance or execution).

[76] For more detail regarding what follows see, in general, Observatorio JT, "Jurisprudential Milestones…", op. cit.; o Juan Pablo Mañalich, "El procesamiento transicional del terrorismo de Estado a veinte años del caso Pinochet", *Revista Anales de la Universidad de Chile*, Nº 15, 2018, pp.73-85.

[77] See, in particular, the 2013 edition of this report (available in English from https://pure.ulster.ac.uk/en/publications/truth-justice-and-memory-for-dictatorship-era-human-rights-violat-3). Supreme Court verdict Rol 517-2004 marked a tipping point in 2004, by ratifying a first instance verdict delivered by special investigative magistrate Alejandro Solís which convicted perpetrators for enforced disappearance under the domestic criminal charge of kidnap (considered an ongoing crime as long as its victim is not recovered or released).

[78] Due, above all, to the presentation of dozens of criminal complaints (*querellas*) by the Association of Relatives of Victims of Political Execution (Agrupación de Familiares de Ejecutados Políticos, AFEP), with the goal of ensuring that at least one serious investigation had been carried out for each of the almost 2,000 currently acknowledged victims of the practice.

[79] Although with occasional backward steps. There are also some internal subtleties within this overall direction of travel, such as for example a prevalence of higher sentences in cases of disappearance (kidnap) when compared to homicide (execution), whereas torture rarely produced custodial level sentences (i.e. sentences of five years and above) due to the deficient charging figures available in the applicable (1970s and 1908s) version of the criminal code. A previous pattern of multiple sentences against the same perpetrators was also partly preserved, meaning that many sentences had no practical impact as those who were the object of them were already in prison for other crimes.

[80] Via acknowledgment of the inadmissibility of statutory limitation to civil claims. See Observatorio JT, "Jurisprudential Milestones", op. cit., milestone no. 27.

[81] The Inter-American Court of Human Rights emitted negative verdicts against Chile in 2006 (Almonacid Arellano) and 2013 (García Lucero). Other cases that would come to resolution (some by agreement) in the subsequent decade were also admitted into the system in this period, or were already under consideration by the Inter-American Commission. See INDH, *Chile ante el Sistema Interamericano de Derechos Humanos: Síntesis de sentencias y soluciones amistosas*, Santiago, 2022.

address denounced the "passive accomplices" of the dictatorship in terms never before heard from the political right. The second came from the Supreme Court, which issued a statement expressing regret for what its predecessors had failed to do "*dejación de funciones*" when confronted with abundant evidence and complaints, over flagrant crimes.[82]

The most recent phase, the decade from 2013, has so far produced an accentuation of the tendency toward more frequent use of custodial sentencing,[83] together with a notable diversification of the kinds of legal debates and legal action taking place around transitional justice matters. In the criminal justice arena, a broader range of criminal charges than before is currently being invoked in dictatorship-era cases, where it was previously usual to see solely charges for homicide brought in cases of extrajudicial execution; for kidnap, in cases of enforced disappearance, and for 'illegitimate pressure' - or other inadequate euphemisms for torture - in cases involving victims who survived.[84] Today, by contrast, prosecuting lawyers and judges are readier to invoke multiple and/or composite criminal charges in respect of the same case or victim, providing a much more accurate picture of the seriousness of the crimes actually committed. For example, instead of adding a (small) penalty for 'torments' [torture] to a sentence for kidnap, a judge might find the perpetrator guilty of 'kidnap involving grave harm'(*secuestro con grave daño*), a crime which attracts a higher sentencing tariff.[85] It is also more common than previously, to see the use of criminal charges such as illegal burial of remains,[86] or forms of criminal conspiracy or criminal enterprise,

[82] Public statement by a full sitting of the Supreme Court, dated, 6 September 2013, and published two days after Chile's magistrates' association published a much more strongly-worded declaration asking victims' forgiveness and asserting that "the judicial branch could and should have done much more". Public statement by the National Association of Magistrates of Chile's Judicial Branch (Asociación Nacional de Magistrados del Poder Judicial de Chile) 4 September 2013.

[83] See section 2.2.1, below. There have been exceptions and controversies, for example, Supreme Court verdict Rol 12.196-2018, 16 March 2020, denying the status of crime against humanity to the incident investigated and accordingly declaring it subject to statutory limitation; or Santiago Appeals Court Rol 1.734-2017, 13 April 2020, which conceded gradual prescription (and therefore swingeing sentence reductions) to all perpetrators convicted in the Villa Grimaldi case, episode 'Iván Insunza et. al'. It is however positive to note that this latter verdict, aptly described by eminent jurist Juan Pablo Mañalich as a "juridical aberration" (see the 2020 version of this report, and Juan Pablo Mañalich, "Homicidio alevoso, intervención delictiva y prescripción gradual. Comentario a la sentencia de la Corte de Apelaciones de Santiago en el caso «Villa Grimaldi» (rol 1734-2017)" *Revista de Estudios de La Justicia*, 32, pp. 209–227, 2020) was annulled by the Supreme Court on 28 July 2023 (rol 71.900-2020). The Court's replacement sentence reimposed custodial sentences of each of the 14 perpetrators.

[84] The range of cases in which the crime of torture, specifically, has been prosecuted (albeit using the euphemistic charging figures available from the time) has also been broadened and it is now common to see it included on the charge sheet for cases involving absent victims (where previously only kidnap or homicide were pursued). Conversely, charges for kidnap and other forms of illegal deprivation of liberty have begun to be successfully brought against survivors who were also victims of torture. See, for example, Supreme Court sentences Rol 45.519-2022, 25 January 2023, or 72.039-2020, 31 January 2023.

[85] See for example the Santiago Appeals Court's actions in the case of Víctor Jara and Littré Quiroga; or see Francisco Bustos, "Recalificación de aplicación de tormentos a secuestro calificado, imprescriptibilidad de las acciones criminales y civiles por crímenes de lesa humanidad (comentario de jurisprudencia)", *Revista de Ciencias Penales*, Vol. XLVI, 2019.

[86] Supreme Court verdict Rol 24.061, 23 September 2022, ratifying guilty verdicts against 11 people for the 1976 unearthing of remains belonging to victims of the Caravan of Death who had been extrajudicially executed in Calama three years earlier.

against members of state repressive apparatuses, notwithstanding a recent worrying setback.[87]

A more direct method for co-attributing responsibility to all members of such apparatuses for the most atrocious crimes they committed was recently ratified by the Supreme Court in one of various separate investigations related to Operation Colombo. The recent verdict upheld convictions against a total of 59 former agents, the highest single number convicted at Supreme Court level in any case to date.[88] The immediate cause of the changes is a growing understanding among some case magistrates and higher court judges of perpetration-by-means, conventionality control, and other relatively sophisticated doctrines and approaches that are better suited than ordinary criminal precepts for dealing with system crimes.[89] While these changes are positive, the new awareness is not system-wide and the Chilean courts continue on the whole to place undue emphasis on physical participation of an accused person in the crime at hand, and/or their physical presence in the place where it is deemed to have been committed. This approach fails to grasp the essentially structural, collective and hierarchical nature of this type of crime, and its persistence is one of the reasons Chile lags behind in efforts to hold corporations and other entities, plus judges and other justice system operators, criminally liable. Such efforts have borne some fruit in Argentina and are today under active discussion before Colombia's Special Jurisdiction for Peace. In the case of Chile, Sferrazza and Bustos detect a certain "reticence" on the part of the courts to prosecute these categories of perpetrator even for material authorship.[90] That said, there have been occasional breakthroughs in holding certain individual civilian collaborators or instigators to account, such as doctors who facilitated torture;[91] landowners,[92] or one particularly notorious former military prosecutor.[93] Along the way, the notion that non-military personnel should always be charged only as accomplices, rather than co-conspirators or full perpetrators, has been superseded, hopefully definitively.[94] One major limitation that persist,

[87] In Supreme Court Rol 33.461-2019, 17 February 2023, the Criminal Bench ratified guilty verdicts for kidnap against eight former members of the Comando Conjunto, but overturned their convictions on the charge of illegal association (*asociación ilícita*) accepting a *ne bis in idem* defence, since the same perpetrators had been convicted of illegal association in 2022 in a separate case. See Boletín 75, enero-febrero 2023.

[88] Supreme Court Rol 25.384-2021, Operación Colombo, 2 March 2023.

[89] See Observatorio JT Boletines 75 (enero-febrero 2023) and 76, marzo-abril 2023, for illustrative verdicts.

[90] Pietro Sferrazza and Francisco Bustos, "Persecución judicial de la complicidad económica y de civiles por la comisión de crímenes de lesa humanidad durante la dictadura en Chile", in Pablo Galaín and Eduardo Saad-Diniz (eds.), *Responsabilidad Empresarial, Derechos Humanos y la Agenda del Derecho Penal Corporativo*, Valencia, Tirant lo Blanch, 2021, pp. 331-371.

[91] See, for example, Supreme Court Rol 28.816-2019, 4 January 2023, sentencing two civilian doctors alongside four former CNI agents, for the killing of teacher Federico Álvarez Santibáñez.

[92] For example, sentences against civilian Juan Luzoro Montenegro, and other non-agents who died before their convictions could be ratified, in various episodes of the Paine case (*inter alia* San Miguel Appeals Court, Rol l 2.108-2020, April 2021, or Supreme Court Rol 1-568-2017, 16 November 2017. See also various guilty verdicts against leaders of the former Colonia Dignidad sect.

[93] Supreme Court Rol 154.811-2020, 6 March 2023. According to the Court Podlech was "de facto military prosecutor" in Temuco at the time, having offered his services voluntarily to the new de facto authorities to collaborate in the persecution of members and supporters of the deposed government.

[94] Particularly, of course, where their actual involvement - whether in planning, instigation or execution - was demonstrably identical to that of military or police personnel who are also being prosecuted. Supreme Court Rol 24.143-2019, Santa Barbara-Quilaco, 19 October 2022, and see Observatorio Boletines 73 (septiembre y octubre de 2022) and 53 (mayo y junio 2019).

however, is that all of these advances were won in, and only apply to, cases that have been accepted as meeting the crimes against humanity threshold (and are thereby held to be exempt from amnesty and statutes of limitation). This threshold is not invariably accepted as having been met, even in cases whose facts are acknowledged by the respective official truth commission.[95]

Other notable trends in criminal casebringing over recent years include a more visible presence of survivors among legal claimbringers,[96] with an associated greater emphasis on torture. This is due in part to the Valech Commission, Chile's second truth commission, carried out in two iterations in 2004-5 and 2011 and focused on crimes against survivors. Similarly, there has been growing pressure from some survivors to force the courts to address sexual violence as a specific form of torture, and to address sexual and gender-based violence (SGBV) more broadly.[97] In the area of gender, the treatment of female perpetrators has also come under the spotlight.[98] The first sentence that has come to the Observatorio's attention where a differential gender focus was explicitly applied to modify the charges brought and increase the applicable sanction was emitted in 2020, and ratified by the Supreme Court in August 2023.[99] That same month, the Santiago Court of Appeal applied multiple special considerations and norms around gender and discrimination, to a civil claim involving sexual violence.[100]

The complexities surrounding the legal status of former conscripts have surfaced at regular intervals over the decade, with some accused of crimes and others demanding recognition as victims.[101] The most recent controversies have included criticism of alleged inaction by the then-subsecretary of human rights, over a collection of written accounts whose contents some

[95] Recent examples include Supreme Court Rol 19097-2022, 28 February 2023, and 25.052-2019, 17 April 2023. Although the Rettig Commission denounced, respectively, "irrational" and "excessive" use of force, leading to the deaths of two people, the Court found the incidents to be, respectively, an ordinary crime in respect of which the statute of limitations clock had run out, and a case of legitimate self defence. A total of six agents were acquitted.

[96] See below, main text, Tables B and C, although cases triggered by survivor complaints tend to be still in the preliminary investigation or evidence gathering stages, *inter alia* because they began more recently. Survivors have also brought cases or complaints before international mechanisms, for example, the Inter-American Court of Human Rights cases *García Lucero and others vs. Chile*, or *Maldonado and others vs. Chile*, resolved in 2013 y 2015, respectively. Other complaints brought by survivors are currently before the Commission and Court. .

[97] *Inter alia* San Miguel Appeals Court, Rol 1544-2021, case of survivor Nieves Ayress, 4 November 2021, and Supreme Court Rol 31.711-2017, Lara v Fisco, 23 January 2018, in which the Court recognised for the first time that sexual violence can constitute a crime against humanity. The Corporación de Asistencia Judicial acted on behalf of the complainant in the case (see *infra*, section 2.4).

[98] Recent custodial sentences against women perpetrators represent the reversal of an earlier clear tendency, highlighted in the 2013 version of this report, to discount or overturn charges against female agents at final verdict or appeals level.

[99] Supreme Court Rol 84.451-2021, 21 August 2023, ratifying a first instance sentence handed down by judge Mario Carroza, Rol 73-2016, in the case "Episodio 'Venda Sexy' Cuaderno-A", 5 November 2020. The case was brought by a total of 10 survivors. The agents were sentenced for having committed kidnap and 'torments' against the four male victims, and for 'kidnap' and 'torments with sexual violence' against the six women. The decision, and the basis for the differential treatment of SGBV, are explained and justified in detail in the first instance sentence.

[100] Santiago Appeals Court, No. Civil 12550-2022, 25 August 2023.

[101] Leith Passmore, *La guerra en los cuarteles*, Santiago, Ediciones Universidad Alberto Hurtado, 2023.

feel may shed light on matters currently undergoing criminal investigation.[102] The Supreme Court recently saw fit to reject a mass civil claim placed by a group of almost 500 former conscripts, but the Subsecretariat of Human Rights has suggested that plans are under way to address the situation of those who were physically abused and/or subjected to cruel and inhuman conditions, often as teenagers or adolescents.[103]

In the area of criminal justice, the State continues to refuse to directly initiate criminal prosecutions of crimes committed against survivors, either de officio or by offering legal support to survivors who want to see charges brought.[104] A further and even more flagrant contradiction persists in the actions of the Consejo de Defensa del Estado (CDE), an official entity whose mission is to represent state interests in any and all legal matters. Although the CDE has initiated or adhered to some key criminal prosecutions, it persists in 'defending' state interests by denying civil liability for the self-same state crimes. The tactics of defence lawyers over the period have meanwhile shifted away from insisting on their clients' innocence, or invoking the amnesty decree law, toward downplaying their clients' crimes or the harms caused, or simply attempting to avoid, reduce, postpone, or cut short the applicable penalties. This led, at one stage, to perpetrators attempting to normalize a practice of automatic early release, appealing systematically to the Supreme Court to reverse unfavourable individual decisions from prison parole committees.[105] When the rules were tightened to eliminate this playing of the system, perpetrators instead resorted to the Constitutional Tribunal, misusing the unconstitutionality recourse in ways that eventually served only to bring the entire Tribunal into disrepute.[106] A more recent and emerging practice, by contrast, is for defence lawyers to abstain from taking cases to the final level (Supreme Court), or to abstain from appearing or responding when another party to the case does so.[107] It may be that this attitude of apparent resignation has to do with renewed hope that perpetrators may obtain automatic concession of non-custodial forms of sentencing solely on grounds of age: from early 2023 the Supreme Court began to concede alternative sentencing even when it had not been explicitly requested.[108] It is difficult to see how this practice can be reconciled with the admonitions of the Special Rapporteur cited at the beginning of this section.

[102] These are accounts that were submitted to the Subsecretariat in the final semester of 2017, while current parliamentary deputy Lorena Fries held the post of Subsecretary. Handed over to the judicial Branch in mid-2022, the accounts proved in the end to have only limited utility for ongoing criminal investigations.
[103] Source: written reply received on 16 August 2023 from the Subsecretariat, op. cit.
[104] The only partial exception to this vacuum is the work of the Corporación de Asistencia Judicial of the Santiago Metropolitan Region. See *infra*, section 2.4.
[105] Under the terms of the extremely dated Decree Law N° 321, which dates from the C19th. See the 2016 edition of this report for a detailed discussion.
[106] Leading eventually to a criminal investigation against some of its members. See. 2.3.3, below; the 2020 and 2021 versions of this report, and Observatorio JT, "Jurisprudential Milestones", op. cit., milestone 38, Caso Cerro Moreno.
[107] Various examples involving Miguel Krassnoff appear in Observatorio JT, Boletín 75 (enero-febrero de 2023).
[108] Supreme Court Rol 95.109-2020, 31 January 2023, and Rol 72.032-2020, 3 February 2023, with minority dissenting votes from judges Brito and Brahm. These concessions are even more worrying since they deal with cases of torture, which as the written verdicts themselves concede, is today subject to a new law under the terms of which non-custodial sentences are explicitly forbidden.

Over the course of the past two and a half decades the passage of time has had its effect, with 'biological impunity' increasingly beginning to operate at case level whereby not a single suspect remains alive by the time a case is concluded. The Observatorio has a record of at least five such cases to date, including the case of the extrajudicial execution of Ángel Carmona Parada: in February 2023, the Supreme Court was forced to abstain from emitting a final resolution owing to the death of the only remaining individual found guilty by lower courts.[109] In such cases the only dimension that remains pending is reparation (the civil claim aspect of the case. Even here, it may be too late as survivors or victims' relatives may themselves have died while still awaiting justice.[110] We have also begun to see the commission of new crimes to cover up the old, such as the systematic destruction of evidence: a danger foreseen by the Special Rapporteur.[111] Faced with this risk it is worth emphasising that the large number of civil demands currently active in Chile can be understood as one concrete expression of a collective state responsibility that endures. Unlike criminal investigation, it emphasises the structural, systemic and deliberately collective e nature of the harms caused by State terror. It is also relevant that Chile's courts have recently become a scenario where all of the multiple dimension of transitional justice are debated and contested. In the truth dimension, for example, families have appealed to the courts to order rectification of the reproduction, in the media of the time, of flagrant official lies and propaganda;[112] to order counter-measures against denial,[113] and to officially revoke spurious convictions handed down by the dictatorship-era authorities.[114] In reparations, a solution has recently presented itself to one remaining source of inequality that until now has operated to the disadvantage of civil complainants who acted early. This potential solution has taken the form of a Supreme Court resolution that bases itself on Chile's international duties, to dissolve the specific effects of double jeopardy (*cosa juzgada*) as regards civil liability.[115] In memory and guarantees of non-repetition, there are verdicts that address symbolic aspects of justice, and/or help to remove authoritarian legacies from public space, at the same time as they seek to contribute to non-repetition by promoting changes of institutional culture among perpetrating entities.

We have seen, then, that the numbers, types, and complexity of transitional justice dilemmas that appear before the courts are all on the increase. Additionally, it is ever more frequent to see resort to international human rights law as a source of law, or, at least, as a criterion for interpretation of the applicable national law. Various relevant sentences from the Inter-

[109] Juan Pardo Villaroel. Observatorio JT, Boletín 75, op. cit.

[110] There are dozens or even hundreds of potential examples. They include the case of Manuel Antivil Huenuqueo, a survivor of political imprisonment, whose criminal complaint over torture was resolved on 31 January 2023, with a non-custodial sentence for the now-elderly perpetrator, and a civil damages award whose purpose is uncertain as Mr. Antivil died while awaiting finalisation of the verdict. Supreme Court Rol 95.109-2020, 31 January 2023.

[111] A/HRC/48/160, op. cit. In 2017, for example, three former Army intelligence operatives were charged with the 2000 and 2001 destruction, by burning, of records belonging to the now-dissolved dictatorship-era intelligence agency the Central Nacional de Información (CNI). Observatorio JT, "Jurisprudential Milestones", op. cit., milestone 47.

[112] Observatorio JT, "Jurisprudential Milestones", op. cit., milestone 45, *La Tercera* newspaper.

[113] Ibid., milestone 54, deputy Kaiser and hate crimes.

[114] Ibid., milestones 32, 34 and 41, and see section 3.3, below. The Boletines of the Observatorio from 2019 onward offer detail of Supreme Court pronouncements on the matter.

[115] Ibid., milestone 52, 'inefficacious *res judicata'*, Paine case civil claims.

American Court of Human Rights have been at least partly accepted and/or complied, including some which primarily address issues of reparation.[116] Along the way, the Chilean State issued a resounding acknowledgement of State responsibility which has subsequently been taken up in Supreme Court jurisprudence – although the CDE, it seems, continues to ignore it.[117] It is also increasingly frequent for specialised human rights case magistrates to proactively cite international jurisprudence and precepts when setting out the reasoning behind their verdicts.[118]

The Achilles heel of all this apparent justice progress is, of course, time: fifty years on from the event that triggered these aberrant crimes, justice that was not done when it should have been is all too often justice that will never be reached, or at least will never be seen by those who most longed and campaigned for it. This chapter is dedicated to all of those people.

2.2 Actions of Domestic Courts

As can be seen in Table A, Observatory records show a total of 658 final verdicts handed down in dictatorship-era human rights cases between 1995 and mid-2023 (30 June).[119] Most came from the Criminal Bench of the Supreme Court.[120] 124 of the 658 verdicts dealt with standalone civil claims, with the remaining 534 dealing with criminal cases (some of which include a civil claim component).[121]

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[116] The ceremony of re-conferring of military rank carried out in compliance with the Inter-American Court sentence in the Maldonado case is particularly worthy of mention.

[117] In the Órdenes Guerra case, with repercussions in the key civil claim verdict in the Paine case (Supreme Court Rol. 149.250-2020, 14 June 2022, and see section 3.2, *infra*).

[118] See, for example, the reasoning of judge Álvaro Mesa of the Temuco Appeals Court, *inter alia* in Rol 39.296, "NN de Villarrica" case, 22 April 2023. Judge Mesa cites the Geneva Conventions and abundant Inter-American Court jurisprudence, and invokes the control of conventionality doctrine which the Supreme Court also cites in Rol 149.250-2020, 14 June 2022 (see below, section 3.2).

[119] This represents the closing date of each period of statistical coverage of this Report, for comparative purposes.

[120] A small proportion of final mixed or criminal-only verdicts is emitted by the respective Court of Appeals and not elevated to the Supreme Court, therefore becoming finalised at Appeals Court level. The Observatorio endeavours to track and record such cases and include them in our register of finalised cases (we currently have 15 such cases on file, which are therefore included in the figure of 658 final verdicts cited here). Since all of them are either criminal cases, or criminal cases with a civil claim incorporated, in practice they all belong to the 534 cases subcategory of the total of 658). It is possible that other similar cases have gone as yet undetected in which case the 658 total may be slightly below the real figure. We endeavour on an ongoing basis to recover any historical anomalies of this sort and update our record. As regards the 124 final sentences that we record in civil claims alone, a small portion of these – those emitted before the end of 2014 - were emitted or ratified by the Constitutional, rather than the Criminal, Bench of the Supreme Court. (On 26 December 2014 the Court altered its own procedures, via Acta 233-2014, reassigning such cases so that they would from then on be seen by the Criminal Bench. See previous editions of this report and/or Observatorio JT, "Jurisprudential Milestones", milestone 31.) It should be noted that neither the Observatorio nor the judicial Branch has reliable central record of numbers or outcomes of civil claims resolved before 2014, and that civil claims terminated post-2014 at first instance or Appeals Court level are also particularly susceptible to under-counting, since they are more likely than their criminal case or mixed case counterparts to not be picked up by judicial branch and other news services. The number of such claims is also, we believe, on the rise as the Consejo de Defensa del Estado increasingly relies on negotiated settlement or declines to appeal the awards made at lower court level.

[121] These sentences almost without exception adjudicate the civil liability of the state (they are directed against the Fisco, or Treasury). A tiny proportion of the earliest civil claims, those brought around the year 2000, also attempted to sue one or more named perpetrators in person. An even smaller number are directed at the Fisco,

Table A: Dictatorship-era human rights cases that have received final sentences in the higher Chilean courts between 1995 and 30 June 2023

Total no. of completed cases*	**658**
Civil claims	124
Criminal or mixed** cases	534

** Completed at Supreme Court level (mostly) or at Appeals Court level, without referral to the Supreme Court*
*** 'Mixed', here, means cases with both a criminal and civil aspect*

Of the 534 criminal case verdicts, 228 deal with crimes committed against victims of enforced disappearance; 238 with victims of extrajudicial execution, and 31 with cases brought by groups of survivors of political imprisonment and torture. Of the remaining cases, 33 involved two or more of these categories of victim simultaneously while another handful dealt with investigations which do not have specific named victims (see Tables B and C, below). Although most cases therefore deal with only one category of crime (disappearance, or execution, or torture), in most of these there is more than one victim per case: the 534 concluded criminal verdicts deal with crimes committed against a total of 1,363 people.[122] 1.119 of these people fall into the category of "absent victims": 521 of them are acknowledged victims of State-sponsored disappearance ("detenidas/os-desaparecidas/os") while 598 are acknowledged victims of politically-motivated execution (ejecutadas/os políticas/os). The remaining 254 people are survivors, mostly acknowledged survivors of political imprisonment and torture.[123]

claiming not for material or moral harm arising from the original crimes but instead for 'lack of service' *(falta de servicio*) on the part of the Servicio Médico Legal regarding historical errors in the identification of remains belonging to forcibly disappeared persons. Four of the 124 finalised civil claims on the Observatorio's current records are of this type.

[122] We acknowledge that some key actors favour, while others reject, use of the term "victim", whether to refer to absent persons or to survivors. The Observatorio's in-house policy is to generally limit the use of the term to references to disappeared or executed persons, although on occasion – as here – it is necessary for purposes of clarity or consistency to use it, in its strictly legal sense, to denote a surviving victim of a crime.

[123] Most of whom were acknowledged as such by the Valech Commission in one of its two iterations (in 2001, or in 2005). Nonetheless, the courts have on occasion recognised as surviving victims of crimes against humanity, persons who do not feature in the current Valech Commission lists, since these lists are neither exhaustive, nor determinant when it comes to the accreditation of judicial truths. We are not currently aware of any finalised case verdict for a victim of execution or disappearance not acknowledged by Rettig or by Valech II, although a first-instance verdict over such a victim was handed down in April 2023 (see above, Truth section, 'NN Villarica' case. At the time of writing, this verdict had not yet been seen by the respective Court of Appeal. Given the circumstances surrounding the case, it is possible that the victim, if ever identified, will prove to be a person already on the aforementioned lists.

Table B: Classes of victimisation dealt with in human rights cases completed between 1995 and 30 June 2023

Total no. of criminal cases	**534 cases**
Cases whose victims were all detained-disappeared, DD*	**228**
Cases whose victims were all subjected to politically-motivated execution, EP*	**238**
Mixed Cases (with victims EP, DD, and/or survivors)	**33**
Cases for torture and other crimes against survivors	**31**
Cases only for illicit association**	**1**
Cases only for illegal exhumation**	**2**
Cases over the arms control law**	**1**

* For the purposes of this classification we use the original classifications assigned to each victim by the respective truth commission (Rettig Commission and Valech II Commission, respectively). Victims who were not acknowledged by these bodies are classified according to the facts established in each verdict.
** These cases are excluded from calculations based on this data, as they are cases that do not make reference to specific individualised victims. It is possible that the cases that appear in other entries in this table include verdicts for such crimes: for purposes of the table every case is classified according to the most serious crime that is mentioned in the respective verdict.

Table C: Numbers of absent versus surviving victims represented in criminal cases for dictatorship-era human rights violations, completed between 1995 and 30 June 2023*

Total no. of absent victims (DD and EP) represented	**1,119**
Detained-disappeared persons (*detenida/os desaparecida/os*, DD).	521
Persons victims of political execution (ejecutada/os política/os, EP)	598
Total no. of survivors represented	**254**

* Due to the methodology used, it is possible that totals contain more than one mention of the same victim; due to the (limited) occasions on which more than one criminal investigation has been undertaken over the same originating incident. Wherever such a situation has been detected, the person involved is counted only once (see for example fig 2.2, verdict no. 75, second case over the enforced disappearance of Luis Cornejo).

A closer look at what these figures represents demonstrates just how much remains to be done in the formal justice domain over three decades after Chile's dictatorship came to an end. Only just over a third (34.7%) of the total of over 3.200 people currently recognized by the Chilean state as victims of death or disappearance have had the crimes committed against them investigated and resolved with a final criminal verdict.[124] That said, these figures do at

[124] The figure of 34.7% represents, in turn, 42% of those people today acknowledged as detained-disappeared, and 30% of those today acknowledged as victims of political execution. Taking into account the complexities surrounding figures and lists discussed above, for the purposes of this calculation we maintain the practice adopted in previous editions of calculating on the basis of a total universe of 3,216 victims of enforced disappearance or political execution, and 38,254 survivors of political imprisonment and torture. For the

least demonstrate a respectable 5.4% rise – representing cases involving 175 more victims – in the most recent statistical twelve month period from July 2022. This is due to a substantial volume of final verdicts emitted by the Supreme Court in that same period. By contrast, the proportion of the 39,268 survivors currently acknowledged by the state who have seen a criminal case resolved for the crimes committed against them is only 0.6%. The vast gulf between absent victims and survivors as regards the satisfaction of their right to seek a judicial remedy through criminal investigation therefore persists. This disparity has various contributing factors. One of them is, undoubtedly, the relative reluctance of survivors to initiate criminal actions,[125] and a corresponding preference for civil claims. However this difference itself reflects historical and current deficiencies in the state's response. The historical, i.e. longstanding, deficiencies include the practice of only utilizing existing criminal charges from the time of commission of the crimes. In respect of torture – the crime most often denounced by survivors – the term is not even mentioned in the contemporaneous criminal code. This means resort to euphemistic terms such as 'illegitimate pressure', which carries a maximum possible sentence tariff so low that survivors prefer to take the civil claims route. Other longstanding flaws include the judicial branch's arbitrary attempt, back in 1998 when cases slowly began to move forward for the first time, to limit the human rights caseload in such a way as to completely exclude crimes committed against survivors.[126]

Current weaknesses include the fact that, while this arbitrary exclusion has now been overcome as far as the judicial branch is concerned, it persists in the mandate and operating practices of the Human Rights Programme of the Ministry of Justice and Human Rights. The Programme has, since 2009, had legal competence to require investigations to be opened for absent victims, and to act in favour of prosecution in the ensuing cases. However it can not and does not do the same regarding crimes committed against surviving victims. The sole state body currently existing that offers any assistance at all to survivors in exercising their right to access justice is the Santiago regional office of the Corporation for Legal Assistance, Corporación de Asistencia Judicial de la Región Metropolitana (see section 2.4, below).

One major underlying failing, paradoxically partly obscured by the persistence and courage of civil society claimbringers, is the erroneous assumption that criminal investigation can only occur when one or more named victim can be identified and/or is an active party to the case, either in their own right or represented by relatives or an association. In fact, as the UN Special Rapporteur has made clear, the duty to prosecute rests with the State and should be undertaken *de officio*.[127] As the Observatory and others have repeatedly pointed out, the task at hand is to investigate torturers, not those who were tortured. There is no good reason, other than longstanding habit, why criminal investigations should not be organized to cover

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respective definitional and methodological parameters applied, see previous editions and Observatorio de Justicia Transicional, "*Cifras de víctimas y sobrevivientes de violaciones masivas a los DDHH oficialmente reconocidas por el Estado chileno*", Santiago: Universidad Diego Portales, 2013.

[125] Criminal complaints over absent victims are mostly long-running, having been initiated during the dictatorship itself (particularly, in cases of disappearance) and/or shortly after the revival of criminal justice possibilities in and after 1998. For victims of political execution, in particular, there is broad coverage produced not only through the actions of specific families but also due to the persistence, determination, and systematic mobilisation of the Agrupación de Familiares de Ejecutados Políticos, AFEP.

[126] Full sitting of the Supreme Court, Act 36-2005, 6 May 2005, and Act 81-2010, 1 June 2010.

[127] UN A/HRC/48/160, op. cit.

entire geographical regions, branches of the Armed Forces, command structures and/or clandestine detention centres. This would serve certain purposes much better than the current patchwork of individual cases. It would, for example, better expose the deliberate nature of the dictatorship-era decision to design, set up, maintain – and still, today, to attempt to cover up – an entire elaborate state machinery to eradicate opponents of authoritarianism, using terror as a tool for social discipline. This duty of de officio investigation was highlighted, inter alia, by the Inter-American Court of Human Rights in its Garcia Lucero case judgment of 2013, observing that the responsibility for initiating a criminal investigation of the torture that had been suffered rested not with the plaintiff, but with the Chilean state.

Another historically-rooted weakness that still persists is a lack of systematic, visible application of a gender perspective to the criminal justice dimension of Chile's transitional justice. In recent years the country has seen a welcome rise in the use of lenses of sex and gender to understand various aspects of the dictatorship era, whether in sociological analysis, first-hand testimony and biography, or social-scientific works. Any sign of these insights making their way into the arena of judicialization however remains elusive, save in a handful of cases (see above, section 2.1). Those cases tend moreover to limit their gender perspective almost exclusively to the subject of sexual violence, leaving many other important dimensions unaddressed. These include the question of whether the proportions of cases that have been successfully judicialized, reflect the gender breakdown of victimhood at least as reflected in current official figures. If the universe of finalized cases is disaggregated by biological sex of named victims, we see that the total of 521 victims of enforced disappearance (*detenidas/os desaparecidas/os*, DD) for whom a criminal case has been concluded, includes 40 female victims. For political execution, 29 women feature among the 569 currently acknowledged victims with finalized cases. This gives an accumulated total of 1,119 absent victims for whom some measure of justice has been delivered, 6.1% of them, women. This figure is in fact reasonably consistent with the breakdowns of acknowledged victims of these practices by sex, produced by the respective truth commissions (Rettig/CNRR, and Valech I). If we turn to survivors, 89 female survivors of torture and other grave crimes have obtained criminal verdicts against at least one perpetrator. This represents 35% of the 254 survivors who currently have concluded cases, greatly exceeding the 12.5% and 16.1% documented, respectively, by the two iterations of the Valech truth commission (in 2004-5, and in 2011). This figure suggests that the trend documented in previous years' reports continues, whereby women survivors are more likely than their male peers to initiate legal action over the crimes committed against them. This activism is driven in part by a brave and conscious determination on the part of some to draw attention to the specifically sexual violence to which they were subjected, inflicted as part of a patriarchal attempt to 'punish' them additionally for daring to be politically active and to resist. However, since the state does not involve itself in bringing criminal investigations over survived crimes, the current distribution of justice activity cannot be properly classified as a positive sign of gender awareness on the part of the State. It is, rather, the organic result of the sum of individual decisionmaking and conscious collective action by women and their associations. The UN Secretary General's call for gender differentiated approaches to TJ therefore remains unheeded.[128]

[128] UN A/75/174, *The gender perspective in transitional justice processes, Note by the Secretary-General*, 17 July 2020. See also section on Guarantees of Non-Repetition, below.

Table D: Percentages of women represented in criminal cases completed between 1995 and June 2023, by type of case

Total no. of persons per category, and no. of this total who were women	**Percentage of the total represented by women**
Absent victims (DD and EP): 1,119 people, 69 of whom were women	**6.1% of the total of absent victims who have a completed criminal case are women**
Disappeared victims (DD): 521 people: 40 women, 481 men	7.6% of the total of disappeared persons (DD) with a completed criminal case are women
Victims of execution (EP): 598 people: 29 women, 569 men	4.8% of the total of executed persons (EP) with a completed criminal case are women
Survivors: 254 people, in whose cases there has been a finalised criminal sentence for: 89 women, 165 men,	35 % of survivors of torture with a completed criminal case are women

Sources: Observatorio, using official truth commission reports, judicial verdicts, and judicial branch data.
Methodology: victims or survivors who appear for the first time in cases finalised in the most recent statistical period are added to the cumulative register. The same observation made in Table C applies to those who appear in more than one case, although this is relatively infrequent. A small number of survivors with a concluded case are not acknowledged by the respective truth commission, meaning the base total of 38,254 people used to calculate the percentage reported here is slightly too low. For the present, the differences are of such a small order that percentages are not affected.

Fig. 1. Total numbers of sentences handed down by the Supreme Court Criminal Bench in dictatorship-era human rights cases, 1 July 2010 - 31 June 2023, over 13 statistical periods

Time Period *1 July-30 June of:*	**No. of human rights cases finalised before the Criminal Bench**
2010 - 2011	**23 (all criminal cases)***
2011 - 2012	**18 (all criminal cases)**
2012 - 2013	**4 (all criminal cases)**
2013 - 2014	**12 (11 criminal**, 1 civil***)**
2014 - 2015	**44 (40 criminal, 4 civil)**
2015 - 2016	**58 (42 criminal, 16 civil)**
2016 - 2017	**55 (49 criminal, 6 civil)**
2017 - 2018	**37 (31 criminal, 6 civil)**
2018 - 2019	**44 (38 criminal, 6 civil)**
2019 - 2020	**47 (32 criminal, 15 civil)**
2020 - 2021	**39 (27 criminal, 12 civil)**
2021 - 2022	**47 (37 criminal, 10 civil)**
2022 - 2023	**85 (67 criminal, 18 civil)**

* Prior to 2014, civil claims not associated with a criminal investigation that made their way to the Supreme Court were seen by the Constitutional Bench. Most were accordingly denied on grounds of statutory limitation.
** Criminal investigations can incorporate a civil claim element, if a casebringer so wishes.
*** The reference is to autonomous civil claims, i.e. claims brought outside of the context of an associated criminal investigation.
Source: Observatorio, based on judicial sentences.

Fig 2.1 Detail of the 47 Supreme Court verdicts handed down between July 2021 and June 2022* (inclusive) in dictatorship-era human rights cases

** Data for the period corresponding to the 2022 edition of this report, which did not include a transitional justice chapter. The equivalent data for the subsequent, most recent, period, appears below in Fig. 2.2)*

Case	Date of Verdict	Case ref. ('Rol')
1. Aggravated homicide of Juan Ramón Olivares Pérez y Rubén Eduardo Orta Jopia, Victim of political execution (EP).	02.07.21	31.866-2018
2. Civil claim, case of Fernando Eugenio Iribarren González, EP.	06.07.21	79.259-2020
3. Civil claim by María Gladys Ávila Rosas, survivor, ex political prisoner (ex PP).	26.07.21	13.2353-2020
4. Caso Operación Colombo, aggravated kidnap of Luis Guendelman Wisniak and Carlos Gajardo Wolff, Detained-Disappeared (DD).	28.07.21	3.452-2018
5. Civil claim, Washington Leonel Castro Hidalgo, survivor, ex PP.	12.08.21	13.5340-2020
6. Civil claim. Juan Antonio Garcés Carreón, survivor, ex PP.	12.08.21	33.344-2020
7. Aggravated homicide of Jorge Manuel Salas Sotomayor, EP.	18.08.21	12.762-2019
8. Aggravated kidnap of María Galindo Ramírez, DD.	23.08.21	7.843-2019
9. Quinta Bella case: Aggravated homicides Sergio Alejandro Alcapia Cienfuego & Juan Carlos Valle Cortés, EP; aggravated kidnap of Juan Ortiz Moraga, DD.	23.08.21	33.457-2018
10. Civil claim of María Francisca Iribarren Arrieta, ex PP.	25.08.21	99.422-2020
11. Aggravated homicide and torture (torments) against trade union organisers Hugo Candia Núñez and Máximo Segundo Neira Salas, EP.	21.09.21	28.310-2018
12. Aggravated kidnap of Aladín Esteban Rojas Ramírez, DD.	23.09.21	8.572-2019
13. Civil claim by Christian Hernán Falcón del Pino, ex PP.	27.09.21	92.043-2020
14. Aggravated kidnap of Vitalio Orlando Mutarello Soza, DD.	05.10.21	23.156-2019
15. Aggravated homicide of Víctor Carreño Zúñiga, EP.	05.10.21	33.551-2018
16. Kidnap & aggravated homicide Joaquín Segundo Montecinos Rojas, EP.	07.10.21	14.594-2019
17. Operación Colombo case: aggravated kidnap of brothers Carlos and Aldo Pérez Vargas, DD.	19.10.21	8.561-2018
18. Aggravated kidnap of José Domingo Llabulén Pilquinao, DD.	20.10.21	28.552-2018
19. Homicide of Exequiel Zigomar Contreras Plotsqui, EP.	20.10.21	12.342-2019
20. Aggravated homicide of Juan Antonio Díaz Cliff, EP.	22.10.21	13.364-2019
21. Operación Colombo, aggravated kidnap Juan Carlos Perelman Ide, DD.	25.10.21	32.907-2018
22. Aggravated homicide of José Fuentes Fuentes, EP.	08.11.21	12.820-2019
23. Aggravated kidnap of Rossetta Gianna Pallini González, EP.	08.11.21	16.096-2021
24. Civil claim by Álvaro Enrique Tapia Quijada, ex PP.	09.11.21	95.096-2020
25. Torments Patricio Rivera Cornejo & Daniel Pavez Casanova, ex PP.	10.11.21	33.544-2018
26. Esparza brothers: torture (torments) leading to death of Tomás Esparza Osorio, EP, and torture (torments) of Javier Esparza Osorio, ex PP.	16.11.21	7.671-2019
27. Aggravated kidnap & aggravated homicide of Marta Ugarte Román, EP.	26.11.21	223-2019
28. Homicide of Eduardo Vielma Luengo, EP.	02.12.21	1.7518-2019
29. Aggravated homicide of Fernando Valenzuela Rivera, EP.	23.12.21	41.099-2019
30. Kidnap of Jeremías Noé Jara Valenzuela, EP.	24.12.21	19.203-2019
31. Aggravated homicide of Augusto Ramón Cepeda Venegas, EP.	24.12.21	13.887-2019
32. Aggravated homicide of Evaldo Aburto Gallardo, EP.	01.03.22	24.255-2019
33. Civil aspect**, arbitrary detention of Waldo César Alfaro Retamal, EP.	08.03.22	125.421-2020
34. Aggravated homicide of Eulogio Fritz Monsalve, EP.	24.03.22	10.662-2019
35. Civil aspect,** case of Ricardo Jorge Solar Miranda, EP.	28.03.22	33.366-2019
36. Illicit association, and aggravated kidnap of Aníbal Riquelme Pino, Francisco González Ortiz and Alfonso Araya Castillo, all DD.	18.04.22	36.977-2019

37. Kidnap of a legal minor, Óscar Hernán Miranda Segovia, DD.	20.04.22	13.368-2019
38. Aggravated homicide of Miguel Enríquez, EP.	09.05.22	16.939-2019
39. Civil claim, case of Arazatí Ramón López López, EP.	06.06.22	130.949-2020
40. Civil claim, case of Rosa Elvira Solís Poveda, DD.	07.06.22	144.310-2020
41. Civil claim, case of Sergio Nicolás Medina Godoy, EP.	10.06.22	129.220-2020
42. Paine case, principal episode (38 victims). Aggravated homicides of: José Cabezas Bueno, Francisco Calderón Nilo, Héctor Castro Sáez, Domingo Galaz Salas, José González Espinoza, Juan González Pérez, Aurelio Hidalgo Mella, Bernabé López López, Juan Núñez Vargas, Héctor Pinto Caroca, Hernán Pinto Caroca, Aliro Valdivia Valdivia, Hugo Alfredo Arenas, Víctor Zamorano González, José Adasme Núñez, Pedro Cabezas Villegas, Ramón Capetillo Mora, José Castro Maldonado, Patricio Duque Orellana, José Fredes García, Luis Gaete Balmaceda, Carlos Gaete López, Luis Lazo Maldonado, Samuel Lazo Maldonado, Carlos Lazo Quinteros, Samuel Lazo Quinteros, René Maureira Gajardo, Rosalindo Herrera Muñoz, Jorge Muñoz Peñaloza, Mario Muñoz Peñaloza, Ramiro Muñoz Peñaloza, Silvestre Muñoz Peñaloza, Carlos Nieto Duarte, Andrés Pereira Salsberg, Laureano Quiroz Pezoa, Roberto Serrano Galaz, Luis Silva Carreño and Basilio Valenzuela Álvarez, EP.	14.06.22	149.250-2020
43. Aggravated homicide of Segundo Muñoz Rojas, EP.	14.06.22	33.452-2019
44. Kidnap and grievous bodily harm, Arnoldo Camú Veloso, EP.	24.06.22	33.309-2019
45. Aggravated homicides of former congressperson Luis Espinoza Villalobos, and peasant leader Abraham Oliva Espinoza, EP.	28.06.22	33.421-2019
46. Aggravated kidnap of legal minor Víctor Maldonado Núñez, EP.	28.06.22	22.962-2019
47. Aggravated homicide of Guillermo Hernán Herrera Manríquez, EP.	29.06.22	41.287-2019

Source: Observatorio, based on judicial sentences.
***** Cases which began as mixed (with a criminal and a civil element), but in which only the civil element was seen before the Supreme Court. The criminal aspect of the Waldo Alfaro case culminated in biological impunity due to the death of all of the accused, while in the case of Ricardo Solar the criminal aspect of the case was extinguished due to the absolution of all agents originally charged.

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Fig 2.2 Detail of the 85 Supreme Court verdicts handed down between July 2022 and June 2023* (inclusive) in dictatorship-era human rights cases

Case	Date of Verdict	Case ref. ('Rol')
1. Civil claim by José Ricardo Uribe Villegas, survivor, expolitical prisoner	07.07.22	12.7330-2020
2. Civil claim by Renato Vital Arias Rozas, Manuel Patricio Jorquera Encina, Juan Miguel Molina Manzor, Luis Erasmo Retamal Jara and Héctor Clemente Vásquez Luncumilla, former political prisoners (exPP)	08.07.22	10.4460-2020
3. Aggravated kidnap of José Arturo Weibel Navarrete, Carlos Enrique Sánchez Cornejo and Mariano León Turiel Palomera, all DD.	19.07.22	18.762-2019
4. Aggravated kidnap of Nicza Estrella Báez Mondaca, ex PP.	25.07.22	33.661-2019
5. Aggravated kidnap of Mario Salinas Vera, DD.	10.08.22	33.853-2019
6. Civil claim by Fernando Vergara Vargas, EP.	29.08.22	138.662-2020
7. Pisagua case principal episode, aggravated homicide and kidnap of: Tomás Orlando Cabello Cabello, Nicolás Chanez Chanez, Juan Apolinario Mamani García, Luis Aníbal Manríquez Wilden, Hugo Tomás Martínez Guillén, Juan Orlando Rojas Osega and Nelson José Márquez Agusto, all EP; y Rodolfo Jacinto Fuenzalida Fernández, Juan Antonio Ruz Díaz, José Demóstenes Sampson Ocaranza and Freddy Marcelo Taberna Gallegos, all DD.	23.09.22	36.319-2020
8. Caravan of Death case, Calama episode, kidnap and aggravated homicides of: Mario Argüelles Toro, Carlos Alfredo Escobedo Cariz, Luis Alberto Hernández Neira, Hernán Elizardo Moreno Villarroel, Fernando Roberto Ramírez Sánchez, Alejandro Rodríguez Rodríguez, José Gregorio Saavedra González, Jorge Jerónimo Carpanchay Choque, Luis Alberto Gaona Ochoa, José Rolando Hoyos Salazar, Roberto Segundo Rojas Alcayaga, Carlos Berger Guralnik, Bernardino Cayo Cayo, Daniel Jacinto Garrido Muñoz, Domingo Mamani López, Jorge Rubén Yueng Rojas, Manuel Segundo Hidalgo Rivas, Luis Moreno Villarroel, Rosario Aguid Muñoz Castillo, Sergio Moisés Ramírez Espinoza and Víctor Alfredo Ortega Cuevas, all EP (remains found and identified). Haroldo Cabrera Abarzúa, David Ernesto Miranda Luna, Rafael Pineda Ibacache, Carlos Alfonso Piñero Lucero and Milton Alfredo Muñoz Muñoz, all DD (not yet found)	23.09.22	104.259-2020
9. Caravan of Death case, Calama episode, multiple counts of illegal burial of 26 victims of political execution *[victims as named in case 8, above]*.	23.09.22	24.061-2019
10. Civil claim, case of José Enrique Conejeros Troncoso, DD	23.09.22	144.438-2020
11. Civil claim, case of conscripted soldiers	26.09.22	4.073-2021
12. Operación Colombo case, aggravated kidnap of Rubén David Arroyo Padilla, DD.	03.10.22	22.175-2018
13. Civil claim by Roberto Eduardo Becerra Donoso, ex PP.	13.10.22	104.558-2020
14. Operación Colombo case, aggravated kidnap of Zacarías Antonio Machuca Muñoz, DD.	17.10.22	24.683-2018
15. Aggravated homicide of Jaime Raúl Olivares Jorquera, EP.	17.10.22	22.379-2019
16. Santa Bárbara and Quilaco case, 28 victims of disappearance: aggravated kidnap of: José Domingo Godoy Acuña, Julio Godoy Godoy, Desiderio Aguilera Solís, José Nazario Godoy Acuña, Manuel Salamanca Mella, José Mariano Godoy Acuña, Miguel Cuevas Pincheira, Sebastián Hernaldo Campos Díaz, José Rafael Zúñiga Aceldine, José Secundino Zúñiga Aceldine, José Gilberto Araneda Riquelme, Juan de Dios Rubio Llancao, Julio Rubio Llancao, José María Tranamil Pereira, José Guillermo Purrán Treca, Elba Burgos Sáez, Juan de Dios Fuentes Lizama, Juan Francisco Fuentes Lizama, Sergio D´Apollonio Petermann, Aliro Oporto Durán, Cristino Humberto Cid Fuentealba, José Felidor Pinto Pinto, Luis Alberto Cid Cid, Luis Alberto Bastías Sandoval, Raimundo Salazar Muñoz, Gabriel José Viveros Flores, Segundo Marcial Soto Quijón and José Roberto Molina Quezada.	19.10.22	24.143-2019
17. Aggravated homicide of Cedomil Lucas Lausic Glasinovic, EP.	19.10.22	44.105-2020
18. Operación Colombo case, aggravated kidnap of Enrique Segundo Toro Romero, Eduardo Enrique Lara Petrovich and José Caupolicán Villagra Astudillo, all DD.	19.10.22	3.739-2019
19. Civil claim by Celpa Cubillos family, ex PP.	20.10.22	12.458-2021
20. Civil claim by Heriberto Selín Murillo Urra, ex PP.	20.10.22	39.048-2022
21. Civil claim by Miguel Enrique Smith Padilla, ex PP.	20.10.22	33.854-2021

22. Residents of San Gregorio: kidnap and aggravated homicide of Sergio Orlando Candia Salinas, Carlos Chamorro Salinas, Miguel Ángel Ponce Contreras and Jaime Alberto Veas Salinas, all EP.	25.10.22	36.435-2019
23. Civil claim by Guillermo Orlando Anavalón González, ex PP.	2.11.22	14.105-2019
24. Civil claim by Benjamín Patricio Muñoz Díaz, ex PP.	03.11.22	16.919-2021
25. Aggravated homicide of Patricio Leonel González González, EP.	15.11.22	206-2020
26. Civil claim by Jorge Hilario Alvarado Espinoza, ex PP.	16.11.22	14.622-2021
27. Civil claim by Sergio Gustavo Opazo Jara, ex PP.	29.11.22	57.995-2021
28. Civil claim by Mirtha Cecilia Montecinos Gamonal, Luis Sergio Montecinos Gamonal, Cristián Andrés Montecinos Gamonal, Ricardo Robinson Montecinos Gamonal and Raúl Eduardo Araya Veliz, ex PP.	12.12.22	26.534-2021
29. Illicit association and aggravated kidnap of Ramón Isidro Labrador Urrutia, DD.	13.12.22	72.036-2020
30. Aggravated kidnap of Luis Fernando Fuentes Riquelme, DD.	13.12.22	30.508-2020
31. Caso Curarrehue, illegal detention and aggravated homicide of Alberto Colpihueque Navarrete, Eleuterio Colpihueque Licán, both DD; and torture ('illegitimate pressure') against Abel Colpihueque Licán, ex PP.	14.12.22	361-2020
32. Aggravated homicide of Juan Guillermo Ramírez Peña, EP.	14.12.22	44.448-2020
33. Aggravated homicide of Jorge Manuel Vásquez Matamala, EP.	16.12.22	42.792-2020
34. Torture leading to death of Nolberto Enrique Seiffert Dossow, EP.	22.12.22	44.103-2020
35. Aggravated kidnap of Jorge Leonel Gaete Espinoza, EP.	04.01.23	36.665-2019
36. Aggravated homicide of Federico Renato Álvarez Santibáñez, EP.	04.01.23	26.816-2019
37. Civil claim by Juan Esteban Aguilar Celis, ex PP.	04.01.23	49.404-2021
38. Civil claim by Pedro Antonio Casanova Torres, ex PP.	04.01.23	58.366-2021
39. Aggravated homicide of Juan Humberto Hernández Guajardo, EP.	11.01.23	27.791-2019
40. Aggravated kidnap of Benedicto Poo Álvarez, DD.	13.01.23	10.005-2022
41. Civil claim, case of Luis Leopoldo Sepúlveda Núñez, DD.	16.01.23	94.432-2021
42. Aggravated kidnap of Sergio Emilio Vera Figueroa, DD.	19.01.23	66.004-2021
43. Aggravated kidnap of Juan Bautista Barrios Barros, Eduardo Enrique Alarcón Jara and Gumercindo Fabián Machuca Morales, all DD.	19.01.23	82.388-2021
44. Aggravated kidnap of Miguel Enrique Rodríguez Vergara, DD.	23.01.23	94.891-2020
45. Aggravated homicide of Juan Jorge Gallardo Núñez, DD.	24.01.23	24.292-2020
46. Aggravated kidnap of Francisco Segundo Sánchez Arguen, DD.	24.01.23	122.175-2020
47. Kidnap resulting in grievous bodily harm against Morelia del Rosario Fernández Montenegro, ex PP.	25.01.23	45.519-2022
48. Torture (illegitimate pressure) against Manuel Antivil Huenuqueo, ex PP	31.01.23	95.109-2020
49. Kidnap leading to grievous bodily harm of Abelardo Enrique Zamorano Barrera, ex PP.	31.01.23	72.039-2020
50. Homicide of Ángel Patricio Carmona Parada, EP.	02.02.23	34.012-2021
51. Torture ('torments') against Harry Edwards Cohen Vera, ex PP.	03.02.23	72.032-2020
52. Aggravated kidnap of Waldo Ricardo Villalobos Moraga, DD.	06.02.23	14.183-2020
53. Aggravated homicide of Justo Benedicto Cortés Díaz, DD.	06.02.23	14.980-2020
54. Aggravated kidnap of Gary Nelson Olmos Guzmán, DD.	08.02.23	44.909-2021
55. Aggravated kidnap of Nicomedes Segundo Toro Bravo and Raúl Gilberto Montoya Vilches, both DD.	17.02.23	33.461-2019
56. Civil claim by Jaime Rodrigo Bórquez Leichtle, ex PP.	20.02.23	862-2022
57. Kidnap, siblings José Miguel & Isabel Verónica Sánchez Larraín, ex PP.	27.02.23	21.037-2020
58. Aggravated homicide of José Ananías Zapata Carrasco, EP.	27.02.23	19.097-2022
59. Aggravated kidnap of Alejandro Ancao Paine, DD.	28.02.23	30.338-2022
60. Aggravated kidnap of Guillermo González de Asís, DD.	01.03.23	269-2021
61. Torture ('torments') and kidnap leading to grievous bodily harm against Mario Alberto Ávila Maldonado, EP.	01.03.23	122.173-2020
62. Operación Colombo case, 16 detained-disappeared persons: aggravated kidnap of: Francisco Aedo Carrasco, Juan Andrónicos Antequera, Jorge Andrónicos Antequera, Jaime Buzio Lorca, Mario Eduardo Calderón Tapia, Cecilia Castro Salvadores, Juan Carlos Rodríguez Araya, Rodolfo Espejo Gómez, Agustín Fiorasso Chau, Gregorio Gaete Farías, Mauricio Jorquera Encina, Isidro Pizarro Meniconi, Marcos Quiñones Lembach, Sergio Reyes Navarrete, Jilberto Urbina Chamorro and Ida Vera Almarza.	02.03.23	25.384-2021
63. Aggravated kidnap of Jaime Emilio Eltit Spielmann, DD.	06.03.23	154.811-2020

64. Operación Colombo case, aggravated kidnap of María Inés Alvarado Borgel and Martín Elgueta Pinto, both DD.	06.03.23	104.196-2020
65. Aggravated kidnap of Héctor Jenaro González Fernández, Carlos Julio Fernández Zapata and Roberto Salomón Chaer Vásquez, victims of Operación Colombo, all DD.	06.03.23	129.356-2020
66. Aggravated kidnap of Luis Justino Vásquez Muñoz, DD.	08.03.23	135.452-2020
67. Aggravated kidnap of Humberto Patricio Cerda Aparicio, DD.	14.03.23	30.196-2020
68. Aggravated homicide of Bautista van Schouwen Vasey, DD; and Patricio Munita Castillo, EP.	15.03.23	36.978-2019
69. Aggravated homicide of Manuel Antonio López López, EP.	15.03.23	28.214-2019
70. Operación Colombo, aggravated kidnap of Francisco Bravo Núñez, DD.	27.03.23	43.975-2020
71. Residents of Nueva Matucana: aggravated homicides of: Álvaro Acuña Torres, Miguel Moreno Caviedes, Guillermo Arriagada Saldías, Sergio Aguilar Núñez, Carlos León Morales, José Machuca Espinoza and Domingo Gutiérrez Aravena, all EP; attempted aggravated homicide of Osvaldo Cancino Muñoz, ex PP; and aggravated kidnap of José Alfredo Vidal Molina, DD.	28.03.23	50.334-2020
72. Caravan of Death case, Cauquenes episode: aggravated homicides of Miguel Enrique Muñoz Flores, Manuel Benito Plaza Arellano, Pablo Renán Vera Torres and Claudio Arturo Lavín Loyola, all EP.	28.03.23	72.024-2020
73. Aggravated homicide of Gonzalo Hernández Morales, DD.	11.04.23	17.200-2021
74. Aggravated kidnap of Luis Ángel Cornejo Fernández, DD (Causa II).*	14.04.23	82.310-2021
75. Aggravated homicide of Óscar Jesús Delgado Marín, EP.	14.04.23	28.922-2021
76. Case of 14 survivors from Villa Grimaldi, aggravated kidnap and torture ('torments') against: Beatriz Alessandra Miranda Oyarzún, Alicia Ana Hinojosa Soto, Elena Orfilia Sánchez Cordero, Mirtha María Compagnet Godoy, Sybil Marjorie Cleary Aceituno, Victoria Jeanette Villagrán Aravena, Marlene Luz Marina Leichtle Vargas, Claudio Antonio Herrera Sanhueza, Óscar del Tránsito de la Fuente Muñoz, Gilda de las Mercedes Bravo Riffo, Pedro Emeterio Cano Pagliai, Magdalena del Carmen Helguero Falcón, Dagoberto Mario Trincado Olivera and Juan Ernesto Segura Aguilar, all exPP.	14.04.23	82.303-2021
77. Aggravated homicide of Hernán Correa Ortiz, EP.	17.04.23	25.052-2019
78. Aggravated kidnap of Agustín Corvalán Cerda, EP.	03.05.23	27.625-2019
79. Homicide of Sergio Osmán Negrete Castillo, EP.	04.05.23	43.973-2020
80. Aggravated homicide of Gregorio Mimica Argote, DD.	08.05.23	125.434-2020
81. Aggravated kidnap of Sergio Órdenes Albornoz, DD.	25.05.23	21.988-2021
82. Operación Colombo, aggravated kidnap of Eduardo Humberto Ziede Gómez, DD.	13.06.23	21.337-2019
83. Caravan of Death case, Valdivia episode: aggravated homicides of Gregorio José Liendo Vera, Rudemir Saavedra Bahamondez, Víctor Eugenio Rudolph Reyes, Víctor Segundo Valeriano Saavedra Muñoz, Santiago Segundo García Morales, Luis Mario Valenzuela Ferrada, Sergio Jaime Bravo Aguilera, Luis Hernán Pezo Jara, Víctor Fernando Krauss Iturra, Pedro Purísimo Barría Ordóñez, Enrique del Carmen Guzmán Soto, José René Barrientos Warner, EP.	16.06.23	122.163-2020
84. Aggravated homicide of Enrique López Olmedo, EP.	20.06.23	43.575-2020
85. Conferencia II case,** aggravated kidnap of Fernando Alfredo Navarro Allendes and Héctor Véliz Ramírez; and kidnap followed by aggravated homicide of Juan Fernando Ortiz Letelier, Horacio Cepeda Marinkovic and Lincoyán Yalú Berríos Cataldo, all DD.	22.06.23	144.242-2020

Source: Observatorio, based on judicial sentences.

* This is the second case over a single incident. In this most recent case, Walther Klug Rivera was found guilty as an accomplice. The first criminal investigation for the disappearance of Luis Cornejo was resolved by the Supreme Court on 17 July 2019 (Rol 6.550-2018) against two other perpetrators.

** This does not represent a second criminal case for the same events, but rather, a distinct episode in a single clandestine operation (namely, the enforced disappearance of members of the Central Committee of the Communist Party). This operation was investigated in two different cases.

Fig. 3: Sentences and Perpetrators in Finalised Supreme Court Sentences for Dictatorship-era Human Rights Violations (compared over 13 statistical periods)

	July 2010 – June 2011	July 2011 – June 2012	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017	July 2017 – June 2018	July 2018 – June 2019	July 2019 – June 2020	July 2020 – June 2021	July 2021 – June 2022	July 2022 – June 2023
No. of cases finalised before the Supreme Court	**23**	**18**	**4**	**12***	**44 ****	**58°**	**55ˣ**	**37ˣ**	**44°**	**47±**	**39ª**	**47≈**	**85ɦ**
Total no. of suspects whose convictions were suspended due to death										19	22	38	124
Suspensions of entire criminal case, due to death of all suspect(s)						1				1+	2	1	1
Total no. of absolutions	**12**	**12**	**0**	**10**	**26**	**10**	**44**	**4**	**154**	**196**	**7**	**58**	**309**
Total no. of convictions	**84**	**49**	**11**	**49**	**159**	**122**	**212**	**102**	**128**	**125**	**70**	**174**	**362**
No. of convictions that imposed a custodial sentence	34	13	5	18	132	81	179	67	113	107	60	156	315
No. of convictions that conceded a non-custodial sentence	50	36	6	31	27	41	33	35	15	18	10	18	47
Total no. of agents involved in these cases* **	**64**	**48**	**11**	**53**	**103**	**98**	**155**	**78**	**---**	**144**	**80**	**181**	**334**
No. of these agents convicted in at least one case. ˈ	52	40	11	43	73	88	127	68	**77**	81	60	119	204
No. of these agents whose convictions were suspended due to their deaths by the end of the periodᵠ										14	14	27	60

* 1 of which was only regarding civil liability
** 4 of which were only regarding civil liability
° 16 of which were only regarding civil liability
ˣ 6 of which were only regarding civil liability
± 15 of which were only regarding civil liability
ª 12 of which were only regarding civil liability
≈ 10 of which were only regarding civil liability
ɦ 18 of which were only regarding civil liability
+ Sometimes the civil aspect of a case is pursued regardless, this particular case had no associated civil claim
--- Missing data
*** The same agents' names often recur between periods, i.e., the simple arithmetical total of all entries in this row gives a figure that is higher than that of the number of natural persons involved. Duplications of names are, however, eliminated within each period, and so for example it is possible to report that for 2022-23 a total of 334 separate individuals (natural persons) were involved.
ˈ Agents convicted in one or more cases within a period, often also receive absolutions in the same period
ᵠ Some of these agents may still register convictions or absolutions within a period, depending on the date of their death, or the date on which the Court is notified.

2.3.1. Recent Tendencies in Criminal Justice: Indirect Perpetration, Mitigation, Aggravating Circumstances, and Novel Uses of Criminal Law

Over the recent period, some specialist human rights investigative magistrates and higher courts have shown themselves readier than previously to apply modern precepts in international criminal justice. These include, for example, the thesis of indirect perpetration through control of organized apparatuses of power associated with Klaus Roxin (see section 2.1); and the notion of joint criminal enterprise as developed by jurist Gerhard Werle.[129] In the Operation Colombo case already cited, for example,[130] both of these concepts were explicitly mentioned by the Supreme Court as part of the doctrinal justification for sentencing some agents as co-authors of aggravated kidnap.[131] *Autoría mediata* has been explicitly explored by the Court in other recent cases.[132] As so often in the history of innovation and advances in these cases, these theses were not taken up spontaneously by the Supreme Court, but were first introduced (usually unsuccessfully) by private actors in previous cases.[133]

As regards proportionality of sentencing (see the words of the UN rapporteur, above)[134] it is important to acknowledge that the practice of international tribunals has been uneven and to some extent contradictory. So too has that of specialist domestic entities such as Colombia's Special Jurisdiction for Peace (Jurisdicción Especial para la Paz, JEP). Further international norm development on this matter is urgently needed. Absent such updating, existing sources including Rome Statute Article 81.2.a establish proportionality as an orienting principle that must be taken into account when setting penalties for crimes against humanity, as the most serious crimes that law can conceive of. Determining the exact sanction that should be applied in any particular case requires consideration of a range of factors, including: how the criminal code at the time of commission of the offence described the crime or its closest equivalent; the general sanction regime in place; the exact level of participation of each perpetrator; the existence of valid mitigating or aggravating circumstances, and the extent of the harm caused. The norms and rules for calculating sentence tariffs contained in the relevant Criminal Code should be applied in the light of the aforementioned factors. However, even when sentence tariffs are established that seem superficially or symbolically proportional, these are emptied of all real effect if external considerations such as age are allowed to determine whether the initially established sentence is served or not, as the UN Special Rapporteur reminds us in the document cited at the beginning of section 2.1.

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[129] Claus Roxin, *Autoría y dominio del hecho en derecho penal*, 7° edición, Marcial Pons, Madrid, 2000; y Gerhard Werle, *Tratado de Derecho Penal Internacional,* 2ª edición, Tirant lo Blanch, Valencia, 2011, p. 291. Both sources were cited by the Supreme Court in the Operation Colombo verdict discussed below, main text.

[130] Supreme Court, Rol 25.384-2021, Operación Colombo-cuaderno principal, op.cit.

[131] Ibid., considerando 60. The Court re-imposed guilty verdicts for aggravated kidnapping that had first been handed down by investigative magistrate Hernán Crisosto against agents operating in intermediate clandestine detention centres that were not the last known whereabouts of victims who later disappeared. In order to do so, the Court pointed out that the crime of kidnap "cannot be reduced solely to the act of apprehending the victim", and underlined that in regard to the DINA, "those subjects who formed part of this organised apparatus of power are responsible for the illegal acts that it carried out". Supreme Court, Rol 25.384-2021, op. cit., considerando 60º.

[132] For example, Supreme Court Rol 27.791-2019, 11 January 2023, and 24.292-2020, 24 January 2023.

[133] For one example, see Supreme Court Rol 36.731-2017, Operación Colombo - episode kidnap of Sergio Flores Ponce, 25 September 2018.

[134] UN A/HRC/48/160, op. cit.

As regards mitigating circumstances, previous iterations of this report have echoed strong criticism formulated by international organisations surrounding the concession by the Chilean courts as 'super-mitigation' (*hiperatenuante*) to slash sentence tariffs for perpetrators of crimes against humanity. This is one of many issues about which the Inter-American Court of Human Rights is due to pronounce in cases against Chile that have already been declared admissible.[135] It is positive to observe that the Criminal Bench of the Supreme Court seems to have set a jurisprudential criterion that acknowledges the inapplicability of 'half statute of limitations' (*media prescripción*), given that it is widely accepted that the statute of limitations proper is ruled out.[136] Defence arguments based on having followed superior orders –often referred to as the 'Nuremberg defence'− have rarely been attempted in Chile and, when put forward, have generally correctly been admitted only as potential mitigation, never as dissolving responsibility. Between 1995 and 2021 we have records of only 11 cases in which superior orders were cited as a defence. Such a low frequency may on the surface appear compatible with the precepts of international human rights law, which contemplates superior orders as a defence only in very limited cases and circumstances. On closer inspection, however, it transpires that few of those who have been favoured were the low-level officials or conscripts for whom this defence was designed. Instead, articles 211, 214 and 411 of the Military Justice Code were invoked in seven of the 11 cases to benefit DINA, CNI, or naval intelligence agents, mostly of officer rank. In another two of the cases the perpetrators took part in the Caravan of Death, the high-level travelling execution squad personally appointed by Pinochet. This suggests, at the very least, some questionable concessions whose effect has been to promote impunity in the form of unduly lenient penalties.[137]

Another highly questionable mitigating circumstance that the Supreme Court has nevertheless persisted in conceding or ratifying much more frequently is "previous good conduct" (*irreprochable conducta anterior*) as set down in Art. 11.6 of the applicable Criminal Code. This mitigating circumstance has been conceded time and time again to perpetrators who often have dozens of prior convictions for similarly grave crimes. This happens because what is taken into account is not the person's criminal record at the time of sentencing, but their history at the time the crime occurred. Given the flagrant impunity that persisted all the way through the dictatorship period, this interpretation has rightly produced strenuous objections from various domestic associations and from organs of the international system of human rights protection. Notwithstanding, the Supreme Court has persisted in its interpretation that anyone who did not have a formal criminal conviction at the time the crime was committed, automatically receives this benefit and the consequent reduction in sentence.[138]

[135] *Arturo Vega González and others vs. Chile*, presented 19 November 2021. The case alleges violation of the right to judicial remedy of a total of 48 victims and their families.
[136] Supreme Court, Rol 25.384-2021, op. cit., consids. 63º a 65º; and Rol 71.900-2020, 28 July 2023, Villa Grimaldi-episode Iván Inzunza Bascuñán and others, motivos 48º to 50º.
[137] Francisco Bustos, "La obediencia jerárquica en el Derecho Penal Internacional: un examen a la jurisprudencia chilena por crímenes de lesa humanidad (1995-2020)", in Camila Guerrero (eds.) *El Derecho Penal Internacional en Chile y ante la Corte Penal Internacional.* Santiago, Ius Civile, 2022, pp. 189-213.
[138] Recent examples include, once again, Supreme Court Rol 25.384-2021, op. cit., considerando 11.

The story is rather different where aggravating circumstances that might increase sentences are concerned. In 2019's annual report, the Observatorio drew attention for the first time to a court practice very favourable to defendants, namely, the failure to invoke such circumstances as a counterweight to the concession of mitigations when calculating final sentence tariffs to be imposed. In the 2019 version of this report we presented a study indicating that aggravating circumstances had been invoked in only eight of over 350 criminal case verdicts finalised between 1993 and 2018.[139] The 2021 version of the report updated the monitoring, finding that the lack of application of aggravating circumstances that were clearly applicable continued to contribute to the leniency of final sentences. This practice cannot but be considered to constitute a failure of proportionality, when one considers that aggravating circumstances were invoked in fewer than three per cent of cases concluded in the 2020 calendar year. In 2022, the Inter-American Commission on Human Rights declared that the principal obstacles to access to justice in Chile included: "the failure, at times, to apply sentences that are adequate or proportional to the gravity of [dictatorship´-era] crimes.".[140] In fact the situation has improved quite substantially between 2020 and 2022, with a total of 17% (13 of a total of 77) of the cases finalized in 2021 and 2022 considering aggravating circumstances when determining penalties. The 13 applications consist of: i) seven applications of 'misuse of public office or status' ("*prevalerse del carácter público del culpable*", criminal code Art. 12.8 CP);[141] ii) four applications of 'committing the crime with the assistance of armed persons or persons who afforded impunity' ("*ejecutar [el delito] con auxilio de gente armada o de personas que proporcionen la impunidad*" (Art. 12.11);[142] one application each of iii) 'abusing a position of superior force' ("*abusar el delincuente de la superioridad de sus fuerzas*") (Art. 12.6 CP);[143] and iv) 'committing the crime with disregard for the position of authority occupied by the victim ("*ejecutar el hecho con ofensa o desprecio del respeto por la autoridad del ofendido"* (Art. 12.18, in the case over the politically-motivated execution of Jorge Vásquez Matamala, the governor of the province of Elqui.[144] It is welcome to see that aggravating circumstances have been invoked in a larger number of cases in the past two years, than in all previous years combined. Nonetheless, most of the invocations are from 2021, with a slowing down in 2022, and most are compensated for by the concession of mitigation to the same individuals, generally more than wiping out any net effect in raising sentence length. One is therefore forced to conclude that there are still reasons to be concerned about a lack of proportionate, and therefore adequate, sentencing.

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[139] Francisco Bustos, "La circunstancia agravante del artículo 12 Nº 8 del Código Penal y su (in)aplicación en causas sobre crímenes contra el Derecho internacional. Un análisis de la jurisprudencia chilena (1993-2018)". Unpublished masters' dissertation for the Master in Law, with mention in International Law, Santiago, Universidad de Chile.

[140] Inter-American Human Rights Commission, *Situación de Derechos Humanos en Chile*, 2022, p. 24 (para. 62).

[141] Supreme Court, Rol 26204-2018, 2 June 2021; Supreme Court, Rol 8572-2019, 23 September 2021; Supreme Court, Rol 23156-2019, 5 October 2021; Supreme Court, Rol 28552-2018, 20 October 2021; Supreme Court, Rol 12342-2019, 20 October 2021; Supreme Court Rol 12820-2019, 8 November 2021, and Supreme Court, Rol 13877-2019, 24 December 2021.

[142] Supreme Court Rol 20396-2018, 22 March 2021; Supreme Court Rol 125421-2020, 8 March 2022; Supreme Court Rol 33452-2019, 14 June 2022, in conjunction with the aggravating circumstance foreseen in Art. 12 Nº 12 of the Criminal Code (carrying out a crime at night), and Supreme Court Rol 22962-2019, 28 June 2022.

[143] Supreme Court Rol 24953-2018, 5 April 2021.

[144] Supreme Court Rol 42792-2020, 16 December 2022.

The novel uses of law and the courts that we first identified in the 2021 edition of this report have continued to multiply, to the extent that some are now dealt with in other subsections of this chapter, as they deal with civil, administrative and constitutional law.[145] In this section we will therefore mention only one recent innovation in criminal law, inviting the court to recognize events that fit the Rome Statute definition of forcible displacement as a crime against humanity. The event in question is the violent expropriation suffered between 1976 and 1980 by families from the flagship Villa San Luis housing project in the Las Condes district of Santiago. The project was a pioneering experiment in urban integration designed by renowned architect Miguel Lawner in the late 1960s. During the dictatorship, over 1,000 families who had legitimate title to their homes were violently expelled from the project by heavily armed soldiers in a series of raids. The families were loaded into trucks and dispersed across Santiago, sometimes abandoned at the side of the road, on rubbish tips, or on abandoned land. This shocking story was first made known to the general public in early 2023 via a special televised report on TVN.[146] The programme was prompted in part by the decision by some of the affected families to launch a criminal complaint before the Santiago Appeals Court.[147] The complaint aims to recover the truth about the episode and make it part of the historical memory of the period, requesting that the court order the creation of a memorial on the site, a petition that has the support of the developers who currently own the site. The petitioners nonetheless opted for a criminal complaint as they also want action to be taken over the crimes of 'torments' and 'illegitimate pressure' to which they were subjected, all committed in a context which meets the threshold to constitute a war crime and/or crime against humanity. In practice the objective is to have the crimes acknowledged as torture, albeit necessarily relying on the deficient descriptions available in the criminal code of the day. At time of writing, the complaint was before judge Paola Plaza and was in the investigative phase. This case is one that also shines a spotlight on the illegal seizure of public land and other fiscal assets by the Armed Forces during the dictatorship. Many of these assets, and private goods also appropriated, have never been returned to their rightful owners.

2.3.2 Special Investigative Magistrates and the Judicial Branch Co-ordination Office for Human Rights Cases

According to the Supreme Court's National Co-ordination Office for human rights cases, Oficina de Coordinación de Causas de DDHH 1973-1990,[148] in the twelve months between July 2022 and June 2023 inclusive a total of 14 special investigative magistrates were

[145] See, *inter alia*, sections 3.2 (judicial route to reparations), 3.3 (symbolic reparations) and 5 (guarantees of non-repetition).

[146] TVN, 24 Horas.cl: "Crónicas del Domingo. Primeros habitantes de Villa San Luis buscan justicia: 'los despojados de Las Condes'", 24 April 2023. https://www.24horas.cl/programas/cronicas-del-domingo/cronicas-del-domingo-primeros-habitantes-de-villa-san-luis-buscan-justicia

[147] In the name of the Fundación de Desalojados Villa San Luis. Case code (Rol de ingreso) Santiago Court of Appeals, Nº 120-2023.

[148] Written report provided by the judicial branch office for co-ordinating human rights cases (Oficina de Coordinación de Causas de Derechos Humanos 1973-1990) to the Observatorio on 14 August 2023, ref. IODH-154-2023, in reply to queries submitted by the Observatorio. As always, we are grateful for the assistance of Cristian Sánchez and his team, for compiling this report and resolving followup queries.

overseeing human rights cases in eight of the country's district appeals courts.[149] Twelve of the magistrates were working full time on dictatorship-era human rights cases (*dedicación exclusiva)*, with the remaining two having what is known as 'preferential assignation' (*dedicación preferente*). The Office also announced that from 1 July 2023, the two judges with *dedicación preferente* would be ending their period,[150] while judge Rafael Corvalán Pazols, of the Valparaíso Appeals Court would be handing over his full time human rights caseload to two colleagues from the same Court.[151] This leaves a total of 11 special investigative magistrates active across seven Appeals Court districts for the remainder of 2023.[152] This represents a significant reduction when compared to the 17 magistrates who were operating at the time of our last report, in 2021, despite the fact that the number of active criminal cases continues to grow significantly: as of July 2023 a total of 2,040 criminal cases were active (compared to only 1,462 at the end of 2022). Of those 2,040 open cases, 210 (10.2%) had seen an initial verdict delivered,[153] 212 (10.3%) had completed the investigation stage and were awaiting an initial verdict, and 1,618 were still at the investigative stage. 358 cases, or 17% of the total, had recently begun (i.e. were the result of criminal complaints lodged in the current calendar year, 2023). Over half of this new caseload (193 of the 358) were being investigated by judge Yolanda Méndez Mardones of the Concepción Appeals Court;[154] with a further 28% (101 cases) falling to judge Vicente Hormazábal of the La Serena Appeals Court. In the first half of 2023, 34 cases received an initial verdict while 75 were temporarily or permanently shelved (*archivadas*) by the investigative magistrate overseeing them. A total of 85 criminal verdicts were ratified or handed down by the respective district Appeals Court between 1 January and 30 June 2023, with 36 receiving a definitive resolution from the Supreme Court.

Most of the 2,040 active criminal cases (1,193, or 58.4% of the total) involve torture, whether as the sole or primary crime (716 cases, or 35% of the total) or in association with other crimes such as kidnap (enforced disappearance) or homicide (extrajudicial execution) (477, or 23%). The prominent place of torture in the caseload represents a positive step inasmuch as it demonstrates that torture is finally being taken seriously in the prosecution of crimes

[149] It should be emphasised that specialised investigative magistrates only deal with criminal cases; and also that the statistics that the judicial branch co-ordination office provides only deal with criminal cases. Civil claims that are submitted independently of criminal investigations are dealt with in the first instance by the respective ordinary court (Juzgado de Letras).

[150] Judge Dora Mondaca Rosales, of the San Miguel Court of Appeals, and judge Hernán González García, of the Talca Court of Appeals.

[151] Judges María Cruz Fierro Reyes and Max Cancino Cancino.

[152] Valparaíso, San Miguel, Santiago and Concepción (two judges each); Punta Arenas, La Serena and Temuco (one judge each). A team of detectives from the specialist human rights brigade of the detective police, Policía de Investigaciones, supplements the work of each investigative magistrate: while the Brigade today has a total of 67 operatives, over time its focus on dictatorship-era cases has been diluted with the introduction of additional tasks.

[153] And were accordingly awaiting the resolution of an appeal or elevation to cassation before the respective higher court.

[154] This via express order of a full sitting of the Supreme Court, whose ruling ('auto acordado') AD 739-2010 of 6 June 2023, states that: "complaints newly received by the Chillan and Concepcion Courts of Appeal will be passed, irrespective of their content, to specially-designated investigative magistrate Yolanda Méndez Mardones, of the Concepcion Court of Appeals". Similarly, the Court ordered that complaints received by the San Miguel court will be seen by judge Marianela Cifuentes.

against humanity committed by the Chilean dictatorship.[155] The caseload dealing exclusively or primarily with torture is presently concentrated in the hands of two investigative magistrates: judge Méndez (402 of 716) and judge Hormázabal (213 of 716). Whether or not this concentration is deliberate, if strategically managed it could facilitate better identification of patterns of torture, revealing the command structures and high-level decisionmaking involved rather than solely investigating one case, or one physical perpetrator, at a time: see discussion in section 2.2 above. A strategy of this sort would be in line with the recommendation of the UN Special Rapporteur that in adopting prosecutorial strategies, states seek to consider the "systemic and/or structural dimensions of massive violations, patterns of violations, the identification of chains of command, and other supporting players and arrangements", and prioritise prosecutions in ways that "disable[e] the web of actors and structures that enabled the various actors to jointly make the violations happen".[156]

The Office also informed the Observatorio that a total of 35 initial criminal case verdicts were handed down over the course of the calendar year 2022: by way of comparison, 34 such verdicts had been delivered in the first six months of 2023 alone. While this figure suggests a welcome improvement in the rhythm of initial case verdicts, it must be recalled that the 2022 baseline is particularly low in comparative terms, in part reflecting the effects of the pandemic and associated slowdown (see the previous, 2021, edition of this report). Nonetheless, the recovery in numbers of cases resolved is welcome and responds in part to visible efforts being made at all levels within the justice system: viz. the example of the Supreme Court, already mentioned (section 2.2). In addition, according to data received from the National Co-ordination Office, all but one of the 110 criminal cases awaiting Supreme Court resolution as of 15 June 2023 was already at an advanced stage, with many already scheduled for a particular sitting (*en tabla*). This suggests that the measures adopted by a full sitting of the Court (Pleno) in 2021 to speed up human rights case outcomes are having some effect. Similar measures were also taken in June 2023, in the form of a priority docket in the Supreme Court for resolving related civil claims. While these measures and their effects mark advances in the provision of access to justice, and of reparations via the judicial route, this has all come too late for many cases, victims, and petitioners.

Other initiatives reported by the National Co-ordination office include what is referred to as the 'Plan for Inventory and Registering of Transition-era Case Files' ("Plan sobre Inventario y Registro de Expedientes de la Transición"), aimed at preserving, indexing, and eventually digitalizing the files from already-concluded human rights cases. These files are currently dispersed across their originating courts or magistrates, and there is no single central record. Exploratory meetings involving representatives of various courts, the Judicial Archive, the Human Rights Programme of the Ministry of Justice and Human Rights, and the (private, Catholic Church-owned) archive of the former Vicaría de la Solidaridad, FUNVISOL identified a potential site where the records could be brought together and central register

[155] This considering that torture was at one time expressly excluded from the definition of crimes against humanity that the judicial branch itself came up with, as we have repeatedly documented.
[156] UN A/HRC/27/56, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Repetition, Pablo de Greiff*, 27 August 2014, para. 118.

compiled.[157] The initiative aims to ensure the important historical data contained in the case files is duly preserved, which could in turn lead to better identification and understanding of the patterns of macrocriminality that underlay the State terror project. Whether or not there will be full or partial access for the general public to the archive once created is not entirely made clear. The terms of any such access will determine its precise utility for the purposes of creating or sustaining historical memory or the collective, social right to truth. It is to be hoped that the terms of the ill-conceived Acta 44-2022 are not allowed to interfere unnecessarily with the achievement of this important objective.

The project acquires additional relevance when considered alongside other actions announced or already taken by judge Mario Carroza, national coordinator for dictatorship-era human rights cases for the Supreme Court. These actions include efforts to create a smooth working relationship between the judicial branch and the new National Search Plan for the disappeared,[158] and a rotating schedule of field visits to identify assistance that may be required by investigative magistrates attached to regional Appeals Courts. The visits, five of which had been carried out at time of writing, also aim to underline the importance of the periodic reports that each investigative magistrate supplies to the Co-ordination Office and to strengthen links with local Homicide Brigades and/or the specialized National Human Rights Brigade of the detective police, PDI. An annual seminar has also been instituted, which in 2023 took as its theme compliance and implementation of sentences by international courts. Plans to diversify the Office's human rights promotion brief across newer issues and to all areas of Court activity are welcome from a guarantees of non repetition perspective, and accurately reflect the continuing active concern that judge Carrozza has always shown for this issue, since his days as a human rights case investigative magistrate long before his elevation to the Supreme Court.

2.3.3 Human Rights Cases Before the Constitutional Tribunal

In five previous editions of this report (2017-2021) we discussed and monitored intervention in dictatorship-era human rights cases by Chile's Constitutional Tribunal, Tribunal Constitucional (TC). The period corresponding to the current report (July 2022-June 2023) has seen the consolidation of a consistent trend, since 2019, toward diminution of efforts by perpetrators to use the Constitutional Tribunal to paralyse cases in which they had been found guilty. These efforts have dwindled almost to zero, closing an ignominious chapter during which the Tribunal allowed itself to be pressed into service as a pro-impunity mechanism (in particular between 2015 and 2018).[159] The explanations for this welcome shift undoubtedly include changes in the composition of the Tribunal between 2019 and 2021. Those changes, in particular the retirement of determinedly pro-impunity judges Aróstica and Romero, rendered the Tribunal a less attractive place for perpetrators to seek allies. Incoming judges including the (recently-deceased) judge Rodrigo Pica Flores, named by the Supreme Court, or recent presidential nominees Daniela Marzi and Nancy Yáñez (current

[157] The building that currently houses the 34th Criminal Courts of Santiago.
[158] The aims of the Transitional Files ('Expedientes de la Transición') project include that of "being of use to the search plan". Report AD 739-2010, 10 August 2023, shared with the Observatorio by its author, judge Mario Carroza, National Co-ordinator for Human Rights Cases 1973-1990.
[159] See Francisco Bustos, "Los casos por crímenes de lesa humanidad ante el Tribunal Constitucional (2005-2018): Análisis jurisprudencial", unpublished master's thesis in International Human Rights Law, Santiago, Universidad Diego Portales, 2020.

Tribunal president) acted considerably more judiciously in this as in other matters. The direction of travel of recent improvements was however partially reversed in late August 2023, when the Supreme Court nominated the ultra-conservative Raúl Mera to replace judge Pica after the latter's unexpected and untimely demise.[160]

Over the course of the two statistical periods of coverage reported in the present edition (July 2021-June 2022, and July 2022-June 2023), all human rights cases still pending before the Tribunal from previous periods were resolved through dismissal. Two new applications were made, both also now resolved.[161] The first group – i.e. cases pending from earlier periods – comprised the following applications: (i) Paine case, Episodio Principal[162] on behalf of Arturo Fernández Rodríguez, now convicted of 38 counts of aggravated homicide; (ii) cases 10927-21-INA and 10929-21-INA (challenging the constitutionality of the invocation of certain norms from the applicable Criminal Procedural Code), on behalf of Juan Carlos Nielsen Stambuk and Jorge Romero Campos, both accused over the enforced disappearance of two people,[163] and (iii) an attempt (declared inadmissible) by the defence of Arturo Montero Souper to force the imposition of a non-custodial alternative to his sentence.[164]

The two more recent applications were: (i) application for declaration of inapplicability *rol* (reference) 12229-21-INA, brought by the defence of René Villarroel Sobarzo,[165] seeking the disapplication of articles b485, 486, 487 and 488 of the old Criminal Procedural Code over the homicides of the Abraham Oliva Espinoza and Luis Espinoza Villalobos. The case was about to be heard before the Supreme Court when it was suspended, in November 2021, due to Villaroel's application. The resulting six month delay came to an end in April 2022, when the application was heard by the Tribunal, allowing the case to resume its normal course before the Criminal Bench of the Supreme Court. The outcome of the application was finally announced in early June 2022: the Tribunal rejected it by a 6-2 majority.[166] At the end of that same month, the Supreme Court handed down its final verdict in the originating criminal case, in which Villaroel was sentenced to 15 years and a day.[167] (ii) application for declaration of inapplicability *rol* 14167-23-INA, submitted on behalf of Alberto Roque Badilla Grillo in the case for the aggravated homicide of Enrique López Olmedo. This badly-worded and poorly-grounded application appeared to challenge every single aspect of the criminal justice system: it demanded that amnesty and the statute of limitations be applied to close the case, rejected wholesale the validity of the old procedure under which all dictatorship-era cases are seen, and claimed that the case should be transferred to military jurisdiction. The complaint reads as little more than a wholesale compilation of all issues brought to the Tribunal by other perpetrators between 2016 and

[160] See the 2020 edition of this report on the trajectory of judge Mera in human rights cases, in the Valparaiso Court of Appeals.
[161] Constitutional Tribunal, Rol 12229-21-INA, and Rol 14167-23-INA.
[162] Constitutional Tribunal, Rol 9629-20-INA, 21 October 2021.
[163] Constitutional Tribunal, Rol 10927-21-INA, 25 November 2021, and 10929-21-INA, 25 November 2021.
[164] Constitutional Tribunal, Rol 10864, declaration of inadmissibility, 3 June 2021.
[165] Who had previously presented another claim of inapplicability, Rol 3285-16-INA, in a separate case (Episode "Fundo El Toro").
[166] Constitutional Tribunal, Rol 12229-21-INA, 1 June 2022.
[167] Supreme Court Rol 33421-2019, 28 June 2022.

2019.[168] Although it was initially accepted for consideration, the Tribunal opted not to suspend the originating criminal case during its deliberations, and eventually declared the application inadmissible, by 4 votes to 1, on grounds including the finding that it was manifestly unfounded.[169] The originating criminal case was resolved in due course by the Supreme Court, on 20 June 2023.[170]

One less positive signal from the Tribunal came just before the close of the present edition, when for the first time in almost two years the Tribunal reverted to its previous practice of interrupting the normal course of an originating case that was on the point of being definitively resolved by the Supreme Court. The suspension was triggered by an application on behalf of two agents seeking to prevent ratification of their sentences for 'torture' under the figure of 'torments' as contained in the version of the criminal code in force at the time of the crime (1973). The most worrying aspect of this development is that the Tribunal opted to order the suspension of the associated criminal case, with the consequent additional last-minute delay to a case that had already waited almost five decades for justice.[171]

2.4 Other Key Actors: the Corporación de Asistencia Judicial

The Santiago regional Corporation for Legal Assistance (Corporación de Asistencia Judicial) is a state office whose relevance we have overlooked in previous editions of this report, despite the fact that it is the only state entity in Chile that currently offers not only legal advice but free legal representation to survivors of torture and other grave dictatorship-era violations. It is also the only state entity that acts in support of civil claim making rather tan solely criminal prosecution, setting it apart from both the Human Rights Programme of the Ministry of Justice and Human Rights – which only acts in criminal prosecution, and only over absent victims – and the Consejo de Defensa del Estado, CDE, the state legal office that notoriously continues to vigorously contests state civil liability.

The Corporation has this brief because its mandate allows it to act not in representation of State interests, or in the name or on behalf of the State, but in furtherance of the interests of the person requiring its legal services: which in the present context usually means a survivor of political imprisonment or torture.[172] While the Corporation often acts to provide legal assistance to people of insufficient means, where crimes against humanity are concerned no such restriction applies and the Corporation can in theory act on behalf of anyone who so requests: including representing the person before the Inter-American Commission or Court of Human Rights.[173] As of mid-2023 the Corporation was active in around 150 cases, 100

[168] Three of which - Rol 3019-16-INA, 3055-16-INA and, indirectly, 2928-15-CAA− were presented by different perpetrators in the same case: the aggravated homicide of Enrique López Olmedo.
[169] Constitutional Tribunal Rol 14167-23-INA, declaration of inadmissibility, 14 June 2023.
[170] Supreme Court Rol 43575-2020, 20 June 2023. Badilla and another two agents were convicted.
[171] Constitutional Tribunal, Rol 14623-23-INA, declaration of admission to processing with associated case suspension, 23 August 2023. The suspension was approved in a 3-1 majority vote (with judges Yáñez, Vásquez, and Fernández in favour). Judge Pozo voted against, precisely due to the current status of the originating case.
[172] Which leaves the Corporation as the only state entity which can support and represent relatives and survivors even to the point of representing them in cases brought against the Chilean state before the Inter-American human rights system.
[173] The specific office mentioned is geographically delimited to the Santiago Metropolitan Region: the Corporation does have presence in other regions, but not necessarily with associated expertise in human rights case advice.

criminal and 50 civil, before the courts of Santiago and San Miguel, despite having only three qualified lawyers on staff.[174] A substantial proportion of this caseload involved criminal and/or civil actions for torture and related crimes committed against surviving victims. When those crimes fall outside of the limited mandate of the Valech truth commission, survivors are obliged to undertake the arduous course of proving the events from first principles, rather than being able to rely on an official narrative carrying the imprimatur of the commission. In such circumstances civil claims are often appended to or presented after a related criminal complaint, allowing survivors to cite the judicial truths established in the course of criminal investigation as the factual basis for their application for recognition of the right to reparation.

The Corporation depends institutionally on the Ministerial Regional Justice Service (Servicio Regional Ministerial, SEREMI) of the Santiago metropolitan region, and thereby ultimately on the Ministry of Justice and Human Rights. It is currently headed by Pedro Contreras.[175] Cases with particular relevance in Chile's transitional justice trajectory that it has acted in include *Lara v. Fisco* – a milestone in judicial treatment of gender and sexual violence, as mentioned in section 2.1 above – and *Araya v. Fisco*, in which the existence in post-coup Chile of a 'systematic policy of generalized repression' was acknowledged as an established fact in no need of further evidentiary substantiation.[176] Although the Corporation is not currently equipped with sufficient human and infrastructural resources to allow it to offer appropriate specialised social and psychosocial support, its relative legal freedom to act, as well as the substantial experience it has acquired in representing survivors, mean it should be taken into account. Considering the longstanding, and persistent, nature of the Chilean state's failure to support or guarantee survivors' rights, the Corporation's work could even offer an alternative to the expansion of the Human Rights Programme's mandate.

2.5 Agents (Perpetrators)[177]

At end July 2023 258 people were recorded as serving custodial prison sentences for dictatorship-era human rights crimes,[178] 134 of them in Punta Peuco, leaving the facility slightly over its nominal maximum capacity of 130 prisoners. The remaining 124 detainees were being housed in a special unit in the high security Colina I prison. At around the same time, a cross-party group of parliamentarians launched a proposal to make the most of Punta Peuco's superior facilities by transforming into a detention facility for women prisoners with

[174] As well as one legal-technical support person and law students undertaking work experience.

[175] Since 2016. He was preceded in this post by Franz Möller, and by Nelson Caucoto, both of whom continue to practise in related functions, as non-state human rights lawyers.

[176] In the words of the court, "the current state of the art in national historiography, ratified by innumerable judicial investigations and sentences, shows it to be a self-evident publicly known fact – which accordingly does not need to be proven – that in our country, on and after 11 September 1973, diverse state organisms and institutions were placed … at the service of a structure dedicated to the generalised repression of thousands of Chileans, largely due to their holding political opinions opposed to the presiding military regime, although also for a range of incomprehensible additional reasons". Supreme Court Rol 26554-2021, 12 December 2022, considerando 4.

[177] Also see sections 2.1, 2.2, 2.3.1, and 2.3.3, (*supra*), on defence strategies, recourse to the Constitutional Tribunal, and the taking of advantage of sentencing benefits and mitigating circumstances.

[178] This total, and the breakdown that follows it, are taken from figures shared by Professor Myrna Villegas with the conference "A 50 Años del Golpe de Estado: El tratamiento penal de los crímenes vinculados a la dictadura", held on 12 and 13 September 2023 at the Law Faculty of the Universidad de Chile. The figure of 134 prisoners held at Punta Peuco has also appeared in a range of press sources.

young children. One question that arises is, however, whether the proposal aims to relocate its existing population of convicted perpetrators of atrocity crimes to other jails, or whether there is some hidden intention or agenda to argue for the early release of some or all (137 of the 258 are believed to be aged 75 or over).

2.5.1 Fugitives from Justice

At the beginning of September 2023 at least 13 perpetrators of crimes against humanity – 12 former agents and one businessman - were on the run and being sought by the criminal justice system.[179] Eleven of the fugitives had had a conviction definitively ratified in at least one case,[180] with various of them continuing to accrue more sentences and jail time while on the run. Their names are as follows; Jorge Octavio Vargas Bories, ex agent of the CNI political police (Central Nacional de Informaciones). Vargas was recently sentenced to 10 years and one day in prison, as one of those responsible for the politically motivated killing (extrajudicial execution) of teacher Federico Álvarez Santibáñez.[181] Rubén Aroldo Morales López, formerly of the uniformed police (Carabineros), sentenced to 10 years and a day for the extrajudicial execution of Jorge Vásquez Matamala.[182] Luis Enrique Barrueto Bartning (businessman), sentenced to serve 10 years and a day for seven counts of kidnap (enforced disappearance) in the Santa Bárbara-Quilaco case.[183] Alberto Roque del Sagrado Corazón Badilla Grillo, former Naval officer, due to serve two concurrent sentences, one of 541 days and the other, 12 years, for the torture followed by aggravated homicide of Enrique López Olmedo.[184] Juan Dionisio Opazo Vera, former conscript, who has been on the run since June 2022 when his sentence of 10 years and day for 38 counts of aggravated homicide was confirmed. Four former agents of the DINA political police (Dirección de Inteligencia Nacional) were sentenced in June 2023 for numerous counts of aggravated kidnap (enforced disappearance) of members of the Central Committee of the Communist Party, in the case known as 'Conferencia II'. The four are: Federico Humberto Chaigneau Sepúlveda, José Miguel Meza Serrano, Eduardo Alejandro Oyarce Riquelme, and Víctor Álvarez Droguett.[185] Droguett was already on the run when this most recent conviction was ratified, having been sentenced previously to 10 years for the aggravated kidnap (enforced disappearance) of Marta Ugarte Román.[186] Two more fugitives were added to the list in August 2023 when Juan Jara Quintana and Nelson Haase Mazzei went on the run after being handed two concurrent sentences each, for the aggravated kidnap and homicides of Víctor Jara and Littré Quiroga.[187] The two fugitives whose convictions have not yet been ratified by the Supreme Court are: Daniel Riquelme Reyes - a former police officer sentenced in the first instance as accomplice in four aggravated homicides, co-author of seven counts of torture, and

[179] According to information supplied by the Unidad Programa de DDHH of the Ministry of Justice and Human Rights.
[180] One more is convicted in a first instance sentence, while the last one is under charges, and subject to a preventive detention order.
[181] Supreme Court Rol 26816-2019, 4 January 2023.
[182] Supreme Court Rol 42792-2020, 16 December 2022.
[183] Supreme Court Rol 24143-2019, 19 October 2022 (Santa Bárbara-Quilaco).
[184] Supreme Court Rol 43575-2020, 20 June 2023.
[185] Supreme Court Rol 144242-2020, 22 June 2023 (Conferencia II).
[186] Supreme Court Rol 223-2019, 26 November 2021. Jorge Vargas Bories was previously convicted and served a sentence for the killings of José Carrasco Tapia and Abraham Muskatlit Eidelstein, Supreme Court Rol 2406-2008, 13 August 2009.
[187] Supreme Court Rol 7.885-2022, 28 August 2023.

accomplice in a further count of torture[188] - and Guillermo Mella Colpihueque, under formal charges brought by judge Álvaro Mesa in case Rol 13-2013. At time of going to press, three of the eight perpetrators recently convicted for the killing of Spanish diplomat Carmelo Soria had not yet been apprehended and were being actively sought by the detective police (Policia de Investigaciones, PDI).[189]

Three perpetrators who had been on the run were captured during the course of the year: in early September 2023, former police official Héctor Fernando Osses Yáñez was finally detained. Osses was the fugitive of longest standing, having been on the run for almost two years. Osses, who was previously a director of the association of retired police officers, was convicted of six extrajudicial killings in the San Gregorio Población case.[190] The previous June, Olegario González Moreno and Manfredo Jürgensen Caesar were captured. Former DINA agent González Moreno was finally incarcerated in June 2023 to begin serving a 10 year sentence for nine aggravated kidnappings. Jürgensen, a doctor who collaborated willingly with the CNI during the dictatorship, was sentenced in January 2023 as co-author of the aggravated homicide of Federico Álvarez Santibáñez. In that verdict, the Supreme Court also raised his sentence from non-custodial level to eight years' imprisonment,[191] which triggered his flight. Despite being in hiding, he instructed his defence lawyer to put in a request for concession of a non-custodial alternative to his sentence.[192] Although supposedly subject to a prohibition on international travel, as well as being actively sought by the police, Jürgensen managed to renew his second Passport at the German embassy[193] before leaving Chile for Argentina by some clandestine route. Fortunately his status as a fugitive from justice was detected at Ezeiza airport in Buenos Aires when he attempted to board a flight to Frankfurt on 3 June. Taken ill shortly after his arrest, Jürgensen died in Argentina a few days later, before an extradition request emitted by Chile could be acted on.[194] During the period covered by this report another agent died while overseas and on the run: in April 2022 Carlos Minoletti Arriagada died in the US. Former Army major Minoletti managed to escape from Chilean justice twice. At the time of his death he had long been subject to extradition proceedings (initiated in 2017 and 2018), for his part in the aggravated kidnap of survivor Leopoldo García Lucero – for which he was under formal charges – and in the Caravan of Death's Calama phase, for which he had been definitively sentenced.[195]

There are various reasons why perpetrators attempt to go on the run, and succeed in doing so. These include the fact that the domestic courts tend to impose only very limited pre-sentencing preventive measures: at most requiring a bail bond and banning overseas travel,

[188] Judge Álvaro Mesa. Rol 27.530 A and B. Sentence of 17 April 2023 (Episode Bernardo Nahuelcoy and others).
[189] Namely, Guillermo Salinas Torres, René Quilhot Palma and Pablo Belmar Labbé, all former agents of the Mulchén Brigade, and all still not detained eight days after the issuing of detention orders, on 28 August 2023, based on Supreme Court sentence Rol 36.336-19, 22 August 2023.
[190] Supreme Court Rol 14594-2019, 7 October 2021; Rol 19203-2019, 14 December 2021; Rol 22962-2019, 28 June 2022; Rol 36435-2019, 25 October 2022; Rol 27791-2019, 11 January 2023, and Rol 24292-2020, 24 January 2023 (victim: Juan Jorge Gallardo Núñez).
[191] Supreme Court Rol 26816-2019, 4 January 2023.
[192] The petition was denied by the Santiago Court of Appeals on 3 April 2023, Rol 1216-2023 (Penal).
[193] Supreme Court Rol 106733-2023 (active extradition of Manfredo Jürgensen).
[194] See Observatorio Boletín 77, mayo-junio 2023.
[195] Supreme Court extradition request Rol 37.255-2017, 9 November 2017, amplified on 17 July 2018.

and rarely if ever resorting to detention on remand. One risk factor is created by malfunctioning of the system for notifying and carrying out judicial resolutions around definitive sentencing: as we have previously mentioned, there are often excessive delays between a Supreme Court sentence being handed down, and the return of the respective case file to the Appeals Court jurisdiction responsible for ordering the sentence to be carried out. These delays can long exceed supposed stipulated maximum waiting periods. As a consequence, perpetrators who have already been alerted to the content of a verdict through a leak in the system – or even due to the publication of the sentence on the judicial branch website, or in the press – have time to make a decision to go into hiding. Particularly when hefty sentences are expected or handed down against former high officials, or others who clearly have the means as well as a strong incentive to escape justice, action should be taken to notify and carry out sentences before verdicts are made public. Alternatively, pre-sentencing security measures including surveillance could be stepped up. This preventive approach was taken recently with some perpetrators in the Paine case. It is particularly worrying to note that two of the fugitives listed here (Osses and Badilla) had been subject to a final ratified verdict for over a month, without any action having been taken to detain them or oblige them to begin to serve their sentences. The complainant in the case (the relatives' association AFEP) had to intervene to bring the matter to the attention of the court. In an interview with the Observatory, Supreme Court human rights case coordinator judge Mario Carroza assured us that an existing procedure that is supposed to alert first instance judges when a sentence of theirs is due for final ratification by the Supreme Court will be strengthened.[196] It should also be possible to consider a general strengthening of pre-sentencing measures, and increased vigilance or surveillance in the leadup to final hearings. Better coordination with frontier immigration posts, to ensure lists of fugitives from justice are updated regularly, would also help.[197]

2.5.2 Deceased Perpetrators and Biological Impunity at Case Level

It is a striking fact that 57 of the 334 perpetrators sentenced in the 67 Supreme Court verdicts of the most recent statistical period had already died before the sentences could be ratified or served. Since many of the 57 were involved in numerous crimes, the 57 deaths led to a total of 124 occasions on which the Supreme Court had to hand down or ratify suspensions due to the death of at least one perpetrator in the case. Biological impunity is becoming an ever more frequent outcome, and in 2020 we coined the term 'biological impunity at case level' to describe a situation where the entirety of those charged or convicted for a particular crime, die before the case is concluded. In the three statistical periods since, we have detected at least five occurrences of this phenomenon. In at least two of them, the Supreme Court was moreover forced to intervene to affirm the continued validity of the associated civil claim. The most recent of the five occurrences took place in the most recent statistical period (July 2022 to June 2023), in the case over the extrajudicial killing of Ángel Patricio Carmona Parada, shot dead by soldiers over a minor traffic altercation. The first instance verdict, ratified by the respective Appeals Court, conceded former soldier Juan Pardo Villarroel a non-custodial sentence (*libertad vigilada*) as an accomplice, since his colleague who fired the fatal shot had died in the interim. However Pardo himself then died, on 1 July 2022,

[196] Interview with judge Mario Carroza, 25 August 2023 op. cit.

[197] It is particularly worrying, moreover, that at least one of the recent fugitives – Dr. Manfredo Jürgensen− was able to renew a passport in his second (German) citizenship after his conviction.

before the case could be heard before the Supreme Court.[198] Of the other deaths of perpetrators occurring over the period, one that caused particular comment was the suicide of former army officer Hernán Chacón Soto, who killed himself at the exact moment that he was being detained by detectives to begin serving concurrent sentences of 10 and 15 years for the kidnap and killings of Víctor Jara and Littré Quiroga.

2.6 Chile and the Inter-American and Universal (UN) Human Rights Systems

Chile's relationship with the Inter-American human rights system (IAHRS) experienced tensions during the second right-wing administration of president Sebastián Piñera (2018-2022). In April 2019, for example, Chile joined other right wing governments around the region in expressing "disquiet" about the system's functioning.[199] The tensions were exacerbated during the recent social protests, when a January 2020 in situ visit by the Inter-American Commission on Human Rights, IACHR, led to the publication of a very critical report diagnosing excessive use of force by the State.[200] The change of administration to the presidency of Gabriel Boric, in March 2022, has created an easier relationship between the Chilean state and regional and international systems for the protection and promotion of human rights. Over the course of 2022, the position of Chilean Chancellor (Foreign Minister) was held by Antonia Urrejola, formerly president of the IACHR, and in early 2023 Chile was the setting for the 157th ordinary period of sessions of the Inter-American Court of Human Rights, IACtHR, as well as a session of the UN Working Group on Enforced and Involuntary Disappearance. Various other agencies and high level representatives of the UN human rights system visited Chile in 2023 or are scheduled to do so in 2024.[201]

Focusing on Chile's relationship with the Inter-American human rights system about transitional justice matters reveals a pattern with some positive improvements to report: there is a growing tendency to cite Inter-American Court jurisprudence and follow Inter-American precedent in higher court verdicts, as discussed in sections 2.1 and 2.21. There are also signs of growing acceptance of Court jurisprudence as a source of binding obligation. The INDH report *Chile ante el Sistema Interamericano* summarises the status and impact of relevant Inter-American cases including four Court verdicts: Almonacid Arellano (2006, regarding the Amnesty Decree Law); García Lucero (2013, on reparations for survivors); Maldonado Vargas (2015, on false confessions obtained under torture); and Órdenes Guerra (2018, on the statute of limitations and civil liability). There are also reports on one case due for sentencing (Vega González, on 'half statute of limitations' and sentence proportionality); and

[198] Supreme Court Rol 34.012-2020, 2 February 2023.

[199] Press release of the Foreign Ministry and Ministry of Justice and Human Rights regarding the Inter-American Human Rights system, dated 23 April 2019.

[200] Organization of American States (OAS) Press Release no. 018/22, and OEA/Ser.L/V/II. Doc. 1/22, Informe Situación de derechos humanos en Chile, approved by the Inter-American Commission of Human Rights on 24 January 2022.

[201] In June 2023 Chile also acted as the host of a subregional meeting for studying advances and challenges in transitional justice in the Southern Cone, organised by the Regional Office for South America of the High Commissioner for Human Rights of the United Nations. The meeting was supported by various Chilean official bodies, including the collaboration or participation of the Ministry of Justice and Human Rights and of the Human Rights Office of the judicial branch. See https://www.ohchr.org/es/statements/2023/06/chile-high-commissioner-addresses-regional-meeting-transitional-justice , last accessed 6 August 2023.

on the Rivera Matus case, regarding statute of limitations and civil liability, in which an amicable settlement was reached.[202]

The aforementioned report claims that the Chilean state has fully or partially complied with all Court sentences and recommendations in the mentioned cases, with the following exceptions: ensuring that the Amnesty Decree Law ceases to present an obstacle to investigation and sanction (Almonacid Arellano);[203] investigating, in a timely fashion, allegations of torture (García Lucero, Maldonado Vargas); and paying reparations and costs where ordered (Órdenes Guerra).[204] As far as the formal justice aspect is concerned, the State has failed to systematically initiate and carry out investigations not only of the torture suffered by the named victims Leopoldo García Lucero, and the complainants in Maldonado et al) but also of all those who have subsequently successfully applied to have their spurious criminal records expunged on the grounds that they were imposed by military courts based on confession obtained by torture (see below, section 3.3.1). The domestic criminal investigation of the crimes committed against Mr. Garcia Lucero, opened by the state shortly before the Inter-American case verdict was due, has now been shelved due to the death of the only named suspect. Mr Garcia Lucero himself subsequently died, as have so many others, without seeing justice done.[205]

[202] Two more cases are frequently omitted from transitional justice analyses, but are related to the dictatorship era and its arbitrary actions. These are *Urrutia Laubreaux vs. Chile*, brought by a judge who was unduly sanctioned for writing an academic thesis criticising the actions of the judicial branch during the dictatorship, and *Profesores de Chañaral vs. Chile*, in which almost 850 former schoolteachers demand the payment of allowances left owing to them when the public education system was partly municipalised during the dictatorship. (INDH, *Chile ante el Sistema Interamericano*, op. cit., cases 11 and 13).

[203] Although state sources suggest that the current practice of the courts is in accordance with the tenor of this measure, the Observatorio – like many national and international sources – has advocated for legislation over the matter, as was promised explicitly by the administration that was in government when the sentence was passed. This recommendation has been reiterated in every edition of this report since 2010. There have also been worrying minority votes in the Court, in favour of continuing to apply the amnesty decree law. (The most recent of these votes was in 2021, by three judges of the Constitutional Tribunal). See Observatorio, Boletín 64, marzo y abril de 2021).

[204] The Chilean Foreign Ministry (Cancillería) informed the Observatorio that subsequent to the cited publication, all the steps needed for the remaining payments to be released had been taken (electronic communication received on 16 August 2023). The lawyers of the case petitioners nonetheless report a difficult process whereby due to official errors in calculation of interests and processing of payments, some families initially received an insufficient amount, whereas others were subsequently presented with a demand for part repayment. A request to forfeit the repayment request was accepted by the Treasury just before the close of this edition (electronic communication from the Foreign Ministry, received on 28 August 2023).

[205] In 2022 Carlos Minoletti, the only agent under charges in the case, was reported to have died while a fugitive from justice. However there is no *a priori* reason why the investigation should not continue in order to identify and prosecute other suspects, in order to carry out the full investigation that a crime against humanity demands. Should this not occur the case, presently temporarily suspended, will end in biological impunity. The Observatorio also understands that the path allowing the family to initiate a civil claim is obstructed by the Court's insistence that civil actions for crimes committed against survivors can only be initiated by the person themselves (and not, for example, by family members).

There is still scepticism in some official quarters regarding the validity of the doctrine of control of conventionality,[206] with some remaining confusion or lack of awareness as to where and with whom the duty to comply with Inter-American sentences, recommendations, and agreements actually rests. Accordingly, active political will of the sort needed to make progress is unevenly distributed, with clauses or sentences that require legislation being particularly vulnerable given the administration's lack of a clear majority.[207] Problems of political will however also obtain outside of the ambit of parliament, with the advent of public debate ever more dominated by 'securitising' concerns that are inimical to the expansion of rights. There is a clear need to create a dedicated space within the state that has robust powers of implementation, signalling awareness that the foreign ministry (Cancillería) is not the only state entity charged with proactively ensuring compliance. The state could also take steps to reach expeditious friendly settlements in all cases and complaints still outstanding, given that complaints are taking an average of 12 years just to make their way through Commission phase, that is, before they even make their way onto the Court's caseload.

3. REPARATIONS

3.1 The Administrative Route to Reparations: Public Policy Measures

The UN's Updated set of principles for the protection and promotion of human rights through action to combat impunity point out that the right to reparation can be guaranteed through at least two routes: via judicial action, or through legislated public policy programmes or measures.[208] The UN special rapporteur on transitional justice defined reparation, in his 2019 annual report, as: "administrative processes set up by States aiming to deal with a large universe of victims", characterising these as probably the "the most effective tool for victims (…) to receive reparation" given that in the absence of programmes with mass reach, victims," would have to prove their status in a court of law, including by providing all the necessary evidence, pay the expensive costs of litigation, and wait several years".[209] While there is some logic to this, it should also be possible to consider or recommend the possibility of sequencing and complementarity between the administrative and the judicial routes to reparation, particularly considering that the UN Principles themselves mention reparation as a right to which every victim should have access "All victims shall have access to (…) remedy in the form of criminal, civil, administrative or disciplinary proceedings".[210] As we will see in section 3.2, below, in practice survivors, relatives, and their legal representatives have finally managed to open up the judicial route to reparations in Chile, establishing it as an additional, rather than exclusionary, form of exercising the right to reparations.

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[206] Discussions and presentations at the opening seminar of the 157th ordinary period of sessions of the Inter-American Court of Human Rights, held on 24 April 2023 at the Universidad de Chile, at which it was suggested that there is a tendency among the other branches of state to treat conventionality control as a duty that is incumbent only on the judicial branch.

[207] It was pointed out that a growing tendency on the part of the regional Court to resolve and decree diverse types of reparation have increased the frequency with which their sentences require legislation if they are to be fully carried out. Source: interview with Ambassador Tomas Pascual, human rights director for Chile's Foreign Ministry (Ministerio de Relaciones Exteriores de Chile). Online interview carried out on 17 May 2023.

[208] UN E/CN.4/2005/102/Add.1, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005, Principle 32.

[209] UN A/HRC/42/45, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 11 July 2019. paras. 31 and 32.

[210] UN E/CN.4/2005/102/Add.1, Principle 32, op. cit.

The UN rapporteur recommends that administrative reparations programmes are timely, broad, comprehensive, and sustainable. This is in stark contrast to Chile's experience to date: reparations efforts have been sporadic and improvised. This has led to entirely preventable problems such as mutual incompatibility between measures, an absence of clear responsibility for implementation, and a hierarchy of victims and harms in which survivors have clearly been placed at a relative disadvantage. Measures are also not designed to adapt to the lifecycle of the rightsholder.[211] The 2019 edition of this report paid special attention to the subject of reparations. In it, we diagnosed a notable tendency to privilege indemnization (direct monetary transfer) over other forms of reparations.[212] This, like all the other deficiencies mentioned above, has yet to be resolved. Nonetheless, in the context of 2023's broader national discussion of pension reform, in this present edition we concentrate on the issue of pensions. We analyse information received from national state welfare agency the Instituto de Previsión Social, IPS, regarding the current structuring of pensions associated with grave violations and, in particular, the vexed question of the incompatibility that currently exists between these existing entitlements and the new guaranteed universal pension (*pensión garantizada universal*, PGU).[213]

According to information provided to the Observatorio by the IPS, as of May 2023 the state was actively delivering pension entitlements to relatives (indirect victims) of 42% of the absent victims (victims of enforced disappearance and extrajudicial execution) recognized as such by the Rettig and Valech truth commissions.[214] This translates in practice into pensions being paid to a total of 1,636 individual family members of 1,358 recognized victims ('*causantes*', in the term applied by the pension service).[215] As of May 2023 another 19,573 recognised survivors of political imprisonment and torture, and 4.191 widows or widowers of survivors, were receiving the reparations pension established by Law 19.992. This means pensions are currently being paid in respect of 62.1% of the total number of survivors

[211] See Observatorio de Justicia Transicional, *Tabla leyes y medidas de reparación en Chile, 1991-2011*, Santiago: Universidad Diego Portales.

[212] In spite of having recognised, in the same Observatorio sources already cited, the existence of measures of another sort, such as the Programa de Reparación y Atención Integral en Salud y Derechos Humanos, PRAIS (see 2021 report), 'Valech scholarships', symbolic measures such as exemptions from compulsory military service, or direct and indirect memorialisation actions.

[213] Another line of followup, regarding the processing of thousands of applications for reparations for political sacking and blackmail that as of 2019 were still pending, will be returned to in future editions, as some official data received in response to a request, could not be analysed in time for the closing of the current edition.

[214] "Causante" is the term the IPS uses to refer to the person whose victimisation by the state gave rise to the right to reparation. By "Rettig Commission", for present purposes we refer to the National Commission on Truth and Reconciliation (Comisión Nacional de Verdad y Reconciliación, 1991) and the followup National Corporation on Reparations and Reconciliation, 1996 (Corporación Nacional de Reparación y Reconciliación). The number of people officially acknowledged as disappeared or executed increased by 30 in 2011, as a result of the second iteration of the survivors' truth commission, Comisión Asesora para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y Tortura, more commonly known as "Valech II". This increase has been incorporated to the total and calculations referred to here.

[215] Figures provided to the Observatorio by the Instituto de Previsión Social via official memorandum *(oficio*) ORD. D.N. Nº 68337, of 12 May 2023 (henceforth, IPS Oficio, op. cit.). The percentage calculation is based on the universe of 3,216 absent victims (disappeared or executed persons) currently acknowledged by the State.

currently acknowledged by the state,[216] representing a drop over time in both categories since, according to the IPS, 4,888 relatives of absent victims have at some time exercised pension entitlements while the number of survivors for whom pensions have at some time been paid amounts to 35,216, or 92% of the total possible. The drop is occasioned by the passage of time leading to an increase in the numbers of survivors and eligible relatives who are now deceased.

The IPS also indicates that since 2015 it has undertaken "actions to directly locate victims who may be eligible, in order to make them aware of the possibility that they may be beneficiaries [sic.], and also to inform those who, having already been found eligible, have never claimed the associated payments", signalling that as of May 2023 "a total of 398 [surviving] victims have never applied for their reparations pension".[217] While this situation remains far from ideal, it represents an improvement given that the 2019 version of this chapter reported that the equivalent total for late 2016 was 467. Unfortunately no similar improvement can be seen in the number of people exercising their right to reparations payments in respect of absent victims. The IPS claims that this category of person is more difficult for them to trace proactively since "[this type of victim] is not always fully identified [on the respective truth commission lists]": the person's national identification number (RUN) may be missing and "the entry often consists of only a single forename and surname, which does not lend itself to accurate identification of possible family members who may be eligible".[218]

There is a certain amount of truth in the IPS's contention regarding the particular difficulties that surround identification and traceability when those concerned are absent victims. Notwithstanding, it is worth recalling that the work of numerous state agencies deals with or relates to this same category of person, i.e. people currently recognized by the state as victims of enforced disappearance or politically motivated execution. This fact offers both extra incentives and extra possibilities for overcoming these difficulties. To take one positive example, the Human Rights Office of the national civic registry, Registro Civil, has long been making praiseworthy efforts to resolve inheritance, registry, and other administrative problems for relatives on a case by case, person by person basis. This work has made evident the need for the Registry to be given the faculty to amend inaccurate national ID numbers and/ or create them from scratch where, for whatever reason, a particular victim was never assigned one during their lifetime.[219] The Registry does not currently have the legal powers it needs in this regard. We note that the legislative agenda announced on 7 September and discussed above promises to make advances in identifying needs and lessons learned around

[216] IPS Oficio, op. cit. The percentage calculation is based on the universe of 38,254 people recognised as survivors of political imprisonment and torture by the truth commissions "Valech I" and "Valech II", (2004/5 and 2011) (Comisión Nacional de Prisión Política y Tortura, and Comisión Asesora para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y Tortura).
[217] IPS Oficio, op. cit., our translation.
[218] IPS Oficio, op. cit.
[219] The Office has been proactive in generating proposals for structural and/or legislative solutions, proposals which have apparently only recently, and in part, been attended to. The work of the Electoral Commission, the Human Rights Unit of the Ministry of Justice and Human Rights, the Servicio Médico Legal, and the Policía de Investigaciones, all organisms that are involved with the identification and localisation of witnesses and relatives for the purposes of investigation, identification, etc.

these matters, but it is a matter of concern that despite mention of changes and improvements to particular registers or lists, it remains unclear whether the agenda unequivocally promises the single, permanent and unitary classificatory commission and register of victims and survivors whose creation has long been recommended by a host of national and international organisations and was promised in Chile's first National Human Rights Plan. The second National Plan, approved via Supreme Decree (presidential decree) on 18 January 2023 makes no reference to the issue,[220] while none of the other initiatives discussed above spells out clearly whether they will do what is needed in encompassing both main currently recognized categories of victim (absent victims, and survivors).

If all categories of victim are to be considered, as ought to be the case, a further question arises as to who will take responsibility for examining and acknowledging new cases of survivors who were not recognized by the Valech commission, or of people belonging to the new categories of victimization that the government announcement of September promises will now be considered (see above, section 1). In this regard it is important to appreciate that under present arrangements, people whose status as victims comes to light through being definitively proven before a court of law during the course of a criminal investigation are not thereby given access to the associated administrative reparations entitlements.[221] Expansion of the mandate of the Human Rights Programme of the Ministry of Justice and Human Rights may prove to be the most effective way to rectify these omissions, given the recent visible and laudable efforts Programme staff have gone to, to make the National Search Plan into a genuinely holistic initiative that attends to all the associated transitional justice rights and entitlements, plus the fact that it is not at all uncommon for survivors to also have relatives who are absent victims.

In a similar vein it is unfortunately necessary to draw attention to a notorious lack of complementarity between the new Guaranteed Universal Pension, Pensión Garantizada Universal, PGU, and reparations pensions. The PGU, introduced in early 2022, is a social security provision, therefore quite distinct in nature and purpose from reparations pensions.[222] Law 20.255 (a welfare reform law first introduced in 2009, and modified in 2022) stipulates in Art. 36 that holders of reparations pensions associated with the dictatorship period[223] can only access the basic disability solidarity pension and/or the PGU if these latter have a higher monetary value than their reparations pension entitlements. Given the average amounts of current reparations pensions, this provision in practice means almost no-one who is receiving reparations for grave human rights violations, can also

[220] The action included in the First National Human Rights Plan, developed in 2017, was: "Promote the creation of a Permanent Classifying Commission for the clarification of all human rights violations committed during the dictatorship (political execution, enforced disappearance, and torture" (*promover la creación de una Comisión Calificadora Permanente para el esclarecimiento de todas las violaciones a los derechos humanos cometidas durante la dictadura (ejecución política, desaparición forzada y tortura*). The associated indicator of completion was defined as "Draft Bill introduced to parliament" (our translation).

[221] Due to the now anachronistic fact that almost all such measures or programmes, formally or in practice, treat inclusion of the person on the existing Rettig or Valech lists as an entry requirement.

[222] Reparations pensions should not be considered for the purposes of calculating taxable income, nor to exclude the rightsholder from social security provisions designed to assure basic universal rights.

[223] "the holders of pensions entitlements under Laws N°. 18.056; 19.123; 19.234; 19.980 and 19.992" (our translation).

receive the disability pension or PGU.[224] This de facto exclusion from the PGU moreover means relatives and survivors are in effect barred from accessing other associated provisions such as the winter bonus (Law 21.419, art. 5), or the funeral costs assistance known as the '*cuota mortuoria'* (Law 20.255, art. 34). A group of 80 parliamentarians from the governing coalition approved a resolution in mid-2022 exhorting the President to move to rectify the situation via amendments to welfare legislation. The resolution describes the present state of affairs as "giving rise to discrimination" against those harmed by dictatorship-era human rights violations.[225] In November 2022 a draft government pension reform Bill was submitted (Boletín 15.480-13), which would derogate art. 36 of Law 20.255 allowing positive complementarity between the PGU and reparations pensions.[226] In August 2023 the Subsecretariat of Human Rights stated its intention to "seek to put an end to the exclusion of victims from 'benefits' [sic] such as the PGU",[227] and on 13 September an announcement to similar ends appeared on the web page of the Ministry of Social Development and the Family, Ministerio de Desarrollo Social y de Familia. The announcement promised that reparations pensions will not henceforth be considered when household income is calculated for the purpose of means testing on the national social register (which determines needs-based eligibility for various kinds of social support or welfare). The change should allow an estimated 13,427 households – made up of 23,180 individuals – to be classified in the correct income quintile for the first time, regaining any associated rights whose exercise has hitherto been denied to them.[228]

For the moment, however, the norm creating the incompatibility between the PGU and reparations pensions remains in force and there is strenuous resistance from the political right to any modification that would resolve it in favour of rights holders. Eliminating this anomaly however remains the only way in which the State can correctly signal its appreciation that reparations are not grace and favour measures, nor gifts, nor even social security measures, eligibility for which relies on a combination of need and the meeting of the qualifying conditions stipulated by the particular measure. The right to reparation is quite

[224] According to official information seen by the Observatorio, as of July 2023, reparations pensions extended under Law N°19.992 ('Valech pensions') ranged, according to the age of the rightsholder, from between CLP $207.773 and CLP $237.796 a month, whereas the maximum amount of entitlement under the PGU was CLP $185.000. This being so, every survivor of political imprisonment and torture would be excluded from receiving the PGU. The prevailing situation regarding pension entitlements under Law N°19.123 ('Rettig pensions') similarly left Rettig rightsholders out of the PGU's reach: 'Rettig pensions' began at CLP $248.183 per month (with amounts thereafter varying according to type of family relationship and number of people in the nuclear family). This means that relatives of victims of politically-motivated execution and enforced disappearance were also excluded from the PGU. For people acknowledged as victims of political blacklisting (*exoneradas/os políticas/os*), the situation as regards current income from pensions entitlements is much more variable since the corresponding reparations entitlements mostly do not directly pay a set amount of pension. Rather, the associated measures restore pension credits that were lost due to dictatorship-era repression. Notwithstanding, those people who did receive direct payments under this scheme were receiving an average of CLP $198.373 per month, and in consequence would also be excluded from the PGU.

[225] Chamber of Deputies, draft resolution Nº 98, 16 May 2022.

[226] Boletín 15.480-13, 7 November 2022, Draft Bill to Create a New Mixed System of Pensions and Social Security with a Contributory Pillar, Improve the Universal Guaranteed Pensión, and Establish Benefits and Regulatory Modifications As Indicated.

[227] Source: written response received on 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

[228] desarrollosocialyfamilia.gob.cl: "Gobierno no considerará las pensiones de reparación como ingresos económicos en el Registro Social de Hogares", 13 September 2023.

distinct: in the formulation favoured by the UN, it is triggered by "the violation of [a person's] rights", which acts as a necessary and sufficient condition giving rise to entitlement "independent of all other considerations", including need.[229]

In other words, the existence of a grave harm inflicted by the state is the only applicable qualifying threshold. The existence of this harm in the case of the Chilean dictatorship has been explicitly acknowledged by the Chilean state, inter alia before the Inter-American Court of Human Rights in the case Chile vs Órdenes Guerra, (see above, section 2.6), and – at least in recent times – by the country's higher courts (see below, section 3.2, discussion of the Paine case). There have always been certain social and political sectors ready to question these forms of compliance with the duty of reparation. In response to such challenges, the UN Special Rapporteur rejects the stigmatisation of victims and provides a reminder that reparation is not a matter of political expediency or preference.[230] There is also a common good rationale for reparation, whereby the State itself is rehabilitated through this particular expression of acknowledgment of responsibility. This serves to restore the social fabric by promoting renewed civic trust in previously abusive institutions, signalling that the duty of non-repetition is being taken seriously.[231]

3.2 The Judicial Route to Reparations: Civil Claim-Making

Thanks to the same long road of perseverance and creativity that was needed to overcome obstacles to criminal justice, Chile today faces a relatively advanced situation in judicial responses to civil demands for reparation whereby the higher courts today recognise the general state duty to provide reparations, the inapplicability of the statute of limitations, and the precepts of international law that underpin both. The courts have also come to appreciate that the reparation of moral harm via the issuing of orders for Treasury indemnization is distinct from, and fully compatible with, the concurrent exercise of the right to reparation via administrative measures (public policy programmes). This appreciation leaves the Chilean courts in a relatively advanced position when compared to other countries' courts, and even in comparison to other branches and institutions of the Chilean state, when one considers for example the recalcitrant attitude of the State Defense Council, Consejo de Defensa del Estado, whose brief is supposedly to act in defence of the legal interests of the state.[232] This relatively enlightended judicial position has however been a long time in the making, to the point where many of the survivors whose groundbreaking actions led to the breakthrough, have not lived to see it come to fruition.[233] Other obstacles and dilemmas also remain, for

[229] UN A/69/518, op. cit., para. 89.
[230] UN A/HRC/42/45 paras. 27, 28, y 30.
[231] ONU A/69/518, op. cit.
[232] Even though this leaves the CDE apparently at odds even with its own executive branch, given that in the Órdenes Guerra case, the Office of the Chilean President made an unequivocal recognition before the Inter-American Court of Human Rights of state responsibility for the underlying harm, that makes the subsequent posture of the CDE even more irrational.
[233] The protagonism of survivors in the use of civil law recourse, in particular after Valech I, owes in part to the fact that torture – the crime that usually features most prominently in cases for survived crimes – is investigated under antiquated criminal code figures and charges that carry exceedingly lenient, often irrisory, maximum penalties.

example in determining the amounts of compensation that are due, and in correctly setting the evidentiary bar for considering the facts of any particular case to be proven.[234]

In the years immediately after 1998, when even cases seemed likely to remain a distant horizon, the civil law route was rarely resorted to and was even more rarely successful. A whole range of obstacles served to dissuade anyone who might consider bringing a civil claim. These included a certain social stigma that was also detectable within the human rights community, which was primarily oriented toward establishing criminal responsibility and harboured a certain amount of moral disdain toward the notion of attaching an economic value to harm. The Domic Bezic case, resolved in 2002, serves to illustrate the arguments the judiciary of the day relied upon to reject claims of civil liability.[235] In Domic Bezic, the Supreme Court affirmed the applicability of ordinary norms regarding civil responsibility, including the much shorter time periods for the lapsing of liability that apply to civil as distinct from criminal liability. This decision rested on the Court's view that international law surrounding the State's obligation to ensure a remedy for certain grave classes of crime – as set down in the Geneva conventions – should not be understood as stretching beyond criminal law to include civil liability. The verdict also accepted the CDE's contention that the administrative reparations already put into place by the state were sufficient to repair the harm, or at least made it inadmissible to seek indeminization via the judicial route in respect of the same facts.[236]

Civil plaintiffs and their legal representatives nonetheless persevered, opening up two main lines of activism and argument.[237] The first was to begin generating civil demands as part of criminal cases; which offers the advantage of being able to have the facts established by the criminal investigation taken as proven for the purposes of civil liability. The second was to begin to bring standalone civil demands, although these face additional hurdles in episodes

[234] These days, the CDE generally does not dispute the underlying facts in cases of people acknowledged by the Rettig or Valech commissions, limiting itself instead to debating juridical aspects of state duties of reparation. However the CDE does dispute the facts in cases where victims or survivors are not on Rettig or Valech lists; where demands are brought by indirect victims whose exact family connection does not match the – often arbitrary – list of categories given in the respective administrative reparations laws, or in respect of second or third generation victims (thereby wilfully ignoring intergenerational transmission of harm). In cases where an associated criminal investigation challenged or failed to recognise the status of crime against humanity, the CDE does however dispute the underlying facts, and/or returns to its previous position of demanding application of statutory limitation, even where the person is acknowledged as a victim, on the Rettig or Valech lists.

[235] Supreme Court Rol 4573/2001, 15 May 2022.

[236] This argument, referred to as the "payment exception" (*excepción de pago*), was adduced for many years as a reason for reducing or directly rejecting amounts requested as reparations via the judicial route. It is a particularly cynical argument in the case of survivors, above all in the era of the verdict in the Domic Bezic case (i.e., prior to the Valech I report of 2005 and its associated reparations legislation), since many of the administrative measures available in that pre-2005 period – especially, the economic measures - were reserved exclusively for relatives of absent victims.

[237] On the strategic and empirical origins of the universe of civil claims see Andrea Gattini and Francisco Bustos, "El Caso Paine, Episodio Principal, contra Nelson Iván Bravo Espinoza y otros: Imprescriptibilidad de la acción civil e ineficacia de la excepción de cosa juzgada en casos de crímenes de lesa humanidad", *Anuario de Derechos Humanos*, Nº 18(2), 2022, pp. 235-6.

with no pre-existing criminal investigation and/or truth commission narrative to draw on.[238] Overall, the response of the courts to civil claims has been notoriously unreliable.[239] One major source of variation was however eliminated in late 2014, at a time when judge Sergio Muñoz was officiating in a twin capacity as human rights case co-ordinator, and Supreme Court president. On 26 December 2014 a full sitting of the Supreme Court adopted Administrative Disposition (*Acta administrativa)* 233-2014, under the terms of which civil claims for dictatorship-era crimes that were referred up to the highest court would henceforth be seen by its criminal bench.[240] This unification of criteria operated in practice to the advantage of plaintiffs, leading as it did to consolidation of the Court's growing readiness to acknowledge that the inapplicability of the statute of limitation to crimes against humanity is covers civil as well as criminal actions arising.[241]

Over the subsequent few years, and in response to further encouragement from the Inter-American human rights system,[242] a higher proportion of civil actions of both types- with, and without, attachment to a criminal investigation – began to produce outcomes favouring plaintiffs' rights. A lesser known variant of the same strategy of pursuing civil liability began to be followed in third country civil courts, specifically and initially those of the US. This line of action would lead, years later, to the stripping of US citizenship from one of the agents responsible for the extrajudicial killing of legendary folk singer Víctor Jara.[243] On the local

[238] The tendency to demand acknowledgement of a case by a truth commission as a prerequisite for bringing a claim is entirely without foundation, as the judicial status of administrative truths such as these has never been established. Neither has the matter been treated consistently in regard to certifications from the state health reparations programme, PRAIS: these have been rejected on numerous occasions, but accepted in a few others, as sufficient evidence of harm caused. Moreover, many relevant victim categories and associated harms fall outside of the (limited) mandate of the commissions, particularly in the case of Valech.

[239] See the 2011, 2012 and 2013 versions of this report.

[240] Prior to the Acta, civil claims presented autonomously (i.e. without being appended to a criminal complaint or investigation) were referred to the Third, Constitutional, Bench, which still takes a view in favour of application of the statute of limitation. The Second (Criminal) Bench has, by contrast, tended since 2006 to recognise the status of crime against humanity of most crimes of repression and since 2008, to acknowledge that the associated inapplicability of statutory limitation extends to civil, as well as to criminal, action.

[241] Although not without backward steps. See for example Observatorio JT, Jurisprudential Milestones, op. cit., milestones 26 and 27, cases of Grober Venegas Islas and Eduardo González Galeno. In the latter case, resolved in January 2013, a full sitting of the Supreme Court attempted to designate a point in time at which the civil statute of limitations clock could be considered to have started running. The Court decided on 1991, the date of publication of the Rettig report. Notwithstanding, the very next case resolved by the Court's criminal bench resulted in a decision ignoring the prior ruling in order to award indemnization (Supreme Court Rol 64-2009, Cecil Alarcón case, 18 July 2013).

[242] In the García Lucero case, the Court affirmed the compatibility between judicial and administrative measures of reparation: "the existence of administrative reparations programmes (…) cannot be allowed to violate the free and full exercise of the right to judicial guarantees" (*la existencia de los programas administrativos de reparación (…) no puede llegar a violar el libre y pleno ejercicio del derecho a las garantías judiciales*), IACtHR, *García Lucero and others Vs. Chile*, Sentence of 28 August 2013. In Órdenes Guerra, for the first time, the Court explicitly took the position that statutes of limitation were inapplicable to crimes against humanity, invoking duties of conventionality control and congratulating the Supreme Court for having changed its position and criteria on the matter, over the period during which the case was being seen in the Inter-American system. IACtHR, *Órdenes Guerra and others Vs. Chile*, 29 November 2018. For more on both cases, also see section 2.6.

[243] In June 2016 a district court in Florida, USA found Pedro Pablo Barrientos civilly liable for the 1973 torture and killing of Víctor Jara in the Estadio Chile –today renamed Estadio Víctor Jara. The verdict led directly the

front, meanwhile, one group of plaintiffs was left behind by these gradual breakthroughs. This group consisted of relatives or survivors who had lodged standalone civil cases before the 2014 rule change mentioned above, and had therefore had their claims denied by the Supreme Court's constitutional bench.[244] After 2014, the Consejo de Defensa del Estado began to argue that plaintiffs in this situation were prohibited from lodging new appeals by a variant of the double jeopardy prohibition: since a final sentence had been pronounced – according to the CDE - *ne bis in idem* should prevail even if and where the content of that sentence had violated various state obligations. This situation had the perverse effect of introducing diametrically opposed outcomes even for members of a single group affected by the same crime, if some had brought pre-2014 civil claims and others had not. In respect of the former, the CDE began to modify its contentions away from claiming that no harm had been caused or no state liability existed for it. Instead, the CDE turned people's previous, then-unsuccessful, claims against them, in effect imposing a penalty on those who had led the way in attempting to assert their rights before the state was ready to acknowledge them.

This evidently unjust situation was allowed to prevail until very recently, even though the Inter-American Court had insisted, as long ago as 2018, that while *res judicata* is "a safeguarding principle that must be respected in a State governed by the rule of law"…
"in such cases the principle of res judicata should not prevent the victims (…) from finally obtaining the reparations to which they may be entitled through the courts.".[245] This final hurdle however began to be overcome in June 2022, when the Supreme Court took a notable step in the principal episode of the Paine case, where *res judicata ('cosa juzgada')* had previously been invoked. On this occasion the Court revoked a lower court invocation of *res judicata* in regard to civil as well as criminal liability, overruling the CDE which had attempted to deny indemnization to some of the 38 families involved in the case (namely, those who had previously taken civil actions and had them rejected). The court explicitly cited control of conventionality as its basis for so doing, adducing that under that principle "any *cosa juzgada* exception is rendered irrelevant when the matter at hand is a civil action aimed at producing holistic reparation of the harms caused".[246] In effect, the court declared *cosa juzgada* to be inapplicable to the previous rulings (*"ineficaz*").

Bustos and Gattini (2022) describe the verdict as "an historic sentence that places international legal obligations ahead of exceptions derived from internal law.".[247] It is true to describe the verdict as potentially transformational inasmuch as it acknowledges that the effect of the *cosa juzgada* exception cannot be allowed to prevent the State complying with its obligation to provide reparation, when this obligation proceeds from an international obligation that Chile has freely undertaken.[248] The impact of *cosa juzgada* in recent years has

revocation, in June 2023, of the US nationality that Barrientos acquired in 2010. This revocation should lead eventually to his expulsion, as has occurred in similar cases involving Salvadoran perpetrators. US District Court, Middle District of Florida, Orlando Division, case no. 6:22-cv-1252-RBD-EJK, 17 June 2023, and see Observatorio JT (2023), op. cit., milestone 33.

[244] Which (unlike the criminal bench) still considered the statute of limitation to be applicable.

[245] IACtHR, *Órdenes Guerra,* op. cit., paras. 113 y 114.

[246] Supreme Court, Rol 149.250-2020, 14 June 2022.

[247] Gattini and Bustos, op. cit., p. 231.

[248] See also compliance by the Chilean state with the IACtHR sentence in the case *Norín Catriman Vs. Chile*, 29 May 2014.

been to produce the rejection of dozens of second-time-round claims, a pattern which has led various plaintiffs to open petitions before the Inter-American human rights system. If the Supreme Court's new position becomes settled practice, therefore, a number of current and future cases will benefit. The Chilean state will also benefit, of course, taking the lead among comparable countries and registering an important step forward in compliance. At the same time, given the nature and importance of *cosa juzgada* as an institution and a doctrine, both the plaintiffs in the case and the Court itself went to considerable lengths to make it clear that, as Gattini and Bustos put it, the verdict went in favour of the duty of reparation, rather than against the principle of *cosa juzgada* per se.[249] In this way, despite the change in its jurisprudence, the highest court "in no way fails to recognize the importance of *cosa juzgada* as a mechanism for procuring legal certainty… neither does it deny the validity and legality of the initial civil claims presented by the same plaintiffs. Rather, the verdict acknowledges that the Constitution gives a pre-eminent place to human rights treaty law, and to the requirement that domestic norms be adapted to it."[250] In the time elapsed between this decision and the end of June 2023, the Court handed down at least five more final verdicts invoking the same reasoning.[251]

There have been equally noteworthy recent changes in the Court's interpretation of [*cosa juzgada fraudulenta]* in criminal cases. Given that even in civil cases the Court was reluctant to directly decry its own previous actions – preferring to coin the novel term *cosa juzgada ineficaz* – even greater reticence might have been anticipated where criminal verdicts were concerned. The impending verdict in Carmen Gloria Quintana and Rodrigo Rojas de Negri[252] had been widely expected to offer the first definitive test of whether the Court would be prepared to denounce its own historical verdicts in the categorical terms that a declaration of *cosa juzgada fraudulenta* conveys, particularly when the historical verdict in question was not a dictatorship-era ruling but one handed down after the 1990 return to democracy.[253] Notwithstanding, already on 22 August 2023, in the Soria case, the Court seemed to have few or no qualms in declaring *cosa juzgada fraudulenta* its own predecessor's application of the 1978 Amnesty Decree Law, in the mid 1990s, to extinguish a criminal sentence.[254]

If it proves to be correct that *cosa juzgada* is no longer to be allowed to impede the awarding of reparation through the courts, attention must inevitably shift to formulae for determining the amount of monetary awards, currently the other main source of disparity in judicially-awarded reparations.[255] The Supreme Court has stated that it is the duty and prerogative of

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[249] "The verdict is not against the institution of *res judicata* per se, it is in favour of the duty of reparation" (*no se falla … en contra de la cosa juzgada propiamente tal, se falla en favor del deber de reparación)* Andrea Gattini and Francisco Bustos, op. cit., p. 249.

[250] Ibíd, our translation.

[251] Supreme Court, Rol 36319-2020, 23 September 2022; Rol 862-2022, 20 February 2023; Rol 25384-2021, 2 March 2023; Rol 72024-2020, 28 March 2023; and Rol 122163-2020, 16 June 2023.

[252] Juan Pablo Mañalich, "Cosa juzgada fraudulenta en el caso 'quemados'" *Política criminal.* vol.16, no.31, 2021.

[253] Whereas in previous criminal cases where fraudulent res judicata has been declared, this has always been in respect of a decision taken wholly or in part by military tribunals and/or during the dictatorship. E.g. the case of the Vergara Toledo brothers (Supreme Court Rol 7.089-2009, 4 August 2010)

[254] In which the case was suspended due to the application of the Amnesty Decree Law. See the recent Supreme Court sentence, Rol 36.336-19, 22 August 2023.

[255] See the 2021 edition of this report for a first approximation.

each awarding judge or bench to "consider the specifics and unique circumstances of each case"; and that it would therefore be inappropriate to "take amounts awarded in cases over similar facts as a parameter" or to create any kind of *de facto* sliding scale awarding different amounts according to exactly how each plaintiff is related to the victim(s) concerned.[256] In a case for the enforced disappearance of Humberto Cerda Aparicio,[257] for example, the Court reaffirmed the inapplicability of common or garden instruments such as the "Baremo Jurisprudencial Estadístico del Poder Judicial".[258] While it is certainly right that amounts are arrived at using criteria which include detailed consideration of the particular consequences of each violation, and the exact moral harm that was caused, the applicable general international standards should also be borne in mind. These include, in particular, UN General Assembly Resolution 60/147, which stipulates that indemnization, like all other forms of reparation for grave violations, must consider and reflect the seriousness of the harm.

3.3.1 Symbolic Reparations Through the Courts: Dissolving Spurious Convictions Handed Down by Military Courts Martial

Alongside the developments in civil claimbringing and resolution mentioned above, the recent period has also seen a growing diversification in the forms that reparation awards by the courts take. In this section we particularly highlight the overdue and absolutely necessary reversal of one of the most flagrant dictatorship-era injustices directly perpetrated by the legal system itself: arbitrary convictions imposed by military courts on civilians who should not even have been subject to their jurisdiction. These actions were designed to confer an air of apparent legality on at least one form of dictatorship-era repression, by sentencing regime opponents for non-existent, trumped-up crimes, presenting false evidence, and/or using torture to extract spurious 'confessions'.

As we have explained in earlier editions of this annual report, in recent times the Supreme Court has chosen to designate the petition for review (*recurso de revision*) as the channel available for victims of this practice to finally be able to have false convictions still on their records, not only expunged but dissolved. The Court took this step as its preferred method of compliance with the Inter-American Court's sentence in *Maldonado Vargas and others v. Chile*. The process of review allows the Supreme Court to accredit that those affected by the practice, far from being "criminals" or "terrorists", were victims of repeated travesties of justice. The review petition is in our view an imperfect remedy, as it has to be initiated through action from or on behalf of each affected person, rather than offering a collective, proactive institutional solution. However, in the course of such reviews, the Supreme Court has already acknowledged in numerous resolutions "the existence of a method, pattern or generalized system of mental and physical harm and affront to dignity, to which persons brought before War Councils (*Consejos de Guerra*) were subjected … by their interrogators, jailors or other personnel who took part in proceedings …in order to obtain admissions or confessions from them about the accusations they faced".[259] At last these spurious

[256] Supreme Court Rol 269-2021, 1 March 2023.
[257] Supreme Court Rol 30196-2020, 14 March 2023.
[258] According to the web page of the judicial branch, the Baremo is "a reference tool, not of compulsory application (…) that allows access to jurisprudence, statistics, and tables of minimum and maximum awards made for moral harm in similar cases".
[259] Supreme Court, Rol 150.176-2020, 10 November 2022.

convictions have at least been officially recognised for what they were, dissolving their effects and restoring state acknowledgment of the inherent dignity of those affected, and of their blameless reputation as entirely innocent of the false charges brought against them.

A total of 37 such declarations have been made since the first review petition was resolved in 2016.[260] Eight of the decisions were brought in the two statistical periods that are the main focus of this report, i.e., between July 2021 and June 2023, between them declaring the absolution and complete innocence of a total of 17 people previously unjustly convicted.[261] A novel aspect of these actions in these more recent cases involves the legal channels that those affected subsequently used to pursue reparation for the harm caused. One channel continues to be the subsequent bringing of an ordinary civil claim against the state, specifically against the Treasury as represented before the courts by the CDE. The other, more novel, path has been to request that the Supreme Court declare the original convictions to have been "unjustifiably erroneous or arbitrary" (*injustificadamente erróneas o arbitrarias)* under the terms of Art 19 Nº 7 (ii)i of the 1980 Constitution. This declaration is then brought before an ordinary civil tribunal, asking for determination of an appropriate sum of compensation to be determine in an abbreviated proceeding. According to our records at least three sentences of this second type were obtained, in favour of a total of 24 people.[262]

Responding to this new type of action, the CDE has yet again regrettably chosen to oppose victims' interests, attempting to prevent survivors of torture and arbitrary conviction from exercising access to reparations via this route. Two lines of argument have been attempted: the first, familiar from previous forms of civil claim, is *excepción de pago*, which amounts to the somewhat tired – and moreover, in respect of a person's criminal record, self-evidently fallacious - argument that administrative reparations have been so generous as to render the recognition of previous judicial error unnecessary.[263] The second argument essayed by the CDE has been that the special status of the War Councils means that their rulings should not be treated as generating State responsibility. In this regard, the Supreme Court has pointed out the evident contradiction between this contention and the CDE's own prior action in the case Rol 1-73 (Chilean Air Force versus Bachelet and Others). The case sought the review and dissolution of a spurious sentence passed by a war council on a group of constitutionalist Air Force officers who opposed the coup. In it, as the Supreme Court highlighted out, the CDE "acknowledged what it now proposes to deny: that [the dictatorship-era Council's] verdict has the status of a resolution emitted by a jurisdictional entity, since this is a qualifying condition for it to be susceptible to invalidation through review of this type, [ie]

[260] In the case known as the "constitutional airmen", *aviadores constitucionalistas*: Supreme Court, War Council ('Consejo de Guerra') FACH Rol 1-73, 3 October 2016.
[261] Supreme Court Rol 76.358-2020, 9 August 2021; Rol 79.500-2020, 18 August 2021; Rol 79.497-2020, 25 August 2021; Rol, 92937-21, 3 June 2022; Rol 150.176-2020, 10 November 2022; Rol 127.171-2020, 10 February 2023; Rol 10.564-2022, 13 March 2023, y Rol 79.866-2020, 27 March 2023.
[262] Supreme Court, Sentencia Rol 2.627-2020, 14 September 2021; Rol 104.623-2020, 10 November 2022; y Rol 90.651-2020,14 March 2023. The total is higher than the 17 people mentioned in the preceding paragraph because some of the declarations emitted in the period are based on earlier revision verdicts.
[263] Supreme Court rol Nº 90.651-2020, 14 March 2023.

on the basis of its having been emitted in accordance with the legal framework of the day [but] with blatant disregard for due process […]".[264] Finally, in finding in favour of the plaintiffs the Court also affirmed that the blatant irregularities and illegal acts perpetrated by the War Councils does not *per se* prevent them from being considered official actions for the purposes of evaluating whether the State should or should not be held accountable for their effects.

3.3.2 Other Forms of Non-Monetary Reparation via the Judicial Route

Satisfaction is, according to the UN, one of the necessary guiding principles that reparations should pursue.[265] A sentence passed in mid-2022 by the Santiago Appeals Court, over Operation Condor, proved innovative in this regard.[266] The Court agreed to order some symbolic – or at any rate, non-monetary- measures as reparation, a practice that has become relatively common in the actions of the Inter-American Court of Human Rights. The specific measures are sometimes as requested by the plaintiff, other times, they are of the Court's own design. While this case is not the first time that complainants have asked Chile's domestic courts to order such measures, judges previously proved reluctant, arguing that they did not have the power to do so.[267]

In this particular case the Appeals Court ordered the Treasury to "set aside the sum of CLP 15,000,000 [USD$15,800] for the Ministry of Education to acquire books on the theme of human rights, to be distributed to the libraries of all state schools in the Chiguayante district". The books are to be accompanied by a plaque informing readers that they were donated "in memory of Alexei Jaccard Siegler, victim of human rights violations during the military dictatorship". A further CLP $75.000.000 [USD$79,000] was awarded for the creation, at the Universidad de Concepción, of a prize in the same name, to be awarded annually to a student carrying out research connected to human rights. These measures were specifically requested by Paulina Veloso Valenzuela, the complainant in her capacity as Alexei's partner, instead of financial compensation in her own name. The sentence also ratified the order made by the initial adjudicator in the case (judge Mario Carroza, at the time an investigative magistrate) to have the verdict published on the judicial branch's news portal, and to "require all Chilean state institutions and entities to comply with Armed Forces regulations, comply in full with the state's international legal obligations and accompanying domestic legislation, and to continue to make all possible efforts to trace victims [of enforced disappearance]".[268] In support of its decision, the Appeals Court highlighted the "particular nature of cases for violation of fundamental rights in which the State is the object of claim-making", signalling that this special circumstance justifies extending sentencing measures beyond mere deliberation over sums of money to "potentially [include] other modes of satisfaction, since

[264] Supreme Court rol Nº 90.651-2020, op. cit.
[265] Together with restitution, indemnization, rehabilitation, and guarantees of non-repetition, UN, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, approved by the General Assembly on 16 December 2005, by Resolution 60/147.
[266] Santiago Appeals Court, "Operación Cóndor-cuaderno principal", Rol Nº 4.545-2019 (criminal), 25 July 2022.
[267] See, for example, the Comando Conjunto case, Alonso Gahona Chávez and others, Rol 120.133-p, 7 April 2021, judge Miguel Vázquez Plaza.
[268] Santiago Appeals Court, Rol Nº 4.545-2019 (criminal), 25 July 2022, op. cit.

in this way the State complies with what is set down in international human rights law regarding holistic reparations to victims".[269] At time of writing, the case had been heard and concluded before the Supreme Court, with only the drafting and publication of the final verdict still pending.[270]

In the recent words of Supreme Court president Juan Eduardo Fuentes Belmar, "reparations [for crimes against humanity] are not concluded with the handing down of a criminal case verdict or the awarding of a sum of indemnization. There are also concrete actions of other sorts which, when carried out in accordance with the competencies assigned to the courts by law, allow [us] to emphasise the importance of respecting and guaranteeing values that are indispensable to every person and in all societies (…) The judicial branch's contribution in this regard comes not only through the exercise of its jurisdictional faculties, but also in employing those of its non-jurisdictional faculties that may be relevant to actions that contribute to integral reparations".[271]

Another recent form of pursuing satisfaction has been to request protective measures (*recursos de protección*) against private media outlets and companies that acted as propaganda machines on behalf of the dictatorship. This type of action has however met with only limited success in recent times, after relatively promising beginnings. In 2019, relatives of two people extrajudicially executed during the dictatorship obtained an order obliging the *La Tercera* newspaper to publish a retraction of its previous headline, on the basis of the facts newly acknowledged in a recent criminal verdict.[272] Similar actions brought by two groups of relatives of victims of Operation Colombo however did not prosper, even though they make reference to what is probably one of the most notorious media propaganda actions of the whole dictatorship period: the publication by the *La Segunda* newspaper, on 24 July 1975 of the headline "Exterminated Like Rats".[273] In 2019 the Santiago Appeals Court rejected a writ of protection requested by the sister of one victim, who had contended that the paper's response to a previous direct request for retraction had been insufficient.[274] The rejection was ratified (though not unanimously) by the Supreme Court in October 2020 and the family has now placed a complaint before the Inter-American Commission of Human Rights. The criminal investigation of another episode of the same operation finally reached its definitive verdict stage at the beginning of 2023,[275] triggering a similar action by another group of relatives. In this second case, however, the petition was not even declared

[269] Ibid.
[270] Since 31 July 2023, under admission code (*rol de ingreso*) Nº 147.560-2022.
[271] The occasion was a posthumous degree award ceremony by the Supreme Court, for lawyers and law students who fell victim to disappearance or execution during the dictatorship. See Observatorio Boletín 74, noviembre-diciembre 2022.
[272] Supreme Court Rol 11.044-2019, 17 September 2019 (Oyarzún con COPESA).
[273] The accompanying article also attempted to cover up the fact that this was a massacre carried out by agents of the dictatorship, accusing the 59 victims of having killed one another in internecine conflict while undergoing supposed guerrilla training in Argentina.
[274] It should be noted that the retraction that was requested had been partially complied with voluntarily. What was being called into question was the sufficiency of what the paper had agreed to do (in terms of its visibility, and the explicit acknowledgment of the unacceptability of its own previous conduct).
[275] Operación Colombo, main investigation (Supreme Court, Rol 25.384-2021, 27 February 2023).

admissible before the court.[276] Accordingly, and despite the advances mentioned in section 2, Chile's communications media and other private entities continue relatively untouched by recent trends toward greater accountability, and appear moreover unrepentant when called on to recognize their previous complicity or take measures to amend their own past actions.

4. MEMORY

4.1 State Actions

At no point in the post-dictatorship period has Chile managed to create an official state memory policy conducive to the creation of a consistent, concerted public awareness of dictatorship's implications, or of the kind of associated civic learning that strengthens democracy. This omission has left organized civil society as the principal motor of memorialization, with the organic emergence of a calendar of commemorations to mark significant ates. These memory practices stretch far beyond marking the 11 September coup anniversary, with multiple initiatives and forms of remembering taking place in every region of the country as well as, increasingly, in virtual space. This proliferation, in many ways to be welcomed, nonetheless carries hidden risks given the continuing absence of decisive State action to prevent the downplaying, relativization or even outright denial of the grave human rights violations committed by the dictatorship. The painstaking accumulation of administratively and judicially-produced official truths about particular episodes, facts and detail that has taken place through two truth commissions and in the courts has to date prove insufficient. The announcement, in early September, of a governmental legislative agenda including the creation of a national policy on Memory and Patrimony is accordingly welcome, not least because it should serve to regulate and improve the financing and upkeep of the country's memory sites. It is to be hoped that this initiative is treated with due seriousness and respect by all of the wide range of political forces and tendencies currently represented in parliament, since it aims to promote a common good in the interests of all citizens, whatever their ideological preferences.

Meanwhile, despite the absence of both the announced initiative and the minimum moral and ethical consensus around which it will need to be built, some advances or achievements can be seen in the recent period. These include the construction, public co-funding, and/or acknowledgement of new memorials or memory sites, and some purging from public space of artefacts glorifying authoritarianism, although the period has also seen backward steps and failures. Some illustrative examples of advances include a citizen-led campaign to remove the name of Augusto Pinochet from the Carretera Austral. A large, imposing cast-iron sign explicitly dedicating this major national artery to the former dictator has stood for many years in a prominent position in the town of La Junta, where the highway begins. The campaign, which has included an e-petition on the Change.org platform, led the government to announce that it was considering substituting the sign for one that instead pays homage to the military units who worked on the building of the road.[277] It is not the first time that this particular site

[276] Santiago Appeals Court, admission code Nº 9.992-2023-protección, *Andrónicos contra El Mercurio S.A.P – La Segunda*, brought on 26 May 2023, declared inadmissible by the Appeals Court on 30 May 2023, inadmissibility confirmed by the Supreme Court on 20 June 2023.

[277] *La Tercera*: "¿Se va Pinochet de La Junta? Gobierno planea reemplazar monumento en plena carretera austral por los 50 años del Golpe", 5 June 2023.

has featured in a plea for change: as far back as 2017, the lower chamber approved a draft resolution, Proyecto de Resolución N° 920, requesting that then-president Bachelet order "the removal of monuments exalting former members of the [dictatorial] Military Junta and, where relevant, a change to the nomenclature of sites in public space that currently pay tribute to these persons".[278] Three years previously, in 2014, parliamentarian Karol Cariola sponsored a bill that also sought to prohibit homages to or glorification of the dictatorship, but the project shows no further activity or advance since 2018.[279]

Some have turned to the courts in pursuit of similar ends, and one such action saw recent success in forcing the removal of a statue of former navy commander in chief José Toribio Merino from the frontis of the Valparaiso maritime museum. Merino was a coup plotter and junta member, and numerous groups of survivors and other activists had long campaigned for the statue to be taken down. Lawyer and former political prisoner Luis Mariano Rendón, acting on behalf of the Historical Memory association that he founded (Corporación Memoria Histórica) initiated a series of legal actions that saw the monument finally physically removed by the navy in June 2022, in compliance with a court order.[280] The Santiago Appeals Court ruling, in response to a writ of protection (*recurso de protección*) made mention of the state's obligations in the areas of guarantees of non-repetition an 'due reparations',[281] rejecting the navy's counterargument invoking Merino's status as a former commander in chief signalling that "it was precisely in this capacity that he directed and led naval forces to act against the legally constituted government of the day". The ruling went on to point to his time as "part of a de facto regime, as a member of the military Junta, responsible for innumerable deaths, disappearances, and perpetration of torture which are still being investigated before the courts almost 50 years later".[282] The Historical Memory association has continued along the same lines in other cases, challenging the Army, uniformed police (Carabineros) and the Ministries which oversee them (see section 5.5, *infra*). Other welcome advances in the period included a change to the title of the velodrome of the National Stadium, which will henceforth bear the name of national cycling champion and MIR activist Sergio Tormen Méndez, forcibly disappeared by the dictatorship in 1974. The change was the result of a long campaign by Sergio's family.[283]

4.2 Civil Society

The importance of ensuring participation, acceptance and ideally unanimity among neighbourhood communities or groups of stakeholders affected by name changes was underlined by difficulties surrounding various similar initiatives, including in Puerto Montt where a street formerly named after the local military regiment had its name changed to "The Sportsmen" (Los Deportistas), to remember four footballers who were killed there in

[278] Infogate.cl: "Diputados de Nueva Mayoría piden a Presidenta Bachelet retirar monumentos que recuerden dictadura militar", 12 September 2017.
[279] Chamber of Deputies, Boletín 9746-17.
[280] Santiago Appeals Court Rol 37.319-2021, 17 June 2022. See also the 2020 edition of this report, and below, main text section 5.5.
[281] Santiago Appeals Court, Rol 37.319-2021, op. cit., and DiarioUchile: "Corte de Apelaciones ordena a la Armada retirar estatua del almirante Merino del Museo Marítimo", 17 June 2022.
[282] Santiago Appeals Court, Rol 37.319-2021, op. cit.
[283] Cultura.gob.cl: "Velódromo del Estadio Nacional se llama Sergio Tormen en homenaje a ciclista detenido desaparecido", 30 April 2023.

1974 by Air Force operatives.[284] A group of local residents formally requested the change be revoked, arguing that it had caused them considerable administrative and practical difficulties.[285] A similar initiative by the Santiago city council caused even greater controversy: with the occasion of the 50th anniversary of the coup in mind, the council decided to accept citizen suggestions and proposals which included changes to the names of 11 streets, nine of them to names recalling victims of dictatorship-era disappearance or execution.[286] Ahead of the changes, reservations were expressed as to whether the name changes were licit or not, reservations which some considered to have been motivated by ideological objections or far-right denialism. After the fact, meanwhile, a broader range of voices criticized one particular initiative for having effaced the original street name 'Santa Monica', well known to human rights defenders as housing the headquarters of the Comité ProPaz, forerunner of the emblematic Vicaría de la Solidaridad.[287] A range of spontaneous and informal actions along the same lines also took place or intensified around the 50th anniversary, with visible evidence in downtown Santiago of street art interventions replacing official signage with stickers or stencils bearing the names of the disappeared or executed. The actions echo similar interventions in 2019, when Metro stations were informally 'renamed' by feminist activists.

Attacks on memory sites around the country have meanwhile continued, though at a slightly lower reported frequency than in previous comparable periods. Between 2018 and 2022 at least 118 such attacks were registered, with 39 of these taking place in 2021 or 2022.[288] Memorials were the single most frequent category of target, featuring in 45.8% of the reports, followed by memory sites at 36.4%. In terms of geographical distribution, 40.7 of reports were of incidents that had taken place in Santiago and surrounding districts, followed by Valparaíso (16.9%) and Biobío (10.2%). Memory sites fulfil an important social function, contributing to the satisfaction element of states' duties in reparation and GNR – but they can only fulfil this function if they are publicly accessible. It is worrying, therefore, that the State does not have effective plans in place to protect and maintain them. The period did produce a welcome, albeit long overdue, announcement that the women's memorial currently situated above Santiago's Los Heroes metro station was finally to be permanently relocated. Inaugurated in 2006, the monument "Women in Memory", dedicated to all female victims of political repression between 1973 and 1990, has spent well over half of its 18 year existence in a state of absolute abandonment and disrepair, as we have pointed out in numerous previous editions. The most recent announcement promises it will be moved to nearby Paseo Bulnes, the location for which it was originally designed, although there is no mention of

[284] See the 2021 edition of this report.
[285] SoyChile.cl: "Vecinos de calle Los Deportistas de Puerto Montt inician campaña para revocar cambio de nombre", 3 May 2023. It is worth underlining that the group appears to have been opposed not to the idea of the commemoration but to its form, having suggested the installation of a monolith instead of the street name change.
[286] Amongst them Alicia Aguilar Carvajal, killed by military bullets in 1973 at only six years of age, while playing in the street outside her house.
[287] Elmostrador.cl: "Las historias de niñas y mujeres ejecutadas detrás del renombre de calles en Santiago", 9 August 2023, and Elmostrador.cl "Lamentan cambio del nombre a calle del Comité Pro Paz: 'violenta la memoria de los derechos humanos'", 11 August 2023.
[288] Source: Unidad de Cultura, Memoria y Derechos Humanos del Ministerio de las Culturas, las Artes y el Patrimonio (2023), Informe de Agravios a Lugares y Sitios de Memoria entre los años 2018 y 2022, Santiago: Ministerio de las Culturas, las Artes y el Patrimonio (MinCAP).

timescales or of any measures that will be taken to ensure that it is better protected and cared for in its new placement.[289]

Between 2022 and the present, a total of 11 memory sites were conceded National Monument status, which implies some legal protection, and for which some had been waiting for a considerable time, having applied under the previous administration. Counting the 11 new concessions, as this edition went to press a total of 48 memory-related sites had received formal national monument status under Law 17.288. Another five sites were signed over, temporarily or permanently, to social organisations in the period since 2022. In all cases, the organisations concerned had spearheaded years of campaigning for the recovery of the spaces. A total of 16 sites are currently open to the public for educational purposes, in different regions of the country. In addition, on 1 September 2024 it was announced that the former detention centre located at Irán 3037, in the Santiago municipal district of Macul, had been successfully expropriated, ie recovered by the state. The site is particularly notorious for its association with torture in the form of extreme sexual violence.[290] National cultural agency the Servicio Nacional del Patrimonio Cultural is currently implementing a memory site programme aimed at supporting and strengthening the management of these spaces.[291]

Memory sites will doubtless feature prominently on the agenda of public activities to commemorate the 50th anniversary of the coup, with sites creating their own programmes alongside hosting or taking part in official events: most initiatives announced ahead of the 11 September anniversary were scheduled to take place at, or in association with, at least one memory site.[292] The Observatorio was also given to understand that official resources have been earmarked for a new memory route to connect Patio 29 with the main commemorative wall of names in the Santiago General Cemetery, and for a monolith and pedestrian plaque in Morandé street, which runs beside the presidential palace, to commemorate the victims of the 11 September bombardment.[293] Memory sites and spaces also feature prominently in the actions promised in the second National Human Rights Plan, covering the period 2022 to 2025. Ten of the actions promised to further the goal of "ensuring access to truth, investigation and sanction of all massive and systematic human rights violations committed during the dictatorship, reparations for victims, and the preservation of historical memory" are directly and specifically connected with memory sites or memorials. While this fact can be regarded in a positive light, it is important to underline the importance of commemoration reaching beyond the confines of existing memory spaces. Memory also needs to be public

[289] Cultura.gob.cl: "Ministra de las Culturas anuncia reubicación y reconstrucción de 'Mujeres en la Memoria. Monumento a las Mujeres Víctimas de la Represión Política 1973-1990'", 7 March de 2023.
[290] Announcement by the Ministerio de Vivienda y Urbanismo, Diario Oficial No. 43.642, 1 September 2023.
[291] Servicio Nacional de Patrimonio Cultural, Resolución exenta n° 0452, 4 April 2023, which approves the terms for the public call for tender for the Memory Sites programme: "aprueba las bases de convocatoria pública del programa denominado Sitios de Memoria: reconocimiento, resguardo y sostenibilidad patrimonial, del servicio nacional del patrimonio cultural, de acuerdo a la partida 29, capítulo 03, programa 01, asignación 210, de la ley 21.516, de presupuesto para el sector público, año 2023".
[292] Source: https://www.50.cl, a state platform that has been placed at the disposal of the public, under the auspices of the Ministry of Culture, to act as a focal point for the communication of a range of initiatives related to the commemoration of the 50th anniversary of the coup, under the banner of "Democracy is Memory and Future" (*Democracia es memoria y futuro*).
[293] As well as "co-ordinated work" across a range of ministries to explore public access and a memorial for Lonquén. Written reply received on 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

and visible, permeating the public sphere and present in physical, virtual and discursive spaces, if the forces of relativism and denialism discussed above are to be counteracted.

5. GUARANTEES OF NON REPETITION

A broad - perhaps excessively broad – definition of the concept of guarantees of non repetition could lead us to conflate assessment of the overall situation of human rights prevailing in any post-authoritarian or post-conflict country, with its level of success or failure in learning lessons from its recent past. If that approach were to be taken, each of the other thematic chapters in the present report provides an account of some achievements, but also of some failings or gaps, in Chile's GNR trajectory after almost two and a half decades of restored electoral democracy. This chapter however adopts the more modest definition of GNR endorsed by the first ever UN special rapporteur in this area, according to which the primary objective of GNR in any transitional justice framework or programme should be to avoid a recurrence of grave and/or systematic violations, in particular.[294] From the perspective of such a definition, the other chapters of this report whose themes resonate most closely with GNR are those which address the slow, partial and still deficient State response to human rights violations committed by police and security forces in response to the social protests that first irrupted in 2019.[295] On the other hand, the present Rapporteur has been keen to underline that systematic violations tend, today, to have multiple causes and points of origin, with nonstate, including corporate, actors often playing a direct role as perpetrators and facilitators.[296] This observation broadens the field of action, making it a legitimate transitional justice concern to advocate for profound, progressive, social and economic transformations in postconflict or post-authoritarian societies, and to attend to the social, cultural and collective dimensions of prevention of violence and of grave violations. In this reading, for example, it is reasonable to celebrate recent governmental initiatives such as the strengthening of existing antidiscrimination laws, as they are in line with the state's transitional justice duty to promote GNR.[297] The scale of the challenge that promoting a culture of human rights presents also implies that while the State remains the principal subject of obligation, GNR must also be a collective concern shared by all social actors.[298] Another recent report from the UNSR on transitional justice makes particular reference to the valuable role of social mobilization, including survivor-led activism, in driving the key societal changes needed for transformation and prevention. The report recommends particular attention to the promotion of participation by children and young people.[299] A separate report

[294] UN A/HRC/30/42, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 7 September 2015.

[295] A response that apparently plans to draw for support on some programmes initially created in response to dictatorship-era represión, for example, PRAIS. Source: written reply received on 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

[296] UN A/HRC/51/34, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, report on the role and responsibilities of nonState actors in transitional justice processes,* 12 July 2022.

[297] The current Law Ley 20.609. Written reply received on 16 August 2023 from the Subsecretariat of Human Rights, op. cit.

[298] UN A/HRC/30/42, op. cit.

[299] UN A/77/162, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Sustainable Development Goals and transitional justice: leaving no victim behind,* 14 July 2022.

on gender perspectives describes memorialization as one of the main areas in which GNR take root and are put into practice. It goes on to recommend a deeper articulation of memorialization with gender, going beyond mere visibilization of women's memories, to instead take due note of the particular ways in which women transmit memory.[300]

The section that follows makes mention of just some recent initiatives in Chile – of many possible examples – that demonstrate the valuable role of social and cultural actors as motors of collective change. Many are intergenerational actions led by survivors, which also demonstrate application of gender perspectives. One other notable feature of some of them is that they act as living proof that it is possible to create positive collaboration between critical social movements and state or public institutions or entities. It is no accident that many of these positive examples come from the world of arts and culture, perhaps uniquely suited as it is to creative cooperation with public institutions who do not necessarily feel the need to assume defensive positions or control the narrative of their social movement counterparts.

5.1 Feminist and Survivor Protagonism Against Torture

In mid-July 2023 the Museum of Memory and Human Rights was the venue for a commemoration of the International Day of Solidarity with Torture Survivors. A group of social organisations and historic NGOs issued an open invitation to an event that emphasized the role of women as leaders, resisters, organisers, survivors and prime movers in the struggle to put an end to torture wherever and whenever it occurs. A powerful address delivered by Juanita Aguilera, co-organizer of the Comisión Ética contra la Tortura (CECT), made reference to the wide range of women who continue to risk their own physical and mental wellbeing to oppose new forms of structural and patriarchal violence. The event also celebrated the many women present who were active during the dictatorship in resistance, political leadership, receiving and sheltering political prisoners, denouncing and publicizing the torture practiced by state agents often for no other purpose than the sheer enjoyment of causing suffering. The meeting remarked how the return to electoral democracy has proved clearly unequal to the task of putting an end to the practice, and called for the design and implementation of GNR measures explicitly aimed at prevention, investigation and sanction of present-day torture in all its forms. The event, like the longstanding work of its principal organisers – including the CECT and mental health organisation the Centro de Salud Mental y Derechos Humanos (CINTRAS) - is a prime example of the UN's call, above, to join forces in order to pursue necessary social transformation.

The 'no more torture' call made by the event mentioned above was echoed at an emotive mass event held on 22 July 2023 in homage to the 119 victims of Operation Colombo, a set piece repressive operation carried out by the DINA secret police. The 119 people involved – for the most part young activists of the MIR – returned to once again fill the streets of the capital with light and colour, despite the clouds and rain that accompanied the event. Relatives, comrades and friends of the 119 disappeared or executed activists joined forces with human rights defenders and other participants of all ages, to carry cutout figures made in the exact likeness of each victim in procession through the streets. The action made its

[300] UN A/75/174, *The gender perspective in transitional justice processes, Note by the Secretary-General, 17 July 2020*, 17 July 2020.

way through city centre Santiago from the Museo de la Memoria to the Museo Nacional de Bellas Artes. Some press sources estimated that the event attracted over 2,000 participants. A range of artistic and symbolic interventions were carried out along the way, from dance to mime, and various protests were raised against denialism and impunity.[301] The action constitutes another example of the social impulse mentioned above, as well as of the kind of positive synergy between state entities and social collectivities that is so vital if the cause of GNR is to be furthered. The event also served as an unexpected posthumous tribute to José Rodríguez, the artist who led the original creation and recent restoration of the silhouettes, and who took his own life shortly before the event.

5.2 University and Judicial Tributes to Victims from the Legal Profession[302]

Between June 2022 and August 2023 the Chilean bar association, the country's Supreme Court, and three national universities each organized ceremonies completing the legal studies or training of a total of 25 victims whose legal careers were cut short by dictatorship-era repression. The actions were the result of a joint initiative between the relatives' association Agrupación de Familiares de Ejecutados Políticos (AFEP), and members of the Human Rights Committee of the Bar Association, who called on the Association in mid 2019 to rescue and commemorate the history of its own members who had fallen victim to the dictatorship. As a first step, a review of the Bar Association's archive revealed 10 names of qualified or practising members of the legal profession (having completed their studies and who had forcibly disappeared or been extrajudicially executed. On 13 June 2022 a ceremony of memory and symbolic reparation was held at the headquarters of the Association, attended by relatives and authorities. A biography of each person was read, noting features of their personal and professional lives alongside the circumstances of their death or disappearance. A plaque was unveiled in the Association library, with a replica presented to each family. The ten lawyers whose lives were celebrated were: Carlos Berger Guralnick, Julio César Cabezas Gacitúa, Rubén Guillermo Cabezas Parez, Arnoldo Camú Veloso, León Eduardo Celedón Lavín, Roberto Guzmán Santa Cruz, Sócrates Ponce Pacheco, Reinaldo Salvador Poseck Pedreros, Arsenio Poupin Oissel, and Carlos Helen Salazar Contreras.

The Committee and AFEP subsequently asked the Supreme Court to concede the status of qualified lawyer posthumously to victims who were killed or disappeared before finishing their legal studies, or once qualified but before the swearing in ceremony before the Supreme Court that is the final stage required to practise law in Chile. The Bar Association, AFEP, and various judicial personnel and academics worked together to identify 13 names, acknowledged in later ceremonies. The first group, Cecilia Gabriela Castro Salvadores, Germán Rodolfo Moreno Fuenzalida, Patricio Munita Castillo, Juan Ramón Soto Cerda and Marcos Orlando Letelier del Solar, had their posthumous law degrees recognised by a full sitting of the Supreme Court on 11 January 2002.[303] In a solemn ceremony held on 16 November 2022 in the presence of members of the Supreme Court, various Appeals Courts, and other judicial authorities, each family then received their loved one's final certifications.

[301] DiarioUChile: "Siluetas en homenaje a las 119 víctimas de la Operación Colombo marchan por Santiago", 22 July 2023.

[302] Special thanks for the content of this section to Joaquín Rubio Schweizer, a lawyer and member of the legal team of the relatives' association AFEP, and of the Human Rights Commission of the Chilean Bar Association, the Colegio de Abogados de Chile.

[303] Supreme Court Autos Rol AD 964-2020, 11 January 2022.

Deans of the law faculties of three universities, the Universidad de Chile, Universidad de Concepción, and Universidad Católica de Valparaíso, were then approached with a request to confer symbolic diplomas on a group of eight people who had been studying law at the time they fell victim to dictatorship-era violence. Once the degree certificates had been emitted, the Supreme Court agreed to carry out a second swearing-in ceremony, on 29 August on the eve of the International Day of Victims of Enforced Disappearance. Silvio Vicente Pardo Rojas, Fernando Álvarez Castillo, Jaime Emilio Eltit Spielmann, Littré Quiroga Carvajal, Héctor Mario Silva Iriarte, José Tohá González, Fernando Abraham Valenzuela Rivera and Guillermo Osvaldo Vallejo Ferdinand were called to the bar at this second ceremony.

These memory actions serve as symbolic reparations for relatives and for society as a whole, at the same time as they offer the professional associations, universities, and judicial institutions involved an opportunity to take decisive actions in favour of truth and memory after having been themselves accomplices or passive bystanders to the injustices and abuses involved. Insofar as the actions serve to increase awareness among current and future members of the legal profession and judicial branch, they also contribute to GNR. Other professional associations, trades unions, and institutions of higher education have taken or are taking similar steps,[304] showing that this is a model that can be emulated, including in the aspect that involves collaboration between authorities and civil society.

5.3 Universidad de Valparaíso Embarks On a Process of Reflection and Reparation

In anticipation of September's 50th anniversary, in March 2023 the Universidad de Valparaíso (which until 1981 operated as the Valparaíso campus of the Universidad de Chile) set up a joint staff-academic-student committee to review the university's dictatorship-era record. Supported by staff from state health reparations programme the Programa de Reparación y Atención Integral en Salud (PRAIS), local self-convened historical memory association the Taller de Memoria Histórica,[305] and an expert in human rights law, the committee set itself the task of identifying members of the university community who had been directly harmed by dictatorship-era repression and making proposals for appropriate symbolic reparations. The Committee devised various methods for identifying, inviting and listening to its target audiences, creating virtual and in-person encounters and organising three public meetings at which broader community participation was welcomed.

By mid-2023 the University had received more than 150 testimonies from current or former members of the university community who had been victimised by the dictatorship, or relatives of absent victims. The symbolic reparation measures that the university is considering range from a public ceremony of acknowledgement, to take place in September 2023, to the awarding of posthumous degree certificates to those who feature among the dead or disappeared, and the founding of a named lecture and activity series with a human rights

[304] The Observatorio understands, for example, that the Medical Association (Colegio Médico) has embarked on a similar process of internal reflection, using a truth commission format.

[305] A social organisation from Valparaíso that carries out peer to peer work among people who suffered dictatorship-era political violence, including anti-impunity actions.

theme. The initiative demonstrated the University's commitment to truth and GNR, and led to an institutional commitment to create a more permanent and forward-looking project under the title "Memory of the Universidad de Valparaíso".

5.4 Intergenerational and International Eco-Memorial Project

The arrest of Pinochet in London in 1998 is often regarded as a decisive moment for much of Chile's subsequent domestic justice activity. However many other resistance and rights-claiming processes also began in the wake of the international activism that grew up in the 503 days of Pinochet's detention and extradition hearings. Many of these processes were begun and conducted by diaspora and solidarity communities that formed or re-formed to push for the arrest or in response to it. One example is the Ecomemoria.cl project, run by some of the same people behind memoriaviva.com.[306] Ecomemoria is an intergenerational project of people exiled by the Chilean dictatorship. In its first phase, the project planted trees in Chile's Araucanía region and in other selected sites around the world, as a tribute to victims of repression and as a contribution to greater ecological awareness. Phase two, around the 50th anniversary of the coup, involves expanding the project's existing intervention in Curacautín, Región de La Araucanía, with the goal of planting a native tree in the name of each absent victim (person forcibly disappeared or executed by the civil-military regime). The project has all the hallmarks of the intergenerationality and shared protagonism that the UNSR calls for in his thematic reports on the pursuit of transitional justice objectives in relation to GNR and the UN's sustainable development goals.[307]

5.5 Institutional Culture and GNR in the Armed Forces and Police

As discussed in section 4, above, over a number of years the Corporación Memoria Histórica represented by its co-founder and president Luis Mariano Rendón, has undertaken various actions inviting the Armed Forces and forces of public order to show contrition over their dictatorship-era actions and make clear their commitment to "nunca más", 'never again'. The invitations pay particular attention to changing the internal culture of these institutions regarding the values that they pass on to present-day trainees. The Corporación's first actions took the form of direct requests and informal conversations, but moved into the legal arena after 2018 due to the inadequacy of the responses received. Since then a range of legal tools have been deployed, making creative use of the writ of protection route as a way of inviting the courts to make the precepts of international human rights law real in the areas of symbolic reparations, truth, and above all GNR. The Corporación has taken aim at various vestiges of the cult of tribute to the dictatorship, and figures associated with it, that is still embedded in military installations and practices.[308] As news of the Corporación's activities has spread, more sources from inside and outside the relevant institutions have made contact with it. The information they have provided reveals the continued existence of a thriving institutional culture at odds with the democratic, constitutional, and rights-respecting values that the country's armed forces ought to espouse.[309] The Corporación's first set of legal actions, reported on in depth in the 2020 version of the present chapter, sought to obtain the forcible

[306] A project that is mentioned above, in the Justice section, and describes itself as a "collectivity that originated in London as a response to the ongoing denial of justice in Childe justicia en Chile, with the aim of contributing to a future without impunity". https://memoriaviva.com/nuevaweb/quienes-somos/.
[307] UN A/HRC/30/42 and A/77/162, op.cit.
[308] See https://memoriahistorica.cl/ for a complete list.
[309] Interview with Luis Mariano Rendón, Santiago, 28 April 2023.

removal of artefacts paying tribute to Manuel Contreras and to José Toribio Merino. At the time, the only positive outcome was partial success in the form of a court order instructing the army to remove plaques and a photograph of Contreras – at the time perhaps Chile's most-convicted and most notorious perpetrator of crimes against humanity. Renewed legal action and sustained dialogue with Naval authorities led subsequently to the removal of the statue of Merino from its previous place of honour in the gardens of Valparaiso's Naval Museum, an outcome long-demanded by the Corporación and by numerous other local, national and international human rights groups. In a resounding verdict delivered in June 2022 the Santiago appeals court accepted a writ of protection that alluded to the psychological and social harm caused by the presence of the statue, which left Merino as one of only three ex-commanders in chief in the past 90 years to have received such an honour.[310] The verdict ordered the image to be removed not only from its original plinth but also from "any other public space or building".[311] Luis Rendón, who presented the writ in his capacity as a survivor of political imprisonment and torture, welcomed the outcome as a "notable victory" and "a triumph for the human rights movement in general, and victims of the Navy in particular". He also made critical reference to the incumbents of the two Ministries against whom the writ was also directed - Defence, and Justice and Human Rights, respectively, describing them as "submissive" to militarism given that both made written submissions to the Court stating that in their view the removal of the statue of Merino was an entirely internal matter for the Navy alone to resolve as it saw fit.[312]

Once the statue was removed a series of other writs and communications followed, seeking variously to discover where the statue had been taken; to create an accurate list of similar sites and tributes in other navy installations including Isla Dawson, and to request the removal of these. In the face of this onslaught the Navy finally replied in March 2023 acceding to all requests but one: a case was made for the retention of a portrait and photograph of Merino to be kept in a gallery which supposedly houses similar images of all other navy commanders in chief, past and present. The Santiago Appeals Court nonetheless took the decisive position that the Navy's having acceded to the other removals amounted to a concession of the principle at issue, and that the photo and portrait should therefore also be eliminated. The Court however stopped short of ordering the installation, in place of the statue, of a memorial to victims (as the original writ had requested).[313] The Corporación has subsequently used access to information requests to verify compliance with the measures ordered by the Court. It has also continued to maintain lines of direct communication and dialogue with Naval authorities, in pursuit of its overarching goal to promote and/or support changes in institutional thinking and in the attitudes and values which are inculcated among new generations of young officers presently in training. For similar reasons, the Corporacion has pursued writs against the uniformed police, Carabineros, regarding tributes to dictatorship-

[310] The other two being Thomas Cochrane and Manuel Blanco Encalada.
[311] Santiago Appeals Court, Rol 37.319-2021, 17 June 2022.
[312] Diario UChile: "Corte de Apelaciones ordena a la Armada retirar estatua del almirante Merino del Museo Marítimo", 17 June 2022; correction due to correspondence with Mr. Rendón on 14 August 2023.
[313] Santiago Appeals Court, Rol 1.887-2022, 17 March 2022 (accepting appeal for action of protection). On the same date, under reference Rol 10-2022, another appeal was rejected on the basis that the action it sought – the removal of a bust of Merino from the Naval School – had already been carried out.

era police chiefs César Mendoza (1973-1985) and Rodolfo Stange (1985-1995),[314] and over the nomenclature of the junior officer training school (Escuela de Suboficiales).[315]

These new actions also name as respondents the respective Ministries –Defence, Interior and Public Safety, and Justice and Human Rights– since as the Court itself has already acknowledged, GNR is an international obligation that applies to all state entities, including the Ministries responsible for ensuring that the Armed Forces and police are fully subject to civilian democratic control.

6. CONCLUSIONS AND RECOMMENDATIONS

In the 2021 edition of this report, we reviewed all of the recommendations made in successive iterations of this annual chapter since 2011. While this review indicated some advances, it also evidenced how many actions remain pending if rights to truth, justice, reparations and guarantees of non-repetition are to be secured according to international standards and Chile's related obligations. The numerous significant anniversaries alluded to in the introduction to this chapter – 50 years since the coup, 25 years of renewed criminal justice efforts, and 15 years of the Observatorio – offer a renewed opportunity for examining achievements, highlighting unfulfilled promises, and evaluating recommendations that should be made or need to be repeated.

The present chapter offers two obvious emphases: first, the new public policy on search and second, a notable tendency for actions or measures in any or all of the dimensions of transitional justice to be brought before the courts. The objective of putting an end to the Valech secrecy law has to date been pursued via legal recourse brought by survivors, whether as individuals or in organised associations. Constitutional actions for protection have been used to attempt to force retractions of flagrant denialism

Material reparations have been pursued via civil claims, and actions for review (*recursos de revisión*) have been designated by the Supreme Court as the method by which survivors falsely convicted by war councils can have their spurious sentences dissolved. Even the 'de-Pinochetisation' of public and military space have been made the object of judicial actions. This judicialisation doubtless has its positive side, insofar as it has accentuated already favourable tendencies within the justice system toward greater familiarity with, and acceptance of, international standards applicable to crimes against humanity and the need to interpret and apply domestic norms in consonance with these. At the same time, the resort to judicialisation has its worrying dimension. First because it represents and requires the initiative and protagonism of victims themselves, something that ought to be unnecessary if state obligations had been complied with in a timely fashion, and ex officio. Second, because time moves inexorably on, and prolonged legal processes mean many people do not live to see the small quotient of justice that they so long desired. Moreover because – as the public opinion measures reported here reveal – judicial truths do not translate automatically into

[314] Which had already been a focus of controversy in August 2020, when the institution proposed naming its Academy of Police Sciences in "honour" of the former commander in chief who had been linked in the mid 1990s with coverup attempts in the Degollados case, refusing, moreover, to resign when then-president Eduardo Frei requested that he do so.

[315] Named after Fabriciano González Urzúa, a uniformed police official who died a few days after the coup.

social truths. We cannot afford, then, to believe in a 'magical legalism' by which the accumulated verdicts, convictions, and claims lead directly to the kinds of cultural, institutional, and social changes needed to create awareness and guarantee non-repetition. At the same time, these educational and preventive tasks have perhaps never been more urgently needed, when we see how prevalent denialism has become, and with it something even more insidious: justification of atrocities, an attitude which differs from denialism only in dispensing with even the pretence of regarding the acts involved as shameful.

Improvements in the quantity or quality of political will, suggested by the National Search Plan and other measures announced in September 2023, are not capable by themselves of taking on what is a daunting challenge that needs to be tackled society-wide. This challenge requires, after all, profound scrutiny of how we treat one another, and of how, and about what subjects, we talk to our children, neighbours, students, colleagues, partners and peers. That said, improved political will is also essential and is also welcome. Over the recent period it has made itself noticeable, particularly although not exclusively in the launch of the National Search Plan, an initiative that perhaps inevitably has attracted a large part of the attention that this anniversary has attracted both inside and outside the country. Other issues cannot afford to be neglected, however, which is why the broader legislative agenda announced in September 2023 is welcome, as is the promise to attend in 2024 to other categories of victimisation including what have come to be referred to as "irregular adoptions". In the arena of the courts, it is also promising to see signs of reversal of inequities and injustices some of which arose in post-dictatorship times, in both criminal and civil cases. All things considered, the Chilean courts must be counted among those few domestic jurisdictions in the world that have undertaken – largely at the insistence of survivors and victims' relatives – a sustained and prolonged transit toward proportionality in sentencing and satisfaction as a goal of reparations. They have done so in a case-by-case, and unduly individualising, manner but it is not entirely too late for key justice system actors to introduce greater consistency and coherence, applying a 'macro' perspective to criminal prosecution. Even so, there are noticeable weaknesses – some of them structural and systemic – that need to be overcome. These include preventing flight by perpetrators awaiting final sentence confirmation, and monitoring, securing and reporting on the correct serving of custodial sentences once imposed.

Some aspects of outstanding justice tasks however send the ball back into the government's court: a general dissolution of the outcomes of courts martial; the derogation or annulment of the effects of the amnesty decree law; the creation of a system for overseeing the serving of sentences, and decisionmaking as to the correct content and environment for armed forces' training that inculcates democratic values and deference to civilian command, are all measures that require action by the executive and legislative branches of state. As the National Search Plan demonstrates and promises, progress is possible, and there is much still to do, whether in the acknowledgement and reparation of survivors of additional categories of grave and systematic violations, or in amending what the Consejo de Defensa del Estado understands by "the interests of the state".

To seek, find, and identify; to affirm the truth; to continue to work for justice, or to procure prevention, all require the commitment of all concerned, as well as the expertise of those who from the interstices of the State have long dedicated themselves to attempting to repair,

improve, and strengthen the – until now – lukewarm response that human rights defenders have managed to obtain from the state.

Therefore, among the many possible and necessary measures, we propose or reiterate the following:

Repeat Recommendations

Derogate the Amnesty Decree Law (Law 2.191 of 1978), and suppress all its legal effects

Define clear and public criteria for the judicial determination of amounts of indemnization in reparations awards made through the courts, including differential approaches on the basis of gender and categories of person or community considered in need of special consideration and protection.

Provide the Human Rights Programme of the Ministry of Justice and Human Rights with the mandate, faculties, investigative capacity, and budget necessary to broaden its work – particularly, its legal work – to crimes affecting surviving victims, and to requiring the dissolution of spurious convictions imposed by dictatorship-era war councils or courts martial.

Ensure that the Consejo de Defensa del Estado submits itself to the same responsibilities for compliance with Chile's international duties that are shared by all other state organs and entities, *inter alia* in issues such as recognition of the duty of reparation and avoidance of secondary victimisation in the treatment afforded to people who exercise their right to reparations.

Recommendations 2023

1. Ensure followthrough and implementation of the legislative agenda announced in early September 2023 covering enforced disappearance, the elimination of dictatorship-era secret laws, review of the secrecy provisions surrounding the Valech commission archive, and the creation of a national policy on memory and patrimony. As regards this latter, ensure the protection and conservation of memory sites and relevant state archives. Additionally, make an explicit commitment to the cultivation of anti-authoritarian, human rights-promoting practices and culture within State institutions including the Armed Forces and security services, as part of a holistic memory policy oriented toward non-repetition.

2. Assign sufficient human and financial resources to ensure full implementation of the National Search Plan, guaranteeing its articulation with other transitional justice measures already in operation, its sustainability in time, and the ongoing participation of civil society organisations, relatives, and all other actors with a legitimate interest.

Give particular consideration to the archivistic and IT expertise necessary to secure the Plan's medium and long term future.

3. Support and intensify existing justice system efforts to advance in the investigation and sanction of perpetrators of grave human rights violations, in accordance with the standard of due care while attentive to the growing risk of biological impunity. Reverse the gradual dilution of functions that has negatively affected the capacity of auxiliary justice system entities in the Detective Police (PDI) and Forensic Medical service (SML) in recent years, via the introduction of additional tasks and priorities alongside that of attending to investigation of dictatorship-era crimes. Order the ex officio investigation of systematic torture, including the torture suffered by people who were subjected to spurious convictions by dictatorship-era courts-martial

4. In the process of determining the correct sentencing tariff(s) for crimes against humanity, consider the principle of proportionality and reevaluate the applicability of the mitigating factor of 'previous good character' (*irreprochable conducta anterior*), taking into account the situation of institutionally-mandated impunity that prevailed when these crimes were committed. Consider applying the aggravating circumstance known as 'taking advantage of the official status of the perpetrator' (*prevalecimiento del carácter público del ofensor*), as it appears in the Rome Statute of the International Criminal Court, ICC (rule 145 para. 2b.ii). Create and operationalise contingency plans for acting in a timely fashion to apprehend fugitives from justice, and prevent future repetitions by intensifying existing measures and establishing new procedures such as adequate vigilance at land borders.]

5. In regard to civil claims, review, and where necessary make explicit, the grounds on which relatives of absent victims (victims of death or disappearance), and of survivors subsequently deceased, are or are not treated as entitled to exercise rights to reparation of the moral harm caused. Attending to the principle of equality, and mindful of the inconsistency and lack of explanation that surround these issues of entitlement in the current regime of administrative reparations.

6. Establish a new entity, or equip an existing entity, capable of coordinating and articulating current state initiatives, plans, programmes and policies in transitional justice; ensuring internal and external coherence and the explicit application of a differential gender approach in existing and future measures. Ensure the required level of complementary between reparations measures and social security measures. Guarantee that the state duty of reparations is fulfilled regarding people who are acknowledged in the future – owing to advances in truth, justice, and search – as belonging to existing categories of harm or victimisation, or new categories that may be defined in future.

7. Ensure that the new public policy on Memory and Patrimony announced in early September 2023 sets out to inculcate societal awareness about the causes, responsibilities, and consequences of past crimes and past violence; at the same time as establishing as publicly acknowledged facts, truths whose acceptance is a

necessary condition for healthy, rationally-based social dialogue and tolerance. Include in the policy, assignation of the resources that the Ministry of Culture, Arts and Patrimony, and the Ministry of National Heritage (Bienes Nacionales) require for the correct exercise of their mandated functions. Consider, in relation to all proposals that deal with archives dating from the dictatorship era, the need to establish connections with the Ministry of Defence; Minister of the Interior and Public Security, and Foreign Ministry.