



## Report of the Chilean National Commission on Truth and Reconciliation<sup>1</sup>

### Contents

Foreword by William Lewers, C.S.C. ....	4
Introduction to the English Edition by José Zalaquett.....	6
Guide to the English Edition.....	18
Acronyms .....	18
Introduction.....	20
Supreme Decree No. 355 .....	24
Chapter One .....	28
A. <i>Objectives of the Commission</i> .....	28
B. <i>Knowledge of the truth</i> .....	29
C. <i>Sending evidence to the courts</i> .....	38
D. <i>Acknowledgement of harm inflicted and proposals for reparation and prevention</i> .....	38
E. <i>Chapters dealing with relevant prior circumstances</i> .....	39
F. <i>A truth for reconciliation</i> .....	40
Chapter Two .....	42
A. <i>Norms</i> .....	42
B. <i>Concepts</i> .....	47
PART TWO .....	63
Chapter One: Political Context.....	63
A. <i>Situation in Chile leading up to September 11, 1973</i> .....	64
B. <i>The 1973–1990 political framework and human rights</i> .....	74
Chapter Two: Legal and institutional framework.....	90
A. <i>The months after September 11, 1973</i> .....	90
B. <i>The 1974-1977 period</i> .....	100
C. <i>The 1978-1990 period</i> .....	109
Chapter Three: War tribunals.....	121
A. <i>Laws</i> .....	121
B. <i>Procedure governing war tribunals</i> .....	124
C. <i>Activity of the war tribunals</i> .....	127
D. <i>Observations on sentences issued by the war tribunals</i> .....	136
Chapter Four: Behavior of the courts toward the grave human rights violations that occurred between September 11, 1973, and March 11, 1990.....	140
A. <i>Overall attitude of the judiciary toward human rights violations</i> .....	140
B. <i>The stance of the judicial branch toward applying the established processes most relevant to its obligation to protect human rights</i> .....	142
C. <i>Other actions by the courts</i> .....	150
PART THREE.....	152
Chapter One: September through December 1973.....	152
A. <i>Human rights violations committed by government agents or persons working for them</i> .....	152

<sup>1</sup> Posted by USIP Library on: October 4 2002

Source: Report of the Chilean National Commission on Truth and Reconciliation (Notre Dame, Indiana: University of Notre Dame Press, 1993), vol. I/II, Foreward, xxi-xxii.

Note: Digitized and posted by permission of the University of Notre Dame Press, February 22, 2000.

B. Human rights violations committed by private citizens for political reasons .....	596
C. Reactions of major sectors of society to the human rights violations that occurred in the immediate aftermath of September 11, 1973. ....	605
Chapter Two: 1974 through August 1977.....	613
A. Human rights violations committed by government agents or persons working for them .....	613
B. Human rights violations committed by private citizens for political reasons during the January 1974 – August 1977 period.....	812
C. Reactions of major sectors of society to the human rights violations that occurred between 1974 and 1977.....	816
Chapter Three: August 1977 through March 1990 .....	828
A. Human rights violations committed by government agents or persons working for them .....	828
B. Human rights violations committed by private citizens for political reasons during the August 1977–March 1990 period .....	884
C. People killed in mass protests and demonstrations .....	923
D. Use of undue force and abuses of power tolerated by those in authority .....	967
E. Reactions of major sectors of society to the human rights violations that occurred between 1978 and 1990.....	971
Chapter Four: Impact of the most serious human rights violations on families and social relations .....	997
A. Loss and grief: "Human beings sometimes kill human beings..." .....	998
B. Torture: "If they had just killed them outright, it wouldn't be so hard..." .....	1001
C. Prolonged uncertainty: "... this long nightmare from which I don't know if I'm ever going to awaken..." .....	1002
D. Damage to personal integrity: "Why did they take away my chance to be happy?"... ..	1005
E. Family life disrupted: "They didn't sentence just him. They sentenced the whole family..." .....	1010
F. Sense that familiar reference points have changed: "They changed the country on us..." .....	1013
G. Being stigmatized and outcast: "We feel like outcasts in our own country..." .....	1015
H. Positive forces: "I got strength from God, from my wonderful memories of him, and from the support I received from so many people who had gone through the same thing..." ..	1019
I. Feelings today: "One phase is ending but a more difficult one is beginning..." .....	1019
Chapter Five: Cases declared to be unresolved.....	1022
PART FOUR.....	1057
Chapter One: Proposals for reparation .....	1057
A. Introduction.....	1057
B. Recommendations for restoring the good name of people and making symbolic reparation.....	1058
C. Legal and administrative recommendations.....	1060
D. Recommendations in the area of social welfare.....	1062
E. The most urgent recommendations .....	1073
Chapter Two: Prevention of human rights violations .....	1075
A. Introduction.....	1075
B. Suggestions in the institutional and legal area to assure that human rights remain in force.....	1077
C. Suggestions aimed at consolidating a culture truly respectful of human rights.....	1104
D. Truth, justice and reconciliation as preventive measures .....	1112
Chapter Three: Further recommendations .....	1115
A. Creation of a public law foundation .....	1115

<i>B. Applying sanctions for concealing information on illegal burials and competence in investigating such matters</i> .....	1117
Chapter Four: Truth and Reconciliation .....	1118
APPENDICES .....	1121
Appendix I: Cases outside the Commission's mandate .....	1121
Appendix II: Statistics.....	1122
Appendix III: National Commission on Truth and Reconciliation Staff .....	1126

**Foreword** by William Lewers, C.S.C.

On behalf of the Center for Civil and Human Rights of the Notre Dame Law School, I wish to express our gratitude for the privilege of bringing to the English-speaking world the Report of the Chilean National Commission on Truth and Reconciliation.

Before acknowledging the significant contributions that many persons have made to the successful completion of this project, I dedicate this English edition of the Report to the men and women of Chile who worked so courageously for human rights during the long nightmare of the Pinochet dictatorship. Their endeavor to "speak truth to power" provides an unforgettable example of the human spirit's capacity to struggle for justice against seemingly impossible odds.

Since his inauguration on March 11, 1990, President Patricio Aylwin has guided the Chilean transition to democracy with wisdom and grace. By promptly establishing the National Commission on Truth and Reconciliation, appointing its members and staff director, and giving to it its mandate, he initiated the painful search for the truth that hopefully will make reconciliation possible.

In carrying out its mandate, the members of the National Commission on Truth and Reconciliation and their supporting staff have earned the respect of the international human rights community for the integrity and professional competence with which they conducted their work. As a result, the policies and procedures of this Commission ought to be viewed as models for similar undertakings in future transitions from authoritarian regimes to democratic governments.

After the publication of the Commission's findings, President Aylwin authorized the Center for Civil and Human Rights of the Notre Dame Law School to oversee the English translation and publication of the Report of the Chilean National Commission on Truth and Reconciliation. We trust that we have justified the confidence that he thus placed in us.

All of us at the Center for Civil and Human Rights wish to express our appreciation to Phillip Berryman for the distinguished quality of this English translation. As an author in his own right, and a Latin American specialist with extensive experience living and working in the region, he proved to be an ideal colleague in this venture. And, because of his own personal commitment to human rights as demonstrated by his work in Central America, he readily accepted our request to undertake the difficult task of translating two volumes of the Report.

José Zalaquett, a Chilean lawyer and human rights advocate who served as a member of the National Commission on Truth and Reconciliation, has enriched this English translation of the Report with a perceptive Introduction that places it into context and highlights the lessons that may be learned from the work of the

Commission. His earlier research into the subject of "confronting human rights violations committed by former governments" undoubtedly helped to establish the analytical framework for the work of the Commission.

After accepting the honor of overseeing the English translation and publication of the Report of the Chilean National Commission on Truth and Reconciliation, I asked Ms. Julie Dorrian to serve as Project Director, and this proved to be a very wise decision. Having lived and worked in Chile, she has an excellent working knowledge of Spanish and an understanding of the country. Working quietly and with great skill and efficiency, Ms. Dorrian served as liaison between the University of Notre Dame Press, the translator, and the Center for Civil and Human Rights (and almost succeeded in keeping us on schedule). She undertook this task and brought it to a successful conclusion, not only because of her professional abilities and talents, but, above all, because of her love of Chile and its people and her devotion to social justice.

Many people generously responded to our requests for advice and assistance regarding difficult questions of legal terminology, and I would especially like to commend for their help the following persons: Jorge Correa, Staff Director of the Chilean National Commission on Truth and Reconciliation; Pedro Aylwin and Andrés Sanfuentes of the Commission staff; Isauro Torres, Chilean Embassy, Washington, D.C.; Dan S. McDevitt, a J.D. candidate at Notre Dame Law School; and Ingrid Wittebroodt, a lawyer in the Santiago office of José Zalaquett.

I must express my personal thanks to Garth Meintjes, Assistant Director of the Center for Civil and Human Rights, and Nancy Wesolowski of the Center staff, for their initiative and responsibility, and for the generosity of their assistance in so many ways.

Financial assistance from the Ford Foundation made it possible for us to undertake this project, and I do wish to express my gratitude to the Ford Foundation for its generosity in helping to make the Report of the Chilean National Commission available to the English-speaking public. I am especially thankful to Margo Picken of the Foundation's staff for her patience, insightful questions, wise critiques, and unfailing commitment to international human rights.

(Rev.) William Lewers, C.S.C.  
Professor of Law and Director,  
Center for Civil and Human Rights

## **Introduction to the English Edition** by José Zalaquett<sup>2</sup>

This report is the core of Chile's earnest response to a major ethical and political dilemma of our time. The problem may be summarized as follows: How can a country overcome a legacy of dictatorial rule and massive human rights violations if the new government is subject to significant institutional and political constraints? How, in those circumstances, can the equally necessary but often conflicting objectives of justice and social peace be harmonized? What are the moral tenets which should guide the politician's actions in such ambiguous situations?

Chile came to confront this dilemma after the inauguration of elected President Patricio Aylwin on March 11 of 1990, which put an end to more than sixteen years of military rule. By that time, several other countries in different regions of the world had been through a process of transition from dictatorship to democracy. Although Chile could learn from recent precedents, the sobering lesson they taught was that the political stakes involved in settling accounts with the past are extraordinarily high, that a fully satisfactory outcome can hardly be expected, and that the social tensions brought about by the legacy of human rights violations linger on for a long time.

Chile's solution was also, and inevitably, lacking. However, it was a serious, carefully thought-out policy which achieved salutary results within the country and significantly added to a wealth of relevant experiences from which other nations may draw. Indeed, since the time of the publication of this report in Chile, more countries have come to a similar political juncture and no doubt still others will.

This introduction attempts to explain the rationale and effects of the Aylwin administration's overall human rights policy, of which this report is a central component. The making of this policy was intensely deliberate. During the presidential campaign the coalition of parties from the center and center-left which supported the Aylwin candidacy set up a commission to prepare policy recommendations on human rights. Immediately after inauguration, President Aylwin engaged in consultations with human rights activists, relatives of victims of human rights violations, religious leaders, and representatives from a broad range of political parties.

Defining a policy involved first establishing ultimate objectives. These made themselves evident: to repair the damage caused by human rights violations both to individual victims and to the society as a whole; and to prevent such atrocities from ever happening again. The crux of the matter, however, was to decide on the means to achieve such objectives and on the likely extent to which they could be accomplished.

---

<sup>2</sup> Some material in this Introduction is drawn from the Mathew O. Tobriner Memorial Lecture delivered by Mr. Zalaquett at Hastings College of the Law and appeared in 43 HASTINGS L.J. 1425, © Copyright 1992 University of California, Hastings College of the Law, reprinted by permission.

These questions could not be answered in a void. At least four major considerations had to be duly weighted: the nature and extent of the human rights violations committed and the measure of investigation of the truth and justice for which they called; the restrictions imposed by the existing laws and institutions and by the likely reaction of the Chilean armed forces; the relevant experience of other countries; and the duties dictated by international human rights norms, as well as the position adopted on these issues by the international human rights community. An analysis of these factors is necessary to understand this report and the policy from which it stemmed.

On September 11 of 1973 the Chilean armed forces attacked La Moneda, the presidential palace in the center of Santiago. Within hours Chile's elected president, Salvador Allende, lay dead (this report concludes that he committed suicide), and a military junta presided by General Augusto Pinochet took power.

There followed an intense political repression which resulted in political killings and "disappearances," the imprisonment or exile of countless Chileans, and the widespread use of torture. These massive human rights violations shocked the world.

President Allende's three-year government and the more than sixteen years of dictatorial rule that followed it were the most turbulent chapters in Chile's history as an independent country. Chile had a long tradition of democratic institutions and respect for the rule of law. However, in the sixties a process of increasing political polarization, which is described in Part Two of this report, led to growing intolerance and divisions among different sectors of the Chilean society. During the Allende administration's tragically failed socialist experiment this polarization was sharply exacerbated. The 1973 coup d'état was the culmination of this process. Chileans were deeply divided about this outcome. Some considered it an inadmissible violent interruption of democratic rule; others believed it was an inevitable move to prevent an impending civil war.

Adamantly opposite views about the coup still persist, although most Chileans have come to agree to disagree on this issue. However, it is now widely acknowledged in Chile that a distinction must be made between the coup d'état and the human rights violations committed by the military regime. While the inevitability or admissibility of the former could be controvertible, there ought not be two opinions about the utter illegitimacy of the latter. Although the ethical basis of such a distinction is unequivocal, not many supporters of the regime dared to speak out against human rights violations, at least during the most critical years of military rule.

Both in Chile and abroad, political killings, "disappearances," and torture came to be considered as the worst abuses of the military regime. It certainly committed many other human rights violations, including massive arbitrary imprisonment and exile, as well as attacks on other civil liberties. But, notwithstanding the seriousness of these transgressions, the facts were known and the military government did not deny them. Rather, it attempted to justify them on the grounds that the emergency the country

faced permitted the suspension of certain individual rights. Concerning political assassinations and torture, however, there is no possibility of even attempting a justification under international law (whether human rights law or the laws of armed conflict) because the respective norms can never be subject to derogation or suspension. Consequently, those practices were always denied by the military government. These denials were largely believed by most of its civilian supporters (many of them probably preferred not to know for sure). They would accept the official explanations that nothing more than isolated, inevitable excesses could have occurred. At most they would believe that the real extent of the abuses was far less than what was reported by domestic and international human rights organizations and by the foreign press.

As is abundantly documented in this report, the method of "disappearances" was systematically applied during the first four years of military rule. Detention of the victims was not acknowledged. They were kept in clandestine detention, subjected to torture and eventually summarily executed. Their bodies were disposed of in secret. This report documents close to one thousand of such cases. During the first months of military rule these "disappearances" were not centrally coordinated. But with the establishment of DINA, the regime's secret police, toward the end of 1973, "disappearances" became a carefully organized method designed to exterminate opponents considered dangerous and to avoid accountability for such crimes.

The families of the executed prisoners were at least able to bury their dead. However, the relatives of the "disappeared" have endured for many years the cruel uncertainty about the fate of their loved ones, both mourning for them and hoping against all hope. They desperately needed to know the truth.

DINA was dissolved in 1977 and replaced by a new body, the CNI. The systematic resorting to "disappearances" ceased, but other human rights violations, including assassinations and torture, continued although at a lesser scale.

The military government always insisted that it had been waging a war, albeit an unorthodox one, against an insidious, subversive enemy. Yet under no accepted definition of armed conflict could such an allegation be sustained. As established in this report, except for isolated acts of resistance on the day of the coup d'état and in its immediate aftermath, the military government exerted effective control over the country. It was able to suppress any opposition, whether peaceful or not, during the first seven years of its rule. Around 1980, however, as explained in this report, some opposition groups started an organized armed resistance. While they were never able to control territory or to wage military operations in a sustained manner, their actions gave a boost to the government's contention that it was fighting a war. These groups engaged in killings, most of which may be characterized as terrorist acts or, at any rate, as acts in violation of internationally accepted humanitarian principles. Ninety such killings are documented in this report.

Some opposition groups justified the resorting to armed resistance on the grounds



that they were fighting a tyrannical government. The need and justification for armed rebellion could be a matter of controversy, as the coup d'état was (most of those who opposed the military regime, however, rejected either the legitimacy or the effectiveness of armed resistance). But, again, a distinction must be drawn between the reasons for resorting to arms and specific actions of the rebels that violate the laws of armed conflict or other basic principles of humanity.

These realities dictated that the human rights policy of the Aylwin government should focus, as a priority, on revealing the truth about the fatal victims of political violence: victims of assassinations and "disappearances" committed by agents of the government (the vast majority) but also political assassinations committed by rebel groups. The practice of torture by the government also had to be accounted for.

A second factor the Aylwin administration had to take into account was the set of institutional and political constraints it inherited. Among the most salient was an amnesty law decreed by the military government in 1978, following the dissolution of DINA. The effect of it was that, with the exception of one crime (the bomb assassination ordered by DINA of Orlando Letelier in Washington, D.C., in September of 1976) all human rights violations committed prior to the date of that decree would remain in impunity. The worst and most systematic human rights violations perpetrated by the military government occurred in the period covered by the amnesty. Offenses committed after that date could legally be prosecuted. They included some egregious crimes. But most of them would be hard to prove in court without collaboration from the perpetrators or their comrades in arms.

The Chilean Supreme Court, which is sharply criticized in this report for failing to protect human rights, had upheld the validity of the 1978 amnesty decree. President Aylwin did not, of course, have constitutional powers to interfere with the Court's rulings. He could not hope for a repeal of this legislation either. In effect, despite a broad victory in the presidential and congressional elections, the government coalition did not obtain a majority in the Senate due to a provision of the 1980 Constitution which reserved a number of seats for appointed rather than elected senators.

But even if it had been feasible to repeal the amnesty, the Aylwin administration would have had to calculate carefully the likely results of such a move. The 1980 Constitution, although amended prior to the presidential election, did retain other provisions which restricted the powers of the President. Chief among them was a norm securing tenure for the commanders of the armed forces, including General Pinochet, the head of the army, until 1997. The purpose of this provision was to maintain the institutional cohesiveness of the armed forces, which was a major feature throughout the years of military rule, during the initial (and, for the military, unpredictable) period of democratic restoration. The armed forces considered the amnesty and its effects as a settled affair and were most worried about the prospect of widespread prosecutions. They were convinced that in 1973 they had been the last institutional bastion which managed to save the country from drifting into communism. Their argument was that prosecutions would undermine their position,

dangerously depriving the country from the safeguard they represented in case of a new drift towards socialism which could never be ruled out. Further, they felt they had, in an orderly fashion, returned an economically dynamic Chile to democratic rule and that any undesirable costs paled in significance. Thinly veiled warnings that the armed forces would not tolerate a repeal of the amnesty decree were repeatedly made before and after President Aylwin was inaugurated.

On the other hand, one of the planks of the coalition that supported Aylwin had been to seek the repeal of the 1978 amnesty. Short of that hardly attainable goal, the Aylwin government felt that at least it should request from the judiciary that the effects of that amnesty would not preclude judicial investigations of the fate of the disappeared prisoners, even if such investigations could not conclude in trial and punishment.

In fashioning its human rights policy, the Aylwin government also had to take into account the experience of other countries, the principles of international law, and the opinion of the international human rights community.

In Chile, the banner of human rights became the moral counterweight to the force of the military regime, throughout the years of dictatorship. Soon after the coup d'état, a coalition of churches led by the Catholic Church established the Committee for Peace, which as of 1976 became the Vicariate of Solidarity of the Catholic Archdiocese of Santiago. These successive organizations lent moral and legal assistance to thousands of victims of the political repression and to their families. They carefully documented every case which came to their attention and produced numerous and thorough reports on the overall human rights situation in Chile. In parallel, international human rights bodies and organizations, both intergovernmental and non-governmental, focused intensely on the human rights situation in Chile from the onset of the military regime. So did the international press. All of them could rely on the information provided by the Peace Committee, the Vicariate of Solidarity, and other human rights groups which emerged in Chile in subsequent years.

Chile's rich and prolonged experience in the struggle to protect human rights had a remarkable influence in the realm of social values and public discourse. By the time Chile started its transition to democracy, human rights stood as the preeminent notion of political ethics. Chilean politicians who might once have invoked human rights mostly as a means to confront the military government's repressive drive, accepted in subsequent years the universal value of the idea and its place as a central tenet of a democratic system. Politicians who had supported the military regime came to admit openly that they should have paid more attention to the protection of human rights.

At the beginning of the military regime, the nascent human rights organizations in Chile were barely aware of the extent to which an international human rights movement had developed. But soon they become fully acquainted with the international human rights scene and could, in turn, contribute to the development of mechanisms for the protection of human rights at the United Nations or the OAS and

to the work of international non-governmental organizations such as Amnesty International, the International Commission of Jurists, and Americas Watch.

The Chilean case had received far greater international attention than would usually be given to a country of modest geopolitical importance. For years the United Nations and the OAS singled it out for special human rights monitoring. The case of Chile was better known to international public opinion than that of other countries suffering comparable or even worse repression. At the beginning of the military regime this could be explained by the fact that the coup d'état was in poignant contrast with the political tolerance which had come to be expected from Chile. Further, President Allende's experiment with a "peaceful road to socialism" had captured the imagination of sectors of international public opinion. His dramatic death in the governmental palace acquired the lasting power of a symbol.

However, the intense international focus on the human rights situation in Chile was subsequently sustained due to the work of Chilean human rights organizations. The Vicariate of Solidarity had succeeded in documenting the vast majority of all serious human rights violations committed by the military government. Chilean human rights organizations came to be widely considered by the international human rights community as among the most effective groups working within a context of dictatorship.

Given the international status achieved by the case of Chile and the strength of domestic human rights work, the international human rights community followed with great attention how Chile dealt with the legacy of the dictatorial past. This problem had been confronted by one country after another in the recent past. International human rights organizations were still drawing the lessons from these developments and adjusting their own policies.

The vocal, highly visible international human rights movement of today may be said to have started in the sixties. The issue of human rights had been formally in the world agenda since the creation of the United Nations. But although human rights treaties and the corresponding intergovernmental mechanisms are of central importance, it was not until the sixties that a worldwide movement began to be formed. It started at the international level with the creation of Amnesty International and other non-governmental organizations which channeled the activism of concerned citizens all over the world. Later on, domestic organizations were formed in many countries where there was a pattern of political repression.

Until the early eighties these international organizations dealt chiefly with human rights violations being at that time committed by governments. It could be assumed that it was within the power of those governments to continue or to stop such practices. Campaigning for their immediate cessation was thus not only based on clear norms and solid convictions – in addition, governments could not argue that it was beyond them to comply.

However, the positive duty of successor governments to dispense justice for past crimes is of a different nature than the negative obligation of refraining from committing them. These governments' power to comply fully with such a duty may not always be assumed. This problem became evident starting with the case of Argentina, after the downfall of the military regime and the election of President Alfonsín, in 1983.

Before that time, the thinking about dealing with State crimes was largely framed by the foremost precedent of our time: the Nüremberg and Tokyo trials. This precedent emphasized the duty, imposed by the conscience of humankind and by several international legal norms, to prosecute and punish certain crimes and the necessity of such measures in order to preserve the collective memory and to build up an effective deterrent. The role of human rights organizations would be to make sure that in the process of meting out justice the new government respected the rules of fair trial and other human rights norms.

However, the postwar model rested on a necessary material condition: the war criminals who were brought to trial did not lose power through political means but through a complete military defeat. The victors did not have to wrestle with questions of correlation of forces.

Some of the salient cases of political transition before 1983 were not of a nature that would challenge the suitability of the post-Second World War model. For instance, in Nicaragua, in 1979, the Sandinistas won a decisive victory by the force of arms. Likewise, after the overthrow of the military regime in Greece, in 1974, the succeeding civilian government prosecuted many officials of the fallen regime. Argentinean President Alfonsín also prosecuted several of the top military rulers of the previous regime. However, just as it happened with Greece seven years before, the Argentinean military had recently been defeated in an international war outside the mainland. As a consequence they had lost authority and institutional cohesiveness. This factor facilitated the possibility of prosecutions in Argentina, although the military still controlled the weapons. Eventually they regained a measure of cohesiveness which permitted them to put strong pressure on the Alfonsín government to adopt measures of leniency.

After the Alfonsín government's ensuing difficulties and after the rapid succession of political transitions of subsequent years, in all regions of the world (from the Americas, to Eastern and Central Europe, to Africa) the whole array of complex ethical, legal, and political issues involved in the change from dictatorship to democracy became fully apparent. In most of these countries the successor governments did not come to power as a result of military victories but through tortuous political paths. The perpetrators and their supporters were still a force to be reckoned with. Often before they left power they managed to impose institutional and legal arrangements to limit the scope of action of the incoming government. In some cases there had been an internal armed conflict, but it ended in a negotiated peace, with no clear victor; or else, one of the parties did emerge victorious, but feared to antagonize the rival ethnic or

national groups through widespread prosecutions, lest the conflict be reignited.

What are the principles to be applied in all such situations? What can they be fashioned from? This was a novel ethical dilemma, although many of the discrete issues encompassed by this problem have long received the attention of ethicists, jurists, or theologians. For instance, much literature on political ethics has been devoted to the relationship between ends and means in political life and also to the more specific issue of the extent to which politicians should be guided, in the pursuit of morally desirable ends, by the likely outcome of their actions. As to juridical sciences, criminal law theories have for a long time dealt with the social or moral value of penalties as a deterrent or as instruments of distributive justice. Further, since the jurisprudence of the Nüremberg Tribunal, United Nations resolutions and treaties have defined crimes against international law. These treaties include the obligations of States to prosecute certain crimes or to refrain from establishing limitations to their prosecution and punishment. Finally, legal theories, the domestic laws in most countries, and even certain international treaties also refer to measures of clemency, including pardon and amnesties. But the richest depository of doctrines and reflections on mercy is to be found in the teachings of major religions about acknowledgment of wrongdoing and atonement, penance, forgiveness and reconciliation.

However, the sum of principles and theories concerning separate aspects of the problem was not sufficient. A unifying ethical approach was required which would permit the integration of principles and real-life constraints. This was provided by Max Weber's distinction between the ethics of ultimate ends (or ethics of conviction) and the ethics of responsibility, as developed in his famous lecture "Politics as a Vocation," dictated in Munich in 1919. Weber clarifies that an ethic of conviction does not imply lack of responsibility, just as an ethic of responsibility does not imply lack of convictions. Rather he stresses the fundamental difference that exists between acting according to an ethical precept regardless of the outcome and acting taking into account the predictable consequences of one's action.

In Weber's view politicians must always be guided by an ethic of responsibility. All the more so, it must be concluded, they should follow such a maxim in cases where the stakes for the whole of society are as great as they are in the types of situations just described. Political leaders ought not be moved only by their convictions, unmindful of real-life constraints, lest in the end the very ethical principles they wish to fulfill suffer because of a political or military backlash. However, it must also be firmly stated that neither can a politician invoke the need for prudence as an excuse for inaction and cowardice. Responsible politicians do not shy away from pursuing the fulfillment of basic ethical principles, even in dangerous circumstances. Rather, they assess carefully the circumstances so as to be able to attain the desired results to the fullest extent possible.

In retrospect, it is striking how much Weber's distinctions have inspired people who had to make relevant human rights policy decisions or recommendations in different

countries and who, in all appearance, had no contact with each other. At roughly the same time, around 1990, President Aylwin, Czechoslovakia's President Vaclav Havel, and a number of human rights commentators were making express reference to the particular relevance of Weber's concept to situations of political transition.

In what concerned Chile, President Aylwin could draw from recent examples in Argentina and Uruguay. These countries were not only Chile's South American neighbors. Like Chile they had been ruled by military regimes, following a similar process of political polarization. Human rights violations in all three countries were of comparable gravity.

Argentina emphasized truth telling, through an official commission which produced a thorough report on disappearances. It also annulled an amnesty law passed by the military. But eventually the Alfonsín government felt compelled to back off from its initial stance and passed, under pressure, legislation to preclude further prosecutions. Uruguay emphasized forgiveness and some measures of reparation. There were neither prosecutions nor a thorough official report about the truth. This led many discontent citizens to organize a campaign of signature collection to put to a referendum the repeal of a law which precluded prosecutions. Although they lost the vote, the issue bitterly divided the Uruguayan society during the first years of democratic rule.

The lesson for the Aylwin administration was that it should stake out a policy it could sustain. Reparation and prevention were defined as the objectives of the policy. Truth and justice would be the primary means to achieve such objectives. The result, it was expected, would be to achieve a genuine reconciliation of the divided Chilean family and a lasting social peace.

The truth was considered as an absolute, unrenounceable value for many reasons: In order to provide for measures of reparation and prevention, it must be clearly known what it is that ought to be repaired and prevented. Further, society cannot simply black out a chapter of its history, however differently the facts may be interpreted. The void would be filled with lies or with conflicting versions. The unity of a nation depends on a shared identity, which, in turn, depends largely on a shared memory. The truth also brings a measure of social catharsis and helps to prevent the past from reoccurring. In addition, bringing the facts to light is, to some extent, a form of punishment, albeit mild, in that it provokes social censure against the perpetrators or the institutions or groups they belonged to. But although the truth cannot really in itself dispense justice, it does put an end to many a continued injustice – it does not bring the dead back to life, but it brings them out from silence; for the families of the "disappeared," the truth about their fate would mean, at last, the end to an anguishing, endless search. It was deemed further that a thorough disclosure of the truth was feasible, although probably the whereabouts of the remains of most disappeared will remain unknown.

Regarding justice, an important consideration was to assess the duties imposed by international law. The conclusion was that nations have discretion to decide

democratically on measures of clemency, provided that such decisions are informed, namely that the truth about what is being amnestied is known. However, international law imposes on governments the duty always to investigate and punish certain particularly serious crimes. Whether some of the crimes amnestied in Chile, in particular the systematic practice of disappearances, fit the letter of those international norms may be a matter of technical controversy. But there was no doubt that they did fall at least within the spirit of international law. The position of the Aylwin administration was that fulfilling the obligation to prosecute those crimes depended not only on the executive power, but on the legislature and the judiciary as well. If the executive could not, by itself, fulfill it, at least it would refrain from decreeing or proposing measures which would confirm or add to the existing situation of legal impunity.

Criminal justice would be effectively limited to cases committed after the 1978 amnesty and to the only pre-1978 crime exempted from the amnesty, the Letelier case. However, the government would insist in its view that the judiciary should at least investigate the fate of the disappeared prisoners, even if the cases were covered by the amnesty. In addition, other measures of justice, such as compensations and restitution of the victim's good name could be amply applied.

Based on these considerations, the Aylwin administration promised "the whole truth, and justice to the extent possible." Responsibility dictated that during the transition this was the most that could be aimed for. In fact, if the government had made an attempt (however futile, given Chile's existing legality) to expand the possibilities for prosecutions, most likely it would have provoked tensions and reactions resulting in that neither truth nor justice could be achieved.

The human rights policy, therefore, rested mainly on disclosing the truth. The government was conscious that for the truth to achieve the expected purposes it had to be established in a manner that elicited the respect of all Chileans. That is how President Aylwin came to appoint the National Commission for Truth and Reconciliation, a panel of eight people from across the political spectrum, which produced this report.

The reader will find abundant details in this report, particularly in its Parts One and Two, about how the Commission conducted its investigations, nationwide, and about the context within which the violations it investigated occurred. The Commission was also asked to make recommendations on reparations and on prevention. They are presented, in great detail, in Part Four. In the period since the publication and dissemination of this report many of the most important recommendations have been acted upon. Chief among them, the granting of a pension, by law, to the families of all the people listed by the Commission's report as victims and the establishment of an organization which could pursue the investigation of cases the Commission could not conclude and otherwise follow up on its work. Legal reforms also have been proposed, largely based on the Commission's recommendations.

The establishment of the Commission was strenuously objected to by the armed forces. However, in the end, they abided by the President's authority to do so and responded (mostly in form rather than in substance) to the Commission's many inquiries. Political parties which had also objected to the establishment of the Commission finally accepted its need and lent to it their cooperation.

On February 9 of 1991 the Commission delivered its report to the President. On March 4 in a televised address to the nation President Aylwin presented the findings of the Commission and, as the head of State, atoned for the crimes committed by its agents. The report was then widely disseminated. Congress passed a unanimous resolution commending it. All political parties acknowledged the truth of the facts investigated, although some disputed the historical interpretations contained in it. The army and the navy publicly rejected the report, focusing mostly on a historical interpretation of the Allende administration and the role of the military government. They did not deny the individual findings contained in the report. With the passing of time, there can be no doubt that the facts established in the report have come to be widely accepted in Chile as the truth.

The Commission named the victims but not the perpetrators. It mentions the branch of the armed forces or police responsible for the acts and even the specific unit, but it does not attribute guilt to individuals. However, it sent to the courts the incriminating evidence it could gather. The Commission was not a tribunal and was not conducting trials. To name culprits who had not defended themselves and were not obliged to do so would have been the moral equivalent to convicting someone without due process. This would have been in contradiction with the spirit, if not the letter, of the rule of law and human rights principles.

Based on the information channeled by the Commission, some courts reactivated judicial investigations of disappearances. Also a number of notorious political assassinations, including the Letelier case, have been brought to trial. In such cases the Commission's finding probably did not add substantially to the evidence gathered by the courts. But it is safe to say that the climate created by the establishment of the global truth may have encouraged some zealous judges to persist in the investigation of specific cases.

The reader will no doubt find that this report, although confined to the terms of its relatively narrow mandate and restrained in its style, does convey the cardinal ethical importance of the task undertaken. Indeed all those who participated in this endeavor, commissioners and staff alike, were deeply touched by this fact. They held widely different political persuasions but they all felt united by sincere adherence to human rights and by a strong awareness of the uniqueness of their civic mission. This is eloquently reflected in the fact that the report was unanimously approved.

Those who worked to produce this report became keenly aware of the cleansing power of the truth. Interviewing thousands of relatives of victims and other witnesses nationwide was a necessarily rigorous method. But, as the interviewers soon



discovered, it was at the same time a means to heal the wounds, one by one, and thus to contribute to the building of a lasting peace. They were also humbled by the generosity shown by the relatives of the victims they met. Certainly, many of them asked for justice. Hardly anyone, however, showed a desire for vengeance. Most of them stressed that in the end, what really mattered to them was to know the truth, that the memory of their loved ones would not be denigrated or forgotten, and that such terrible things would never happen again.

## Guide to the English Edition

To assist the English reader in understanding the Chilean context of the report, we have added several "Editor's Notes" to further explain concepts, institutions, persons and dates. These notes appear at the bottom of the page where the term is first mentioned. An alphabetical index of these notes immediately follows these comments. Original text notes are found at the end of the chapter in which they appear. At the beginning of each volume is an acronym list.

We are especially grateful to a number of Chileans who have helped us in preparing this translation, particularly those persons mentioned in the Foreword. The following books have also proved useful: Arturo Valenzuela's *The Breakdown of Democratic Regimes: Chile*; *The Legacy of Hispanic Capitalism* by Brian Loveman; *La Constitución Política de la República de Chile 1980 Actualizada en 1992*; Mario Bernaschina G.'s analysis of the Chilean Constitution of 1925 *La Constitución Chilena*; *Historia de la CUT* by Jorge Barría S.; *M.I.R. (una historia)* by Carlos Sandoval Ambiado; the Comisión Política MIR's *El MIR Vive en el Corazón del Pueblo*; and *A Nation of Enemies: Chile Under Pinochet* by Pamela Constable and Arturo Valenzuela.

### Acronyms

AGP	Agitation and Propaganda
CELADE	Latin American Center for Demography
CEN	Radical Party Central Policy Committee
CNI	National Center for Information
CODELCO	Corporation of Copper
C.O.F.F.AA	Armed Forces Operational Command
CONAR	National Committee for Refugees
COPACHI	Committee of Cooperation for Peace
CORA	Agrarian Reform Corporation
CORFO	Corporation to Stimulate Production
CORHABIT	Housing Corporation
CORVI	Corporation for Housing
COU	Corporation for Urban Works
COVEMA	Avengers of the Martyrs Squadron, 1980
CTK	Czechoslovakian News Agency
CUT	Unified Labor Federation
DINA	National Intelligence Directorate
DINAC	National Bureau of Trade
DIRINCO	National Bureau of Industry and Trade
ECA	Company for Agricultural Trade
EMPORCHI	Chilean Port Company
ENACAR	National Coal Company
ENAEX	National Explosives Company
ENAMI	National Mining Company

ENDESA	National Electricity Company
FENATS	National Federation of Health Care Workers
FENSA	National Electronics Manufacturer, Inc.
FER-MIR	Revolutionary Student Front
FIN	North American Investigatory Source
FPMR	Manuel Rodríguez Patriotic Front
IANSA	National Sugar Industry
INACESA	National Cement Industry
INDAP	National Institute for Agricultural Development
INDUMET	National Metallurgical Industry
JAP	Council for Supplies and Prices
KPD	Soviet Company
MANESA	Tire Manufacturers Company
MAPU	United Popular Action Movement
MCR	Revolutionary Peasant Movement
MIDEPLAN	Ministry of Planning
MIR	Revolutionary Left Movement
OAS	Organization of American States
ODEPLAN	National Planning Office
ORPLAN	Regional Planning Office
SADEMI	Mining Supply Company
SAG	Agriculture and Livestock Service
SENDET	Executive National Secretariat of Prisoners
SERCOTEC	Technical Cooperation Service
SERVIU	Housing and City Planning Service
SICAR	Police Intelligence Service
SIRMA	Intelligence Service of the Southern Military Region
SOCORA	Agrarian Reform Marketing Association
SOQUIMICH	Chilean Chemical and Mining Society
UN	United Nations

## **Introduction**

When he took office, the president stated that one of his most ardent longings was to bring about the reconciliation of all Chileans; he was thereby expressing the fervent desire of the vast majority of the citizenry. No one can question the need for such a reconciliation, given the events of which we are all certainly aware, namely a profound division between Chileans, and a violation of human rights that affected many people and disrupted our traditional observance of the norms of the rule of law.

The president rightly thought that attaining the reconciliation for which people so yearned would require a thorough knowledge of how grossly the norms of humane conduct had been transgressed. He was indeed correct when he expressed this idea in the decree establishing our Commission, and when he said that "only on a foundation of truth will it be possible to meet the fundamental demands of justice and create the necessary conditions for achieving true national reconciliation." It is also true, as the decree states, that only the truth will make it possible to restore the dignity of the victims in the public mind, allow their relatives and mourners to honor them properly, and in some measure make it possible to make amends for the damage done.

Thus our head of state decided to entrust to us the mission of drawing up a report concerning the overall truth of those violations. That mission will certainly be one of the most important any of us will undertake in our lives. That report is being presented to our country to enable it to acquire a rational and well-grounded idea of what has happened. Such knowledge will also provide the different government branches with information that will facilitate their adoption of appropriate decisions in this regard.

The Commission was legally constituted on May 9 of last year and was to conclude its work by February 9. We have finished our work on time.

We are taking the liberty of stating why we accepted the noble task with which we have been honored. We were aware that it would be difficult, and that our own limitations would make it more so. We nonetheless accepted it without hesitation. The members of our group uphold a variety of philosophies of life. We are aware that we adhere to a variety of traditions, that our political loyalties are different, and that we have different perspectives on our country's history. We do, however, believe in the essential identity of our nation, and we think it ought to be protected by a state that remains faithful to the norms of democracy no matter which administrations might legitimately succeed one another. We accepted our task because the same fundamental principle unites us all – respect for human persons simply because they are human persons – and because we believe that the person is protected by inalienable rights which cannot be violated on the grounds of any accidental condition, nationality, creed, race, or ideology. These are rights that no power, no matter how far-reaching, may violate. We are united by an utter conviction that the human person in his or her dignity constitutes inviolable limits to the activity of other human beings. This is the primordial rule of human life in common. Finally, we are united in our yearning to make our country a

land worthy to shelter the children of our species, which is always regarded as the highest expression of creation.

Each person is endowed with numerous rights. All these rights are connected to numerous culturally acknowledged values, and especially those of life, freedom, and justice. The core of our own work, however, had to be an examination of how the most fundamental value – that of life – had been violated.

The primary moral obligation we were fulfilling was to the victims, their families, and those mourning them. It also seemed to us that to maintain silence about these painful events – not a true silence but one imposed by force – was not helpful to our future life together as a nation. Indeed, we thought that to help the Chilean state to establish the truth calmly and impartially would encourage society to acknowledge these facts and thus lay the groundwork for a healthy resistance to such violations in the future. The pain of the past, together with a common desire to condemn what is indefensible, would help prevent such events from recurring, and thus would lead to a consensus that might be conducive to the reconciliation we all desire.

The Commission's task was to draw up as complete a picture as possible of the most serious human rights violations that resulted in death and disappearances which were committed by government agents or by private citizens for political purposes; to gather evidence that would make it possible to identify individual victims and determine their fate or whereabouts; to recommend such measures of reparation and restoration of people's good name as it regarded as just, and also to recommend measures that should be adopted to hinder or prevent new violations from being committed.

We had to complete our work in nine exhausting months. We had no power to oblige anyone to meet with us, and we had to examine and weigh a vast amount of information in order to come to a conclusion, based on an honest judgement, about what had happened in each case presented to us, as well as to prepare an overall account of what had happened.

We interviewed each person who wanted to present his or her case, and in order to do so we travelled up and down the entire country. In an effort to assure that no family member be prevented from providing us with information, some of us travelled to other countries where we enjoyed the cooperation of Chilean diplomats. Our aim was to be utterly impartial in our work. Hence we were objective, and we pride ourselves on having been both rigorous and understanding. No one can accuse us of having been swayed in our deliberations by prejudices or loyalties to particular groups. It was encouraging to find ourselves agreeing on all our decisions. All the humanitarian organizations that had been gathering evidence on these events offered their cooperation, and they opened their archives to us. We sought relevant information from national and international bodies. We sent out approximately two thousand official inquiries to public and private agencies, and we studied their answers with all the care that the situation required. We took testimony from hundreds of people who

came forward voluntarily, and we examined all the evidence gathered for each case until we were certain of what had happened. The aid of all these persons and organizations was of immeasurable importance to us; the only way we can express our gratitude is to submit this report.

The Ministry of Justice quickly and efficiently provided us with the equipment we needed to carry out our work. We also relied on the self-effacing and loyal assistance of more than sixty people who gave up their normal work in order to devote themselves to the tasks of this Commission with enthusiasm and commitment.

We now turn over to the president the volumes containing our report. We thought we should examine the situation in our country on September 11, 1973, for even though it in no way justifies the violations we are going to relate, doing so will be helpful for recalling the atmosphere in which some of that violence was rooted.

We have documented cases of death and disappearance. In the first few days after September 11, 1973, some people were killed in armed clashes, as well as through political violence perpetrated by both sides. Several hundred political prisoners were then executed. Many of these executions were officially explained in accounts that the Commission has not found convincing or acceptable. Bodies were often left abandoned, or they were hidden, thus bringing about the first cases of disappearance. There was no legal investigation of, or punishment for, these events.

After the DINA (National Intelligence Directorate) was created, victims were selected by its intelligence units, and then generally held in DINA's secret detention centers where they were interrogated and tortured by specialists. The bodies of those who died under these circumstances disappeared in such a fashion that many have been impossible to locate. Normal legal safeguards proved insufficient. Efforts to introduce writs of habeas corpus were fruitless after the Ministry of the Interior denied that detentions were taking place. Judges did not inspect secret prisons or torture centers.

After the DINA was dissolved in August 1977, disappearances became far less common, although torture resulting in death continued. Armed resistance to some military operations led to gun battles, and there were other events which this Commission was forced to conclude were executions. In the early 1980's commando units composed of government agents or operating under government protection carried out some executions.

During this same period, some organized or reorganized extreme left groups opted for armed struggle. Groups reentered the country ready to engage in subversive activity. Their methods and objectives varied. For political purposes they made attempts on the lives of government figures, murdered police who were maintaining public order, set off bombs for terrorist purposes, and carried out attacks in which government agents and civilians were killed.

The nationwide protests that took place beginning in 1983 represented a new stage

in which government agents or unidentified civilians killed political opponents. Some of these opposition groups were also responsible for killing people.

These violations radically changed the lives of the victims' relatives, as this report seeks to show by indicating the pain, sense of rejection, and fear affecting these families even today. The Chilean state must turn to them and urge them to forgive the society that injured them. Our society must ponder deeply what has happened if it is to look toward the future with a clear conscience.

If this Commission has had the arduous task of reestablishing the truth, it is now the delicate but fundamental task of all Chileans to utilize that truth for the sake of national reconciliation. How can the truth that we have sought to present systematically by means of our investigation and report be used to the best advantage? We firmly believe that we Chileans must seize hold of this truth which makes each and every one of us responsible; we must understand that there are some aspects to both repressive and extremist violence whose impact goes beyond the consciences of those directly responsible for crimes. To do otherwise would be tantamount to narrowing the scope of our effort to understand what has happened. Indeed if we yearn to assure that it does not recur, we need a new spiritual attitude.

Such an attitude entails reflecting with civic devotion on how we must conduct ourselves in the future. That reflection should lead to an utter conviction that full democracy and the rule of law are the only dikes that can contain violence, render it useless, and banish it forever. Only in this fashion will our country be secure from new outbreaks that might give lawless force control over our life in common and incline dissidents to routinely resort to criminal behavior. An examination of the tragic series of events that the Commission has had to present makes it imperative that our reflection and education be aimed at bringing about understanding among all Chileans.

The harm done to many Chileans calls for some degree of reparation. A special chapter of this report is devoted to this issue which from a human standpoint is so important.

We conclude by thanking the president for having invited us to participate in the task he set for us. We have fulfilled that task with both sacrifice and gratitude. In this instance those two ideas are not at odds.

We also thank those who put their confidence in us, whether by coming to our office or from afar, and shared their anguish, concern, and hope with us. They have enriched us emotionally with their sincerity, their self-control under affliction, and their faith that they would bring about the restoration of the good name of their loved ones. We ourselves may be better as a result.

We hereby submit our report.

## **Supreme Decree No. 355**

Executive Branch  
Ministry of Justice  
Undersecretary of the Interior

Creation of the Commission on Truth and Reconciliation

Santiago, April 25, 1990. The following decree was issued today:

No. 355. Considering:

1. That the moral conscience of the nation demands that the truth about the grave violations of human rights committed in our country between September 11, 1973 and March 11, 1990 be brought to light;

2. That only upon a foundation of truth will it be possible to meet the basic demands of justice and create the necessary conditions for achieving true national reconciliation;

3. That only the knowledge of the truth will restore the dignity of the victims in the public mind, allow their relatives and mourners to honor them fittingly, and in some measure make it possible to make amends for the damage done;

4. That the judiciary has the exclusive responsibility, in each particular case, to establish what crimes may have been committed, to identify those persons guilty and to apply the proper sanctions.

5. That the nature of such legal procedures makes it unlikely that the judiciary will quickly provide the country with an overall sense of what has happened;

6. That delaying the formation of a serious common awareness in this regard may potentially disrupt our life as a national community and militates against the yearning among Chileans to draw closer together in peace;

7. That without in any way affecting the responsibilities of the judiciary, it is the duty of the president as the person charged with governing and administering the state and the person responsible for promoting the common good of society to do all within his power to help bring this truth to light as quickly and effectively as possible;

8. That a conscientious report by highly respected people with moral authority in our country, who are to receive, gather, and analyze all the evidence given to them or that they can obtain on the most serious cases of human rights violations, will make it possible for national public opinion to come to a rational and well-grounded idea of what has happened and will offer the various branches of government information that will make it possible or easier to take the measures appropriate to each one;



9. That in order to meet their objective these people must carry out their task in a relatively brief period, and hence the investigation must be limited to instances of disappearance after arrest, executions, and torture leading to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons carried out by private citizens for political reasons, so as to provide the country with an overall picture of the events that have most seriously affected our common life together as a nation;

And exercising the faculties conferred on me by Article 24 and Article 32, No. 8, of the Constitution, and in accordance with Article 1, paragraphs 4 and 5, and Article 5, paragraph 2, as well,

I decree

Article One:

Let there be created a National Truth and Reconciliation Commission for the purpose of helping to clarify in a comprehensive manner the truth about the most serious human rights violations committed in recent years in our country (and elsewhere if they were related to the Chilean government or to national political life), in order to help bring about the reconciliation of all Chileans, without, however, affecting any legal proceedings to which those events might give rise.

Serious violations are here to be understood as situations of those persons who disappeared after arrest, who were executed, or who were tortured to death, in which the moral responsibility of the state is compromised as a result of actions by its agents or persons in its service, as well as kidnappings and attempts on the life of persons committed by private citizens for political purposes.

In order to carry out its assigned task, the Commission will seek:

1. To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances;

2. To gather evidence that may make it possible to identify the victims by name and determine their fate or whereabouts;

3. To recommend such measures of reparation and reinstatement as it regards as just; and

4. To recommend the legal and administrative measures which in its judgement should be adopted in order to prevent actions such as those mentioned in this article from being committed.

Article Two:

In no case is the Commission to assume jurisdictional functions proper to the courts nor to interfere in cases already before the courts. Hence it will not have the power to take a position on whether particular individuals are legally responsible for the events that it is considering.

If while it is carrying out its functions the Commission receives evidence about actions that appear to be criminal, it will immediately submit it to the appropriate court.

#### Article Three:

The Commission is to be made up of the following persons:

Raúl Rettig Guissen, who will serve as president  
Jaime Castillo Velasco  
José Luis Cea Egaña  
Mónica Jiménez de La Jara  
Ricardo Martín Díaz  
Laura Novoa Vásquez  
Gonzalo Vial Correa  
José Zalaquett Daher.

#### Article Four:

In order to carry out its assigned task the Commission is to:

1. Receive the evidence provided by alleged victims, their representatives, successors, or relatives within the time period and in the manner that the Commission itself will determine;
2. Gather and weigh the information that human rights organizations, Chilean and international, intergovernmental and non-governmental, may provide on their own initiative or upon request about matters within their competence;
3. Carry out as much investigation as it may determine suitable for accomplishing its task, including requesting reports, documents, or evidence from government authorities and agencies; and
4. Prepare a report on the basis of the evidence it has gathered in which it is to express the conclusions of the Commission with regard to the matters mentioned in Article One in accord with the honest judgement and conscience of its members.

The report is to be presented to the president, who will then release it to the public, and will adopt the decisions or initiatives that he regards as appropriate. With the submission of its report the Commission will conclude its work and will automatically be dissolved.

Article Five:

The Commission will have six months to carry out its work. If it cannot do so in that period it may obtain an extension for no more than three months, by passing a resolution to that effect along with providing a justification for so doing.

Article Six:

Jorge Correa Sutil will serve as Commission secretary. The secretary's functions will be to organize and manage the office with sufficient staff to carry out its task, as well as to perform other functions the Commission may entrust to him.

Article Seven:

The Commission will prepare its own by-laws to guide its operation. The Commission's activities will be confidential.

The by-laws will determine which activities the Commission can delegate to one or more of its members or to the secretary.

Article Eight:

Either on its own initiative or upon request, the Commission may take measures to protect the identity of those who provide information or assist it in its tasks.

Within the scope of their competency, government authorities and agencies are to offer the Commission all the collaboration it may request, furnish the documents it may need, and provide access to such places as it may determine necessary to visit.

Article Nine:

The members of the Commission will carry out their tasks without pay. The secretary and the secretariat staff will be paid as contract employees. The Ministry of Justice will provide whatever technical and administrative support may be necessary.

Let it be noted [by the Comptroller General's Office], registered and published [in the Diario Oficial].

PATRICIO AYLWIN AZOCAR, President of the Republic.  
Enrique Krauss Rusque, Minister of the Interior.  
Francisco Cumplido Cereceda, Minister of Justice.

## PART ONE

### **Chapter One:** Methodology and work of the National Commission on Truth and Reconciliation in preparing this report

#### *A. Objectives of the Commission*

On May 9, 1990, by publishing Supreme Decree No. 355 of the Ministry of the Interior in the *Diario Oficial*,<sup>3</sup> His Excellency, the President of the Republic, created this National Commission on Truth and Reconciliation. Its purpose has been to help the nation come to a clear overall understanding of the most serious human rights violations committed in recent years in order to aid in the reconciliation of all Chileans.

At that time the president believed that for the sake of the nation's moral conscience the truth had to be brought to light, for only on such a foundation, he said, would it be possible to satisfy the most basic requirements of justice and create the necessary conditions for achieving true national reconciliation.

This Commission was charged with four tasks:

- \* To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances;
- \* To gather evidence that might make it possible to identify the victims by name and determine their fate or whereabouts;
- \* To recommend such measures of reparation and the restoration of people's good name as it regarded as just; and
- \* To recommend the legal and administrative measures which in its judgement should be adopted in order to prevent further grave human rights violations from being committed.

As it began to operate, the Commission believed that its primary duty was to determine what really had happened in every case in which human rights had been seriously violated. Only by clearly determining what had happened in each individual instance would the Commission be able to draw up as complete a picture as possible of the overall phenomenon of the violations of these basic rights. Knowing this individual truth was also the indispensable basis for measures to repair, insofar as possible, the harm done to families, to identify the victims, and to recommend measures that might be taken to prevent such actions from recurring.

---

<sup>3</sup> *Diario Oficial*: Chile's journal in which all presidential decrees and laws must be published, and therefore made public, within five working days following processing. It is published daily.

As will be explained in the following chapter, the decree itself set clear limits to the actions that were to be investigated. The president judged that in order to meet its objectives the Commission should complete its task in a relatively short period of time. Accordingly, only the most grave violations could be considered and investigated. The decree defined such violations as disappearances of people who had been arrested, executions, torture leading to death when committed by agents of the government or people in its service, and those kidnappings and attempts on peoples' lives committed by private citizens for political purposes. The decree also specified that those events leading to death or disappearance should be brought to the Commission only if they were committed between September 11, 1973 and March 11, 1990. Events outside the country could be considered if they were connected to the Chilean government or to the nation's political life.

The investigation of these events was to be published in a report containing the Commission's conclusions on these matters in accordance with an honest and conscientious judgement by its members.

The decree stated that because the judiciary could not be expected to quickly provide the country with an overall understanding of what had happened, this Commission was charged with that task. That document also made quite clear the differences between this Commission and the courts. In accordance with a solid and well-established principle in the area of human rights, it was determined that in no case was the Commission to take on legal functions proper to the courts nor to interfere in cases already pending. In order to make the matter even more explicit, the Commission was expressly prohibited from making pronouncements on whether and to what extent particular persons might be responsible for the events it investigated.

In order to achieve its purposes the Commission was empowered to carry out whatever inquiry and measures it judged appropriate, including requesting reports, documents, or evidence from government authorities and agencies. The same decree obligated government officials and bodies to offer their full collaboration within their own specific area of competence. The Commission did not have the authority to oblige anyone to appear before it and testify.

Thus the task was understood as being moral in character: to examine as much evidence as possible about the most serious human rights violations of this period and report its findings based on its honest and considered judgement. The aim was to enlighten the country and its government officials, so that knowing this truth might help them to make the decisions they determined most apt for bringing about national reconciliation.

## *B. Knowledge of the truth*

1. Deciding which cases the Commission should consider

After approving an overall work plan and by-laws, and hiring the first staff members, the Commission sought to invite all the relatives of the victims of these events to register their cases, and to make an appointment to meet with the Commission. They could register in the Commission's offices in Santiago, in regional offices of the national government, and in many of the provincial governorships, which provided space for this purpose. Outside the country they could go to Chilean embassies and consulates. Notices were published several times in different publications. Cases were registered during June 1990.

Meanwhile, as the Commission was planning its work in greater detail and approving procedures for the work of its staff, lists of those who had died as a result of human rights violations were sought and received from the various branches of the armed forces and from the police as well as from other organized groups, such as business, labor, and professional organizations, which had gathered evidence of such violations. Thus seven professional associations, the army, the navy, the air force, the police, the investigative police, the Socialist party, the Communist party, the MIR (Revolutionary Left Movement), the Vicariate of Solidarity, the Chilean Human Rights Commission, FASIC (Christian Churches Foundation for Social Welfare), CODEPU (Commission for the Rights of the People), the Pastoral Office for Human Rights of the Eighth Region, the Sebastian Acevedo Movement Against Torture, CORPAZ (the National Corporation to Defend Peace), FRENAO (National Front of Independent Organizations), the Group of Relatives of those Arrested and Disappeared, the Group of Family Members of those Executed for Political Reasons, the CUT (Unified Labor Federation), and the National Commission of the Organization of Democratic Neighbors all brought their lists of victims to the Commission.

Through registration by family members and information presented by these agencies, the Commission was able to decide on the overall body of cases it should examine. After duplications and errors had been eliminated, a little more than 3,400 cases remained.

When the family members registered their cases with the Commission, in addition to the basic information about what had happened, they were asked to mention which agencies, groups, or organizations had already made some inquiry concerning the case. These agencies were then asked to provide the evidence they had been able to gather. Copies of initial court records were requested. Thus began the effort of consulting the archives of human rights organizations, particularly that of the Vicariate of Solidarity. The

Commission could thus draw on a great deal of information already gathered about these matters.

## 2. Staff organization

Determining the overall body of cases that the Commission should investigate made it possible to organize the staff more specifically. Certified lawyers and law school graduates were hired. Each lawyer, working with a law school graduate, began to study approximately two hundred cases.

The Commission also hired a group of social workers in order to come to a proper understanding of the effects of these events on the victims' families, to reflect this truth in its report, and to lay the groundwork for its recommendations for reparation. The staff was aided by a computer team which was responsible for properly storing and retrieving all the information the Commission gathered, and a files and documentation unit, which was responsible for filing all documents received. Together with secretaries, technicians, and their assistants, the staff consisted of more than sixty people.<sup>4</sup> All the professional people were chosen by the Commission, while support staff was proposed by the secretary and appointed by the president of the Commission. No more than ten percent of these people had prior experience with human rights organizations. The Commission's intention was that its staff take a fresh look at the cases it was to examine and report upon.

In accordance with the terms of the decree, Commission members were not paid for their work, while the staff was hired to work by contract. All Commission expenses were paid with government funds provided by the Ministry of Justice, which offered continual support and assistance.

## 3. Testimony from family members

By the end of June, the Commission had a file on each case received, including the registration form and the request for an interview, along with all the relevant evidence previously gathered. The family members in the Metropolitan Region [Santiago and environs]<sup>5</sup> who had requested an interview session were assigned a particular date and time.

The lawyer, the social worker, and the law school graduate were present at these sessions; however, during the busiest periods only two of them might be present and in a very few exceptional cases only one of these people was able to be present. There was always one Commission member present in the office, taking part in the sessions and helping resolve any emergency problems that might present themselves.

---

<sup>4</sup> Commission staff members' names are listed in the appendix of Volume 2.

<sup>5</sup> There were 1,845 such requests in the Metropolitan Region.

Each session lasted from forty-five minutes to an hour, although some lasted much longer. The Commission sought to obtain from relatives any information they could supply about the events. It particularly wanted any evidence that might serve to advance the investigation, such as the names of witnesses, and any information concerning proceedings initiated in the courts, human rights organizations, and other agencies. Relatives were also asked to explain the impact of these events on the family so that this aspect of the truth could be made known. This information was also intended to help provide the basis for devising policies for making reparation. The families were amazingly willing to put their trust in our group. For many of them, this was the first gesture made by the Chilean government to acknowledge their situation.

When the Commission had determined how many sessions had been requested through the regional and provincial government offices throughout the country,<sup>6</sup> it organized a schedule of visits to all these places and set dates for giving testimony. From July to September two members of the Commission, one or two social workers, and a varying number of lawyers and law school graduates visited each regional capital and practically all provincial capitals. Families were gathered in small groups so that they could express what they had suffered as a result of the grave human rights violations. This method proved very valuable, since it enabled many of them to share their experience and support one another. After these joint meetings, each family group met with a law school graduate and a lawyer, who after becoming familiar with the cases and gathering evidence where possible, recorded their accounts and testimony. Commission members organized their time so as to be present during as many interviews as possible.

#### 4. Subsequent investigations

Once the interviews had taken place and the materials had been obtained from human rights organizations and the families themselves, further steps were taken to obtain new evidence and corroborate the accounts already received. The Commission approved a general plan for that purpose. Article 4c of Supreme Decree No. 355 authorized the Commission to carry out all the investigation it deemed useful in order to accomplish its task, including requesting reports, documents or evidence from government officials and agencies. In addition, Article 8, paragraph 2, of that decree declared that these officials and agencies were obliged to "offer the Commission all the collaboration it may request, furnish the documents it may need, and provide access to such places as it may determine necessary to visit."

Many of the procedures ordered were of a general nature. Thus the Civil Registrar's Office was asked to supply the birth certificates for all those presented as victims, so as to assure from the beginning that their existence

---

<sup>6</sup> The number of interviews requested in other regions of the country was 1,688.



was legally recognized. Death certificates and autopsy reports were requested for those reported as having been killed, so as to provide information on the date and cause of their death and relevant evidence. In the case of those presented as disappeared after arrest, death certificates were always requested along with birth certificates, in view of the possibility that a death might have been registered unbeknownst to the family. In addition, the international police [whose task is to monitor entrance into, and departure from, the country] was asked if the victims might have left the country. Inquiries were also made with the Civil Registrar and the Electoral Registrar to see whether they might have registered in some fashion during the period in which they were presented as disappeared. These initial inquiries were useful for corroborating the basic aspects of the accounts of relatives and of human rights organizations and to weed out a few instances in which people had simply left home without informing their families. All the agencies mentioned here were helpful to the Commission, although it proved impossible to locate the documentation for autopsies carried out in some remote rural areas.

Whenever there had been a judicial investigation, the Commission sought to obtain copies. In the metropolitan area law students were especially contracted for this purpose; elsewhere regional officials of the Ministry of Justice or of the bar association or other persons often provided help. Many official requests were sent to hospitals in order to provide documentation for the medical treatment mentioned in the evidence that had been gathered. The National Archives, the General Comptroller's Office,<sup>7</sup> and the Chilean Police were also frequently consulted. The Commission sent out more than two thousand formal requests and received a response in approximately eighty percent of the cases.

In practically all cases in which the evidence gathered indicated that agencies of the armed forces or police might have been involved, the head of the respective branch was consulted as well as the chief of staff when appropriate, and they were asked for any evidence their institution might have on those events. The Chilean Army replied to more than two-thirds of these requests. In most of its replies it pointed out that in keeping with the legislation in force and its own by-laws, the evidence on such events that might have existed had been burned or destroyed when the legal period for doing so had passed. In other cases the response was that the institution did not have any evidence or could not respond unless the Commission provided further information. In those cases in which the army turned over the requested information, it proved

---

<sup>7</sup> General Comptroller's Office: An autonomous body which acts independently of the executive, legislative, and judicial branches. It oversees the legality of acts of the administration, thereby registering decrees and resolutions and objecting to them whenever they are unconstitutional or contrary to existing delegatory law. This institution also controls revenues and investments of the National Treasury, municipalities and other state agencies and agents. The General Comptroller is appointed by the president with Senate approval and remains in office until he/she reaches 75 years of age.

valuable for determining what had happened.

The Chilean Police almost always responded to such requests by indicating that the documents from that period had been legally burned. In most cases they indicated that they had made some investigation to find the requested information, but these efforts proved fruitless except in a small number of cases. On other occasions, the police answered that the evidence was part of a judicial investigation, and they invoked legal provisions currently in force to justify not sending it. The Chilean Air Force sometimes provided the evidence requested; in other cases, however, it said that it did not have records of the events or that they had been legally burned. The Chilean Navy replied to all the Commission's requests and sent material that proved very useful for the investigations. In some cases, it replied that it did not have evidence on the situations about which inquiries were being made.

The Commission made repeated efforts to obtain copies of the war tribunal records. It did not find them in the National Archive. The navy sent the Commission copies of sentences handed down by the naval wartime courts. The Chilean Air Force gave the Commission permission to examine all documents of any trial it requested. The Chilean Army stated that some of these records had been burned on army property in a fire started by a terrorist attack in November 1989, and did not respond to requests for the remainder of such records. Examining these records would have been very valuable for carrying out a more profound study of the legality of such war tribunals.

When information on the involvement of their security agencies was requested, the army, the navy, and the air force pointed out that they were legally prohibited from providing information having to do with intelligence activities.

On a number of occasions the Commission requested the internal investigation reports that could or should have been made within the armed services and police forces about particular events, many of them having to do with members within their own ranks who had been victims of terrorist actions. The navy sent the rulings given in all such reports requested; the air force added a good deal of direct and circumstantial information about such events; the police did not send them for various reasons, such as the fact that they had been legally burned or that they had already been sent to the courts; the army sent copies of the rulings in the reports drawn up when its members were killed.

When the evidence gathered indicated the involvement of uniformed personnel not identified by name but by rank, by their unit, or by the functions they were carrying out at a particular moment, official inquiries were sent to their institutions requesting their names or the names of all those who were serving on a particular squad or unit. Pointing to Article 436 of the Military Justice Code, the Chilean Police claimed that they were legally prohibited from responding to

such requests, since that article made confidential the lists of military personnel. The Commission stated that it was not seeking such lists but inquiring about the names of persons who had served on a particular unit. Subsequently the police sent the names of retired officers who had been in charge of each unit. The Chilean Air Force and Navy always responded by giving the requested names of officers in charge of particular units.

In almost every case in which the evidence gathered made it possible to pick out a particular person, the Commission asked that person to give testimony in order to learn his or her version of the events and to take it into account in discerning what had happened. If the person was still on active duty, the Commission made such a request through the commander-in-chief of each branch and through the chief of staff where appropriate. After explaining that the individual member had been mentioned in a document the Commission had received, noting that such testimony was voluntary and could be made confidentially, and that it was not the Commission's role to determine whether individuals were guilty of crimes, these officers were asked to inform the individual members how important their testimony was considered to be. The Commission requested the testimony of one hundred and sixty members of the armed forces and the police. The commanders-in-chief answered that the names of some of these people were not listed as belonging to their institution or were now retired. Even in these cases, the police attempted to locate these people and inform them of the Commission's interest. In other cases, the heads of these branches did inform those cited that the Commission wanted to receive their testimony. With the exception of a few cases, which will be noted below, those who were on active duty refused to offer testimony to this Commission. They offered a number of reasons for doing so: they generally indicated that they had no knowledge of the events for which they had been summoned; that they had already stated all they knew in court proceedings; or that, since compliance was voluntary, they chose not to appear. One member of the police who was on active duty and one in the air force indicated their willingness to offer testimony. A considerable number of policemen and one air force officer agreed to answer questions in writing. When such persons did not belong to the armed forces or were now retired, these requests were delivered directly to them. In these cases a larger number came forward to testify.

The investigative police passed on all the Commission's requests except those in which it was noted that there were no records in its files. Its members were often willing to provide testimony to the Commission.

Because of the limited amount of time, it was impossible to take testimony from all persons who were mentioned as witnesses of the events under investigation. Hence the Commission chose those it regarded as more relevant and whose testimony was not to be found in other reliable documents. The lawyers and law school graduates visited almost all regions of the country a second time in order to record the testimony of the most important witnesses.

## 5. Individual decision on each case

By the beginning of October, the Commission had established a schedule and laid down a procedure whereby each of the lawyers could prepare information on the cases he or she had been assigned to investigate under the supervision of the Commission members. At this point the lawyers focused on drawing up a written report in accordance with Commission guidelines in order to give an account of all the evidence they had gathered in each case and to suggest that the Commission adopt a particular conclusion.

Only the material in this report constitutes the Commission's opinions and consensus. The documentation in its archives has merely served as the basis for its work.

The first cases were presented to the Commission at the end of October 1990. In sessions lasting until mid-January 1991, the Commission individually examined about 3,400 cases, until it had reached agreement over how it was going to present each case in which human rights had been gravely violated or in which people had been killed as a result of political violence. In other cases it concluded that it had not been able to come to such a determination or that the case was beyond its competence. In only a small number of instances did it reach agreement by a simple majority, and in none of these cases were the differences over matters of principle. Hence the Commission agreed to leave dissenting opinions only in its minutes and to omit them in this report.

As a result of the time available to the Commission for completing its tasks some of its official inquiries remained unanswered and consequently a number of cases were left unresolved. Hence in this report the Commission recommends that the government continue to investigate these situations to determine whether they also constituted grave human rights violations.

## 6. An account of the truth about individuals and the country as a whole

As it was weighing information, the Commission was also deciding the structure and characteristics of the present report. In order to provide an account of the episodes in which the Commission concluded that grave violations of human rights had taken place, the staff first had to provide concise accounts of these cases and present them in draft form to the Commission. Given the nature of this report, information on many circumstances connected to the most serious violations, such as prior surveillance or pursuit, treatment in prison, and arrest procedures had to be omitted, except where they were necessary for the Commission's decision. Hence what is written in the accounts are basically those elements that directly or indirectly led the Commission to conclude that a grave human

rights violation had taken place. This procedure has enabled the Commission to identify every single victim of grave human rights violations, as well as the people who were killed as a result of political violence, and to indicate its conclusion and reasoning in each case.

The examination of these particular situations served as the basis for the overviews which outline the major features of events in each period considered in this report. These overviews highlight the most common and relevant features of the events, the organizations involved, who the victims were, and the methods used in these violations, such as the location, treatment, and disposal of dead bodies. Testimony given by important actors of that period and by people who were involved in organizations and groups which violated human rights, as well as the contributions of those who have studied these matters, were very important for drawing up this overview.

The Commission was also charged with providing evidence that might make it possible to determine the fate of the victims and their whereabouts. From the beginning efforts were focused on this vital task. Whether it could be accomplished was basically dependent on whether people who could offer evidence were willing to appear voluntarily before the Commission. The information thus gathered can be found in this report as well as in what was presented to the courts, since whenever evidence concerning the whereabouts of the remains of someone who had disappeared after arrest was obtained, it was immediately submitted to the courts.

Since this task was so important, the Commission did not want to finish its work without first sending out a confidential official request for any evidence that could directly or indirectly help determine what had happened to those persons identified as disappeared. These requests were sent to agencies or government bodies whose members were said to have participated in some action of arresting or imprisoning these persons and to those government figures who might have ordered investigations into such matters. Although almost all of these requests were answered, none of the answers offered any information that could substantially serve that purpose.

The final volume [not included in the English translation] of this report is simply auxiliary in nature. It provides an alphabetical list of all of those persons whom this Commission has regarded as having suffered grave human rights violations or political violence. It seeks to indicate who these persons were and is limited to a brief mention of the events that led to their death or disappearance, in accordance with the Commission's conclusion, as presented in the body of this report.

### *C. Sending evidence to the courts*

The second paragraph of Article 2 of the Commission's founding decree states that if "while it is carrying out its functions," the Commission "receives evidence about actions that appear to be criminal, it will immediately submit it to the appropriate court."

In compliance with this obligation, the Commission sent to the courts all the evidence it gathered of whatever seemed to be an illegal burial in order to help determine the fate or whereabouts of those who disappeared after arrest. In other cases, the Commission decided to send the courts whatever evidence it gathered that seemed new, useful, or relevant for judicial investigations. Thus when the evidence the Commission gathered did not go beyond what was already in the possession of the courts, or when it did not seem relevant for a judicial investigation, it was not sent to the courts; the intention was to send only evidence that could make a difference. In no case did the Commission refrain from sending evidence because a criminal action might be ruled out, or because the amnesty law might go into effect. The Commission determined that such decisions were to be made by the courts, and hence it should not decide such circumstances on its own.

In sending evidence to the courts, the Commission was careful to observe the norms laid down in its founding presidential decree, namely that the identity of those who wanted to testify confidentially should be protected. In no case has this concern hindered the Commission from sending to the courts all available evidence about sites where the remains of someone who disappeared after arrest might be found.

### *D. Acknowledgement of harm inflicted and proposals for reparation and prevention*

As has been noted, from the beginning the Commission did not want to stop at presenting the truth about human rights violations. It understood that when the Commission's founding decree spoke of the overall truth of what happened, the report could not neglect the effects of these events on the victims' families. Hence the Commission discussed this matter with the relatives in each interview and testimony session. Chapter Four of Part Three of this report seeks to present the Commission's findings as faithfully as possible.

In addition to examining what the relatives of the victims of grave human rights violations had suffered, the Commission consulted with relevant experts and persons who could offer guidance on proposals for reparation and prevention such as the decree had urged it to prepare. The Commission consulted with a large number of national and international organizations by asking them what they believed would be the most fitting measures of reparation and prevention. Naturally, the Commission was quite aware that complete reparation for the damage done was impossible, and that any proposal for reparation should be made with complete respect for the dignity of the people involved. Moreover, the

Commission had to bear in mind that its primary duty was to clarify the truth, which in itself had undeniable effects in terms of reparation and prevention. Starting with these premises, the Commission consulted each one of these organizations and institutions and inquired which measures of symbolic or cultural reparation, whether legal or administrative, or in the form of services or aid, they regarded as most fitting for repairing, insofar as possible, the harm that has been done. Likewise they were asked about measures that might strengthen the legal order and institutional framework, or promote a culture more respectful of human rights in order to assure that such events never again take place in our country. One hundred and nine organizations were consulted in this fashion, including those of the victims' family members, human rights agencies, the main universities and centers of learning, the political parties, the churches, and other moral authorities. Internationally, the request was sent primarily to those intergovernmental and private bodies with the greatest experience in protecting and promoting human rights. The Commission received more than seventy extensive and well-documented presentations, which it then studied and carefully processed, until it finally came to the proposals and recommendations included in this report.

#### *E. Chapters dealing with relevant prior circumstances*

Since Decree No. 355 stated that the Commission was responsible for preparing us complete a picture as possible of the most serious human rights violations, along with their antecedents and circumstances, the Commission also decided to include with these accounts some observations it believed to be essential to a better understanding of this matter. Thus, before beginning its accounts of the events themselves, this report notes some of the legal, political, and social features of the period that are more directly related to human rights violations. While fully aware that nothing can excuse or justify these violations, the Commission has sought to take into account some characteristics of the climate in Chile before and after September 11, 1973 that may have contributed to such violations. The Commission believes it is thereby carrying out a duty imposed by the decree that it should set forth the antecedents and circumstances of these violations, while also helping recall the climate that enabled such violations to take root. The purpose of these observations is to help prevent them from ever occurring again.

We have also considered the main legal institutions which made such violations possible, as well as those legal mechanisms that proved most effective for countering them. The Commission believes that acknowledging such antecedents will always be useful for enabling us to examine our cultural and legal institutions and as a basis for determining the changes required in order to prevent such events from recurring.

How the judiciary and the main actors in society reacted to these grave violations is also described. It will be the task of social scientists and

historians to determine what happened with greater precision and depth. The Commission, however, believes it has been very important to connect the phenomena of human rights, as well as their gradual eclipse, to the greater or lesser commitment by various actors in society to protecting, defending, and promoting the rights of all Chileans.

In working on these chapters, the Commission first set about gathering the literature and documentation of the period, and sought the opinion of experts in these areas. When all this material was in hand, one or more Commission members were assigned to prepare drafts of each chapter. After being reviewed by the whole Commission, these drafts became chapters in this work.

#### *F. A truth for reconciliation*

The tasks assigned to the Commission were clearly and precisely described in its founding supreme decree, as were its duties and powers. In carrying out these tasks, the Commission worked with complete and utter independence. The administration that had created the Commission did not seek to influence its decisions in any way nor did any other branch or agency in the government do so. The Commission's decisions were always made in accordance with the members' conscience.

Nevertheless, from the beginning the Commission understood that the truth it was to establish had a clear and specific purpose: to work toward the reconciliation of all Chileans. In view of the magnitude of such a task, the Commission sought the opinion of the main actors in our national life and especially those most concerned with this undertaking, in order to draw upon their ideas about the work that was to be done. Thus from the time it began its work until it moved into the stage of analyzing cases, the Commission met with all of the groups of victims' relatives, human rights agencies, those professional associations that sought meetings, and all the political parties. Discussions with groups of relatives and human rights organizations dealt primarily with the objectives and methods the Commission was to use to gather the evidence they had in their possession and to seek the truth both in individual cases and as a whole. The Commission also sought to keep in mind the expectations of the organizations of family members about its work, and it often sought the opinion of those who brought individual cases before it. In the case of the churches, the moral authorities in the country, and the political parties, the Commission sought to become familiar with, and analyze, their perspectives about how the Commission, within its limitations, could best reach the truth and truly aid national reconciliation.

Thus after a hundred working sessions, this Commission has come to the end of its task and presents to His Excellency, the President of the Republic, this report on its work.





## **Chapter Two:** Norms, concepts and criteria on which the Commission's conclusions have been based

The previous chapter indicates how the Commission worked in a material sense, that is, how it was organized and what tasks it carried out in order to meet objectives. The Commission also believes it should explain the norms, concepts, and criteria that provided the framework for its deliberations and conclusions. Given the seriousness of what is presented in this report, readers must be fully informed about its moral and theoretical foundations.

### *A. Norms*

#### 1. Human rights

The decree creating the Commission on Truth and Reconciliation stated that its purpose should be to contribute to the overall clarification of the truth about the most serious violations of human rights committed in recent years. The decree defines those "most serious violations" to be situations of those persons who disappeared after arrest, who were executed, or who were tortured to death, in which the moral responsibility of the state is compromised by acts of its agents or persons in their service, as well as kidnappings and attempts on the life of persons committed by individuals for political reasons.

The Commission wishes to make the following observation about the meaning of human rights and how the most serious violations are to be defined:

1. The norms set forth in the Universal Declaration of Human Rights and other relevant international documents proclaim rights which were already substantially part of Chile's legislation and its best civic traditions. Nevertheless, the expression "human rights," which is now consecrated by its wide use, appropriately emphasizes that such rights are inherent in every person and also points to the universal acceptance they enjoy. Moreover, current international norms on human rights make it clear that previously our nation's legislation was defective in a number of ways and was therefore unable to effectively protect the rights it proclaimed.

2. The relevant international norms encompass a wide range of civil, political, economic, social, and cultural rights. Although this report deals only with the violations of some of these rights, the importance of other rights is by no means thereby denied. It can be said, nonetheless, that the major values which human rights norms seek to defend are respect for life, the dignity and the physical and psychological integrity of persons, as well as the ideals of freedom, tolerance, respect for

diversity, and mutual support among all human beings. During Chile's recent experience, very serious excesses of intolerance and division occurred among Chileans; the most extreme manifestations of those excesses were killing and torture. Hence for the purposes of this report, and with no intention of offering a universally valid judgement applicable to other situations, it is reasonable to characterize as the most serious human rights violations those that led to the death of persons.

3. The Commission has studied all denunciations of violations of this nature case by case and has come to a determination concerning each.

Torture also must be regarded as one of the most serious of such violations; this report also considers the practice of torture during the period under consideration as indeed it was obliged to do. Nevertheless, it does not make a case by case determination on those who were victims of torture unless such torture led to death, or unless the fact that torture occurred has been important for coming to a judgement on aspects essential to a case (for example to establish irregularities in war tribunal proceedings or to note the unlikelihood that prisoners were in fact trying to escape as claimed). The Commission's founding decree formally restricts the consideration of individual torture cases to such instances. The Commission itself, however, understood that this limitation had been imposed for a substantive reason: to have carried out a detailed investigation of individual complaints of torture—which in all likelihood would have been very numerous—would have inevitably delayed this report, and the country had a right to expect it to be concluded quickly. Moreover, given the time that had elapsed and the circumstances under which torture had been applied, it would have been virtually impossible to come to a conscientious conclusion in a vast number of specific cases. Such obstacles are not a factor, however, if the aim is to come to an overall assessment of the practice of torture. Indeed, the Commission encountered abundant and convincing evidence on the characteristics and extension of this most serious practice.

The Commission also sought and received confirmation from the president that it should make a case by case examination of politically motivated assassination attempts and kidnappings committed by private citizens only when such actions ended in the death of the intended victims. This decision did not preclude making overall observations on such terrorist practices and on other similar unlawful actions committed by private citizens.

## 2. Laws of war or international humanitarian law

The norms of humane behavior governing armed conflict (also known as the laws of war or international humanitarian law) are likewise part of

Chilean legislation and tradition. Specifically, Chile has ratified the 1949 Geneva Conventions.

The norms of international humanitarian law do not consider the question of when it is lawful to resort to war or armed rebellion. Traditionally, it has been specialists in social and political ethics who have dealt with such issues. According to the most well-established positions, turning to war is justified when what is at stake is the legitimate defense of the nation or its allies, or of other similarly important values, or in response to unjust aggression; armed rebellion against a regime is justified only as a last resort in order to end a tyranny and provided that other important requirements are met.

To apply these moral principles to specific situations entails interpreting social and political circumstances, about which people's opinions are often very deeply divided.

The Commission has refrained from taking a stand on whether the use of force on September 11, 1973, and immediately thereafter was legitimate, both by those who sought to overthrow the government of President Salvador Allende and by those who sought to defend it. In addition to the obvious difficulties that would have been involved had this point been debated, the Commission did not believe it to be necessary for its assigned purposes. Indeed, whether having recourse to weapons was justified or not, there are clear norms forbidding certain kinds of behavior in the waging of hostilities, both in international and internal armed conflicts. Among these norms are those that prohibit killing or torturing prisoners and those that establish fair trial standards for those charged with a criminal offense, however exceptional the character of the trial might be.

The main sources of those norms are international humanitarian law, the essence of which is part of Chilean law, as has been noted. Such norms are also clearly part of the universal ethical consciousness and the traditions of military honor.

Certainly, these and other norms are often violated in practice and certain factors may make such violations more likely. Such transgressions, however, are never justified, as is made clear further on.

### 3. Other norms governing the use of force

Besides the norms mentioned above, the Commission has kept in mind the general norms governing the use of force:

\* The state, through its bodies and officials duly empowered by the

constitution and by law, enjoys a monopoly over legitimate force, namely that which can be rationally used to enforce the laws and maintain public order. The use of force should be justified and in proportion to the end being legitimately pursued; otherwise, it may be deemed unjustified or excessive.

\* Private citizens may use force in legitimate self-defense or to defend others through means reasonably aimed at repelling imminent attack, as well as in exceptional circumstances such as a citizen's arrest.

#### 4. Who is guilty of violating human rights?

When committed by a government official, the very same illicit act can be defined in different terms without falling into contradiction. For example, if in the context of an internal armed conflict, a soldier or police officer tortures a prisoner, the act can be termed a crime, because the law declares it to be such. It can also be termed a human rights violation because it specifically violates the norms of various human rights agreements and conventions. Finally, it can be termed a violation of international humanitarian law, which expressly prohibits such behavior in situations of armed conflict.

If an individual involved in guerrilla warfare against a government commits the same act against a member of the military or police who has been captured or kidnapped, it can be termed a crime and a violation of the norms of international humanitarian law. But may such an act be termed a human rights violation as well?

Although this issue would seem to be purely academic, it has been the object of a good deal of controversy. One reason that it is so controversial is that the term "human rights violation" has taken on a symbolic power far beyond its technical meaning both in our country and in the concert of nations. Hence, while some take one side or other of the issue without any ulterior motive, others do so for political reasons. Since this matter has also been discussed in Chile, the Commission is bound to explain what the controversy is about and state its own position.

Until recently, the traditional position of the most respected human rights organizations was that such rights norms primarily govern relations between the state and citizens, and that it is therefore inappropriate to call actions committed by private citizens "human rights violations." Today there is a tendency to move away from this position, although many human rights organizations still maintain it.

The traditional grounds for this position are as follows. The Universal Declaration of Human Rights was proclaimed and human rights covenants were signed and ratified by states. Certainly, the actions of

private citizens may also affect human life or other important values, but such attacks can appropriately be called crimes, acts of terrorism, or something else, depending on the case. To designate them "human rights violations" diverts attention away from how serious it is when the state, which wields public force and is charged with protecting the rights of citizens, uses that force to violate those rights. If private citizens commit crimes, even for political motives or pretexts, the state has at its disposal the judicial system, the police, the press, and public opinion, that is, an array of powerful institutions and means at hand for denouncing, investigating, and punishing such crimes. When the state itself uses such power to assault the rights of its citizens, they are rendered utterly defenseless.

Those who argue that it is preferable to speak of human rights violations only in connection with actions by the state and its agents also point out that various governments from a wide range of countries often designate violent actions committed by those in opposition "human rights violations" as though doing so might justify their own abuses, which they present as necessary for responding to such actions.

Granting the power of such arguments, those who hold that the term should also apply to actions of non-governmental agents can also draw on valid theoretical arguments. Furthermore, in practice it has been observed that when the expression "human rights violations" is limited to government actions, public opinion very often tends to interpret it as an effort to condone or justify abuses or atrocities that may be committed by certain opposition political groups. There is no doubt that public opinion overwhelmingly condemns resorting to abuses or atrocities whether in order to retain or seek power or to resolve political conflicts. The idea that there are certain values of humane behavior that not only the state but all political actors must respect has become enshrined in the public conscience. Those norms of humane behavior derive partly from the norms of human rights and partly from the norms of international humanitarian law or the laws of war. In peacetime, they govern all political actors, governmental or non-governmental; and in the case of armed conflict, whatever its nature, they are obligatory for all combatant forces. Public opinion has a deep intuition of these norms of humane behavior, which it has taken to be synonymous with the expression "human rights." Thus in practice people have been moving beyond the more restricted historic or technical meaning of this term.

The Commission believes that these reasons explain why its founding decree regards as human rights violations not only certain acts committed by agents of the government, but also other politically motivated acts of private citizens.

The Commission is certainly bound to follow the terminology set down in the decree. However, it wants to make clear that in carrying out its assigned task, it also accepts the need to acknowledge this broader interpretation of the term "human rights" that has gradually become prevalent in public opinion. This does not mean that such broader interpretation is to be regarded as universally valid, nor does it entail a disregard for the power of the arguments that originally led to a more restricted use of the term. Indeed, the Commission believes that it should always be emphasized that acts of terrorism or other illegitimate actions committed for political reasons cannot be used to seek to justify human rights violations committed by the state and that the state's use of its monopoly over public force to violate the rights of persons is a matter of the gravest concern.

## *B. Concepts*

### 5. Responsibilities

During the period when the Commission was at work, national public opinion witnessed the intensification of a debate already underway. At issue was the kind and degree of responsibility to be attributed to individuals, political parties, the armed forces and police, or other institutions and sectors involved in the events this Commission was to examine.

It is appropriate and indeed unavoidable that the Commission articulate its position on this matter.

#### a. The relationship between the political situation prior to September 11, 1973, and the subsequent human rights violations

One of the issues being debated at the time the Commission was formed and while it was at work was the period that its report should cover. Some argued that the Commission should also consider human rights violations, or the political situation, or both as they were prior to September 11 (and opinions differed about how far back the investigations should extend). They believed that events before and after that date were inextricably interconnected, or at least that it was important to keep in mind that connection. Others, however, pointed out that the human rights violations that took place starting on September 11, 1973, were uniquely grave, systematic, and numerous, and had not been acknowledged by the state nor was the public properly informed about them. Thus this Commission's report could justifiably be limited to the period of military government.

This Commission has devoted itself to a case by case analysis of the most serious human rights violations committed between September 11, 1973 and March 11, 1990, whether by government agents or politically motivated private citizens. Such was its specific assignment. However, the Commission believes it must take into account the situation of the country leading up to September 11, 1973. That situation led to a break in our institutional life and a deep division between Chileans which made it more likely that human rights would be violated. One of this Commission's assigned tasks is to propose preventive measures, that is, to suggest what should be done so as to prevent the recurrence of the kinds of infractions we have investigated. Hence, it is imperative that we examine not only such deeds and their immediate circumstances but also the circumstances that created a climate that made their perpetration more likely.

Nevertheless, the Commission wishes to assert very firmly that even when certain circumstances increase the likelihood that certain acts will be committed, or weaken the institutional and social defenses that help prevent them, by no means do such circumstances constitute the slightest justification or excuse for the violation of legal and ethical norms which are absolute, such as those governing the situations that this Commission has been charged with examining.

The argument sometimes proposed, directly or indirectly, that it is naive to expect certain norms to be observed in a situation of war or some other disturbance, is unsustainable. Indeed, the ethical and legal norms governing armed conflicts have been devised precisely for those situations that are known to be prone to excesses. These norms do not seek to completely avoid all conflict but rather to set certain limits upon them. Moreover, although such regulations are often violated or overlooked in practice, the validity of such norms and the need for them is not thereby diminished. The situation is not essentially different from that of the laws governing peacetime, which are not made less valid or necessary by the fact that they are often violated. Thus instead of emphasizing how much the norms governing armed conflict tend to be violated in practice, the focus should be on what would happen if there were no applicable norms at all.

The argument we are here seeking to refute is even less defensible with regard to the cases this Commission has had to



examine, since for the most part the events did not take place in the heat of an armed clash nor immediately thereafter. Rather, these were assaults on people who were unarmed or imprisoned.

In short, this report takes into account the situation prior to September 11, 1973, and notes that that situation and its consequences objectively jeopardized human rights and made it more likely that they would be violated, but by no means did it justify such violations.

b. The state's "moral responsibility"

The decree creating the Commission mentions "acts in which the moral responsibility of the state is seen to be compromised as a result of actions by its agents or by persons in their service." As far as the Commission has been able to determine, this concept of the "moral responsibility of the state" does not have a precise legal or technical meaning.

The Commission has understood that phrase to mean the kind of responsibility which may rightly be attributable to the state due to acts committed by its agents (or by persons serving them) in compliance with policies or orders from state agencies, or due to actions carried out by such persons without specific policies or orders, provided that their actions were subsequently approved by state agencies or that the protection of, or inaction by, state agents allowed their behavior to go unpunished.

This meaning of "moral responsibility" is the one that the Commission members have established in accordance with their own judgement; it does not have any legal effects other than to lay the groundwork for measures of reparation which the branches of the government, within their own proper functions, may decide to award. Finally, the Commission wishes to make it clear that its own judgement of moral responsibility has no effect on other judgements of responsibility that may be made on the government or individuals by the judiciary or other competent bodies.

c. Other kinds of responsibility: those which fall on individuals and those which fall on the institutions to which they belong

It is generally accepted that the same action can give rise to different kinds of responsibility and hence to different kinds of punishment. From a legal standpoint, responsibility can be criminal, administrative, civil (contractual or noncontractual) or political. From the standpoint of ethical or social norms, one can

speak of responsibility being moral or historical, and in a different sense of the term, of political responsibility as well.

This is not the occasion to discuss these distinctions in detail. However, it must be noted that except for responsibilities of a civil character, which can affect juridical persons and even government bodies (and which are generally translated into the obligation to pay damages), other types of responsibility generally only affect natural persons. In the case of moral, historical or political responsibilities (not understood in the strictly legal sense), however, it is often and correctly said that such a responsibility may fall on one sector or institution or another, and even on all of society.

The Commission believes that it must state clearly its opinion on the individual and institutional responsibility that may stem from the human rights violations it has had to examine. More explicitly it must state what responsibility-if any-should fall on the armed forces and security forces for human rights violations committed by individuals on active duty in their respective institutions.

One opinion repeatedly expressed by representatives of a wide range of political parties as well as by other voices which help shape public opinion in our country, holds that the responsibility for such actions is always that of individuals and in no way affects the institutions they serve. Underlying these statements, the Commission believes it discerns conceptual assumptions, value judgements, and motivations which it shares. It is also of the opinion, however, that to deal with the issue simplistically runs the risk of not only making conceptual errors, but also of jeopardizing the higher interests of the military and police forces themselves, as well as the higher interest of the country to the extent it overlaps with the interest of those forces.

Indeed it is correct to say that the responsibilities of a criminal character and other legal responsibilities that may derive from human rights violations are personal in nature and do not affect the institution to which the perpetrator belongs. It is also true that the fundamental role played by the armed forces and security forces in the history of the country should be fully appreciated, as should be their character as permanent and essential national institutions. Finally, it is praiseworthy to strive to avoid any use of the issue of human rights to attempt to sully these institutions, or to detract from their contribution to the country and the role they are called to play in the future.

Nevertheless, these points cannot be invoked to deny the historic or moral responsibility that may befall one institution or another as a result of the practices it ordered, or to which it consented, or with regard to which it failed to do all that was required to impede or prevent their recurrence. Just as we have spoken of the moral responsibility of the state, which would be inconceivable if the actions of its officials could never affect it, we can also speak properly of the moral or historical responsibility of political parties, of other institutions or sectors of national life, and of society as a whole. The armed forces and the security forces are no exception. It is human beings who forge and make institutions great, and it is also human beings who can affect them negatively.

It is not a purely conceptual concern, however important it might be, that prompts this Commission to make these distinctions. This Commission believes that if matters came to the point that an institution would always be immune from any harm or loss of respect no matter what the behavior of its individual members might be, there would be a danger of falling into an attitude of complacency, the result of which could be serious damage to the institutional integrity and prestige that everyone rightly seeks to preserve.

When the nation's institutions acknowledge their historic and moral failures-and few if any are completely free of such failures-they are in fact ennobled, made better, and enabled to serve more fully the high purposes for which they were created.

6. Some forms of human rights violations

The Commission believes that at this point certain kinds of human rights violations frequently mentioned throughout this report should be defined.

a. Disappearance after arrest<sup>8</sup> [detenidos desaparecidos, literally "disappeared prisoners"]

The expression "disappeared prisoners" became common in Chile and outside the country during the period covered by this report. It refers to the situation of those who were arrested by

---

<sup>8</sup> The term "arrest": The Spanish text version of this report uses the term *detener* in referring to persons who were deprived of their liberty by Chilean armed or security forces or civilian agents in their service between September 11, 1973, and March 1990. The literal translation of this word is "to detain." A more commonly used English term is "to arrest." Although both in English and Spanish there are legal differences between *detener-arrestar* and "detain"-*arrest*," the exact definition is not preserved in either text. Therefore the translator has chosen to use the more commonly recognized term "to arrest" when referring to the deprivation of a person's liberty.

government agents or by persons in their service and about whom the last information is that they were apprehended or that they were seen later in a secret prison. Officials deny having arrested them, claim to have freed them after a certain period of time, offer other unsatisfactory explanations, or simply say nothing.

This situation is quite different from that of persons whose fate or whereabouts are simply unknown, even though they may be described in similar terms. These latter are matters for the police, and may involve suicide, a common crime, some other kind of misfortune or someone's free decision to move away from his or her circle and break ties with relatives and friends.

In the case of disappeared prisoners, however, this Commission has arrived at a moral conviction that the so-called "disappearance" is not a disappearance at all, as will be explained in detail in Part Two. In fact, all the cases which this Commission treats under this term involve an arrest along with, or followed by, measures to conceal it and official denials. Torture was generally used during such detention, and there is a moral certainty that it ended in the victim's death and the disposal of the remains so as to prevent their being discovered.

The Commission became familiar with two main forms of this practice of "disappearance." In the kind of disappearance most common after September 11, 1973, arrests seem to have been made throughout the country by different units of official forces, sometimes accompanied by civilians. These basically consisted of a summary execution or murder of the victim and the disposal of the body (generally by throwing it into a river or burying it secretly) followed by a denial or false stories. In such cases disappearance is primarily a way of hiding or covering up crimes committed, rather than the result of centralized coordination aimed at eliminating predetermined categories of people. [The second form of] "disappearance" was carried out primarily during the 1974-1977 period, mainly but not exclusively, by the DINA. The Commission is convinced that behind most of these cases was a politically motivated and systematically implemented effort to exterminate particular categories of persons.

Even though both kinds of disappearance constitute extreme forms of human rights violations, which deserve absolute condemnation, the Commission believes that this intention to exterminate certain categories of persons makes this second

form singularly reprehensible.

b. Executions<sup>9</sup>

This Commission encountered cases of executions carried out in accordance with a death sentence issued or supposedly issued in a war tribunal. Without seeking to take a position on the more general issue of the legitimacy of the death penalty, the Commission regards these executions as human rights violations, since these trials, when they in fact took place, lacked the minimum guarantees for a fair trial.

The Commission also examined various kinds of executions in which there was no trial whatsoever. In the technical terminology of international organizations these are known as extrajudicial or extralegal executions.

During the months after September 11, 1973, the so-called "law of escape" was often invoked in connection with such executions. In the well-worn official explanations offered in these cases, it was generally claimed that government troops had shot prisoners who were trying to escape and who paid no attention to orders to halt, and therefore were killed.

Even if these explanations were plausible, it would not have been justified to shoot to kill at people who could have been subdued in some other manner. However, the Commission found that these explanations were implausible in all the cases of the "law of escape" which it examined, and hence it judged them to be extrajudicial executions, and that the false story of attempted escape was used as a justification. In a few isolated cases, narrated below, the circumstances are somewhat

---

<sup>9</sup> The term "execute": The Spanish text of this report uses the term *ejecutar* in referring to persons who were killed by Chilean armed or security forces or civilian agents in their service and whose deaths were certified to the victims' families. They are distinguished from those persons identified as "disappeared after arrest" (*detenido-desaparecido*), whose deaths were not certified and whose corpses were never returned to their families. A more thorough explanation of these categories is cited above. In the individual case material, *ejecutar* as well as *ser muerto* (literally-"to be killed") are used in describing executions and other killings resulting from use of undue force, the abuse of power, or torture. The translator has preserved the Spanish word *ejecutar* and in both instances used "to execute" or "execution" in the translation. In English these terms usually carry the connotation of being a killing sanctioned by the State as a punishment for a crime. Although in some instances the victims were killed as a result of a war tribunal sentence (see Part Two, Chapter Three) and all the killings were committed with the impunity of the State, the nuance here is not the same. In the translation of this report the words "execute" or "execution" will refer to the deliberate killings committed by the agents of the State in an extra-judicial/extra-legal manner or which were ordered during a trial that lacked the minimum guarantees of fairness.

different, without however, altering the unlawful character of killing committed by government authorities.

The Commission also examined many instances of execution in which there was no effort to offer any justifying explanation. In some of these cases the victims were physically under the control of their captors.

In some instances the remains of disappeared prisoners have been discovered subsequently and hence they may also be regarded as executed. This report nonetheless refers to them as disappeared prisoners in order to make it clear that their remains were not found for a long time. As has been noted, however, this Commission regards the fate of both categories of victims, executed or disappeared prisoners, as the same. The only difference lies in the fact that in some instances the remains have been found, while in others they have not.

c. Use of undue force

The Commission also examined many cases of human rights violations which it has qualified as the use of undue force. These are killings committed by on-duty government agents which were not a premeditated action against a previously chosen victim. Use of undue force specifically includes situations in which the use of force was unjustified as well as others in which the use of force may have been justified in principle, but was excessive and bore no proportion to the requirements of the situation.

Specific situations varied a great deal. They included cases such as police officers who while arresting a drunk person needlessly beat him with their rifle butts so badly he died; shots fired at participants in a demonstration causing the death of one or more, when circumstances would have permitted imposing order through other means; or shooting to kill an unarmed boy who instinctively ran down the street at the sight of men in uniform, out of the mere vague suspicion prompted by such a reaction.

d. Killings during curfew hours

The Commission learned of many cases of killing during curfew hours. Many of these took place in rather obscure circumstances and hence could not be called human rights violations. The persons who were killed in this fashion are nevertheless regarded as victims, as is stated further on in this chapter.

The Commission judged that many other cases fell into the previous category of the use of undue force, because from the evidence (described in each case) it could be deduced that the reaction had been excessive. The Commission decided that in some cases an execution had taken place.

e. Abuse of power

The Commission was told of many instances in which government agents killed people not for political reasons but out of revenge or for other private reasons unrelated to their tasks as government agents or to superior orders. If the government took administrative measures or prosecuted the case, the Commission has regarded it as a common crime, and hence as excluded from its mandate. If, however, officials condoned the deed, either by failing to condemn it or by providing the means whereby the perpetrator could enjoy immunity, the Commission has judged that the moral authority of the state has been compromised, and that a human rights violation has thereby been committed.

The Commission is aware that at various periods in our country's history people have been killed as a result of the abuse of power. Nevertheless, such acts remain human rights violations, if the government, instead of punishing them, itself becomes a participant by condoning or supporting them. In other periods of our country's history, there have also been deaths due to the use of undue force or during curfew periods. It does not follow, however, that such acts should not always be judged in accordance with the criteria set forth here.

f. Torture

The Commission has made use of the definition of torture in Article 1 of the Convention against Torture, and Cruel, Inhuman or Degrading Treatment or Punishment (which according to the Constitution is in force in Chilean law) which states:

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is

inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

The Commission has had to determine reasonably and honestly in which cases a victim has died as a result of torture, as specified further on in this chapter.

g. Terrorist acts

The Commission has examined many cases of politically motivated killings committed by private citizens and judged them to be human rights violations.

Moreover, the Commission has also judged such actions to be terrorist when they constitute indiscriminate assaults on people. Examples of such actions are the placing of explosives in a public site or the toppling of high tension wires to electrocute either those who live in the vicinity or passers-by (or disregarding the danger that they may be killed). Selective treacherous attacks on government agents are also regarded as terrorist attacks.

7. Victims

a. Victims of human rights violations

Based on these formulations, the Commission has defined as victims of human rights violations those who were subjected to:

\* forced disappearance, that is, those who disappeared after being arrested;

\* execution, in any of its forms;

\* use of undue force leading to death;

\* abuse of power resulting in death, if the government has condoned the action or permitted it to go unpunished;

\* torture resulting in death;

\* murder attempts leading to death, committed by private citizens, including acts of terrorism, whether indiscriminate or selective, as well as other kinds of attacks on life.

The Commission has also regarded as victims of human rights violations those who have taken their own life, if the



circumstances make it possible to come to a reasonable and honest judgement that the person committing suicide was led to despair or impelled to make such a decision due to physical or psychological torture, or to the conditions of imprisonment or some other situation for which the government was responsible, and which itself violated human rights. In assuming this position the Commission is not taking a stand on whether suicide itself is ethically justifiable but on the unlawfulness of the causes that make it understandable.

- b. Persons who were killed in armed clashes or who were, in a general sense, victims of the situation of political confrontation. We refer here to people who strictly speaking cannot be regarded as victims of human rights violations. Their death is nonetheless directly connected to the political conflict in our country or to its effects. The Commission has also declared them victims (although clearly distinguishing them from the victims of human rights violations). The decree creating the Commission does not formally consider these situations. Nevertheless, given the complexity of the cases it examined, the Commission judged that it was its moral duty to consider each case of those who perished in this manner. They fall into one of the following categories:

\* Combatants on one side or another, as well as non-combatants, who died as a result of the exchanges of fire on September 11, 1973, and during the subsequent period (the length of which the Commission has had to weigh case by case). The Commission believes it must be concluded that the armed clashes that took place on September 11 and subsequently were over a struggle for political power, either for or against the government of President Allende. (On the other hand, executions or the use of undue force during that period are regarded as human rights violations);

\* Persons who took their own life in a situation of armed confrontation from which they had little hope of escape, if the circumstances were such that had they been killed in the confrontation they would have been regarded as victims of the situation of political violence;

\* Persons who died accidentally as the result of an armed clash of a political nature in which they were not involved, as well as persons who died as the result of the unintended effect of an act which in itself is not necessarily unlawful, for example, the person who died after inhaling tear gas under circumstances

when the use of the gas was not necessarily unjustified;

\* Persons who died while using weapons in self-defense trying to resist efforts by the DINA, the CNI or other security agencies (which this report treats below in Chapter Five) to arrest them, in circumstances in which they could reasonably fear that their fate would be torture and death. This Commission holds that regardless of what might be thought of the ideas or political activities of those who were killed in this fashion, and even though being killed in such a clash cannot be regarded as a human rights violation in the strict sense, no one can be faulted either rationally or morally for defending himself or herself from being arrested when there is a well-founded fear that arrest will entail torture and death. (If, however, those resisting in this manner were captured and while in the hands of their captors were put to death or if already wounded were finished off, they are not regarded as killed in an armed clash but as victims of a human rights violation, namely that of being executed without any trial whatsoever).

On the other hand, and consistent with this position, the Commission does not regard as victims of political conflict those who took part in armed robbery or assault or any other similar unlawful action, even if it may have been politically motivated, and who died in an exchange of fire with the security forces who came seeking to arrest them.

- c. Cases falling outside the Commission's mandate  
Besides the cases just mentioned, that is, of those who were killed as a result of a lawful action by the police forces, the Commission has also ruled out the following situations: accidents which took place outside the context of armed clashes and which cost lives, whether among those in uniform or opponents of the military regime, including automobile accidents; accidental shootings by one's fellow combatants, or accidental explosions of devices being carried by the victims themselves. A fuller discussion of these situations is to be found in the first appendix of this report.

## C. Criteria

1. Honest decision on the basis of information gathered

The Commission had to come to a reasonable and honest decision on every case presented to it as well as on the overall truth that could be drawn from these cases and from other events. For that purpose it was able to gather a vast body of information on the events and

circumstances that were part of its task, as was indicated in the previous chapter.

The Commission reached a reasonable and honest conviction about each case based on the testimony of the victims' relatives, of eyewitnesses to relevant events, of current and former government agents, uniformed and civilian, including statements by now-retired high and mid-level ranking officers of the armed forces and police and by former agents of state security; press reports; expert testimony and opinion; some visits to the places where events took place; documentation from human rights organizations; official documents and certificates such as birth certificates, death certificates, autopsy reports, voter registration rolls, criminal records, immigration service records about entry into and departure from the country and many other official documents; copies of court records and responses to official requests that the Commission sent to institutions under the authority of the executive branch, including the armed forces and security forces.

The utilization of all these items as the basis for examining thousands of cases made it possible to achieve a thorough vision of the context of the events under study throughout the country and in each region or location during various periods. It also made it possible to understand the working methods of particular government bodies as well as those of the various political opposition groups as they evolved over time.

Thus it was possible to evaluate the veracity of testimony and documents not only directly but by comparing them with information already established concerning the same events or related events.

Furthermore, the Commission made an effort to always have proof of each specific case. In cases of disappeared prisoners it obtained proof of arrest or that the person was in one of the secret detention sites where the disappeared were often kept, particularly starting in 1974.

In a few cases, relying on the power and agreement of convincing circumstantial evidence, the Commission concluded that the person had suffered forced disappearance even though it did not have proof. Among such indications were the following: the victim's political activism, the time and place of the events, the knowledge that other activists with proven ties to the victim were arrested during the same days and disappeared, the fact that relatives had been searching for fifteen or sixteen years without any results or the lack of any records of subsequent travel or registration to vote.

The Commission has examined these cases very rigorously, especially when the remains of the victim have not been found. However, it cannot

entirely rule out the possibility that in one or other isolated case it may have made the mistake of qualifying a person as "disappeared" and presuming him or her to be dead. Nevertheless, the Commission fears that even more numerous will be the cases of genuine victims about which, given its own rigorous standards and the fact that the investigation could not be pursued further, it has been forced to state that it could not reach a conviction about whether the person's human rights were violated or not. The Commission hopes that in the future it will be possible to determine the truth about what has happened in such cases.

## 8. The perpetrators and their motivations

- a. The decision not to assign blame to particular individuals  
In carrying out its investigations, the Commission received information about the identity of government agents, both uniformed and civilian, and about people in their service, as well as about members of political parties or armed groups opposed to the military government, all of whom were said to have been involved in one or more of the events it was examining.

The Commission has not included those names in this report. Its founding decree forbade it to take a stand on the potential responsibility of individual persons in these events in accordance with existing legislation. The reasons for that prohibition are both clear and compelling: only the courts of justice can determine the responsibility of particular persons for crimes committed. If this report had included the names of those presumed responsible, whether of government agents or private citizens, the practical result would be that a commission appointed by the executive branch would be publicly accusing of committing crimes people who had not been able to defend themselves. Indeed, they had no such obligation to defend themselves since the Commission did not have any judicial authority, nor indeed did it prosecute any case. Such a procedure would have been an obvious violation of the principles of the rule of law and of the separation of the powers of government, as well as of the basic norms of respect for human rights.

Those considerations notwithstanding, in all relevant cases the Commission has sent the respective items of evidence to the courts.

- b. Determining the institution or group

In this report the Commission is offering as much information

as it could obtain about actions committed by government agents except for the names of the individuals alleged to have participated. Thus when such information is available the report names the branch or branches of the armed forces or police forces or the security or intelligence agencies said to have participated, and specifically the regiment, base, police precinct, garrison, or group from which the official forces came. When the Commission was unable to obtain such information but did come to the conviction that the person was killed by, or disappeared in the hands of, government agents, it has stated so.

When available, the Commission has also provided information on the political affiliation of private citizens who committed terrorist acts or other kinds of politically motivated attacks.

The Commission has not presumed that government agents were involved in the death of individuals, even when it is clear that they were killed by firearms and when there is every reason to believe that the motivation was political, unless there are grounds for that judgement. Hence it has stated that the human rights of some people were violated for political reasons, without, however, attributing the deed either to government agents or to private citizens acting for political reasons.

c. Motivation of the perpetrators

In order that instances of attacks by private citizens be regarded as within the competence of this Commission, it is essential that there has been political motivation.

As already noted, when government agents have committed violations, political motivation is of no concern. In fact, the Commission judges that in most cases of death inflicted by government agents, such motivation has been present either specifically, in an effort to eliminate certain people because of their political membership or activities, or more generally, in order to gain access to power, impose order, or intimidate real or potential political opponents. However, the Commission also examined cases in which common criminals were killed by government agents in what was ostensibly a campaign against crime. Such cases were also taken into account in this report.

d. Reference to private citizens

When the Commission here refers to perpetrators as private citizens acting for political reasons or pretexts, it does not always mean that these were people who were opposed to the

military government. In some cases the political motives of such private citizens were quite the contrary, that is, they supported the government. In some of these cases, which will be narrated in the chapter on those killed during protest actions, the Commission does not rule out the possibility that such private citizens were really security agents in civilian dress.

9. Determination of causal connections and the fate of the victims

a. Connection between torture and death

As has already been noted, the Commission judged that it was obligated to come to a reasonable and honest judgement on whether the torture a person had undergone either caused, led to, or contributed to his or her death. Making such a determination is especially difficult when a relatively long time has elapsed between the treatment suffered and subsequent death. The medical specialists whose opinion the Commission sought whenever there was doubt, always pointed out that in most cases medical science can only provide estimates of probability. Nevertheless, their expert opinions proved extremely valuable for establishing the parameters within which the Commission made its decision in conscience.

b. The fate of the disappeared

After examining all the available evidence about individual cases and the relevant context, this Commission concluded that it was morally obliged to declare its conviction that in all the cases which it has accepted as disappearances, the victims are dead; that they died at the hands of government agents, or persons in their service; and that these or other agents disposed of the victims' mortal remains by throwing them into a river or the sea, by covertly burying them, or by disposing of them in some other secret fashion.