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The case against Augusto Pinochet

Augusto Pinochet was arrested in the United Kingdom (UK) on 16 October 1998. His arrest led to a number of positive developments in the application and interpretation of international human rights law. Fundamental principles were reaffirmed, such as the scope of universal jurisdiction and the absence of immunity from prosecution for former heads of state accused of crimes such as crimes against humanity and torture.

On 11 September 1973 General Augusto Pinochet led a bloody coup in Chile, and his military junta immediately embarked on a programme of repression: constitutional guarantees were suspended, Congress was dissolved and a country-wide state of siege was declared. Torture was systematic; “disappearance” became a state policy.

In November 1974 Amnesty International published its first report on the gross human rights violations in Chile, following a fact-finding mission to the country in the early months after the coup. Since then the organization has published hundreds of documents and appeals on behalf of the victims and has supported the struggle of victims and their relatives seeking truth and justice.

The fate of most of those who “disappeared” in Chile during the military government remains unknown. However, there is overwhelming evidence that the “disappeared” were victims of a government program to eliminate perceived opponents. In the course of a long search by relatives, human remains have been discovered in clandestine graves and hundreds of former detainees have made statements confirming that the “disappeared” were held in detention centres.

Following the return to civilian rule in 1990, two institutions were created to contribute to establishing the truth about “disappearances”, extrajudicial executions and deaths from torture by state agents. The National Commission on Truth and Reconciliation and its successor, the National Corporation on Reparation and Reconciliation, documented the cases of more than 3,000 victims of these human rights violations.

For more than 30 years, relatives of the victims in Chile have campaigned for justice and truth. They have been blocked by several mechanisms which guarantee impunity to those responsible and prevent effective judicial investigations within Chile. The government of President Eduardo Frei Ruiz-Tagle pursued all possible avenues to secure the release of Augusto Pinochet, to obtain his return to Chile and to prevent his trial in Spain. The Chilean government justified its endeavours in the name of national sovereignty, the right of the Chileans to deal with their own past, and national reconciliation.

While the Chilean authorities at the time repeatedly stated that Augusto Pinochet could be tried in Chile, no attempts were made to remove the obstacles to such a trial. Chief among these were the fact that Augusto Pinochet, as a senator for life, enjoyed parliamentary immunity; that cases involving members and former members of the armed forces accused of human rights violations came within the jurisdiction of military courts; and the application of the Amnesty Law by military and civilian courts.

Crimes committed in Chile between 11 September 1973 and 10 March 1978 fall within the scope of the Amnesty Law decreed in 1978 by General Augusto Pinochet, then President of Chile. Although the Amnesty Law has been declared constitutional by the Chilean Supreme Court, the Inter-American Commission on Human Rights and the UN Human Rights Committee have stated that it is incompatible with Chile's obligations under international law. The Amnesty Law, which can only be annulled by Congress, effectively guarantees impunity to those responsible for systematic and widespread human rights violations and was a major obstacle to bringing Augusto Pinochet to justice in Chile. Today, the Amnesty law is still in force and was applied by the Chilean Supreme Court in December 2007.

The judicial investigation initiated in Spain by the Spanish National Court at the request of victims and relatives, the Spanish government's submission of a formal request for the extradition of Augusto Pinochet, together with the UK House of Lords rulings against his immunity as a former head of state constituted some of the most important developments in human rights since the adoption of the Universal Declaration of Human Rights in 1948.

The ruling of UK Magistrate Ronald Bartle, of Bow Street (London) Magistrates' Court, that the extradition of Augusto Pinochet should be allowed to proceed represented another step towards the acceptance of universal jurisdiction in cases of human rights violations and the universality of international human rights standards. The Magistrate considered that the effects of "disappearances" can amount to mental torture for the relatives of the "disappeared" and left it to a trial in Spain to decide.

International human rights mechanisms have already provided this definition. Article 1(2) of the UN Declaration on the Protection of All Persons from Enforced Disappearance of December 1992, states: "Any act of enforced disappearance... inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia,... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment".

The Inter-American Court of Human Rights, the European Court of Human Rights, the UN Human Rights Committee and the Inter-American Commission on Human Rights have all stated that "disappearances" per se violate the right of the relatives of the "disappeared" not to be subjected to torture or ill-treatment.

The Pinochet case showed that international law is not a set of agreements that can be ignored, but a vital mechanism for the protection of individuals. The rulings by the UK courts created a very important precedent for the future of human rights. They also opened a window of hope for all the victims and relatives still pursuing justice.

The crimes against humanity committed in Chile since 1973 are subject to universal jurisdiction. The principle of universal jurisdiction to try crimes against humanity regardless where the crimes have been committed has been recognized under international law even before the establishment of the international military tribunal of Nuremberg. Nowadays, the vast majority of states recognized universal jurisdiction as a permissible ground of jurisdiction. However, far too few states exercise this kind of jurisdiction even when notorious suspects are in their midst. So much remains to be done. Today, Amnesty International is publishing the first of a series of reports on each of the 192 UN member states describing what they have done to make universal jurisdiction a reality in their courts and making detailed recommendations for reform of law and practice to ensure that no country in the world will be a safe haven for those responsible for the worst possible crimes in the world.

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