

UNITED KINGDOM/CHILE

Pinochet -- The absence of immunity for crimes against humanity: Amnesty International submits case to the House of Lords

Amnesty International has published today a new document stating the organization's position in relation to General Augusto Pinochet's detention and the issues of universal jurisdiction and immunity for crimes against humanity.

The document, *The Case of General Pinochet: Universal jurisdiction and the absence of immunity for crimes against humanity*, spells the legal arguments that the human rights organization believes lie at the heart of the case.

Amnesty International has been granted leave to appear as a third party in the appeal of the High Court judgment to address the legal concerns surrounding the arrest of General Augusto Pinochet. The hearing will take place on 4 to 5 November in the House of Lords.

Two of the main legal issues involved in the appeal to the House of Lords of the judgment by the English High Court of Justice are the scope of universal jurisdiction over certain crimes under international law, including crimes against humanity, and the absence of immunity under international law of heads of state for certain crimes under international law, including crimes against humanity.

Amnesty International's main arguments as presented in the document are:

- The widespread and systematic human rights violations in Chile during the military government amount to crimes against humanity.
- Crimes against humanity are subjected to universal jurisdiction -- a principle that has been recognized under international law since the establishment of the International Military Tribunal of Nuremberg.
- Any state has the ability to exercise universal jurisdiction over crimes against humanity and other crimes under international law.
- Crimes against humanity are considered as crimes of the same nature as piracy, which any state may punish.
- All states are under obligation to prosecute and punish crimes against humanity and to cooperate in the detection, arrest and punishment of persons implicated in crimes against humanity, such as widespread and systematic murder, torture, forced disappearance, arbitrary detention, forcible transfer and persecution on political grounds.
- There is a long established fundamental rule of international law that heads of state do not enjoy immunity for crimes against humanity.
- Under international law heads of state and government officials are not immune from criminal prosecution. This rule applies to national as well as international courts.

Background

On 16 October 1998, while General Pinochet was on a visit to the United Kingdom, he was arrested based on a Spanish provisional arrest warrant, issued at the request of a Spanish court, alleging that he had been responsible for the murder of Spanish citizens in Chile at a time when he was President of that country. He was later served with a second Spanish provisional arrest warrant alleging that he was responsible for systematic acts in Chile and other countries of murder, torture, "disappearance", illegal detention and forcible transfers. A Spanish court, the *Audiencia Nacional*, on 29 October 1998 rejected a challenge to the jurisdiction of the Spanish judiciary to try General Pinochet.

This Spanish case is only one of a number of cases which have been instituted in national courts against General Pinochet. The Swiss government has sent an extradition request to the United Kingdom in the case of a Swiss citizen who was killed in Chile. Other criminal proceedings have begun or reportedly are planned in national courts in Belgium, France, Italy, Luxembourg and Sweden.

The English High Court, in an opinion by Lord Chief Justice Bingham of Cornhill, stated with respect to the first Spanish provisional extradition warrant alleging systematic murders of Spanish citizens in Chile that neither Spain nor the United Kingdom had criminal jurisdiction. He also concluded that under English law a former head of state of a foreign country was "entitled to immunity as a former sovereign from the criminal and civil process of the English courts" with respect to systematic murder, torture, "disappearance", illegal detention and forcible transfer in foreign countries. Justice Collins and Justice Richards agreed. Justice Collins rejected the argument that such crimes could never be part of the sovereign functions of a head of state:

"Unfortunately, history shows that it has indeed on occasions been state policy to exterminate or to oppress particular groups. One does not have to look very far back in history to see examples of that sort of thing having happened. There is in my judgment no justification for reading any limitation based on the nature of the crimes committed into the immunity which exists."