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## **PINOCHET**

### **Briefing on the issue of the medical tests requested by the UK Home Secretary**

Amnesty International is concerned at reports that the medical tests of Augusto Pinochet ordered by the Home Secretary, Jack Straw, on 22 December 1999 as a result of the Chilean Government's request for a stay of the proceedings based on medical grounds and conducted on 5 January 2000, will be evaluated in secret by the Home Secretary, a political official, rather than by a court, without any opportunity for the prosecution to observe the medical examination, challenge it or obtain a second independent medical opinion.

Although anyone facing extradition should be permitted to request and obtain an independent medical examination to determine whether he or she is able to participate in the extradition proceedings, while these proceedings are before the courts such an examination should be subject to judicial supervision in a transparent process in which the prosecution should be permitted to have a medical observer, should be able to examine the medical reports and the doctors who conducted the medical examination and, if appropriate, to call its own medical experts to examine the person facing extradition.

However, according to reports, the Crown Prosecution Service (CPS), which represents the Kingdom of Spain, which has requested the former President of Chile's extradition, was not present at the medical examination, will not be provided with a copy of the medical report and will have no opportunity to challenge the medical report before the Home Secretary. In contrast, two medical doctors on Pinochet's side have reportedly been permitted to participate as medical observers during the medical examination, and the medical report is to be provided only to the Home Secretary, government legal advisers and the former President.

As a general rule, medical records are entitled to the protection of privacy. When a person has put his or her medical condition in issue in a legal proceeding, he or she waives that right to privacy at least to the extent of the other parties to the proceeding. In the interests of justice, the prosecution in this case is entitled to see and challenge the medical report. Here, although the former President has not himself sought the medical examination or contended that he was unfit to participate in the extradition proceedings, either in the High Court -- where he is entitled to raise this issue under Section 11 of the Extradition Act 1989 -- or before the Home Secretary, he has reportedly agreed to the medical examination and to the presence of outside medical observers appointed by the Republic of Chile.

For these reasons, Amnesty International wants to stress the following points:

Under Article 11 of the UK Extradition Act of 1989, humanitarian concerns about the state of health of the accused should be raised with the High Court, but the Extradition Act appears to give the Home Secretary the statutory power to review medical evidence himself at any stage of the proceedings and to decide whether to allow the extradition proceedings to continue. Amnesty International believes that Jack Straw should let the courts determine whether Pinochet is fit or not before taking a final decision on extradition.

- The judicial process involving Augusto Pinochet's extradition could only be seen as complete once the last avenue of appeal -- the Judicial Committee of the UK House of Lords (if given leave to do so) -- has been exhausted.

Given the above, Amnesty International reiterates that the CPS should be allowed to participate in and have an opportunity to challenge any medical examinations to determine whether someone is fit to participate in extradition proceedings. As a minimum, the CPS should be allowed to obtain any medical reports and to cross-examine the doctors who conduct such examinations and to nominate a medical examiner to conduct a medical examination of the former President. This procedure should, in the first instance, be conducted under judicial supervision.

ENDS.../

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