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## **Pinochet case: extradite or prosecute**

The British authorities have only two legal avenues open to them in the Pinochet case: extradition or prosecution in the UK, Amnesty International said today.

“Under the European Convention on Extradition, rejecting Spain’s extradition request and failing to prosecute in the UK is simply not an option,” said Javier Zúñiga, head of the Americas Research Program.

Under Article 1 of the Convention, all state parties "undertake the obligation to surrender to each other all persons against whom the competent authorities are proceeding for an offence". If the United Kingdom decides not to extradite an alleged torturer, it must, under Article 7 of the Convention, “submit the case to its competent authorities for the purpose of prosecution”.

“In short, there are no grounds under the European Convention on Extradition which would permit a state to deny extradition of a person suspected of torture or crimes against humanity, unless that state -- in this case, the UK -- is prosecuting the suspect for these crimes,” stressed Javier Zúñiga.

Under international law, torture and crimes against humanity are extraditable offences. In this particular case, a man alleged to have committed torture is present in the United Kingdom and the country is therefore obliged -- under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment -- to take that man into custody or to take other measures to enable criminal or extradition proceedings to be instituted.

In legal terms, there is no reason why criminal proceedings could not be initiated in the UK, although requests by victims of torture in Chile and their relatives for a criminal investigation to be opened in the UK have so far faced some set-backs.

On five occasions since October 1998, victims and relatives asked the previous Attorney General to authorize the Metropolitan Police to open a criminal investigation concerning allegations that former General Pinochet was responsible for torture. At the time, the Attorney General refused each request, contending that there was insufficient admissible evidence and that there were a number of unspecified legal questions concerning immunity, defences and the relative priorities of extradition and prosecution within the United Kingdom.

The former Attorney General did not specify what those legal questions were.

“This failure by the Attorney General to spell out the alleged factual and legal deficiencies in the five complaints has made it impossible for the complainants to address and remedy them,” Mr Zúñiga said

“It also makes it difficult to determine whether the UK is fulfilling its responsibilities under the Convention. Moreover, it is inconsistent with the country’s duties under UN standards, which

require that victims be informed of the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.”

Amnesty International is gravely concerned that the Attorney General -- rather than the Crown Prosecution Service or a judge -- has made decisions concerning whether to open a criminal investigation in a case of such great political importance.

The Attorney General is the chief law officer in the UK, and his main role as a minister is to provide the government with legal advice. In other words, his role has both legal and political functions.

The European Convention requires that the competent authorities “take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State”.

“In the Pinochet case, in particular, the appearance of impartiality would be better served by leaving the decision on whether to open a criminal investigation in the hands of the police and prosecuting authorities -- as in any ordinary offence of a serious nature,” Mr Zúñiga stressed.

The current Attorney General has taken a step in the right direction recently by leaving the decision to the Metropolitan Police. Amnesty International welcomes the decision, but still expresses concern at his apparent suggestion that the final consent on whether to prosecute is his alone.

“This would be yet another step backwards in the case, placing the final decision to investigate and prosecute in the UK at the hands of an official with both legal and political functions,” warned Mr Zúñiga. “Given the politically sensitive nature of this case, this would hardly be the right formula to ensure justice for the victims.”

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