

EXTERNAL

News Service:

225/98

INDEX: AMR 22/21/98

13 November 1998

## **Questions And Answers**

### **Augusto Pinochet and the international fight against impunity**

**What is Amnesty International's position on the case of Augusto Pinochet?**

Amnesty International's main arguments in relation to the case 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.
- All states have the ability to exercise universal jurisdiction over crimes against humanity 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, extradition and punishment of persons implicated in crimes against humanity, such as widespread or 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.

Amnesty International has welcomed the decision of cooperation between the Spanish judiciary and the UK authorities. This is an important development in the fight against impunity. It also confirms the importance of international legislation and cooperation in the battle against crimes against humanity. It gives perhaps the only opportunity for the relatives to find out about the whereabouts and fate of the "disappeared"-- and certainly the right to have redress for what they have been suffering and campaigning for the past 25 years. However it is crucial that investigations are not hampered by political considerations and that the affair is not seen as one of partisan politics.

**What is the implication of the UK High Court decision granting Augusto Pinochet immunity**

### **from prosecution?**

The decision by the UK High Court granting Augusto Pinochet immunity from prosecution as a former head of state is an alarming setback in the international struggle against impunity.

This decision is extremely disappointing and dangerously out of step with existing international law which provides that there are no grounds for immunity in matters relating to crimes against humanity. It sets a worrying precedent for those who commit crimes against humanity using the state apparatus. It sends a message that these crimes can be committed without punishment.

How can there be any credibility to the promises made by governments in the defence of human rights if international law is undermined by granting protection to those who commit crimes against humanity?

### **What are Amnesty International's concerns in relation to Augusto Pinochet's case?**

Amnesty International has been collecting information since the very beginning of the military government in Chile. The first mission of Amnesty International to Chile was in 1973. Over the years Amnesty International has documented a considerable number of testimonies of victims and relatives of torture, murders and arbitrary detentions. As the years passed, substantial information was coming both from organizations in Chile like the *Vicaría de la Solidaridad* (church based organization) exiles and the relatives.

The Chilean Government itself has now acknowledged that under Augusto Pinochet's rule more than 3000 people were victims of killings, torture, "disappearances", and death under torture at the hands of government forces. However, this is a conservative figure: the reports do not include any of the victims that survived systematic torture, were arbitrarily detained or exiled. Because of the immunity he has been guaranteed from prosecution as Senator for life and of his continuing political influence it is very unlikely he will ever be tried in Chile. These crimes against humanity, according to international law, are subjected to principles of universal jurisdiction.

Many states have turned a blind eye to human rights violations in Chile often being more interested in developing diplomatic and commercial ties. At the height of the military crackdown several western countries rushed to recognize the new military junta.

### **What is the legal argument to keep him in the UK? Does he not have diplomatic immunity?**

The enormity and nature of the crimes committed in Chile during the military government -- like widespread arbitrary detention, killings, systematic torture and systematic "disappearances" -- are crimes against humanity. The international community has an inescapable obligation to bring those responsible for crimes against humanity to justice under international law -- whatever their rank or wherever the act took place. The principle has been universally recognized since the Nuremberg Tribunal 1946.

The Spanish National Courts (*Audiencia Nacional*) have reaffirmed this fundamental principle by deciding on 5 November it had jurisdiction to try crimes against humanity during the military government of Chile and Argentina. The UK authorities should now ensure that legal proceedings are not frustrated by an incorrect interpretation of the UK's obligation under international law. The UK authorities should send a clear message to violators and would-be violators that the UK will always abide by international human rights law.

It also ignores calls made by the families who for more than 25 years have campaigned for truth and justice. These calls are made in light of the fact that the Chilean State has set up

mechanisms to protect the impunity of human rights violations. Impunity in Chile is not accidental.

### **Why is Augusto Pinochet not being tried in Chile?**

For 25 years relatives of the victims of human rights violations have campaigned for justice and truth with the support of human rights lawyers, organizations and judges. The simple elements of truth and justice are essential for true reconciliation. As senior members of the Chilean Government and politicians have stated the issue of human rights violations committed during the military government is an unresolved one. Several mechanisms guaranteeing impunity have blocked effective judicial investigations in Chile.

The Amnesty Law of 1978 passed during the government of General Pinochet has made it impossible for the relatives to find the answers on the whereabouts of those “disappeared” and to obtain justice. Those responsible for committing human rights violations played a major role in dictating the terms of transition to civilian rule to ensure immunity from prosecution for human rights violators and this has not allowed for true reconciliation. Those seeking truth and justice have been sidelined, often violently, as a means to silence them. The Constitution which Augusto Pinochet was instrumental in drafting built in a system of senators for life who as parliamentarians have complete immunity. Augusto Pinochet on retiring from the army became senator for life. Impunity has also been guaranteed by threats and intimidation against those who demand justice. Impunity is not accidental.

The Inter-American Commission on Human Rights in 1996 and 1998 concluded that the self-amnesty is incompatible with international human rights law and its legal impact formed part of a general policy of human rights violations (IACHR Reports No.36/96 and No.25/98).

**Chile is a new developing democracy trying hard to come to terms with its past and reaching some level of reconciliation. Is not this action destroying what has been achieved up to now?** Amnesty International recognizes the efforts made by the civilian government when appointing two Commissions to record human rights violations in two reports. However, it is important to remember that the relatives of the victims are still campaigning for truth and justice. The opinions of the relatives on how to achieve reconciliation have all too often been sidelined. Those responsible for committing human rights violations played a major role in dictating the terms of transition to civilian rule to ensure immunity from prosecution for human rights violators. How can this allow for true reconciliation?

For 25 years Chilean society has been divided over the human rights violations committed during the period of military government. On many occasions when those demanding truth and justice have attempted to voice their opinions they have faced repression by state security forces. Recently, on 11 September, marches organized by the relatives of the victims and authorized by the authorities were brutally suppressed by police (Carabineros). Two people died, hundreds injured and hundreds arrested.

The Chilean electorate voted against General Pinochet’s continued rule for a further seven years in the 1989 plebiscite, and in subsequent presidential elections his candidacy was rejected by a majority of the Chilean electorate.

The reaction of Chileans to Augusto Pinochet’s arrest illustrates clearly that the country has not come to terms with its past. A large proportion of Chilean society is still looking for answers and justice. This does not signal that Chile is reaching a level of reconciliation.

The simple elements of truth and justice are essential for true reconciliation. History tells us

that the wounds of the past can only be healed through the truth and the recognition of the atrocities committed. Only then can a society look forward to a stable future.

In recent weeks the pro-Pinochetista sectors have issued death threats against those they consider responsible for the detention of Augusto Pinochet. On 9 November 1998 Amnesty International issued an Urgent Action following a series of death threats against a number of relatives of victims of human rights violation under the military government and campaigners for justice and truth (see UA 289/98, AMR 22/19/98).

Such threats show that those responsible for human rights violations are still actively seeking to protect their own impunity, it is these sectors which have prevented true reconciliation and are threatening Chile's political stability.

**General Pinochet was not aware/he was only the President at the time. Did he commit all those crimes?**

General Pinochet was the supreme Head of State, the Intelligence services (Directorate of National Intelligence, DINA and later National Information Centre, CNI) reported directly to him. He was very much in command and fully aware of what was being done by the Intelligence services. This was confirmed in February 1998 when the former head of DINA told the Chilean Supreme Court of Augusto Pinochet's overall command of its operation.

**He is an old man, he is ill and he was arrested in hospital. Should he not be freed on humanitarian grounds?**

Amnesty International believes that ALL prisoners in need of medical care should be granted all the necessary attention according to international standards. Mr. Augusto Pinochet has access to doctors, lawyers, relatives and diplomatic authorities. Amnesty International believes that his medical condition should not be used as an obstacle to obstruct legal proceedings which may finally reveal the whereabouts of the "disappeared" and ensure that justice is done.

**What does Amnesty International think about Latin American governments calling for his release?**

Amnesty International is also calling for their cooperation to uphold international commitments made by those same countries that have participated in the development of international standards that classify systematic "disappearances", killings and torture as crimes against humanity. Amnesty International is also calling on the Chilean government to cooperate in this international effort. Other governments are also responsible for protecting the impunity of those who have committed human rights violations in their own country by passing laws which have prevented effective judicial investigations or failing to tackle other mechanisms of impunity. It is not surprising therefore that they have adopted such a negative position.

Many non-governmental organizations in other Latin American countries are supportive of moves to bring Augusto Pinochet to justice.

**Is this a success to Amnesty International's efforts?**

Amnesty International considers this a moment of hope for the relatives who are the real force behind any outcome of this international effort to find the truth and justice. It is the human rights organizations in the country and the relatives who have been able to keep this issue alive against all odds. It is also a victory that Augusto Pinochet has been detained in another country and that other countries are willing to bring him to trial. These actions may act as a deterrent to other perpetrators of serious human rights violations.

**Does Amnesty International really believe that this is going to help in the fight against impunity ?**

Yes. International law must be upheld, justice should be done and should be seen to be done . This will send a clear message to those who believe they are above the law. Impunity is not accidental -- in Chile it has been guaranteed through the Amnesty Law, and for Augusto Pinochet also by his self-appointed parliamentary status. Impunity is also guaranteed by threats and intimidation against those who demand justice.

**On what basis can Augusto Pinochet be tried under universal jurisdiction and international criminal law?**

The scale, number and seriousness of human rights violations which were committed under the September 1973 and March 1990 military government together with their systematic nature constitute crimes against humanity under international law.

Any state may exercise universal jurisdiction over crimes against humanity. Crimes against humanity recognized by international law include the practice of systematic or widespread killings, torture, forced disappearances, arbitrary detention and other inhumane acts. A number of these crimes against humanity have been the subject of International Conventions and are recognized by the international customary law. These crimes against humanity are subject to the principle of universal jurisdiction This principle has been established since the International Military Tribunal of Nuremberg and its Judgement recognized international law principles by the UN General Assembly in 1946 in 1946.

Under international law all states are under an inescapable obligation to prosecute and punish crimes against humanity and to cooperate in the detection, arrest, extradition and punishment of persons implicated in these kinds of crime. States have an obligation to pursue judicial investigations against those responsible for crimes against humanity regardless of where or when such crimes were committed.

**Is there a possibility that Augusto Pinochet will be returned to Chile under diplomatic immunity?**

On Wednesday 28 October 1998, Lord Bingham, the Lord Chief Justice, ruled in the High Court in England that Augusto Pinochet could not be tried for acts he committed as head of state. Unless the House of Lords overturns this ruling the former General could return to Chile very soon.

**What is the latest position of Spain's extradition charges against Augusto Pinochet?**

In Lord Bingham's ruling, he quashed both provisional warrants made at the request of the Spanish magistrate investigating human rights violations committed by Augusto Pinochet. The order quashing the second warrant was stayed pending the appeal to the House of Lords.

**What is the result and implication of the High Court ruling on the cases against Augusto Pinochet in October 1998?**

Amnesty International is now acting as a third party in the case against Augusto Pinochet in the House of Lords. Amnesty International has presented its case to the House of Lords in November 1998.

Amnesty International is concerned by the failure by the High Court to acknowledge the responsibility of the State under international law in the investigation, prosecution and punishment of crimes against humanity committed during the Chilean military regime (1973 to 1990):

- The UK should ensure that legal proceedings initiated in Spain and other countries on crimes

against humanity committed during the military regime should not remain impune and acknowledge that under international law the immunity of Heads of State cannot be invoked in cases of crimes against humanity to avoid prosecution;

- The recognition of a supposed right of immunity to a former head of State implicated in crimes against humanity is a direct violation of the principles of international law and undermines the effectiveness of the recently created international criminal court;
- The UK cannot ignore that under international law all States are under an inescapable obligation to prosecute and punish crimes against humanity and to cooperate in the detection, arrest, extradition and punishment of persons implicated in these kinds of crime;
- The UK should recognize that failure to abide by this obligation risks sending a clear message to violators and would be violators that the international community is turning a blind eye to continued and future impunity;
- The High Court's decision ignores the calls made by families of victims of human rights violations under the military government of Augusto Pinochet, who for over 25 years have campaigned for truth and justice, on the international community to proceed with international judicial investigations. Their calls have been made in the light of the fact that the Chilean State has set up mechanisms to protect the impunity of human rights violators.

**Finally, Amnesty International asks:**

How can states argue that they respect international law and human rights, when they have not ensured that international law is fully incorporated into their internal laws and that their judiciary fully respects the fundamental rules of international law?

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