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No to empty promises: Chilean law guarantees Pinochet total impunity

The 1978 Amnesty Law and parliamentary immunity that has afforded Augusto Pinochet total impunity from prosecution remains in full force today, and the UK should not allow anyone to disguise this major obstacle in bringing Augusto Pinochet to justice, Amnesty International said in a letter addressed to UK Home Secretary Jack Straw.

In light of the recent statements by Chilean Foreign Minister José Miguel Insulza that Augusto Pinochet would be tried in Chile if allowed to return, Amnesty International has reminded the Home Secretary that most of the crimes subjected to judicial investigations in Europe in relation to the case took place under the period covered by Pinochet's self-amnesty law -- which has so far guaranteed total impunity to him and other alleged perpetrators.

“When considering the former general’s case, Jack Straw must keep in mind that even two modest proposals introduced by the civilian government to reform the self-amnesty law -- to allow for the investigations into the fate of the "disappeared" without establishing responsibility -- were dismissed by Congress,” Amnesty International stressed.

At present, Augusto Pinochet is also covered by parliamentary immunity in his capacity as a senator for life. Under this immunity, and according to the Chilean Constitution, he cannot be tried under any charges brought against him.

Although the Chilean Constitution and the Penal Procedure Code establish the possibility of lifting parliamentary immunity for the purpose of judicial procedures, Amnesty International believes that this possibility is severely constrained in Chile under the current political circumstances.

The continuing strong influence of the military in Chilean political life and the repeated statements on the danger to the democratic transition if Augusto Pinochet is brought to justice are the real obstacles for a fair, impartial and independent trial in Chile on this matter.

“Moreover, even if the parliamentary immunity could be lifted, the period between 1973 and 1978 -- when most of the crimes were committed -- would remain protected by the Amnesty Law provisions,” Amnesty International said.

“When considering this case, the role of military courts must also be borne in mind. Even in the event of the self-amnesty law being repealed and the parliamentary immunity lifted, Chilean legislation demands that former General Augusto Pinochet be tried by a military court -- a reason for grave concern,” Amnesty International said.

“The United Nations Human Rights Committee and the Inter-American Commission on Human Rights have repeatedly stated that the trial of members of the armed forces on human rights violations by military courts is incompatible with the States’ obligations under international law,” the organization stressed.

The Inter-American Commission in its 1985 report on the Situation of Human Rights in Chile stated that military courts in Chile do not guarantee the right to justice and have been instrumental in conferring appearances of formal legality to impunity granted to members of the armed forces involved in human rights violations. This military legislation remains substantially unchanged.

A 1996 report to the Human Rights Commission by the Special Rapporteur on Torture, Mr Nigel Rodley, establishes that the military legislation continues to be a source of impunity.

Background

Crimes against humanity committed between 11 September 1973 and 10 March 1978 fall within the Amnesty Law (Decree 2191 of 18 April 1978) decreed by General Pinochet, then President of the Republic of Chile. The Amnesty Law was declared constitutional by the Chilean Supreme Court of Justice.

The Inter-American Commission on Human Rights in 1996 and 1998, however, has stated that the Chilean Amnesty Law is incompatible with the international obligations of the Chilean State under international law and considered that the legal effects were part of a general policy of human rights violations in Chile.

There are currently 14 judicial investigations in Chile related to the findings of human remains in secret graves which could be those of victims of "disappearances" or killings and on cases of other victims of human rights violations committed during the period of the military government (1973 -1990). However, if the relevant judicial authority establishes the criminal responsibility of Augusto Pinochet the judicial procedures could be blocked either by the application of the Amnesty Law or by his parliamentary immunity.

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