

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Bicentenary "*indulto*" proposal: should not undermine the struggle against impunity for violations of the past

The presentation by the Chilean church of a proposal for a "Bicentenary *indulto*" (*Indulto* means "release") for convicted prisoners on Wednesday has opened up a debate around the possibility that *indultos* may be granted to people who have been convicted and sentenced for crimes against humanity, including murders, torture and enforced disappearances during the Chilean military government. The proposal sets out the Church's motivation for proposing the consideration of *indultos* to coincide with the country's Bicentenary, as well as its concerns regarding prison conditions in the country. However, Amnesty International believes that regarding *indultos*, the proposal does not adequately take into account Chile's obligations under international law.

Although the Church does not exclusively propose the granting of *indultos* to those responsible for human rights violations, Amnesty International believes it is important to remember the fact that during the years of the military government (1973–1990), thousands of people were murdered, tortured or forcibly disappeared by members of the Chilean armed forces and security services. Real progress in prosecuting those responsible in Chilean courts for crimes under international law has only been achieved since 1998. After a long struggle by the victims and their families, human rights defenders and a few courageous prosecutors and judges, over 400 persons have been convicted of these crimes. It is these criminals - a fraction of the total number of persons responsible for such crimes - whom it is proposed should be considered for release before they have fully served their sentences.

In this context, Amnesty International reminds the Chilean government of its responsibility under international law to punish crimes against humanity, including murders, torture and enforced disappearance, with appropriate penalties that take into account their seriousness, in accordance with the standards in treaties ratified by Chile, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The due punishment of those responsible for crimes against humanity is an essential element of the reparation that is owed to victims of such crimes and to overcoming impunity from the past.

Amnesty International calls for those suspected of responsibility for crimes under international law to be promptly, thoroughly, independently and impartially investigated. If there is sufficient admissible evidence they should be prosecuted in a fair trial and those found guilty must be sentenced under laws which provide for punishment which reflect the gravity of the crime. Amnesty International rejects the granting of any amnesty that obstructs the investigation and conviction of crimes against humanity. It is for this reason that the organisation has repeatedly spoken out about the need to abrogate Chile's Amnesty Law (Decree Law 2.191) which remains in force.

The organization considers that release shortly after conviction or after serving only a minimal proportion of a sentence could undermine the principle of imposing a punishment which reflects the gravity of the particular crime. Furthermore, the organization underlines that any release before the end of a sentence must in no way be seen as a negation of the conviction or a lessening of criminal responsibility for the actions committed. As a number of courts have

concluded, any proposal that wipes out or declares void a conviction reached after a fair investigation and trial process is contrary to international law.

In regard to the proposal to reduce prison sentences or grant provisional freedom it is essential to ensure that such decisions are made on a case by case basis; it would be unacceptable for there to be a general order for release without taking into account such factors as proportion of the sentence served, recognition of the gravity of the offence. In this sense, the granting of a mass *indulto* that does not take into account the specificities of each case, would make it impossible to justify the reasons behind any such action.

Amnesty International notes that nothing in the *indulto* proposal imposes a requirement that the person reveal that truth to the victims and to the general public and, once released, there may well be no effective incentive to persuade them to do so. The government has an obligation to ensure that all those serving sentences for these crimes provide the truth about what happened to their victims.

Amnesty International insists that any *indulto* granted must not be allowed to jeopardise the process of providing full reparation to victims. The victims of human rights violations have a right under international law and standards to such reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. The failure to ensure that those responsible provide such reparations is indefensible.

Furthermore, Amnesty International considers that the granting of *indultos* as a response to a situation of unacceptable standards within prisons would be an inadequate response to a problem that requires public policy to ensure that prison conditions comply with the standards required by international law and standards.

The Church's proposal, given to President Piñera five months after his taking office, requires him to demonstrate his attitude to the dark past of his country, through the decisions he takes and actions he makes. Amnesty International believes that Chile should mark its third century by demonstrating its commitment to providing justice, truth and reparation to all victims, and by remembering the debt it owes to all of the victims of crimes against humanity that occurred during the military government. For this to be achieved it is essential to ensure that all those who are responsible for such crimes are brought to justice, that the truth about what happened to their victims is established and that victims receive full reparations. The granting of *indultos* to any person who has been proven to have played a role in human rights violations in the past must not undermine the spirit of the fight against impunity.

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