

# Pinochet: Fit to Be Tried

By Stacie Jonas | February 4, 2005

Just when it looked as though former Chilean dictator Augusto Pinochet might never be brought to justice, surprising new developments and legal decisions in Chile are putting the general back in the hot seat. Bolstered by unexpected historical twists, the new victories in the struggle for accountability are largely the result of the dedication of human rights advocates in Chile and around the world who have demanded truth and justice for more than three decades.

### History of the Pinochet Case

When Pinochet relinquished most of his power in 1990, hopes for truth and justice were high. The release of an official Truth and Reconciliation Report in 1991, under the country's first elected government in more than 17 years, was a significant but partial victory. The report detailed over 3,000 murders and disappearances committed during Pinochet's military dictatorship. It did not include, however, cases of torture committed during the military regime or identify those responsible for the violations. The government pulled these punches at a time when Pinochet was entrenched in Chile's political landscape as Commander-in-Chief of the Army and future "lifetime Senator," and the military continued to leave at least one booted foot outside the barracks. Chile's new President, Patricio Aylwin, advocated justice for human rights violations "to the extent possible." Given that the 1978 military-decreed Amnesty Law allowed most human rights abusers to escape trial or imprisonment and the continued political power that Pinochet had secured for the military and his right-wing supporters during the transition back to democracy, that possibility seemed remote.

Unable to see justice done in Chile, dictatorship victims turned to the Spanish courts. The 1998 detention of Pinochet in London based on an arrest warrant issued by Spanish Judge Baltasar Garzón and the subsequent 16-month extradition proceedings marked a major blow to impunity and a victory for human rights that reverberated around the world. In

addition to opening new public debate on human rights in Chile, the arrest led to the filing and reactivation of other cases against Pinochet and Chilean military officers in courts in Europe and the United States. These cases, in turn, helped create political space in Chile, allowing for new progress in human rights cases in the Chilean courts, as well.

Although Pinochet was ultimately released in 2000 on the basis of highly-contested medical reports suggesting he was unfit for trial, his legal troubles did not end with his return to Chile. In fact, shortly after returning to Santiago, the Chilean courts stripped the former dictator of the immunity from prosecution he enjoyed as an unelected lifetime Senator and "Former President of the Republic." Shortly thereafter, Chilean Judge Juan Guzman indicted Pinochet and placed him under house arrest for his role in the "Caravan of Death" case, involving the 1973 kidnapping and murder of several political opponents. The victory was short lived; on the basis of new medical exams and under pressure from some political and military officials, the Chilean Supreme Court suspended the case against Pinochet in 2002, declaring him mentally unfit for trial.

### New Developments

That might have been the end of the story. But victims groups and lawyers were unwilling to give up the fight for justice. Day after day, they continued pushing the Chilean courts to reconsider stripping Pinochet's immunity from prosecution in a number



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of different human rights cases. Their arguments that Pinochet was, in fact, fit for trial were strengthened by Pinochet's own inability to keep a low profile.

Although he resigned from the Senate and largely disappeared from public life after the Caravan of Death case was suspended, Pinochet continued to make headlines signing autographs during beach vacations and making trips to local bookstores. The final straw came shortly after the 30th anniversary of the September 11, 1973 military coup, which had once again generated intense public debate about human rights abuses during the dictatorship. Two months later, in November 2003, Pinochet gave an hour-long interview to a Miami television station, speaking clearly and coherently about events that had occurred 30 years earlier. In the interview, the aging General claimed he had been an "angel," not a dictator. He said he had no reason to ask for forgiveness.

Human rights lawyers pounced on the interview as a sign of Pinochet's lucidity and once again brought their case to the courts. Despite three previous rulings declaring Pinochet unfit for trial, in May 2004, the Santiago Appeals Court upheld a new request from Judge Juan Guzman to strip Pinochet's immunity from prosecution for a case involving crimes committed by "Operation Condor."

The fact that this was a Condor case may have played a role in the Court's decision. Operation Condor was a coordinated campaign uniting the security forces of South American dictatorships to carry out joint operations against political opponents, including kidnapping and assassinations that took place abroad. The 1974 Buenos Aires assassination of Chilean General Carlos Prats and his wife Sofia Cuthbert and the 1976 Washington, D.C. assassination of Chilean diplomat Orlando Letelier and American Ronni Karpen Moffitt, are two well-known Operation Condor crimes. (Disclosure: At the time of their murders, Letelier and Moffitt worked for the Institute for Policy Studies. IPS runs Foreign Policy In Focus in partnership with the International Relations Center.)

Pinochet's right-hand man and secret police chief Manuel Contreras had already served jail time in Chile for his role in the Letelier-Moffitt murders, and the Spanish case resulting in Pinochet's 1998 detention had placed heavy emphasis on Condor crimes, as well. Argentina, France, Italy, and the United States had also investigated Operation Condor, and information from those cases combined with recently declassified U.S. documents strengthened the Chilean case against the former dictator.

As Pinochet's lawyers scrambled to challenge the decision, an unexpected revelation once again turned the tide against them. In July 2004, a U.S. Senate Subcommittee released a report revealing million dollar bank accounts that Pinochet held at Riggs Bank under a number of false names. Further investigations by a Chilean judge exposed that Pinochet, aka "Daniel Lopez," had amassed a nearly \$16 million fortune despite his modest annual income as Commander-in-Chief of the Army. The highly-publicized "Pinochecks" case led to interrogations of Pinochet's entire extended family, and eventually to an order to freeze several of Pinochet's bank accounts. Both the Spanish and Chilean courts continue to pursue cases against Pinochet, his family, and even his financial adviser on charges including misuse of public funds, embezzlement, and tax fraud.

Blatant corruption was more than even many of Pinochet's supporters could bear. Those who had defended him in the face of allegations of human rights violations began to shy away. Somehow they were not convinced by the Pinochet family's suggestion that the money came from "donations." Nor did they believe Pinochet's lawyer's argument that it was "quite common" for Americans to use false names on their bank accounts. It was against the backdrop of this scandal that the Chilean Supreme Court in August 2004 decided to affirm the decision to strip Pinochet's immunity for the Condor case.

Stripped of immunity and the myth that his dictatorship had at least been fiscally responsible, Pinochet was soon subject to an interrogation by Judge Guzman and new medical exams. As Judge Guzman considered the findings of the new medical reports,

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another human rights shockwave hit Chile in the form of an official report on torture. The Valech Report, named for the Bishop who headed up the Commission on Torture and Political Imprisonment, detailed over 35,000 individual cases of torture committed during the dictatorship. In response to the report, released in late November 2004, some military commanders and politicians acknowledged for the first time that the abuses of the regime had been systematic and institutional.

After 30 years of denying that torture had taken place aboard the Chilean navy training vessel *La Esmeralda*, Naval Commander Miguel Angel Vergara finally admitted the ship had been used as a torture chamber in the early days of the military regime. Even Pinochet's daughter was taken aback by the gruesome descriptions. Calling the torture committed during the dictatorship "barbarity without justification," Lucia Pinochet claimed "I knew there had been detainees and that pressure was applied...but nothing like what I've heard about recently."

Also in November 2004, the five-member Criminal Chamber of the Chilean Supreme Court upheld the conviction of several high-level military officials, including former secret police chief Manuel Contreras, for the 1975 disappearance of Miguel Angel Sandoval. The milestone verdict marked the Supreme Court's first decision not to apply the Amnesty Law in the sentencing phase of a forced disappearance case. It also represented a unique development in Chilean jurisprudence by extensively citing international law to support its conclusions. Just a few months later, in January 2005, Contreras and other high-level members of Pinochet's secret police were jailed for this crime.

In the new political climate created by the Torture Report and the Sandoval decision, and shortly after yet another decision to strip Pinochet's immunity for the 1974 Buenos Aires assassination of Gen. Carlos Prats, Judge Guzman announced his decision to indict 89-year-old Pinochet for nine kidnappings and murders committed by Operation Condor. After analyzing at length the new medical findings, Judge

Guzman concluded: "Augusto Pinochet Ugarte is mentally fit to face criminal trial in Chile."

Just days before the Santiago Appeals Court was set to rule on Judge Guzman's indictment, Pinochet was hospitalized for a stroke. Instead of ending his legal troubles, however, the rumors about the former dictator's impending demise only led to a confirmation by high-level government officials that Pinochet would not receive official honors at his funeral or a national holiday upon his death. The Appeals Court, relying on Judge Guzman's assessment, went right ahead and upheld the indictment, and the Chilean Supreme Court denied Pinochet's request for habeas corpus in early January.

The former dictator was, for a third time, placed under house arrest. To add insult to injury, according to his lawyers, he had to turn to friends to raise bail money because so many of his bank accounts had been frozen as part of the Riggs investigation. He has thus far been spared the indignity of being fingerprinted and having his mug shots taken, though Judge Guzman assures that this will take place if the indictment survives the next round of appeals.

And thus Pinochet is set to end his days facing another round of legal challenges for both human rights violations and corruption charges. According to recent reports, at least 160 of his cohorts are also being investigated in over 350 human rights cases.

## New Challenges

While there are signs of hope for justice in Chile, considerable challenges remain. President Ricardo Lagos' administration has pushed a law through Congress stipulating that official accounts and documents gathered for the torture report cannot be made public or given to the courts for 50 years. This law, criticized by human rights groups and even some Supreme Court Justices, deprives potential legal cases against torturers of critical evidence. And despite the Torture Report's finding that the judiciary branch had both implicitly and explicitly supported the military regime, the Chilean Supreme Court issued a statement in December 2004 refusing to accept

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responsibility for the human rights violations that were committed during the dictatorship.

An even bigger threat to recent progress in human rights cases emerged in January 2005 when the Chilean Supreme Court ordered lower court judges to conclude all human rights investigations within six months. This highly controversial decision, which has been denounced by human rights groups and Parliamentarians as unconstitutional and contrary to international law, enjoys the full support of President Lagos and two front-runners in Chile's 2005 Presidential race.

## Conclusion

Despite these new setbacks, it is clear that the individuals who courageously documented abuses and filed cases in Chile during the dictatorship and who continued to insist that the truth be told and justice be done after the transition to democracy have made significant headway in their struggle. Their efforts to date have sent a clear message that any attempt to put an artificial end to the "human rights question" will likely be futile. A much fuller accounting of the dictatorship years is now available to Chilean society and future generations. Military officials are on notice. They will not be assured impunity for human

rights crimes in the future. And maybe, just maybe, Pinochet will finally be tried in 2005.

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