
Case No. 4
Anonymous

**Personal details**

She is 19. Before her arrest she was training to be a social worker. Since her release she has been unemployed. She is unmarried. The man she lived with before her arrest is now in prison and she lives with her uncle.

**State of health before arrest**

She was in good health.

**Time and place of arrest and detention**

She was arrested in Santiago in the first quarter of 1981. No arrest-warrant was shown. She was taken to the CNI centre in the city and held there until her release 19 days later.

**Duration of alleged torture**

She claimed that while she was at the CNI centre she was tortured on 17 days, on the last three of which the torture was exclusively psychological.

**Interrogation and torture**

Her account of events was as follows:

During interrogation she was slapped all over the body and punched in the face, breasts and abdomen. She was kicked on the buttocks and backs of the thighs, usually while lying down. On one occasion when she was in her cell an interrogator seized her hair and banged the back and right side of her head against the wall. She did not lose consciousness. She was electrically tortured. She was stretched out on a metal bed with hands and feet bound. She was given shocks on the temples, chest and heel. A metal object was applied to her vaginal labia and she was electrically tortured there, but the device was not forced inside.

On about the eighth day she was sexually tortured. She was stripped naked and her blindfold was removed. She was made to lie on the floor then kicked and raped by four men,
one of whom subjected her to fellatio. This type of torture lasted about an hour. They also threatened to violate her with a dog and to lock her in a room with rats.

She was told the man she had been living with had been killed. She was then taken into a room where a corpse lay with its face covered and told it was this man. She knew it was not however, as the body's height and build were different from his. The corpse had been split open down the middle and there were wounds on the abdomen. It was beginning to decompose, and she was forced to lie right by it facing it. At one stage the towel was removed from its decomposing face.

On five occasions she was taken into a small, very hot room and left there for a few minutes. She had a burning feeling all over but did not think she actually was burned.

She was taken into a room full of rats, but managed to jump up on a bed and so escaped from them. She was threatened: the interrogators said they would kill her, the man she had been living with and her parents. She was also insulted and called a whore.

On each of the last five days of her imprisonment a "friendly" interrogator visited her. He was very fatherly and asked her about her friendships and her life history. He repeatedly assured her (almost hypnotizing her in the process) that she had been very well treated.

She was partially deprived of sleep for the first 14 days, getting only a few hours' sleep between each interrogation session. She was held incommunicado throughout her 19 days at the CNI centre. She was blindfold all the time except when in her cell, when being sexually tortured and when confronted with the corpse. She was naked during several of the torture sessions; the rest of the time she wore overalls and zapatillas.

She was handcuffed all the time (including when she ate) except when she went to the toilet. The food was adequate. The day after her arrival at the CNI centre, she was photographed in her cell, which was about 3m by 2m and contained a concrete bunk, blankets and a pillow.

**Medical examination and/or attention during detention**

On arrival at the CNI centre she was examined by a man, probably, she thought, a doctor. The examination included taking her pulse and blood pressure. She was examined again before release.

After every torture session she was medically examined and her pulse and blood pressure were taken.

The "friendly" interrogator arranged for a doctor to examine her. The doctor said she had caught cold, said she should have more blankets and gave her some tablets.

**Medical personnel involved in torture**
Before she was sexually tortured she was injected with an unknown substance in the right cubital fossa. (She could not tell who gave her the injection.) She was also injected in the right shoulder.

**Early symptoms described**

Her recollection of the first 14 days at the CNI centre was hazy as she had partially lost her sense of time. All she wanted to do was die, and she asked them to kill her rather than keep torturing her. She tried to commit suicide. She fainted several times while being tortured, then recovered consciousness in her cell. She had pains all over her body after being beaten and electrically tortured. She had headaches and vomited (she said there was blood in the vomit). After torture she could not walk very well and her arms, legs and hands were swollen. This condition lasted for about a month. The skin on her right buttock and the outside of her thigh was discoloured but the discolouration faded quite fast. Apart from that she had no marks on her body.

After her release she lost her appetite and her upper abdomen ached after eating; and for some time after release she felt as though she were sleep-walking. She could not weep even though she was miserable. She felt utterly indifferent to everything and wanted to be left alone. She was bothered by noise and light, which gave her a headache. She often lay awake at night; at other times she had nightmares.

She lost 13kg while in detention. (After release she went to a doctor because she was aching all over, especially her back and left knee, and because of a vaginal discharge and irritation. She was treated for a pelvic inflammation disease and urinary tract infection.)

She did not menstruate for the first three months after release and since then has done so somewhat irregularly, her periods being heavier and much more painful than before. Since her release, she has had headaches, especially at the back of the head and around the temples. She went to an optician who told her she needed spectacles. Probably, however, this visual defect is not of recent origin.

For a short time after release she had respiratory difficulties: she coughed and expectorated and had spells of whistling and gasping when trying to breathe.

Towards the end of her time at the CNI centre she could no longer recall what had happened to her and was not sure whether she had been hypnotized. This loss of memory persisted even after she had been released. She wanted to be alone. Her sleep was disturbed by nightmares; she was afraid and had difficulty falling asleep. Later she went to a psychiatrist and had group therapy. In mid-1981 she broke down during a session with her psychiatrist; then she began to remember what had happened to her at the CNI centre. She had a traumatic experience and spent 15 days in a psychiatric hospital. Gradually she began to remember everything that had occurred at the CNI centre.

After leaving hospital she was in a rehabilitation centre for a week, then visited her parents. On several occasions she has behaved as though she were being tortured-
cried, screamed and flung herself about. This last occurred early in 1982. She has been treated with medication.

**Present symptoms described**

Her left knee and back (around the spinal column) still ache when she moves them. She can now breathe normally again and a recent chest X-ray revealed nothing abnormal.

Recently she has had several bouts of vomiting and a heavy feeling in the stomach and acid reflux after eating. It still occasionally hurts when she urinates; however, her doctor has not found any bacteria in her urine.

Her menstrual cycle is somewhat irregular and her periods are heavier than before. She gets menstrual pain during the first three days of each period.

She gets headaches at the back of the head and around the temples. They last about two hours and are bad enough to make her lie down. She has difficulty reading and can do so only for about half an hour at a time without getting a headache. She cannot concentrate for long stretches, and is apt to get restless and feel cooped up. She feels different from how she was before she was arrested and likes to be left on her own.

She suffers from insomnia and awakens easily. She feels more withdrawn and nervous. She still sees a psychiatrist, who has treated her with chlorpromazine, imipramine and sleeping tablets.

**Clinical examination (nearly 14 months after the alleged torture)**

She seemed somewhat tense and melancholy but was cooperative. In the abdominal region there was tenderness in the upper epigastrium and in both iliac fossae. (A gynaecological examination was not carried out.) There was tenderness over the spinal process of thoracic vertebrae II, III, VIII, IX and X.

**Conclusion**

She said her memory was impaired for about four months and she could not remember certain things she has now said happened to her at the CNI centre.

There are several plausible psychiatric explanations for this. She may be suffering from a reactive psychosis, as is suggested by her loss of time sense, low state of mind plus suicidal thoughts and the fact that she has clearly experienced sufficient emotional trauma to justify such a diagnosis. Or she may have been the victim of a form of hypnotic suggestion, leading her to "forget" what the authorities had done to her and to accept their views totally. Or else her condition may constitute a type of defence mechanism involving a denial of what she went through. Most likely, however, it is a combination of all three.
The medical delegates found complete consistency between the torture alleged and the symptoms described. The findings of their examination, carried out nearly 14 months after the alleged torture, were consistent also with the symptoms described.

Some detainees are subjected to "only" psychological [70] torture: deprivation of sleep, disorientation through the constant playing of loud music, threats against the victim's spouse or children or parents, pressure to collaborate and become paid informers, mock execution. While this kind of torture can cause psychic wounds as deep as physical mistreatment, it was relatively ignored in Chile at first, overshadowed by the physical forms of abuse. As a witness told the UN Special Rapporteur on Chile in 1979: "This is because we have become rather accustomed to living in a climate in which detention is associated with very severe and very serious ill-treatment... [W]e have very considerably extended the limits of what we consider acceptable as humane treatment."(1)

The methods of physical torture indeed command attention. A catalogue is provided by the 1978 case of Rodriguez Munoz Munoz, detained February 16-23, tortured in Villa Grimaldi. Methods used: forced to eat garbage, excrement; "dry submarine" (near-asphyxiation with a sack over head, repeated several times); "wet submarine" (head submerged in large can of oil); "silvania" (victim fastened in a chair, electrodes applied to most sensitive parts of body -- soles of feet, testicles); beaten while given electric shock; hung by the hands between two trees[71] while beaten with stick on most sensitive parts of body); "pau de arara" ("parrot perch" --hung in a twisted position from a pole, electricity applied); "parrilla" ("grill"--victim strapped to metal grill, electric shock applied). Each stage lasted about two hours, with gaps of 15-30 minutes between. After this detainee tried to escape he was knocked out, and awoke with cuts in his neck and wrists, which officials attributed to a suicide attempt. (2)

In a great many cases, physical and psychological torture both are used. One described by Chilean psychologists in a recently published article is that of a patient with the pseudonym "Cesar C."

Cesar C. was a 27-year-old political community leader with some high school education; he was married and had three children. He was arrested seven times between 1973 and 1977, each time with great violence. He was subjected to a series of tortures; being beaten all over his body for four hours at a time; simulated executions; deprivation of sleep for 48 hours; humiliation and harassment; broken teeth caused by stones put in his mouth and then hammered; witnessing his brother's torture with electric prods; and other forms of violence and humiliation. Cesar had
electric shock applied to his genitals for 12 hours at a time, lost consciousness several times, and was hung by the neck; metallic objects of different sizes simulating a penis were introduced through his anus and then electric shock applied; he was partially suffocated with plastic bags and his head forced into pails of water or urine and excrement. He was forced to witness the raping of women by soldiers and trained dogs. Torture inflicted upon him resulted in brainwashing and severe disintegration, which led him to betray two of his closest clandestine political contacts. Subsequently, his having informed on his friends constituted the core of his disturbance. Testimony was taken during the month of April 1979 as part of the treatment. Cesar requested psychological help after having been in hiding for two years.\(^{(3)}\)

Notable in torture accounts since the mid-70s is the role of medical personnel. Doctors' collaboration with torture, also noted in Amnesty's recent report, is but one aspect of the system's sophistication; its moral implications are vast, however. In the Munoz case described above, a Dr. Fernando Briones Becerra of the Clinica London certified the victim "clinically in good health" on February 17, the day following his kidnapping and initial beating. On February 21, another doctor certified Munoz again in good health, three days after suffering the wounds in his neck and wrists. The Santiago Prison hospital on March 1 described him as polytraumatized, with possible brain damage from a blow to the head. He had convulsions, a violent headache, the neck and wrist wounds, and was suffering from anxiety.


**Pinochet Case Reviving Voices of the Tortured**

January 3, 2000

By CLIFFORD KRAUSS ANTIAGO, Chile -- It was only when Mario Fernández saw the headline, "Pinochet Under Arrest," that the dam broke and he finally found it possible to talk about the beatings, the electric shocks, the cigarette burns, the terrible sense of humiliation and alienation.

"My body froze; I had an intense allergic reaction, and I didn't know whether to laugh or cry," said Mr. Fernández, trembling at the memory. He ran to his wife and wept on her shoulder, and, at long last, took her advice to seek therapy.

"I needed to talk about the terror inside that hood they put on me, of not knowing whether they would kill me from one minute to the next," he said.
Mr. Fernández is not alone in the anguished release that has come with the arrest of Gen. Augusto Pinochet in London on human rights charges in October 1998.

Psychologists report that hundreds if not thousands of people like him have begun to see therapists, to organize group therapy, to share their long-hidden horrors with spouses and children.

Although no accurate count exists, at least 40,000 Chileans were tortured under the Pinochet dictatorship from 1973 until 1990, people who had been members of leftist parties, unions, student groups or even merely bureaucrats in the Socialist government of President Salvador Allende Gossens.

Some were tortured for information, some to drive them into exile, some purely to intimidate them. In a systematic campaign run by the armed forces and the police at special sites across the country, they were raped, beaten, shocked, hooded, drugged, held under water and deprived of sleep; they were subjected to mock executions and months of solitary confinement.

And when it ended in 1990, they were forgotten, overshadowed by the 4,000 Chileans who disappeared altogether, resentful by a majority still suspicious of the political left, hounded by guilt and anger, silently enduring the terrible mental scars of their ordeal.

Now 44 and unemployed, Mr. Fernández, who was a factory metal worker in the Allende era, still suffers from insomnia, chronic head and joint aches and red blotches that he calls an allergy. He said he seriously contemplated suicide four times, once very nearly jumping off a bridge before some passers-by stopped him.

To this day no torturer has been investigated, no torturer has been tried, no compensation has been paid. Too many military officers were involved for the new civilian government to pursue the issue without threatening the stability of a still-incomplete transition to civilian rule.

"Torture is the great dark secret in Chile's closet that is just beginning to open a crack," said Alfredo Joselyn-Holt Letelier, a historian at the University of Santiago de Chile.

"If we can't deal with 4,000 disappeared easily, how are we going to deal with 40,000, 70,000, or maybe even 100,000 torture victims? The fact that we don't even have good statistics is a sign of how we treat this issue."

But since the arrest of General Pinochet on a warrant issued by a Spanish judge, reports about the torture charges against him have begun to appear regularly in the press. Newly reinvigorated human rights groups have come to victims, first seeking testimony they could use in the courts in London and Madrid, then urging them to seek help.
One group of torture victims said 500 people sought its help this year, three times as many as last year. A mental health program sponsored by several Christian churches reported that monthly demand had climbed from 60 patients a month before General Pinochet's arrest to 90, and was still rising.

Of 300 torture victims interviewed for testimony by the Group of the Families of the Disappeared, for instance, at least 100 have sought or plan to seek therapy.

In the small agricultural center of Rancagua, 50 miles south of Santiago, newly organized torture victims recently held meetings with 3,000 people who were fired from their jobs for political reasons after the 1973 coup. They have identified 200 who suffer various physical and psychological problems from torture, and who have now said they are willing to give testimony and seek help for themselves.

"It's like a snowball gathering momentum," said Jorge Pantoja, a psychologist and director of the Christian program. Paz Rojas, chief of neurological services at the University of Chile, said a growing number of torture victims were appealing for help from private doctors and psychologists. "Pinochet's arrest was a great catharsis that has begun to break the silence," she said.

Victim: Torture Memories 'Always Inside Me'

Viviana Uribe, a 48-year-old human rights activist with a warm smile and confident countenance, dug through her pocketbook for some pills as she prepared to leave her Santiago apartment to do some errands the other day.

"I feel a lot better, I really do," she said in a strong, steady voice. "I still get my headaches, but maybe they are a little better. Ever since I heard Pinochet would be judged for his crimes, it has been a tremendous relief for me."

Given the horrendous torture she experienced -- Ms. Uribe said that she was raped four times and that among other things, electric cables had repeatedly been clamped to her eyelids, lips, tongue and around her head for bolts of shock during interrogation sessions -- she appears to be the picture of a well-adjusted woman.

Ms. Uribe has no ticks or obvious nervous habits as so many other torture victims do. And although she refused to have her photograph taken for this article, she spoke with surprising ease about the disappearances of her husband, Fernando, and her sister Bárbara -- whose pictures, of each smiling broadly, one at a wedding, the other at the beach -- she keeps posted on the wall next to her desk.

For years, Ms. Uribe managed to cope by helping around the office of a human rights group and marching with other relatives of the disappeared for an accounting of her husband's and sister's fates. She took it upon herself to find her torturers, looking up their addresses in the telephone book, and even to confront the wives of men she believes raped her.
She says the repeated torture sessions -- some combined with interrogations -- still made no sense to her. She had belonged to a radical group that supported the Allende government, but she said she never did anything more extreme than to plaster walls with posters. Her interrogators' claims that she had been a threat to the state were absurd, she said. But through her years of exile in Mexico and her eventual return to Chile, she mainly kept silent about her terrible experience.

"My own torture always took second place," she said.

Everything changed a few weeks after General Pinochet's arrest, when her daughter Bárbara sat down with her on her living room couch to discuss the disappearance of her aunt and namesake.

The two had discussed the terror of the Pinochet years many times in the past, but this time was different. Like many other relatives of the disappeared, Bárbara was gathering testimony for the human rights lawyers in London and Madrid. Under her daughter's urging, for the first time Ms. Uribe told her of the rapes.

"It was like vomiting, all the horrible things flowing out uncontrollably," she recalled. "The torturers are always inside of me." The very next day, Ms. Uribe entered therapy.

Government: Official Position Angers Victims

Torture had always taken a distant second place to the disappearances as a political crime and public issue in Chile, but the Pinochet case has finally pushed the subject front and center.

Soon after he took power in 1990, President Patricio Aylwin established a commission that documented more than 3,000 disappearances during the Pinochet years. But the panel left torture out of its report, except for cases that ended in death, leaving many torture victims feeling abandoned and cheated.

The reason for their exclusion goes to the heart of Chile's slow democratic transition. General Pinochet remained a potent political force as commander in chief of the army until he stepped down from that post in early 1998, and human rights investigations would have threatened the uneasy civilian-military balance. Torture was a particularly sensitive subject because it involved a far greater number of military officers and units than the disappearances, which were largely the work of two quasi-independent military intelligence agencies.

Since General Pinochet's arrest, President Eduardo Frei has pressed to block the general's extradition to Spain, contending that any trial should be in Chile. His position has been supported by Ricardo Lagos, a Socialist Party member who is the presidential candidate of the Socialist-Christian Democratic coalition that has governed the country for the last nine years.

That position has caused anger and pain among many torture victims, including Mr. Fernández, the unemployed metal worker.
"Their betrayal," he said, "is the cause of my pounding headaches."

Repeated attempts were made to interview senior officials in the presidential palace and Health Ministry, but aides said they were unavailable for comment.

The emergence of democracy spurred only modest efforts to help torture victims resuscitate their lives. The government established a small unit in the Ministry of Health called the Program for the Integral Repair of Health and Human Rights to treat torture victims, former political prisoners and family members of the disappeared.

From 1991 through 1998, 31,102 people received at least some attention, but over time the program has withered and several administrators have resigned in frustration. Today many of the program's original 13 teams -- which were to include a doctor, a nurse, a social worker and a psychologist -- are now down to a nurse and social worker. Foreign financing for private and public agencies that help torture victims has dried up, in part because the government has refused to pitch in matching funds.

Still, Patricia Narváez, a senior administrator at the health ministry program, said first-time visits of torture victims this year for treatment at her agency were up 20 percent from 1998.

"The needs are great," Ms. Narváez said. "Some, especially on the right, wanted to shove this subject into the past, but we have all been full of silence. It's macabre. It's a phenomenon of silence."

If there is a conspiracy of silence, the victims are a part of it. Psychologists say many of the victims are still embarrassed that they survived while others were executed. Some feel shame for having given up names of comrades to their torturers, while others feel paranoia at the thought that people may think they did even when they did not.

But now their grievances have taken on international legitimacy, and as the Pinochet case has propelled torture to the top of the agenda of international human rights law, many torture survivors say they are happy that their testimony can have legal value for the cause of justice.

In March, the House of Lords in Britain ruled that General Pinochet could be extradited to Spain on charges of torture and conspiracy to commit torture committed only after his government signed the international Convention Against Torture in 1988. A judicial panel of seven members of the House of Lords, known as the Law Lords, further ruled that torture was an international crime for which any court in a country that has signed the convention has jurisdiction.

Baltasar Garzón, the Spanish judge who issued the warrant for General Pinochet's arrest and who wants to try him in Spain, has prominently included charges of torture in his case against the former dictator.
Meanwhile, a group of former political prisoners here is preparing to file the first criminal complaint in a Chilean court accusing General Pinochet, as well as an undetermined number of former officers, of torture. The hope, leaders of the group say, is to see the imprisonment of the leaders of the former military government's vast torture apparatus and to collect millions of dollars in reparations from the government. They are beginning with 50 cases and hope to expand their complaint to 500 in the next few months.

"Pinochet's arrest catalyzed us," said Raúl Reyes, a 60-year-old bookseller who is one of the organizers of the complaint. "During the dictatorship, we were stigmatized as criminals and terrorists, and even rebuffed by our families. That's changing now, albeit slowly."

Aftereffects: High Alcoholism and Joblessness

For all the change, a lot of torture victims say they feel no better. As a group, experts say, they still experience high rates of alcoholism, family violence and chronic unemployment.

"It's a mortal sin to be 52 years old and a returned political exile or torture victim," said Antonio Oszmica, who is all three. "People isolate you, and you can't find work."

None of that has changed for Mr. Oszmica since General Pinochet's arrest. In fact, he said he has only felt worse watching the government working hard to defend the former dictator against extradition. He has begun therapy at a public hospital under a new government program to help people who lost their jobs for political reasons, but relief appears distant.

"If Lavín wins," he said, referring to Joaquín Lavín, the former official in General Pinochet's planning ministry who stands a good chance of winning the presidency Jan. 16, "I am going to put a pistol to my head."

Mr. Oszmica appears to be a particularly frail man, even among torture victims. He goes from giddy highs to the deepest lows of depression from one moment to the next. After what he has gone through, his gloom is understandable.

As Mr. Oszmica tells it, his only crime was to serve as a low-level accountant in President Allende's agrarian reform in the town of Temuco. Shortly after the coup, he was dismissed and then pulled out of bed by troops in the middle of the night and dragged through the streets naked.

For six days he went through torturous interrogation at a police station, and he said he had nothing of value to tell them. For two days he was kept in total darkness, he recalled, the next two under intense fluorescent lights burning into his eyes. Then for two more days, he said, he was hung by his wrists, causing the dislocation of his right shoulder, which is still maimed. He also lost the ability to feel in his right hand.
In another torture session, police dunked him repeatedly in a tub of water. As he gasped for air, his torturers pulled him up by his hair and smashed metal plates against his ears until blood flooded from one of them. He remains hard of hearing.

After months of imprisonment, Mr. Ozimica said, he was allowed to leave the country, and he settled in an Indian village deep in the Venezuelan Amazon, where he lived for 18 years in a hut under a zinc roof.

"The torture made me hate life," he said. "I was so dehumanized, I figured only the Indians were human beings because they were nonviolent and they didn't lie. And I didn't need hearing because it was so quiet in the wilderness."

Mr. Ozimica said that he had made a living making cement bricks, but that his wife left him and took their two children back to Chile. He finally came back too, after democracy returned, but he still does not live in peace.

"Pinochet's arrest didn't give me happiness or sadness because his falling prisoner doesn't solve anything," he said. "So many of the people who were behind him are still around."

By Latin America analyst Nick Caistor

Augusto Pinochet Ugarte was born the son of a customs official in the Pacific coast port of Valparaiso on 26 November 1915.

It was apparently his mother who pushed him into a military career, and his wife Lucia, the daughter of a prominent politician, who encouraged his ambitions.

The young Pinochet rose through the officer corps in an army based on Prussian traditions of discipline and loyalty to the constitution, but as early as the 1950s he was involved in political struggles, as he headed the clampdown on the Chilean Communist party.

Paradoxically though, it was for his apparent lack of political ambition that he advanced to the rank of general under the left-wing Popular Unity government led by Salvador Allende in the early 1970s.
In June 1973 he was made commander-in-chief, again because President Allende thought he could be trusted.

Only a few months later, in September 1973, President Allende discovered how wrong he had been. He lost his life in the coup led by General Pinochet, who headed a military junta representing all branches of Chile's armed forces.

But very quickly it was General Pinochet who came to represent the military regime, and it was he who ordered many of the purges that saw more than 3,000 supporters of the Allende regime killed, thousands more tortured, and many thousands more again forced into exile.

**Saw himself as a patriot**

He closed down the Chilean Parliament, banned all political and trade union activity, and in 1974 appointed himself president.

General Pinochet has always defended his actions as those of a patriot who rescued his country from chaos and the threat of Communism.

In the 1970s, many Chileans appeared to support this point of view, particularly as the economy recovered and stability returned to towns and countryside.

But there was always opposition to his rule. By the mid-1980s the left-wing parties had re-grouped and organised protests that attracted increasing numbers, while in 1986 the armed groups fighting his rule narrowly failed in an assassination attempt.

**Popular backlash**

It seems that the general underestimated the extent of this discontent against his regime. The 1980 national constitution brought in by his military government set a timetable for the election of a president.
It allowed for a referendum on whether or not Pinochet should be the only candidate. Much to his surprise and dismay, this proposal was rejected, and General Pinochet found himself having to allow the return of civilians to government.

So in 1990 he reluctantly stepped down as president. He did however remain as commander-in-chief of the army, a position he frequently used to ensure both that there were no prosecutions against any members of the security forces suspected of human rights abuses during the 17-year military regime, and to block any radical political initiatives.

In 1998 General Pinochet finally relinquished his post as commander-in-chief. The very next day, he took up a seat in parliament as a senator-for-life, another position he had created for himself in the 1980 constitution.

Since then, he has insisted that his role as senator would be to promote reconciliation in Chilean society. But as events since his arrest have shown, General Pinochet is a figure who instantly polarises opinion not only in Chile but throughout the world.

**Pinochet's rule: Repression and economic success**

The coup in which General Augusto Pinochet seized power in 1973 was the bloodiest in 20th century South America.

More than 3,000 were killed in the September military onslaught, which began when fighter jets bombed the Presidential Palace while the democratically elected President, Salvador Allende, was still inside.

It was the start of a 17-year rule by General Pinochet. But the bloodshed did not stop there.

The general looked fearsome and talked tough. He promised wholesale reform of the political system which had allowed the annual rate of inflation to reach 150% in 1973.
No time was wasted. The military government dissolved Congress, suspended the constitution and opposition parties were outlawed. Shortly after came a night-time curfew and strict limits on the media.

Economic reform came in the shape of free-market principles. Nationalised companies were returned to their original owners, trade barriers were cut to encourage foreign imports and there was renewed emphasis on exports.

General Pinochet had once articulated his goal as "to make Chile not a nation of proletarians, but a nation of entrepreneurs".

Chilean society had been split by Allende's socialist rule, and so it was under the new right-wing leader. But with Pinochet in charge dissidents spoke out at their peril.

The general's iron rule was underpinned by the tactics of brutal repression that saw thousands die and thousands more flee into exile. Others disappeared or were tortured.

Particular targets were those who threatened unrest in the workplace and the shantytown dwellers who demanded better living conditions.

In the absence of any official political opposition, the Roman Catholic Church assumed the role of moral critic.

In 1976 the Pinochet regime's anti-democratic tactics were glimpsed by the wider world when a former Allende ambassador to the US was killed by a car bomb in Washington DC.

There was little doubt that the murder was linked to the government in Santiago but attempts by the Americans to extradite the accused members of the Chilean military were reportedly rebuffed.

Ten years later General Pinochet himself was the target of an assassination attempt, by the armed wing of the Communist Party. The dictator, however, escaped the attack on his motorcade with a few minor injuries.

When in 1990 he stepped down, it was due to his own miscalculation. He gambled his one-man rule on a plebiscite and lost.

The general was down but not out. The constitution he had been instrumental in drawing up guaranteed his continuation as army commander-in-chief until 1998.

He has ensured the armed forces remain largely outside the control of the government - a condition that has made it difficult to bring the military to book for past human rights offences.


Pinochet denies charges
On Tuesday 23 January, investigating judge Juan Guzman interrogated Chile's former military ruler, General Augusto Pinochet, at his residence in Santiago.

The questions centred on the actions of a military squad, known as the "Caravan of Death", which killed more than 70 political prisoners shortly after the 1973 military coup which brought General Pinochet to power.

This is the official transcript of the interrogation, signed by both parties.

Judge Juan Guzman: "As chief of the army or president of the military junta did you ask General Sergio Victor Arellano Stark to undertake a trip in September and October of 1973? What purpose did that trip have?"

General Augusto Pinochet: "His mission was to speed up the [judicial] processes and conclude them: to sentence those who had to be sentenced and close the cases where there was no evidence."

(General Pinochet is then presented with an official document dated 31 October 1973 and signed by Brigade General Joaquin Lagos Osorio. General Pinochet recognises as his a note written on the document in red ink.)

General Pinochet: "What appears in the summary as a list of people executed under the orders of the commander in chief of the army is absolutely false. "I am not a criminal. Anyway, those in charge of the [judicial] processes, of the detainees, were the commanders of the different garrisons.

Judge Guzman: "Once you learnt about the excesses committed during General Arellano Stark's travels in different parts of the country, did you take any measures?"

General Pinochet: "As I said before, those in charge of speeding up the processes were the commanders of the garrisons."
Judge Guzman: "Did you give orders for people to be executed during General Arellano and his delegation's travels to different cities in 1973?"

General Pinochet: "For me to remember everything now is impossible.

"I myself never ordered any executions. There was an order from the government junta which said that shots could only be fired in self-defence."

Judge Guzman: "Did you ever give orders to the effect that the bodies of those who died on that occasion should not be returned to their families?"

General Pinochet: "If that happened, it was because the bodies were often reclaimed by their own relatives. In other cases, because they were terrorists and were undocumented, identification was difficult - nobody knew where the bodies were because they weren't claimed.

Judge Guzman: "In your opinion, why did these excesses occur? Why were so many bodies not returned?"

General Pinochet: "In answer to the first, I do not know. In answer to the second, I already replied."

(The declaration was read to General Pinochet and signed by him and the judge.)

If Pinochet dies abroad

ARIEL DORFMAN

[Translator's note: I have tried to capture both the full meaning and the spirit of Mr. Dorfman's essay. It is difficult to recreate his compelling prose in another language, however. If you read Spanish, do yourself a favor and read the original. Please note -- especially if you quote from this for publication -- that this is an unauthorized translation. I am trying to contact Mr. Dorfman to see if he thinks it has done justice to his words. --LG]

Do Pinochet's followers really want him to return to Chile? Does it really matter to them if he dies abroad?

They cry that the general's detention wounds them; they swear that national sovereignty has been broached by Jack Straw's decision to allow extradition; they solemnly declare that only Chileans themselves should sort out the nation's internal affairs, they assure that the delicate transition to democracy in my country must be defended.

They assure, they declare, they swear, they cry, but until their hero was detained in London on October 16, Chilean rightists did nothing, absolutely nothing, to demonstrate
that these high-flown principles were anything more than hollow rhetoric, words devoid of content.

Now finally they have the opportunity to get the repatriation of the one who was their president, and to end with the affront (to them) that a former head of state is brought to justice in a foreign land.

The opportunity will present itself in a few months before the much-reviled Jack Straw, Blair's admirable (in my eyes) Home Secretary. In effect, if England's extradition process follows precedent and predictable legal stages, and if, as is likely, the British courts conclude that there is reason to deport the dictator to Spain, then Jack Straw will again be forced to decide if general Pinochet should or should not be brought to justice in Spain for crimes against humanity. The Home Secretary has promised that, should that happen, he would reexamine the case to see if there were new reasons, other circumstances, that would cause him to modify his initial opinion.

One of these circumstances would certainly be Pinochet's health, but even more important politically and morally, I believe, would be that Jack Straw have valid proof that Chilean society has made a genuine effort so that Chilean courts could truly judge Pinochet.

My country has before it, above all, a challenge. And also an urgent deadline. Only a few months to convince Straw and the whole world that impunity [*impunidad*: freedom from consequences; pun on immunity] has no home in Chile and that the place where the general should prove his innocence or be condemned for his crimes is before his own people.

Chile has the will to make this happen. The overwhelming majority of Chileans (65% according to the latest polls) wants Pinochet to answer in Chile for his possible crimes, and the democratic Government de la Concertación has repeatedly said that it is possible for such justice to be obtained in Santiago.

For these declarations to have substance and to be more than a mere illusion or political spin aimed at persuading a cynical international public, enormous changes must be brought about in Chile -- changes which signify by deed the completion of the transition to, and the arrival of, a full democracy where no one is above the law. Where no minority faction has the right to override the wish of the majority. Changes in the laws of self-declared amnesty that Pinochet granted for himself and his cronies. Changes in the Constitution as proclaimed by Pinochet that lets the right-wing, with one-third of the vote, could tie up any any legislation that doesn't meet with their approval. Changes in penal procedures in order to punish anyone who, knowing the whereabouts of the "disappeared," conceal this information. Changes in the status and regulations governing the Armed Forces so that in the future they will be subject to the popular will instead of being, as they are now, autonomous decision-makers, with generals that cannot be removed by civil authorities and with their own fixed, untouchable budget.
All these changes are difficult to bring about, but they have the advantage of being transparent and open -- and therefore negotiable. What is not so easy to transform is something more essential and intangible: the most intimate identity of the Pinochetistas, the way in which they see the nation and conceive the democratic process.

The Chilean right, especially after so many years of dictatorship in which everything was done as they pleased, continues to regard Chile as if it were their private, privileged fiefdom -- some would say as if it were their plantation. And as for democracy, they only believe in it when it serves their interests. If not, as happened during the legitimately elected government of Salvador Allende, their leaders are more disposed to subvert democracy, in turn killing and torturing and exiling thousands upon thousands of their adversaries. Because of this, now that that man who led the coup is being held in a foreign country, they announce that "anything can happen" (the words of Garín, former vice-commander of the army and Pinochet confidante), they treat the ministers of [Chilean President Eduardo] Frei's government as if they were their servants and, worst of all, they threaten a return to the dictatorial past.

The problem is that these crypto-fascists are unrepentant. They look with nostalgia on the years of military rule and believe they were good, even better than good, and they vow to return to punish and kill if necessary to save the country, their country, the country that they feel belongs in the first place to them, and only in the third or fourth place to other Chileans.

It is going to take years, maybe generations, to change this type of authoritarian mentality. The good old overlords of Chile, who still act as if they were its only masters, must look deep into their conscience and understand the profound pain they have caused their fellow Chileans, must be able to look at the enemies of yesterday as the equals of today. They will have to transform themselves magically into real democrats.

This transfiguration of morals and values seems to me unlikely, and I appeal instead to something more concrete: their immediate interests, their desire to have their beloved general return. If they help to ease the transition and bring about changes to the Pinochet Constitution in the next months, this would be a signal to the entire planet that power has effectively returned, after 25 years, to the people of Chile.

If they truly want Pinochet to return home, if they truly are so worried about the nation that they believe has been insulted, if they truly want to end the inevitable polarization between a majority nation that suffered terror and a minority nation that inflicted it, the solution in in their hands: they should agree that Chile will definitely become a full democracy, without "guardians," in which no one -- absolutely no one -- is above the law.

I have no doubt that this gesture, this basis for a different Chile, would force Jack Straw to decide, the next and last time he reviews the case, to return the general to his country so that he might be judged there. It would be a demand on all Chile, on a united Chile -- a demand that I certainly would want to ally myself with.
It is more than likely that Pinochet's followers will not be inclined to pay this price, to sacrifice their privileges and exchange their advantages for the liberty of their detained/imprisoned (detained) leader. In that case, let it be known and stated clearly: if Pinochet dies abroad, it will be their responsibility, not that of those of us who for decades have been calling to no avail for justice in Chile.

I repeat: if general Augusto Pinochet Ugarte dies abroad, it will be because his followers did not want to make the effort, the tremendous and truly patriotic effort, to return him to the country of his birth so that all of us could get the terrible mess of our house in order, together confronting our memory and our dead. (END)
The South African Truth and Reconciliation Commission (TRC) was set up by the Government of National Unity to help deal with what happened under apartheid. The conflict during this period resulted in violence and human rights abuses from all sides. No section of society escaped these abuses.

The TRC is based on the Promotion of National Unity and Reconciliation Act, No 34 of 1995.

"... a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation."

Mr Dullah Omar, former Minister of Justice

The TRC effects its mandate through 3 committees: the Amnesty Committee, Reparation and Rehabilitation (R&R) Committee and Human Rights Violations (HRV) Committee. The Commission is currently in suspension while the work of the Amnesty Committee is completed. The remaining work of the R&R and HRV Committees has been designated to the former chairs of those Committees, and now forms part of the Amnesty Committee.

The South African Truth and Reconciliation Commission

‘Harrowing the Ground so that Others May Build’

The second time I went to South Africa to sit in on TRC hearings, Antjie Krog, a radio journalist with the South African Broadcasting System gave me a copy of a letter. The letter had been signed, first name only, and although the writer indicated what part of the country she was from, she wrote: ‘I prefer to keep our address anonymous. We don’t need any ‘silencers’... an accident happens too easily.’

‘A’fter my husband had spent about three years with the Special Forces, our hell began. He became very quiet. Sometimes he would just press his face into his hands and shake
uncontrollably... I never knew. Never realized what happened during ‘the trips’. I had to be satisfied with ‘what you don’t know won’t hurt you....’

‘Today I know the answers to all my questions. I know where it began... The role of ‘those at the top’... and ‘our vultures’ who had to carry out their bloody orders. The churches and community leaders. Of those who did everything to keep exclusive power. Today they all wash their hands in innocence and resist the realities of the TRC... I stand by my murderer who let me and the old White South Africa sleep peacefully... While those at the top were targeting the next ‘permanent removal from society’.

‘I have forgiven the freedom fighters for their bombs, mines and AK-47s they used so liberally. There were no angels... I would have done the same had I been denied everything... if I had to watch how White people became dissatisfied with the best, and still wanted better, and got it.’

‘I envy and respect the people of the struggle. At least their leaders have the guts to stand by their vultures, to recognize their sacrifices... As long as the vultures were useful, tributes were dished out. Today, the same vultures are wasted and ask only recognition and support. They do not get it....’

‘One night my wasted vulture told me: They can give me amnesty a thousand times but I have to live with this hell. The problem is in my head, my conscience. There’s only one way to be free of it. Blow my own brains out. That’s where my hell is.’

Reconciliation after war and a hideously grotesque pattern of gross violations of human rights is a matter of creating peace in the present, and of sustaining peace in the future. Peace is not simply a matter of stopping physical violence. It is also a matter of helping people overcome what has been done to them... and of overcoming what they have done, so that a future might be built.
In and of itself, no Truth Commission can create reconciliation. Much less can a Truth Commission create peace. However, they do create conditions which make reconciliation and peaceful coexistence possible. They do this by uncovering the reality which embraces the factual truth of the past, and the emotional truth of both the past and of the present. No Truth Commission to date has done more to create such a full picture of reality than the South African TRC. The TRC has made it possible for the citizens of that country to begin to understand why people participated in such grotesque actions, and it has made clear what must be done to prevent such things from happening again.

This was accomplished in two ways. First, the TRC chose to work with a restitutive, rather than a retributive concept of justice. And second, they made the choice that all aspects of the Commission’s work would be kept absolutely transparent. They emphatically encouraged the national - and international- public and media to be a part of this work.

Not all South African citizens are happy with the way in which the TRC functioned. In particular, some who survived torture, rape, abduction, and some whose loved ones were tortured and murdered in cold blood passionately desire that the perpetrators of atrocity be punished for their crimes. There’s a strong undercurrent that justice has not been done; that the only thing that will assuage the bitterness of loss, of acid grief, of harrowing memory, and continuing painful present, is retribution.

A person who has not personally lived through such horrors is in no position to argue with this. Instead, let us consider how the TRC worked, and why it worked the way it did.

The TRC is the result of a negotiated settlement that ended the war in South Africa. No side won that war. If the negotiations had failed, there was a ghastly prospect that civil war would continue.

Military and security chiefs wanted a blanket amnesty, while some representatives of the liberation forces demanded trials. But some form of amnesty provision was essential to
ending that war: without it the killing, the torture, the rapes and disappearances would have continued.

A compromise was eventually reached, and in May of 1995 President Mandela signed the Promotion of National Unity and Reconciliation Act (the Act) which lead to the creation of the TRC.

The TRC consisted of the Human Rights Violations Committee (HRV), the Reparation and Rehabilitation Committee (R&R), and the completely autonomous Amnesty Committee. Each of these committees was assisted in their work by the Investigation Unit, and by the Research Unit which was also responsible for the creation of the Final Report. The HRV Committee was at work for about 15 months. They received and investigated more than 21,000 statements from Apartheid’s victims and survivors. They also oversaw hearings for various South African institutions, including media, business, the medical profession, and religious organisations.

The R&R Committee was responsible for developing a policy for reparations and rehabilitation for victims and survivors. They made recommendations on the basis of what was learned from the HRV hearings and submissions.

These recommendations were sent to the office of the President, and then to the Parliament. The TRC’s Final Report recommends that over a six year period a little under three billion South African Rands should be paid out; however, this is being debated in Parliament at the time of this writing, and it is uncertain what the final decision will be.

The Act also included some specific elements which made it possible for the South African TRC to penetrate, to an unprecedented degree, the reality that had existed during apartheid.

One unusual element of the Act was that it granted the TRC power of

Archbishop Desmond Tutu. Photo George Hallet
subpoena. The TRC could and did legally compel persons to attend hearings and give evidence. If a subpoena was refused, legal penalties, including fines and jail terms were applied.

But the most important of these elements was the TRC Amnesty Provision. According to the Act, amnesty could be granted to individual persons who made full disclosure of all relevant facts relating to acts of violence associated with a political objective. The Act specified that employees of the state, including both Security Forces and the military, and members of the liberation forces, were eligible for amnesty for acts of political violence committed between March, 1960 and May, 1994.

Persons receiving amnesty from the TRC’s Amnesty Committee are immune to prosecution in South Africa’s civil or criminal courts. Conversely, those who applied but did not receive it, or those who did not apply at all, may face either or both criminal and civil charges, providing enough evidence can be found to write indictments. (97 percent of amnesty applications heard as of June, 1998, have been denied.)

The South African Truth and Reconciliation Commission created a direct linkage between amnesty granting and truth telling: amnesty for truth. If perpetrators had not voluntarily come forward much truth and much reality of that time would have been lost. Paper trails and evidence regarding perpetrators of gross violations of human rights do exist. But not a lot of it. And not enough to successfully prosecute all perpetrators of gross violations of human rights during apartheid.

‘Our nation needs healing. Victims and survivors who bore the brunt of the apartheid system need healing. Perpetrators - those who tortured and killed - are, in their own way, victims of the apartheid system. They, too, need healing.’

The agonizing cascade of information coming out of the TRC hearings was challenged many times, particularly in courts of law. The TRC faced a barrage of litigation from perpetrators who didn’t wish to be named in HRV hearings, and from political parties who had constitutional and bias problems with the process. Lawsuits were filed by survivors who did not require more information out of Amnesty proceedings because they knew what had happened to their loved ones and wished to see either criminal or civil cases mounted against alleged perpetrators in the hope that they would be found guilty and punished. Although only a few of these challenges had the specific intent of silencing the torrent of raw information pouring forth from the TRC in many cases, had they been successful, their effect would have been just that.

The truth that came out of these TRC hearings is about delivering justice, but not as in ‘justice equals punishment of those proven guilty in a court of law’. For the TRC justice is about uncovering what really happened: it’s about establishing reality in all it’s conflicting perspectives. This essential form of justice would have not been found in the work of adversarial court cases. It required an amnesty process.
But justice is also a matter of the victims and survivors being able to tell their stories, to tell the reality of their experience and to make it public. There will always be a gap between the factual truth, and the reality which encompasses both factual truth and the emotional truth. To re-create the reality which existed before, the TRC has demonstrated that one must have the factual truth. But it has also clearly shown the urgent necessity of making room for the emotional truth of the victims, the survivors, and the perpetrators. All of these people must tell their stories: if the intention is to foster reconciliation, all of these people must be heard.

As was noted by the Constitutional Court of South Africa, the desire to see perpetrators of human rights violations vigorously prosecuted and then punished for their callous and inhuman conduct is legitimate. But they also wrote that: ‘Much of what transpired in this shameful period [of apartheid] is shrouded in secrecy and not easily capable of objective demonstration and proof. Loved ones have disappeared, sometimes mysteriously, and most of them no longer survive to tell their tales...

‘The Act seeks to address this massive problem by encouraging these survivors and dependents of the tortured and the wounded, the maimed and the dead to unburden their grief publicly... and, crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible. That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do this. Without that incentive, there is nothing to encourage [perpetrators] to make the disclosures and to reveal the truth...’

To really understand the stunning accomplishment of the TRC, one need only turn to the five-volume Final Report. There were limits to the amount of truth the TRC could dredge up in its two and a half year life span, but within those limits, a picture of the whole is bitterly plain: it is impossible to create or sustain any mythology with regard to this civil war in the face of what the Final Report records.

The legacy of the TRC is eternal. Now, when we are still so close to it, we can only barely make out the meaning of the whole: each succeeding generation must build further on the reality the TRC has offered. There were flaws and omissions in the TRC’s process and results. But the Commission did an extraordinary job of beginning.

*This article has been written by Colleen Scott.*

THE COMMITTEES OF THE TRC
Human Rights Violations (HRV) Committee

The task of the HRV Committee was to investigate human rights abuses that took place between 1960 and 1994, based on statements made to the TRC. The Committee established the identity of the victims, their fate or present whereabouts, and the nature and extent of the harm they have suffered; and whether the violations were the result of deliberate planning by the state or any other organisation, group or individual. Once victims of gross human rights violations are identified, they are referred to the Reparation and Rehabilitation Committee.

Read transcripts of Event and Victim Hearings and submissions from political parties and other organisations.

Reparation and Rehabilitation (R&R) Committee

The enabling act empowered the R&R Committee to provide victim support to ensure that the Truth Commission process restores victims' dignity; and to formulate policy proposals and recommendations on rehabilitation and healing of survivors, their families and communities at large. The envisaged overall function of all recommendations is to ensure non repetition, healing and healthy co-existence. A President's Fund, funded by Parliament and private contributions, has been established to pay urgent interim reparation to victims in terms of the regulations prescribed by the President.

Read policy documents and workshop transcripts.

Amnesty Committee (AC)

The primary function of the AC is to consider that applications for amnesty were done in accordance with the provisions of the Act. Applicants could apply for amnesty for any act, omission or offence associated with a political objective committed between 1 March 1960 to 6 December 1993. The cut-off date was later extended to 11 May 1994. The final date for the submission of applications was 30 September 1997. Being granted amnesty for an act means that the perpetrator is free from prosecution for that particular act.

Read transcripts of Amnesty Hearings and Decisions.

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

This is an application for amnesty in terms of the provisions of Section 18 of the Promotion of National Unity and Reconciliation Act, No. 34 of 1995 ("the Act"). The matter relates to an incident that occurred at approximately midnight on 25 August 1989 when shots were fired at the house of Mr Ivor Jenkins at 269 Annette van Zyl Street, Garsfontein, Pretoria. Mr Jenkins had indicated that he is not opposing the application.

The relevant facts can be set out briefly. At all material times, Applicant was a member of Unit C1 of the then South African Security Police stationed at Vlakplaaas under the command of Colonel Eugene De Kock. In the course of his official duties, Applicant was ordered to participate in an operation with the objective of intimidating Mr Jenkins who was active in the campaigns being conducted by the Mass Democratic Movement at the time. In the light of his political activities, Mr Jenkins was clearly regarded as a political enemy of the then government and by the same token the security police. The political role played by the security police and in particular Vlakplaas at the time, has been amply documented and confirmed in various proceedings before the Amnesty Committee.

In execution of his orders, Applicant fired various shots at the house of Mr Jenkins at approximately midnight when the occupants were expected to be asleep. Applicant's orders were explicitly to aim the shots at such a height that no risk would be posed to life or limb inside the house. The intention of the operation as well as Applicant's orders were clearly not to kill or harm any of the occupants of the house. The shots fired by Applicant were accordingly harmless. According to the contents of a statement furnished to the Committee by Mr Jenkins, the family left the house earlier that evening after having received various threats. They were spending the night at the home of a friend. At the time of the incident, none of the family members were present inside the house. They were notified of an incident at the house during the early hours of the morning when they found upon inspection that shots were fired at the house earlier that evening.

Having considered the matter, we are satisfied that the incident is clearly associated with a political objective. The facts are largely common cause and there can be no doubt that Applicant has made a full disclosure as required by the Act. In the circumstances, amnesty is hereby GRANTED to Applicant in respect of all offences and delicts arising from the shooting incident at the house of Mr Ivor Jenkins situated at 269 Annette van Zyl Street, Garsfontein, Pretoria on or about 25 August 1989.
BONGANE SHADRACK KHUMALO APPLICANT

After considering the matter we are not satisfied that the actions committed by the applicant constitute "acts associated with a political objective" as it is required by the Act. There is no evidence that he was a *bona fide* member or supporter of a known political organisation or liberation movement. We are also not satisfied that the applicant has made a full disclosure of all the relevant facts. We are convinced that this was just a straight robbery for personal gain.

The application is accordingly **REFUSED** for all the offences.

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE


ANDREW CHAUKE 1ST APPLICANT

(AM5487/97)

REGINALD JABU SIMELANE 2ND APPLICANT

(AM6400/97)

ALFRED SIMELANE 3RD APPLICANT

(AM6401/97)

ROBBIE BONGANI MABUZA 4TH APPLICANT

(AM6402/97)

____________________________________________________

DECISION
The four Applicants have applied for the murder of one Benjamin Masinga which took place on 19 April 1986 in Atteridgeville near Pretoria. The Applicants have not yet been prosecuted for this offence pending the outcome of their amnesty applications.

The first Applicant submitted a comprehensive unsigned statement in which he laid out the circumstances of the murder and the other Applicants submitted unsigned statements confirming the contents of the 1st Applicant's statement.

The confirmed the correctness of these statements, under Oath. In his affidavit, 1st Applicant stated that in 1984 he was a student in Saulridge High School. He joined the Congress of South African Students (COSAS) and became a member of the Student Representative Council together with his co-applicants.

Since COSAS was an affiliate of the United Democratic Front (UDF), the Applicants were then introduced into the politics of ANC from the many meetings and conferences which they attended. They met with uMkhonto weSizwe cadres who taught and trained them. They were, however, not trained in the use of weapons. They were ordered to form an underground unit of the MK which was to operate in the Atteridgeville and Pretoria areas. Their main task was to popularise and execute the campaigns of the UDF/ANC to bring about the downfall of the apartheid regime.

The commander of this underground unit/cell, was the 1st Applicant. However, all the activities taken by the unit were agreed to by all present.

The Police, soldiers, Councillors, Council Police were all regarded by this unit and the ANC as enemies since their main duty was to suppress all political activities and also to arrest and disillusion political activists.

The unit knew Benjamin Masinga as a policeman who was stationed in town and was well known as "Rambo" as he harassed people in the township. He stated that there had been a previous attack on Rambo by other political activists but they only succeeded in taking his firearm as he managed to escape.

On 19 April 1986 Applicant's underground unit met at 1st Applicant's home in 35 Serote Street. They were busy preparing petrol bombs as they were planning to attack the house of another policeman.

Whilst preparing the petrol bombs and planning the attack, a certain lady (later known as Linkie) came to 1st Applicant's home. She called 1st Applicant outside and told that Rambo was at the house opposite his home. Rambo apparently had a girlfriend at that house. The first Applicant then realised that Rambo was a more significant target. He then went into the house and informed his comrades about the presence of this "target" in the area.
The comrades immediately and unanimously agreed to attack and kill him. They thought that it would send louder message if they could take him out of the house and kill him at a public place so that his death may be known.

The Applicants, together with other comrades, namely Joseph Moshepe and Clement Mdau who have not applied for amnesty, then went to Rambo's place. Joseph was ordered by the 1st Applicant not to enter the house but to keep guard and warn the others if there was any danger coming.

First Applicant was the first one to go inside with an axe in hand. he saw Rambo seated in the dining room and proceeded to attack him with an axe. The other comrades then joined in.

The second Applicant attacked him with a stick and assisted in dragging him to Khabo school.

The third Applicant hit him with stones and poured him with petrol when they arrived at Khabo School.

The fourth Applicant used a stick and stones to assault him, assisted in dragging him to Khabo School and set him alight after third applicant had poured petrol over him.

That was the evidence in chief of the four Applicants. This application was opposed by the members of the family of the deceased.

Of major concern to the Committee was the evidence of first Applicant. His evidence of what transpired between him and Linkie was crucial to determine whether or not the killing of Ben Masinga was political or was an ordinary murder. In so far as the other members, the Committee is prepared to accept that they had no knowledge of the details and circumstances of the conversation between 1st Applicant and Linkie.

When cross-examined, first Applicant's testimony was found wanting in certain crucial aspects. At page 31 of the transcript, he stated that he was seeing Ben Masinga for the first time on the day that they killed him. He also mentioned that Linkie knew him as a political activist. She knew that policemen were regarded as targets so that is why she came and told him that there was a target in the house. At page 33 he goes on further to say that when he got this information he said "no problem, we'll sort that out". Thereafter he does not know where Linkie went.

Of concern to the Committee is the fact that 1st Applicant seemed to deny things he had said in an inquest. At page 57 of the transcript he stated:-

MR CHAUKE: No, Mr Chair, I never said that.

CHAIRPERSON: So the record is wrong?

MR CHAUKE: Ja, the record is wrong.
CHAIRPERSON: And so you went, it is recorded as you're saying - "She then went to the shebeen. After about 10 minutes I followed her. I went there to call her. She came and said there aren't any people there".

Did you say that: Did you go and call her from the shebeen?

MR CHAUKE: No, Mr Chairman. As I've already indicated in my statement where I met the lady and I did not.

CHAIRPERSON: Yes, so once again the Court record is defective?

MR CHAUKE: Yes, Mr Chairperson.

CHAIRPERSON: And it's then recorded as saying -

"She said that she would go into the house and turn off the light as the policeman was in the sitting room. He was in the chair and he was asleep".

MR CHAUKE: No, that she did not mention to me.

CHAIRPERSON: After the light was turned off she called us and we went into the house. The person who went in first was Clement".

MR CHAUKE: No, Mr Chair.

CHAIRPERSON: So all this is wrongly recorded, wrongly interpreted?

MR CHAUKE: Yes, Mr Chairman, if one can take a thorough trace and make a very thorough trace, most of these statements that time when we were tried, Mr Chairman, they were solemnly(?) written by the cops.

CHAIRPERSON: This was evidence you gave before the Court, it was not something written by a policeman. This is the recording of the evidence given before the Magistrate.

MR CHAUKE: I do understand what the Chairperson is saying, that is why I'm saying that I am denying that.

CHAIRPERSON: It was written by the cops, it was testified to by you. What I have been reading from this, as your counsel will explain to you, is a transcript of the court record.

JUDGE DE JAGER: And it was a tape recording by Lubbe Opnames, like we've got a tape recording here?

MR CHAUKE: Yes, Mr Chair.

CHAIRPERSON: And you say all this is wrong, you didn't say any of what I have read to you?
MR CHAUKE: Yes, Mr Chairman, as I've already indicated while I was asked by the attorney, Mr Nyawuza, that all this other incident that one confessed during that time, it was in terms of defending himself that one mustn't be prosecuted.

CHAIRPERSON: But this isn't confessing, this isn't defending yourself, this is merely telling what happened.

After the close of evidence of the Applicants, the brother of the deceased came to give evidence. His testimony was that his brother was a peace loving person who was well liked by the community and was not the terror which was described by the Applicants. He stated that although his brother had stayed with his wife at in-laws house, at the time of the death they were separated. He had only gone there to fetch some of his possessions. He was no longer staying there.

Linkie, although an implicated person, she came to give evidence. She had legal representation. Her evidence was that on this day her aunt, Ben Masinga's wife, was not at home. She had gone to Soshanguve in an attempt to run away. When the deceased came, he was drunk and wanted to sleep with her. She was scared of the deceased. She decided to go to Gilbert's place, a shebeen, in order to seek help. When she arrived at Gilbert's place, she spoke to Lawrence, who is Gilbert's grandson. She wanted Gilbert to help her or to accommodate her and/or accompany her first to her home to go and lock the deceased inside and then be accommodated at Gilbert's place.

She, however, did not communicate this request to them. She just told them that the deceased was pestering and insulting her. Whilst sitting at the shebeen, the first Applicant came to Linkie. She testified that she knew 1st Applicant very well. She had known him for a number of years because they all grew up in the same area. She, however, denied knowing that he was a political activist.

At page 232 she testified that:

MS MOKGOKONG: "He called me, then I went to him. Then he said to me: "Who is at the house?" Then he said: "With whom is he?" Then I told him that he's alone. Then he told me that they were looking for that person for a long time. Then he asked me as to why am I there, then I said:" I ran away from him". Then he said "There's no problem, we'll help you".

Further on she was asked "Now Mr Chauke, did he know the deceased?"

Her reply was: - "That's correct, Chairperson, because we were neighbours".

After that she went home and the deceased was attacked by the Applicants. She was in the bedroom whilst the attack was taking place so she was not in a position to say exactly what took place.

Of significance of her evidence which differs from the testimony of the Applicants is the fact that she stated then after the murder the 1st
Applicant, together with others, came back and asked for a bucket of water in order to clean the floor. He also asked for a spade so as to remove the blood on the street. She denies having gone to 1st Applicant's place to ask him to harm or injure the deceased. She also testified at page 245:

MS MOKGOKONG: He said to me they have killed Benjamin and they wanted transport so that they could take him from the toilet and take him to another place far away.

MR RICHARD: Where did they find Benjamin's body?

MS MOKGOKONG: His corpse was found by the police in the school toilet.

1st Applicant said that he needed transport so that they could take the deceased from the toilet and take him to another place far away. That was the evidence in chief of Linkie.

Under cross-examination, a certain statement submitted as Exhibit E was put to her. There were certain inconsistencies. For instance, she could not remember certain things that she had said to the police. It was pointed out to her that one of her statements she had mentioned that she knew that 1st Applicant was a comrade.

Whilst this witness was not such a good witness, her contradictions were not of such a nature as to render her whole evidence totally incredible.

The Committee is mindful of the fact that she may well be scared of implicating herself in a murder.

Her evidence, however, casts doubt as to whether or not 1st Applicant has made a full disclosure to the Committee.

The Committee is thus left with a doubt as to whether this killing was politically motivated or whether it was to assist Linkie to get rid of her brother-in-law who was a nuisance to the family.

Also of concern is the fact that 1st Applicant states that he did not know the deceased and yet they were neighbours.

The Committee is not satisfied that the 1st Applicant himself was a good witness as he seemed to deny statements which he made and only gave unsatisfactory explanation when he realised that he had been caught out. In the circumstances the Committee is not satisfied that the 1st Applicant has made a full disclosure of all the facts relating to the murder of Benjamin Masinga.

Accordingly, amnesty is REFUSED to the 1st Applicant for the murder of Benjamin Masinga.

Insofar as the other three applicants, the Committee is satisfied that they were acting on the instructions of their commander and that they
were bona fides as to the political motive for the killing of the policeman.

They have also made full disclosure of all the facts relating to this murder.

Accordingly, amnesty is GRANTED to:

Reginald Jabu Simelane
Alfred Simelane
Robbie Bongane Mabuza

for the murder of Benjamin Masinga.
As US Secretary of State Colin Powell, and UN Secretary-General Kofi Annan hold talks today with Sudanese President Omar al-Bashir, Amnesty International calls on the leaders to end the impunity of those who have caused human rights and humanitarian tragedies in Sudan.

Responsibility for ensuring justice in Sudan rests primarily with the Sudanese government. However, the international community as a whole has a duty to fight impunity by bringing to justice perpetrators of crimes under international law through the exercise of universal jurisdiction. Ensuring justice means investigating allegations of war crimes and crimes against humanity, bringing perpetrators, commanders and accomplices to justice in fair trials without the possibility of the death penalty, and ensuring reparations for the victims.

"Impunity for human rights abuses only breeds further violations. Those who have killed, raped, abducted and displaced in Darfur knew that those who had committed similar crimes in the Nuba mountains and the south did so with impunity. If those who commit war crimes are never held accountable there will never be peace in Sudan," Amnesty International said.

"The rape and killings committed by the government-supported Janjawid militias in Darfur constitute war crimes. Systematic and widespread killings, rape and forced displacement are crimes against humanity. War crimes and crimes against humanity have also been committed in southern Sudan by all parties to the conflict," the organization said.

On 19 June President Omar al-Bashir said on television that he would control and pursue all outlaw groups, such as the Janjawid, and present them to justice. US Secretary of State Colin Powell, and UN Secretary-General Kofi Annan should demand, in their discussions with President Omar al-Bashir, that this is implemented immediately.

During 20 years of war in the south the Sudanese armed forces and militias supported by the government killed, raped and abducted thousands of Sudanese. At the same time the Sudan People's Liberation Army (SPLA), militias allied to the SPLA and independent
militias killed and raped with equal impunity.

As the peace negotiations between the Sudanese government and the SPLA limped forward after 2002, the government supported Janjawid militias to attack and displace rural ethnic groups in the western Sudan after some members of these groups, complaining of marginalization and lack of protection, founded a "Sudan Liberation Army". Today, one million internally displaced people in Darfur who have fled to camps and swollen the townships in Darfur now face hunger and disease. A further 130,000 people have fled to Chad.

On 5 June 2004, after two years of negotiations, peace was eventually signed between the government of Sudan and the SPLA. But the protocols which make up the peace accord do not mention accountability for past serious human rights violations.

"By tolerating this impunity the government and the SPLA, as well as the mediators and observers to the peace process in the south accept that international humanitarian law can be breached with impunity," Amnesty International said.

Amnesty International has frequently called for human rights monitors to be deployed in the southern Sudan to investigate allegations of serious human rights violations and for perpetrators of human rights abuses, from whatever side, to be made accountable.

With regard to the conflict in Darfur Amnesty International is calling for:

- an international Commission of Inquiry to examine evidence of war crimes, crimes against humanity, and other violations of international humanitarian law as well as allegations of genocide;
- the immediate deployment of human rights monitors in Darfur in sufficient numbers and with the requisite resources to investigate and report on serious human rights violations;
- the disarming and disbanding of the Janjawid militias who must be put in a position where they may no longer abuse the civilian population.

Sudan has signed, but not ratified, the Rome Statute setting up the International Criminal Court. The new power-sharing, government to be set up following the Nairobi peace accord between the government and the SPLA, should ratify the Rome Statute as one of its first acts. This will be a sign to the people of Sudan that the horrific breaches of humanitarian and human rights law which have happened over the past 20 years, will no longer be acceptable.
AMNESTY INTERNATIONAL

Iraq: Saddam Hussein's trial must be fair, and seen to be fair.

Press release, 02/07/2004

Amnesty International is deeply concerned at the absence of defence lawyers and the apparent censorship during yesterday's first court appearance by Saddam Hussein and 11 senior members of the former president's government.

"The beginning of legal proceedings to determine responsibility for a series of crimes considered as war crimes, crimes against humanity and genocide committed over the last three decades, is to be welcomed. However, in order to bring justice to the thousands of victims, the proceedings must be fair, impartial and transparent," Amnesty International said.

The organisation was particularly alarmed that defence counsel was not made available to the accused at yesterday's hearing. Although the judge said that Saddam Hussein would be allowed legal defence in future, he and the other accused should have been given access to defence representation right from the beginning of the process.

The apparent restrictions, or censorship, of some of yesterday's hearing is also a matter of grave concern. The sound of Saddam Hussein's voice was initially not allowed to be broadcast although later some of his comments were broadcast creating doubt about who was in charge of proceedings.

Open reporting of the trial is of paramount importance. While, full physical access by the public may be impractical because of security considerations, the proceedings must at least be reported on by a variety of media reflecting different backgrounds. In light of this, Amnesty International is dismayed that only reporters from US media outlets were allowed access to the court during yesterday's hearings.

It is essential that the trial of Saddam Hussein and the other defendants be fair and open to public scrutiny so that ordinary Iraqis and the international community can see that justice is being done.

Background

International law guarantees everyone during detention and trial the right of access to lawyers of their own choosing as well as the time and facilities to communicate with them.

Under International law, the press and public can only be excluded from all or part of a trial for reasons of morals, public order or national security.