

# Chile's president charged with "crimes against humanity"

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A coalition of human rights organizations has filed a brief before the International Criminal Court charging Chile's sitting president, Sebastian Piñera, along with former and current civilian, military and police authorities with crimes against humanity. The case, stemming from the ruthless repression meted out by the Piñera government against mass protests in 2019, has been filed in the midst of savage police-state repression against popular upheavals in Colombia by the far-right government of President Iván Duque.

Former Spanish judge Baltasar Garzón, the Chilean Human Rights Commission (CHDH), the American Association of Jurists (AAJ) and the Centro di Ricerca ed Elaborazione per la Democrazia (CRED), sent the brief to ICC Chief Prosecutor Fatou Bensouda last week. The next stage is for the prosecutor Bensouda to determine whether the case falls within the ICC's jurisdiction, whether there are grounds to maintain that there were crimes against humanity and the admissibility of the appeal, a process that takes years according to the lawyers involved.

In their 141-page brief the plaintiffs request that the ICC initiate an "investigation, file an indictment, and launch a trial (against) the President of the Republic of Chile and other civilian, political and police authorities" for "widespread and systematic" attacks against a civilian population "occurring simultaneously throughout the national territory of the Republic of Chile, from October 6, 2019 and up to the present day, which we consider to constitute Crimes against Humanity."

Those who stand accused are the ultra-right president Sebastian Piñera, along with former and current interior ministers Andrés Chadwick, Gonzalo Blumel, Víctor Pérez and Rodrigo Delgado, the former undersecretary of the Interior, Rodrigo Ubilla, the current undersecretary of the Interior, Juan Francisco Galli, the former ministers of Defense, Alberto Espina, and Mario Desbordes, the former general director of the Carabineros, Chile's militarized national police force, Mario Rozas and the current general director, Ricardo Yáñez, as well as the mayor of the Metropolitan Region, Felipe Guevara.

The document explains that the Piñera government pursued from the beginning a policy of state repression "to confront the demands of the rights of the population as if it were a declaration of internal war, suspending constitutional guarantees and deploying the army in the streets, thus preparing the ground for the commission of the worst State crimes."

The brutal police actions were not isolated or independent of each other, but were part of a plan aimed at carrying out an organized, massive, extensive and systematic attack against the civilian population, with the objective of repressing manifestations of dissent,

containing social demands, and exercising political intimidation.

The government continued with this policy in spite of being updated by the National Institute of Human Rights, an autonomous state agency; the Public Prosecutor's Office, the autonomous prosecutorial body intervening in the Chilean judicial system; and the Directorate of Studies of the Supreme Court (all of which are obliged to inform the government of human rights abuses committed by state agents).

In complete disregard of reports and recommendations submitted by state, national and international human rights organizations, which tabulated violations against thousands of demonstrators, journalists, reporters and photographers, human rights personnel and health brigades, the government at first denied that its repressive arm committed any crimes, admitting to only possible individual "excesses," and has to date encouraged the actions of the Carabineros and the high command.

Recourse to the international court is also driven by the absence of equality before the law. Thousands of cases involving egregious human rights abuses committed in a "widespread and systematic manner" by agents of the state since 2019 have languished for months or have been summarily closed.

Of 8,581 total cases initially opened for human rights violations that occurred during the social unrest, 2,013 were regrouped with other proceedings, leaving 6,568 active cases. Over the last year and a half 3,050 (46 percent of the total) of these have since been closed without formalizations, and most of them with practically no progress. Of the 1,496 cases involving children and adolescents, 420 were regrouped, leaving 1,076 active cases. In the last year and a half, the Prosecutor's Office has closed 541 cases.

The document notes:

that the aforementioned unlawful acts, dealt with and punished by Article 7 of the Rome Statute, ratified by the Chilean State on June 29, 2009, are fraudulently classified and investigated in Chile as common crimes, with the deliberate purpose, first, of removing them from the jurisdiction of the International Criminal Court and, second, to prepare the conditions that would favor their subsequent impunity with the possible application of the statute of limitations, or through the application of possible pardons, amnesties or end-point laws. In addition, the State agencies in charge of investigating and judging, such as the Public Prosecutor's Office and the Judiciary, have had an unjustified delay in the substantiation of these processes and their actions do not have the necessary independence and impartiality and the due respect for the

principle of Equality before the Law. All this makes it appropriate and necessary to exercise the complementary jurisdiction of the International Criminal Court.

The report directs attention to the “Public Prosecutor’s Office and the Courts of Justice” and “calls into question their will and capacity (to) investigate and punish the massive and systematic human rights violations committed by the security forces.” It notes their asymmetrical treatment of many demonstrators who were imprisoned for supposedly committing serious crimes but have “subsequently been acquitted due to insufficient (or) false evidence.”

The brief also refers to specific cases of intimidation suffered by prosecutors (e.g., Ximena Chong) at the hands of the Carabinero police for pursuing cases against them and the sanctioning of justices (e.g., Daniel Urrutia) by the Judiciary for modifying preventive detention measures.

“The Chilean courts have failed in their duty to administer justice,” Carlos Margotta, president of the Chilean Human Rights Commission, concluded in an interview with investigative news site CIPER. Garzón added that the complaint to the ICC “seeks to highlight the impunity that is being experienced in Chile and demands an independent international investigation and that when it comes will force the Chilean justice system to (grant justice).”

While there is doubtless broad support for the criminal prosecution of Piñera and his underlings, it is necessary to bring attention to the political organizations involved and their political motives. At the forefront of the operation is the anti-Marxist and counterrevolutionary Stalinist Communist Party of Chile (PC) and the parliamentary pseudo left, whose central political function is to subordinate the working class to the capitalist state by sowing the illusion that the executive, the congress, the judiciary and its repressive arm can be reformed or refounded on democratic principles. This myth has been their central argument for decades, preceding the 1973 coup d’état and since.

This is also the political outlook of Garzón, who is a founding member of the Spanish pseudo left-Stalinist front Actúa. Formed in 2017 as a break-off from United Left (Izquierda Unida), it promotes itself as “the left that does not feel represented either by the minimal gestures of the PSOE and its pact with the PP, or by the rhetorical maximalism of Podemos.”

Garzón, a former investigating judge from Spain’s central criminal court, the Audiencia Nacional, came to international prominence in 1998 when he sought to have former Chilean dictator Gen. Augusto Pinochet, who was visiting Britain, extradited to Spain to face charges of torture and assassination of Spanish citizens at the hands of his regime. The attempt was thwarted in March 2000 when the British Foreign Office found Pinochet too ill to stand trial. Pinochet died in Chile six years later while tied up in court proceedings.

Garzón attempt to prosecute Pinochet raised deep concerns within the British, US, Spanish and Chilean ruling elites for competing reasons.

A trial in Spain could well have raised many awkward and long-suppressed historical questions. The transition to civilian rule in Chile in 1990 provided an amnesty for Pinochet and his fellow military criminals, similar to the one granted in post-Franco Spain, where a political shift was engineered that left the old repressive apparatus intact.

More significantly, the bloody overthrow of the Popular Unity government of Chile’s President Salvador Allende was heavily

backed by Washington, which continued its support as thousands were summarily executed and many thousands more were tortured and forcibly disappeared. Universal jurisdiction, the undermining of the principle of sovereign immunity, which the imperialist powers used to try war criminals of the former Yugoslavia, could just as well be threatened against a slew of American, British and Spanish authorities for crimes in Chile, the Balkans, Afghanistan, Iraq and beyond.

Indeed, moves to suspend Garzón from the Audiencia Nacional were initiated following his attempt to open an investigation into the systematic torture program at Guantánamo Bay in 2009 as well as his investigation into crimes against humanity committed during the fascist dictatorship of Gen. Francisco Franco. He was convicted in 2012 of misconduct for illegal wiretapping during the investigation of the Gürtel corruption case and disqualified from the position of judge for 11 years.

The decision to bring the Chilean state under Piñera to the ICC took shape at the Latin American Human Rights Forum held at the beginning of 2020 at which Garzón was guest speaker. Garzón made contact with the forum organizers, pseudo-left parliamentarians Alejandro Navarro (Progresivo), Adriana Muñoz (Partido Por la Democracia) and Juan Ignacio Latorre (Revolución Democrática)—all members of the Senate Human Rights Commission. Lawyer Carlos Margotta, president of the Chilean Human Rights Commission and aligned to the Chilean Stalinist PC, agreed with the idea of going to the International Criminal Court in March 2020.

On the 22nd anniversary of Pinochet’s arrest last year, Garzón expanded on his motivations for pursuing Piñera: “I fear for what may happen on the first anniversary of the social outbreak and the subsequent plebiscite, I fear for the actions of the police, who are still in charge of those who have openly supported their subordinates and make a defense of the rotten apples without realizing that in doing so they are rotting an entire institution ... But even President Piñera himself recognizes that Carabineros de Chile must undergo profound changes. Then I ask, what are you waiting for, Mr. Piñera? How many more deaths, how many more rapes, how many more tortures must happen to undertake this profound transformation?”

As events in Colombia, Brazil and throughout Latin America demonstrate, the region’s capitalist ruling classes and their political allies in Washington are not about to pursue a policy of reforming the repressive apparatus. Rather, they rest ever more heavily upon it as they prepare police-state measures against the rising tide of struggle within the working class.



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