

## **In praise of sanctuary for brutal dictators**

Ottawa *Citizen*, 23 February 2014

<http://www.ottawacitizen.com/opinion/op-ed/Offer+sanctuary+dictators/9541437/story.html>

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On 11 March 1990, after seventeen years in office, Chilean dictator Augusto Pinochet stepped down from the presidency, having lost a referendum on his government a couple years earlier. Pinochet returned to his former post as Commander-in-Chief of the Chilean army. He retired in March 1998 and was named a senator-for-life, as required by the constitution he had helped to write. Pinochet died in December 2006.

On 18 June 1982, Leopoldo Galtieri, the final leader of the Argentine military dictatorship, was removed from power by the other members of the junta. Soon after his departure, the junta let itself be replaced by an elected government. Galtieri died in January 2003.

Pinochet was a brutal dictator, responsible for the murder of at least 3000 people and the torture and wrongful imprisonment of many more. Galtieri, for his part, rose through the ranks during Argentina's Dirty War, between 1975 and 1978, in which more than 10,000 people were murdered by the government.

Neither Pinochet nor Galtieri worried much during his time in high office about being indicted for the crimes he was committing. It wasn't only that neither thought he was committing crimes. Pinochet and Galtieri could not have feared prosecution or imprisonment because they believed no institution of justice existed that could hold them accountable. The same was true of many of their compatriots in torture and murder. None of Francisco Franco, Jorge Rafael Videla, Idi Amin, and P.W. Botha feared ending up in jail, for none knew of any legal system that could touch them. They feared assassination, of course, but not robed judges.

Now certainly these days the people of Chile, Argentina, Spain, and South Africa—especially South Africa—have many concerns and fears. But they do not have to fear being brutalized or disappeared by their government (knock on wood), as their countrymen did just a generation ago. As transitions from dictatorship to democracy go (or from restricted to full democracy), each of the four cases I've mentioned was as orderly and peaceful as one could hope.

Uganda, sadly, is not (yet) a democracy, and it took force of arms to oust Amin, who, in 1980, was received by Saudi Arabia, where he died, in 2003.

Now let's imagine a very different 1970s and 1980s. Let us imagine that as their regimes waned, these ugly torturers and killers were being watched carefully by an international court of human rights, a court that had reach and muscle. Each president in our imagined world knows, as the actual president did, that he is losing power and running out of time. But the presidents in our imagined world cannot expect to retire to a country estate or even to a small house in the

suburbs. They don't, of course, believe that they have committed any crimes. Yet they know that that the human rights court will find them guilty—and that the court will almost certainly get its hands on them.

I would think that in our imagined world the presidents would cling to power as long as they could and would take down with them as many other people as possible. With nowhere to retire to, they would have option but to go out fighting. Happily, all things considered, they were offered sanctuary, and they accepted it.

It's appalling to think of Amin resting comfortably in Saudi Arabia, and Pinochet strutting around in his general's uniform. But better that, I think, than that one more person be tortured or killed.

I might be wrong about that, though, because recently quite a number of sensitive, thoughtful people have been arguing for strong and active systems of justice that will find war criminals and violators of human rights and bring them to account. Erna Paris, for one, tirelessly champions strengthening the world court. In the *Citizen*, Shannon Gormley argued that democratic governments should assert universal jurisdiction, so that “the worst kinds of criminals can run, but they can't hide” (“Getting tough on war crime,” *Ottawa Citizen*, February 15, 2014).

As moving to us as the prospect of Bashar al-Assad facing formal justice might be, or Joseph Kabila, Omar Al-bashir, or Robert Mugabe, I can't help wondering about the extent to which that prospect itself has reinforced the determination of these men to remain in power. If lives can be saved by granting al-Assad or Kabila immunity from prosecution and setting him up in a nice condo in Victoria, BC, then to his condo let him go.

There are, of course, more theoretical or principled objections to institutions of transnational justice such as the world court or universal jurisdiction. The most significant, I think, is that such institutions must lack democratic legitimacy. The great thing to say about democracy, at least when the franchise is widely held and civil liberties such as freedom of expression are respected, is that it is fair. Each of us in a democracy may make our views known and press publicly and through our votes to have our views expressed in the laws under which we live. Even if our views do not prevail, we must recognize that we had our fair chance to convince others, and indeed that we continue to have a chance.

The international forum is not like that at all. The world is not a democracy, we individuals have not had our say with respect to any international institution. For that reason, no international prosecution can enjoy the fairness than a prosecution under national law might.

That is to say, since brutal dictators could not have had the opportunity to participate democratically in determining international human rights law, trying them under such law violates their human rights.

What we are left with, perhaps, is the position George Jonas argues: offer the brutal dictators a way out, so that the brutality might slacken; if they don't take the offer, then, summary execution (or life incarceration?) should they be captured.

We can leave the more theoretical considerations for another time, though. Right now I want to urge that ending the atrocities should take precedence over justice, even if, as I doubt, international courts could dispense justice. We all want that the brutal dictators run. But they are not going to run unless there is somewhere to hide.