



UNITED NATIONS

GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/35/522  
23 October 1980  
ENGLISH  
ORIGINAL: FRENCH/SPANISH

---

Thirty-fifth session  
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Special Rapporteur on the situation of human rights in Chile in accordance with paragraph 7 of Commission on Human Rights resolution 21 (XXXVI) of 29 February 1980.

CONTENTS

|   | <u>Paragraphs</u> | <u>Page</u> |
|---|-------------------|-------------|
| Introduction .....  | 1- 9              | 1           |
| I. The constitutional and legal situation and its effects on human rights                       | 10- 86            | 4           |
| A. Some decree-laws restricting the exercise of human rights                                    | 10- 19            | 4           |
| B. The state of emergency and its consequences for human rights; new powers of the Executive    | 20- 50            | 6           |
| 1. Decree-law No. 3,168 of 20 January 1980  | 24- 35            | 8           |
| 2. Decree-law No. 3,451 of 16 July 1980   | 36- 48            | 12          |
| 3. Restrictions on night traffic  | 49- 50            | 14          |
| C. The constitutional framework; draft submitted by the Military Junta; calling of a plebiscite | 51- 74            | 14          |
| D. Political rights   | 75- 86            | 21          |
| Decree-law No. 3,177 of 9 February 1980   | 82- 86            | 24          |
| II. The right to life, liberty, physical and moral integrity and security of person             | 87-241            | 25          |
| A. Arrests and detentions   | 96-113            | 27          |
| B. Torture and ill-treatment  | 114-134           | 32          |
| C. Kidnappings  | 135-140           | 39          |
| D. Right to life  | 141-152           | 43          |
| E. Prison conditions  | 153-160           | 51          |
| F. Persecution and intimidation   | 161-179           | 53          |
| G. Persecution of the Catholic Church   | 180-192           | 58          |
| H. Security agencies  | 193-216           | 66          |
| I. The Judiciary  | 217-241           | 72          |
| 1. Protection of human rights   | 217-230           | 72          |
| 2. Investigation of responsibility and punishment of those guilty of violations of human rights | 231-241           | 80          |

CONTENTS (cont'd)

|   | <u>Paragraphs</u> | <u>Page</u> |
|---|-------------------|-------------|
| III. The question of the fate of missing persons  | 242-284           | 85          |
| A. Investigations conducted before the Chilean courts   | 245-252           | 85          |
| B. The role of the military courts  | 253-262           | 88          |
| C. Attitude of the authorities to investigations of the disappearance of persons                                | 263-270           | 91          |
| D. Results obtained in the cases entrusted to investigating judges  | 271-284           | 94          |
| IV. Other civil and political rights  | 285-359           | 99          |
| A. The right to reside in, enter and leave the country  | 285-299           | 99          |
| B. Freedom of information   | 300-311           | 104         |
| C. Right of assembly  | 312-323           | 110         |
| V. Right to education and academic freedoms   | 324-359           | 113         |
| A. Access to education  | 324-336           | 113         |
| B. Academic freedoms; dismissals of university teachers and expulsions of university students                   | 337-359           | 117         |
| VI. Trade union rights  | 360-387           | 126         |
| A. Some consequences of the implementation of the labour legislation enacted by the Government in 1978 and 1979 | 360-365           | 126         |
| B. New decree-laws relating to the labour sector  | 366-367           | 128         |
| C. Persecution for trade union activities   | 368-387           | 130         |
| 1. Violations of the right of assembly  | 369-372           | 130         |
| 2. Violations of the right of association for trade-union purposes  | 373-374           | 131         |
| 3. Repression of trade union organizations and their leaders and activists                                      | 375-387           | 132         |

CONTENTS (cont'd)

|  | <u>Paragraphs</u> | <u>Page</u> |
|--|-------------------|-------------|
| VII. Other economic and social rights                                | 388-422           | 136         |
| A. Unemployment  | 388-394           | 136         |
| B. Social situation of the poorest sectors of the Chilean population | 395-398           | 138         |
| C. Government programmes for the very poor                           | 399-403           | 141         |
| D. The Minimum Employment Programme                                  | 404-411           | 142         |
| E. The situation of the indigenous populations                       | 412-422           | 145         |
| Concluding observations and recommendations                          | 423-440           | 150         |

Annexes

Annex

- I. Letter dated 11 February 1980 from the Acting Minister for Foreign Affairs of Chile addressed to all Chilean missions and consulates abroad
- II. Notification, by the headquarters of the emergency zone of the metropolitan area and province of San Antonio, of refusal of permission to found, edit, publish or distribute the periodical Gente Actual

## INTRODUCTION

1. On 23 November 1979, the Chilean Government sent to the Secretary-General a letter in which it contests the procedure instituted for investigating the human rights situation in that country (A/C.3/34/12) on the grounds that it violates the principles of the legal equality of States, their sovereignty and co-operation among them. At the thirty-fourth session of the General Assembly, it reiterated its decision not to co-operate with the Special Rapporteur on the situation of human rights in Chile. That decision, which the Chilean Government had already announced in a previous communication addressed to the Director of the Division of Human Rights of the United Nations, 1/ was analysed by the Special Rapporteur in his report to the General Assembly. The Special Rapporteur pointed out that:

"In the long-standing practice of the United Nations it has been repeatedly confirmed that the United Nations has wide competence to deal with large-scale situations of violations of human rights. This has been established since the inception of the Organization and has been maintained throughout its existence in the various situations involving violations of human rights dealt with by the United Nations in all parts of the world. It has also been well established that the United Nations may employ for dealing with situations of violations of human rights all appropriate methods under the Charter, depending upon the circumstances of each situation." 2/

2. At its thirty-fourth session, the General Assembly noted that the reports of the Special Rapporteur and of the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile clearly indicated that generally the situation of human rights had not improved, and in a number of areas had even deteriorated, compared with that described by the Ad Hoc Working Group in its last report; the General Assembly strongly urged the Chilean authorities to respect and promote human rights in accordance with the obligations Chile had undertaken under various international instruments. It also urged the Chilean authorities to co-operate with the Special Rapporteur and with the Expert on the Question of the Fate of Missing and Disappeared Persons (General Assembly resolution 34/179 of 17 December 1979).

3. At the thirty-sixth session of the Commission on Human Rights, the Chilean Government reiterated its refusal to co-operate with the Special Rapporteur. It justified its position on the grounds that the application of a special procedure to Chile constituted discriminatory treatment against that country.

4. The Commission on Human Rights declared itself deeply concerned about the conclusions of the Special Rapporteur that generally the situation of human rights in Chile had not improved and in a number of areas had even deteriorated. The

---

1/ Letter sent by Mr. Manuel Trucco, Ambassador and Permanent Representative of Chile to the United Nations Office at Geneva, on 15 February 1979.

2/ A/34/583, para. 9.

Commission on Human Rights also expressed its deep concern that the whereabouts of the numerous persons who had disappeared since 1973 were still unknown and that the Chilean authorities had failed to take the urgent and effective measures as requested by the General Assembly in several resolutions to investigate the fate of those persons. Moreover, being convinced that it could not consider terminating the mandate of the Special Rapporteur until a number of concrete steps had been taken by the Chilean authorities towards restoring full enjoyment of human rights and fundamental freedoms in that country, it again urged those authorities to co-operate fully with the Special Rapporteur. To enable it to consider terminating the mandate of the Special Rapporteur, it also strongly urged those authorities to respect and promote human rights in accordance with their obligations under various international instruments and, in particular, to take the following concrete steps so that they could report to the General Assembly at its thirty-fifth session and to the Commission on Human Rights at its thirty-seventh session:

- (a) Restore democratic institutions and constitutional safeguards with the object of terminating the state of emergency, which had facilitated the violation of human rights;
- (b) Take effective measures to prevent torture and other forms of inhuman or degrading treatment and to prosecute and punish those responsible for such practices;
- (c) Restore fully freedom of expression and information and of assembly and association;
- (d) Restore fully trade union rights, especially the freedom to form trade unions which could operate freely without government control and could exercise fully the right to strike;
- (e) Allow Chilean citizens freely to enter and leave the country, and provide the possibility for those who had been deprived of Chilean nationality for political reasons to regain it;
- (f) Restore fully the right of amparo;
- (g) Restore the rights, in particular the economic, social and cultural rights, of the indigenous population.

5. The Commission on Human Rights urged the Chilean authorities to investigate and clarify the fate of persons reported to have disappeared, to inform relatives of the outcome and to institute criminal proceedings against those responsible for such disappearances and punish those found guilty. It likewise requested the Special Rapporteur to deal also with the problem of disappeared persons in Chile in his report on the situation of human rights in Chile to the General Assembly at its thirty-fifth session and to the Commission on Human Rights at its thirty-seventh session.

6. Pursuant to resolution 21 (XXXVI) of the Commission on Human Rights and in the conviction that the Chilean Government should co-operate with him and with the Commission on Human Rights, the Special Rapporteur sent on 13 May 1980 to the Chilean Government a letter inviting it to send a representative to establish contact with him between 27 May and 2 June 1980, when the consultations regarding

his mandate were to take place. The purpose of that invitation was to consider ways of initiating the co-operation that was desirable in drawing up the report on the situation of human rights in Chile, including a visit to that country which the Special Rapporteur wished to make for the purpose of carrying out his mandate. In its reply, the Chilean Government reaffirmed the position that it had set out in its communication to the Secretary-General and reiterated before the Commission on Human Rights.

7. In Chapter I of the report now being submitted to the General Assembly at its thirty-fifth session, reference is made to some of the decree-laws promulgated by the present Government which nullify or restrict the operation of fundamental civil and political rights. Reference is also made to the effects of the state of emergency on human rights and an analysis is made, in particular, of the legislation enacted during the period covered by the report which imposes new restrictions on human rights and on the protection and safeguards which the latter enjoyed under the previous legislation. Information is then given on the present situation with regard to the effective operation and enjoyment of civil and political rights in the country. Special attention has been paid to the rights to life, liberty, physical and moral integrity and the safety of persons, as well as to further information concerning the investigations being carried out regarding persons who have disappeared in Chile. Subsequent chapters deal with economic, social and cultural rights. The legislation on these rights is examined with respect to each of the pertinent points, together with the data available for assessing whether they are respected in conformity with the international instruments in which they are set forth.

8. When drafting this report, the Special Rapporteur was anxious to hear the testimony of persons supporting the views of the present Chilean Government. To that end, he sent an invitation to Mr. Julio Durán, President of the Chilean Bar Association, asking him to make a statement, as a witness, at the hearings that were due to take place in New York at the end of June. Mr. J. Durán is a person who has indicated his support for the approach of the Government and for the measures taken by the authorities in the political field in general, and with regard to the institutional and legal organization of the country in particular. Several organizations concerned with the defence of human rights in Chile were also invited.

9. Neither the lack of co-operation on the part of the Chilean Government nor the absence of Mr. Durán, who did not see fit to give evidence, have prevented the Special Rapporteur from ascertaining the official positions and decisions relating to each of the matters dealt with in the report. The Chilean press gives extensive coverage of all communiqués, statements and news items from official sources. News emanating from private individuals, groups or associations opposed to, or critical of, government policy are also published, subject to the restrictions which will be considered in the appropriate chapter. For this reason the news items published by the press have served as an important source of information, as has the oral testimony of the invited witnesses and the written communications from Chilean and foreign organizations, together with communications received from governmental and non-governmental international organizations. The Special Rapporteur has also taken into account individual communications and public and private documents or photocopies thereof concerning one or more of the cases reported. All documents have been carefully analysed, compared and evaluated so that the facts can be judged impartially and reported with the greatest accuracy.

As in the case of previous reports, the facts have been evaluated in accordance with the provisions of the international instruments to which Chile is a party and which set forth the fundamental rights of every human being, in the field of civil and political rights and in that of economic, social and cultural rights. The Special Rapporteur wished categorically to reaffirm that he has included in his report only facts which are accurate and materially indisputable. He has thus set aside anything which seemed to him to be in any way dubious. By adopting a rigorous and strictly selective method of evaluation, he has arrived at the conclusions offered in this report.

## I. THE CONSTITUTIONAL AND LEGAL SITUATION AND ITS EFFECTS ON HUMAN RIGHTS

### A. Some decree-laws restricting the exercise of human rights

10. After visiting Chile in July 1978, the Ad Hoc Working Group informed the General Assembly that "the accumulation of powers in the hands of the Junta, together with the abridgement of their own powers and the restrictive interpretation placed upon the relevant legislation by the organs of jurisdictional control, means that human rights and the legal instruments for their protection are subservient to the will of the military government" (A/33/331, para. 70).

11. In connection with this accumulation of powers, the Ad Hoc Working Group drew special attention to Decree-Law No. 128 of 12 November 1973, by virtue of which the Junta assumed legislative and constituent powers, and its President the executive power. It also drew attention to Decree-Law No. 788 of 2 December 1974 by virtue of which, as from that date, decree-laws which changed the Constitution had to indicate expressly that the Junta was acting in the exercise of its constituent powers (A/33/331, paras. 54 and 55). This provision explicitly conferred upon the military Junta the power of promulgating laws derogating from the rules set forth in the Constitution currently in force.

12. In addition to the dissolution of the Congress by Decree-Law No. 27 of 21 September 1973 and of the Constitutional Court referred to in article 78, paras. (a), (b) and (e) of the Constitution (see A/10285, para. 87), the Government has imposed limits on the powers of constitutional and legal supervision exercised by other organs of the State. The restrictions on the powers of the Office of the Controller General of the Republic (see A/33/331, paras. 175-180) and the Judiciary (see A/33/331, paras. 197 and 203-207) have assumed serious proportions as a result of the attitude of some civil servants and judges who have clearly restricted their own functions and powers.

13. Many laws promulgated by the military Junta have amended the text of the 1925 Constitution, which remains in force. Some of them are directly connected with human rights. Thus Decree-Law No. 175 of 3 December 1973 granted the Executive the power to deprive of their Chilean nationality citizens of the country on the grounds of "seriously damaging from abroad the essential interests of the State in exceptional situations". During the state of siege, this power can be exercised, by decree, by the President of the Republic under article 5 of Constitutional Act No. 4 of 13 September 1976. When the state of siege is not in force it must be exercised by the Government, by means of a supreme decree signed by the President and all the ministers. The Government determines whether a person "has seriously damaged the essential interests of the State", which it has done on various occasions to punish its political opponents abroad. Thus,



Orlando Letelier, the former Minister, had been deprived of his Chilean nationality 11 days before his murder in Washington in 1976, following the explosion of a bomb in his car (E/CN.4/1221, para. 229).

14. Decree-Law No. 77 of 13 October 1973 outlawed and dissolved a number of political parties and provided heavy penalties for those who disregarded the ban on association or on conducting propaganda in favour of those parties. Decree-Law No. 78 of 17 October 1973 suspended all political parties and groups not covered by the previous decree-law. Decree-Law No. 1,697 of 12 March 1977, promulgated by the Junta in the exercise of its constituent power, provided for the dissolution of political parties and entities, groups, factions or movements of a political nature whose activities had been suspended, while maintaining the suspension of article 9 of the Constitution, which establishes and protects the exercise of political rights. It deprived the organizations in question of their legal personality, prohibited their existence, organization, activities and propaganda, and provided for the liquidation of their assets. It prohibited all entities from engaging in or supporting any activity of a party political nature (A/32/227, para. 66).

15. In the exercise of its constituent power, the military Junta also promulgated provisions extending the periods for which persons may be detained without being placed at the disposal of the competent judge (Decree-Laws Nos. 1,008 and 1,009 of 8 May 1975 and Constitutional Act No. 4, art. 13). 1/ Recently, as will be seen subsequently, other decree-laws have extended those periods. 2/

16. Other measures taken by the military Government have seriously restricted the right of Chileans to live in their own country or to enter or leave its territory. Thus Decree-Law No. 81 of 11 October 1975 provides that the authorities are empowered to take administrative action to cancel the passports of persons who disobey an order to appear before the authorities for reasons of State security. It also provides that persons who left the country by means of asylum or without complying with the established rules, were expelled or were forced to leave the country or who are serving sentences of exile, may not return without the authorization of the Minister of the Interior, who may refuse it for reasons of State security. Under the Decree-Law in question, this provision was to have applied only during the state of siege but, since the promulgation of Decree-Law No. 1,877 of 12 August 1977, it is also applicable during the state of emergency (see A/33/331, para. 80).

17. Decree-Law No. 604 of 9 August 1974 has prohibited many persons from entering the country for political reasons and conferred upon the Government the discretionary power to decide which persons are a danger to the security of the State and may thus not enter the country. The powers granted to the administration by Decree-Law No. 604 are not of an emergency nature since they would remain in force even if the state of emergency were to end (A/33/331, para. 442).

---

1/ See A/10285, annex, paras. 95-97; E/CN.4/1100, paras. 63-66, and A/33/331, para. 85.

2/ See, in this chapter, section B (1) and (2).

18. The provisions promulgated by the present Government impose severe penalties for various types of political offences. The copious legislation impedes freedom of information, assembly and association. Some of its provisions were promulgated in the exercise of the constituent power, such as Decree-Law No. 2,346 of 17 October 1978, whereby many organizations of a trade union character were declared illegal or dissolved. Others instituted new types of offences with the general aim of prohibiting the existence of associations or the expression of opinions which are not among those permitted by the authorities. For example, Decree-Law No. 2,347 established a new offence against the security of the State, imposing penalties on persons who undertake the representation of sectors of workers without possessing the required legal capacity, such capacity being granted by the Government through its administrative organs. It also declared contrary to public order and the security of the State associations or groups of persons which undertake such representation without possessing the capacity to do so (E/CN.4/1310, paras. 217-226). Decree-Law No. 2,621 of 25 April 1979 has seriously jeopardized freedom of association by presuming the existence of an unlawful association if a single one of its members commits an act which constitutes an attack on the social order, morality, persons or property. Furthermore, it has undermined the principle whereby an accused person is to be presumed innocent until proved guilty, since an accusation levelled against a single one of its members makes it possible for all the other members of the organization or group to be charged with the offence of illegal association and presumed guilty, without even enjoying the benefit of provisional release while their cases are being heard. The scope of this Decree-Law is even wider, since it stipulates that any person who "has had plausible information of plans and activities undertaken by one or more members of an unlawful association and fails to give the authorities suitable notice thereof" is guilty of an offence.

19. The present legal framework, the product of a uniform and steady evolution since September 1973, is characterized by a pre-eminence of the powers of the military Government to the detriment of the other powers, in particular with regard to the civil and political rights of citizens. Moreover, various specific provisions (in particular, Decree-Law No. 2,882 of 9 November 1979) confer greater autonomy and independence on the security agencies, freeing them from all civilian control as far as their financial operations, recruitment of personnel and use of the funds allocated to them in the national budget are concerned. Likewise, their activities and the assessment of any offences that they may have committed in the exercise of their functions are currently within the exclusive jurisdiction of the military system of justice (E/CN.4/1362, paras. 82-91). Thus the state of emergency which has been uninterruptedly in force since 1973, to which modifications have been made tending to institutionalize it and even sometimes to aggravate it, reinforces the restrictions on human rights.

#### B. The state of emergency and its consequences for human rights

##### New powers of the Executive

20. On 20 April 1978 the Government of Chile informed the Secretary-General of the United Nations that, on 11 March 1978, the state of siege had been terminated in Chile in view of the progressive normalization of all activities throughout the country. In the same note it added that, with the termination of the state of siege, the remedy of amparo had returned to full force and that the power of the President of the Republic to deprive Chilean nationals of their nationality and to confine persons indefinitely to places other than prisons or to their

homes had ceased. The note stated that the administrative authorities could detain arrested persons for a period of five days, at the end of which they had to be released or brought before a competent court (see A/33/331, para. 75).

21. The previous reports of the Ad Hoc Working Group and of the Special Rapporteur have shown that the changes announced have not been given concrete expression by practices favourably affecting human rights, in that the state of emergency, extended on 8 March 1980, remains in force for a further six months. <sup>3/</sup> In practice, the remedy of amparo remains ineffective in most cases <sup>4/</sup> and the constitutional amendments regarding deprivation of nationality have remained in force even though, during the present state of emergency, other members of the Executive Power (the ministers) have to add their signatures to that of the President in decrees ordering the loss of Chilean nationality. Several restrictions on civil and political rights, expressly provided for in the state of emergency régime, also continue to exist, particularly the power granted to the Government to expel certain persons from Chilean territory under Decree-Law No. 81, mentioned previously, and that "to suspend the printing, distribution and sale of up to six editions of newspapers, magazines, pamphlets and printed matter in general, and transmissions for up to six days by a radio and television station, or any other similar information medium which disseminates opinions, news or communications likely to alarm or upset the population, distort the true dimension of facts, are manifestly false or violate the instructions addressed to them for reasons of domestic order, ..." (Decree-Law No. 1,281 of 11 December 1975, which was added to article 34 of the Security of the State Act, No. 12,927, as subparagraph (n)); this Decree-Law adds that, if the offence is repeated, orders may be given for the control or censorship of the respective media, their premises and equipment.

22. The restrictions on human rights during the state of emergency are imposed not only by means of decree-laws but also through proclamations (bandos) issued by the Chiefs of the emergency zones. These proclamations restrict the right of assembly and the right to freedom of expression and information. They remain in force even though the six-month period, the maximum duration authorized by the law on the state of emergency, has expired. At the end of this period, a new decree-law is promulgated for the purpose of extending the state of emergency by a further six months. Nevertheless, the military authorities do not deem it necessary to issue new proclamations to justify the maintenance of the restrictions, which they consider to be automatically extended.

23. With regard to the powers of the administrative authorities to deprive people of their liberty during the state of emergency, the legislation that existed prior to 1973 has undergone some important changes. The first was made by Decree-Law No. 1,877 of 12 August 1977 which "modifies Law No. 12927 of 6 August 1958 on the security of the State by conferring on the President of the Republic new exceptional powers of arrest for a period up to five days ...". <sup>5/</sup>

---

<sup>3/</sup> El Mercurio, 9 March 1980. On 10 September 1980, the state of emergency was again extended for six months (El Mercurio, 11 September 1980).

<sup>4/</sup> See A/33/331, paras. 185-198; E/CN.4/1310, paras. 60-63; A/34/583, paras. 64-79.

<sup>5/</sup> A/32/227, para. 164.

According to the legislation until the promulgation of Decree-Law No. 1,877, the President had the power to arrest persons during a state of siege. The above-mentioned provision has extended those presidential powers to the state of emergency but limited the period of deprivation of liberty to five days (see A/33/331, para. 81). 6/

1. Decree-Law No. 3,168 of 20 January 1980

24. Decree-Law No. 3,168 confers upon the Executive new powers similar to those that had been previously granted to it only during the state of siege. This Decree-Law, which appeared in the Official Gazette of 6 February 1980, is worded as follows:

"...

Article 1. Add to article 2 of Decree-Law No. 81 the following subparagraphs: Likewise, in similar cases, it may order enforced residence in a specified locality of the national territory. The enforced residence measure referred to in the previous subparagraph may be taken only by means of a supreme decree bearing the signature of the Minister of the Interior and including the formula on the instructions of the President of the Republic, and may not relate to a period exceeding three months. A person affected by the measure provided for in the two preceding subparagraphs may, at any time, apply to the Minister of the Interior for a review of the measure without such application impeding the fulfilment of the measure.

Article 2. Add to article 1 of Decree-Law No. 1,877 of 1977 the following subparagraph:

This power shall be exercised by means of a supreme decree signed by the Minister of the Interior and including the formula: "by order of the President of the Republic.

...". 7/

Article 2 of Decree-Law No. 81, mentioned in the above provision, runs as follows:

"In the cases provided for in article 418 of the Code of Military Justice, such as in a time or state of war, and when the higher interests of State security so require, the Government may order the expulsion or banishment from the country of particular individuals, whether aliens or nationals, by means of a decree stating the reasons for its action and signed by the Minister of the Interior and the Minister of National Defence."

---

6/ See, in A/33/331, para. 80, the text of article 2 of Decree-Law No. 1,877, which states: "the references to the state of siege contained in Decree-Laws Nos. 81 and 198 of 1973 and No. 1009 (article 1) are hereby declared also to be applicable to the state of emergency regulated by Law No. 12927 of 1958."

7/ El Cronista, 7 February 1980.

Article 1 of Decree-Law No. 1,877, mentioned in article 2 of Decree-Law No. 3,168, states that:

"Under the declaration of the state of emergency regulated by the Law on the Security of the State, the President of the Republic shall be empowered to hold persons under arrest for a period not exceeding five days in their own homes or in places that are not prisons."

25. Consequently, this new provision has conferred upon the Minister of the Interior the power to hold persons under arrest for a period of five days, without having to answer to the competent courts. <sup>8/</sup> It also permits him to order their enforced residence in any locality of Chilean territory for a period of up to three months. Although Decree-Law No. 3,168 refers to "enforced residence in a specified locality of the national territory", statements by the Minister of the Interior leave no room for doubt as to the Government's intention to use the power conferred upon it by this text to transfer persons from one place in the country to another and to oblige them to remain in the place which it designates for them for the period allowed by this provision. The Minister of the Interior stated that:

"... the promulgation of the Decree-Law which is the subject of this statement will make possible the firm attainment of these objectives without the need to have recourse inevitably to other means, such as the expulsion from the country provided for in exceptional cases. The authorities will thus, in case of need, be able to oppose the activities of disturbing elements by removing them from the place of their activities or from the surroundings in which they are sowing, or attempting to sow, unrest." <sup>9/</sup>

26. A supreme decree ordering the transfer or enforced residence of persons does not need the signature of the President of the Republic but merely that of the Minister of the Interior. Before the promulgation of this Decree-Law, the power to issue such an order was vested solely in the President even if, in practice, the relevant provisions had not been applied. The Special Rapporteur mentioned in his previous report the exercise of this right by the Minister of the Interior, pointing out that it contravened the legislation in force (see A/34/585, paras. 42-45). The possibility of depriving persons of their liberty during the state of emergency - a power which, before 1973, could be exercised only by the President of the Republic while the state of siege was in force - is now conferred upon an administrative authority of lower rank, and may be exercised during the state of emergency. Moreover, when a measure of this kind was decreed by the President of the Republic, it had to be submitted to the Office of the Controller General of the Republic for verification of its legality (see A/33/331, paras. 170-181) whereas, when adopted by the Minister of the Interior, it can be exempted from such verification.

---

<sup>8/</sup> In the following subsection, Decree-Law No. 3,451, which has increased this period to 20 days, will be considered.

<sup>9/</sup> El Mercurio, 7 February 1980.

27. Although the Decree-Law provides that this measure may be reviewed, it should be noted that this administrative remedy does not result in a suspension of the measure's effect. The application for review has to be submitted to the Minister of the Interior himself and it will thus be decided by the same authority which adopted the measure. What is more, no time-limit is laid down for the decision by the Minister of the Interior on the application submitted by the person affected, which means he can deal with it after the person concerned has been released. Consequently, the Minister of the Interior can, acting entirely on his own authority, severely restrict the right to personal liberty.

28. Decree-Law No. 3,168 creates a situation which is potentially more prejudicial than that which existed during the state of siege, when any transfer had to take place within a given department. In early 1978, the courts decided that, since the departments no longer existed and had been replaced by provinces in the course of the regional reconstruction, a person affected by this measure could choose his place of enforced residence within the limits of the province. <sup>10/</sup> The new role provides that enforced residence shall take place in "a specified locality of the national territory", thus preventing the person concerned from choosing the locality of residence within the above-mentioned limits. He may thus be assigned to enforced residence in an inhospitable place far removed from all human and family contacts. <sup>11/</sup>

29. The new provision has alarmed not only opponents of the régime, who may consider that they are its potential targets, but also certain circles favourable to the Government and which generally support its policy. Inter alios, the newspaper El Mercurio has stated in an editorial:

"Discretionary powers are extremely difficult to justify outside transitional periods. It follows that this new provision can be understood only in the context of the Government's determination to make progress this year towards political institutionality and the full reign of law resulting therefrom.

Also with regard to the above-mentioned provision, it should be pointed out first of all that there are various concepts of public order. Recourse to the discretionary powers conferred upon the Minister of the Interior must therefore in every case be understood with reference to the tradition which has prevailed in Chile in the matter. It would, for example, be serious if a political authority should in the future resort to this legislation for the purpose of punishing disturbances of public order committed - according to subjective opinion - through communication organs, in a university chair or in any place where dissenting political thought is expressed in an appropriate manner that respects the legal order in force." <sup>12/</sup>

---

<sup>10/</sup> Decision by the Santiago Appeal Court in the case of Georgina Aceituno and other leaders of the Christian Democrat Party assigned to enforced residence in early 1978.

<sup>11/</sup> See, in chapter II, section A, some recent examples of the application of this provision.

<sup>12/</sup> El Mercurio, 10 February 1980.

30. The absence of a legal and material justification for the state of emergency in the present circumstances - i.e. the non-existence of the alleged "public disaster" (even if this expression is construed in the sense of "social disaster" and not "natural disaster", the obvious meaning of the expression in the rule containing it) - has been commented upon in various reports by the Ad Hoc Working Group and the Special Rapporteur. 13/ The General Assembly and the Commission on Human Rights have on several occasions urged the Chilean authorities to terminate the state of emergency. 14/

31. According to statements made by the Minister of the Interior to the Ad Hoc Working Group, the state of emergency now in force in Chile is of a preventive nature (A/33/331, para. 78), which is tantamount to saying that there is at the moment no situation of "public emergency" threatening "the life of the nation" of the kind mentioned in article 4 of the International Covenant on Civil and Political Rights. Consequently, the state of emergency is not being applied "to the extent strictly required by the exigencies of the situation" and in circumstances justifying the suspension of the obligations contracted by Chile under that Covenant.

32. The concept of a "preventive" state of emergency did not exist in Chilean legislation before the present Government came to power. The real basis for this state of emergency is not the "natural disaster" invoked but the situation described in Constitutional Act No. 4 of 11 September 1976 (see E/CN.4/1221, paras. 64-74). This instrument provides for a new emergency régime, the state of defence against subversion, i.e. in the case of "latent subversion", an expression which is not defined in the text or preamble of Constitutional Act No. 4 but which clearly emerges from the speeches of General Pinochet and other members of the Government. In his speech of 11 September 1976, General Pinochet stated that;

"... the fact that our towns and villages are victims of a permanent aggression imposes upon us the duty to rely on vigorous and effective emergency régimes to check communist subversion and to neutralize those who facilitate its course." 15/

In May 1980, he stressed the preventive nature of the state of emergency, affirming that "no changes would be made in it", since it was owing to this régime that it was possible to combat the "dirty war" which terrorism was currently waging in Chile. He added that the state of emergency would be neither modified nor mitigated, since the Government alone was in a position to determine when measures of that type, which were primarily of a preventive nature, could be ended. 16/

---

13/ See A/33/331, paras. 76-79; A/34/583, paras. 18 and 19; E/CN.4/1362, para. 14.

14/ See General Assembly resolutions 33/175 and 34/179 and resolutions 11 (XXXV) and 21 (XXXVI) of the Commission on Human Rights.

15/ Cuadernos Jurídicos (Archbishopric of Santiago, Vicaria de la Solidaridad), No. 7, April-June 1979, p. 24.

16 El Mercurio, 19 May 1980.

33. Commenting recently on the new provisions promulgated by the Government (Decree-Law No. 3,168), Mr. Jovino Novoa, the acting Minister Secretary-General of the Government and Titular Under-Secretary, confirmed this point of view, stating that "the situation in the country is normal and quiet, but we must all remember that we are constantly threatened ...". 17/

34. Mr. Jaime Castillo Velasco, former Minister of Justice and former Representative of Chile in the Commission on Human Rights, commenting on the amendments made to the legislation on the state of emergency, said that the new Decree-Law did not in itself constitute a violation of human rights: "but it could happen - something that has already occurred in the past with the present régime - that use would be made of the powers relating to the state of siege in violation of the spirit of that legal institution and of the cases provided for by the Constitution." 18/

35. As will be seen in section A of chapter II below, the subsequent application of the new law on arrests and imprisonments would seem to justify the fears expressed in this statement and in others. Furthermore, the provisions of Decree-Law No. 3,168 add a new power to the already numerous prerogatives available to the Executive, since this Decree-Law removes from the control of the Judiciary measures implying serious restrictions on personal liberty. The Decree-Law thus constitutes a further step in the process of accumulation of powers in the hands of the military Government, which affect human rights and limit the Judiciary's powers of control and protection.

2. Decree-Law No. 3,451 of 16 July 1980

36. Decree-Law No. 3,451, published in the Official Gazette of 17 July 1980, consists of a single article which reads as follows:

"Insert after the first subparagraph of article 1 of Decree-Law No. 1,877 of 1977, as amended by article 2 of Decree-Law No. 3,168 of 1980, a second subparagraph as follows:

The period established in the above subparagraph may be increased to a maximum of 20 days in the case of investigations into offences against the security of the State which have resulted in the death, attacks on the physical integrity or the kidnapping of persons."

37. As has been indicated above, Decree-Law No. 1,877 amended Law No. 12,927 on the Security of the State by conferring upon the President of the Republic new exceptional powers of arrest by virtue of which he may extend the duration of detention to five days during the state of emergency. Article 2 of Decree-Law No. 3,168 provides that these powers may be exercised by the Minister of the Interior with the formula "by order of the President of the Republic" (see above, paras. 23-28).

---

17/ El Mercurio, 14 February 1980.

18/ Hoy, 13-19 February 1980.



38. Thus, since the promulgation of Decree-Law No. 3,451, the Minister of the Interior may order the detention and retain detainees at his disposal, without the control of a judge, for a period of 20 days.

39. Prolongation of the detention for a period not exceeding 20 days is provided for in the case of "investigations into offences against the security of the State which have involved the death, attacks on the physical integrity or kidnapping of persons".

40. The Executive is granting itself in this way powers reserved hitherto to judges. Article 80 of the 1925 Constitution, which is still in force, provides that "The power of judging civil and criminal cases belongs exclusively to the tribunals established by law. Neither the President of the Republic nor Congress can, in any case exercise judicial functions, remove pending cases from a lower to a higher court or revive terminated proceedings."

41. For a judge to be able to order the detention of a person, there have to be "justified suspicions" regarding his responsibility for an offence (article 252 of the Code of Criminal Procedure). In order to extend that detention beyond five days, there have to be "justified presumptions" concerning the detainee's participation in the offence as an author or accomplice (article 274 of the Code of Criminal Procedure). These two articles guarantee the right of innocent persons to be released.

42. This guarantee was restricted following the promulgation of Decree No. 1,877. The situation has considerably worsened since the promulgation of ~~XXXXXXXXXXXXXXXXXX~~ Decree-Law No. 3,451, the manifest purpose of which is to restrict the guarantees afforded to detainees by Chilean legislation when judges are investigating offences falling within their jurisdiction.

43. The Government may henceforth carry out arrests without being subject to the slightest control, and hold persons in detention without having to justify its decision. As the Ad Hoc Working Group has indicated, decrees ordering detentions are exempt from the cognizance procedure of the Office of the Controller General of the Republic. 19/ The judges themselves have systematically renounced their powers of control over the acts of the present Government and have accepted the fact that the latter is arrogating to itself increasingly extensive prerogatives, even if by doing so it is limiting the powers of the Judiciary and openly violating the provisions of the Constitution.

44. Since the Judiciary provides practically no protection, it has been possible to arrest persons unjustly and illegally by bringing false and groundless charges against them (see chapter II, section H, on the security agencies). The duration of such detentions, which used to be five days, can now be increased to 20 days.

---

19/ A/33/331, paras. 176 and 177.

45. In practice, the powers granted to the Minister of the Interior have been exercised by the security agencies. The supreme decrees ordering arrest are generally signed a posteriori by the Minister of the Interior. Persons arrested by the security agencies are led blindfolded to secret places of detention; none of them has been able to learn the identity of the persons who arrested and interrogated him. A number of the victims have stated that they have been subjected to very violent physical and psychological tortures (see chapter II, sections B and C). The acts of torture are committed during the early days of detention so as to ensure that there are no traces of them left when the victim is released.

46. The possibility of extending the duration of detention to 20 days increases the risk that the tortures will be intensified and prolonged, with the resultant danger to the physical integrity and life of the detainees.

47. It should not be forgotten that the possibility of practising torture without the slightest control may have been the cause of many of the disappearances which occurred in Chile between 1973 and 1977.

48. The promulgation of this decree, in conjunction with Decree-Law No. 3,168 mentioned above, seems to be recreating in Chile a situation similar to that which existed up to the end of 1977. The progress recorded in 1978 and reported by the Ad Hoc Working Group 20/ could well be nullified by the practices to which this new legislation may give rise.

### 3. Restrictions on night traffic

49. The restrictions on night traffic which the Ad Hoc Working Group mentioned in its last report to the General Assembly (A/35/331, paras. 101 and 102) are still in force.

50. In January 1980, it was announced that these restrictions would be provisionally lifted in certain provinces for the benefit of the tourists who visit Chilean seaside resorts in summer. It was indicated in some cases that the suspension would be only temporary. 21/ Subsequently, on account of the explosion of bombs, the restrictions were again applied in some places where they had ceased to apply. 22/

### C. The constitutional framework. Draft submitted by the Military Junta.

#### Calling of a plebiscite

51. In a speech delivered on 11 September 1975, General Pinochet announced the promulgation of three Constitutional Acts which would provide a "single and sure constitutional corpus". These acts were promulgated one year later, but they have never formed the "constitutional corpus" referred to by the President.

---

20/ A/33/331, paragraph 779 (1).

21/ La Tercera de la Hora, 22 January 1980.

22/ Hoy, 23-29 April 1980.

52. Constitutional Act No. 2 provides, in its transitional article 2, that: "Within a period of one year following the entry into force of this Act, the Decree-Laws modifying the Political Constitution of the Republic with regard to the powers of the State and their exercise shall be reproduced in the form of Constitutional Acts." Constitutional Act No. 2 entered into force on 11 September 1976, but that provision has so far remained a dead letter.
53. Constitutional Act No. 3 envisaged, in its transitional articles, the promulgation of a number of supplementary rules on which the entry into force of several of its provisions depends. These supplementary rules have likewise not been promulgated.
54. Constitutional Act No. 4 provided, in its transitional article, that the Act would enter into force 180 days after its publication in the Official Gazette and that during that period a supplementary law should be enacted; this never occurred.
55. As a result, the Constitutional Acts have not entered into force. On 9 July 1977, General Pinochet, in his Chacarillas statement, announced a completely new régime which he described as "authoritarian democracy, secure, unifying, technocratic and with genuine social participation" and formulated a three-stage programme consisting of "recovery, transition and normality or consolidation", stating that the second stage would begin in 1980 and the last in 1984 or 1985. General Pinochet added that promulgation of the Constitutional Acts would proceed regularly until 1980, by which time they should have been completed (see A/33/331, para. 221). On 5 April 1978, he announced that a new draft Constitution was being prepared and that the Commission entrusted with the task was to submit the draft by 31 December 1978 (see A/33/331, para. 224).
56. The preliminary draft of the constitutional text prepared by the Commission, presided over by Mr. Enrique Ortúzar Escobar, was submitted at the end of 1978 and commented on by the Ad Hoc Working Group (E/CN.4/1310, paras. 73-78) and by the Special Rapporteur (A/34/583, paras. 181-184). It was transmitted to the Council of State, which prepared another draft, making certain amendments to the Commission's draft but keeping essentially to the general approach and modalities proposed in it. <sup>23/</sup> The Council of State's preliminary draft was transmitted to General Pinochet on 9 July 1980. It was then submitted to the Military Junta for consideration. The eight members of the Commission chaired by Mr. Enrique Ortúzar and the 17 members of the Council of State had participated in the preparation of the preliminary draft submitted to the Junta. According to a number of official statements, the preliminary draft "is a suggestion" and "the Government Junta, directed by the Leader, will have the last word on the draft to be submitted to plebiscite". <sup>24/</sup> The final draft approved by the Military Junta was released on 11 August 1980, on which date the press published the text and announced that a plebiscite would be held on 11 September 1980. On 12 August 1980, the Diario Oficial of Chile published Decree-Law No. 3,465, which lays down the procedures for organizing the plebiscite. Of those procedures, the following are

---

<sup>23/</sup> La Nación, 9 July 1980.

<sup>24/</sup> Statements by General Sergio Badiola, Minister Secretary General of the Government. El Mercurio, 15 August 1980.

noteworthy: the right to vote is granted to every person aged over 18 years; an identity card, whatever its expiry date, is valid for voting purposes; in the polling booths, the responsible officials will comprise a presiding officer, nominated by the mayors, and two members chosen by lot from persons volunteering at municipal offices; the Regional Board of Polling Officers (Colegio Escrutador Regional) is to consist of the Intendant, who will be its presiding officer, the longest-serving judge of the Court of Appeal whose seat is in the regional capital, and the Registrar of Real Estate (Conservador de Bienes Raíces); and the National Board of Polling Officers (Colegio Escrutador Nacional) will consist of the Controller General of the Republic, a judge of the Santiago Court of Appeal nominated by the Supreme Court, and the Clerk of the Supreme Court.

57. The organizing of the plebiscite was criticized by the opposition. In the view of the former minister Orlando Canturias, who represents the democratic socialism tendency, "a plebiscite, referendum or consultation which takes place without all democratic institutions being in operation is stripped of the basic essentials to ensure its legitimacy". Mr. Luis Bossey, of social democratic persuasion, said the following: "On this question there was no discussion involving the major sectors of the population. It is not possible to meet or exchange views, to make any analysis or even to inform the public. There is neither a roll nor a legitimate electoral system. Everything must be improvised. No plebiscite organized in these conditions (under a state of emergency) will produce results which are representative and worthy of respect." 25/ A number of Christian Democrat leaders held a press conference at which they stated that the organizing of a plebiscite, according to the time-table established and under the conditions announced, would constitute "an act of extreme violence and an affront to the country". They added that "the country is in a state of emergency, fundamental freedoms are being violated and there is no electoral procedure which guarantees that the exercise will be conducted properly; neither is there genuine access to the information media, and the elementary conditions of impartiality in counting and communicating the results do not exist." 26/

58. To sum up, the criticisms expressed concerning the organization of the plebiscite are of three kinds:

(a) Lack of participation by the vast majority of the population in the preparation of the text;

(b) Conditions under which the plebiscite is to be held: state of emergency, numerous restrictions on the rights of assembly, freedom of association, information, expression, etc.;

(c) Lack of guarantees of reliability and of inspection of the conduct and results of the plebiscite, especially through the lack of electoral registers or rolls and the lack of provision for representatives of views other than the official line to supervise the balloting and the counting.

---

25/ Hoy, 13-19 August 1980.

26/ El Mercurio, 15 August 1980.

59. In a speech which he made in order to present the text of the draft Constitution and announce the plebiscite, President Pinochet stressed to the people that "rejection of the draft approved by the Government Junta would signify a return to the legal and political situation which existed on 10 September 1973." 27/ It should be noted that no alternative solution is provided for in the event that the Government's draft is rejected. It would be logical to suppose that such a rejection should call into question the legitimacy of current political processes in Chile; the possibility, however, has not been envisaged by the authorities. On the contrary, the course presented by General Pinochet seems to be the only one offered to the people. General Sergio Badiola, the Minister Secretary General of the Government, asserted that the plebiscite would pave the way to "either liberty or chaos and anarchy" but he refrained from saying what course the authorities would actually follow if the draft was rejected. 28/ The picture of chaos and anarchy (with the consequent measures already familiar to Chileans - taken by the armed forces in order to deal with it), which all the information media put forward as the sole possibility in the event of a rejection of the Government's wishes, is a factor which creates confusion, distorts choice and impedes a free expression of will.

60. The text of the draft brings together, in a single body of law, various provisions promulgated by the military Government which reflect the current situation of the country's institutions. Many of these provisions form part of the legislation currently in force and are dispersed among various decree-laws. The draft comprises two parts: the first is the constitutional text which would enter into force only eight years after its approval, and the second, which contains the "transitional provisions", would take effect six months after its approval.

61. The plebiscite offers the voters one alternative: "YES" or "NO". The "transitional provisions" form part of the draft and will not be subject to a separate vote. The Chilean Government had indicated in 1978 that it would call a plebiscite on a constitutional text which would include transitional provisions. 29/ The Ad Hoc Working Group made the following remark on this point:

"The Group notes that the new constitutional provisions are to be approved as a whole, whether they relate to the transitional period or are planned to apply in a normal situation, although the date on which such a situation will be deemed to have commenced has not been indicated with any precision. This means that Chileans might be compelled to approve or reject rules which may prove mutually contradictory. A plebiscite of this kind has no historical precedent and the proposal to hold it appears contrary to elementary principles of law." 30/

---

27/ El Mercurio, 11 July 1980.

28/ El Mercurio, 12 August 1980.

29/ See CCPR/C/1/Add.25, p. 52.

30/ See A/33/331, para. 245.

62. The plebiscite organized by the Government imposes, as was announced, a single vote for two quite different, and to some extent contradictory, parts. The provisions of the second part derogate from many rights and guarantees recognized in the first. In a public statement, the Episcopal Conference of Chile said:

"In order for the plebiscite to be conducted correctly, the citizens should reflect on the tenor both of the transitional articles and of those of the ~~permanent~~ Constitution, and should reflect carefully on whether or not they wish to approve the provisions set forth therein. We shall confine ourselves to noting that, although the Constitution contains articles which seem to us to be in conformity with the Christian spirit, it also contains, as do the transitional measures, some which drastically restrict the right to legal protection and warrant serious examination." 31/

63. The draft which the Government wishes to have approved is confused and contradictory in that the first part of the text institutes a representative system, with elections by the people and a separation of powers, but this system is abolished in the following part, the "transitional provisions". Those who oppose the draft have very little chance of being heard, since they are denied access to the most important information media 32/ and, moreover, are prosecuted, especially if they attempt to express their views. 33/ On the other hand, the information media are used extensively by the authorities. The state of emergency in the country, by virtue of which the exercise of various civil and political rights (the rights of association, assembly, expression, information and freedom of movement) is being restricted or denied, is also preventing Chileans from learning about and evaluating the options on which they are to vote. The conditions described do not seem to satisfy the minimum requirements for the population to be able to take a free and informed decision on such a fundamental question.

64. The "transitional provisions" of the draft Constitution designate the person who will govern the country during the next eight years. The fourteenth clause is worded as follows:

---

31/ El Mercurio, 24 August 1980.

32/ A request by former President Frei for permission to deliver a speech on national radio and television was rejected, although he was given permission to hold a meeting in a theatre. El Mercurio, 24 August 1980.

33/ El Mercurio of 20 August 1980 has a report on the arrest of persons who had been distributing pamphlets concerning the plebiscite. El Mercurio of 26 August 1980 mentions the arrest of 12 persons meeting near a theatre where an unauthorized meeting of the Coordinadora Nacional Sindical was to have been held, during which the question of the plebiscite was to have been discussed.

"During the period indicated in the preceding provision, the present President, Army General Augusto Pinochet Ugarte, shall continue to serve as President of the Republic and shall remain in office until the end of the said period.

"Likewise, the Government Junta shall remain composed of the Commanders-in-Chief of the Army, the Navy and the Air Force and the Director-General of Carabineros. It shall be governed by the provisions relating to its internal operation and shall have the powers set forth in the relevant transitional provisions."

65. During the transitional period, the military Junta would exercise legislative and constituent powers, but constituent power would be subject to approval by plebiscite. The President of the Republic would have the power to decree states of emergency and disaster on his own initiative but could decree states of alert and siege only with the Junta's agreement. During this period, two bodies created by the draft Constitution would begin to function. The first is the Consejo de Seguridad Nacional (National Security Council), which would consist of the President of the Republic, the members of the Junta, the President of the Supreme Court and the President of the Council of State (the latter would be replaced by the President of the Senate on the expiry of the eight-year transitional period, when that legislative body would be constituted). The second is the Tribunal Constitucional (Constitutional Court), composed of three judges of the Supreme Court and four lawyers nominated by the President of the Republic, the Security Council and the Government Junta.

66. The text thus provides that, for eight years, President Pinochet and the military authorities will keep all power, since the other bodies created under the draft Constitution would be composed of persons whom the former had nominated or who had signified their allegiance to the Government in all its activities.

67. It is also envisaged that military power will be maintained for a further eight years. The "transitional provisions" state that, on the expiry of the eight-year period, the military Junta itself will propose the person who will serve as President of the Republic for the presidential term following the transitional period. In this case, the proposal is to be approved by plebiscite. All party political activities are to remain forbidden, as they have been hitherto, by virtue of the provisions contained in the decrees referred to in paragraph 14 above.

68. Under the twenty-fourth clause of the "transitional provisions", the Executive would retain the powers conferred on it, in a state of emergency, by Decree-Laws Nos. 3,168 and 3,451, which were commented on earlier. However, the text of the draft Constitution provides that the President of the Republic would have these powers (that of remanding in custody for a maximum period of 20 days and that of imposing enforced residence for a maximum period of three months), even if a state of emergency had not been declared in the country. According to this provision, the President could, by means of a simple declaration, authorize himself to deprive anyone of his freedom. The text of the twenty-fourth clause reads as follows:

"Without prejudice to the provisions of articles 39 et seq. relating to states of emergency provided for by the present Constitution, if, during the period referred to in the thirteenth transitional provision, acts of violence are committed with a view to disturbing the public order, or if there is a risk of disturbance of internal peace, the President of the Republic shall make a declaration to that effect and shall have, for a renewable period of six months, the powers to:

- (a) Detain a person for a period of up to five days, at his home or in a place other than a prison. In the case of an act of terrorism entailing serious consequences, he may extend this period by up to 15 days more;
- (b) Restrict the right of assembly and freedom of information, the latter only with respect to the foundation, issue or circulation of new publications;
- (c) Refuse entry into, or expel from the national territory in the case of any persons propagating the doctrines referred to in article 8 of the Constitution who are accused or have the reputation of being active supporters of such doctrines or who commit acts contrary to the interests of Chile or constitute a threat to internal peace; and
- (d) Order particular persons to reside in a specified urban locality within the national territory for a period not exceeding three months.

The powers referred to in the present provision shall be exercised by the President of the Republic by means of supreme decree signed by the Minister of the Interior and bearing the words 'By order of the President of the Republic'. Measures adopted pursuant to this provision shall not be subject to any recourse other than an application for reconsideration to the authority which ordered them."

69. This provision creates a new form of state of emergency based on simple "acts of violence", which could be isolated acts, and leaves it to the President to determine the motive underlying them. Consequently, precise objective conditions do not necessarily have to exist for such a state of emergency to be proclaimed. The restrictions thereby imposed on personal freedoms are serious. The complete absence of protection stemming from the final part of the twenty-fourth clause is particularly disturbing.

70. Further provisions likewise affecting human rights form part of the text which it is planned to apply during and after the so-called "transition" period. Thus, so long as one of the states of emergency - which may be prolonged for successive periods - is maintained in the country, the exercise of fundamental human rights is suspended, and the guarantees and protection attaching to those rights no longer apply. The remedy of amparo cannot be exercised, and judges are unable to order detainees to be brought before them during states of alert and of siege. The remedy of protection is suspended for the entire duration of states of emergency. Nor may the courts examine the factual basis for the measures adopted by the authorities in exercise of their powers. The Judicial Power would thus lose one of its important faculties, albeit one which it has exercised only exceptionally during the seven years of military government. Because of the restrictions on the Judiciary's competence, there would no longer be any control, once a state of emergency had been declared, over acts by the Executive Power.



71. The draft provides for a series of disqualifications based on present and past political opinions and activities. It is forbidden for anyone who propagates or has propagated "doctrines which attack the family or advocate violence or a view of society, the State or the legal order which is totalitarian in character or is based on the class struggle" to hold public office, even in teaching, to occupy a post connected with the dissemination of information by the mass media or to perform functions in political organizations, in organizations related to education and in neighbourhood, professional, employers', students' or trade union associations. Disqualification is pronounced for 10 years from the date on which the Constitutional Court determines that an offence has been committed. Persons found guilty of having upheld such doctrines are also to be deprived of the right to vote. This provision confers on the Government a power to discriminate and to exclude from social, political, economic and cultural life which will adversely affect many Chileans. Its aim is to forbid any political opponent from having access to public office, teaching, information or management positions in associations of any type. In order to declare disqualification, it would suffice to accuse anyone of having actively supported previous Governments (or to be in favour of divorce), since the terms used to describe the conduct penalized are extremely vague and leave room for varying interpretations. Chilean citizens can be sure of avoiding disqualification only if they have supported and support the present Government uncritically. This discriminatory provision violates the principles set forth in international instruments to which Chile is a party.

72. The insecurity engendered by these various provisions is heightened by the further restrictions imposed on fundamental rights. On the pretext of "national security" or "State security", restrictions are placed on the freedom to teach, to join an association, to take part in economic activities or to go on strike. Yet in no part of the text is the concept of "national security" defined.

73. The text of the draft Constitution contains a large number of principles formulated by the Government since 1973, analysed in earlier reports and regarded by the Ad Hoc Working Group and the Special Rapporteur as violating human rights. The provisions envisaged for the transition period bring no improvement to the present situation with regard to human rights. On the contrary, all the provisions which had been promulgated for a period deemed temporary and exceptional would be given constitutional force if the draft was adopted. As a result, the transition period merely consolidates, at the institutional level, the present situation, which is characterized by serious limitations on human rights.

74. The Special Rapporteur notes that the plebiscite to be held on 11 September 1980 will not meet the requisite conditions to enable the results to be regarded as an authentic expression of the Chilean people's will. He notes, moreover, that the text of the draft Constitution proposed by the Government contains certain provisions which violate the human rights proclaimed in international instruments to which Chile is a party, and others which remove guarantees and protection intended to ensure the exercise of the rights recognized by legislation in force in the country.

#### D. Political rights

75. In the period since the publication of the previous report of the Special Rapporteur there has been no appreciable change in the situation with regard to political rights. All decisions relating to public affairs have

continued to be taken by the Executive Power, with no new developments to suggest any improvement. Reference has been made, in earlier paragraphs, to the total suspension of political rights in Chile in an institutional context characterized by an absolute centralization of power in the hands of the Executive. This power is exercised by the President and his ministers and is shared, in some respects, by the other members of the military Junta representing the Armed Forces of Chile.

76. In their previous reports, the Ad Hoc Working Group and the Special Rapporteur noted that the restrictions imposed on participation by the population in decisions concerning public affairs were absolute and that the rights conferred by article 25 of the International Covenant on Civil and Political Rights were thereby violated (see E/CN.4/1310, para. 71, and A/34/583, para. 171). The Special Rapporteur pointed out that the lack of enjoyment of any political right was even more serious if it was viewed in the context of the restrictions applied to other fundamental human rights, such as the right to freedom of association and assembly and the right to freedom of information and expression (A/34/583, para. 178).

77. The electoral registers were publicly destroyed in July 1974. The authorities then declared that the establishment of new electoral registers would necessarily take several years, during which time it would naturally not be possible to hold fresh elections (A/10285, para. 214). In April 1979, the Minister of the Interior confirmed that electoral registers would not be reconstituted but that the necessary machinery would be established to ensure the validity of any plebiscite to endorse the draft Political Constitution (A/34/583, para. 174). The plebiscite at which the new constitutional text proposed by the Government will be put to the vote is to take place on 11 September 1980 without the electoral registers having been reconstituted. Steps have been taken to enable persons not possessing an identity card to obtain one, and it has been decided that this identity document, even if expired, would be valid for voting purposes. 34/ There is no means of checking the number of votes cast since it is Government officials who will be responsible for appointing the authorities who are to preside at the booths as well as the polling officers.

78. The media have frequently published divergent opinions concerning the institutional proposal, but the preparation of the draft Constitution was carried out without the participation of the public or its representatives, and the Government has steadfastly maintained its own views, which were in no way amended as a result of criticisms by persons representing different currents of opinion. Although certain currents of opinion have at times been granted the right to freedom of expression, the ideas put forward had no influence on decisions. Thus, the "Group of 24", composed of jurists and other persons well known in Chile, held a press conference to present some suggestions and studies concerning the draft Constitution. 35/ The following day, the ideas of the Group were rejected outright by President Pinochet, who reiterated views similar to those he had expressed on previous occasions with regard to his intention to exclude certain political tendencies completely from any institutional activity. 36/

---

34/ El Mercurio, 12 and 13 August 1980.

35/ El Mercurio, 30 January 1980.

36/ See, in paragraph 177 of document A/34/583, the statements made by General Pinochet concerning the participation of certain currents of opinion in political discussions.

79. On 30 June 1980, the General Council of the Bar Association released a draft Constitution which nine sub-committees of that body had worked for two years to prepare. On some points this draft differs from the one prepared by the Commission for the Study of the New Constitution, nominated by the military Junta and presided over by Mr. Enrique Ortúzar Escobar. 37/ President Pinochet stated that the draft would be "a further element" to be taken into consideration. The Bar Association was not invited to discuss its proposals and its vice-president did not know whether those proposals had been studied, according to statements he made to the press the day after the official draft had been presented and the plebiscite announced. 38/

80. The refusal to allow free expression of opinions differing from those of the Government is evidenced by the dismissal of many university professors. Among the university personnel recently dismissed from academic, managerial or administrative posts there are many intellectuals who, in varying degrees, had expressed ideas contrary to those held in official circles (see chap. V, sect. B). These include Professor Manuel Sanhueza, Chairman of the group known as the "Group of 24" which had submitted draft constitutional articles differing from those of the Government. The Rector of the University of Concepción told Professor Sanhueza that his dismissal had not been due to personal reasons but was the outcome of a political decision. 39/

81. The Government's wish to prohibit any kind of association dealing with public affairs was also evidenced in the decision taken, at the request of the Minister of the Interior, to prosecute persons who had tried to form a movement known as the "Talleres Socialistas Democráticos" (Social Democratic Workshops). The Minister claimed that this movement had violated the prohibition on political activity imposed by Decree-Law No. 1,697 of 1977 (see para. 14 above). Nevertheless, the courts dismissed the charges against the persons indicated. 40/ The same Minister also filed charges against 12 other persons who, in December 1979, had published in the press a statement regarded by him as "a party political action or step taken by private persons.". The courts have not yet ruled on this case, but the matter has been referred to the ordinary criminal courts pursuant to the new Decree-Law No. 3,177. 41/

---

37/ See E/CN.4/1310, para. 73, and El Mercurio of 1 July 1980.

38/ El Mercurio, 13 August 1980.

39/ Hoy, 30 January - 5 February 1980.

40/ El Mercurio, 26 March 1980 and 15 April 1980.

41/ El Mercurio, 7 March 1980. At the request of the Minister of the Interior, proceedings were also instituted under Decree-Law No. 2,347 of 17 October 1978 (see E/CN.4/1310, paras. 2217-226) against several trade-union leaders who had been accused of having assumed legal representation when they had no right to do so. This decree penalizes statements or petitions of any kind made by members or leaders of workers' associations to which the authorities have not accorded legal personality (see para. 18 above).

Decree-Law No. 3,177 of 9 February 1980

82. As indicated in section A of this chapter, Decree-Law No. 1,697 of 12 March 1977 ordered the dissolution of all political parties and other entities, groups, factions or movements which had not been dissolved by Decree-Law No. 77 of 1973. Furthermore, it is forbidden to engage in or encourage any public or private activity, action or measure of a party political nature, and penalties have been established for anyone infringing this prohibition (see A/32/227, paras. 66-70).

83. Decree-Law No. 3,177 makes only procedural amendments, and none of substance, to Decree-Law No. 1,697, since it provides that offences under this instrument will henceforth be dealt with by the criminal courts and will no longer be subject to the procedure laid down in the State Security Act. <sup>42/</sup> A case brought before the ordinary criminal courts offers the accused the advantage that the evidence must be assessed in accordance with the law; whereas, under the procedure laid down in the State Security Act, the judge weighs the evidence according to his own conscience and renders judgement likewise.

84. Apart from drafting details, the new Decree-Law seems to be intended to prevent political trials from capturing the limelight. The aim would be to make such trials indistinguishable from ordinary criminal proceedings, so that persons charged with political offences are presented as ordinary offenders. This would avoid public interest in such trials throughout their duration, and would inhibit discussion of the serious violations of human rights resulting from the application of Decree-Law No. 1,697 of 12 March 1977. The total ban, implicit in the text of this decree, on the exercise of political and other related rights (such as the right to freedom of association and information) constitutes a most serious restriction of the exercise of civil and political rights in Chile. Although the ban thereby imposed relates only to activities of a party political nature, the Government, through the Minister of the Interior, interprets the decree as applying to any activity aimed at the formation of associations or the expression of opinions concerning the country's public affairs.

85. The first part of the draft Constitution allows for the existence of political parties, but subjects certain opinion groups to discrimination which excludes them from the country's social, political, economic and cultural life, as is pointed out in section C of this chapter. In the second part of the draft, entitled "Transitional provisions", which is to remain in force during the first eight years of application of the new Constitution, it is stated that:

"Pending the entry into force of the basic constitutional law relating to the political parties covered by article 19, paragraph 15, it shall be prohibited to engage in or to encourage any activity, action or measure of a party political nature, whether by natural or legal persons, organizations, entities or groups of persons. Anyone contravening this prohibition shall be liable to the penalties laid down by the law."

86. Thus, restoration of the exercise and enjoyment of political rights forms no part of the Government's immediate plans. On the contrary, the draft seeks to impart a constitutional character to the denial of such rights.

---

<sup>42/</sup> Pursuant to this act, an examining magistrate was appointed to hear cases of this type in first instance.

## II. THE RIGHT TO LIFE, LIBERTY, PHYSICAL AND MORAL INTEGRITY AND SECURITY OF PERSON

87. In his previous reports the Special Rapporteur analysed violations of the rights to life, liberty, physical and moral integrity and security of person. <sup>1/</sup> In his report to the General Assembly at its thirty-fourth session, he highlighted the question of institutional passivity with regard to this kind of violation of human rights, which encourages the perpetrators of such reprehensible acts. He also indicated that this passivity seemed to be due to reasons similar to those which served as a basis for the continuing state of emergency and for the promulgation of numerous enactments designed to limit enjoyment of these rights (A/34/583, para.126). The period covered by the present report was marked by the promulgation of decree-laws which increase the severity of the penalties imposed on those who seek to exercise their political, trade union, social, economic or cultural rights. It was also marked by a recrudescence of the violence with which the security agencies have acted - a violence which has been supported and justified by the Government, arguing that it is necessary to take strenuous action against terrorism. Nevertheless, most of the victims of the repression were innocent, no proof having been adduced of their participation in acts of terrorism. The major events of this period are described below.

88. In January and February, although the number of arrests declined from the level of previous years, the Government promulgated Decree-Law No. 3,168 of 20 January 1980, which empowers the Minister of the Interior to impose enforced residence in various areas of the country for a period of three months. This decree-law provides the Government with a legal instrument to deprive, through the administrative channel, certain persons of their liberty during the state of emergency and for a far longer period than that authorized hitherto.

89. In March and April many arrests were recorded, accompanied by searches of the homes of the persons arrested, and a recrudescence of the illegal practices whereby arrested persons are taken to secret places and tortured was noted. Persons participating in public activities or private meetings and members of professional, peasant, student, cultural and youth associations were among the victims of these violations of human rights. Many of those arrested were persons who had connections with the work of the Catholic Church. Also included were persons who had opposed the present Government in the past; others were arrested for interrogation because they were friends or neighbours of persons belonging to the above groups or were connected with them in one way or another. Decree-Law No. 3,168 of 20 January 1980 has been implemented and persons have been subjected to enforced residence in remote areas. At the same time various persons and institutions have been closely watched and severely persecuted. The days before 1 May were marked by various arrests, especially of persons presumed to be in the process of preparing public activities for May Day. Bombs planted by unknown individuals caused the death of innocent persons and led the press to launch accusations against opponents of the régime, accusations which have not been confirmed by any reliable evidence.

---

<sup>1/</sup> See A/34/583, paras. 89-170, and E/CN.4/1382, paras. 42-108.

90. The murder of a carabinero, Heriberto Novoa Escobar, on 28 April 1980 gave rise to further press campaigns and to operations during which many persons, some of whom were released after a few hours, were arrested. On the same day, Oscar Salazar Jahnsen was killed and the official accounts of the circumstances in which he died are neither clear nor satisfactory. The climate of terror and warnings by the Government led to the cancellation of the Mass scheduled to be held in the Cathedral on 1 May. Many participants in activities organized by the trade unions were arrested and roughly handled on leaving trade union premises, and some of them were later subjected to enforced residence.

91. In May and June, several groups of persons, including trade union or peasant leaders, persons accused of belonging to banned political parties or of having engaged in extremist activities, were arrested. The arrests were made in the street, at the homes of those concerned, and in various other places. Many of those arrested complained of having been tortured. Most were released, despite allegations made by the security agencies and disseminated by the press to the effect that they had committed serious offences. Some were subjected to enforced residence or brought before the courts.

92. Acts of persecution, particularly against the Catholic Church, have also increased considerably. In addition to searches of religious premises, various parishes have been the scene of clandestine activities (underhand searches for documentation, bombings or armed attacks).

93. In July, Lieutenant-Colonel Roger Vergara, Director of the Army Information School, was murdered. General Odlanier Mena, Director of the National Information Agency (CNI), resigned and made statements in which he rejected the possibility of this murder being attributed to extremists of the MIR (Movimiento Revolucionario de Izquierda) group. President Pinochet ordered the formation of the Anti-Subversive Commando (CAS) which co-ordinates, under a single command, all the security agencies of the country. The Government promulgated Decree-Law No. 3,451 of 16 July 1980, which considerably expands the discretionary powers of the security agencies. Large-scale operations were conducted, in the course of which hundreds of persons were arrested and in some cases remained missing for several days. The Government declared that it had to take a very strong line. As a result of the persecution of the presumed perpetrators of the attacks made at the end of July, several persons whose innocence has in most cases been subsequently established died or were seriously wounded.

94. Attacks on the Catholic Church have increased substantially. One parish church was surrounded by the police and three others were searched at the beginning of August. Attacks have also increased against any private activity or any activity by religious, social, political, economic or educational groups which was not subject to the control of the authorities or did not follow the line laid down by the Government. Cardinal Raúl Silva Henríquez was threatened with death on several occasions. Many people disappeared without anyone knowing what had become of them. CNI admitted that some of them were detained in secret places, while it has been ascertained that other persons had been clandestinely kidnapped by the security agencies. One such person died after being tortured and beaten. The perpetrators of these kidnappings were identified during proceedings instituted at the Government's request.

95. In the following sections of this chapter an analysis will be made, in particular, of the violations of the rights to life, liberty, physical integrity and security of person committed during the period under consideration.

A. Arrests and detentions

96. In his report to the Commission on Human Rights at its thirty-sixth session, the Special Rapporteur drew attention to an increase in the number of arrests and detentions during 1979, as compared with 1978 (E/CN.4/1362, para. 57).

97. The length of time for which people have been held under arrest or detained in 1980 has varied greatly. In many cases arrested persons have been subjected to torture during their first few days in the hands of the security agencies, before being released or brought before the courts. The machinations of the police and security agencies have been characterized by the fact that: (a) their agents almost never present an arrest warrant issued by a competent authority; (b) the perpetrators of the arrests, often dressed in civilian clothing, do not reveal their identity and do not explain the reasons for the arrest; (c) in most cases, members of the family are not informed of the arrests or of the reasons for them; (d) many arrested persons have been taken to secret detention centres where they have been subjected to interrogations and to intimidatory practices.

98. The use of clandestine detention centres in which detainees are held secretly, interrogated and in general tortured has become widespread; many statements report premises of this kind and brutality or degrading treatment inflicted on detainees there.

99. Quite a number of arrests were made by well-armed groups of men travelling in vehicles without licence plates and moving freely on the roads despite police controls. Buses equipped for the security agencies and passing as public transport vehicles have sometimes been used. 2/

100. CNI has continued to arrogate to itself the power to arrest people illegally. A number of press reports have referred to arrests made by CNI, without specifying by whose authority the arrests were made. Many of the persons arrested by CNI were released as soon as the judges were informed of the charges against them and ascertained the lack of grounds for their arrest, but before being brought before the courts, the arrested persons had been secretly held for several days in clandestine places where they were tortured. 3/

101. At a press conference convened by the Chilean Committee on Human Rights, a lawyer analysed 15 cases of persons arrested in April and summarized the common features of these cases as follows:

"The arrest is made late at night, at the homes of those concerned, by a dozen or more heavily armed agents in civilian clothing. They present no arrest or search warrant. They search the house and oblige the members of the family to sign blank sheets of paper. The persons arrested have adhesive tape placed

---

2/ Thus Mrs. Adriana Hortensia Vargas Vásquez was arrested when she boarded one of these vehicles, believing it to be an ordinary bus. She was then taken to a secret place where she was tortured.

3/ See, in this chapter, section B on torture.

over their eyes and are taken away to secret detention centres. In the cells they are handcuffed to bunks. They are photographed with wigs and false beards. They are tortured and then obliged to sign documents which they are not allowed to read. Five days later they are returned to their homes". 4/

102. The number of arrests made in the first half of 1980 was higher than that recorded for the same period in 1979. Whereas, between January and June 1979, 744 persons were arrested, 1,208 persons were arrested between 1 January and 20 June 1980 according to statements made by the Chilean Committee on Human Rights at a press conference which it gave with the Committee for the Defence of Youth Rights on 20 June 1980. 5/ In the following months the number of arrests seems to have increased, according to press reports and information received from various sources by the Special Rapporteur. An Amnesty International report dated 21 July 1980 shows that, on 17 July, 350 persons were arrested in a single area near La Florida, and that hundreds of arrests were made in other places. These figures include mass arrests, sometimes followed by detention lasting a few hours, carried out following acts of terrorism. Arrests of this kind, to which the inhabitants of the poorer quarters are often subject, have an intimidatory effect, since they are accompanied by a large-scale deployment of weapons and violence.

103. The number of arrests followed by detention lasting from one to five days which occurred up to 30 June 1980 is lower than that recorded in previous years. This is explained by the fact that, as a result of the climate of terror created by official statements and military operations, the population has preferred not to participate in acts or demonstrations in the street or in big meetings in closed halls. On the other hand, cases of deprivation of liberty for periods exceeding five days increased following the implementation of Decree-Laws Nos. 3,168 of 20 January 1980 and 3,451 of 16 July 1980. In July and August, arrests increased sharply, but no accurate information can be supplied on the length of the detentions. Not only has the period of detention been extended, but the circumstances in which the arrest takes place have worsened (brutal searches, with maltreatment of members of the family), as have the physical and psychological sufferings inflicted on detainees. The following few examples give an idea of the procedures employed for arrests:

(a) Ricardo Jesús de la Riva. He was arrested while walking along the street on 8 April 1980 by a group of 15 armed men in civilian clothing who presented no warrant from a competent authority. Many witnesses were present at his arrest, to whom he shouted his name, whereupon one of his kidnapers pointed a pistol to his head. He was forced to get into a taxi. The newspapers reported his arrest, stating that he was "suspected of having participated in the theft of the flag before which the independence of Chile was proclaimed" (incident which took place on 5 April). 6/ Ricardo J. de la Riva was taken to secret CNI premises where he was tortured: he was beaten and received electric shocks on his genitals and other sensitive parts of his body. He fainted three times, and a doctor came to revive him. During all this time he was watched by a Dobermann. He was interrogated about

---

4/ Hoy, 7-13 May 1980.

5/ Solidaridad, No. 95, June 1980.

6/ El Mercurio, 12 April 1980.



his political activities, but not about the theft of the flag. CNI agents conducted a violent search of his home. The office of the Third Military Prosecutor stated that he had been arrested by CNI "under the powers conferred upon it by Decree-Law No. 1,877", an instrument which, as the Special Rapporteur has already indicated in various reports, 7/ does not bestow this power upon CNI. The person in question was prosecuted solely for possessing printed matter of a political character.

(b) Victoria and Boris Arnaldo Vera Tapia. These two persons, who are brother and sister, were arrested at dawn on 16 April by a group of 15 CNI agents who were travelling in seven cars. The kidnappers burst into their home without presenting any arrest warrant, insulting the residents and searching the common premises of the building. They seized certain documents relating to a youth centre of which the two persons were members. The latter were taken blindfolded to a secret detention centre where they were interrogated about their activities, in particular those connected with the Church, about the priests attached to different districts of the Nuestra Señora de la Victoria parish, about other parishes and the ecclesiastical area to which they belonged, about the names of persons connected with youth groups in the "poblaciones" and about the circulation arrangements for the magazine Solidaridad. Victoria Vera Tapia was violently punched in the face and was the victim of a neck strangulation. Brother and sister were obliged to sign three blank forms, whereupon their blindfolds were removed. They were then able to see that the following was written: "I was arrested on ... in the company of ... at ... o'clock. I belong to the the ... party and my associates are ...". They were released at 6 p.m. on the same day, 16 April 1980.

(c) Victor Manuel Riveros Olguín. He was arrested on 1 May in the course of a spectacular operation in which some 20 CNI agents participated. The latter searched the building where he lived and scattered propaganda material in his home. They filmed the house in this condition and then gathered up their tracts. Handcuffed and blindfolded, Riveros Olguín was taken to a secret CNI camp where - tied to a young detainee named Cottet who was in poor condition, probably as the result of torture - he was interrogated about his alleged political activities. Riveros Olguín remained in this secret camp until 5 May, when he was released.

(d) Persons arrested on 1 May 1980. On 1 May 1980 several non-governmental events took place in celebration of May Day on closed premises belonging to trade unions. When the events were over, police attacked some of the participants who were returning home, firing into the air and beating them. Plainclothes agents also participated in these attacks. The arrests were made in violation of all relevant legal provisions. The persons concerned were taken to police stations, where their identity was checked and they were interrogated. Nine of them were brought before a judge at the request of the Minister of the Interior for having allegedly contravened the State Security Act; seven were released through lack of evidence and two were prosecuted for creating disturbances. On the decision of the Minister of the Interior, 37 persons were subjected to enforced residence for three months in various parts of the country. They included three seminarists of the Congregation of the Adventist Fathers.

---

7/ See A/34/583, paras. 54-55.

(e) Persons arrested on 12 June 1980. At 10.15 p.m., 96 persons - 29 women and 67 men - who were attending a cultural and artistic meeting organized in solidarity with two students expelled from the State Technical University were arrested. Carabineros searched the premises, where they claimed to have found a substantial quantity of "subversive" material (posters, leaflets) insulting the Government. 8/ Among the women arrested was a journalist from the magazine Hoy who had attended the meeting for professional reasons and who described what happened as follows:

"We did not sleep. We were kept outside despite the cold, being made to repeat our identity over and over again. We were ordered to undress in front of the others for a medical examination, in terribly cold weather, at 4 o'clock in the morning. We did not know how long we were to remain there, or what the possible consequences or the charges brought against us were ...".

She added:

"There were no tracts, weapons or anything that could justify such absurd charges". 9/

Most of those arrested were released a few days later with this warning: "Also, the persons concerned are informed that, in the event of a repetition, the Minister of the Interior will impose, with equal stringency, the penalties laid down". 10/ The warning given to the persons released was accompanied by an order for three months' enforced residence issued against 22 participants in the meeting.

#### Enforced residence

104. Enforced residence can be imposed in Chile following a judicial decision in the case of certain clearly specified offences, including some of those provided for in the State Security Act. It can also be applied during the state of siege on the decision of the President of the Republic to order the transfer of a person from one place to another. Lastly, it can, since the promulgation of Decree-Law No. 3,168 of 20 January 1980, be imposed during the state of emergency by supreme decree of the Minister of the Interior, who uses the formula "by order of the President of the Republic" (see chapter I, section B.1).

105. Shortly after the promulgation of this decree-law, the penalties provided for began to be applied. Seventeen persons who had participated in peaceful demonstrations organized to celebrate International Women's Day were the first to be affected by the enforced residence measures. No formal charge against them was brought before the courts. A decree of the Minister of the Interior ordered their transfer to different parts of the country, merely indicating that the persons concerned "had participated in this kind of unauthorized public demonstration before".

106. Thirty-seven other persons were subjected to enforced residence for having participated in public meetings held on 1 May. The decree instituting this measure indicated that the persons concerned were "activists" and ordered their transfer for a period of three months.

8/ El Mercurio, 14 June 1980.

9/ Hoy, 18-24 June 1980.

10/ Quotation from part of the communiqué by the Ministry of the Interior announcing its decision on this case. La Tercera de la Hora, 18 June 1980.

107. On 23 May, in implementation of this same provision, Humberto Espinoza Aravena, a young man who was arrested on 19 May by three individuals (one of whom was in the Navy) and maltreated, was finally subjected to enforced residence by order of the Minister of the Interior. 11/

108. Similarly, enforced residence was imposed on 22 of the persons arrested at a meeting organized by the Onda Latina folklore club in Santiago (see para. 103 (e) above). These persons were accused of taking part in a political meeting where printed matter had allegedly been distributed. The decree of the Minister of the Interior indicates that they are "Marxist activists". 12/ The participants pointed out that they had held an artistic and cultural meeting in solidarity with some of their colleagues who had been expelled from the State Technical University.

109. Other persons were subjected to enforced residence by judicial decision rendered in 1980 for contravention of article 1 of Decree-Law No. 77 of 13 October 1973, which proclaims the dissolution of political parties and declares them illegal.

110. Persons subjected to this penalty are sent to a variety of places. Some are thousands of kilometres from their homes. Others are nearer, but very difficult to reach. Others are sparsely populated localities, where it is difficult to find work. Some localities have an extremely harsh climate and others are situated at very high altitudes. 13/

111. The uprooting of persons from their usual place of residence causes innumerable problems, not only for themselves but also for their families. The most immediate problems are the interruption of their studies or work, the separation from their families, the loss of family income and the penalties which accompany enforced residence, namely expulsion from teaching establishments and loss of employment. The persons affected must overcome serious difficulties to adapt to local conditions and to find lodgings and a means of subsistence. Many have not been able to find work, but other have. Some have been exposed to harassment which has exacerbated their already difficult situation. In one case a persons subjected to enforced residence was obliged to go every two hours to the local police station to sign on; he was followed about and locked in his lodgings at night. In another case a person who had come to visit someone in enforced residence was arrested and tortured. 14/

---

11/ Solidaridad, No. 93, May 1980.

12/ La Tercera de la Hora, 18 June 1980.

13/ Chucuyo, one of the localities to which some persons subjected to enforced residence have been sent, is 5,000 metres above sea-level; enormous variations between day and night temperatures are found there. Only a few dozen people live there and there is little transport.

14/ The Special Rapporteur has received copies of the applications for amparo submitted by the victims.

112. The enforced residence provided for by Decree-Law No. 3,168 is a real penalty which can be inflicted by the Executive at its discretion. An order by the Minister of the Interior is sufficient to impose the penalty; there is no legal appeal from the decision, except for an application to the same authority which took it, with no guarantee that the application will be considered impartially. The courts, in the light of the case law which has been established since the present régime came to power, have refused to review the decisions of the Executive. 15/

113. The cases mentioned in the present section are only examples of the kind of arrests which have taken place during this period. Under the new legislation adopted in this field, the penalties which may be applied without the intervention of the Judiciary have been extended and the period for which detainees remain totally unprotected in the hands of the security agencies has been increased considerably. Furthermore, the intimidatory effects of the arrests on members of the family and on persons who witness them have worsened, this being part of a general process of intimidation characteristic of the period which commenced at the beginning of the year.

#### B. Torture and ill-treatment

114. After the death of Mr. Federico Alvarez Santibañez at the end of August 1979 as a result of the torture to which he had been subjected at a secret CNI centre, 16/ some decline in the number of complaints of torture and ill-treatment was noted, but between March and August 1980 the number of such violations increased.

115. In a previous report, the Special Rapporteur mentioned the evidence of a witness who had reported that the intensity of torture and the techniques employed had changed. This witness described the tortures practised in Chile today as "calculated risks" as compared with the barbarous and extremely deadly tortures which were common in previous years. 17/ In general, it can be said that torture varies in intensity from one case to another but that in all cases there is humiliation, harassment and, in one form or another, psychological torture.

116. The complaints received mention very cruel tortures inflicted on women. One of them had the following story to tell:

"They laid me on my back on a bench like those found in squares, to which they tied me by each foot and hand separately. They placed electrodes on my temples, on my breasts, on the toes of my right foot and in my vagina and they applied electric current while treating me in a manner which was vulgar, coarse and humiliating to me as a woman. They interrogated me concerning a neighbour whom they were looking for and who, according to them, was an extremist political criminal and a terrorist. The torture made me lose the sense of

---

15/ The Supreme Court confirmed the rejection by the Court of Appeal, of the application for amparo submitted on behalf of 83 persons arrested at the Onda Latina folklore club. The Court of Appeal had rejected it "having regard to the information supplied by the Minister of the Interior and to the provisions of article 2 of Decree-Law No. 81 of 1973, to Decree-Law No. 3,168 of 1980 and to article 306 of the Code of Criminal Procedure". (El Mercurio, 11 July 1980).

16/ See A/34/583, paras. 123-125, and E/CN.4/1362, para. 66.

17/ A/34/583, para. 114.

time and during Thursday night, I think it was, my torturers took me to another room and told me that they would be obliged to give me a different form of treatment since I was a very tough case.

"They untied me, washed my hands and took my fingerprints. They made me sit down, still blindfolded, on the ground and tied my hands to my knees so as to leave a small space between my elbow and my knee, through which they passed a stick of about the thickness of a fluorescent tube, full of splinters which scratched me. My position was uncomfortable, almost unbearable. I begged them to tell me what they wanted of me. I even offered to plead guilty to something, but the torture was not over. They picked me up by the ends of the stick and placed me on a table. I then felt an indescribable pain, because they held me in the air by raising the stick by its ends. I had the impression that my feet and legs were crushed. I felt that they were inserting the stick into something fixed and my body was swaying. They left me in this position for some time. I felt them placing electrodes on my breasts, in my vagina, on my feet and on my temples which caused convulsions so painful that I lost consciousness.

"My fainting must have worried my torturers since, when I came to, I was lying on the floor, they were rubbing my body and someone who claimed to be a doctor was asking me how I felt. I told him that my head was hurting so much that I felt it was going to burst, because I had been strung up head down."

117. This woman, who was subjected to this treatment because she was the neighbour of a person wanted by the security agencies, also suffered psychological tortures, one of which consisted in keeping her naked all the time and another in telling her the lie that her 7-year-old son had witnessed the tortures and that his fingers would be cut off unless she gave the information sought. In this case the victim's story has been confirmed by the examination carried out at the Institute of Forensic Medicine, whose report mentions "abrasions of the right ankle and a linear ecchymosis on the left ankle; ecchymoses on the upper third of the left leg; abrasions on the left heel, the left elbow and the left cheek; multiple punctiform abrasions on the right hip, on both nipples and in the left pectoral area". The report concludes that it was a case of "light injuries produced by the action of an offensive object and a physical agent." 18/

118. Other detainees have reported tortures just as serious. Sometimes, the maltreatment poses an immediate threat to the victim's life, since the sick are also subjected to such torture. One woman states the following:

"As soon as I arrived there, they made me undress and laid me on a mattress. They applied electric shocks to all parts of my body, mainly to the ovaries and the uterus, and repeated the operation several times. I must inform you that I suffer from cancer in both breasts and that I am undergoing cobalt treatment, which has weakened my heart and obliges me to take 'coramine' regularly. I informed my torturers of this and asked them to let me take my medicine. They refused. That caused serious disorders." 19/

18/ The Special Rapporteur has received photocopies of the relevant documents in application for amparo (Case No. 211-80) submitted on behalf of Adriana Hortensia Vargas Vasquez.

19/ The Special Rapporteur has received copies of the legal document in which these events are recounted.

119. The tortures take place during the period in which detainees are kept on the secret premises of the security agencies. This is the period for which the President of the Republic is authorized to hold persons at his disposal without bringing them before the competent judge. In fact, during this period prisoners are at the mercy of the security agencies, while judges refuse to visit the premises where they are held or to order the detainees to be brought before them. During this period their life, liberty, physical integrity, honour and dignity have no protection and they become mere objects deprived of any right in the hands of their torturers, who can destroy them physically and mentally.

120. The cases of torture mentioned above involve persons who were arrested prior to the entry in force of Decree-Law No. 3,451 and who were not tortured for more than five days. At present, persons arrested in connection with inquiries into offences against State security involving death, injury or kidnapping are deprived of all legal protection for 20 days. 20/

121. For example, on 16 July 1980 18 persons were arrested in a building in Santiago. They were accused of being members of a political organization and of possessing a large quantity of weapons. Nevertheless, almost all of them were immediately released. One of them, the young José Benado Mendvisky, was held incommunicado for 14 days, 21/ in the course of which he was subjected to maltreatment described by Claire Wilson Broffman, held at the same time and also subjected to torture. In the application for amparo which the latter submitted on behalf of José Benado Mendvisky, the following account is given:

"At 7 a.m. on Thursday they made him get up and took him to the bathroom, where he again vomited; shortly afterwards he was again taken up for torture and I heard his cries of pain almost all morning. At one point they brought him down and told him that there was a pencil and that he should talk. He could hardly move and could not walk unaided. He told them that he had nothing to say and that he was already almost dying before their eyes. He was again taken away to be tortured after this reply, and a short while later was brought back on a stretcher, scarcely breathing. About 15 minutes after he had been brought down, a woman came running out of the room calling for a doctor because he was dying, she said. The doctor was slow in coming and the last words I heard from José Benado were when, almost unable to speak, he told the doctor that he should really see him because he was dying. The doctor said at first 'let him alone, no more', but then he shouted: 'We shall have to take him to hospital'. At that moment José Benado could no longer speak and he could be heard breathing with difficulty". 22/

122. It was said that Mr. Benado Mendvisky had been detained "in connection with the inquiries being made following the murder of Colonel Roger Vergara, Director of the

---

20/ For a description of this new provision, see chapter I, section B.2.

21/ El Mercurio, 17 July and 2 August 1980.

22/ The Special Rapporteur has received a copy of this submission.

Army Intelligence School". 23/ However, Miss Wilson Broffion affirmed that none of those detained was interrogated with reference to this death and that the CNI agents admitted that they knew that Benado had no connection with the event.

123. Torture is still being practised as a means of obtaining information on persons, organizations and events being investigated, and it is not possible to report the slightest progress, since whether or not greater or lesser use is made of it depends on political considerations and not on adherence to the principles of respect for life, physical integrity and security of person. The following case is an illustration of many similar complaints received by the Special Rapporteur:

"... After driving around for 30 minutes, during which my captors communicated several times by radio, we arrived at a place where they made me get out. I went up four steps and was then kicked hard in the stomach. I realized that I was in a room, on CNI premises. They began to interrogate me and to kick and punch me. They wanted me to admit that I was in possession of weapons, that I was an extremist and that I served as a letter-box for a group of terrorists, etc. I denied this and declared that the accusations against me were false. At midday on Monday they undressed me and a person who claimed to be a doctor examined me. I was then taken into another room where the interrogation was continued. I was violently and savagely kicked and punched. Electric current was applied to my arms and to various parts of my body. They bawled into my ears through a megaphone, which almost made me pass out. I was handcuffed to a chair. This is the treatment which I received on Monday, the 12th and Tuesday the 13th. Throughout this maltreatment I was accused of being an extremist and of engaging in what were described as terrorist activities. I attempted to refute these accusations, since my past is irreproachable and I am a peaceful man who works to support his family. Nevertheless, the physical and psychological tortures inflicted on me were so savage that at some moments I even offered to plead guilty to something if they would stop torturing me, and especially if they would stop shouting into my ears, which almost drove me mad. Naturally, my torturers did not believe me. I am justified in wondering whether the other detainees, on whom similar or more cruel methods than those applied to me are used, do not end up by agreeing to what their torturers want. In any event, in the afternoon of Monday the 12th the bandage and sticking plaster were removed from my eyes and they showed me a customer who used to buy the newspaper and cigarettes at the kiosk from me. I saw that she was in a poor condition. I recognized her. They told me that she had asked me to keep a parcel for her in the kiosk; this is true, but I never saw or knew what the parcel contained. I learned that she had been detained since Thursday, 8 May 1980, and five days later she was still complaining of the ill-treatment received. Her name is Inés Díaz Tapia. I was distressed to see her in such poor condition. Most of the detainees at CNI complained pitifully ...". 24/

124. Cases like that of this shopkeeper who, through lack of evidence to justify his detention, was released four days later, give an idea of the insecurity in which the Chilean people live.

23/ El Mercurio, 22 July 1980.

24/ Application for amparo registered as case No. 355-80.

125. Torture is practised to intimidate people by destroying them physically and mentally if they attempt to exercise their political and trade union rights or the rights to freedom of association and assembly. The complaints received show that the victims are accused of belonging to various political parties, trade union organizations, neighbourhood associations or cultural or student organizations which are not authorized by the Government or of engaging in activities on behalf of such groups (all party political activities are prohibited under Decree-Law Nos. 77 of 13 October 1973 and 1,697 of 12 March 1977) 25/ or simply of having expressed personal opinions criticizing or diverging from official policy. Many people are also subjected to maltreatment merely because it is believed that they can supply information on these activities, although they do not take part in them themselves and have never done so.

126. Ill-treatment and psychological tortures are inflicted on most detainees. Insults, threats and humiliating treatment are habitual practices of the security agencies. The Chilean Commission on Human Rights and the Committee for the Defence of Youth Rights held a press conference on 20 June at which they spoke mainly of the question of torture. They indicated that their statements were based on the testimony of victims. They stated that physical, psychological and mental tortures "contrary to the most elementary conception of the human being, threaten to become regular police procedures". They affirmed that electric shocks were applied to the leaders of the peasant movements arrested at Talca between 11 and 15 May and that those leaders had been kicked and punched; one of them had had a toe-nail pulled out, another had been beaten about the mouth and ears; all had been photographed, filmed and obliged to sign statements which they had not been allowed to read; all had been kept in secret places, blindfolded and handcuffed, without having the least idea of what was going to become of them. 26/

127. A lawyer for the Chilean Commission on Human Rights has said on the subject of torture: "These acts of terrorism are not known to public opinion, either because the press says nothing about them or because the victims are too frightened to denounce them". 27/

128. Under the heading "Kidnappings" (section C below) the case of José Eduardo Jara, who was confined in a secret place and died a few hours after being released after torture, is described. The maltreatment to which a girl in the same place of detention was subjected has also been reported, as well as the maltreatment inflicted on other detainees. According to the latest news, the agents of the security agencies responsible for these kidnappings and tortures were subsequently identified and prosecuted. The kidnappers were so sure of impunity that they did not even take care to ensure that they could not be identified. The conclusive evidence adduced by the victims of the kidnappings made it possible to shed light on the events and to trace the likely culprits. This rapid action by the judiciary prompts the observation that in hundreds of cases reported this year complaints have not produced the same result. It is, however, clear that a simple judicial inquiry, conducted with the co-operation of the administrative authorities, would make it possible to establish the identity of the perpetrators of the many other crimes of torture which have been referred to the courts.

---

25/ See chapter I, section A.

26/ Solidaridad, No. 95, June 1980.

27/ Hoy, 7-13 May 1980.



129. Given the nature of the tortures, the threats proffered and the general climate of intimidation in which the country is living, it is evident that only some of the victims denounce the treatment to which they have been subjected. However, there are enough of them to give an idea of the violent situation for which government officials are responsible. As has been indicated at the beginning of this chapter, the number of persons detained and tortured declined during the early months of this year. In Santiago alone there were seven complaints of cases of maltreatment in January, five in February and nine in March. In April, however, 41 persons complained of having been subjected to ill-treatment and/or torture, and in May the number of complaints of torture in Santiago alone was 19. In July and August the number of persons tortured seems to have increased considerably, according to reports received from organizations concerned with the defence of human rights, some of which were published in the press of various countries. 28/

130. The Special Rapporteur considers that the Chilean people lack the most elementary guarantees for life and physical integrity. The following factors make for a state of total insecurity:

(a) The proclamation of the state of emergency which involves the application of Decree-Law No. 1,877 of 12 August 1977 granting the President, for the duration of the state of emergency, powers which are proper to the state of siege. 29/ The amendment made by Decree-Law No. 3,451 of 17 July 1970, which increases to 20 days the period of time for which a person can be held without being brought before the courts, considerably worsens the situation of some detainees (see chapter I, section B.2);

(b) The increasingly extensive powers assumed by the security agencies, which exercise, in practise, a right which is reserved to the President of the Republic. Thus, the security agencies make arrests, keep people in secret places and subject them to unlawful coercion;

(c) The concealment of the activities of the security agencies permitted by various decree-laws 30/ and by military proclamations prohibiting the dissemination of information concerning specific cases, 31/ as well as, the dissemination of false information emanating from these agencies by the information media; 32/

---

28/ See The Guardian, 12 September 1980; Le Monde, 16 September 1980; and the Amnesty International press release of 9 September 1980.

29/ See A/33/331, paras. 80-86.

30/ See, in this chapter, section H on the security agencies, and E/CN.4/1362, paras. 83-88.

31/ On 18 July 1980, Brigadier-General Humberto Gordon Rubio, Commander of the Emergency Zone, issued a proclamation whereby the information media are forbidden to publish interviews with or statements by witnesses of terrorist acts which might jeopardize the successful outcome of the investigation. This prohibition also applies to the dissemination of information concerning persons holding posts of responsibility or public office in respect of functions or activities not performed in the course of their official duties, except with their express authorization. (El Mercurio, 22 July 1980)

32/ See, in this chapter, section H on the security agencies.

(d) The tolerance with which the security agencies are treated by the institutions responsible for protecting human rights, such as the judiciary, 33/ and the protection afforded to their activities by the Government, which it justifies on the grounds of the "internal security of the State".

131. It is particularly disturbing that torture and ill-treatment have come to be a permanent feature of the country's legal and institutional order. The reason for this is the uninterrupted maintenance of the state of emergency, under which a series of provisions in violation of human rights can be applied. Moreover, the security agencies, whose powers are steadily expanding in the country's institutional framework, possess the material means of torture (secret premises, instruments of torture, personnel specialized in these activities) and enjoy official protection to cover up their activities.

132. There have recently been a number of acts of terrorism in the country in which the victims were military personnel or persons having no connection with any political or governmental activity. Nevertheless, these serious and reprehensible acts do not justify the brutal behaviour of the security agencies. It should be pointed out that those responsible for the deaths caused by these acts of terrorism have not been found. However, many people have been arrested and, in general, tortured, accused of being the perpetrators of terrorist acts, and have then been released through lack of justification for their detention. Others have been brought before the courts for acts which constitute nothing more than the exercise of political, trade union and social rights restricted by the Chilean legislation currently in force.

133. In any case, a campaign against terrorism cannot justify a State in keeping the entire population in insecurity and terror. The report of a journalist who tried to question a girl who was kidnapped by CNI together with a friend of hers on 27 July 1980 and who was released on 1 August, is evidence of this terror, which prevents many people from complaining of the tortures to which they are subjected. Young Georgina Ramírez and her father refused, out of fear, to be interviewed by the reporter. The friend arrested at the same time as Georgina is Norma Orellana Riffe, an 18-year-old student. Her father, Sergio Orellana, who has been a neighbour of the Ramírez family for 20 years, told the press that Georgina, 17 years old, had been subjected to intensive interrogation during the week which she spent in detention being kept permanently blindfolded without knowing where she was or why or by whom she was being held prisoner. 34/ On 8 August CNI published a communiqué in which it gave a list of persons whom it was holding in detention, including Norma Orellana Riffe. 35/

134. The Special Rapporteur is extremely concerned over the measures which the Government has taken to extend the powers of the security agencies and to submit persons to their arbitrary control for an increasingly long period of time (Decree-Law No. 3,451 of 17 July 1980). The persistent use on detainees of torture and humiliating treatment, as described in previous reports 36/ and in the foregoing paragraphs, suggests that these expanded powers will be one more instrument at the disposal of the security agencies for continuing to violate human rights and subject people to their arbitrary will, without any legal or institutional control to restrain them.

33/ See, in this chapter, section I on the Judiciary.

34/ Las Ultimas Noticias, 4 August 1980.

35/ El Mercurio, 9 August 1980.

36/ See A/34/583, paras. 112-127.

C. Kidnappings

135. During July 1980 further disappearances occurred; by the way the captors operated, these were reminiscent of the disappearances which occurred between 1973 and 1977. Some persons were held only for a few days, but one of the victims was killed by his captors.

136. The cases brought to the Special Rapporteur's attention are the following:

(a) Guillermo Hormazábal and Mario Romero. These two journalists were abducted in the street, right in the centre of Santiago, on 30 July 1980 at 2.15 p.m., by six persons in civilian clothes who did not identify themselves and produced no arrest warrant. Several witnesses were present at the scene. Mr. Guillermo Hormazábal Salgado is Director of the Department of Public Information of the Archbishopric of Santiago and Chief News Editor of Radio Chilena, and Mr. Mario Romero Estrada is Chief News Editor of Radio Presidente Ibáñez of Punta Arenas. They were both forced into a G-10 van, which bore no licence plates, and were driven blindfolded to an unknown destination. Mr. Hormazábal stated that he had not been interrogated or been subjected to unlawful coercion. He said that he had heard the voices of other persons detained in the same place; one was a man, who was complaining of the cold and said that he suffered from arthritis, and the other was a woman. He himself was released at 10.30 p.m. the same day, after having been driven in another vehicle while blindfolded, and left somewhere in Santiago. His captors said that they belonged to the "Comando de Vengadores de Mártires" (Martyrs' Avengers Commando) and advised him to "keep quiet" since "they were not playing games". 37/ Mr. Romero reported that he had been separated from his colleague on arrival at the secret place of detention and that he had been led into a room where he had been questioned about the activities of his brother, Néstor Gonzalo Romero Estrada, a sixth-year student at the Catholic University's School of Medicine, who had disappeared on Saturday, 26 July. He was also interrogated about his own political activities and contracts. He stated that he had been beaten and kept blindfolded for the entire time he had been detained. He had been left, together with his brother, at 1.20 a.m. on 31 July somewhere in Santiago. His captors stated that they belonged to the same "Comando de Vengadores de Mártires" and that they meted out justice themselves because the police and security services had been incapable of combating terrorism. The Minister of the Interior requested the Santiago Court of Appeal to open an investigation into the matter and punish those guilty of the offence, pursuant to article 5 (b) of the State Security Act (No. 12,927). 38/

(b) Néstor Gonzalo Romero, a student, brother of the journalist Mario Romero, was abducted by a group of persons on Saturday, 26 July as he was going to the clinic at the Catholic University. He was covered with a blanket and taken to a place which he thought was the basement of a house. Later he was moved to other premises, where he heard the voice of José Eduardo Jara complaining of pains in the hand and of an ulcer. He also heard the voices of the abducted journalists. He stated that he had been subjected to unlawful coercion during one of the interrogations. He was released in the same circumstances and on the same day as his brother. 39/

---

37/ El Mercurio, 31 July and 1 August 1980.

38/ El Mercurio, 1 August 1980.

39/ El Mercurio, 1 and 2 August 1980.

(c) Nancy del Carmen Azcueta, a secretary, was abducted on 28 July 1980 at 9 a.m. by four or five individuals in civilian clothes armed with submachine guns, who broke down the door of her room when she failed to open it, being alarmed by the brusque orders she had been given. The unknown persons handcuffed her, dragged her out of the room by her hair and forced her into a van. When she was being forced out of the house with blows, carabineros on duty approached, guns in hand, and asked the captors to explain their behaviour. The person who was pulling her by the hair and striking her advised them not to intervene, showing them something (presumably a warrant), whereupon the carabineros moved off. Nancy del Carmen Azcueta was then taken to a basement where she was beaten, ill-treated, stripped and tortured with electric shocks while she was suspended head downwards from an iron bar which had been passed between her arms and legs while her wrists were handcuffed. She was able to note the presence, in the same place of detention, of Gonzalo Romero, Cecilia Alzanora, Eduardo Jara and Juan Capra; the last-named had been arrested at the same time as herself. There was also an elderly person. Eduardo Jara complained a great deal; his hands were hurting and he seemed to have a burst eardrum. He said that he did not want to die, called for help and prayed. Nancy del Carmen Azcueta was moved to another place, where she heard 40 or 50 other detainees arrive, in three successive groups. She was released on 2 August, together with Juan Capra. Before being released, she was threatened with death if she talked. Her captors claimed that their action was for the good of the motherland and in revenge for its martyrs. 40/

(d) Haisan Chaghoury Said, a student of Syrian nationality, was arrested on 28 July, at 9 p.m., in the same circumstances as were the persons already mentioned. He was accused of being an extremist and threatened with death, and was apparently taken to the same place as the others. He was interrogated about persons listed in his telephone notebook, but not about political matters. He was not subjected to maltreatment, merely "from time to time ... a blow of no great force" when he was slow to answer. He was transferred, like the others, to a second place of detention, where he met Juan Capra, Nancy Azcueta, someone addressed as Doc (the nickname given to Gonzalo Romero) and someone called Bigote who complained the whole time (he assumes that it was Eduardo Jara). There was also a girl named Cecilia and an elderly woman addressed as "abuelita" (grandma). During his captivity he was kept handcuffed and his head was covered by a hood. He was released on Saturday, 2 August near his home, after having been advised to keep silent. 41/

(e) Cecilia Alzanora, a journalism student, was kidnapped at the same time as her fellow student, José Eduardo Jara, on 23 July 1980. The captors were armed to the teeth; they halted the public transport vehicle in which the young persons were travelling and ordered them to get out. They were put into another vehicle, where they were blindfolded and obliged to squat, and were covered with clothing. They were taken to a basement which they reached through a tunnel; there they heard the sound of typewriters and sensed the presence of other people, as in an office. The captors separated Cecilia Alzanora from Jara. They stripped her and examined her closely. They threatened her and interrogated her about her private life, political activities, friends and university colleagues, and about José Eduardo Jara. On the third day of her detention she noted that

---

40/ El Mercurio, 7 August 1980.

41/ Ibid.

José Eduardo Jara had been brought in; he was complaining particularly of his ulcer and of pains in his wrists, and was feeling very poorly. They were apparently checking the truthfulness of Jara's replies by asking Cecilia Alzanora the same questions. She heard cries from other persons held in adjoining rooms. She reports that she herself was not beaten but that other persons in the same place of detention were treated roughly and beaten. Someone told her that "Eduardo had been given the four-knot treatment". On the sixth or seventh day she was moved to another building, together with José Eduardo Jara. The latter complained a great deal, and when he complained too much he was struck again. On one occasion he was struck on the head; there was a sharp noise, and at the same time the victim cried out. She and Jara were then put into a car of recent model, from which they were taken to a muddy place where they were left lying in the slime early in the morning of 2 July 1980. As Eduardo was feeling very ill, having burns on his fingers and ankles and bruises on his face, Cecilia made her way to a nearby house to ask for medical help. All that Eduardo managed to say was that he had been treated very badly and wanted to rest. Cecilia Alzanora affirmed that she did not engage in any political activity and that Eduardo Jara "was never an extremist. He was a peaceful man and was only interested in getting himself and his son out of the poverty in which they lived." 42/

(f) José Eduardo Jara was arrested at the same time as Cecilia Alzanora. All that is known about the period he spent in the hands of his oppressors is what was reported by the young woman. They were both given attention by the Nuñoa Public Health Service. The doctor in charge of the establishment, Dr. Lautaro de la Fuente, stated that the two young persons were admitted to the centre at 4.15 a.m. on 2 July. The young woman had no injuries, but José Eduardo Jara was suffering from an internal brain injury which resulted in death at 8.05 a.m. on the same day, 2 July. The doctor stated that the student had been conscious on his arrival at the care centre and had told the doctors attending to him that he had been abducted and subjected to a great deal of ill-treatment by persons unknown. 43/ Spokesmen for CNI said that this death was a case "clearly for the police", and that CNI had no jurisdiction in the matter. 44/ A number of organizations protested at this death and denounced those responsible. The Students' Federation of the Catholic University of Chile (FEUC), in particular, stated:

"The recent statements by the Minister of the Interior, to the effect that the security services operate within the legal provisions in force, leads necessarily to the conclusion that there seems to be truth in the contention

---

42/ El Mercurio, 3 August 1980.

43/ Ibid.

44/ Ibid.

that detentions and abductions are taking place in our country beyond the scope of the constituted authority and existing legality - a matter of the utmost gravity". 45/

137. Other cases of abduction, concerning which the Special Rapporteur has no further information, were denounced in the press by a number of organizations. In particular, there is the complaint lodged by Alejandro Correa, a student expelled from the Technical University, who stated that he had been abducted and then released. Together with Alejandro Goic, Mr. Correa made the following statement on behalf of the Faculties of Social Sciences, Philosophy and Letters, Sciences, Fine Arts and Musical Sciences and Arts of the University of Chile:

"In our view, Jara's murder is not an isolated incident but is directly linked to the abductions and arbitrary detentions of 11 other students at various universities which have taken place in recent weeks. These involved Bernardo Amigo, a history student at the University of Chile; Remis Ramos, of the Faculty of Sciences; Norma Arellano, a philosophy student at the University of Chile; Marcos Piña a student debarred from the School of Architecture; Alejandro Correa and Marlene Schultz, of the Technical University; Florencia Velasco, a student of Spanish-teaching and Antonio Reynaldo, of the University of Chile; and Cecilia Alzamora, Gonzalo Romero and Eduardo Jara, of the Catholic University. The latter died from blows inflicted by his captors." 46/

138. In addition Mr. Guillermo Yunge, Chairman of the National Commission for Young Persons' Rights, said on 4 August 1980 that, according to information in his possession, three people had disappeared: Norma Orellana Riffo, Esme Ignacio Ríos López and Agustín Dávila. 47/ The press learned, from sources close to CNI, that Miss Norma Orellana Riffo and Mr. Agustín Dávila had been arrested by CNI, which claimed to have had nothing to do with the abduction of Ignacio Ríos López. 48/ Norma Orellana Riffo was arrested at 4 a.m. on Sunday, 27 July 1980 at her home by 14 individuals in plain clothes armed with submachine guns. The latter also arrested her friend, Georgina Ramírez, who was later released and stated that Norma Orellana had been ill-treated. The young woman's mother was visited by

---

45/ El Mercurio, 5 August 1980. At the request of the Government, the Court of Appeal appointed an investigating judge to look into the abductions of Guillermo Hermazábal and Mario Romero. Further measures were subsequently taken to investigate the other abductions, but in view of the apparent connection among them all (one of the cases was that opened for the murder of José Eduardo Jara), it was decided to combine them. As a result, the examining magistrate Echevarría Lorca was put in charge of all the investigations (El Mercurio, 9 August 1980). It was later announced that it had been concluded that officers of the Police Department were responsible for these abductions and that they would be charged. General Ernesto Baeza, head of the police service in question, submitted his resignation, which was accepted by General Pinochet (Le Monde, 13 August 1980).

46/ El Mercurio, 4 August 1980.

47/ El Mercurio, 5 August 1980.

48/ Ibid.

two persons claiming to belong to the security services who obliged her to sign a document giving the reasons for her daughter's arrest and stating that she was in perfect health. 49/ Agustín Dávila, a potter, was arrested at the same time as Marcela Bunster, on 31 July 1980. The latter was released on 2 August and apparently reported that both she and Mr. Dávila had been tortured, the latter having been forced to confess to offences he had not committed. 50/ Sources close to CNI apparently informed the daily El Mercurio that Agustín F. Dávila was being investigated for suspected extremist activities, but that it was not certain whether he would be charged with heading the extremist commando which had killed Army Colonel Roger Vergara. 51/

139. These abductions seem to be the result of arbitrary implementation, by various security agencies subordinate to the Ministry of Defence, of Decree-Law No. 3,451 of 16 July 1980, under which, on the order of the Minister of the Interior, individuals may be held in custody for a period of 20 days without being brought before the courts, whilst inquiries proceed into offences against State security resulting in death, bodily injury or abduction of persons (see chap. I, sect. B.2). However, the victims have not been charged with such offences. It has to be noted, therefore, that these events could signal a return to the repressive practices, which characterized the régime's early years, against opponents or persons whose activities do not accord with the official policy line.

140. The abduction of persons for political reasons is without doubt a terrorist act. When it is carried out by official bodies or tolerated by the authorities such an act constitutes one of the most serious violations of human rights, since the victims are deprived of any protection. For that reason, it constitutes one of the gravest concerns for the international community, which must ensure protection for those victims by all the means available to it in order that the rights to life, liberty, physical integrity and security of person are respected.

#### D. Right to life

141. Every State is required to guarantee its citizens the right to life. No State may claim that it has no responsibility in cases of violation of that right, to which a large part of all countries' legislation, and a number of international instruments, are devoted.

142. For this reason, whenever threats or acts infringing that right stem from action by State bodies - that is to say, those whose role and purpose should be to protect the right to life - the violations are even more serious and quite rightly arouse the international community's deep concern.

143. The Special Rapporteur, in the reports he submitted to the General Assembly at its thirty-fourth session (A/34/583, paras. 128-136) and to the Commission on Human Rights at its thirty-sixth session (E/CN.4/1362, paras. 69-74), referred to a number of complaints concerning persons killed by members of military organizations or security services. The progress of a number of inquiries

---

49/ El Mercurio, 6 August 1980.

50/ El Mercurio, 5 August 1980.

51/ El Mercurio, 6 August 1980

brought before the courts at the request of the victims' relatives is reported in section I of this chapter. In certain cases the culprits have been identified. In others this has not yet been done, since the inquiries have encountered obstacles raised by the military or administrative authorities, which refuse to communicate information, or are hampered by the attitude of many judges, who do not inquire rigorously enough into offences committed by members of military organizations or security services.

144. Since submitting his report to the Commission on Human Rights at its thirty-sixth session, the Special Rapporteur has received a number of further complaints of violations of the right to life. <sup>52/</sup> Some are cases of arbitrary and irresponsible acts encouraged by the impunity enjoyed by their perpetrators, within the general pattern of intimidation to which the Chilean population is subjected. In other cases, the deaths seem to have been premeditated with the aim of concealing the true nature of the crime inflicted on political opponents or persons deemed "a danger to State security", according to the particular criterion applied by the authorities in this case. <sup>53/</sup> These observations are illustrated by the following complaints:

(a) Marcos Tapia Guzmán (25 years, workman). On 8 December 1979, the victim, who was taking part in a local fête, began to sing. The singing disturbed Corporal Juan Vigorena Valdebenito, who approached the young man, gun in hand, and shot him in the mouth, causing instant death. A photocopy of the death certificate and relevant details have been sent to the Special Rapporteur. The perpetrator is being held in the municipal prison, at the disposal of the judge of the First Criminal Court of Puente Alto. Preliminary hearings are proceeding.

(b) Vicente Rojas Galdame (shopkeeper). During the morning of 12 December 1979, Mr. Rojas Galdame filled his car with petrol at a service station. After he drove off, a patrol car from the Tenth Carabineros Station followed him and, on reaching a bend, its occupants opened fire on him. Five shots were fired, one of which pierced the victim's head. <sup>54/</sup>

(c) Rafael Luis Ruiz Carrasco (22 years, workman). On 10 January 1980, Mr. Ruiz Carrasco was hit by a bullet as he was passing a restaurant. As a result of a quarrel in the restaurant a soldier, José Francisco Millar Cabezas, was using a firearm and the victim was killed by a bullet which ricocheted outside. The Special Rapporteur has received a report of the facts and a photocopy of the death certificate. The matter is before the Second Court of San Bernardo, and the hearing is at the final stage.

(d) Pedro Andurandegui Sáez (19 years). The victim was arrested on 17 February 1980, together with a girl aged 15 years and another youth, aged 17 years, without any warrant being produced and without any apparent reason. The three of them were taken to the headquarters of the Police Department of the José Mariá Caro district. Each of the young men was put into a cell, after having been made to strip, whilst the young woman was kept in a room. Mr. Andurandegui was immediately taken to another room, where he was tortured with blows and electric shocks for half an hour. His companions could hear his cries

---

<sup>52/</sup> The information concerning the cases mentioned in this chapter was provided to the Special Rapporteur by reliable sources and is well-documented.

<sup>53/</sup> The murder of Daniel Aulfa is an example of crimes of the latter type.

<sup>54/</sup> Solidaridad, No. 88, March 1980.



of pain, which abruptly ceased. On arriving at the headquarters that evening to inquire about him, the victim's relatives were informed that he had died "from an overdose of Marijuana". On the following day, when the body was returned to them, they discovered that the face and testicles were burnt, the mouth had deep wounds, one eye was bruised and the fingers were charred. The relatives filed a charge of aggravated homicide against the members of the Police Department responsible for Andurandegui's death, before the Third Criminal Court of the Department of Pedro Aguirre Cerda. It seems that the culprits were identified, but, the judge rejected the relative's petition that they should be brought to trial. 55/ Nevertheless, conclusive proof exists, such as the report submitted by the Institute of Forensic Medicine which carried out the autopsy, stating "The cause of death was the intake of liquid regurgitated from the stomach. The victim's vomiting was provoked by convulsions due to violent treatment which disturbed the internal organs". 56/

(e) Rigoberto Fuentes Bravo (16 years). A police patrol called at a house to put a stop to a noisy party. While those taking part were leaving peacefully, the carabinero Máximo Moncada drew his revolver and fired three or four shots, one of which hit the youth, who was running away, in the back. The youth was taken to the Lota hospital, where he died before he could be given medical aid. The police officer was arrested and brought before the courts. 57/

(f) Luis Lazo Arriagada (23 years, workman, married, father of a five-year old child, president of the Centro Juvenil Juventud y Esperanza of the Joao Goulart district). On 29 March 1980, Mr. Lazo Arriagada was talking with his brother and a group of friends near his home when a rented vehicle stopped by them. An inebriated carabinero in uniform alighted from it. He approached the group and forced the young men to lie on the ground, threatening them with his firearm and punching and kicking them although they had given no provocation. The victim's brother, aged 14 years, protested at this unwonted and arbitrary behaviour; this angered the drunken carabinero, who assaulted him with kicks to the face. When the elder brother stood up to defend the younger, the carabinero reacted by firing four shots, two of which hit Luis Lazo Arriagada, killing him instantly. The murderer then fled, leaving behind his cap and a bottle containing alcoholic drink. On 3 April a complaint was lodged with the Second Court of La Granja. A number of witnesses gave full and corroborating descriptions of the culprit. The parish priest of San Pedro y San Pablo, the Agrupación de Centros Juveniles de San Pedro y San Pablo, the Coordinadora Juvenil de Santa Rosa and other parish associations issued a statement on the matter, containing the following passage of note:

"We know that, when the investigation is completed, the culprit will be punished. But there is something else we should like to know. Who checks the use of firearms in irresponsible hands? Why are there so many instances of uniformed men who kill for no reason when they are drunk or angry? We wonder whether an attitude of permanent hostility towards civilians is not inculcated in police officers. At least that seems to be so in our townships, where human life, especially in the case of the poor, seems no longer to have any importance."

---

55/ El Mercurio, 7 March 1980.

56/ Hoy, 11-17 June 1980.

57/ El Mercurio, 7 March 1980.

(g) Miguel Henríquez Lizama (25 years, married, two children). On 28 March 1980, a 17-year-old youth, Fernando Henríquez, was accosted near his home by two men in plain clothes who apprehended him, striking him violently, without giving any reasons or producing an arrest warrant. Called by neighbours, his brother Miguel Henríquez intervened to defend him. One of the two men, identified by several witnesses as a carabinero, drew his service firearm and shot him. The victim died a few minutes later at the Barros Luco Hospital. A large group of carabineros arrived on the spot and arrested the victim's parents and his three brothers. Several hours later, they were all released with the exception of Fernando Henríquez, who was charged with assault at the Buzeta substation, to which the murderer of his brother is attached. The following day he was released on bail by the military court, before which he is being tried on a charge laid by the carabineros.

(h) Oscar Salazar Jahnsen. On 14 March 1980 the victim submitted an early application for amparo in his favour, since he was clearly being followed by unknown persons in civilian clothes. In handling the application, the Court of Appeal requested information from the authorities. The Minister of the Interior, replying to the communication addressed to the National Information Agency on 18 March 1980, stated: "There is no record on this person and no order or decision has been issued, relating to him". The Headquarters of the Metropolitan Area Police Department stated on 19 March that, after consultation with the Department of Technical Counsel, Police Information Section, it appeared that no outstanding warrant of arrest existed in regard to Oscar Salazar Jahnsen which could affect his freedom. The Minister of the Interior stated on 3 April: "The Department of Public Order and Security of the Carabineros has stated that, as a result of inquiries on the subject at the Metropolitan Area and Investigation Headquarters of the Carabineros, it appears that there is no previous record involving the said Salazar Jahnsen". On the basis of those statements, the Court of Appeal rejected the application for amparo of the person concerned; it nevertheless requested the competent criminal court to make the appropriate inquiries in order to determine whether an offence had been committed. On 29 April it was reported by the press that Oscar Salazar Jahnsen had been killed by security forces in an exchange of gunfire in the Renca district. A CNI communiqué stated: "It is believed, although this has not been confirmed, that this person could be one of the extremists involved in this morning's incident in the centre of the capital". <sup>58/</sup> The communiqué refers to the murder of a carabinero that morning, by persons unknown, on the Cerro Santa Lucía. <sup>59/</sup> According to information communicated to the press, the victim had been followed for several days, <sup>60/</sup> which would seemingly have made it difficult for him to commit the crime of which he was accused in the communiqué. It may be wondered why all the authorities questioned in connection with the application for amparo denied the existence of any reason why Oscar Salazar Jahnsen should be followed, when in fact there were such reasons, as the press reports clearly show.

(i) Patricia Caballero Loyola (17 years). On 18 May two officers of the Police Department had been at a party; when they left the premises at 5 a.m., they became involved in an argument with a group of persons. Detective Enrique Rodríguez, who was inebriated, drew his firearm without a word and fired at the

---

<sup>58/</sup> El Mercurio, 29 April 1980.

<sup>59/</sup> See para. 90.

<sup>60/</sup> La Tercera de la Hora, 29 April 1980.

young woman, hitting her in the head and killing her instantly. Seeing that the young woman was dead, the murderer fled in a car together with the other officer and a woman who was in their company. They were overtaken by some taxi drivers who had set off in pursuit. Both officers were dismissed and brought before the Fifth Criminal Court. 61/

(j) Jorge Espinoza Farías (20 years). On 15 June 1980, in the San Gregorio district of La Granja, carabiniero Daniel Alejandro Muñoz Araya had an altercation in the street with another person. In order to frighten the latter, he drew his service weapon and fired it at that person's house, mortally wounding Jorge Espinoza Farías who was close by at the time. The officer was dismissed and brought before the ordinary courts. 62/

(k) Santiago Rubilar Salazar. According to the security agencies, the person in question took part in bank raids carried out on 28 July 1980. In order to escape the police, Santiago Rubilar is alleged to have taken as hostages a woman and her son who were travelling in a car. Apprehended by the carabineros, who fired shots, Rubilar is said to have been wounded by five bullets and the hostages less seriously. 63/ Mr. Rubilar's relatives had reportedly submitted an application for amparo to the Court of Appeal, alleging that he had been arrested, with his wife, Mrs. Luz Celeste Rojas Carrasco, and his brother, Mr. Juan Rubilar Salazar, by armed individuals in plain clothes on 26 July - in other words, two days before the attack. In the application it was also alleged that later Mr. Carlos Salazar Fonseca, whose telephone number appeared in Santiago Rubilar's telephone notebook, had likewise been arrested. 64/ The information available is not complete, since it concerns a recent event. The Special Rapporteur will continue to look into this case as well as that of several persons wounded or killed during operations carried out by the security agencies on 28 July.

145. In other cases, attempts on an individual's life did not have fatal results, but this in no way lessens the perpetrators' responsibility. One of the cases is that of Luis Jerez Soto and Luis González Aravena, who received respectively three and five bullet wounds from submachine guns fired by a group of carabineros in December 1979 (for an account of the facts, see E/CN.4/1362, para. 73). The officers accused them of "assaulting carabineros and stealing vehicles". At the hospital they were given attention while handcuffed, on the grounds that they were "extremists". It transpired during the legal proceedings that there was no justification for any of the charges, which were dismissed. They in their turn lodged a complaint for "acts of needless violence resulting in serious injuries" against the three carabineros responsible for the attempt on their lives. 65/

146. The aforementioned events are certainly not the only acts of violence that have occurred in Chile. Nevertheless, since the authorities claim that the illegal acts committed by their agents are justified on account of terrorist

---

61/ El Mercurio, 20 May 1980.

62/ El Mercurio, 17 June 1980.

63/ El Mercurio, 30 July 1980.

64/ El Mercurio, 31 July 1980.

65/ El Mercurio, 22 January 1980; Solidaridad, No. 86, January 1980.

activities, it should be noted that the victims mentioned appear to have been innocent persons, even though some of them were accused, through the press, of very serious offences. Furthermore, terrorist activities, which unfortunately are tending to increase in Chile, immediately unleash a wave of arrests, tortures and killings,<sup>66/</sup> as in the case of Oscar Salazar Jahnsen, in which no proof was ever established of the latter's responsibility for the death of carabinero Heriberto Novoa Escobar. On the other hand, the deaths for which members of the armed forces and the security agencies are responsible are not even dealt with properly by the courts, even though the culprits have been clearly identified.

147. In previous reports, the Special Rapporteur considered the circumstances in which the socialist leader Daniel Acuña Sepúlveda died. The victim's son alleges that this death was the result of premeditated action by the security agencies, which then put out a false version of the facts, claiming that Daniel Acuña had committed suicide. Moreover, the security agencies accused the victim's son of possessing explosives and of attempted homicide. The son, Roberto Acuña Aravena, was wounded but managed to escape during an assassination attempt on him; his father was killed by members of the security agencies.<sup>67/</sup> On the day of the events in question, 13 August 1979, the Office of the Military Prosecutor received from the CNI area commander, Captain Patricio Vicente Padilla Villén, a communication stating that Daniel Acuña had committed suicide and also accusing Roberto Acuña Aravena of possessing explosives and attempting to murder security agents who had gone to his home that day. Army Captain Padilla Villén admitted, on 17 August 1979, that he had drafted the communication giving that version. Nevertheless, the military court, in a note of 22 August, instructed the same person (Area Commander Padilla Villén) to proceed with investigations in order to establish facts reported in the note of 13 August which he himself had drafted. Naturally, his report merely repeated the earlier version. The same person issued, during the proceedings against Acuña Aravena, a writ of seizure signed by him and by two witnesses (probably his CNI subordinates). Therefore, Captain Padilla instigated the acts which brought about the death of Daniel Acuña and the wounding of Roberto Acuña Aravena, charged the latter before the court with being the perpetrator of various offences and was entrusted by the court with investigation of the facts. The irregularity of the legal procedure is obvious, as is the partiality of the court, which is quite clearly making no effort to establish the facts but is seeking, rather, to give a semblance of legality to the sentencing of an innocent person. The many contradictions in the statements of officials who submitted depositions to the court, and between those statements and the material evidence gathered in respect of this case, lend credence to Mr. Roberto Acuña's version, which is more plausible than the official account.<sup>68/</sup>

---

<sup>66/</sup> See section A of this chapter, "Arrests and detentions" and section H, "Security agencies".

<sup>67/</sup> See A/34/583, para. 133, and E/CN.4/1362, para. 72.

<sup>68/</sup> The CNI officials who admitted to being present in the house when Daniel Acuña died claimed that the latter had committed suicide or had been killed accidentally due to the explosion of a grenade. However, the deceased's hands were intact, according to the testimony of the relative who identified the body, and it is impossible to imagine how someone exploding a device against his own body could hold it against his chest (the centre of the explosion) without using his hands. The doctor who carried out the post-mortem examination of the victim had

148. The inquiries into responsibility for the death of Federico Renato Alvarez Santibáñez have made no progress. The action brought by the victim's mother following the death of her son, as a result of torture, on 21 August 1979 has not progressed beyond the stage of preliminary inquiry by the investigating judge. The Special Rapporteur, in his report to the Commission on Human Rights, communicated the results of the inquiry conducted by Investigating Judge Alberto Chaigneau, who said that he was incompetent to act, since, in his view, the facts examined constituted a crime of homicide, responsibility for which lay jointly with the Carabineros officer who carried out the arrest, the CNI officials who had subjected the person concerned to interrogation and, as an accessory after the fact, the doctor who had issued a certificate testifying that Alvarez's state of health had been satisfactory when he had left that institution. 69/

149. The family of Federico Renato Alvarez Santibáñez lodged a disciplinary complaint concerning the attitude of the Military Prosecutor, Hernán Montero, maintaining that he had been remiss in his duty as an officer of the law since, having seen the state of the victim's health, he had not ordered his immediate admission to hospital but had him kept in the penitentiary medical unit. As reported earlier, the action was rejected by the Supreme Court. 70/

150. No progress has been made in settling this matter since October 1979, when the file on it was sent to the military courts. On 30 October 1979, counsel for the victim's mother asked for legal action to be taken against five persons identified by the investigating judge as the persons responsible. On 3 February 1980, the request was rejected by the Military Prosecutor, who ruled the evidence produced by the investigating judge to be insufficient. An appeal was made against that decision and, up to August 1980, there was no news of the decision of the Military Appeal Court which was to determine whether the persons held responsible would be prosecuted. The case seems to have been subject to unjustified delays, thus allowing those responsible for this homicide to remain at large and continue to exercise their functions in the security agencies for which they work. On 14 August 1980 the Military Appeal Court decided not to prosecute the officials of the police and security agencies who had taken part in the arrest of Mr. Alvarez Santibáñez and had been identified by the investigating judge as the persons responsible for his death. 71/

---

not found that a hand was missing, but later, after the body had been exhumed, it was seen that its right arm was missing. This disappearance of the right arm shows that there are persons anxious to destroy the evidence. The Special Rapporteur is in possession of photocopies of various trial documents, providing a good deal of evidence and presumptions which point to the conclusion that the son's version of the facts is entirely plausible.

69/ See E/CN.4/1362, para. 66; A/34/573, paras. 123-127 and annex XVI.

70/ E/CN.4/1362, para. 101.

71/ Solidaridad, No. 9, second fortnight of August 1980.

151. The Special Rapporteur has been able to establish that only some of the persons responsible for the crimes referred to above were dismissed from the organizations to which they belonged, that very few of them were remanded in custody and that only in exceptional cases were they sentenced for extremely serious violations of human rights. 72/ The Special Rapporteur has found, by a careful analysis of the press reports and of the cases brought to his attention that no measures of any sort were taken against the persons responsible when the victims were political opponents or persons accused of offences against "the internal security of the State". On the contrary, as shown in section I below concerning the judiciary, in many cases the action at law is blocked by the refusal of the security agencies and administrative authorities to submit to the judges the requisite information for the investigation or by the courts' lack of interest or diligence in seeking the truth and punishing the offenders. Since acts of violence of this nature are being regularly and systematically committed without the culprits being brought to trial or sentenced to the penalties prescribed by law, the Special Rapporteur feels bound to note that the population of Chile does not enjoy sufficient safeguards in respect of the right to life.

152. The climate of insecurity in which the inhabitants of Chile live has been highlighted by various persons and organizations. The latter include the Chilean Confederation of Members of Religious Orders, which expressed its disquiet on the subject and added:

"We note with sorrow that human dignity and freedom are being trampled under foot in our country, and that national security is increasingly bringing insecurity to those who inhabit it". 73/

---

72/ The Court of Appeal of La Serena upheld the sentences passed on seven former police officers for committing the offences of arbitrary detention and unlawful coercion against minors, one of whom was 13 years of age. None of the sentences exceeded three years, and the culprits were granted conditional release. They were also ordered to make restitution for moral damages. The defendants have appealed to the Supreme Court against that decision (El Mercurio, 19 June 1980).

73/ Mensaje, No. 289, June 1980.

E. Prison conditions

153. In his letter to the Secretary-General of 23 November 1979 (A/C.3/34/12), the Permanent Representative of Chile to the United Nations declared that there were no political prisoners, that is, persons deprived of liberty for political reasons, in his country.

154. As already pointed out, a Decree-Law was promulgated in 1980 authorizing the Executive Power to deprive a person of his liberty for three months; this law was immediately applied in many cases to subject persons to enforced residence in various parts of the country.

155. Contrary to Government assertions, several people are currently being detained on account of their opinions or for having tried to exercise their political rights. In a number of cases, legal proceedings instituted against persons detained for political reasons are a matter of common knowledge. For example, among the persons held at the Santiago Penitentiary are José Moldavsky and Jorge Soza Egaña, both accused of belonging to a Communist Party propaganda group; Jaime Terifeño Urra, accused of operating a clandestine printing press for the "Partido Comunista Libertad"; and Inés González Figueroa (confined in the Santiago Women's Prison), accused of distributing political leaflets. 74/ Also held in the Penitentiary are Hernán Aburto Uriz, Justo E. Araya Moreno, Jaime R. Pérez de Arce, Bernardo A. Reynaldos Quintero and Ricardo G. García Contreras, all accused of belonging to the Socialist Youth, and Guillermo Geisse Valenzuela, accused of being a member of the MAPU Peasant Workers' Party. They are charged with holding clandestine meetings and violating the State Security Act. 75/ All these political organizations have been banned under provisions adopted by the military Junta. The fact of belonging to them constitutes an offence in itself (Decree-Law No. 77, art. 2).

156. In May 1980, the Minister of the Interior requested that three political prisoners held in Row 5 of the Santiago Penitentiary and accused of harbouring subversive material in their cells should be brought to trial. 76/ The Special Rapporteur has received a declaration dated 18 May 1980 and signed by "political prisoners of Chile", containing the following statement:

"... Later, at 6 a.m. on 16 April, to the accompaniment of shouts and whistles and under strong physical and psychological pressure, we were brutally dragged out of the row by more than 60 policemen under the command of Lieutenant Angel Amijo, officer of the Internal Guard. For more than two hours the cells of Row 5 were subjected to a thorough search, during which books, tools and study materials were confiscated, and money and other personal belongings stolen. The installations erected by the political prisoners to improve their physical and sanitary conditions were destroyed. The extreme security measures taken against political prisoners shows the absurdity of the Military Government's accusation that the detainees are trying to undermine the internal security of the State. They constitute one more proof of deliberate provocation, aimed at justifying the harsher measures taken against us in reprisal for the mounting tide of popular resistance, for we are hostages in their hands ...".

---

74/ El Mercurio, 28 and 29 May 1980.

75/ El Mercurio, 5 August 1980.

76/ El Mercurio, 22 May 1980.

The examining magistrate in the trial, opened at the instigation of the Minister of the Interior, ordered the case to be dismissed. The matter is to be examined by the Court of Appeal. 77/

157. Another declaration by the political prisoners in the Santiago Penitentiary, dated 6 July 1980, contains the following statement:

"Over and above the constant searching of the cells, during which various personal possessions are confiscated, over and above the complaints and proceedings - when in fact we are in prison - which have been filed for alleged violations of the State Security Act and which have been dismissed, over and above the harassment to which we are subjected by CNI, the restrictions on our right to culture and recreation, and misinformation, we are now the victims of a further arbitrary measure, which only serves to aggravate the atmosphere of hatred, revenge and tension in which we are obliged to live.

A few days ago, we made public the attacks suffered by one of our children on visiting us in a special room reserved for visitors which had to be shared with persons convicted for sexual offences, while officers of the Gendarmería pretended not to notice what was happening. This room was allocated to us after our former visiting room, obtained after long and hard struggles, and ratified by agreement with the International Committee of the Red Cross, had been taken away from us.

After this incident, we were ordered to receive our visitors henceforth in a totally dilapidated place where we are obliged to receive them sitting on the floor or standing, exposed to dampness and dirt and where our children are in constant danger of falling ill. We were also notified of a further reduction in the weekly visiting time, which used to be four hours, but which, as from 6 July, will be only three hours a week in the conditions already described."

The authors of the statement add:

"The dignity and rights of political prisoners in other prisons and penal establishments in the country are likewise being infringed. The situation is particularly serious for our female colleagues in the COF [Women's Guidance Centre, new name for the women's correctional institution], who are subjected to inhuman living conditions, forced labour and various annoyances, being deprived of the right to information and culture and not allowed to live in a community where they could live and work decently."

158. In view of the prison conditions which women detainees are obliged to endure, the lawyers of six women prosecuted for violating the State Security Act or the Control of Firearms Act and confined in the Women's Guidance Centre requested the Director-General of the Gendarmería to have them separated from the rest of the prisoners, but their request was refused. 78/ The prisoners themselves had repeatedly made the same request to the prison authorities. The reasons given for

---

77/ El Mercurio, 3 July 1980.

78/ El Mercurio, 5 July 1980.



this refusal were lack of space, the existing regulations and the need for discipline. Following the rejection of the appeal to the Director-General of the Gendarmeria, the prisoners' lawyers submitted a fresh request to the Minister of Justice, and as the reply was delayed, the prisoners began a hunger strike on 19 July 1980, 79/ an action in which the political prisoners in the Santiago Penitentiary joined. 80/ The latter also demanded the resumption of family visits, which had been suspended by the prison authorities, and an end to imprisonment in disciplinary cells and the solitary confinement of four political prisoners (for possessing books regarded as "subversive"). 81/ The relatives of the strikers then began their own fast at the Recoleta Franciscana Church, Santiago. 82/

159. On 29 July, in an interview with the Chef de Cabinet of the Under-Secretary of Justice, who promised to seek a solution to the problem of the women prisoners in the Women's Guidance Centre, the hunger strike was declared to be at an end.

160. The Special Rapporteur recalls, once again, the promise made by the Minister of Justice to the Ad Hoc Working Group that she would endeavour to find a solution to the problem of separating political prisoners from common criminals. 83/ He trusts that she will also find a solution to the problem of female political prisoners who are obliged to live with women accused of ordinary offences.

#### F. Persecution and intimidation

161. During the period covered by this report, the Special Rapporteur has noted a recrudescence of intimidation and persecution by the security agencies. These acts are directed against the rights of freedom of association, assembly and freedom of expression and even against the right to try to find out what has become of missing persons in Chile. The persecution, threats and intimidation are aimed, in addition, at creating a climate of terror calculated to deter people from exercising those rights.

162. Recently, numerous searches were carried out in homes, work places and premises of trade unions and other civil associations. In most cases, no search warrant was produced. Sometimes the police have blank warrants signed by the Director of CNI, as in the case of Gonzalo Rojas Donoso, a journalist on the staff of the daily newspaper El Mercurio, who declared that, on 1 March, his home was searched by a group of civilians armed with submachine guns who produced a blank warrant signed by General Odlanier Mena. When a relative of his remarked that the warrant was not in order, they answered that "that did not matter" because they would "fill out the warrant later". The journalist reported these facts in a signed statement made under oath before a notary, a copy of which has been sent to the Special Rapporteur.

---

79/ El Mercurio, 22 June 1980.

80/ El Mercurio, 24 June 1980.

81/ Las Ultimas Noticias, 22 July 1980.

82/ La Tercera de la Hora, 28 July 1980.

83/ See A/33/331, para. 370.

163. Many other people have had their homes searched under various pretexts, but on no occasion were shown a warrant issued by a competent authority. The victims of this persecution are often the relatives of missing persons or persons who have been killed by the security agencies. For example, searches were carried out on 2 March 1980 at the home of Berta Ugarte Ronán (sister of Marta Ugarte, whose body was discovered after her arrest by DINA in 1976) and at the home of Marta Lillo Núñez (wife of Ramón Núñez Espinosa, missing since 1974); all the occupants of the apartments were questioned and particulars taken of their identity and occupation. Similarly, Mrs. María Inés de la Vega, sister of Marcos de la Vega, the former Mayor of Tocopilla who was shot on 19 October 1973 in the town of Antofagasta, said that two attacks on her physical integrity had been made on the street by unknown civilians. She also declared that a young man who had participated in the organization of a mass for persons executed on 19 October 1973 - a religious service held in Antofagasta Cathedral on 19 October 1979 - had been arrested by hooded civilians, taken to an unknown place of confinement, questioned about Mrs. de la Vega's activities and urged under threats to collaborate with the security agencies.

164. The searches are carried out with a show of firearms and are generally accompanied by interrogations (sometimes the inhabitants of neighbouring houses are also questioned) and threats. For example, on 1 March 1980, the home of José Ricardo Parra Salas and of his mother was searched. The civilians responsible, who were armed with submachine guns, said that they were "police officers", but they did not reveal their identity or produce a warrant; the reason they gave for violating Mr. Parra Salas' home was their suspicion that he "must be mixed up in something". In the absence of Mr. Parra Salas, they ordered his mother to inform him on his return that he must "stay put" in the house and warned her that they would keep a watch on her to make sure that she carried out the order. The person concerned has applied for amparo.

165. Two people belonging to the Juventud Obrera Católica, Javier Héctor Pozo Arenas and Luis Armando Pinto Gutiérrez, have also had their homes searched. On 6 January, the home of the former was searched by four civilians armed with submachine guns who questioned the neighbours about his activities. On 17 January, other civilians went to his place of work and searched his locker and the section where he worked. On 26 January, they again searched his home. Mr. Pinto Gutiérrez, in turn, had his home searched on 6 January. In neither case was any reason given for the search.

166. The offices of lawyers representing the interests of trade union organizations (see, in this chapter, section I on the Judiciary) and the headquarters of civil associations have also been searched. In particular, the head office of the National Federation of Mine Workers was illegally searched on 13 May 1980. Twelve civilians armed with submachine guns entered the building at No. 726 San Antonio street, District 54, Santiago, presenting a warrant issued by CNI (which has no authority to order such an operation). They asked the only person present, Mr. Hernán Castañeda, Secretary of the Federation, questions concerning the persons who came to those offices, and their personal particulars, likewise the private addresses of members of the Federation's Board. They destroyed furniture and other objects and took possession of the Federation's correspondence and records.

167. The Special Rapporteur has also received information concerning other forms of harassment, such as shadowing, threats and illegal interrogations. This type of persecution is sometimes practised against persons who have recently returned to Chile, with the permission of the Ministry of the Interior. 84/ They include Mrs. María Teresa Ugarte Bruno, who returned to Chile in December 1979, and was accosted in the street on 26 March 1980 by an individual who handed her a letter in which an anonymous person, claiming to belong to the "intelligence services", assured her that a warrant had been issued for the arrest of herself and other persons who had returned to Chile. This anonymous person advised her, also, to leave the country before the end of April. This letter clearly contained a threat, and Mrs. Ugarte Bruno fears for her liberty and security. Another person, Mrs. Haydée María Rojas Guajardo, who had been compelled to leave the country in April 1975 (after being arrested several times), was persecuted on her return home. Members of the district militia (appointed by the Government) had posters put up stating that Mrs. Rojas Guajardo is a "danger to the community". On 16 March 1980, she was attacked by three persons in plain clothes who brutally struck her.

168. The numerous threats and acts of harassment denounced are sometimes directed against members of civil or religious organizations. One member of the Adventist Church received over the telephone anonymous threats which revealed a detailed knowledge of his activities. The homes of members of the technical corps of the Evangelical Church have also been searched. A member of the board of the Villa Cañada Norte housing committee in the Pudahuel commune was visited in April 1980 by two persons in civilian clothes who questioned him concerning the other members of that organization. Other members of the organization have also been visited by security officials. Numerous students and members of university cultural organizations have been arrested and persecuted. They are sometimes threatened with physical punishment 85/ or disciplinary measures by members of the university security services.

169. As already stated in previous reports, illegal interrogations are just one of the forms of harassment commonly indulged in by the security agencies. 86/ These interrogations take place during personal visits, or searches; the victims may also be arrested and taken to secret places. In particular, two officials from the Missio Foundation of the Archbishopric of Santiago were arrested on 30 April 1980, taken to a Carabineros station and then conducted, blindfolded, to secret CNI premises, where they were beaten and given electric shock treatment.

170. On 16 May 1980, the homes of other members of the Missio Foundation were searched and the operation was repeated on 26 May, when a neighbouring house was also searched. All these acts, together with the destruction of property and the following of individuals, form part of a persecution campaign directed against the Foundation. Numerous interrogations take place without the persons being arrested. The mere presence of security agents, sometimes armed, is enough to make the interrogated persons, sensing that they are in danger, answer the questions.

---

84/ See chap. IV, sect. A, "The right to reside in, enter and leave the country".

85/ Case of Raul J. Molina O. in May 1980.

86/ See E/CN.4/1362, paras. 78-79.

The purpose of these activities is not to investigate criminal acts (although that is the excuse sometimes given), but to obtain detailed information on the organization, membership and activities of civil associations which are not completely under Government control. For example, the home of Claudio Enrique Araya Nuñez, a young man who belongs to the Pudahuel South Youth Co-ordination Movement, was searched by armed civilians. During their illegal search of the building (they never produced a warrant), they questioned the young man about his activities, trying to incriminate him in certain aggressive acts committed some time before. They asked him "what plans he had for 1 May", saying that "he was being used by the priests" and insinuating that the priests were paying him for his activities. They declared that "the priests hid missing persons and lent premises for meetings". All these accusations were accompanied by abuse and insults. They offered him money in return for his collaboration.

171. Persecution of members of organizations also frequently takes the form of shadowing. Thus, Mr. Guillermo Yunge began to be followed by officials in a motor-car after presiding over a meeting of the Committee for the Defence of Young People's Rights. He was shadowed for several weeks, which enabled him to take down the registration numbers of several of the vehicles involved. He applied for protection, whereupon the Minister of the Interior informed him that the numbers he had given did not correspond to any of the vehicles in his service. The application was rejected, but Mr. Yunge has appealed to the Supreme Court against this ruling. 87/

172. The persecution of persons who hold opinions different from those of the Government or who are engaged in trade union or social activities, or activities connected with solidarity movements, assumes still other forms which are no less serious: dismissal from their posts or jobs, or expulsion from their colleges or universities. 88/

173. The Special Rapporteur has referred, in previous reports, to the activities of an organization called "Comando Carevic", which had sent anonymous threats to members of the association of Relatives of Missing Detainees. He reported that, when the victims applied for protection, the Minister of the Interior declared that he had "no record" of that group. The Special Rapporteur had pointed out that, even though the courts and the authorities might lack information, they should take the necessary measures to investigate the origin of the threats. 89/ The Special Rapporteur was therefore particularly interested in the progress of the actions brought in connection with those threats. In case No. 51,282-1, following the complaint by Mrs. Clara Torres de Canteros and Mrs. Lucía Canteros Torres (see A/34/583, para. 143), CNI and the National Director of the Police Department have declared that they have no record of the group.

174. As for the activities of "Comando Carevic", the Special Rapporteur has received copies of documents showing that this group does not confine itself to intimidating members of the Association of Relatives of Missing Detainees.

---

87/ El Mercurio, 5 March 1980.

88/ See chapter V on the right to education, and chapter VI on trade union rights.

89/ See A/34/583, paras. 141-145; and E/CN.4/1362, paras. 79-81.

In an official reply by the Director-General of the Police Department to the judge of the First Criminal Court, Mrs. María Ruiz Salinas, it is pointed out that journalists and advertising agents have also received written or telephone threats from "Comando Carevic". 90/

175. Other threats, similar to those by "Comando Carevic", are signed by a so-called "Death Squad". Mrs. Violeta Zuniga, wife of Pedro Silva Bustos, a missing person, has received a letter signed "E de la M", asking her for 20,000 Chilean pesos in exchange for the wrist watch belonging to her husband, whom the senders of the message said they had killed two years earlier. They gave precise details of the watch make, which is not one that is commonly found on the market. 91/

176. Another similar kind of group appears to be operating in university circles. Its activities began on 30 November 1979, when it tried to get the State Technical University to suspend two students. On that day, leaflets were distributed warning some students that they were going to be "struck off the University register" and others that the Anti-Marxist Front (FLAMA) "was keeping an eye on them". In December 1979, the students Alvar Herrera, Pedro Ahumada, Sergio Sáez and Sergio González received statements and threats from this group by post. In confirmation of the anonymous threats, three of the students threatened were subsequently expelled from the University and a fourth was barred from attending classes for a whole term.

177. Following these events, a criminal complaint has been lodged which denounces, at the same time, the existence of a student security and surveillance service in that University. Attached to the complaint was a list with the State Technical University letterhead, giving the names of 17 members of the aforementioned service, whose premises are on the third floor, Office No.9, of the central building, where arms were said to be kept. In the complaint, it was claimed that members of this service belong to the Carabineros or are connected with it, as some of them have taken part in various police operations. 92/

178. On 11 March 1980, the students Victor Manuel Vega, Claudio Escobar, Vilma Cerón and Elizabeth Darría were abducted by a group of civilians comprising members of the security and surveillance service. They were taken to a Carabineros station, where they were released. This illustrates a number of similar cases of intimidation.

179. Harassment and intimidation are an important part of the activities of the security agencies. Their direct object is to prevent Chileans from exercising their civil and political rights or from trying to recover those rights. In practice, they are a serious threat to personal and family life, for they serve to aggravate the insecurity in which the population lives. Sometimes, State officials are to blame for this insecurity. Sometimes, it is due to unidentified persons or groups, who appear to have close operational links with

---

90/ The Special Rapporteur has received, from reliable sources, photocopies of all the documents and complaints mentioned in this section.

91/ Hoy, 16-22 January 1980.

92/ During the celebrations marking International Women's Day, a student from the State Technical University, Miss Violeta Rojas Bagnara, was arrested and taken to police premises, where she was interrogated by a group of persons including a member of the University security service.

the security agencies. So far, the members of the groups responsible for the threats have not been identified, although the facts have been investigated in certain court actions. The failure of these investigations is due to factors which will be dealt with later, i.e. in connection with the powers of the security agencies and the way in which the Judiciary discharges its duty to protect human rights and punish persons who violate them.

#### G. Persecution of the Catholic Church

180. The Ad Hoc Working Group referred on various occasions to the activities of the Catholic Church in Chile and its associated institutions in defence of human rights. In its report to the General Assembly at its thirty-second session, the Group stated that the Vicaría de la Solidaridad was a principal source of help to those detained, to those who feel threatened with detention and to those seeking the whereabouts of missing family members (A/32/227, para. 130). 93/ The Expert on the question of the Fate of Missing and Disappeared Persons in Chile also commented on the work of the Catholic Church on behalf of missing persons and their families (A/34/583/Add.1, para. 144). In December 1978, the Vicaría de la Solidaridad, an organ of the Catholic Church in Chile, received a United Nations prize for its distinguished services in defence of human rights and fundamental freedoms. However, press articles and other information received in the past few months indicate that attacks on the Catholic Church are intensifying.

181. In his report to the Commission on Human Rights at its thirty-sixth session, the Special Rapporteur referred to a series of attacks in the second half of 1979 against the Catholic Church or institutions or persons connected with it (E/CN.4/1362). Such persecution has become a still more frequent occurrence in recent months. In particular, the Special Rapporteur has been informed of the following:

(a) On 4 December 1979, the Catholic priest Manuel Montecinos revealed that unknown persons had broken into and searched the Office for Religious Services, the church and outbuildings of the Catholic cemetery, without taking anything of value, which suggests that the offenders had come not to steal, but to look for evidence or information.

(b) On 14 March 1980, the Department of Public Information of the Archbishopric of Santiago issued the following statement:

"1. On Saturday, 8 March, at the St. John the Baptist Chapel at Villa La Reina, the group responsible for pastoral activities among workers and young people organized a popular entertainment, with the object of raising funds for the district's most needy children. The event, which was held under the slogan 'Women and the family', was attended by members of the Christian community and numerous inhabitants of the neighbourhood.

2. The show began at 8.30 p.m. and everything was going according to plan, without incident, until the arrival, at about 10.30 p.m., of a unit of carabineros; they entered the chapel grounds and at least two of them

---

93/ See also A/33/331, para. 779 (24).

entered the building itself and interrogated the organizers of the evening. They also arrested a young man whose job it was to distribute copies of the New Testament and pamphlets published by the Archbishopric containing subjects for meditation.

3. The Archbishopric of Santiago once again deplures such behaviour, which impedes the Church's freedom of pastoral action and spreads uneasiness and fear among the population." 94/

(c) On 26 April, an event to mark May Day, organized by youth groups, was to be held at the parish theatre of Villa Sur. But before it could begin, and while participants were arriving, persons in plain clothes broke into the hall, confiscated the posters and arrested two young people, who were taken to the police station of the Dávila población. A group of carabineros surrounded the place and the event had to be cancelled. The same day, at the end of a similar event in St. John the Baptist's Church in the Dávila población a group of carabineros burst into the building and arrested three persons, who were taken to the local police station. There they were photographed beside the posters which had been confiscated shortly before at the parish theatre of Villa Sur. In addition, leaflets were placed in their pockets. Vicar Alfonso Baeza went to the police station to enquire about the persons held, but he was not allowed to see them.

(d) On 27 April 1980, at about 9 p.m., the Executive Secretary of the Missio Foundation parked her car, belonging to the Archbishopric of Santiago, near her home in the población "Remodelación Américo Vespucio", in the Conchalí commune. Three hours later, she found that the front and rear windows of the vehicle had been smashed, the seats slashed with a cutting instrument, and that there was some burnt paper in the fuel tank. Nearby was a car with three suspicious-looking individuals inside. On 30 April 1980, in the same población, Guillermo Pelayo Rojas and Vincente Graile Riveros, employees of the Missio Foundation, were arrested by a group of carabineros. They were taken to the local police station and later to secret CNI premises, where they were subjected to severe ill-treatment: kicks and punches and the application of electric current to different parts of the body.

(e) On 1 May 1980, on returning from a public meeting held in a trade union building, Mgr. Enrique Alvear, Auxiliary Bishop of Santiago, and Vicars Miguel Ortega, Alfonso Baeza and Bristián Precht were arrested on the street by persons in plain clothes. They were made to stand against a wall with their arms raised, while their car was searched. The same day, Miguel Ortega, Vicar of the Pastoral Service for Youth, went to the San Miguel police station, at the request of their families, to find out what had happened to two young people who had been arrested that same day. On leaving the police station, the Vicar, who was accompanied by other persons, was stopped and asked to identify himself. His papers and books were inspected, while he was made to go back into the police station. There he was subjected to insolent treatment.

(f) On 1 May 1980, three seminarists of the Congregation of the Fathers of the Assumption were arrested, together with two nuns, when they were leaving a trade union building in which an event to mark May Day had been held. After being treated in a humiliating fashion, the nuns were released, but the seminarists were taken to the First Carabineros Station, where they remained for five days before being transferred for three months to various parts of the country, by order of the Minister of the Interior.

(g) The Church of the Immaculate Conception at La Granja was kept under surveillance by carabineros during the religious service held on 1 May 1980. On 5 May, while a meeting for marriage and baptism guidance was taking place, a group of heavily-armed carabineros burst into the building and asked about the purpose of the meeting. On 7 May, groups of carabineros came to the Church to request details concerning the parish priest's private life. On 8 May, a seminarist was intercepted, on leaving the Church, by a plainclothesman who checked his identity and questioned him about what was happening in the Church.

(h) On 5 May, after 9 p.m., the meeting hall of the Tránsito de San José Church, Renca, was searched by two carabineros who had forced their way in. At the time, a young people's meeting was in progress, in connection with providing assistance to secondary school pupils by organizing pre-university courses. All the participants had to identify themselves and were searched.

(i) On 6 May 1980, eight heavily-armed civilians arrived in two large cars at the headquarters of the FOLICO (Training of Workers' Christian Leaders) Institute, which is under the jurisdiction of the South Zone Vicaría. Without producing any warrant issued by a competent authority and without the slightest explanation, they searched the various offices in the building and asked to see the directors of the Institute, as well as other persons. On being asked who they were, they replied that "they had been sent by the Pope".

(j) On 8 May 1980, four carabineros arrived at the San Gabriel Church in Pudahuel South, Santiago, and inquired about the times of meetings held there. The same day, at 9 p.m., an unknown person turned up at a hall where several people were meeting; on being asked why he was there, he replied that he wanted to register a birth. However, when it came to it, he refused to do so.

(k) On 8 May 1980, at 10 p.m., a group of carabineros entered the grounds of the San Luis Beltrán Church in Pudahuel South and inspected the yards and gardens.

(l) On 9 May 1980, two carabineros presented themselves at the building of the West Zone Vicaría, demanding the names and addresses of the parish priests and the local church staff.

(m) In May, the following churches were visited by carabineros: María Mediadora; Nuestra Señora de la Victoria; Nuestra Señora Reina de los Apostoles; Sagrado Corazón de Jesús; San José Obrero; San Juan Bautista; San Martín de Porras; Santa Madre de Dios; Talagante; and Nuestra Señora del Rosario de Fátima. The homes of priests and laymen assisting in church activities in various places were likewise visited. In every case, the carabineros requested the full name, nationality, identity card number, age and address of the priests, year of arrival in Chile of foreign monks and duration of their stay in the district. They also inquired about the times and duration of



masses and the activities of church groups. They said they wanted to bring the personal files of the monks up to date, with a view to their protection, as CNI had been informed of the possibility of acts of violence.

(n) On 26 May 1980, the Archbishopric of Santiago issued the following statement:

"On Thursday last, at 8.30 a.m., at the start of work in the various offices and departments of the Archbishopric of Santiago located in Calle Erasmo Escala, No.1822, fifth and sixth floors, it was noted that:

- (i) Unknown persons had surreptitiously broken into the offices on the fifth floor;
- (ii) Once inside, they had searched files and records."

In its issue of 28 May 1980, the newspaper El Mercurio reported that the said unknown persons had searched the Office for the Administration of Property, leaving the filing cabinets in disarray and had opened the lower part of the safe and examined the documents inside, upsetting everything. The papers in the Audit and Treasury Office of the Archbishopric and in the offices of Cardinal Silva Henríquez and Caritas Chile had been similarly searched. Mgr. Juan de Castro, Vicar-General of Santiago and of the Vicaría de la Solidaridad, declared:

"We do not know who is responsible ... but it is very suspicious that these investigators are so knowledgeable, for they appear to be interested only in the files. Moreover, all they took was the passport and residence permit of a priest who holds a responsible position conferred on him by the Chilean bishops. This 'investigation' is not the first of its kind; to our knowledge, there have already been two similar ones at the headquarters of the Bishopric of Talca, in the offices of the Catholic cemetery chaplaincy and at the Church of San Alfonso, Santiago". 95/

The doors of several apartments in the building were forced open, but nothing of value was taken.

(o) On 1 July, shots were fired from a car at the West Zone Vicaría of the Archbishopric of Santiago. The front of the building bears the traces of 18 bullets. The Vicar, Mgr. Enrique Alvear, said that "the unknown persons, after firing at the two buildings, hurled an explosive device at the house of the priest, Father Julio Vargas". 96/ The Church of Santa Clara was also peppered with submachine gun fire from a car on 5 July 1980. The perpetrators of the attack also placed two explosive devices outside the Church. 97/

---

95/ Solidaridad, No. 93, May 1980.

96/ El Mercurio, 2 July 1980.

97/ El Mercurio, 6 July 1980.

132. Cardinal Raúl Silva Henríquez has received threats against his life from a "Comando Roger Vergara". In an interview with journalists, the following statement by the Cardinal was read out:

"It is my duty to bring it to public knowledge that, following the tragic death of a distinguished Army officer, Colonel Roger Vergara Campos, whose murder we have condemned as a senseless crime and an aberrant and futile act of violence, numerous anonymous threats have been made against the person and life of high officials of the Church of Santiago.

The seriousness of these threats and of the possibility of their being carried out will not escape anyone. The hatred apparent in such acts, their irrationality and the chaos they are calculated to create bring to mind something we have already said before, and which today acquires new force: we must eliminate hatred, before hatred poisons and kills the soul of our native Chile." 98/

133. The events of July 1980 clearly show that the attacks on the Catholic Church are a consequence of its defence of human rights. On 27 July, just as a meeting with leaders of the poblaciones 99/ was about to begin in the South Zone Vicaría of the Archbishopric of Santiago, carabineros surrounded the building, cut the telephone lines and prevented anyone from entering. A carabineros commander told journalists that the men under his command were merely guarding the sector and that the operation had been ordered by CNI, which wished to arrest one of the leaders who was inside the Vicaría. 100/ On 28 July, the Department of Public Information of the Archbishopric of Santiago issued a statement announcing the arrest of Juan Alejandro Rojas Martínez, by order of the Minister of the Interior. It explained that he had been arrested by CNI when he was in the Vicaría attending a meeting with representatives of the Vicar of the Zone, with a view to finding solutions to the problem of families who had sought refuge in the chapel of the La Bandera district. The statement added:

"Although the order produced apparently meets the legal requirements established by the Government itself, the Church, from the moral perspective incumbent upon it, once again denounces the injustice of a situation which removes a detainee from the protective jurisdiction of the courts, leaving him exposed to the acts of agents whose identity is not known, who keep him in detention in a secret place and who all too often subject him to interrogations, accompanied by coercion which is morally and legally unacceptable. Such a situation is all the more serious now that these detentions may be extended for up to 20 days." 101/

---

98/ Hoy, 23-29 July 1980.

99/ Poor districts of Santiago.

100/ El Mercurio, 28 July 1980.

101/ El Mercurio, 29 July 1980. See chapter I, section B.2, for the text of Decree-Law No. 3,451, to which this statement refers.

184. The Government, on its side, issued a communiqué in which it accused the person concerned, Juan Alejandro Rojas Martínez, of being an extremist and deputy chief of the workers' section of MIR for the Southern Zone. It undertook to prove this to the courts, explaining that it was exercising the powers conferred on it in a state of emergency to the extent that the public interest demanded. 102/ Pending submission of this proof to the judges, Mr. Rojas Martínez would remain in a secret place in the hands of CNI. The events which gave rise to this situation are clearly explained in a statement by the Auxiliary Bishop of Santiago and Vicar of the Southern Zone, Manuel Camilo Vial, which reads as follows:

"In view of the events of the morning of 22 July 1980, I should like to inform public opinion as follows: (1) Yesterday, a plot of land was occupied in the La Bandera sector of the La Granja commune, where some 250 families belonging to various housing committees in the sector had foregathered, distressed by the dreadful situation in which they have been living for so long now, being deprived of the barest necessities for leading a decent family life. (2) According to the statements of those concerned, the area was cleared with exceptional violence, a large number of persons being arrested and taken to the Thirteenth Police Station of La Granja. Also, some 300 persons, mostly women and children, took refuge in a nearby Catholic chapel. (3) According to conversations with those concerned, the reasons for occupying the land were as follows: (a) exasperation at the repeated failure of their efforts to find a just solution to their housing problem; (b) lack of authorities for dealing with their problems with any chance of success. (4) Their demands, to which the Vicar subscribes, are as follows: (a) to get a competent Government authority to come to the spot and ascertain all the circumstances of their distressing situation; (b) to be assured of a rapid solution to their urgent problems; (c) the release of all those arrested in the course of this affair, without being subjected to reprisals. (5) Our Church sympathizes with the problem of the homeless. For this reason, it appeals to all Christians, in this year of the Eucharistic Congress, to see that all these brothers of ours are assured, as quickly as possible, of a home where they can live in dignity as sons of God, and aspire to the proper family life to which they are fully entitled."

185. The Government issued a statement in reply to the one by the Department of Public Information of the Archbishopric of 28 July 1980 (see para. 183 above), warning those responsible and the authors of the statement from the Archbishopric that nothing will induce it to deviate from its policy of combating terrorism and subversion by every means available to it under the law and that it will not give way to anyone who questions the lawfulness of the legislation promulgated by the Government. To challenge that legislation "would imply de facto complicity with violence". 103/

186. The Government of Chile, through its statements and with the help of the greater part of the press, treats on the same footing actions which have entirely different characteristics. It is not possible to equate terrorist crimes, such as the murder of Colonel Roger Vergara or the young man José Eduardo Jara, 104/

102/ El Mercurio, 30 July 1980.

103/ El Mercurio, 30 July 1980.

104/ See section C of this chapter.

with activities which are aimed at securing recognition of a right and which, moreover, are conducted peacefully and do not harm anyone. Nor is it possible to describe as complicity with terrorism the attitude of those who regard as arbitrary the laws enacted by an authority which has appropriated to itself legislative and constitutional powers, since those laws affect fundamental human rights and violate the international instruments to which Chile has acceded.

187. All this goes to show that the State security agencies are engaging in an intensive persecution campaign against the Church. In some instances, interference in Church affairs, and persecutions, are the doing of "unknown persons". It is also "unknown persons" who commit certain acts of vandalism, such as the destruction of the windows in the mausoleum containing the mortal remains of the mother of Cardinal Silva Henríquez (destruction accompanied by acts which demonstrated the harmful intention of those responsible). 105/

188. The detentions, interrogations, destruction of property, harassment and persecution to which persons exercising activities connected with Church life or Church-sponsored programmes are subjected, have also been frequent in this period. Numerous persons have been arrested on account of activities to promote the social good, accused of subversion and even terrorism. In this connection, the Special Rapporteur has observed that the press and other information media often repeat such information. Occasionally they quote official sources and, sometimes, unidentified sources. In this way, they help to create the impression that the Church has a hand in acts of violence. The news thus published is not rectified in any way when the courts or other authorities have demonstrated the falseness of the accusations. For instance, when 13 persons were arrested in May 1980 at Molina and Santu , the press claimed that they belonged to a terrorist cell of MAPU (a political group whose activities, like those of all political parties, are banned under legislation promulgated by the Military Junta). It was claimed that a priest from the Netherlands, Father Teodore Konberg, who exercised his ministry among peasants of the region, had taken part in their actions. But at that time he had left Chile to return to his native land, for personal reasons. The press tried to make out that there was something scandalous about his departure and that he had left the country secretly. The Church authorities declared that, on the contrary, Father Konberg had left by plane, using his passport and without the least difficulty. 106/ The local ecclesiastical authorities were not subsequently notified of any legal proceedings or charge being brought against the priest. 107/

189. Another example, equally serious, concerns the accusations made by the press against the Church some days before 1 May, after the death of the carabiniere Humberto Novoa Escobar. The information media announced the arrest of seven members of the cell which had committed the crime. 108/ They also announced that the Vicar a de la Solidaridad had undertaken to defend the murderers and stated that the applications for amparo submitted "had no purpose other than to hinder the investigation and hide the presumed culprits behind a smoke screen." 109/

---

105/ El Mercurio, 28 May 1980.

106/ Hoy, 21-27 May 1980.

107/ Solidaridad, No. 93, May 1980.

108/ El Cronista, 29 April 1980.

109/ El Cronista, 30 April 1980.

"Radio Nacional", in its 1 p.m. news programme of 23 April, announced that the carabinero's murderers had the support of powerful foreign organizations, which financed their activities, and added that "at the same time, a host of lawyers acting on behalf of the so-called Vicaría de la Solidaridad are mustering their forces before the courts in order to submit applications for amparo" and that they "dispose of powerful means of propaganda, funds and support from abroad. Furthermore, in order to carry out their political activities, they are hiding behind the respectable façade of the Catholic Church, which they are trying to infiltrate in order to use it for their totalitarian ends."

190. However, the seven persons accused by the press and defended by the Vicaría de la Solidaridad were seven students of agriculture (Verónica Ríos S., María E. Álvarez G., Margarita Leiva P., Pedro Izquierdo H., Rodrigo García M., Rodrigo Fuentes R., and Jorge Fontecilla C.), some of whom were arrested in their homes and others on the street, but none of whom had anything to do with the crime. Accordingly, they were subsequently released and no charge was brought. The press, however, did not publicly retract or apologize for its false accusations.

191. The information media systematically make accusations against arrested persons which subsequently turn out to be libellous (see section H of this chapter), but which serve to justify repressive measures. They adopt the same tactics against the Church and institutions sponsored by or subordinate to it, thereby inhibiting the altruistic action of its members in defence of human rights.

192. In the light of this situation, the Episcopate Standing Committee of the Episcopal Conference of Chile circulated a letter to all Catholics in Chile on 29 May 1980, pointing out, inter alia, the following:

"The recent events at Linares, Talca, Santiago and other places in the country and the systematic campaigns conducted by certain press, radio and television organs against the Church, its institutions and its pastors have convinced us of the presence, in Chile, of persons who have an interest in harming the prestige of the Church, particularly the reputation of certain bishops and priests - not excepting this Standing Committee - by depriving us of our spiritual authority.

These people seize on isolated facts, often false or maliciously distorted. In this way, they try to intimidate us so that we shall cease to defend human dignity and social justice, two values which we cannot renounce since they form an integral part of the Gospel of Jesus.

We are, nevertheless, concerned by the bewilderment of many Catholics of good will who have no source of information other than the said media, while we, for our part, are unable to defend ourselves with the same means.

We are likewise disturbed at the intimidation measures inflicted on Christian communities which, in some cases, do not even dare to hold catechism classes for fear of being accused of engaging in politics.

Our intention in this letter is to warn you not to believe the false and sometimes insidious information which is being put out by some information media.

It would be easier for us to disregard the distress of the poor, to ignore the complaints of those who are ill-treated, and even tortured, and not to trouble ourselves about justice. But if we did so, we would be failing in our duty."

H. Security agencies

193. The Special Rapporteur has already referred to the security agencies in previous reports, because he considers them to be responsible for many of the human rights violations in Chile.

194. He referred, inter alia, to the following typical characteristic features of their conduct:

(a) arrests carried out without a warrant from the competent authority, following which the detainees are held in secret places where they are frequently subjected to ill-treatment, which sometimes leads to deaths;

(b) The growing powers assumed by these agencies, which publicly misinterpret the rules in order to acquire powers to which they are not legally entitled, and their improper use of the mass media for the publication of communiqués in which they attribute serious offences to innocent people; 110/

(c) The increased administrative and operational autonomy granted to such agencies under Decree-Law No. 2882 of 9 November 1979 which, according to a pro-Government newspaper, helps "to protect the secrecy of CNI deliberations" - in other words to shroud their financial operations and repressive activities in secrecy. 111/

195. All these characteristics are on the increase, with the result that the security agencies now have the power to intimidate, harass, arrest, torture and even kill, without other authorities exercising any control over their activities. The Judiciary, which rejects almost all the application for amparo submitted to it, can in no way be considered an obstacle to the growth in their powers. 112/ The Minister of the Interior, who issues warrants for arrests after they have actually been carried out by these agencies, neither regulates nor controls their activities, but merely ratifies them. The communication media, which give extensive coverage to information issued by these agencies, giving it preference over any contradictory information, help to cover up their violations of human rights.

196. The persistence of these activities is described in other sections of this chapter, such as those entitled "Arrests and detentions", "Torture and ill-treatment", "Right to life" and "Persecution and intimidation".

197. In the chapter on arrests and detentions, reference is made to the many arbitrary arrests carried out without a warrant. The security agencies not only carry out arrests which have not been ordered by the competent authorities, they try to justify their activities and conceal the arbitrary nature of such acts by giving the news media false information about their victims so as to portray them as terrorists. In this way they persecute people who hold opinions opposed to those of the Government and at the same time encourage belief in the existence of vast terrorist networks or groups. The real perpetrators of many of these acts are never identified. The news media, which give prominent coverage to

---

110/ See A/34/583, paras. 47-63.

111/ See E/CN.4/1362, paras 85-87

112/ See, this chapter, section I, 2.

official communiqués or unofficial accounts from the security agencies, do not give similar coverage to, or in some cases simply ignore, judicial decisions ordering the release, for lack of evidence, of those unjustly accused.

198. For example, in April 1980, CNI arrested Ricardo Jesús de la Riva and accused him of having taken part in the theft of a Chilean flag from the National History Museum. 113/ The news of this arrest was given extensive coverage in the press, with photographs of the detainee. However, the judge charged him only with possession of socialist political propaganda material.

199. Similarly, seven students of agriculture were accused by the press of murdering the carabinero Heriberto Hernán Novoa Escobar in April 1980. The newspaper El Cronista had a half-page headline stating "Terrorists taken prisoner: Murderous cell captured", 114/ and indicated that one of the detainees was of Uruguayan nationality and that "security officials seized large quantities of subversive material which was hidden in a Zastava van, registration number BD-275...". The names of the students were published in all the papers. However, all seven were released without having been brought before a court.

200. The name of Ramón Angel Ojeda Urzúa also appeared in the press (which indicated that it had received a report from the security agencies) as that of an important leader of the Revolutionary Left Movement (MIR), wanted by the security agencies for his participation in several assaults and attacks. 115/ When he read the news, Mr. Ojeda Urzúa presented himself voluntarily before the military courts 116/ and was granted unconditional release for lack of evidence.

201. Citing CNI as its source, the press reported the arrests of José Hidalgo Zamora, Aldo Bonté Medina, Inés Pizarro Letelier and Rafael Agacino Rojas, in connection with three bank raids. 117/ However, all four people were released without being brought before a court.

202. In April 1980, the security agencies began to step up the number of arrests and, particularly in July, the situation became very tense and violent, similar to the circumstances before 1977. Various events which occurred during those months were, according to official statements, responsible for the increase in repression, both with regard to the number and the seriousness of the acts perpetrated. The murder of a carabinero on the Cerro Santa Lucía on 28 April 1980, 118/ the raid on CNI headquarters on 4 May, 119/ several bank

---

113/ El Mercurio, 12 April, 1980

114/ El Cronista, 29 April 1980

115/ Las Ultimas Noticias, 30 April 1980

116/ A copy of the certificate of voluntary appearance issued by the Office of the Third Military Prosecutor was forwarded to the Special Rapporteur.

117/ La Tercera de la Hora, 17 April 1980

118/ El Mercurio, 29 April 1980

119/ El Mercurio, 5 May 1980

raids 120/ and the murder of Lieutenant-Colonel Roger Vergara, Director of the Army Intelligence School, on 15 July 1980 121/ were among those events. It is not yet known who committed these acts, although all of them have been attributed to extremist opposition elements.

203. Lieutenant-Colonel Vergara was murdered by a group of experienced people with access to exceptionally sophisticated technical materials. The operation was undoubtedly carefully planned. General Humberto Gordon Rubio attributed that act to MIR groups. 122/ President Pinochet said that "those who harbour extremists are accessories and are also guilty when terrorist acts such as the murder of Lieutenant-Colonel Vergara occur". 123/

204. President Pinochet launched a direct attack on the organizations defending human rights, accusing them of being responsible for a "lack of firmness in action" and of trying to "lower our people's morale; and whenever we take action, people appear to defend the extremists and are in fact their accessories". 124/ These statements were obviously intended to justify the strong action taken which exceeded the bounds of the law and the standards for respect of human rights. Other military authorities, however, expressed different views. For example, General Ernesto Baeza, Director of the Police Department, made reference to a large-scale tax fraud in which former members of DINA appeared to be implicated. He attributed the attack to extremists, but refused to hazard a guess as to their political leanings. General Odlanier Mena, Director of CNI, stated that "the attack was not organized in the usual MIR manner". 125/ Both security agency chiefs tendered their resignations a few days later and they were accepted by General Pinochet. 126/

205. The various security agencies were united under one command in accordance with express instructions from President Pinochet, and the Anti-Subversive Commando (Comando Antisubversivo - CAS) was established under the orders of General Humberto Gordon Rubio.

206. On 17 July, the Government issued Decree-Law No. 3,451, referred to in chapter I, section B.2. From then onwards the entire country was plunged into a stage of great tension and violence. Operations were carried out in the city of Santiago with cars and helicopters. Several people were killed and others wounded as a result of the chases which took place following bank raids. The security agencies' versions of the events which led up to these deaths were refuted by some of the relatives of the victims. It was claimed that Santiago Rubilar Salazar was wounded on 28 July (he died later in hospital) in an exchange of gunfire with a group of carabineros. A woman and a child who were said to have been taken hostage by Rubilar in his effort to escape from

---

120/ El Mercurio, 12 April and 29 July 1980.

121/ El Mercurio, 16 August 1980.

122/ El Mercurio, 19 July 1980.

123/ El Mercurio, 17 July 1980.

124/ Ibid.

125/ Las Ultimas Noticias, 24 July 1980.

126/ Las Ultimas Noticias, 24 July 1980, and El Mercurio, 12 August 1980



a police cordon, were wounded. However, Santiago Rubilar's family submitted an application for amparo to the Court of Appeal which indicated that he had been arrested on 26 July. Other persons who were injured and hospitalized were also found not to have been involved in these raids. A young man of 25 was mortally wounded during operations following the raids and his body was taken to the Institute of Forensic Medicine. 127/

207. Many arrests and police raids were carried out. For instance, a house was raided in the commune of Nuñea on 16 July 1980 and 20 people were arrested. According to the press, "the raid was carried out in the course of the investigations into the whereabouts of those responsible for Colonel Roger Vergara's murder". 128/ General Humberto Gordon Rubio reported that various weapons, explosives and newspaper articles and a powerful transmitter had been found in the place. 129/ All the newspapers reported on the weapons found in the house which they referred to as an "MIR hideout". 130/ It was also claimed that the police raid had enabled the authorities to dismantle an important extremist cell. 131/ Of the 20 persons arrested, 19 were released two days later for lack of evidence, which disproved the report that an extremist cell was involved. The owners of the house were among the persons concerned, which belied General Gordon Rubio's reference to the "arsenal" said to have been found in the building. If either of those two statements had been confirmed, the judge would have changed the detainees under current Chilean legislation. All these people were removed from the house and transferred blindfolded to a secret place. There they heard and saw one of the people who happened to be in the house, Mr. José Miguel Benado, being tortured. He was held incommunicado for 15 days, after which time he was placed at the disposal of the Office of the Third Military Prosecutor and charged with having returned clandestinely to the country and with possession of arms (only a pistol was acknowledged by the accused to be his property). The fact that he was not placed at the disposal of the Office of the Special Prosecutor in charge of the investigation into the murder of Lieutenant-Colonel Roger Vergara indicates that he was not implicated in that investigation. Nor was Benado accused of offences against state security, because if he had been, he would have been brought before an Appeal Court judge.

208. False accusations were also made with regard to the detention of Mr. Juan Alejandro Rojas Martínez. He was in the South Zone Vicaria offices on 27 July 1980 to attend a meeting with representatives of the Vicar of the Zone when people came to arrest him. The Vicar refused to allow them to detain him without a warrant from the competent authority and so they had to come back on the following day with a search and arrest warrant. On 28 July, CNI released a communiqué stating that Rojas had taken refuge on premises on the Vicaria and that his action "would appear to be closely linked to the bank raids carried out

---

127/ El Mercurio, 31 July 1980.

128/ La Nación, 17 July 1980.

129/ El Mercurio, 19 July 1980.

130/ La Nación, 17 July 1980.

131/ Las Ultimas Noticias, 17 July 1980.

today". This statement contradicted that of the Department of Public Information of the Archbishopric, which clearly stated the reasons for the presence of the detainee. 132/ Furthermore, it seems improbable that Rojas would have taken refuge the day before the bank raid in which he was said to be involved.

209. Various arrests which occurred during the month of July, following the promulgation of Decree-Law No. 3,451, were carried out like kidnappings. Officials from one of the security agencies kidnapped several people to interrogate them, tortured some of them and caused the death of a young man. 133/ President Pinochet stated that the security services had nothing to do with these kidnappings, 134/ but later it was established that Police Department personnel had been involved in them. 135/ Furthermore, people detained by CNI and other CAS bodies disappeared for several days before their whereabouts were discovered. 136/ These combined kidnappings carried out by security agency officers and groups which are supposedly uncontrolled but are nonetheless identified and even tolerated to a certain extent, make the situation extremely complex and allow the Chilean authorities to make sweeping and altogether unfounded accusations.

210. Many people in no way involved in terrorist activities have been killed, tortured and detained ostensibly as a result of the authorities pursuit of terrorist groups. In fact, terrorism has merely served as a pretext to unleash persecution upon people who are opposed to Government policy or who advocate greater respect for human rights. No light was thrown on any of the terrorist acts, nor were their perpetrators identified. 137/

---

132/ See section G above, "Persecution of the Catholic Church".

133/ See section C above, "Kidnappings".

134/ El Mercurio, 6 August 1980.

135/ El Mercurio, 12 August 1980.

136/ El Mercurio, 9 August 1980

137/ General Baeza, former Director of the Police Department, was questioned by journalists on the reasons for the failure to solve the murder of two carabineros, the bank raids and the murder of the Director of the Army Intelligence School. The journalists asked him for his views on the possible relationship between that crime and the people who had threatened Police Department officials because a large-scale tax fraud was being investigated in which it appeared that former DINA officials were involved (El Mercurio, 18 and 20 July 1980). The fact that Colonel Vergara's murderers had not taken precautions to cover their faces and hide their features is also striking (El Mercurio, 19 July 1980).

211. Despite the fact that "in reality, there have not been so many acts", of terrorism, as General Humberto Gordon Rubio said 138/ these acts served to justify the new repressive legislation, particularly Decree-Law No. 3,451 of 16 July 1980, which extended the period during which a person could be held at the disposal of the President of the Republic from five to 20 days (for the text of the Decree-Law, see chapter I, section B.2). Decree-Law No. 1,877 of 1977 gave the President the right to detain people during the state of emergency for five days without placing them at the disposal of the courts (see A/33/331, paras. 80-87).

212. The Special Rapporteur referred in previous reports to arrests carried out by CNI and other security agencies without a warrant from the competent authority (see A/34/583, paras. 50-58 and 98-109). According to General Mena, former CNI Director, CNI was entitled to carry out arrests under Decree-Laws Nos. 1,009 and 1,877, in connection with Decree-Law No. 1,878 and Supreme Decree No. 187. 139/ In fact, none of those provisions expressly authorizes CNI to carry out arrests, and that power cannot be understood to have been tacitly granted. Article 1, paragraph 6 (b) of Constitutional Act No. 3 of September 1976, which states: "No one shall be arrested or detained except by order of a public officer expressly empowered thereto by law", does not permit such an interpretation.

213. In view of the security agencies' illegal exercise of the right to carry out arrests, which is tolerated in practice by the Judiciary (see this chapter, section I), the extension of the powers of the President of the Republic provides the security agencies with a new instrument for action and intimidation. The new rule will enable these agencies to hold people in secret places for 20 days without bringing them before a judge. In addition to affecting basic human rights, as has been noted in the preceding chapter, this increases the security agencies' powers still further. Henceforth it will be sufficient for them to claim that they are investigating offences against State security which have resulted in death, injury or kidnapping, in order to keep persons deprived of their freedom. And as stated above, the security agencies do not hesitate to invoke such grounds or accuse the persons they detain, for reasons other than those stated of serious crimes. It is appropriate to ask whether, in adopting this new provision granting further powers, the Executive Power is not trying to retard consideration of the substance of the case by a judge who might decide to grant the prisoner provisional release; such a decision would prevent various kinds of harassment or torture from being carried out on the detainee.

214. In addition to the statements in the sections on arrests, torture, the right to life and persecution, numerous complaints of abuse of power by the security agencies have been received during recent months. These abuses are not always politically motivated, but are sometimes simply the result of the arbitrary attitude of some officers, who are lacking in humanitarian sensitivity and are assured of impunity. In general, the victims are the weakest and humblest of people. As seen in section D of this chapter, these abuses have even involved the use of firearms which has resulted in several deaths.

---

138/ El Mercurio, 19 July 1980

139/ Review Ercilla, 11 April 1979

215. Among the complaints received, the following may be cited:

(a) Mr. Crescente Tomás Basalto, an epileptic, was arrested on 4 April 1980 by carabineros of the Tomás Pereira police station and was severely beaten on their premises. Three hours later he was released and had to go to the San Juan de Dios hospital where he was admitted to the intensive care unit. On 14 April, a complaint for grievous bodily harm was lodged against the officers responsible.

(b) On 23 March 1980, Juan Carlos Castillo Vera came to the aid of his brother, who was being brutally beaten by carabineros in a restaurant. Although he had not openly confronted the officers, a few hours later eight van-loads of carabineros armed with sub machine guns arrived at his home to arrest him without a warrant. They were unusually violent and beat the women in the house, one of whom was pregnant. At the local Carlos Valdovino Carabineros station, the victim was beaten and accused of attacking the carabineros. Upon his release by order of the Military Prosecutor, before whom the charge was brought, he had to be hospitalized. Mr. Castillo Vera lodged a complaint against his aggressors.

216. These complaints, like those referred to in other sections of this chapter, indicate that the growing powers of the security agencies are only accentuating the insecurity of the Chilean population.

## I. The Judiciary

### A. Protection of human rights

217. In his report to the General Assembly at its thirty-fourth session, the Special Rapporteur reproduced part of a report from the Chilean Government in connection with resolution 7 (XXVII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/430/Add.1) 140/ In the latter report it was stated that in accordance with article 306 of the Code of Criminal Procedure, the remedy of amparo could be used when the order for detention or imprisonment: "(1) is issued by an authority that is not empowered to carry out arrests; (2) is issued outside the cases for which the law provides; (3) is issued in violation of any of the formalities specified in the Code; or (4) has been given without grounds or justification". The report added that the remedy of amparo could also be applied for any delay in taking the statements of the accused (which should be done within the 24 hours following the time at which he was placed at the disposal of the judge), and that the reports requested by the courts should be sent within a reasonable period of time and, if such a period was exceeded, the courts could take the appropriate steps to obtain such reports immediately or might dispense with them for the purpose of taking a decision. The report also indicated that the judge could order the detainee to appear before him (article 309 of the Code of Criminal Procedure) or could go to the place in which he was held (article 310 of the Code of Criminal Procedure).

---

140/ See A/34/583, para. 65.

218. It has been pointed out in several earlier reports that the Chilean Judiciary was not applying the provisions in force with regard to the protection of the rights of persons against whom proceedings were instituted on political grounds. The annual statement submitted by the Vicaría de la Solidaridad to the Supreme Court at the beginning of the judicial year has again drawn attention to that point (see A/33/331, paras. 192-194 and annex XXIV, and A/34/583, para.66). In its statement submitted in May 1980, the Vicaría de la Solidaridad again notes the failure to protect human rights as required by the legislation in force, and gives many specific and conclusive examples of the conduct of the judicial authorities.

219. According to the above-mentioned report by the Chilean Government, the remedy of amparo may be used when the order for detention or imprisonment is issued by an authority that is not empowered to carry out arrests. However, the Vicaría de la Solidaridad affirms in its statement that arrests made by officials without warrants are numerous and it cites several carried out in 1979 by ONI agents, carabineros, a regional intendant, the governor of a province and the Minister of the Interior. The Vicaría states that, in all cases, the lawyers of those who had applied for amparo had pointed out this irregularity to the judges and requested that they put an end to such irregularities. However, protection was denied, although rights were unquestionably being violated and the evidence was based on official reports. This violation of human rights, which is contrary to Chilean legislation, has just been partially ratified by the Government through promulgation of Decree-Law No. 3,168 of 20 January 1980, which authorizes the Minister of the Interior to make arrests during the state of emergency (see chap. I, sect. B.1). This year several mass arrests, made on 7 and 8 March following public demonstrations, were carried out by carabineros who had not obtained an order from the competent authorities in advance, but the applications for amparo submitted by the families and lawyers of those detained were found inadmissible. As they have done for several years, the judges decided that an order issued after the event could remedy the unlawful act committed so they not only confirmed the arrests but extended the deprivation of liberty (subsequently, these detentions were converted to enforced residence, under Decree-Law No. 3,168 - see Section A of this chapter).

220. Similarly, applications for amparo were rejected when the detention did not conform to the legislation in force (paragraph 2 of the report of the Chilean Government referred to above). The statement of the Vicaría de la Solidaridad referred to above cites the example of the application for amparo on behalf of Recaredo Valenzuela, Fernando Flores and Andrés Gyarzún (No. 825-79), which was rejected by the Court of Appeal. The Vicaría gives the following account of the facts:

"... The arrest was made by carabineros who informed the court that it had taken place because the subjects of the application for amparo were shouting political anti-Government slogans and they were not at the disposal of the Ministry of the Interior for offences against the State Security Act.

... The illegality of this measure is clearly evident from the police report, not only because it is not an offence to shout political anti-Government slogans (as had already been decided in cases Nos. 9-79 and 10-79 of the Santiago Court of Appeal) and it is certainly not characterized as such in the State Security Act, but also because it was inadmissible that the Minister of the Interior should keep someone at his disposal under that Act. A person could be placed at the disposal of the Minister of the Interior if it was intended to charge that detainee under Article 26 of that Act: however, that was not done in this particular case".

The Vicaría went on to state that it could not be supposed that the arrest had been carried out under Decree-Law No. 1,877 (see A/33/331, paras.80-87), because the Minister of the Interior was not entitled to order arrests before the promulgation of Decree-Law No. 3,168 and the report added that, despite the weighty arguments advanced, both the application for amparo and the subsequent appeal to the Supreme Court were rejected and the latter found that the judges who had dealt with the application had not been in error.

221. This year, the ineffectiveness of legal protection against arbitrary arrest has been evidenced by the case of several students of agriculture who were accused (according to the press) of having participated in the murder of a carabiniero (see section A of this chapter). One of the detainees, Margarita Leiva, is the mother of a child who was then only a few months old and had not been weaned. Separated from his mother, the baby was deprived of his mother's milk, with the ensuing danger to his health and life. In order to protect the child's life, an application was submitted to the Santiago Court of Appeal, which declared that it had no competence in the matter and decided to refer the case to the Court of Appeal of Pedro Aguirre Cerda; this decision had no legal justification, because the child was domiciled in the jurisdiction of the Court of Appeal of Santiago and the whereabouts of his mother, who was detained, were unknown (the authority which ordered the arrest refused to provide that information). The decision concerning the protection requested was thus put off. Margarita Leiva was released, no cause having been shown for her continued detention, before the Court of Appeal of Pedro Aguirre Cerda took a decision on the protection of the life of the child. These dilatory measures are used to avoid taking decisions on the substance of basic human rights questions.

222. The Judiciary's ineffectiveness in protecting life, liberty and security of person is clear from an analysis of the attitude adopted by judges in recent years. So far there has been no notable change during the current year, since the few exceptions could not constitute a new trend towards strict fulfilment of the duties inherent in the judicial function. The basic characteristics of the Judiciary's attitude towards the remedies of amparo and protection are as follows:

(a) Voluntary relinquishment of powers concerning habeas corpus

223. The judiciary has voluntarily relinquished its powers to have detainees brought before it or to go to the place of detention, even in cases where the life or physical integrity of the victim is in imminent danger. Since 11 September 1973, judges have accepted, without objection, the refusal to supply information they request on the whereabouts of detainees (see A/34/583, paras. 58 and 68). In the case of Federico Alvarez Santibáñez, the Military Prosecutor to whom an application for amparo was made refused to go to the place of detention and merely telephoned the office of the legal adviser of CNI. As the General Assembly was informed at its thirty-fourth session, Federico Alvarez Santibáñez died from wounds inflicted during the cruel torture he endured (A/34/583, para. 68). The victim's family requested the Military Court of Appeal to suspend the Military Prosecutor from his functions for four months. The Military Court of Appeal rejected the request and the Supreme Court confirmed its decision, holding that the refusal to protect a persons' life was not subject to a disciplinary penalty. Eight judges of the Supreme Court were of the opinion that the Prosecutor had committed an error and five others approved his action.

However, only three of the judges who censured the official's conduct voted in favour of the penalty and the other five felt that it was not justified. 141/

224. The power of judges to intercede when detainees are held by CNI in secret places is also a legal obligation under article 317 of the Code of Criminal Procedure, which states:

"Anyone who knows that a person is detained in a place other than a house of detention or a prison shall be required to report the fact, on pain of incurring criminal liability, to one of the officials referred to in article 83, who shall immediately transmit the report to the court he deems competent.

Upon receipt of such a report or information acquired in any other manner, the judge shall go immediately to the place in which the person detained or abducted is being held and shall obtain his release. If a lawful ground for detention is claimed to exist, he shall order the person to be brought before him and shall investigate whether the measure in question is among those authorized by the Constitution or the laws in extraordinary or special cases. A detailed record shall be made of all such inquiries in accordance with the normal procedure."

The amendment of this provision under Decree-Law No. 1,775 of 20 May 1977 forbids civil judges to conduct inquiries on military or police premises. Only the military courts can carry out such inquiries, at the request of civil judges. This provision considerably restricts the powers of the judges and prevents the security agencies from being subject to inquiries by non-military judges. 142/ However, military judges also fail to go to such secret premises when civil judges request them to do so. The Special Rapporteur has received a list of 35 cases in which, during the period from March to May 1980, military prosecutors were requested to go to premises where detainees were being held but failed to do so. The prosecutors merely communicated with CNI by telephone to check that the person concerned was being detained by that agency and placed the reply on record. But in no case did they order the detainee to be taken to a public place, with recognized authorities that could assume responsibility for his physical integrity.

225. A new provision (Decree-Law No. 3,434 of 1 July 1980) grants the following persons the privilege of not having to make a statement in court before judges and entitles them to submit a statement in writing: mayors, heads of department, retired generals, high-ranking officers and commissioned officers of the armed forces. This amendment to the Code of Civil Procedure makes it even more difficult to verify the facts concerning alleged human rights violations, since it exempts the chiefs of the security agencies from replying personally to questions. It also exempts retired generals, among them former heads of DINA who are accused of being responsible for disappearances and murders both inside and outside

---

141/ Hoy, 21-27 May 1980.

142/ See A/33/331, para. 205.

Chile. 143/ A written statement makes it difficult for the judges to form an opinion on the sincerity of the statement or to put further questions so as to clarify an evasive or contradictory reply.

(b) Voluntary relinquishment of the right to be immediately and directly informed

226. The Judiciary has voluntarily relinquished the right to demand immediate and direct information from the various agencies which carry out arrests or hold detainees in their power (see A/34/583, para. 67); this delays consideration of the applications unnecessarily, since the information has to be conveyed through the Minister of the Interior, who acts as an intermediary and is frequently badly informed. 144/ Reference should also be made to the Judiciary's tolerance of the disobedience of the security agencies, which do not reply directly to its notes, despite the courts' request to do so, but forward them to the Ministry of the Interior. The Vicaría de la Solidaridad, in its previously mentioned statement, notes that:

---

143/ Until promulgation of this Decree, only the President of the Republic and his Ministers, magistrates and judges, and church dignitaries, including parish priests in their own parishes, were exempted from having to appear in court.

144/ In its statement in May 1980, the Vicaría de la Solidaridad made the following remarks on this matter:

"In our view, there are three factors which contribute to this evident dilatoriness in dealing with applications for amparo. Firstly, the Judiciary does not submit a direct request to the agencies which have carried out the arrests for direct and accurate replies concerning the acts which have motivated the application. Secondly, the court frequently asks for unnecessary information when it has sufficient facts to determine that the case involves arbitrary and unlawful arrest; lastly, the courts do not always use the most rapid means of communication, namely the telephone, but instead use the slowest, i.e. correspondence, which is obviously inconsistent with the letter and spirit of the ruling of 1932. Regarding the first point, it is well known that the Santiago Court of Appeal generally refuses to contact CNI directly to request information on the subjects of the amparo proceedings but instead requests it from the Ministry of the Interior, which in turn applies to CNI for the information. Furthermore, this High Court refuses to impose a deadline for the authorities to provide the information requested of them ... It should be noted that the failure to request a direct report from CNI, acceptance of the fact that the latter does not provide such a report and the failure to impose a deadline on the Ministry of the Interior to ensure a speedy reply has the effect of making the detainees suffer all the effects of the unlawful detention. Moreover, it is obviously pointless asking the Ministry of the Interior for a report on the case of a person held unlawfully by CNI, considering that the Ministry usually has no information on the arrests carried out by that agency. Thus, in the case of the application for amparo (No. 175-179) submitted on behalf of Raúl Delgado Moreno, arrested by CNI on 21 March, the Minister of the Interior reported on 29 March 'that this government department has not issued any order or taken any decision affecting Mr. Delgado Moreno' and finally indicated on 19 April, almost one month after the arrest, that 'the relevant inquiries have established that this person was arrested by CNI'."



"the tacit refusal of the security agencies to answer the ordinary courts' requests for information as to whether a particular individual is actually in detention has become an unusually widespread practice in the recent past. In the application for amparo on behalf of Miguel Angel Salazar Beltrán and other persons (No. 1010-79) submitted to the First Court of Appeal of Santiago, the Minister of the Interior replied to a communication from the court addressed to the Superintendent of the 14th Police District in the capital".

227. Mr. Guillermo Yunge submitted an early application for amparo in which he claimed that he was being persecuted and followed by the security agencies. In March 1980, Mr. Yunge's lawyer appealed against the decision in which the application for amparo was rejected, pointing out, inter alia, that the Court of Appeal "was perfectly well aware that CNI had not provided any information, yet it failed to ask for that information, despite the request made in the application for amparo. It therefore removed any possibility of investigating the facts, solely on the basis of the statement of the Minister of the Interior that he had given no order". 145/ A recent decision by the Supreme Court 146/ could help to prevent this kind of irregularity and enable applications for amparo to be handled more speedily.

---

145/ El Mercurio, 5 March 1980.

146/ The Supreme Court welcomed some of the requests made in the statement of Vicar-General Juan de Castro concerning applications for amparo. The relevant part of its decision is as follows:

"... that a communication be sent to the Courts of Appeal informing them of the need to proceed to a careful study of the facts and the relevant legal provisions before taking a decision on applications for amparo and recommending that, in their consideration of such applications, they request a report, if they deem it useful, not only from the Ministry of the Interior but also from the agencies which appear to be responsible for the detention, provided that the court concerned has not already made a recommendation that is still in force to the effect that such a report should only be requested of the Ministry of the Interior; the relevant Court of Appeal must also take a decision on such applications within 24 hours of a case being ready for a decision, provided that the information obtained enables it to do so". (El Mercurio, 21 June 1980.)

(c) Voluntary relinquishment of jurisdictional control

228. The Judiciary has voluntarily relinquished its right to determine the legality of the situations which arise when violations of human rights are denounced as a result of decisions, orders or reports emanating from the military authorities or from subsidiary organs of the Executive. <sup>147/</sup> The President of the Supreme Court informed the Ad Hoc Working Group in 1978 that the purpose of the remedy of amparo was "to provide a remedy against improper judicial detention, not administrative detention" and that this remedy "was concerned not with inquiring into a person's whereabouts but with providing a remedy for illegal detention" (A/33/331, para. 186). Recently, a former judge of the Supreme Court maintained that it was not possible "as a general rule, to impose on judges a specific type of conduct with regard to the protection of human rights, since the latter are not subject to supervision by the Judiciary". <sup>148/</sup> This position has underlaid, and still underlies, many judgements, including the judgement handed down in the case of the magazine Hoy, in which the Emergency Zone Commander was recognized as having the right to impose a penalty more severe than that provided for by law, on the basis of a general rule (which was not applicable to the case in question since the latter was governed by a specific provision of the same law) conferring upon the military authorities the power to "give whatever orders or instructions they deem necessary for the maintenance of order". <sup>149/</sup> This year the Supreme Court rejected the appeal lodged by the defence and upheld this judgement. <sup>150/</sup>

(d) Lack of objectivity in the consideration of questions affecting human rights

229. An examination of the case records reveals a clear bias in favour of the authorities and agencies responsible for violations of human rights. The refusal to take action on the evidence submitted by complainants and the practice of evaluating the evidence in such a way that the official version

---

<sup>147/</sup> See A/33/331, para 186; E/CN.4/1310, paras 60-62 and A/34/583, para. 66.

<sup>148/</sup> El Mercurio, 26 May 1980.

<sup>149/</sup> Hoy, 17-23 October 1979.

<sup>150/</sup> El Mercurio, 30 January 1980

acquires, in the judgement, a definitive and indisputable value, considerably reduce the chances of enforcing the rights of persons who seek protection or amparo. 151/

230. The situation described above illustrates a common attitude of the Judiciary in Chile, which could basically be described as one of tolerance towards the Executive's efforts to prevent the exercise of any right except as is strictly in conformity with the rules laid down by the military authorities. The Judiciary generally recognizes, uncritically and unreservedly, the exclusive competence of the Executive for human rights in all matters connected with the latter's political and economic plans. It also approves, either by withholding comment or by expressly applying them, the decisions and situations which the Executive imposes by promulgating regulations or through orders, instructions or acts contrary to the constitutional principles in force. Examples of this are the right to make arrests recently granted to the Minister of the Interior (Decree-Law No. 3,168) and the renewal of the state of emergency for seven consecutive years without any legal basis. 152/ The notion that the defence of human rights is not within the competence of the courts, which underlies most of the case law relating to applications for amparo is the same as that which led

---

151/ In the above-mentioned statement by the Vicaría de la Solidaridad, mention is made of the case of two persons who applied to return to Chile and whose applications were rejected because of a report by the Minister of the Interior accusing them of certain acts. The Vicaría specifically observed:

"For the reasons invoked by the administrative authorities to be logically considered as well-founded, the Government should at least prove the facts which it alleges against the person concerned, who has usually not been notified of the prohibition on him or of the reasons on which it is based and is therefore quite unable to defend himself. This is where in practice the Supreme Court has failed to translate the doctrine which it itself laid down into an effective instrument for the protection of the individual: far from requiring the accuser - the Government - to prove the facts which allegedly constitute the offence and which show that the person concerned represents 'a real danger to public order', the Supreme Court has required the accused, the victim of the violation of a fundamental human right, to rebut the charges against him; it is on the basis of this requirement and 'having regard to the fact that the charges against the accused (...) have not been rebutted' that 'the judgement which gave rise to the appeal is confirmed' (application for amparo No. 923-79, First Court of Appeal of Santiago), the accused being thus deprived of the protection which he had sought from the courts. In short, the Executive is required merely to draw up a few unproved charges, whereas the Chilean citizen far away from his country is required to prove that he is not a danger to the State."

152/ See chap.1, sect. B.

the Supreme Court to refrain from reviewing the abuses committed by the "wartime courts". 153/ Owing to the persistence of this doctrine in recent judgements and to the absence of other official authorities or institutions capable of ensuring the consistent defence of human rights in conformity with the international principles governing the matter, it should be noted that the Chilean people do not have adequate guarantees that these rights will be respected.

2. Investigation of responsibility and punishment  
of those guilty of violations of human rights

231. The Special Rapporteur has followed with particular interest the proceedings in the complaints submitted by the victims or the relatives of persons whose rights to liberty, security, physical integrity and life were held to have been violated.

232. One of the cases which aroused the gravest concern was that of Federico Alvarez Santabáñez, who died on 20 August 1979 after being tortured at a "secret" CII detention centre. 154/ The perpetrators of this homicide by torture have apparently been identified by Judge Alberto Chaigneau del Campo, who was appointed investigating judge to take the initial steps in the investigation. In his report to the Court of Appeal, in which he declared that he lacked jurisdiction, this judge stated that "the facts investigated would constitute the crime of homicide and there is no alternative but to hold the Carabineros officer who arrested him, and the officials of the National Information Agency who interrogated him, responsible as, accomplices, and, as an accessory, the physician who issued a certificate of good health when Alvarez was taken from the agency's premises". 155/ This report was transmitted in September 1979. The case should have been submitted to the military courts, since it fell within their competence by virtue of the participation of military personnel in the offence. On 9 November 1979, Decree-Law No. 2,822, which stipulates, inter alia, that civilian personnel working for CII "will be considered, for jurisdictional and disciplinary purposes, as members of the armed forces" was promulgated. This extension of military discipline ensures the silence of civilians who participate in serious violations of human rights or who have cognizance thereof. 156/

---

153/ On 21 August 1974, the Supreme Court declared that it had no jurisdiction to take a decision on the complaints concerning wartime military courts (A/31/253, para 395); this decision modified previous case law, which tended in the opposite direction and was based on constitutional principles.

154/ See A/34/583, paras. 124-125.

155/ See E/CN.4/1362, para. 66

156/ See E/CN.4/1362, para 88.

233. In the case of Federico Renato Alvarez at least one civilian acted as an accessory, so that the promulgation of the decree-law could help the perpetrators of homicide to escape punishment. Although the culprits have apparently been identified, their names have not yet been made public. Neither have orders been given for them to appear before the courts; the military prosecutor has rejected the application submitted to that effect. The result has been the same in other cases referred to by the Special Rapporteur in previous reports. Specific mention may be made of the case of three schoolteachers, Josefina Angélica de Carmen Rodríguez Córdova, Sonia Orrego Díaz and Luisa Gatica Peña, who were detained at the same time and in the same place as Federico Alvarez Santibáñez and who heard his heart-rending groans. 157/ According to the statement submitted by the Vicaría de la Solidaridad in May 1980, to which reference was made earlier, the persons who interrogated these three women have not yet given evidence and the only measure taken by the prosecutor has been to send repeated requests for information to CNI.

234. The Special Rapporteur also mentioned the death of the following persons: Ricardo Osvaldo Peña Escobar, 16 years old, who died on 21 August 1979 from wounds received at a Carabineros station, and whose mother applied to the courts with a request for an investigation to be opened; 158/ Jorge Alejandro Cabedo Aguilera, who was arrested by the Police Department on 16 November 1979 and who died on 17 November 1979 in "cell No. 1" at the Pedro Aguirre Cerda police station from a "bilateral traumatic sanguineous infiltration of the right side of the neck and of the spinal column, left dorsal" (according to the death certificate); 159/ Ricardo Muñoz Muñoz who, before disappearing (his corpse was discovered at Quilcara in May 1979), had been persecuted and shadowed by persons who acted quite openly without taking any precautions to avoid being seen. 160/ In none of these cases did those responsible answer for the crimes which they committed; they were not even brought to trial. In the case that ended in the death of the young Pedro Andurandegui Sáez, which occurred in a unit of the Police Department on 17 February 1980, the judge rejected his family's petition that two policemen should be brought to trial for aggravated homicide. 161/

235. Also, in the trial that followed the death of Daniel Acuña Sapúlveda, 162/ the conclusions of Mr. Keryna Navia, the investigating judge appointed by the La Serena Court of Appeal, confirmed the statements made by the victim's son and refuted the official versions; the latter were inconsistent and the culprits,

---

157/ See A/34/583, para. 119

158/ See E/CN.4/1362, para. 70, 3

159/ See E/CN.4/1362, para. 70 (1).

160/ See A/34/583, para. 131

161/ El Mercurio, 7 March 1980. For the case of Andurandegui Sáez, see para. 144 above.

162/ See A/34/583, para. 133, and E/CN.4/1362, para 72.

sure of their impunity, made only a crude and imperfect attempt to hide their responsibility (see para. 147). Nevertheless, the investigation was not as thorough as the evidence in the case would have permitted, many contradictions were not elucidated and the responsibility of the culprits was not explicitly established, since they were neither charged nor tried for homicide.

236. The military prosecutors have no hesitation in charging civilians detained by the security agencies and bringing them before the courts on the strength of statements made by those agencies. However, they never bring before the courts the perpetrators of arrests or interrogations, even where there is abundant evidence of the tortures and homicides denounced. The proceedings are unnecessarily protracted, measures are ordered which are not followed up as they should be, members of the police and security forces are allowed to fail to appear when witnesses are questioned and examined, and medical examinations to prove that tortures have been committed are ordered only long after all trace of them has disappeared. 163/

237. The Special Rapporteur has followed with interest the proceedings in which the security agencies have been accused of crimes such as torture or homicide. He has requested copies of the dossiers and has studied them and compared them with articles published in the press. He has thus been able to verify that so far none of the persons denounced before the courts by victims or their relatives as the perpetrators of torture or homicide against political detainees has been sentenced. In many cases, such as that of Daniel Acuña Sepúlveda, the evidence accumulated would surely be sufficient to charge the suspects and to bring them before the courts. In other cases, as in that of Federico Alvarez Santibáñez, the culprits have been clearly identified. The results obtained in the investigations made following disappearances are similar. Even if in some cases, as in that of the corpses found in the Lonquén kilns, the carabineros who murdered the peasants have been identified, no punishment has been inflicted on them, since it was considered that they were covered by the amnesty granted under Decree-Law No. 2,191 of 18 April 1978. 164/ The legal arguments advanced against the application of this measure have not been heard. Other investigations into the fate of missing persons have come up against the refusal of the administrative or military authorities to provide information, and some trials have been closed without any positive results being obtained. Sometimes the authorities have stated that they have burnt their own files. It has not even been possible to establish the origin of falsified documents and reports. 165/ The inquiries made by the investigating judges, sometimes with the greatest care, have in some cases made it possible to identify the culprits. Nevertheless, as

---

163/ Some of the persons arrested on 1 May 1979 and subjected to maltreatment at police stations (see A/34/583, para. 113) reported the facts and proved them through statements made by numerous witnesses. The prosecutor ordered medical examinations several months later, when traces of the blows had disappeared and despite the fact that the complainants had declared that no sign of the wounds remained.

164/ See A/33/331, paras. 278-281. and E/CN.4/1363, para 24.

165/ See A/34/583/Add.1, para. 152.

a general rule, the investigating judges have come up against insurmountable obstacles due to lack of co-operation on the part of the authorities. So far not one of the persons guilty of the disappearance of over 600 individuals between 1973 and 1977 has been sentenced for the crimes committed. 166/

238. Attention should also be drawn to two events which occurred during this period, since they affect advocates in the exercise of their profession. The first is the search of a law office which took place on 11 April 1980. Twelve plain-clothes agents burst into the office of the advocates Francisco Justiniano Stewart, Manuel García Velázquez and Ramón Toledo Maldonado. They searched among the books and study papers, destroyed working documents, smeared and pierced holes in the walls and detained several persons up to 9 p.m., including advocates and their clients and the principal leaders of the National Confederation of United Agricultural and Non-Agricultural Workers. These persons were forced to remain standing, handcuffed and blindfolded, for 10 hours without food and were subjected to continual harassment. Furthermore, they were photographed in front of political slogans written on the walls by the policemen, who made them sign statements in which they affirmed that they had been subject to no pressure or maltreatment. The Advocates' Union requested the intervention of the Supreme Court of Justice, the Ministry of Justice and the Bar Association. 167/ The second case is that reported in the complaint filed with the military prosecutor of Santiago by the advocates Gustavo Villalobos, Carlos López and Alvaro García, who were expelled from the offices of the Santiago military prosecutor and were forbidden to establish contact with their clients. 168/

239. The Special Rapporteur recalls that when the Ad Hoc Working Group visited Chile in 1978 the advocates informed it that they were not subject to persecution in the exercise of their profession and he wishes to point out that he had received no complaint of this kind since the beginning of his mandate. He hopes that these events do not mean that the conditions in which the profession of advocate is exercised will be modified in a way which could restrict or hinder lawyers in the performance of their work.

240. The Chilean Judiciary has voluntarily relinquished a series of powers and prerogatives which, under the legislation in force, would permit it to give due protection to human rights. This is reflected in the fact that it makes no objection to the increase in the powers of the military and administrative authorities imposed de facto or by new legislation, as well as by the support given to the activities of those authorities by many officials of the judiciary. Quite a number of them, by delaying the performance of their duties or by refusing to perform them, are actually co-operating in these illegal machinations. Thus all protection of the Chilean people's human rights is becoming ineffective if not non-existent.

---

166/ See chap. III.

167/ Solidaridad, No. 91, April 1980.

168/ Hoy, 21-27 May 1980.

241. Chilean judges fail to react to cases of torture or homicide in which Government officials are accused. A balanced and impartial sense of justice and a feeling for the protection of human beings is essential if there is to be a Judiciary which performs its duties efficiently. When the political pressures exerted on judges are excessive or when judges allow such factors to have a preponderant influence on their decisions, it is impossible to consider the Judiciary as an independent body capable of ensuring, as it should, that human rights are properly respected by everyone and, in particular, by the Executive.



### III. THE QUESTION OF THE FATE OF MISSING PERSONS

242. At its thirty-fourth session the General Assembly took note of the report of the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile (A/34/583/Add.1), who was appointed pursuant to resolution 11 (XXXV) of the Commission on Human Rights. Further information on this question is included in the report submitted by the Expert to the Commission at its thirty-sixth session (E/CN.4/1363).

243. The Expert made a thorough study of the problem in the two above-mentioned reports, which contain detailed analyses of a number of specific cases and information on the various steps taken by the relatives of missing persons, private organizations and, in particular, the Chilean judiciary in the context of investigations to determine the fate of those persons and the responsibility of certain individuals. The reports also contain information on the role played by the Chilean Government in the matter and draw attention to the responsibilities incumbent upon it vis-à-vis the international community on account of the disappearances which have occurred in its territory as a result of the activities of some of its officials.

244. To supplement the Expert's research, the Special Rapporteur will mention the measures recently taken by the judiciary both in the cases of the discovery of corpses and clandestine graves, and in the inquiries made in the case of individuals. He will also refer to the information obtained in these cases and to other recent events which are relevant to the information already given by the Expert on the fate of missing persons.

#### A. Investigations conducted before the Chilean courts

245. As the Expert, Mr. Ermacora, has indicated, the Supreme Court of Chile, dealing with the application made by the Episcopal Vicars for the appointment, by each of the 11 Courts of Appeal in Chile, of a special investigating judge to trace the 651 persons reported in the application to have disappeared, ordered on 21 March 1979 that the Courts of Appeal of Santiago, Rancagua, Chillán, Concepción and Temuco should appoint such judges. When the Expert's initial report was published, the judge appointed by the Santiago Court of Appeal had before him some 105 cases, the Rancagua judge 20, the Temuco judge 27 and the Concepción judge 5 only. The investigating judge of the Chillán Court of Appeal had apparently completed his inquiries into 7 cases. The Concepción Court of Appeal had also appointed, at the urgent request of various officials of the Archbishopric of Concepción, a judge to investigate the disappearance of 20 persons in the Laja area. 1/

246. In the Santiago jurisdictional area applications for investigations were submitted in respect of a total of 416 cases of persons who had disappeared after their arrest. When the Pedro Aguirre Cerda Court of Appeal was instituted, 67 cases were referred to it. Thus the Santiago Court of Appeal would, in principle, be called upon to investigate 349 cases. However, Mr. Servando Jordán, the judge responsible for conducting the investigations, has taken up only 134 of these cases, leaving aside 215. Of these 134 cases he had only 26 outstanding on 31 March 1980,

---

1/ A/34/583/Add.1, para. 38.

since he had ordered proceedings to be stayed in 47 cases (in 21 appeals were still pending and in the other 26 the stay was maintained) and had declared that he had no jurisdiction in 61 cases (of which 21 were before the military courts and 40 were waiting for the decision regarding lack of jurisdiction to be confirmed or quashed by the competent Court of Appeal).

247. Investigations are not always carried out in the same way and do not yield uniform results. Some judges prefer to refrain from investigating and quickly bring the investigation procedures to an end. Others make an effort to perform their duties normally by seeking to determine the fate of some missing persons, but then their work comes up against certain obstacles, as will be seen below.

248. For example, in accordance with the application addressed to the Supreme Court by the Vicario General de Santiago and the Vicario de la Solidaridad on the occasion of the inauguration of the 1980 judicial year, 2/ in which it was requested that an investigation of presumed disappearances should be conducted in the department of Chillán, the Court appointed Boris Acherán investigating judge. The latter began to examine seven cases of disappearances in March 1979 and completed his inquiries on 12 July of the same year. In that time he questioned only those persons who had submitted complaints, noting that they had given him no information on the whereabouts of their relatives; he sent out a few letters and also ordered an investigation which yielded no result, 3/ and for this reason he dismissed the cases. Mr. Aldo Guastavino, another judge who is responsible for an investigation regarding persons who disappeared in November and December 1976 (which he had previously declared closed in January 1977, four days after it had been opened, by virtue of an official report which the complainants had contested and whose falsity has since been demonstrated), is also failing to pursue these inquiries promptly and with the necessary diligence, as is indicated by the information received by the Special Rapporteur.

249. Other investigating judges, on the other hand, are actively pursuing their investigations and are summoning officials or former officials implicated in the arrests or disappearances to give evidence before them. Thus Mr. Servando Jordán has summoned to appear before him former officials of the Directorate of National Intelligence (DINA) and has heard their evidence, thereby obtaining information of great importance. This information has led him, in some cases, to declare that he has no jurisdiction and to transfer the proceedings to the military courts once the participation of armed forces personnel in the disappearances has been proved. In other instances, he has dismissed cases in view of the impossibility of pursuing the investigations. The Vicario General de Santiago and the Vicario de la Solidaridad, in the above-mentioned application, pointed out the difficulties involved in the procedure under which each case is studied separately, whereas the disappearances have elements in common which would make it possible to get closer to the truth. They added that, although Mr. Servando Jordán may have a "notebook"

---

2/ See chapter III, section ... .

3/ In fact, whenever judges have requested the security agencies to investigate the activities of their officials or of their colleagues in other agencies, they have obtained no result. Only high-ranking military officers seem to enjoy any real authority and the power to have their orders or instructions respected in Chile.

in which he records all facts concerning the matter as a whole, the cases turned over to military justice are dissociated from those currently being examined. Thus the necessary unity of investigation no longer exists, since cases of disappearances must be examined in a uniform context covering the violations of human rights committed between 1973 and 1977.

250. In his application, Monsignor Juan de Castro, the Vicario General, draws attention to certain facts and evidence whose importance is undeniable for determining the fate of the missing persons but which have not been taken into consideration by the judges. For example, it is not known whether the necessary investigations to identify the corpses found at Cuesta de Chada have in fact been conducted. On the other hand, it is well known that nothing has been done to identify the corpses which were discovered in plot No. 29 at Santiago General Cemetery and whose presence was marked by crosses bearing the inscription "N.N.". 4/

251. The applications submitted to the Supreme Court by Monsignor Juan de Castro include the following which are connected with the inquiries being conducted by the investigating judges in respect of certain missing persons:

"Request the Chillán Court of Appeal to order Mr. Boris Acharán Blau, the investigating judge, to reopen the investigation of the disappearance of José Salvador Acuña Yáñez, José Remigio Padilla Villouta, Luis Alberto Muñoz Vásquez, Ernesto René Torres Guzmán, Tomás Enrique Ramírez Oreblana, Luis Hernán San Martín Cares and Ricardo Troncoso León, and 'to assume responsibility for the judicial inquiries designed to establish the circumstances of the arrests, the places to which the arrested persons were taken, the places where the arrested persons were or are now illegally detained, and their present situation or what has happened to them', in accordance with the decision issued by the Court of Appeal on 21 March 1979.

"Request Mr. Aldo Guastavino, investigating judge of the First Court of Appeal of Santiago, to make known as soon as possible the present status of case No. 2-77 for which he is responsible and under which he is investigating the disappearance of various persons in November and December 1976, and urge him to proceed with this investigation as expeditiously as possible with a view to determining the precise fate of these persons and their present whereabouts.

"Instruct Mr. Servando Jordán, investigating judge of the First Court of Appeal of Santiago, to take the necessary steps in order to determine in particular: (a) the whereabouts of the admission records for the persons who were detained at the DINA detention centres, in particular at Londres 38, Villa Grimaldi and Cuatro Alamos; (b) whether the facts alleged in the case of the corpses discovered on the banks of the River Maipo in 1976 are accurate.

...

"Instruct Mr. Humberto Espejo Zúñiga, investigating judge of the First Court of Appeal of the department of Pedro Aguirre Cerda, to investigate

---

4/ See E/CN.4/1363, paras. 30-33.

with all due diligence and thoroughness the accusation concerning the mass burial of unidentified corpses in plot No. 29 at Santiago General Cemetery."

252. The Supreme Court decided to address to the Santiago Court of Appeal an official note inviting it to request from Judge Aldo Guastavino and Judge Servando Jordán information on the status of the cases which they were investigating, on which they should report to the Supreme Court. <sup>5/</sup> Consequently, the Supreme Court has not acceded to any of the requests made in application for a prompt and efficient handling of these cases.

#### B. The role of the military courts

253. As far as the attitude of the military courts is concerned, the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile stated that he was concerned about the lack of zeal displayed by these courts in the investigations of disappearances; from this he concluded that the courts might be reluctant to condemn publicly their colleagues in the Chilean national defence institutions. <sup>6/</sup>

254. The procedure before the military courts excludes the participation of the complainant in the trial, so that the trial proceedings remain entirely unknown to the persons concerned until the final decisions are delivered. The intervention of persons wronged by the offences committed or of their close relatives is permitted, but only for very limited purposes.

255. Many cases concerning the fate of missing persons are currently before the military courts because the ordinary court before which the case was initially brought has declared that it has no jurisdiction, having reached the conclusion that the perpetrators of some of the offences against missing persons were military personnel. From the moment when proceedings are transferred to the military courts, relatives lose all control and the investigation is continued in the utmost secrecy. Recognizing the serious consequences of the referral of cases to the military courts, the Santiago Court of Appeal issued a decision in which it declared admissible and recognized appeals lodged by the complainants against decisions of an investigating judge who declared that he lacked jurisdiction and referred proceedings to the military courts. <sup>7/</sup>

256. The military courts sometimes request judges to refer cases to them, thereby interrupting the investigations being conducted by the civil courts. For example, on 18 August 1977 the Minister of the Interior sent to the Court of the Second Military District of Santiago a note stating that, in accordance with a request from DINA, it should ask the criminal court judge investigating the disappearance of Claudio Enrique Contreras Hernández (file No. 91,841 of the Sixth Departmental Court, Santiago) to remove the case from his list and refer it to the military court. A little over a month later the military courts took over the investigation, which they

---

<sup>5/</sup> El Mercurio, 21 June 1980.

<sup>6/</sup> E/CN.4/1363, para. 85.

<sup>7/</sup> El Mercurio, 29 March 1980.

declared completed in March 1978 without having obtained any result. By these machinations, accepted by the judges, DINA succeeded in preventing General Manuel Contreras Sepúlveda, head of DINA and the officer responsible for Villa Grimaldi, from testifying.

257. Continuing his investigations, Judge Jordán requested the military courts, which had been seized of the cases since 1978, to pursue the investigation initiated against General Contreras and 22 members of the security agencies. This request induced the military courts to ask that the relevant files should be communicated to them. This action by the military courts led to an interruption of Judge Jordán's investigation of the above-mentioned cases.

258. As the Special Rapporteur has learned from the copious written and oral testimony communicated to him, military justice, instead of pursuing the investigations, seems rather to make it its duty to discontinue the action taken and to leave the investigations in abeyance. The Special Rapporteur has been apprised of no case in which military justice has continued investigations into the responsibility of military personnel in disappearances.

259. In cases which the civil courts refer to the military courts after declaring that they have no jurisdiction on account of the participation of military personnel in the disappearances, the military courts take no steps to advance the investigation. On the contrary, they hasten to apply the amnesty promulgated in Decree-Law No. 2,191 of 18 April 1978, without having sought to establish in advance what the offences are and who committed them. For example, in the case of the disappearance of Carlos Carrasco Matus, the military court ordered proceedings to be dismissed without having ascertained what had become of the missing person or who had been responsible for the offences which were alleged to have been committed against the victim.

260. Military justice has adopted an attitude which clearly obstructs the continuation of investigations. For example, in the case of the 22 persons who disappeared in the Paine area, the abundant information available would appear to enable those responsible to be identified. One element which could be of importance in the matter is the identification of the corpses discovered at Cuesta de Chada. However, it is not known whether this identification has taken place, because the file is in the hands of the military courts. The Special Rapporteur has learnt from various reliable sources that the examining judge requested the military court, in a letter addressed to the Prosecutor of the First Military District in March 1979, to forward to him the file containing all the documents in the case. On 22 June 1979 he received the following reply from the Commander-in-Chief of the Second Army Division: "Considering that the trial in question took place in accordance with wartime military penal procedure, I have the honour to inform you that it is not possible to act upon your request". The military court made a similar reply when the investigating judge insisted that his application should be acted upon. Neither the military authority nor the military high court gave the legal reasons for their refusal. Likewise, when Mr. Jordán, the investigating judge, requested the court of the Second Military District to send him the file on the proceedings instituted against Newton Morales Saavedra, one of the missing persons, for an offence against the law on weapons control, General Enrique Morel Donoso, the military judge, replied by letter No. 192 of 20 July 1979: "Considering that the trial in question took place in accordance with wartime military penal procedure and in accordance with the

higher instructions in force in the matter, I have the honour to inform you that it is not possible to act upon your request". The legal argument is not valid since any case which has been completed and placed on file ceases to be secret and becomes public. It seems that orders from above are the only decisive arguments, notwithstanding any decisions to the contrary by the judicial authorities.

261. Mr. Ermacora, the Expert, informed the Commission on Human Rights at its thirty-sixth session that the Military Prosecutor, disobeying an order of a military judge, had ordered the burial of the corpses found in the vicinity of Lonquén (identified as being those of 14 persons reported missing) in a common grave in Isla de Maipo cemetery. He also stated that the relatives had submitted complaints against the military judge, charging him with prevarication, falsification of public documentation, illegal burial and contempt, and against the Director of the Institute of Forensic Medicine (who had not obeyed the order to hand over the body of Sergio Adrián Maureira Lillo to his family), charging him with illegal burial, contempt, harassment and abuse of private individuals. 8/ A judicial appeal against the Military Prosecutor was declared admissible by the Military Appeal Court, which admitted that this official had acted in contempt of an order. Nevertheless, the Supreme Court annulled this decision and dismissed the appeal, thus establishing that it approved of the Prosecutor's attitude. What is more, the Prosecutor gave instructions that the words "remains unidentified" should be entered on the death certificates. Monsignor Juan de Castro, in his application to the Supreme Court, requested that the Prosecutor should be instructed to enter the deaths of persons duly identified in the official register of deaths. The Supreme Court did not declare this application admissible because it has not been possible to establish legally the death of these 14 missing persons. 9/ In this case the Supreme Court confirmed the Military Prosecutor's unjustified attitude. This behaviour reflects an inadmissible refusal to allow the relatives of missing persons to give a decent burial to their deceased relatives. The Supreme Court also supported the Prosecutor's refusal to hand over the death certificates of each of the legally identified victims. It should therefore be noted that the behaviour of this military official, far from being a special case, is part of a general trend endorsed by the Chilean authorities.

262. A general analysis of the cases relating to the fate of missing persons in Chile would indicate that events before the courts have taken the following course:

(a) Before the civil courts the investigations have come up against obstacles of all kinds caused by a lack of initiative and determination on the part of judges, by a lack of co-operation and concealment of evidence on the part of the administrative authorities, or by the restrictions imposed by the military organizations. Many cases have been closed following stays or dismissals of proceedings ordered by the civil courts as a result of failure to obtain the necessary information from official bodies.

---

8/ E/CN.4/1363, para. 25.

9/ El Mercurio, 21 June 1980.

(b) In some cases in which judges have proved more vigilant and more conscientious in the exercise of their duties, it has been possible to identify those directly responsible for the events leading to the disappearance or death of the victims. Nevertheless, as the offenders were in all cases members of military organizations or institutions, the civil judges have declared that they lack jurisdiction and have transferred the proceedings to the military courts.

(c) The military courts have in no case advanced the investigations. In general they have merely dismissed cases under Decree-Law No. 2,191 of 18 April 1978, which grants an amnesty to those guilty of offences such as the violation of the right of everyone to life, liberty and security of person.

C. Attitude of the authorities to investigations  
of the disappearance of persons

263. In a letter dated 20 September 1978 addressed to the Chairman of the Ad Hoc Working Group, Mr. Sergio Díez, Permanent Representative of Chile to the United Nations, gave an assurance that his Government was continuing to "make every effort to clear up the outstanding cases" (concerning missing persons), "in particular the cases which have been submitted by the authorities of the Catholic Church through the various bishops ...".

264. With regard to this assurance, it should be pointed out that no co-operation whatsoever has been extended by the authorities in the investigations conducted by judges. Furthermore, the Chilean Government has lent no assistance during the inquiry carried out by the United Nations through the persons appointed for that purpose.

265. As the Expert has pointed out, the Chilean Government has sometimes supplied the United Nations with contradictory or inaccurate information. 10/ The Chilean courts have also come up against difficulties caused by the lack of co-operation on the part of the authorities. Mention may be made, for example, of the refusal of officials of the security agencies to appear before the courts, 11/ the legislative measures enacted by the Government to prevent civilian judges from conducting investigations or making direct inquiries in military camps (Decree-Law No. 1,775 of 20 May 1977), 12/ the evasive or false information supplied by the Ministry of the Interior or other official departments (e.g. that detainees had been released

---

10/ See A/34/583/Add.1, para. 152.

11/ See A/34/583/Add.1, para. 148.

12/ See A/34/583/Add.1, para. 129.

or that they had crossed the frontier of a neighbouring country), 13/ and, in particular, the absolute refusal to supply lists of persons held in prisons or places of detention used by DINA during the years when the disappearances took place. 14/

266. For example, it has been stated that the registers of detainees at the Cuatro Alamos camp were burned for security reasons when DINA was dissolved and that the registers of detainees at Villa Grimaldi were also unavailable, the National Information Agency (CNI) having found the premises empty when it occupied them, without any person in charge and without any document of any kind. 15/ It is, to say the least, curious that such important documents should have been destroyed and that no record or register of detainees indicating where they were confined should have been preserved. The information concerning Villa Grimaldi was supplied on 2 August 1978. 16/ However, on 3 February of the same year the Director of CNI had informed the Prosecutor's Office of the Second Military District that several persons in respect of whom information had been sought had not been detained at Villa Grimaldi in January 1975. 17/ If CNI had found the premises of Villa Grimaldi "unoccupied and containing no document", it would not have been able to supply the information sought by the Military Prosecutor's Office concerning persons detained in 1975. The refusal to hand over these lists constitutes further evidence of the efforts of the Chilean public authorities to conceal the truth.

267. As regards the kidnappings which took place in the Paine area, Humberto Espajo Zúñiga, the investigating judge, declared that he had no jurisdiction on three occasions (December 1979, June 1980 and August 1980); he based his decision on the fact that the effective participation of the San Bernardo Infantry College in the kidnappings was proved, and even mentioned the names of Colonel Leonel Koenig Altermatt and Lieutenant Andrés Magaña Baun. When the authorities of this military college were questioned by the judge investigating the case, they at no time gave any exact or complete information. Sometimes they delayed their reply for a long time. This led to a complaint against Colonel Jorge Dowling Santa María for aiding

---

13/ In the application addressed to the Supreme Court by Monsignor Juan de Castro, mention is made of case 2/77 concerning certain persons detained in November and December 1976, a case which had been closed after four days following statements from official sources that the persons sought had crossed the Argentine frontier. Subsequently relatives were able to verify that the documents submitted had been falsified.

14/ See A/34/583/Add.1, para. 153.

15/ The information that the Cuatro Alamos registers "have been burned for reasons of national security" was supplied by a "higher officer of the army who declined to give his identity" to the military prosecutor, who visited the CNI offices on the instructions of the military court as part of the proceedings in the case relating to the disappearance of Claudio Enrique Contreras Hernández (see A/34/583/Add.1, para. 153).

16/ The Special Rapporteur has received a photocopy of the report of the Ministry of the Interior containing this information, which had been requested by the judge of the Third Departmental Court of Santiago in the case concerning the "presumed" accident of José Santos Hinojosa Arcos.

17/ The Special Rapporteur has received a photocopy of this report.



and abetting the offences being investigated. Later they maintained that they could not transmit information since the relevant archives had been burnt because of their age (October 1973). In the most recent proceedings brought before the judge of the Maipo-Buín Criminal Court, they named Colonel Koenig Altermatt (who died in 1979, having apparently committed suicide) as the author of compromising documents. Thus, when he was questioned concerning a communication (No. 730 of 2 April 1974) reporting the "release" of Juan G. Cuadra Espinoza and Ignacio Santander Alborno (both killed at the Chena prison camp), Colonel Montalba, the signatory of the document, stated "on his word of honour" that he had done no more than transcribe a similar communication from his predecessor, Colonel Koenig. 18/ Lieutenant Andrés Magaña Baun, despite the statements of persons who affirmed that he was present at Paine, has denied having been in that area in a number of statements to the judicial authorities.

268. To recapitulate the many lies, evasive or incomplete replies, refusals to reply or to appear, concealments, contradictions, etc. for which certain officials and certain institutions of the State are responsible would be a very long job. In fact, the competent official institutions and agencies are taking pains to prevent the fate of the missing persons from being clearly established. It could also be supposed that some officials are concealing or denying facts out of fear of reprisals or in compliance with orders from above.

269. The Government has repeatedly informed the relatives of missing persons that they should address their applications to the judiciary. However, judges who are willing to perform their duties in the matter are rarely able to perform them thoroughly, since the institutions subordinate to the Executive Power and, in particular, to the Armed Forces do not communicate to the judges the facts or information available.

270. When the Association of Relatives of Missing Detainees sent directly to the armed forces a letter drawing their attention to their responsibilities in the disappearances and requesting a reply regarding the fate of the detainees, 19/ they replied that the question lay "within the direct competence of the courts of justice". 20/ Given the attitude of various representatives of the armed forces towards the courts, this reply is merely a pretext to prevent the matter from being examined.

---

18/ Communication of 23 June 1980, sheet 76 of the case entered in the roll under No. 25,614-2, concerning the kidnapping of the Altonoy Prado brothers.

19/ Letter dated 27 December 1979 from the Association of Relatives of Missing Detainees addressed to the armed forces.

20/ Letter dated 23 January 1980 from Sergio Moreno Saravia, Acting Secretary of the Fifth Army High Command addressed to Mrs. María Estela Ortíz Rojas.

D. Results obtained in the cases entrusted to investigating judges

271. Mr. Felix Ermacora, the Expert on the Question of the Fate of Missing and Disappeared Persons, informed the General Assembly, at its thirty-fourth session, of the measures taken by the Chilean courts in certain specific cases, including those relating to the discovery of corpses in various places in Chile, in particular in the furnace of an abandoned kiln in the vicinity of Lonquén 21/ and in Yumbel cemetery, where persons had been clandestinely buried. 22/

272. In the course of the inquiries initiated following the discovery of bodies it was established that at Lonquén the victims were a group of peasants who had been arrested in October 1973 by the Carabineros in Isla de Maipo and that at Yumbel they were 19 persons who had been arrested in September 1973 by the Carabineros in Laja.

273. In 1979 further information was obtained on the fate of only 34 missing persons out of the 651 cases submitted to the Supreme Court by the Episcopal Vicars. These 34 persons are listed below: Rodolfo Antonio, Sergio Miguel, Segundo Armando and José Manuel Maureira Muñoz, Sergio Maureira Lillo, Carlos Segundo, Nelson and Oscar Hernández Flores, Omar and Ramón Astudillo Rojas, Enrique Astudillo Alvarez, Miguel Brand Bustamante, Iván Ordoñez Lama, José Herrera Villegas and Manuel Navarro Salinas, who died after their arrest and were buried at Lonquén; Fernando Grandón Gálvez, Jorge Lamana Abarzúa, Rubén Campos Lopez, Juan Carlos Jara Herrera, Raúl Urrea Parada, Luis Ulloa Valentuela, Oscar Sanhueza Contreras, Dagoberto Garfias Gatica, Luis Araneda Reyes, Juan Acuña Concha, Mario Jara Jara, Juan Villarroel Espinoza, Heraldo Muñoz Muñoz, Federico Riquelme Concha, Jorge Zorrilla Rubio, Manuel Becerra Avello, Jack Gutiérrez Rodríguez, Alfonsa Macaya Barrales and Wilson Muñoz Rodríguez, who died after their arrest and were buried at Yumbel.

274. In all the cases indicated it has been reliably established in the judicial file that the persons concerned were arrested by government officials, as had been affirmed by the relatives of the victims and various Chilean organizations and institutions in the applications and statements repeatedly and insistently addressed to the authorities, to the Chilean people and to international organizations. In the case of the bodies found at Lonquén, the officials responsible are carabineros Lautaro Castro Mendoza, Juan José Villegas, Félix Sagredo, Manuel Muñoz, Jacinto Torres, David Coliqueo, José Belmar and Justo Ignacio Romo, and in the case of the bodies discovered at Yumbel, the officials responsible are carabineros Pedro Rodríguez Ceballos, Leoncio Olivares, Marcio Cerda, Juan Oviedo, Pedro Parra, Alberto Fernández Mitchell, Carlos Fritz, Gercio Saavedra, José San Martín and Juan Muñoz.

---

21/ A/34/583/Add.1, paras. 40, 41 and 60-72.

22/ A/34/583/Add.1, paras. 76 and 77.

275. Nevertheless, the courts have not pronounced any sentence against the perpetrators of these very serious crimes; on the contrary, they have granted them the benefit of the amnesty provided for in Decree-Law No. 2,191 of 18 April 1978. Before the application of this decision, the judge had decided to charge the carabineros with the offence of "unnecessary violence" resulting in death. The relatives of the victims appealed against this decision, requesting that the charge should be changed to one of "homicide, kidnapping and falsification of documents", crimes which had all been duly established and proved during the investigation carried out by the investigating judge appointed by the Santiago Court of Appeal. 23/ The charge preferred by the military court shows the extreme indulgence with which judges investigate crimes of this type against the life of persons. The subsequent decision to grant the benefit of the amnesty sheds light on the attitude adopted in the matter by Chilean justice which, instead of seeking to punish these offences, prefers to leave them unpunished. This attitude is in conformity with the position adopted on many occasions by the highest governmental authorities in Chile. 24/ In April 1980 the Supreme Court of Chile rejected the judicial appeal submitted by the relatives of the victims against a decision of the Military Appeal Court in which the latter court confirmed the dismissal of the case concerning those responsible for the Lonquén crime, without deciding upon the charge of "unnecessary violence", which was also the subject of an appeal. The Supreme Court declared that "the final dismissal of this case had the authority of res judicata and terminated the proceedings under article 918 of the Code of Penal Procedure". 25/

276. In many other cases, the evidence available would appear to enable thorough investigations to be conducted and the truth regarding the fate of the missing persons to be ascertained. However, the investigations always encounter difficulties and, even if some precise information is obtained, the investigations can never be conducted thoroughly. As soon as the investigation establishes the participation of military personnel, the investigating judge loses all jurisdiction and has to refer the case to military justice. As has already been stated, no progress is ever made when a case is brought before military justice, since proceedings are dismissed. There has, however, been some progress in the identification of DINA agents whose responsibility had been previously reported and whose testimony has made it possible to establish the truth of the statements made by certain persons who affirm that they saw some of the missing persons in secret detention camps run by that agency. It has also been possible to establish the falsity of the information previously supplied by officials who denied, for example, that Villa Grimaldi and Londres 38 were DINA detention centres. 26/

---

23/ See A/34/583/Add.1, paras. 64-70.

24/ See A/33/331, para. 281, and A/34/583, paras. 161 and 162.

25/ El Mercurio, 16 April 1980.

26/ See E/CN.4/1363, para. 76.

277. Mr. Servando López Jordán, one of the investigating judges, twice summoned the retired General Manuel Contreras, former director of DINA, to testify after he had been accused of having participated in a large number of disappearances. In April 1980 the press published the statements of General Contreras, who acknowledged that Osvaldo Romo and Alejandra Merino Vega were DINA informers. He also stated that it was Romo who had given information leading to the arrest of Miguel Enríquez, one of the missing persons, who had died, he added, in the course of an armed clash. He further stated that Miguel Krasnoff Marchenko, currently a major in the army, was chief of one of the DINA units and therefore had authority to make arrests. 27/ All the persons named above are mentioned in the various cases examined as having taken part in the arrests which preceded the disappearances under investigation.

278. With regard to the statements of General Manuel Contreras, the periodical Hoy, in edition No. 142 of 9-15 April 1980, reported certain discrepancies with other statements made in these cases. The article recalls in the first place the refusal of Contreras to admit that Londres 38 and Villa Grimaldi were DINA detention centres:

"For example, Colonel Marcelo Moren Brito, in the course of evidence given on 19 October last, declares that he was a member of DINA from the end of 1973 to 1977. He said: 'Calle Londres was not a detention centre, but a place of transit where files were compiled on arrested persons ... Villa Grimaldi, like Londres 38, was a place where files on these persons were prepared and where their identity documents were checked for the purposes of analysis by the information services'. Moren was called upon to testify twice, since considerable evidence identified him as the chief of Villa Grimaldi and Londres 38 ('I may have acted as chief on various occasions ... because there was a permanent rotation of information service units'). He was also the subject of a complaint for having possibly been implicated in the case of his cousin Alan Bruce, a detainee reported missing since 1975".

The following passage appears in the same article:

"When General Contreras was asked whether it was true that DINA detainees were registered under a pseudonym, he replied: 'Whatever may have been said about that is incorrect'.

"On this point, Mr. Jordan, the investigating judge, will certainly have to confront him with Gendarmería Lieutenant Orlando Manzo Durand, chief of the Cuatro Alamos camp from 1974 to 1977 (a secret detention centre situated within Tres Alamos). On 25 July last, Manzo testified in another case and stated:

'It is possible that the person in question entered with a false identity card ... It is also possible that DINA knew that the card was false. I am sure that there were, in the camp, detainees under false identities'. 28/

"Summoned to give evidence in another case, Manzo said, on seeing the photograph of the person concerned: 'It is possible that he was there, but sometimes persons arriving were difficult to recognize or may have spent several days in custody in other DINA departments ..., they therefore arrived with beards, haggard faces, long hair, looking sloppy ...'". 29/

279. The evidence of General Manuel Contreras accords with that of Gendarmería Lieutenant Orlando Manzo Durand when he affirms that the records of the detention camp known as Cuatro Alamos are in the hands of CNI and adds that the DINA archives are also in the hands of CNI. The information supplied by the Minister of the Interior on the absence of records at Villa Grimaldi and the information supplied by CNI on the destruction of the Cuatro Alamos records (see section C of this chapter) would therefore appear to be false.

280. Although General Contreras, as former director of DINA, would have been in a position to supply information on the fate of many of the missing persons, the judges refused to make him testify in certain cases where the complainants wanted him to, on the pretext that he could not be summoned. 30/ The statements of General Contreras are vague and do not provide specific information on the missing persons. He refers to the registers and archives which are said to be in the possession of CNI, but this organization denies holding them. The Government declares that the question of the missing detainees has been referred to the courts, but it does not transmit to the judicial authorities the documents needed for the investigations.

281. In the meantime a large number of investigations undertaken by the investigating judges are being discontinued owing to lack of evidence. Nevertheless, some of them have been reopened recently following the discovery of a huge tax-evasion case in which former DINA officials were involved. Some evidence shows that the offenders used for their own illicit operations the names and identity documents of some of the missing persons. For example, in a bogus deed of sale dated 28 December 1979, the vendor was stated to be a non-existent enterprise whose owner was given as Mr. Alvaro Miguel Barria Duque, his identity card number also being stated. However, Mr. Alvaro Miguel Barria Duque is on the list of missing persons submitted by the Episcopal Vicars to the Minister of the Interior in 1978 and is also listed as No. 112 on the list reproduced in the book entitled Dónde estan?

---

28/ General Contreras admitted that Mr. Manzo had been in charge of Cuatro Alamos for some time (El Mercurio, 1 April 1980).

29/ "The Contreras statement", Hoy, 9-15 April 1980.

30/ El Mercurio, 17 April 1980.

published by the Vicaría de la Solidaridad. 31/ Subsequently, further evidence concerning the missing persons was discovered in the tax-evasion case. For this reason Mr. Servando Jordán, the investigating judge, summoned Mr. Eduardo Romero Olmedo, 32/ one of the accused to testify and ordered that information relating to the documents found in the possession of Manuel López Jiménez, one of the persons implicated in the case, should be communicated to him. In Mr. Jiménez's briefcase information was discovered on some of the missing persons whose fate Mr. Servando Jordán is seeking to determine. 33/

282. The behaviour of the Chilean Government, as reflected in the machinations of the ministries and agencies under its authority, merely confirms the conclusions which Mr. Felix Ermacora reached in his report on the Government's responsibility in the disappearance of over 600 persons in Chile, a country where human rights continue to be violated to the detriment of both the missing persons and their relatives.

283. In 34 cases it has been possible to establish the death of the persons concerned and to identify those responsible. In over 600 cases, however, the fate of the victims is still not known, and their relatives continue to suffer the anxiety and uncertainty caused by this situation. In the cases where death has actually been established as a result of the discovery of corpses, the competent official has refused to issue death certificates and, even worse, to permit the relatives to bury the remains of their dear ones. These decisions, together with the absence of any punishment of those responsible, also constitute serious violations of the rights of the relatives of the missing persons.

284. Despite some progress noted in the cases referred to certain judges who actually perform their duties, it is not in fact possible to report any legal procedure which has helped to put an end to these violations of human rights by determining the fate of the missing persons, by identifying and punishing those responsible, and by indemnifying the relatives of the victims in accordance with Chilean legislation and the international instruments and principles applicable to this matter. Furthermore, there is no sign that the Chilean Government is willing to ensure that these crimes do not recur in future. Although there have been no more disappearances in Chile since November 1977, the recent kidnappings followed by torture, and sometimes very severe torture, by groups which have been identified but against which resolute action has not been taken could give rise to similar situations.

---

31/ See A/34/583/Add.1, para. 47.

32/ It seems that there was an office lease between this person and General Manuel Contreras and that he has contractual links with DINA and advisory relations with CNI in the establishment of a number of enterprises (Hoy, 30 June - 5 August 1980).

33/ El Mercurio, 26 July 1980.

#### IV. OTHER CIVIL AND POLITICAL RIGHTS

##### A. The right to reside in, enter and leave the country

285. A number of earlier reports of the Ad Hoc Working Group and the Special Rapporteur have drawn attention to restrictions on the right of Chileans to reside in and freely enter their own country. In particular, mention has been made of the Government's refusal to apply Decree-Law No. 2,191 of 18 April 1978 (granting an amnesty) to Chileans resident outside their country (refugees or persons serving sentences of permanent or temporary exile). 1/ Mention has also been made of legal instruments applied by the Government to prevent Chileans from returning to their country - Decree-Laws No. 81 of 11 October 1973 and No. 604 of 9 August 1974 - and the policy of the authorities on this question. 2/

286. Through the Ministry of the Interior, the Government continues to deny the right to re-enter their country to a considerable number of persons who wish to return. Many Chileans who have tried to return to Chile, believing that they would encounter no obstacle, have been turned back on arrival at Pudahuel Airport. 3/

287. Actions for amparo brought on behalf of persons affected by these measures have invariably been rejected by the courts, which have established the uniform practice of not stating the grounds for rejection and consider as sufficient the reports provided by the Minister of the Interior which generally state that "the return to Chile of the person concerned is not desirable for reasons of State security". A number of recent decisions have upheld this precedent. They include, for example, the decision given by the First Chamber of the Court of Appeal concerning Alberto Navarro, a former trade union leader of the Sole Federation of Workers (CUT), 4/ the decision of the Supreme Court upholding an earlier decision of the Court of Appeal which prohibited the entry of Mrs. Silvia Inés Cornejo Cuevas, a former member of the Central Committee of the Communist Party, 5/ and the decision of the Third Chamber of the Court of Appeal rejecting Mr. Manuel Antonio Jiménez Inostroza's application to enter the country. 6/

---

1/ See A/33/331, para. 426.

2/ See A/33/331, paras. 428-434, E/CN.4/1310, para. 131, and A/34/583, para. 230.

3/ See A/33/331, paras. 435-437.

4/ El Mercurio, 4 January 1980.

5/ El Mercurio, 11 March 1980.

6/ El Mercurio, 11 March 1980.

288. The Minister of the Interior has often brought against persons instituting proceedings for amparo charges which the courts accept as a valid basis for orders refusing these persons entry into the country. The Minister is not required to furnish evidence in support of the charges and no account taken of the evidence which the persons applying for amparo submit in their defence. This was the case with the couple Henry Marie Mignot and María Eugenia Verschaure Soto, who had been in France since October 1973. When they instituted an action for amparo after being refused entry into Chile, the Minister of the Interior informed the courts that, pursuant to the above-mentioned Decree-Law No. 604, they had been refused entry "because they were included as extremists on the national list of dangerous MIR activists", adding that they had left the country after having requested asylum in the Embassy of France. They submitted to the Santiago Court of Appeal documents which disproved the charges of political militancy brought against them and several witnesses confirmed that the charges were false. Moreover, they proved that they had left the country on a courtesy visa issued by the French Embassy and not as refugees. Nonetheless, the Court decided that the decision of the Ministry of the Interior was neither "unlawful nor arbitrary as it is based on the law and on admissible grounds", and it rejected the application for amparo. 7/

289. In this area the Executive exercises entirely discretionary powers. In certain cases it has refused to provide information requested by the courts concerning the grounds for prohibition of entry. When an action for amparo by Mrs. Mireya Baltra Moreno, former Member of Parliament, and her husband Mr. Reinaldo Morales (who had both been refused entry into Chile) came before the Court of Appeal, the Fourth Chamber unanimously decided that, before it heard the case, a note from CNI in which the Minister of the Interior had stated his reasons for refusing to authorize the entry of Mrs. Baltra and Mr. Morales, should be transmitted to it. The Minister in question refused to transmit the note requested, claiming that it was a confidential document. Mrs. Baltra's lawyer pointed out, in an application to the Court that "the argument that the note could not be transmitted because it was confidential" was in contradiction with the fact that the contents of the same note had been made known to the Aliens Department and the International Police and observed that the attitude of the Minister of the Interior, if he persisted in his refusal, would clearly constitute a manoeuvre on the part of the executive to try to prevent the exercise of the action for amparo. 8/ In August 1980, the Supreme Court pronounced its decision on the action for amparo submitted on behalf of these two persons. It stated that Decree-Law No. 1,009 of 1975 provides that offences covered by Decree-Law No. 77 of 8 October 1973 banning political parties and Marxist movements "shall be considered for all legal purposes as offences against the security of the State". It added that the orders refusing these two persons entry into the country were based on the militant communist activities which they undertook "at a time when the Communist Party and Marxist doctrine were not prohibited, whereas today they

---

7/ El Mercurio, 29 March 1980. Solidaridad, No. 91, second fortnight of April 1980.

8/ El Mercurio, 11 April 1980.



are contrary to the established legal order and might fall within the scope of article 9 of the above-mentioned Decree-Law No. 1,009<sup>i</sup>. The Court added in its decision that "consequently, the conduct of Mireya Baltra and her husband Reinaldo Morales, considered in the light of the aforementioned legal provisions, constitute activities injurious to the security of the State and, hence, to national security. If the grounds for the decision are not considered satisfactory by the appellants, they may be subject to any sort of criticism, but that does not mean that they do not exist. Moreover, the position of legal doctrine is that Marxism is incompatible with democracy". 9/

290. As indicated by the Special Rapporteur in his previous reports, the Government has refused to allow persons outside Chile to benefit from Decree-Law No. 2,191 granting amnesty, and its decision has been ratified by the courts. One example of many cases of this type is that of Luis Antonio Fuentealba Medina, a 47-year-old worker, who in 1973 was sentenced by a military court to imprisonment which was later commuted to exile. This sentence would have been completed in June 1981. Having fallen seriously ill, Fuentealba Medina requested authorization to return to his country, as he should have benefited from the amnesty. The Government rejected his request on the grounds that his presence in Chile would constitute a danger to the internal security of the State. The action for amparo on his behalf was rejected by the Court of Appeal, whose decision was later upheld by the Supreme Court. 10/ Similarly, the Supreme Court refused Mrs. Elvira González Pinilla entry into the country for security reasons. She was serving a term of exile following a judgement pronounced against her in 1973 (her lawyer had applied for her to be admitted under the amnesty granted in Decree-Law No. 2,191). 11/

291. Frequently prohibition of entry is based on events prior to the present Government's assumption of power. This is the case, for example, with Mrs. Enriqueta Chaigneau Soto, whom the Government has refused permission to enter Chile, claiming that she had married a member of the Communist Party, that she had been dismissed from her job in the Military Hospital in 1969 for her pro-Marxist activities and that she had been president of an organization which supported the previous Government. Judge Rafael Retamal, one of the members of the Court, cast a dissenting vote but the majority rejected the action for amparo filed by Mrs. Chaigneau Soto. In explanation of his dissenting vote Judge Retamal said that "the grounds for the prohibition are past events" and that they might be attributed to a large number of Chileans who, prior to 11 September 1973, had engaged in similar activities "without their previous acts having been considered by the political authorities as actual and effective attacks against national security". He added that since the order which led to the action for amparo represents the most serious measure against individual freedom that can be adopted

---

9/ El Mercurio, 13 August 1980.

10/ El Mercurio, 19 May 1980.

11/ El Mercurio, 9 August 1980.

in respect of a national exercising his right to return to Chile after he has lawfully left it, the order must be issued only in exceptionally serious cases". 12/

292. Persons applying for authorization to return to their country often find that they are subjected to conditions which might constitute serious violations of the principle enunciated in article 18 of the International Covenant on Civil and Political Rights. In a letter addressed to the Special Rapporteur in June 1980, Mrs. Graciela Alvarez, a lawyer, stated: "In March 1980, I tried to submit to the Chilean Consulate in Caracas a fifth application to return to Chile. Before he would entertain this application, the Chilean Consul in Caracas insisted that I should make a declaration 'recognizing the legality of the established Government'. Naturally, out of respect for my principles, my profession as a lawyer and the integrity and dignity of my conscience, I was not able to accept this condition". In her letter, Mrs. Alvarez adds that there is no legal provision for such a condition and, consequently, it would appear to represent another arbitrary act committed in the general context of violations of the right to return to one's country.

293. A document which the Special Rapporteur has recently received from reliable sources confirms that, in order to assess the degree of political danger which certain persons might represent, the Chilean authorities often take as a criterion the attitude or opinions of the persons concerned prior to September 1973. This document, which is a copy of an official letter addressed by Brigadier-General Enrique Valdés Puga, Acting Minister for Foreign Affairs, to all Chilean diplomatic missions and consulates abroad, 13/ reveals the existence of a list entitled "List of safe-conducts granted to persons benefiting from the right of asylum, refugees and other persons since 11 September 1973" and other complementary circulars. According to this letter, persons whose names are on these lists may not have their passport renewed. They may only submit an application for authorization to return to Chile and this application must be sent to Chile for examination. Consequently, on every person who left Chile after 11 September 1973 by means of a "safe-conduct granted to persons benefiting from the right of asylum, refugees and other persons" weighs a presumption, based on the activities in which he was engaged prior to his departure or on the fact that he left the country by the means referred to, that he is a "dangerous element". This presumption has often proved to be the determining factor in the rejection, through administrative and legal channels, of applications to enter the country.

294. Furthermore, persons who, although not included on the list (known as the "National list"), "campaign against Chile" do not have the right to re-enter the country. In this respect, the document from the Acting Minister for Foreign Affairs states:

---

12/ Solidaridad, No. 84, December 1979.

13/ For the full text of this document see annex I.

"For the purposes of the preceding paragraph, the scope of the term 'campaign against Chile' is hereby defined. The following basic points should be taken into consideration when determining whether a person is engaged in such an activity:

(a) Publicity, i.e. action undertaken through the mass media (radio, television, press, whether regularly or occasionally, or in the form of pamphlets);

(b) Overt participation in gatherings, meetings, assemblies, marches and, generally, any demonstration of a public nature against Chile, and participation or attempted participation in meetings of international bodies or non-governmental bodies (for example, Amnesty International, World Federation of Trade Unions, etc.);

(c) The submission of written or oral information of a negative character to the aforementioned bodies shall also be considered as a hostile campaign. However, simple petitions addressed to United Nations institutions to intervene vis-a-vis the Chilean Government are not considered as part of an anti-Chilean campaign, although the Ministry must be informed of them;

(d) If, exceptionally, there are other circumstances which are of similar gravity to that of the circumstances described above and which, in your opinion, undeniably constitute a campaign against Chile, they must be notified in accordance with the instructions given in paragraph 8 of this circular."

295. The above document shows that the Chilean authorities interpret the term "dangerous element" in a very broad sense. It also shows that any person who has denounced violations of human rights to an international organization would lose his right to enter Chile in the normal way.

296. The term "dangerous element" is so broad and arbitrary that it applies to persons whose age and state of health would lead one to suppose that there is no possibility of their engaging in acts which might endanger State security. They include Rafael Agustín Gumucio, former Senator, 70 years old and suffering from heart trouble, Víctor Contreras Tapia, former Senator, 72 years old, and Mrs. Laura Allende, sister of the former President, Salvador Allende, who is 68 years old, very ill and in hospital. Mrs. Allende has stated that she is prepared to return to Chile and remain in prison until the question whether she has committed any offence has been clarified. The Archbishop of Santiago has approached the Minister of the Interior on her behalf, but his request has been rejected. The Chilean Commission on Human Rights has also requested the authorities to allow these persons to return to Chile and various groups and persons in Chile and abroad have taken similar action. However, the Government has publicly stated, through the Minister of the Interior, that "to grant them this authorization would be to facilitate the resumption of political activity in Chile". 14/ In the same statement, the Minister of the Interior mentioned

Mrs. Mireya Baltra, the former Labour Minister under the Unidad Popular Government, who had requested authorization to return to Chile when her mother was dying. A letter addressed to the Commission on Human Rights by relatives of Mrs. Baltra states that her mother died on 20 February 1980 without her daughter being able to be present during her last moments.

297. According to information from reliable sources, a large number of people have requested authorization to return to Chile but very few have received it. Whereas the Government states that its position on the matter remains unchanged, 15/ one of its representatives abroad, Mr. Miguel Alex Schweitzer, Ambassador to the United Kingdom, states: "It is a source of constant surprise that many exiles, who express harsh criticism of the Chilean Government abroad and claim that the most atrocious violations of human rights are common occurrences in Chile today, are precisely among those who wish to return there". 16/ Neither the Minister nor the Ambassador made any allusion to the right of every person to return to his country and to reside there.

298. In this area, as in the area of political rights, the Chilean authorities seem to want to justify a situation contrary to the provisions embodied in the International Covenants which Chile has ratified (in this instance, art. 12 of the International Covenant on Civil and Political Rights) by invoking the need to maintain "order". 17/

299. The Special Rapporteur feels it his duty to point out that order cannot be maintained through the indefinite continuation of a situation which ignores fundamental human rights. Moreover, the definition of this "order" has been established, not with the consent of the Chilean people by means of the mechanisms for participation in public affairs (see art. 25 of the International Covenant on Civil and Political Rights), but by a decision taken unilaterally and arbitrarily by the Executive in defiance of all humanitarian principles. In this situation, the judiciary has once more shown that it has failed to ensure the necessary protection which would enable Chileans freely to exercise their rights.

#### B. Freedom of information

300. After its visit to Chile, the Ad Hoc Working Group submitted to the General Assembly, at its thirty-third session, information concerning the extent to which freedom of information is enjoyed in Chile (A/33/331, paras. 468-484). The conclusions reached by the Group on that occasion still apply today to the present situation:

---

15/ Statements made to the press by Mr. Sergio Fernandez, Minister of the Interior, and published in El Mercurio of 5 March 1980.

16/ El Mercurio, 28 March 1980.

17/ Explaining the attitude of his Government to Chileans wishing to return to their country, Ambassador Schweitzer said: "This situation arises from the fact that the Government has to maintain order and promote national unity, objectives which could not be achieved if all exiles were indiscriminately allowed to return". El Mercurio, 28 March 1980.

"The Group ... noted that relatively wide freedom of expression appeared to be enjoyed in certain areas but that these areas did not seem to be those at the very centre of national life. The Group also noted the wide range of legal powers enjoyed by military authorities to control the media, the occasions on which that power has been exercised and the fact that government authorities communicate their views to newspaper editors and eventually apply sanctions when the views are not respected. According to witnesses who testified before the Group, there exists an informal system of communication of government views on what should and should not be published and on how certain issues should be handled, and a general respect for these views through the self-censorship those responsible for the communications media, who are well aware of the potential for action against them by the authorities". 18/

301. The Special Rapporteur's later reports confirmed these conclusions. 19/ Mr. Jaime Castillo Velasco, former Minister of Justice, former professor at the University of Chile and former representative of Chile in the Commission on Human Rights, stated in an article published in the periodical Hoy that the press, with a few exceptions, does not carry out its role of defending human rights, does not examine facts, does not effectively provide information and does not state the views of those who are attacked by, or disagree with, the Government. 20/

302. José Luis Fuenzalida, an independent journalist, columnist for La Tercera de la Hora and owner of the Europool Press Agency, in the following recent statements reported in Hoy of 20-26 February 1980, referred to the self-censorship which journalists were forced to apply: "We live in an age when journalists practise the worst kind of censorship: self-censorship. It is trying on the nerves to have to be one's own censor, not being able to say what one has seen, what one feels and how one interprets it. The atmosphere is stifling".

303. The self-censorship which Chilean journalists are forced to practise has its origin not only in the requirements or obligations of a general nature which apply to the population as a whole, but also in specific legislation limiting the right to information. Decree-Law No. 1,281 of December 1975, which added to article 34 of Act No. 12,927 on the internal security of the State as subparagraph (n) authorizing the military commanders of emergency zones to suspend or close information media (see chap. I, sect. B), is still in force. The restriction imposed in March 1977 by Proclamation No. 107 of the commander of the metropolitan area emergency zone has also been maintained; under this Proclamation the establishment, issue, publication, circulation, distribution and marketing in any form of new newspapers, journals, periodicals and printed matter in general

---

18/ A/33/331, para. 484.

19/ See A/34/583, paras. 185-199, and E/CN.4/1362, paras. 22-26.

20/ Hoy, 26 March-1 April 1980.

shall require prior authorization by the chief of the zone, in the same way as the import and marketing of all types of books, newspapers, journals and printed matter in general. 21/ The press and concerned persons or institutions throughout the country have pointed out the contradiction between this provision and Constitutional Act No. 3, article 1, paragraph 12, fifth subparagraph, which was promulgated by the Military Junta itself in 1976 and recognizes the right of any natural or juridical person to establish, issue and own newspapers and journals. However, the restriction was maintained when Proclamation No. 107 was replaced by Proclamation No. 122, which provides that emergency zone commanders must consult the National Directorate for Information Media (DINACOS) before taking a decision on applications for authorization.

304. Other provisions and legal decisions which restrict freedom of information and which the Special Rapporteur has already mentioned in earlier reports also remain in force. 22/ These instruments continue to be contested by the national press, including the principal daily newspapers which generally support government policy. For example, at a meeting of the Commission for the Freedom of the Press of the Inter-American Press Association held in March 1980, the editor of the daily newspaper El Mercurio stated that since October 1979 no measure or sanction against journalists or the media had been recorded in Chile, but the continued existence of restrictive legislation - even if it was not being applied - meant that there was no true freedom of the press. 23/

305. According to the same newspaper, the Inter-American Press Association concluded in its report that there had been progress in Chile with respect to freedom of the press since no restrictive measure, sanction, pressure or threat against journalists, newspapers or other media had been recorded. 24/ However, it should be pointed out that in the period since the report of the Inter-American Press Association was prepared, the director of La Voz del Litoral radio station in the town of Talcahuano has been warned that the station might be closed down as a result of a broadcast on the history of the Chilcan trade union movement. The authorities have confiscated 265 tapes on which the programme was recorded. 25/

306. On 22 May 1980 the Standing Commission for the Defence of Freedom of Expression of the Association of Journalists made the following statement concerning restrictions on the free pursuit of its members' profession:

"1. Two journalists have been arrested this week by CNI officials; their homes have been searched and they are at present in secret places of detention.

---

21/ For the text of this proclamation see A/32/227, para. 71.

22/ See A/34/583, para. 185.

23/ El Mercurio, 18 March 1980.

24/ El Mercurio, 22 March 1980.

25/ Hoy, 21-27 May 1980.

"2. These journalists, Mr. José Maldavski K. and Mr. Jorge Soza Egaña, are members of our Association of Journalists (Metropolitan Council) and perform professional work, the first as an occasional contributor to the periodical Hoy, and the second irregularly in other media, since he is at present registered as an unemployed journalist.

"3. During the past few days the journalist Juan Ibáñez has received threats from persons who have identified themselves as members of CNI, according to his statement in the complaint to this Commission.

"4. On 8 March the journalist José Maldavski K. was arrested by carabineros while he was engaged in his professional activity in the street and was deprived of his freedom for four days, without any charges subsequently being brought against him by the Ministry of the Interior.

"5. On the same day, a journalist and a recording technician from Radio Agricultura were arrested, taken to a police station and subsequently released.

"6. On 1 May Mr. Lottar Hemmelmann, the editor of the Los Angeles daily La Tribuna, was arrested and detained on police premises, even though he identified himself as a journalist. This constitutes an arbitrary act since no charge was subsequently brought against him.

"7. During the first two weeks of this month (May), the decision by General Humberto Gordon Rubio, the emergency zone commander, to prohibit publication and distribution of the periodical Gente Actual was published after considerable delay.

...

"9. In view of the foregoing, the Standing Commission for the Defence of Freedom of Expression has no option but to make known to public opinion this escalation against freedom of expression and journalists.

"10. The Standing Commission for the Defence of Freedom of Expression expresses its deep concern about the fate of journalists arbitrarily arrested, particularly in view of the reports by responsible persons that physical coercion has once again been exercised by the National Information Agency". 26/

307. In this connection, two other cases mentioned in the press in recent months may be cited as examples. The first is that of the periodical Hoy, publication of which was suspended for two months on 22 June 1979 by order of the emergency zone commander. The reason given for the suspension was that, in its two previous issues, Hoy had published special interviews of the Unidad Popular leaders, Clodomiro Almeyda and Carlos Altamirano, interviews which, according to the Government, had served to disseminate illegal doctrines and opinions within the meaning of article 11 of Constitutional Act No. 3. The legal provision invoked

in support of this measure was article 34 (n) of Act No. 12,927 on State security. This provision empowers the commander of an emergency zone to give any orders or instructions he may deem necessary for the preservation of public order in the zone. An appeal lodged by Hoy with the Military Appeal Court was rejected on the grounds that the generic powers conferred by the provision in question on an emergency zone commander could not be contested or appealed. 27/ Subsequently, the Supreme Court expressed the opinion that the provision applied, even though it had not been explicitly mentioned in the notice of suspension, had been article 34 (n) of Act No. 12,977 (see para. 303), which allows the possibility of an appeal, and ordered the Military Appeal Court to examine the substance of the case. The latter Court, in a second decision, again rejected the appeal on the grounds that the measure taken was lawful and consistent with the powers conferred on an emergency zone commander. The Supreme Court also rejected further appeals by Hoy, upholding the validity of the sentence pronounced and already executed. 28/ Representatives of Hoy maintained that this ruling violated the legislation enacted by the Military Junta, since it upheld a decision issued by a military authority under the terms of an instrument governing cases of emergency (the instrument being of a temporary nature and strictly limited to the needs of the emergency in question) and violated the guarantees of constitutional freedoms and rights recognized in Constitutional Act No. 3. 29/ In April, the Supreme Court rejected the final appeal, thereby definitively confirming the measure taken by the military authority. 30/ In May Mr. Emilio Filippi, the editor of Hoy, received one of the prizes awarded by the Inter-American Press Association "for his steadfast defence of freedom of the press". 31/

308. Another case which illustrates the situation with regard to freedom of the press concerns the magazine Gente Actual, the publication of which has been prohibited since the necessary authorization has been refused. On 22 October 1979 the publishers, Editorial Araucaria, had applied to the emergency zone commander, in accordance with the above-mentioned Proclamation No. 122, for authorization to publish a new magazine entitled Gente Actual for international circulation. In order to comply with the requirement that a "pre-publication issue" should be submitted as a model, it engaged the services of professional journalists and signed agreements with international press agencies. Seven months later it was informed that authorization had been refused, no grounds for this refusal being given, apart from the fact that the report of DINACOS had been unfavourable. The contents of this report were not disclosed to the applicants. 32/ Brigadier-General Humberto Gordon Rubio, the emergency zone commander, informed the press that the prohibition was based on "the national need to maintain public order and peace", and that, pursuant to the powers legally conferred upon him, he was not required to state the reasons for his decision. He went on to say:

---

27/ See A/34/583, paras. 188 and 189.

28/ El Mercurio, 30 January 1980.

29/ Hoy, 13-19 February 1980.

30/ Hoy, 23-29 April 1980.

31/ El Mercurio, 14 May 1970.

32/ The Special Rapporteur has received a photocopy of the decision in question, signed by Brigadier-General Humberto Gordon Rubio, and a photocopy of the "pre-publication issue" of the magazine.



"The Government of the Armed Forces and the Forces of Order knows perfectly well who are the sponsors of this so-called organ of information and what their objectives are, and is not prepared to yield to any pressure or attempt to alter the course set on 11 September 1973 towards national liberation". 33/

309. Mr. Emilio Filippi, editor of Hoy, stated: "What has taken place must serve to highlight the fact that the freedom of the press and freedom of enterprise which are claimed to exist in Chile are nothing more than means which can be manipulated in the service of other interests". 34/ The National Press Association expressed its opposition to the banning of Gente Actual and called for the repeal of Proclamation No. 122. Mrs. Silvia Pinto, Acting President of the National Council of Journalists, also made a statement in which she protested against this measure and said that she found it incomprehensible that the authorities should refuse to explain the reasons underlying it. The Standing Commission for the Defence of Freedom of Expression of the Association of Journalists issued the following statement:

"The facts which have been described confront journalists with a clear case where the Government is trampling underfoot the freedom of expression recognized and enshrined in the legal order which the Military Government has itself instituted, thus violating a principle which is fundamental for sound and healthy national harmony.

"Constitutional Act No. 3, article 1, paragraph 12, fifth subparagraph, promulgated by this régime, states: 'Any natural or juridical person has the right to establish, issue and own newspapers, journals and periodicals under the conditions established by the law'. A simple proclamation has therefore overthrown this constitutional principle". 35/

310. The newspaper El Mercurio stated in an editorial that, in accordance with international criteria, it could not be said that freedom of the press existed in a country if the establishment of new organs of information was subject to the discretionary powers of the Government. 36/

---

33/ El Mercurio, 15 May 1980. See annex II, a copy of the letter signed by Brigadier-General Humberto Gordon Rubio, emergency zone commander, refusing authorization to publish Gente Actual.

34/ El Mercurio, 13 May 1980.

35/ El Mercurio, 14 May 1980.

36/ El Mercurio, 14 May 1980. The publishers, Araucaria Editoria Ltd., instituted an action for protection in the Court of Appeal, which requested information from the emergency zone commander (El Mercurio, 29 May 1980). The Court of Appeal declared the action inadmissible (El Mercurio, 22 July 1980) but an appeal was submitted to the Supreme Court which accepted it and instructed the Chamber to make a ruling on the substance of the matter (El Mercurio, 6 August 1980).

311. The Special Rapporteur notes that the general situation in the country with regard to freedom of information has not changed, as the legislation restricting rights in this field is still in force, and journalists and the media continue to practice self-censorship, knowing as they do that if they publish news or opinions beyond the limits of what is accepted by the Government, they will be punished. The limits of what is permitted by the Government are not clearly defined by law but are subject to the will and discretionary powers of the authority, which simply takes restrictive measures without providing any explanation for them.

### C. Right of assembly

312. As has been stated in earlier reports of the Ad Hoc Working Group and the Special Rapporteur, the right of assembly is restricted as a result of the state of emergency. 37/

313. A characteristic of the period covered in this report has been the Government's concern to prevent any type of meeting, public or private, at which any cultural, moral, social, economic, political, trade union matter etc. might be discussed from a standpoint other than that of government policy.

314. In other chapters of this report mention is made of arrests which took place at meetings organized to celebrate 1 May and International Women's Day on 8 March. Mention is also made of violations of the right of assembly with regard to trade union matters, the arrest of 96 persons at a meeting organized in solidarity with students dismissed from the State Technical University 38/ and sanctions against students who had taken part in meetings on related questions.

315. Other examples of restrictions on the right of assembly may be cited. The Office of the Intendant of Santiago had authorized a ceremony organized by the Association of Chilean Writers to pay a tribute to Gabriela Mistral, the Chilean poetess who won a Nobel Prize for literature. 39/ The ceremony was to take place on 8 March 1980 but the day before it was due to be held the Minister of the Interior withdrew the authorization. The commission responsible for organizing the ceremony stated that it was "in any case unusual that a tribute of this nature should require the authorization of the Minister of the Interior, since the work of the winner of a Nobel Prize for literature cannot be subjected to formalities which in effect constitute a means of censorship". 40/

316. Authorization to hold a demonstration on the same day in another place under the auspices of the National Trade Union Co-ordinating Body to celebrate International Women's Day was also refused. Those persons who tried to assemble were arrested, as indicated in chapter III, section A. The Government's Social Communication Division issued a communiqué in which it declared that, in accordance

---

37/ See E/CN.4/1310, para. 140.

38/ See chap. II, sect. A.

39/ See chap. V, sect. B.

40/ Hoy, 12-18 March 1980.

with the provisions governing the state of emergency, "any person who participates in activities which are not duly authorized shall be liable to the sanctions provided for by law". The communiqué also stated: "International Women's Day ... has been used, ever since its institution, by Marxism-Leninism to serve its own ends". 41/

317. The Minister of the Interior also refused authorization to hold a congress of the National Association of Cultural and Youth Centres on the grounds that this Association was a "crypto-Communist body". 42/ The request of trade union organizations for authorization to meet on 1 May, Labour Day, was also refused. The Secretary of State declared: "The Government has prevented, and will continue to prevent, the celebration of 1 May or any other celebration from being used to divide workers or create dissension among them". The only demonstration authorized was that organized by the Government. 43/

318. A number of demonstrations were held on trade union premises (in such cases authorization was not required), but participants were harassed by police and security forces as they left. Many persons were arrested and several of them sentenced by the Minister of the Interior to enforced residence, as stated in chapter III, section A.

319. The grain producers requested authorization to hold a public meeting in order to discuss the situation in agricultural enterprises with regard to grain prices, bank credits, official assistance in the emergency caused by the summer rains and other matters of concern to them. The Ministry of the Interior refused authorization to hold this meeting on 28 June 1980. 44/ The Co-operative Association of Grain Producers issued a statement in which it asserted that the Ministry's refusal to authorize the meeting represented "the denial of freedom of assembly to an association which supports the Government and is out of keeping with what the Minister of Agriculture has been advocating". It added that those who "prompted the authorities to commit this grave error, and who are the representatives of the groups in power, have acted in this way solely because they believe their own business interests to be threatened". 45/

320. A number of other meetings have been banned, in particular:

(a) A demonstration in solidarity with persons who had been sentenced to enforced residence following the events of 8 March and had completed their sentence; the meeting had been organized by the Chilean Commission on Human Rights and the Committee for the Defence of Youth Rights (CODEJU); 46/

---

41/ El Mercurio, 8 March 1980.

42/ El Mercurio, 4 April 1980.

43/ Hoy, 16-22 April 1980.

44/ El Mercurio, 20 June 1980.

45/ El Mercurio, 25 June 1980.

46/ El Mercurio, 22 July 1980.

(b) A march to Mount San Cristobal to install a bronze plaque and hold a religious ceremony, organized by friends of missing detainees, was dispersed by carabineros and one member of the group was arrested. 47/

321. Persons participating in meetings not authorized by the Government are brought before the courts and accused of infringing the Act relating to the internal security of the State. This happened in the case of six persons accused of belonging to the Socialist Party and to MAFU (political parties declared illegal) and of holding secret meetings. 48/

322. In an article published in Hoy, mention was made of the discriminatory political criteria which the Government applies in authorizing or prohibiting the exercise of the right of assembly:

"On 13 June, over 300 members of the political group known as 'New Democracy' held a public meeting; the speeches made at this meeting were widely circulated.

"On the same day, 96 Chileans - mostly university students - were arrested for having participated in a private meeting which the Government described as 'political'. They were kept in prison for five days and, although they had not been charged with any offence, 26 of them were sentenced to three months' enforced residence in different parts of the island of Chiloé.

"The following day, just as a meeting of teaching staff convened by the Metropolitan Education Co-ordinating Body to consider matters of interest to the group was about to begin, it was broken up by the police.

"A week later, the authorities prohibited, and used the police to prevent the holding of a seminar organized by the Democratic Youth Movement.

"These events call to mind the old maxim 'Equal justice is less harsh'". 49/

323. Currently, trade unions which follow governmental directives may, within very narrow limits, exercise the right of assembly. 50/ This is not the case, however, with workers' organizations wishing to exercise this right to the full by deciding themselves on the forms which best suit their interests. 51/ Other social groups are subjected to the same restrictions, since this right is granted selectively and it is the Executive which decides in a discretionary fashion who may exercise this right and who may not.

---

47/ El Mercurio, 22 July 1980.

48/ El Mercurio, 2 August 1980.

49/ Hoy, 2-8 July 1980.

50/ See A/34/583, para. 278 (c).

51/ See chap. VI on trade union rights.

V. RIGHT TO EDUCATION AND ACADEMIC FREEDOMS

A. Access to education

324. In an earlier report the Special Rapporteur referred to the impact of the reduction in State funds allocated to education on various sectors of education and particularly on the State system. He pointed out that the Chilean Government itself admitted that the situation in that area was deteriorating and cited extracts from a statement by President Pinochet, who spoke of "repetition of courses, drop-out rates and lack of competent teachers", and said that children leaving school without completing their primary courses did not have "the minimum knowledge necessary to become skilled workers". The Special Rapporteur also pointed out, however, that the President had not announced any changes in the Government's education policy aimed at promoting its development through increased resources and State support (see A/34/583, paras. 249-258).

325. According to the statements referred to above, the reduction in public spending on education is an irrevocable fact. The only remaining matter of concern is how to distribute available funds. In the view of the authorities, the private sector should finance most of the population's educational needs either by increasing school fees or by entrusting some educational activities to private establishments or organizations (A/34/583, para. 250). The Government does not take the right to education and equality of opportunity into consideration in its analysis of educational questions (see A/34/583, para. 258).

326. The Chilean population's aspirations to education by far exceed the opportunities available to it. As earlier reports indicate, the current military Government has halted the steady expansion of education in Chile which enabled broader sectors of society to gain access to consistently higher levels of education (A/34/583, para. 257). In recent months, the authorities have invoked further reductions in budget allocations to universities to justify the dismissal of university staff. 1/ In opposition circles, however, it has been affirmed that this is merely a pretext to conceal the political motivation underlying the measures. 2/ This question is analysed in greater detail below.

327. The budget cuts affect all universities and in particular the University of Chile, whose budget has been reduced by 120 million Chilean pesos (about \$US 3 million). 3/ In Iquique several faculties have been closed by the new Rector of the Northern University; this decision affected 200 students already registered in those faculties, many of whom had come from other regions of the country to begin their studies, at considerable financial sacrifice to themselves. 4/ El Mercurio explained the steady reduction of the funds available to universities as follows:

---

1/ El Mercurio, 28 January 1980.

2/ "Otra etapa dura" Hoy, 30 January-5 February 1980.

3/ Solidaridad, No. 87, February 1980.

4/ El Mercurio, 28 February 1980.

"This downward trend is the result of the current Government's deliberate policy; on the basis of an over-all analysis of the educational situation, it has decided that, in all fairness, primary school education must have resources commensurate with the fact that it is practically the only form of education to which the majority of the population can aspire. That is why State contributions to primary education have increased in the same proportion as contributions to higher levels have decreased". 5/

328. However, although the reductions in the budgets and capacity of universities began shortly after the military Junta came to power, 6/ there has been no corresponding improvement in the situation in primary schools. Thus, according to a recent article in *El Mercurio*, rural schools do not have the necessary furniture, they are badly lighted and badly heated, and they lack drinking water, sports equipment and recreation areas. The same article also pointed out that, since there are no lodgings provided for them, teachers have to live on school premises, that the net monthly salary of qualified teachers is 5,800 Chilean pesos (about \$US 148) and that, despite the extreme poverty prevailing in rural regions, not all needy children are able to benefit from the distribution of food rations in schools. 7/ It should be noted that in 1978, the Chilean Government informed the Ad Hoc Working Group that the construction of school buildings and the improvement of the conditions of teaching staff were among its priorities in the field of education (A/33/331, para. 487). The information given above shows that nothing has so far been done in these priority areas

329. The volume of resources allocated to the remuneration of teaching staff in State education appears to be declining steadily, in line with past trends (see E/CN.4/1310, para. 160). According to information received in February 1980, the system of extending the school day was eliminated as of 28 February. This system enabled many teachers in the State system throughout the country to work up to 44 hours per week instead of the 30 statutory hours, i.e. an additional 14 hours. It was stated that the measure was dictated by the need to rationalize the system for the benefit of some establishments which did not have enough class hours and for which supplementary hours would subsequently be authorized if the heads of schools so requested. The measure has affected some 5,000 teachers, whose monthly

---

5/ El Mercurio, 18 January 1980.

6/ The average number of places available each year in universities was 39,458 between 1970 and 1973, 35,316 between 1974 and 1978, and only 32,398 in 1980. Universities accepted 46.4 % of candidates for the entrance examinations for advanced education between 1971 and 1973, the corresponding figures for the period 1974-1978 being 31% and for 1980 26.9%. Sources: Garretón, Manuel: "Universidad y política en los procesos de transformación y revisión en Chile, 1967-1977," FLACSO, Santiago, 1979; and El Mercurio, 5 February 1980. Quoted by Ruiz Tagle Jaime, in "De las purgas a la privatización", Mensaje, No. 287, April 1980.

7/ El Mercurio, 10 February 1980.

earnings are reported to have declined by between 600 and 2,000 pesos (approximately \$US 15 and \$US 51). 8/ Some teachers have stated that the loss of income could amount to some 4,000 Chilean pesos a month in the case of a teacher who had reached grade 13 on the single scale. The heads of State schools and teachers in general have expressed their concern, and the headmaster of one secondary school stated, inter alia, that for his school the measure was "tragic" since he would be forced to restrict extracurricular activities in such areas as "English, French, science, arts, parent education, chess clubs, etc." 9/

330. The elimination of the system of extending the school day is a further stage in the reduction of expenditure on public education and confirms the discriminatory tendency in educational matters referred to earlier by the Special Rapporteur (see E/CN.4/1362, paras. 115 and 116). According to Mr. Alvaro Arriagada, the new Director-General of Education who took office in March 1980, the level of knowledge of pupils leaving secondary school varies widely: while it is generally very low, in the case of a favoured few it is very high. He said that this can largely be explained, not by the fact that private education is better than State education, but by other factors such as the family and social background. 10/ However, as indicated in several reports, all the plans and measures decided upon by the Chilean authorities in the field of education are aimed at making the right to education a privilege for high-income groups with the means to opt for private education and to pay the constantly increasing registration and tuition fees at the university level; for low-income groups, a minimum education would be provided with a view to the training of skilled workers for the labour market (see E/CN.4/1362, paras. 111-119).

331. The return to private administration of agricultural and technical colleges is based on the same discriminatory approach. In February 1980, the Minister of Education issued a decree (No.6 II) authorizing his Ministry to transfer the administration of certain State technical and vocational training establishments to organizations in the public sector or to private individuals on a non-profit basis. This system, it was stated, "would make it possible gradually to adapt programmes and curricula to the actual needs of the labour market". 11/ Mr. Eduardo Gariazzo, Acting President of the Teachers' Association explained that, in order to offer a broad range of possibilities to secondary pupils, it was "extremely important that the Government should enable some technical colleges to be transferred to the private sector since the industries themselves can keep them informed of the skills they require". 12/

332. This approach, which treats education as an instrument for meeting manpower requirements rather than a human need and a human right, was criticized by one of the witnesses heard by the Ad hoc Working Group during its visit to Chile (A/33/331, para. 519). Some pro-Government sectors of the press have warned against

---

8/ El Mercurio, 9 and 20 February 1980.

9/ El Mercurio, 1 March 1980.

10/ El Mercurio, 9 March 1980.

11/ El Mercurio, 17 February 1980.

12/ El Mercurio, 5 March 1980.

the dangers of this trend and of losing sight of the objectives of an all-round education for the pupil as a human being when technical and vocational colleges are transferred to the private sector. "The labour market and even advanced technology are not the only important aspects; the all-round training of the individual, for which the Ministry of Education will continue to be responsible, must also be considered ...". 13/

333. In 1980, another increase in university tuition fees further restricted enjoyment of the right to education by the majority of the Chilean population. El Mercurio published the following figures on the cost of studies (registration fees and tuition fees) in three universities in Santiago:

Table  
COST OF HIGHER EDUCATION 14/  
First semester 1980  
(pesos)

|                                   | A<br>Basic fee<br>(registration) | B<br>Monthly<br>cost of<br>tuition | C<br>Cost of<br>tuition<br>per<br>semester<br>(xx) | D = C + A<br>Total per<br>semester |
|-----------------------------------|----------------------------------|------------------------------------|--|------------------------------------|
| <u>University of Chile</u>        |                                  |                                    |  |                                    |
| Upper bracket (22)                | 1 900                            | 3 500                              | 17 500   | 19 400                             |
| Average bracket (11) (x)          | 1 900                            | 1 570                              | 7 850  | 9 750                              |
| With exemption                    | 1 900                            | -                                  | -  | 1 900                              |
| <u>Technical State University</u> |                                  |                                    |  |                                    |
| Upper bracket (31)                | 2 100                            | 5 000                              | 25 000   | 27 100                             |
| Average bracket (15) (x)          | 2 100                            | 1 780                              | 8 900  | 11 000                             |
| With exemption                    | 2 100                            | -                                  | -  | 2 100                              |
| <u>Catholic University</u>        |                                  |                                    |  |                                    |
| Fixed amount                      | 1 000                            | 2 500                              | 10 000   | 11 000                             |
| With 50% reduction (x)            | 1 000                            | 1 250                              | 5 000  | 6 000                              |
| With exemption                    | 1 000                            | -                                  | -  | 1 000                              |

(x) The figures are illustrative.

(xx) University of Chile = B x 5; State Technical University = B x 5;  
Catholic University = B x 4.

13/ El Mercurio, 10 February 1980.

14/ Each bracket referred to in the table indicates a specific family income. The upper bracket refers to the largest income considered: if the income is higher than this figure, the registration fee does not change.



334. In order to understand these figures in the context of a family budget, it should be borne in mind that the brackets referred to in the table correspond to the family income scales drawn up by each university to ensure a certain proportionality in the fees charged. However, the registration fee is a fixed sum and there is no exemption. In the University of Chile, for example, the gross income of the whole family is taken into account. Students from families with incomes under 7,600 Chilean pesos a month are exempted from payment of fees; if the gross income is over 56,800 pesos, the student has to pay 3,500 pesos a month. In the State Technical University, students whose family's income (net) is under 850 pesos are exempted from payment, whereas for those whose net monthly income is 10,000 pesos or over, the monthly fee is 5,000 pesos. 15/

335. The current very high cost of studies is particularly surprising in the case of the State Technical University, which, according to El Mercurio, used to provide "free education for young people from the lowest social levels, most of whom are unable to pay any kind of school fee". 16/ Higher-level technical education, which used to enable workers to improve their skills, is now apparently to be reserved for the higher-income groups. The restrictions imposed by the high cost of studies on the exercise of the right to education were referred to in the following statement by a student from Rancagua:

"I was accepted in the Faculty of Metallurgy but I can't see how I can carry on, because my family won't have enough money to pay for my studies. In my income bracket, I shall have to pay 3,760 pesos a month to the University, and the cheapest lodgings I could find cost a further 4,000. How can I possibly find almost 8,000 pesos a month?" 17/

336. If the figures in the above table are compared with those given in paragraph 328 concerning the remuneration of members of the teaching profession, it is quite clear that teachers would find it difficult to send their children to a State university. The constant increase in the cost of education points to the conclusion that the education policy of the Chilean authorities is not in line with the international obligations which they have assumed, in particular, under article 13 of the International Covenant on Economic, Social and Cultural Rights.

B. Academic freedoms; dismissals of university teachers and expulsions of university students

337. During the first months of 1980, many teaching and administrative staff in Chilean universities were dismissed. In January, 41 teachers in the State Technical University were dismissed. The military rector of the University explained that these measures were necessary in order to readjust university structures in the light of the budget and that the planning department had found that the services of the teachers concerned were not necessary. He added that 35 or 36 teachers would nevertheless be re-incorporated in other departments where there was a shortage of staff. Among those dismissed were a number of distinguished professors with the rank of "magister". 18/

15/ El Mercurio, 17 February 1980.

16/ A/34/583, para. 251 in which El Mercurio of 9 April 1979 is quoted.

17/ El Mercurio, 10 March 1980.

18/ El Mercurio, 23 January 1980. Other newspapers, in particular La Tercera de la Hora of 21 January 1980, stated that 70 people had been dismissed in that university, including 50 full-time teaching staff.

338. A university teacher who did not lose his job stated that many of those dismissed had higher qualifications than he had. One dismissed teacher emphasized the decline in activity which the reduction in teaching staff was bound to cause and the increase in the work load of the remaining teachers. 19/

339. Twenty-one teachers were dismissed from Manuel de Salas College, which is attached to the Faculty of Education in the University of Chile. The head of the College said that he had been informed of the measure only three days before it had come into effect and added that he could not give his views on the matter since he had only recently taken up his post. 20/ According to other media, seven teachers were dismissed from the Department of Physics and seven others from the Department of Biology in the same College. 21/

340. The University of Concepción dismissed Mr. Manuel Sanhueza, Professor of Political Law for 32 years, former Dean of the Law School, former Minister of Justice, member of the Academy of International Law at the Hague and Chairman of the "Group of 24 in Chile". The aim of this Group, whose members are eminent Chileans, is to carry out constitutional analyses, and it has submitted proposals for constitutional amendments which differ from those of the Government. 22/

341. Also in January, 17 members of the teaching staff were dismissed from the Catholic University. 23/ In March, 20 teachers were dismissed from the University of Concepción on the grounds that the teaching staff was too large. It was stated that henceforth even the head of the University, the academic secretary and the heads of departments would have to give classes under the new policy laid down by the rector. 24/ In June, several teachers and officials received notice of their dismissal from the University of Chile in Valparaíso; the number of persons involved has not been officially published. 25/

342. Also within the University of Chile, six members of the teaching staff were relieved of their posts at Talca after they denounced "many academic and administrative irregularities, arbitrary dismissals of teaching staff and psychological pressure". The persons concerned have lodged an appeal with the labour courts on the grounds that the legal formalities had not been observed with regard to their dismissal. 26/ At the end of March, Jorge Millas Jiménez, the Chilean philosopher and professor, was forced to resign from his post as Dean of the

- 
- 19/ El Mercurio, 26 January 1980.
  - 20/ El Mercurio, 25 January 1980.
  - 21/ Solidaridad, No. 86, January 1980.
  - 22/ Hoy, 30 January-5 February 1980.
  - 23/ El Mercurio, 31 January 1980.
  - 24/ El Mercurio, 7 March 1980.
  - 25/ El Mercurio, 11 June 1980.
  - 26/ Hoy, 19-25 March 1980.

Faculty of Philosophy and Social Sciences and Director of Studies and Planning at the Southern University. This gave rise to so many protests among teaching staff and students at that University and at several other educational establishments and cultural institutions throughout the country that Professor Millas was finally reinstated in his teaching capacity but not in his administrative capacity. 27/

343. At the Northern University, 141 teaching staff were relieved of their posts, again on technical and administrative grounds. 28/ The dismissals affected staff in Arica, Iquique, Antofagasta and Coquimbo. The Bishop of Antofagasta stated that the mass dismissals affected 23% of the teaching staff at the University, which belonged to the Catholic Church, and that its authority in the matter was ignored by the Government, which kept the University under its control. He added: "the moral and legal aspects of the mass dismissals can be seen, generally speaking, as a decline in respect for the person and dignity of university staff and as a blow to the life of the University community". 29/

344. Among the staff dismissed there are many highly qualified professors of outstanding merit and prestige. Reference has been made, for example, to Professor Silvia Escobar B. of the State Technical University (27 years' teaching experience and exceptional qualifications) and Professor Eliana Pacheco (on the point of retirement after 29 years' service); Alfonso Calderón, the writer and literary critic, who is very well known in Chile; Professor Enrique Cueto, a member of the Catholic University for 27 years; and Professor Gerardo Claps Gallo, one of the founders and the first rector of the Northern University. 30/ Some of the professors dismissed taught subjects that are compulsory for students in certain degree courses and it will therefore be impossible to omit these subjects from the programme. 31/

345. In all cases, the university authorities have emphasized the need to "rationalize" or "restructure" the establishments in question. According to several of the dismissed staff and other statements which have appeared in the press, these are not the real reasons for the dismissals. Professor Manuel Sanhueza, for example, has disclosed the reasons for his dismissal which he was given by Guillermo Clericus, the Government-appointed rector, during a private conversation. The rector said that he had absolutely nothing against Professor Sanhueza from the professional point of view, but he could not tolerate the presence of politically committed teachers, particularly those whose political opinions were not those of the Government, even though - as in the case of Professor Sanhueza - they did not take part in any political activities within the university. He further stated that he would maintain an inflexible attitude towards anyone who engaged in political proselytism, adding that if teaching staff "engage in activities which are not designed to serve the university, the resulting situation is at odds with the aim of education". 32/ Subsequently, an official communiqué from the University of Concepción accused Professor Sanhueza "of using the time he should have devoted to the performance of his duties to strengthen his position as leader of a

27/ El Mercurio, 26 March, 29 March, 2 April and 3 April 1980.

28/ El Mercurio, 21 April 1980.

29/ El Mercurio, 19 April 1980.

30/ Hoy, 9-15 April 1980; Solidaridad, No. 87, February 1980.

31/ Solidaridad, No. 87, February 1980.

32/ Hoy, 30 January-5 February 1980.

political faction" outside the university, 33/ but Professor Sanhueza's statements concerning the reasons for his dismissal, as explained by the Government-appointed rector, have never been refuted.

346. The dismissal of Mrs. Malva Hernández, a teacher in the Faculty of Philosophy whose son disappeared in 1974, gave rise to student protests. Measures were taken against Mrs. Hernández because she was a member of the Association of Relatives of Missing Detainees. That was the explanation given to her and it was emphasized that orders had been issued from above on the basis of a report by CNI. 34/ Various demonstrations in support of Mrs. Hernández were held on the Macul campus. 35/ The authorities of the Faculty of Philosophy and Letters decided to impose penalties on 39 students who had taken part in the demonstrations. 36/

347. Speaking of the circumstances in which the dismissals took place, Professor Jorge Millas Jiménez said:

"Teachers find themselves in an abnormal situation with regard to the mission of the university. They live in fear and insecurity, permanently exposed to the danger of repression. What I referred to some years ago as supervision of university staff is still continuing; and by this I mean not the kind of supervision which should always govern university staff, i.e. discipline and a sense of responsibility, but supervision by powers outside the university itself. As I stated some time ago, a situation has arisen in which the intervention of Government-appointed rectors is of secondary importance: it is a situation in which, in order to teach in a university, one must suffer the indignity of being reduced to silence. I find this terrifying".

He went on to say:

"For example, it is still normal practice in universities for a person to be considered ineligible for a university post even though he may have acquired the necessary academic qualifications from the competent institutions, until a secret report on his political leanings is submitted by sources outside the university. It has happened that a teacher's career has been developing normally until suddenly one of these reports has arrived, warning that he is dangerous because of some detail which has been unearthed in his remote political past. This may have been tolerable in the months immediately following September 1973 when the country was in a state of turmoil, but today it is senseless". 37/

The above statements are all the more relevant since they were made by a person who, because of his position of authority and administrative duties, is well aware of the methods applied in appointing and dismissing staff in higher education.

---

33/ El Mercurio, 22 February 1980.

34/ Hoy, 2-8 July 1980.

35/ El Mercurio, 19 June 1980.

36/ La Tercera de la Hora, 24 June 1980.

37/ Hoy, 9-15 April 1980.

348. Professor Enrique Cueto, who was also dismissed from his post, sent to Vice-Admiral (retired) Jorge Swett, Government-appointed rector of the Catholic University, an open letter in which he asked to know the reasons for his dismissal. Was it because in 1974 he had spoken out against the "vertical and authoritarian" structure of the system? Or because five years previously, in a letter to a dean, he had denounced "the climate of fear and uncertainty in which the university community lived"? Or was it because he had frequently condemned the suspension of students? Or because in his classes he had tried to "communicate to the students [his] passion for freedom, [his] faith in human dignity and the indomitable nature of conscience"? 38/

349. Generally speaking, and without denying the fact that budget cuts have been made (affecting several universities, as has already been seen), it would seem indisputable that the dismissals have not been based on the principles governing the reduction of State employees (in view of the qualifications, abilities, seniority, etc. of the persons concerned), but have been decided upon for political reasons or because of the views of the persons concerned (in particular, their critical attitude towards the Government). Other cases may be cited in support of this statement. For example, Andrés Sifuentes, Director of the Department of Economics of the University of Chile, was forced to resign because he had not interpreted an economic survey on income distribution in Chile in accordance with government economists' wishes. 39/ Subsequently, four professors in the Department of Economics of the Faculty of Economics and Administrative Sciences in the same university were dismissed "because of budget cuts and the need to eliminate posts". The following were affected by this measure: José Florencio Guzmán, former Secretary-General of the Western Section, Douglas Escobar, former Chief of the Bureau of International Relations, Father Mario Zañartú, Senior Adviser, and Professor Pedro Jestanovic. 40/ Father Zañartú stated that the Director of the Department had told him that he was being dismissed because his doctrinal position did not enable him to form a team of the type desired by the Department. 41/ The Democratic Youth Movement issued a statement deploring the professors' dismissal, which, in its view, could be explained only by the divergence between their political views and those of the appointed authorities of the university. 42/ Two psychologists who taught at the Catholic University were dismissed shortly after having published a study entitled "The psychology of the Chilean", which was highly praised in the press. 43/ Professor Carlos Nudon, Executive Secretary of the Special Programme of International Relations of the Catholic University's Institute of Science, speaking of the letter in which Jorge Swett, the Government-appointed

---

38/ Ibid.

39/ Hoy, 9-15 January 1980.

40/ El Mercurio, 23 May 1980.

41/ Solidaridad, No. 93, May 1980.

42/ El Mercurio, 27 May 1980.

43/ Hoy, 6-12 February 1980.

rector, informed him of his dismissal for "budgetary reasons and reasons of academic restructuring", said that, although he did not question the statements contained in that letter, the list of persons dismissed and their "political colour" were such that he was forced to conclude that "political motives were involved". 44/

350. Dismissals of secondary school teachers have sometimes been linked to membership of professional associations; this was the case, for example, with three teachers who were members of the Executive Committee of the Metropolitan Teachers Co-ordinating Body (see chap. VI, sect. C). Mr. Sergio Bórquez Soto, a teacher, was also dismissed from his post and the headmistress of the school gave him a certificate testifying to his excellent work as a teacher. Mr. Bórquez had been detained for five days in November 1979 for having taken part in a demonstration. 45/  
351. The teachers relieved of their posts at the Northern University stated that the measures taken against them obviously formed part of a "campaign of political persecution" and constituted "a flagrant abuse of the powers currently vested in the unwavering government officials". 46/

352. In an article in the periodical Mensaje (No. 287, March-April 1980), entitled "From purges to private ownership", Jaime Ruiz Tagle P. stated:

"At the institutional level, the draconian mass dismissals have demonstrated the extremely broad discretionary powers enjoyed by the Government-appointed rectors in the administration of universities: they can dismiss teaching staff, appoint new staff, close faculties and institutes and establish new ones, and even fix the terms of compensation. \*/ They are practically absolute monarchs. In such conditions, any university order is an illusion. The Catholic University of Santiago is a case in point: in 1977, after detailed studies, a statute for university staff was adopted setting out their rights and duties. A roster of teaching staff was established, the highest grade corresponding to a full professor and all staff were guaranteed considerable security, especially full professors. Today, however, the Government-appointed rector, without consulting the heads of schools and departments, merely writes a letter and staff covered by this statute find themselves on the street. The universities are becoming places where there are constant tremors: what is built today will inevitably be destroyed tomorrow.

\*/ In accordance with Decree-Laws Nos. 112 and 139 of 1973, 493 and 762 of 1974, 1,321 and 1,412 of 1976."

353. There is no doubt that the rectors appointed by the Government exercise their powers against students. Four students accused of "membership of student groups that are not officially recognized ..." 47/ were expelled from the State Technical University. Two of them stated that a few days before receiving the note in which the Government-appointed rector notified them of their expulsion, a certain "anti-marxist liberation front" had sent them a threatening letter with the following

---

44/ La Tercera de la Hora, January 1980.

45/ Solidaridad, No. 92, May 1980.

46/ Hoy, 7-13 March 1980.

47/ El Mercurio, 15 February 1980; Hoy, 12-18 March 1980.

warning: "You and your gang will be thrown out of university". Two of those involved had been elected leaders in the student movement. 48/ Penalties were also imposed on two students from the University of Chile because they were seen outside university premises sticking up posters criticizing the system of university fees. Similarly, measures were recently considered against the chairman and the secretary of the Students' Centre in the Faculty of Music of the same University. 49/ In this Faculty, in order to register, nine student leaders were forced to sign a document in which they undertook not to "engage in activities which may be considered as inciting disorder or as being of a political nature". The document further stated: "It is understood that if I fail to abide by this undertaking, my registration will be cancelled, without any right of appeal". 50/ The Vicaría which deals with university matters publicly protested against the obligation imposed on students to sign such a statement, deeming it "morally inadmissible" and stressing that "it is a student's duty to follow the dictates of his conscience, regardless of what he may have signed at a time when he was subjected to pressures or was not acting with full knowledge of the facts". 51/ Three of the leaders of the Students' Centre in the Faculty of Humanities who were compelled to sign had their right to register as students suspended, because the Centre published a declaration denouncing the compulsion to which the students had been subjected and stating that "signatures given under duress [were] totally invalid". 52/ Hundreds of students from the Macul campus received warnings in writing for having participated in student meetings on 6 and 7 March 1980. 53/

354. Under Decree-Law No. 3,357 published in the Diario Oficial on 24 May 1980, the Minister of Education was given special powers for one year to transfer teachers in the State education system to various regions of the country, regardless of the provisions of article 5 of Decree-Law No. 2,327 of 1 September 1978, which define the cases in which it is possible to refuse a transfer. Under the new law, when a teacher does not accept his new posting, he is considered to have resigned by default. 54/ According to El Mercurio, the teachers asked by the press to comment on this new provision expressed their concern, but did not give their opinion openly and requested that their names should not be published. They felt that the transfer of teachers from one place to another could give rise to arbitrary decisions. 55/

355. Obviously this Decree-Law adds further to the already numerous powers of the Executive, which now has absolute discretionary power to impose important changes in teachers' living and working conditions. In view of the fact that many people have

---

48/ Hoy, 5-11 March 1980.

49/ El Mercurio, 18 March 1980. The chairman of the Students' Centre in the Faculty of Music was suspended from his post for having expressed his solidarity with Alejandro Goic, vice-chairman of the Centre, who was sentenced to enforced residence.

50/ Hoy, 26 March-1 April 1980.

51/ El Mercurio, 31 March 1980.

52/ Solidaridad, No. 90, April 1980.

53/ Ibid.

54/ El Mercurio, 25 May 1980.

55/ El Mercurio, 29 May 1980.

been dismissed recently for political reasons, the teachers' fears appear well-founded and the precaution they took in requesting that their names should not be published seems legitimate.

356. The dismissals of teachers and professors and the penalties imposed on students coincided with the first meetings of a Presidential Advisory Committee on University Matters and Higher Education. This Committee was set up in order to assist in determining the necessary measures to implement government policies in the area of education. Its members are General A. Toro Dávila and Admiral (retired) Jorge Swett, both Government-appointed rectors, Mr. Jorge Schweitzer Speisky and Mr. Avelino León Hurtado, both of whom are lawyers and university professors, General Roberto Rubio Ramírez, Director of the National Security Academy, and General (retired) Alfredo Mahn. 56/ In the course of an interview with El Mercurio, President Pinochet stated that the procedure for the analysis and solution of the university problem could take four or five years, during which time the system of Government-appointed rectors would remain in force. 57/

357. Universities and other teaching establishments in Chile have continued to be subjected to practices designed to exclude from the teaching profession anyone who does not toe the official political line, even if the person concerned expresses his disagreement outside the premises of the educational establishment concerned. Some teachers have stated that a "clean-up operation" has been taking place in the universities and that teaching staff are considered to be "expendable material". 58/

358. In fact, all these measures would seem to form a coherent whole based on a particular concept of education and the human being, as explained in the following terms by El Mercurio, which speaks for those responsible for the Chilean Government's economic policy:

"The universities are basically enterprises which produce an essential commodity. They are to all intents and purposes centres for generating 'human capital' and, for the good of society, they must provide efficient services, i.e., in the quantity, with the variety and to the extent required for human progress, at a reasonable price, and with high levels of academic distinction." 59/

In accordance with this criterion, the material used to produce this "human capital" must be rejected if it does not conform to the requirements of the owner of the enterprise (even though, as in this case, educational institutions may be involved).

---

56/ El Mercurio, 30 January 1980.

57/ El Mercurio, 1 June 1980.

58/ Solidaridad, No. 87, February 1980.

59/ El Mercurio, 23 February 1980.



359. The Special Rapporteur notes that, during the first half of 1980, the limited academic freedoms that have existed in Chile since the military Junta came to power in 1973 60/ have been subjected to further restrictions which undermine the rights embodied in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 18, 19 and 22 of the International Covenant on Civil and Political Rights, instruments to which Chile is a party. The dismissal of teachers, the expulsion of students, forcing students to sign undertakings which limit universally recognized human rights, and the refusal to accept any opinion other than that of the authorities are all aspects of a concept of education that is contrary to the principles established by the international community in the above-mentioned instruments.

---

60/ See A/31/253, paras. 253-256; E/CN.4/1221; A/32/227, para. 212; E/CN.4/1188, paras. 193 and 194; E/CN.4/1221, para. 251; A/33/331, paras. 522-531, and E/CN.4/1310, paras. 165-167.

## VI. TRADE UNION RIGHTS

### A. Some consequences of the implementation of the labour legislation enacted by the Government in 1978 and 1979

360. In its report to the General Assembly at its thirty-third session, the Ad Hoc Working Group commented on the labour legislation enacted in 1978. Among the decree-laws which made important changes in the legislation which had governed labour relations until 1973 (from that year onwards most of the rights guaranteed by this legislation had been suspended or drastically restricted), mention was made of Decree-Law No. 2,200 of 15 June 1979. 1/

361. This decree-law met with opposition from many labour sectors, including groups which supported the Government. Thus, at a press conference given by the National Workers' Command led by Mr. Manuel Contreras of the Confederation of Metal Workers and Mr. René Sottolichio of the municipal workers' Union, reference was made to the need for a radical change in Decree-Law No. 2,200, which was "overtly favourable to the employers' sector" as far as the regulations concerning dismissal were concerned.2/At the same press conference, mention was made of the need to change the provisions governing the situation of contractual workers so as to allow them to participate in collective bargaining without fear of retaliatory dismissal.3/

362. A witness who testified before the Special Rapporteur pointed out that Decree-Law No. 2,200 seriously affected the right of workers to job security, which they had enjoyed under earlier legislation. The witness stated that the fixed-term work contract currently in force, which is widely used by employers, does not guarantee permanent employment to persons recruited under this system since the employer can terminate the contract at any time and the worker is not entitled to ask to be reinstated, even if he proves that the dismissal was unjustified or that it was prompted by political or trade union reasons. He is entitled only to compensation equivalent to one month's wages, if his contract had not expired. If it had expired, the contractual bond is immediately dissolved and the worker is not entitled to any compensation. Through Mr. Federico Mujica, its president, the Chilean Confederation of Employees in the Private Sector (CEPCH) denounced the series of dismissals which had occurred as a result of the implementation of Decree-Law No. 2,200 of 15 June 1978. 4/ It drew particular attention to the situation in the following companies: Textil Andina (97 dismissals) and Corfo Citroën (120 dismissals) in Arica, where "there is an unemployment rate of 20%. 5/ It also spoke of the high unemployment in Magallanes, Concepción and Santiago. It cited the case of Textil Andina, which had been refused authorization to carry out a collective dismissal by Ministerial Order No. 424 of 4 October 1979, but had finally been authorized to do so by Ministerial Order No. 541 of 17 December 1979. 6/

---

1/ See A/33/331, chap. X, sect. A.

2/ El Cronista and Ultimas Noticias, 12 February 1980.

3/ Ibid.

4/ La Tercera de la Hora and El Sur of Concepción, 9 January 1980.

5/ Ibid.

6/ Ibid.

363. Numerous dismissals are reported to have resulted from the collective bargaining system established by Decree-Law No. 2,758 of 29 June 1979 (see A/34/583, paras. 282-285). These dismissals were apparently the direct result of collective bargaining and were intended either to impede such bargaining or to get rid of workers who had taken an active part in it or in strikes that had been voted for in the hope of obtaining improvements in working conditions. Particular mention may be made of the dismissals in the following enterprises: the Compañía Manufacturera de Papeles y Cartones, 7/ the Compañía Técnica Industrial (CTI), 8/ Forestal Arauco, 9/ Confites Serrano, 10/ Manufacturas Sumar, 11/ Textil Rex, 12/ Madeco, 13/ Coresa 14/ and Goodyear. 15/

364. As stated by the Special Rapporteur when he analysed the forms of trade union organization imposed by Decree-Law No. 2,756 of 29 June 1979 (citing, moreover, the opinion of the ILO Committee on Freedom of Association) the ban on concerted action, for the purposes of negotiation, outside the context of the enterprise prevents workers from effectively defending their interests (E/CN.4/1362, para. 133). This ban, together with the restrictions on the right to strike (limitation of the length of the strike to 60 days, employers' possibility of engaging other workers to replace strikers), 16/ places workers in a very unfavourable position for obtaining better working conditions. This opinion has been expressed by several union leaders and has been borne out by strikes in a number of enterprises which did not bring about any improvement in employers' offers, except in a few cases where the improvement obtained was negligible. 17/

365. It has also been pointed out that implementation of the Labour Plan does not mean that all Chilean workers can once more exercise their right to collective bargaining and their right to strike. On the contrary, out of a total of

---

7/ Solidaridad, No. 89, March 1980.

8/ At CTI, 152 workers were dismissed on the day of the vote (these were workers who had a fixed-term contract) and 52 (including the members of the strike committee) after the negotiations. La Tercera de la Hora, 23 January 1980, and El Mercurio, 24 January 1980.

9/ La Tercera de la Hora, 27 January 1980.

10/ Ultimas Noticias, 31 January 1980.

11/ La Tercera de la Hora, 1 February 1980.

12/ Ibid.

13/ La Tercera de la Hora, 6 February 1980.

14/ La Tercera de la Hora, 16, 17, 19, 20 and 23 February 1980; El Cronista, 16, 19, 21 and 23 February 1980; El Mercurio, 17 February 1980; and Ultimas Noticias, 20 February 1980.

15/ Goodyear dismissed 6 persons before the end of the negotiations and 70 persons afterwards.

16/ See E/CN.4/1362, para. 134.

17/ See "Quiénes ganan y quiénes pierden" in Hoy, 13-19 February 1980.

3,100,000 workers, it is estimated that only 500,000 have been able collectively to improve the agreements concerning them. <sup>18/</sup> Consequently some 83.8% of workers would appear to be excluded from this system. Many of them have been excluded under express provisions of the law, as in the case of municipal employees, guards, apprentices, managers, agents, etc. Others are excluded because in practice it is impossible to assemble the minimum number of workers necessary for negotiations. This is the case in the agricultural, commercial and transport sectors, for example, where the workers are widely scattered. Thus some sectors where incomes are lowest and where the workers are in a situation of extreme poverty - such as agricultural workers - have been deprived of access to collective bargaining.

B. New decree-laws relating to the labour sector

366. Some new decree-laws have been added to those commented on in previous reports, and these together constitute the Government's "Labour Plan". <sup>19/</sup> They generally modify the above-mentioned legislation only partially, without changing the system which it has established. They make the system more sophisticated by accentuating its ability to remove all protection for the weaker party to the labour contract and assimilating the contract to one governed by the laws of free competition.

367. These new decree-laws are the following:

(a) Decree-Law No. 2,950 of 15 November 1979, which deprives new categories of workers of the possibility of collectively negotiating their working conditions, in addition to those categories already excluded under Decree-Law No. 2,758 of 29 June 1979. <sup>20/</sup> The latter decree-law introduced changes intended to improve the situation of employers who do not respond to proposals submitted by the workers. In addition, it established a legal presumption of acceptance of a proposal if the employers did not submit a counter-proposal within 10 days. In response to demands by employers, who have sometimes had to grant wage claims because they had not responded to the workers' proposals, this provision was changed; defaulting employers will now have to pay a fine (art. 1, para. 14). In addition, the period required for the proposal to be considered as accepted has been increased to 20 days (twice the length of the previous period). This decree-law also introduced a provision which has very serious consequences for workers since it allows failure by them to vote in favour of a strike to be interpreted as acceptance of the employer's proposal (art. 1, para. 20), regardless of the reasons for the absence of a vote, which may be due to matters beyond the workers' control (e.g. obstacles created by their employers).

(b) Decree-Law No. 3,355 of 17 May 1980, which amended various provisions concerning the trade union organization and collective bargaining. Under this legislation, contiguous premises belonging to the same owner are considered as the

---

<sup>18/</sup> Mr. Ramón Suarez, Director of Labour, stated that 400,000 workers had participated in collective bargaining and that negotiations had failed in only two groups of enterprises (El Mercurio, 29 February 1980).

<sup>19/</sup> See A/34/583, paras. 275-292.

<sup>20/</sup> See E/CN.4/1362, paras. 130 and 131.

same enterprise for the purposes of forming trade unions. This legislation also allows rural workers employed on premises owned by the same enterprise (art. 1, para. 4) to join the trade union organization in an enterprise engaged in commercial activities. This provision seems partially to improve rural workers' opportunities to form unions. Decree-Law No. 3,355 contains various provisions intended to facilitate the work of union leaders (art. 1, paras. 9-11). The most important of these provisions are the following:

- (i) Authorization for union leaders to have four hours a week for union duties. They may also grant this authorization to other leaders, who can thus combine the hours with their own;
- (ii) Various facilities accorded to union leaders, including the opportunity to take leave of absence from work for at least six months, a week's holiday a year for union duties or further training and the opportunity to take leave without pay, with the employer's consent.

However, the cost of all these privileges must be borne by the trade union organization concerned. It is actually the workers themselves who must finance the union leader's salary and social security contributions. These charges on the workers are not subject to collective bargaining. Furthermore, in accordance with Decree-Law No. 3,355, employers' contributions to welfare funds can be negotiated only when the funds are administered jointly by employers and workers (art. 2, para. 1) and the sick leave privileges granted under Decree-Law No. 16,781, which guaranteed job security to all workers for the length of their sick leave and for up to six months afterwards, are eliminated. Thus, a worker who has been sick can be dismissed as soon as he comes back to work.

(c) Decree-Law No. 3,410 of 28 May 1980, which authorized the President of the Republic to restructure the public administration - in particular through reductions in personnel - "without having to observe any legal privilege or tenure which personnel may have enjoyed or may enjoy". The result is that the administrative authorities can change the rank and functions of personnel subordinate to them and even dismiss them, the worker enjoying no legal protection in the form of job security as formerly provided for public employees. It should be emphasized that this decree-law is retroactive. The retroactivity affects public employees who were formerly protected by the legal guarantee of job security and had invoked this privilege in court to avoid dismissal. This once again underlines the insecurity which exists in Chilean society since there are no acquired rights vis-à-vis the omnipotence of a legislative and administrative power which has also assumed constitutional powers. Mr. Tucapel Jimenez, the President of the National Association of Public Employees (ANEP), stated that "40 specific cases currently being examined in the courts are affected by this law"; it could, however, affect the entire public administration. Among the persons apparently affected by this law is Daniel Lillo, President of the National Association of Customs Workers, who was dismissed pursuant to the restructuring powers assumed by the Executive.<sup>21/</sup> According to Mr. Tucapel Jiménez, this provision can be applied to the privileges which formerly protected union leaders in general, pregnant women and employees who were ill at the time they were dismissed. Among pregnant women dismissed were eight former employees of the Agrarian Reform Corporation (CORA), whose case is

---

<sup>21/</sup> See A/34/583, para. 293, for the suit brought by Daniel Lillo.

before the courts. 22/ If this retroactive rule is applied to disputes before the courts, the Executive will once more have shown that it does not respect, even in name, the authority and independence of the Judiciary, since it removes from the Judiciary cases in which the latter should have jurisdiction. Although this provision is in fact in force only temporarily, as General Pinochet said in a statement, 23/ this does not lessen the seriousness of the refusal to recognize the acquired rights of the workers, at least during the period when the new law is applicable. The effects of this law on persons who lose their job - which in cases like Daniel Lillo's would represent punishment for having exercised trade union rights - will not end when the law is no longer applicable.

### C. Persecution for trade union activities

368. The Government claims that the provisions of the so-called Labour Plan ensure complete freedom for trade unions in Chile. Nevertheless, ever since this legislation began to be applied, and in particular during 1980, there has been an increase in the persecution and repression of various trade union organizations and persons engaging in activities of a trade-union nature. The Special Rapporteur has received complaints concerning cases of unlawful detention, torture, searches and trials connected with union activity.

#### 1. Violations of the right of assembly

369. Several workers' meetings have been banned; in some cases the participants have been arrested and sentenced to enforced residence. The following are some examples:

- (i) The meeting of a group of people asking for help for strikers from the CORESA enterprise (to finance the canteen, which was feeding 210 workers and their families) in a street in Santiago. Six persons were arrested; 24/
- (ii) The participants in the demonstrations and peace marches organized by the National Trade Union Co-ordinating body on 8 March 1980 to celebrate International Women's Day were dispersed. One hundred and ten persons were arrested in Santiago and 26 in Valparaiso; 17 of them were sentenced to enforced residence in various parts of the country for three months (see chap. II, sect. A).
- (iii) Authorization of a public demonstration by the Trade Union Rights Defence Command was refused. Authorization was granted only for meetings at individual union headquarters. 25/

---

22/ El Mercurio, 29 May 1980.

23/ La Tercera de la Hora, 18 June 1980.

24/ El Mercurio, 5 January 1980.

25/ Hoy, 23-29 April 1980.

370. On 1 May, several arrests were made, and union leaders, activists and labour organizations were subjected to attempts at intimidation. The climate thus created and some direct references by the Government forced the Catholic Church to call off the traditional May Day mass. Cardinal Raul Silva Henríquez stated that he had decided not to celebrate the mass in the Cathedral because of information from the authorities which had caused him to fear that serious incidents would take place. In his message to the workers, he stated:

"We would have liked to hold a holy mass, as we have done every year, to celebrate the holiday of Saint Joseph the Worker, the holiday of the working man who is respected, loved and protected by the Church, but this has not been possible. Circumstances beyond our control have led us to abandon this celebration which is so dear to us. We did not want to expose anyone to risks, and especially not humble people who love Jesus Christ and strive to serve him; we did not want to expose them to dangers that we felt were serious." 26/

371. Some secret demonstrations were held. After these meetings, the participants held peace marches which were dispersed by the police; 57 persons were arrested, 27/ of whom 37 were sentenced to enforced residence and the others accused of offences punishable under the State Security Act. 28/

372. On 28 June 1980, the Carabineros prevented the National Federation of Taxi Drivers (FENATACH) from holding a lunch in support of Mr. Juan Jara, its president. The reason they gave was that no authorization had been issued "pursuant to Ministry of Defence Proclamation No. 82". About 1,500 persons were to have attended the lunch. 29/

## 2. Violations of the right of association for trade-union purposes

373. The Ad Hoc Working Group, in the report submitted to the Commission on Human Rights at its thirty-fifth session, mentioned Decree-Law No. 2,346 of 17 October 1978, under which the Government has dissolved seven union organizations and declared them illegal (E/CN.4/1310, paras. 208-216).

374. The Government has maintained its refusal to authorize the establishment of any union organization which does not conform to the rules it has laid down. Thus, in June, a railway workers' union representing the inspection department of the Alameda Transport Company was declared non-existent and dissolved by the Labour Directorate. 30/ This shows that the Government does not respect article 4 of ILO Convention No. 87 of 1948, under which: "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority".

---

26/ El Mercurio, 2 May 1980.

27/ El Mercurio, 3 May 1980.

28/ See chap. III, sect. A.

29/ El Mercurio, 29 June 1980.

30/ El Mercurio, 30 June 1980.

3. Repression of trade union organizations and their  
leaders and activists

375. The headquarters of several union organizations have been raided and many union leaders arrested because of their union activities. During the period covered by the report, several cases of dismissal of union leaders have also been reported and were apparently intended to weaken the unions. Moreover, proceedings have been instituted against some leaders under the provisions of Decree-Law No. 2,347 of 17 October 1978.

(a) Raids

376. On 11 April 1980, CNI agents searched the offices of the lawyers Francisco Justiniano and Ramón Toledo. The latter is counsel for the National Confederation of United Agricultural and Non-Agricultural Workers (UOC). The 16 persons who were in the building at the time - nine union members, three lawyers, their secretary and three clients - were handcuffed and tied up with military belts, and their heads were covered with paper bags. They were photographed near posters placed in position by the agents conducting the raid, interrogated about so-called subversive projects, threatened and beaten. 31/ The offices were ransacked and equipment damaged.

377. There has been a similar complaint of a raid on the headquarters of the National Federation of Mine Workers (FINM) by civilian personnel armed with machine-guns. According to allegations contained in the charges, the personnel conducting the raid produced a warrant from CNI, which does not have competence to take decisions on this type of measure. The offices and correspondence were thoroughly searched, and the caretaker was interrogated under duress. That same evening, there was a search of the home of Mr. Pedro Véliz, Vice-President of FINM, whose life was threatened in front of his wife and daughter. 32/

(b) Proceedings instituted against trade union leaders

378. The Special Rapporteur has mentioned the proceedings instituted by the Minister of the Interior against seven union leaders pursuant to Decree-Law No. 2,347 of 17 October 1978. 33/ These workers, who had submitted to the authorities a petition concerning arrested and missing persons, were accused of having improperly assumed representation of categories of workers without the requisite administrative authorization.

379. On 30 April 1980, a similar suit was brought, on the application of the Minister of the Interior, against five leaders of the National Federation of Metallurgical Unions when they were taking steps to secure legal personality for the Federation. They, too, were accused of improper representation. One of the accused, union leader Ricardo Lecarós, stated that the security agencies persecuted workers, conducted surveillance of union premises and made anonymous threats by telephone.

---

31/ Hoy, 7-13 May 1980.

32/ Hoy, 28 May-3 June 1980. The Special Rapporteur has received a copy of the appeal for preventive amparo submitted by Mr. Véliz.

33/ See E/CN.4/1310, para. 225, and A/34/583, paras. 294-297.



In addition, the labour inspectors pressured the unions not to join the Federation. 34/ The five persons were kept in prison for three days and were released on bail while the proceedings continued. 35/ Subsequently, the case was dismissed in the court of first instance, but an appeal has been lodged against this decision. 36/

380. Between 20 and 26 May 1980, the Minister of the Interior brought two other suits for infringement of article 1 of Decree-Law No. 2,347 of 17 October 1978: one against the Trade Union Rights Defence Command and the other against the Workers United Front (FUT). Several leaders of these organizations were accused of having signed documents in which they assumed representation of workers without having the necessary legal capacity. 37/ The lower court judge dismissed the proceedings against FUT, 38/ but at the time of drafting of the present report an appeal has been lodged against this decision.

381. Mr. Juan Jara Cruz, another union leader, the president of FENATACH, was prosecuted for having spoken of the directors of economic policy in Chile in the following terms at a union meeting: "We are tired of seeing a gang of second, third and even fourth-rate toffs, supported by the bayonets of the armed forces, trample the unions underfoot." 39/ Mr. Jara, who was one of the trade union leaders who supported the military uprising of 11 September 1973, was accused by the Minister of the Interior of incitement to subversion and other offences, under Decree-Law No. 12,927 relating to the internal security of the State, and was prosecuted and imprisoned. 40/ He spent seven days in prison and was then released on bail. 41/ Because of his criticism of the Government's economic policy, he was sentenced to 61 days' imprisonment for "insulting government authorities and defamation of such authorities". 42/

---

34/ Solidaridad, No. 90, April 1980.

35/ Hoy, 7-13 May 1980.

36/ El Mercurio, 15 July 1980.

37/ El Mercurio, 29 May 1980.

38/ El Mercurio, 15 July 1980.

39/ El Mercurio, 11 April 1980.

40/ El Mercurio, 12 April 1980.

41/ El Mercurio, 19 April 1980.

42/ Ibid.

(c) Arrests of union activists and leaders

382. The cases mentioned below are only a few examples of the many arrests of agricultural and non-agricultural workers carried out in 1980. They illustrate the persecution suffered by those who undertake union activities or unite to defend the rights of certain categories of workers:

- (i) Five workers in the Mantos Blancos enterprise in Antofagasta were arrested on a charge of impeding collective bargaining and proceedings were instituted against them. These workers are alleged to have distributed pamphlets about collective bargaining, about May Day and about 11 September 1973; 43/
- (ii) Since 8 March and after the celebration of International Women's Day, carabineros in Linares have arrested without charge 12 union leaders and agricultural workers belonging to the Nuevo Horizonte, Sol Naciente and Ranquil federations. A UOC leader stated that the purpose of these arrests was to paralyse the activity of unions which did not endorse the Government's economic and social policy. 44/ The Special Rapporteur has received information from witnesses stating that one of the detainees, Mr. Raul Ortega, was subjected to physical and mental torture. Another worker from the town of Linares, Mr. Raul Sergio Tapia, affirmed in a Statement under oath, a copy of which has been submitted to the Special Rapporteur, that he had been arrested on 24 April 1980 by persons in civilian dress and taken to a secret place, where he had been subjected to terrible torture while being interrogated about his union activities. He spent 10 days in his persecutors' hands;
- (iii) Eleven persons in Molina, all agricultural workers, were arrested and charged with belonging to a cell of the MAPU Obrero Campesino. The police charged them with no specific act of violence, but alleged "that they were preparing to commit such acts". 45/ According to the complaint submitted the detainees were subjected to coercion during their interrogation. Several of them were subsequently released, and proceedings were taken against others.

383. The report on the 213th meeting of the ILO Committee on Freedom of Association mentions many other arrests of union leaders. 46/

(d) Dismissal of union leaders and activists

384. In July 1980, the unions belonging to the National Federation of Chemical and Pharmaceutical Industry Employees stated that heads of companies in their sector were endeavouring gradually to eliminate manual and non-manual workers affiliated to

---

43/ El Mercurio, 26 January 1980.

44/ Solidaridad, No. 90, April 1980.

45/ El Mercurio, 10 May 1980.

46/ See ILO document G.B. 213/8/13, May-June 1980, paras. 315-335.

rank-and-file organizations so as to weaken the union movement, in particular in the light of future collective bargaining. They drew special attention to the fact that the Petrissio, Pfizer and Farnocinica del Pacifico laboratories were dismissing union-affiliated workers and replacing them by others whose opportunities to participate in the unions would be limited. 47/ These complaints are similar to those of other union organizations in enterprises which, because of collective bargaining or as a result of strikes, have dismissed many workers (see sect. A of this chapter). Similarly, a union leader in the Goodyear Company described the proceedings instituted by the company to deprive him of his privileges and dismiss him as "persecution because of his union activities". 48/

385. Many of the personnel dismissed from public administration posts under Decree-Law No. 2,345 of 17 October 1978 (which gave the Government discretionary powers to dismiss public administration employees) 49/ have been union leaders. This was the case in particular with three members of the executive committee of the Teachers' Metropolitan Co-ordinating Body. The persons dismissed stated that they were "convinced that the real cause of our dismissal is the fact that we have expressed our concern, at teachers' meetings, about the many and serious problems confronting Chilean education". 50/

386. As ILO has already observed, the situation described in this chapter shows that labour legislation in Chile contains many provisions that are inconsistent with the international principles relating to this question. Moreover, ILO has expressed concern about the many allegations of arrests of union leaders and activists. 51/

387. The Special Rapporteur has also observed that the great majority of workers enjoy no union right, not even those which were granted to certain categories of workers in 1979. It is this majority which is suffering perhaps the most serious violations of the right of association and assembly and the most serious attacks on life, liberty, security of person and physical integrity. It includes the most disadvantaged sectors of the population - those who have the greatest need for protection of their economic and social rights and for safeguards in exercising and defending these rights.

---

47/ El Mercurio, 24 July 1980.

48/ Hoy, 23-29 July 1980.

49/ See E/CN.4/1310, paras. 199-207.

50/ Solidaridad, No. 89, March 1980.

51/ See ILO document G.B. 213/8/13, para. 336.

VII. OTHER ECONOMIC AND SOCIAL RIGHTS

A. Unemployment

388. In his speech on 11 September 1978, President Pinochet stated: "the continuing unemployment in Chile is foremost among my concerns as head of Government, even though the rate has recently gone down to 12.7% in the Greater Santiago region, where the problem is most serious". 1/

389. According to the ILO Year Book of Labour Statistics for 1979, the unemployment rate in Chile has increased sharply since 11 September 1973. The figures given by this publication are as follows:

|                  | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>1978</u> | <u>1979</u> |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| National total   | 3.1%        | --          | --          | 14.7%       | 13.0%       | 12.4%       | ---         | --          |
| Greater Santiago | 3.3%        | 4.8%        | 8.3%        | 15.0%       | 17.1%       | 13.9%       | 13.7%       | 14.8%       |

These figures are derived from official sources and the figures for certain specific periods have also been published in previous reports by the Ad Hoc Working Group 2/ and the Special Rapporteur. 3/

390. In May 1980, the Department of Economics of the University of Chile stated that the unemployment rate in Greater Santiago was 12.8% in March 1980 and pointed out that this was the lowest rate for March recorded during the past six years in that area. However, it went on to say that the number of unemployed had risen from 151,000 to 175,000 between 1975 and 1980 because of the increase in the population during that period. According to the same study, the total rate of unemployment in Chile was 12%. Furthermore, the number of jobs, which had increased by 112,600 in March 1979, had increased by 193,000 in March 1980. 4/ It also pointed out that the average time during which a worker remains unemployed, which had been 9.6 months in March 1979, had risen to 11.1 months in March 1980. 5/ As a result of its investigations, the same source found in August that there was an unemployment rate of 11.7% among the total work force in Greater Santiago, while the National Statistics Institute stated that its own investigations had shown an unemployment rate of 14.4% for the Greater Santiago area. 6/ As for unemployment at the national level, a comparison of figures from other sources for March and December 1979 7/ shows that there are places such as La Serena and San Francisco where the unemployment rate has greatly increased.

---

1/ See E/CN.4/1310, para. 252.

2/ See A/32/227, para. 225, A/33/331, para. 571, and E/CN.4/583, para. 254.

3/ See A/34/583, para. 299.

4/ El Mercurio, 14 May 1980.

5/ Hoy, 7-13 May 1980.

6/ El Mercurio, 7 August 1980.

7/ In La Serena and San Francisco, the unemployment rate was 13.5% in March 1979 and 15.8% in December 1979. In Curito and Mulchén, it was 16.8% in March 1979 and 17.9% in December 1979, and in Tomé and Subu together, unemployment rose from 18% to 19.1% during the same period (Hoy, 7-13 May 1980).

391. The above figures indicate that the rate of unemployment during the past six years is clearly the highest that Chile has experienced in its entire history. The Special Rapporteur's concern about the continuation of such a high unemployment rate is related to the right enunciated in article 6 of the International Covenant on Economic, Social and Cultural Rights and the responsibility of States parties to the Covenant to take measures intended to ensure the full exercise of the right to work. Chile is among the States which have ratified the Covenant and has accordingly pledged to comply with its provisions. The failure to observe this right, resulting from consistent official policy constitutes a continuing violation of a fundamental right of a large part of the population.

392. As the Special Rapporteur has already pointed out, the persistently high unemployment rate is due to a succession of measures designed to bring about a shift of manpower towards lower-paid jobs which enjoy less legal protection. 8/ Thus, for example, Mr. Guillermo Medina, a copper workers leader and State councillor, denounced the fact that, while workers were being dismissed in the El Teniente division, work was contracted out to private firms who hired their workers for 30 or 45 days "in order to prevent them from acquiring seniority and its attendant advantages". He also denounced the fact that the El Teniente division provides work for 89 such private enterprises, thus violating Decree-Law No. 16,757 of 20 February 1968, which prohibits the contracting of production work to such enterprises. 9/

393. Some of the consequences of unemployment in working-class sectors (where the problem is most severe since, during the period 1974-1979, 52.5% of the total unemployed were from these sectors) have been analysed by economist Marianne Schkolnik of the Academy of Christian Humanism, who drew attention to "the degrading position of a man who enjoys a certain standard of living and, as head of the family, must bring his wages home every month, but then becomes unemployed and a burden on the other members of the family; the degrading position of a skilled worker who has worked all his life in an industrial sector but then has to accept a part-time job looking after cars, peddling goods in the street or asking to do odd jobs in private homes". 10/

394. To combat this serious problem, the Government is continuing to implement the measures discussed by the Ad Hoc Working Group in its report to the thirty-third session of the General Assembly. 11/ However, there has been no

---

8/ See E/CN.4/1362, para. 155.

9/ El Mercurio, 17 April 1980.

10/ La Tercera de la Hora, Economic supplement, 11 May 1980.

11/ See A/33/331, paras. 581-592.

essential change since 1978. On the contrary, the numerous dismissals by public and private enterprises which have been reported in the press, give rise to legitimate concern about the country's economic prospects. 12/

B. Social situation of the poorest sectors of the Chilean population

395. The abject poverty in which some 2 million Chileans are currently living 13/ is giving rise to serious social problems. The Government, as well as the Church and other institutions, has expressed serious concern about the increase in alcoholism, 14/ drug abuse and malnutrition. 15/ In the province of Chiloé, for example, 14.5% of the child population under the age of six years show signs of malnutrition. This information was supplied by nutritionists from the municipal hospital in Castro, who stated that the socio-economic factor was "the main cause of child malnutrition in the urban area: low incomes, the dependence of many families on the Minimum Employment Plan unemployment due to the lack of large sources of labour in a depressed area where the cost of living is quite high". 16/

---

12/ Since March 1980, when the Department of Economics of the University of Chile announced an unemployment rate of 12.8%, the press had reported the following collective dismissals: 46 railway employees of the El Teniente State Mining Company (El Mercurio, 9 April 1980); 22 Citroën-Chile workers (Solidaridad, No. 90, April 1980); 420 employees following the bankruptcy of the Industria Manufacturera Chilena del Caucho company (Solidaridad, No. 91, April 1980); 450 health service employees (El Mercurio, 30 April 1980); 74 employees of the Industria Conservera Copihue (Hoy, 7-13 May 1980); 120 employees following the bankruptcy of the Vía Sur bus company (Hoy, 9-15 April 1980); 1,000 persons following the bankruptcy of two Chilean companies: Cristal Yungay and FAMASOL (La Tercera de la Hora, 24 May 1980).

13/ El Mercurio, 7 January 1980.

14/ The Ministry of Health has announced that campaigns would be launched against alcoholism and drugs (El Mercurio, 22 February 1980). Father Ignacio Garau describes the fate of 127 families living in precarious conditions in an article entitled "Curanilahue, alcoholic town?" published in Mensaje, (No. 289, June 1980).

15/ On 10 June 1980, El Mercurio published an article entitled "Not enough work or jobs and too many drug addicts", which describes the situation of the inhabitants of a shantytown called La Victoria where, for lack of work, people spend the entire day sitting on the pavement, because at least two families have to share very small houses (according to El Mercurio, 4 March 1980, one extreme case was recorded in shantytown where 12 families, comprising 52 persons, live in a house measuring 8 x 16 metres). According to the inhabitants, the main problems of La Victoria are unemployment, lack of housing, alcoholism and drug addiction.

16/ El Mercurio, 8 June 1980.

396. Another increasingly serious problem is housing. On 8 February 1980, the Deans of the ecclesiastical administration of the Catholic Church for the Southern zones (dioceses of Cardinal José María Caro, Santa Rosa and San Bernardo) sent a letter to the Minister of Housing and Urban Planning in which they described the situation of people in working-class districts who were homeless or could not pay their rent. 17/ They state that people have to pay rent that is higher than their average income - 2,800 Chilean pesos a month (about \$US 72). They also speak of many unemployed who receive no allowance at all and ask that housing should be assigned according to social and not commercial criteria. 18/ Dean Rafael Hernandez, head of the Cardinal Caro diocese, has stated that there is a need for 10,000 dwellings in that area. The inhabitants have stated that the area has 685 families on waiting lists for housing and that, in the meantime, they are being "looked after". In the Santa Adriana housing development, one inhabitant has stated that 800 families out of 3,000 are being "looked after" with all the problems of promiscuity involved in such a crowded situation". The deputy mayor and director of public works of the town of La Cisterna stated: "The magnitude of the problem is beyond our capacity and annual programmes, for instead of becoming smaller, the shantytowns are being swollen by an ever-increasing number of persons who are 'looked after'". He added that the Housing and Urban Planning Department (SERVIU) had planned to find housing for 3,460 families from La Cisterna shantytowns within 10 years and that, in his opinion, that programme had not been carried out. 19/

397. Similarly, inhabitants of Western Santiago have said that the housing shortage in various parts of that district affects some 2,000 families comprising more than 5,000 persons. Most of these persons are unemployed, occasional workers or PEM labourers who are unable to save the 40,000 pesos (about \$US 1,035) needed to apply for a State "housing allowance". 20/

398. The reports which the Special Rapporteur has noted in the press - both pro-Government and anti-Government - support the appraisals and information contained in a report by a doctor on the situation of Chilean children. This report states, inter alia:

"... the feelings that unemployment causes in a shantytown-dweller are important. This phenomenon causes a serious deterioration in the quality of life of disadvantaged families, they are, for example, deprived of housing. In these areas, there is a great deal of overcrowding. In a sample taken in a marginal working-class district in Santiago, 58% of dwellings had one bedroom and 35% two bedrooms. Since the average number of persons per dwelling is high, families live in extremely overcrowded conditions. It has been observed that the lack of beds varies in direct proportion to the increase in the number of the members of a family.

---

17/ Solidaridad, No. 87, February 1980.

18/ El Mercurio, 10 February 1980.

19/ El Mercurio, 4 March 1980.

20/ El Mercurio, 17 March 1980.

"This deterioration in the quality of life also finds expression in the deterioration of personal relations within the family and in the emotional and physical exhaustion of each of its members.

...

"In general, men and women in our shantytowns feel beaten, discouraged, tense and exhausted by a situation which is beyond them. Fear of expressing oneself and sheer dread are spectres invading homes and streets, destroying families and ruining private lives; they reduce life exclusively to the effort of surviving.

"The different ways of adjusting to these living conditions have repercussions on emotional capacities, whose complexity and quality decline, and give less and less personal satisfaction to adults and hence to children. Thus, the opportunities for emotional exchange between members of the family group are dwindling. Children have less and less possibility of receiving affection from adults and suffer from all the attendant consequences.

...

"Adults and children in the most disadvantaged socio-economic sectors have always suffered from the cumulative effects of poverty. However, the extreme seriousness of the poverty found in wide areas of the population indicates that the main victims of this situation today are the children and adolescents of Chile, who are being denied, perhaps irreversibly, the opportunity to become adults capable of participating in society in a truly egalitarian manner.

"... The economic problems of the disadvantaged population, housing conditions, the insufficiency of urban planning efforts, and the deterioration in the medical treatment administered by the competent institutions are resulting in a steady decline in the health of working-class families.

"The family is exposed to illnesses due to poor hygiene, malnutrition, overcrowding, lack of medical treatment and inability to afford medicines.

"The child population of the working-class districts suffer from diseases of the respiratory and digestive systems and infectious diseases. These diseases are the main causes of doctors' consultations, hospitalization and deaths in these districts.

"A high percentage of children also show evidence of mental problems due to the poverty and dire family situation in which they live. There are frequent cases of infantile neurosis, apathy and violent aggressiveness, and lastly many young people inhale 'neoprene' or smoke 'grass'.

...

"It has been observed that a well-nourished population contains only 3% of mentally retarded people, whereas in the disadvantaged districts of Santiago this condition affects 40% of children of pre-school age. It should be clearly understood that this problem is not due to malnutrition alone; it is also caused by the absence of sensory stimulation in the surrounding milieu."



C. Government programmes for the very poor

399. In order to improve the lot of the most disadvantaged groups of the population, the Ministerial Social Council has announced new social welfare programmes; some of the more important programmes will take place in the education sector, where a five-year literacy campaign is being considered in order to reduce the number of illiterates (10% of the population and, in the rural areas, 23%) by about 4.7%. Also over a five-year period, 49 new educational establishments and 42 establishments for mentally retarded children will be built, and repair work will be undertaken in 712 schools and high schools. Consideration is also being given to the further expansion of the campaign begun in 1976 in primary and secondary schools against the consumption of alcohol. Other programmes will be conducted in the health sector and will involve the following projects: construction of 137 rural dispensaries in the most disadvantaged zones, thus increasing the territory receiving medical care by some 15%; supply of medical measuring equipment to primary school establishments served by the national health service; and distribution of free medicines to patients of dispensaries, polyclinics and consulting services in peripheral areas. With regard to housing, drainage projects are to be carried out in community housing developments (sanitary installations, connection to the public lighting networks, drinking water supply, etc).

400. Fourteen new open centres are to be built and 21 other such centres for needy children and adolescents are to be replaced and designed to supply meals to 25,000 children throughout the country. Food is to be distributed to 70,000 persons (workers under the Minimum Employment Plan, members of indigenous communities, participants in the Mothers' Centres training programmes). The poorest will receive minimum assistance in the form of blankets, loans, clothing, funeral services and waterproof roofing. The public prison, the penitentiary and the criminal courts in Santiago will be renovated and a new prison will be built in the northern part of Santiago. 21/

401. These programmes are the most important among those the Government has decided to undertake in order to remedy the serious situation of the poorest sections of the Chilean population. According to announcements made, the implementation of these programmes will be financed out of budgetary allocations under the heading "social expenditure".

402. El Mercurio has published the following comparative table 22/ indicating the per capita amounts of "social expenditure", which, according to the Government, are the highest in recent years:

---

21/ Hoy, 20-26 February 1980

22/ El Mercurio, Economic report, March 1980

PUBLIC SOCIAL EXPENDITURE, 1970-1980  
(Millions of 1976 dollars)<sup>a/</sup>

| Heading                                     | 1970     | 1972     | 1974     | 1976     | 1978     | 1980    |
|---|----------|----------|----------|----------|----------|---------|
| Health                                      | 148 77   | 242 36   | 187 75   | 121 37   | 172 74   | 236 0   |
| Welfare                                     | 35 94    | 41 14    | 52 77    | 123 29   | 179 18   | 143 0   |
| Housing                                     | 79 92    | 156 20   | 176 29   | 66 19    | 67 58    | 93 0    |
| Social security                             | 224 40   | 372 75   | 213 78   | 193 68   | 341 53   | 420 0   |
| Education                                   | 343 28   | 502 98   | 380 26   | 312 07   | 456 07   | 530 0   |
| Regional development                        | 6 26     | 17 91    | 27 43    | 49 24    | 51 34    | 50 0    |
| Social fund                                 |          |          |          |          |          | 96 0    |
| TOTAL SOCIAL EXPENDITURE                    | 838 57   | 1 333 34 | 1 038 28 | 865 84   | 1 268 44 | 1 568 0 |
| Public expenditure excluding debt-servicing | 2 071 34 | 2 830 95 | 2 610 23 | 1 797 88 | 2 545 05 | 3 136 0 |

Source: DIPRES. Figures for 1980, estimated by El Mercurio.

a/ Expressed in 1976 dollars, in accordance with the implicit exchange rate method.

403. The programmes mentioned above are plans for the future. If fully carried out, they could make an effective contribution towards improving Chile's economic situation. The programmes implemented by the Government so far were examined by the Ad Hoc Working Group in its report to the thirty-third session of the General Assembly. <sup>23/</sup> Among projects designed to combat unemployment, the Group had mentioned the Minimum Employment Plan which was also referred to by the Special Rapporteur in his report to the thirty-sixth session of the Commission on Human Rights. <sup>24/</sup>

D. The Minimum Employment Plan

404. The Minimum Employment Plan (PEM) was established by Decree-Law No. 605 of 5 August 1974 to combat the alarming spread of unemployment. At first, PEM workers were supposed to work for not more than 15 hours a week and for a maximum of 90 days, priority being given to heads of families with several dependants. Municipalities were entitled under the Plan to grant additional benefits.

405. In fact, PEM workers have always worked a full working day. In 1975 their wage equalled 83% of that year's minimum legal wage; in addition, some of them received free food rations. At present, PEM workers are receiving only 32.7% of

<sup>23/</sup> See A/33/331, paras. 580-592.

<sup>24/</sup> See E/CN.4/1362, paras. 151-154.

the minimum wage, which is only 1,200 Chilean pesos (approximately \$US 30). They receive no family allowances, no free meals and no free transport, and are not entitled to social security or to security of employment. 25/

406. El Mercurio points out in an editorial that "work under the PEM, in addition to providing a small wage, also makes it possible to acquire a skill which will enable the worker to apply for better-paid employment, to register with municipal employment bureaus, to receive assistance in the form of food, medical attention, etc." 26/ From other sources it is reported that following the suspension of an agreement with the Agency for International Development (AID) and Caritas, which used to provide some food rations, food aid under the PEM has also come to an end, and since 1978 the National Health Service has no longer covered persons registered under the PEM because they do not possess an affiliation card. 27/

407. Persons working under the PEM are not regarded as unemployed in the official statistics. In fact, they represent the sector of the population whose rights are violated in a flagrant manner because the harsh necessities of unemployment force them to exchange their labour for pay that is not even enough to replenish their strength, the amount paid to them being insufficient to feed one person for a month. 28/ The table below 29/ indicates the percentage of workers registered under the PEM from 1975 to 1979, and the number of unemployed during the same period. By adding together the two figures, it is possible to obtain a picture of the total number of unemployed in Chile.

Workers registered under PEM  
(Annual average national total)

| Year | (I)<br>Number of persons | (II)<br>As a percentage of<br>total manpower | (III)<br>Unemployment rate<br>(%) | (IV)<br>II + III<br>(%) |
|------|--------------------------|--|-----------------------------------|-------------------------|
| 1975 | 76.496                   | 2.5  | 14.5                              | 17.0                    |
| 1976 | 171 988                  | 5.5  | 14.8                              | 20.3                    |
| 1977 | 187 650                  | 6.0  | 12.7                              | 18.7                    |
| 1978 | 145 792                  | 4.4  | 13.4                              | 17.8                    |
| 1979 | 127 652                  | 3.7  | 13.0                              | 16.7                    |

408. The reason why the number of persons registered under this plan has dropped, even though anyone over 18 years of age is now entitled to join, 30/ is that the remuneration received has been considerably reduced.

25/ J.J. Aldunate and J.P. Ruiz Tagle, "El empleo minimo: ayuda social o verguenza nacional?" (Minimum employment: social assistance or national disgrace?), Mensaje, No. 289, June 1980.

26/ El Mercurio, 4 March 1980

27/ Aldunate and Ruiz Tagle, loc.cit.

28/ See A/34/583 para. 310, for the prices of certain essential goods (September 1979).

29/ Extract from: Aldunate et Ruiz Tagle, loc.cit.

30/ See E/CN.4/1362, para. 151.

409. Workers in this category perform productive tasks which, in some cases, call for a high degree of skill. 31/ Calculations made in 1977 show that their productivity was three times greater than the wage they received at that time. 32/ As has been stated in earlier reports, 33/ what they receive is not an unemployment benefit, but a wage corresponding to less than one third of the legal minimum; moreover, they are no longer entitled to social security.

410. The support and encouragement which the State gives to this scheme, claiming that it is helping to solve the serious unemployment problem, prove that the Chilean Government is failing to carry out the commitments it entered into by ratifying the International Covenant on Economic, Social and Cultural Rights, whose articles 7, 10 and 11 are directly violated by the very existence of such a scheme. It is true that society has derived great benefit from the activity of PEM workers (cleaning, construction and repair of buildings, roads, squares, bridges, temporary housing, historical buildings, etc.), but this does not excuse the employment of human labour under such conditions, for it is intolerable that society should profit from the extreme poverty of some of its members.

411. With regard to the economic, social and cultural rights of the most disadvantaged sectors of the Chilean population, the Special Rapporteur notes with genuine interest that the Government's plans envisage measures aimed at making certain improvements in some important areas, such as education, health and housing. However, the Government should not lose sight of the fact that the problem is deep-seated and requires far-reaching measures capable of attacking it at its roots.

---

31/ See A/34/583, paras. 306 and 307.

32/ Aldunate Ruiz Tagle, loc.cit.

33/ See A/34/583, para. 306.

E. The situation of the indigenous populations

412. After its stay in Chile in July 1978, the Ad Hoc Working Group had made a report to the General Assembly at its thirty-third session on the situation of the indigenous populations in Chile from the human rights point of view (see A/33/331, paras. 685-727). The Working Group had expressed its concern, particularly with regard to the Mapuches, who form the largest indigenous group in Chile. It had stated: "Procedures which the present Government has established concerning the acquisition of title to land by Mapuches fail to take into account their institutions, customs and traditions. This, combined with a lack of effective technical and financial assistance, creates conditions for the Mapuches to be progressively dispossessed of their lands by socially and economically more powerful groups, thus endangering the existence of the Mapuches as an ethnic group." The Working Group had recommended to the General Assembly that it call upon the Chilean Government to take the particular cultural characteristics of the Mapuches effectively into account in any measures that affect them, and to adopt the necessary special provisions to guarantee to the Mapuches their right to own land in accordance with their customs and traditions and the right to preserve their cultural identity. On this subject, the General Assembly, by its resolution 33/175 of 20 December 1978, called upon the Chilean authorities to safeguard the human rights of the Mapuche Indians and other indigenous minorities, taking into account their particular cultural characteristics.

413. The Special Rapporteur provided the General Assembly at its thirty-fourth session with information on legislation subsequently enacted by the Chilean Government (Decree-Law No. 2568 of 21 March 1979), which had been the subject of criticism on the part both of indigenous groups of the population and of bodies concerned with the situation of these communities in Chile. He observed that the new provisions had been enacted without the persons concerned having been consulted or having participated in their elaboration, and without the Mapuche people's historical traditions, specific temperament, forms of ownership and work, and even less its needs and cultural development, being taken into account. On the contrary, he said, Decree-Law No. 2568:

"concerns itself with incorporating the Mapuche community into the social and economic structures established throughout the country in recent years and deprives it of any form of protection or safeguard for its identity and integrity, and of assistance in its development. The extreme poverty to which these autochthonous communities have been reduced and the obligation to incorporate themselves into an alien social, economic and cultural system, on the unilateral decision of the Government, are seriously threatening their existence as an ethnic group. The Special Rapporteur notes particularly that, in this respect, the Government of Chile has followed the tendency criticized in previous reports of the Ad Hoc Group and, by repealing the legislation in force in favour of a new Decree-Law, has aggravated the situation of the Mapuche people." 34/

---

34/ See A/34/583, para. 352.

The General Assembly expressed its grave concern at the deterioration of the situation in this area (resolution 34/179 of 17 December 1979).

414. In November 1979 the Canadian Inter-Church Committee on Human Rights in Latin America appointed an Ad Hoc Commission to visit Chile in order to study the situation of the Mapuche communities living in the country. The Commission was composed of: Miss Marta Lapierre, a member of Development and Peace, the international Catholic aid agency; Simon Smith, a Jesuit priest, co-ordinator of the North American Jesuit missions for Latin America; George Manuel, a Canadian indian, President of the World Council of Indigenous Peoples; and John Hilborn, pastor of the Methodist Church of Vancouver. In its report, this group drew attention to the situation of extreme poverty in which the Mapuche communities in Chile lived. In analysing the above-mentioned Decree-Law No. 2568, it referred to some of the objections to which the Special Rapporteur had drawn attention in his report to the General Assembly at its thirty-fourth session (see A/35/583, paras. 348-352), affirming that the Decree Law had abrogated the provisions previously in force which established procedures enabling the indigenous communities either to recover lands which had belonged to them and which they had lost through usurpation, sale or transfer, or to obtain other land in compensation. The report also mentions the pressure brought to bear on the Mapuches by the Chilean authorities to induce them to apply for the division of reserve lands, officials being sent to the communities for this purpose to convince them that if they did so apply they would obtain loans and better living conditions. According to the report, other means of pressure are also used: the Mapuches are subjected to threats to their freedom or physical integrity by officials or by local landowners, who warn them that if they do not agree to the division of their lands all loans for the purchase of seed and fertilizer will be cut off. It is true that the lifting of the ban imposed by previous legislation on the attachment of land, shares and other entitlements, dwellings, installations and tools belonging to the Mapuches in the event of non-payment by their owners of loans obtained from institutions (except the State Bank or other State institutions) <sup>35/</sup> opens up new possibilities of private loans to the Mapuches. But, as the report states, the poverty in which the majority of the Mapuches live jeopardizes any possibility they have of keeping these lands, which represent the only security on loans they can give financial institutions, and which they risk losing if they fail to meet their commitments. Consequently, any attempt to integrate the Mapuche communities into a system of free competition is tantamount to depriving them of the protection which previously enabled them to preserve the common ownership of their goods, which is the basis of their existence as a separate ethnic community with its own cultural, social and economic characteristics.

415. The identity and integrity of the Chilean indigenous communities are seriously jeopardized by poverty, illness, high mortality rates and, above all, the need to look for employment elsewhere in order to survive individually. This migratory phenomenon has been apparent for a long time, but under the present régime it has

---

<sup>35/</sup> See A/34/583, para. 349.

worsened as a result of the deterioration in living conditions and the persecution and oppression of which the indigenous inhabitants have been victims, particularly during the years immediately after the armed forces seized power. In actual fact, the aim of the legislation enacted in 1979 is to improve the productivity of Mapuche land by including it in the system of private ownership. Owing, however, to their poverty and their ignorance of the rules of the system in which it is hoped to integrate them, the Mapuches can only be at a disadvantage vis-à-vis much more powerful individuals and enterprises. Their dispossession will turn them into cheap labour for the new owners of their lands and will force them to leave, at the risk of seeing their culture disintegrate and their identity disappear, in violation of their rights as an ethnic minority.

416. The division of Mapuche lands is proceeding rapidly. The Minister of Agriculture, at present responsible for all matters concerning the indigenous communities, has announced that he hopes to have allocated 10,000 plots of land to private owners before the end of 1980. <sup>36/</sup> To promote this division of Mapuche community land, the Government has promulgated Decree-Law No. 3256 of 27 February 1980, which exempts from land tax those to whom plots of land have been allocated in application of the system established by Decree-Law No. 2568 and those applying for division before 1 November 1981. Communities remaining undivided, however, will not be exempted from taxes but will be liable to pay a sum representing 25% of the fiscal value of the land in question, in accordance with a provision issued by the Military Junta in 1974 (whereas Act No. 17 729 of 26 September 1972, previously in force, granted these communities total exemption from real estate taxes). <sup>37/</sup> Nor is exemption granted, either, to Mapuches owning in their own name plots allocated as a result of divisions effected under previous provisions. The Mapuches had submitted to the authorities an application for such exemption, but Decree-Law No. 3256, by granting it only in part, merely encourages the breakdown, desired by the Government, of community-ownership bonds. If exemption was granted to all Mapuches, it would be a real measure of support for the indigenous communities living and working in such precarious conditions.

417. Decree-Law No. 2568 permits no opposition to the division of lands, which may be applied for by a single occupant, even if not a Mapuche (see A/34/583, para. 349(a)). In practice, according to information received by the Special Rapporteur, there has been no division in communities where the majority displayed staunch opposition when officers of the Farming Development Institute (INDAP) came to take measurements for division. This has been the case in a number of well-organized Mapuche communities. Most of the communities, however, for lack of information and organization, did not oppose the division of their land.

---

<sup>36/</sup> El Mercurio, 3 February 1980.

<sup>37/</sup> El Mercurio, 15 March 1980.

418. The land division process provided for in Decree-Law No. 2568 begins with topographical studies carried out by INDAP. If an occupant is in favour of division he appears before the competent magistrate, who sets a date for a hearing, which is announced in a local newspaper at the same time as the application for division. The persons concerned do not have to be informed of the hearing individually, and consequently the Mapuches are afraid that hearings might take place without their knowledge, as newspapers are not received in the reserves regularly. That is why the Catholic Church, a number of whose bishops have met with General Pinochet to inform him of their objections to Decree-Law No. 2568 (see A/34/583, para. 347), has supported the establishment of Mapuche cultural centres to help these communities faced with disintegration to organize their defence and initiate a development process taking the true needs and characteristics of these ethnic minorities into account.

419. According to the above-mentioned report by the Canadian Inter-Church Committee, the Church has protected the Mapuche cultural centres and worked in close co-operation with them, giving its support to technical and humanitarian aid programmes (distribution of food, teaching of farming methods for producing protein-rich foodstuffs) and offering legal-counselling and cattle inoculation services, etc. These programmes, it is claimed, have not been imposed but are in response to the real needs and aspirations of the Mapuches.

420. In January 1980, the Indigenous Institute of the Bishopsrics of Temuco and Villarica signed an agreement with the Mapuche cultural centres under which the Institute is to provide guidance, assistance and legal and social training "for all concerned with developing the organization of the Mapuche cultural centres of Chile and defending the rights of the Mapuche people". The President of the Indigenous Institute declared that this agreement would benefit 30,000 Mapuches in 1,000 cultural centres in the provinces of Biobío and Valdivia. 38/ The Mapuche cultural centres are tending also to replace the cultural, social and educational promotion activities undertaken by the Indigenous Development Institute (IDI), which was dissolved by legislation at present in force without its functions being transferred to any other official institution. 39/

421. The new organizations are encountering the hostility of the authorities. In January 1980, for example, the peasant Juan Bautista Huenupi, secretary of the Mapuche cultural centre of Arauco, was arrested by two men in plain clothes who produced no warrant. He was detained for six days in different places, including local Carabineros stations, and was questioned on the activities of the centre to which he belonged. Before his release, a document was put before him, which he was forced to sign, in which he stated that he had been well treated and accused another person of having passed on political propaganda material to him. 40/

---

38/ El Mercurio, 13 January 1980.

39/ See A/34/583, para. 349(f).

40/ Hoy, 23-29 January 1980.



422. The members of the indigenous communities as individuals are denied full enjoyment of almost all the fundamental economic, social and cultural rights because of their extreme poverty and the fact that they no longer benefit from any official measure of protection and advancement or of economic, social and cultural development. In addition, they are victims of the violation of a specific right to which they can lay claim as members of an indigenous ethnic minority, the right to preserve their cultural and social identity and their traditional forms of work and ownership. Their integration into the economic structures favoured by the present-day authorities and imposed by authoritarian means without consultation or the participation of those concerned who are at an obvious disadvantage, is yet another factor which may contribute towards the extinction of their culture and the loss of their identity as a people.

CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

423. At its thirty-fourth session, the General Assembly decided to extend the mandate of the Special Rapporteur on the situation of human rights in Chile, in accordance with paragraph 6 of resolution 11 (XXXV) of the Commission on Human Rights (resolution 34/179). In application of that resolution, the Commission on Human Rights decided to extend the Special Rapporteur's mandate for one year and has requested him to report to the General Assembly at its thirty-fifth session, and to the Commission on Human Rights at its thirty-seventh session, on the human rights situation in Chile, requesting him also to deal with the problem of missing persons in Chile (resolution 21 (XXXVI)). The present report is submitted for consideration by the General Assembly in application of the above-mentioned resolutions.

424. In the report which he submitted to the General Assembly at its thirty-fourth session, the Special Rapporteur stated that during the period under consideration, from March to September 1979, he had not been able to note any improvement in the human rights situation in Chile, and that in certain respects it had, on the contrary, deteriorated; he mentioned in particular a reinforcement of the legislation to limit the exercise of human rights, an increase in the powers of the security agencies and the deaths provoked by members of these agencies, which have given an account of the facts which seems doubtful and in contradiction with the testimony of others.

425. During the period following the last meeting of the Commission on Human Rights, the tendencies noted in the preceding report have strengthened, particularly in the areas already mentioned. It should be added that there has been an increase in the persecution of and threats against persons and institutions expressing criticism of acts, attitudes or decisions of the Government. The Catholic Church, whose action in defence of human rights in Chile has been recognized by the United Nations, 1/ has been subjected to constant persecution by the security agencies and unidentified groups.

426. The state of emergency has been in force for seven years, as has a series of provisions restricting the exercise of civil and political rights. New provisions adopted in 1980 (Decree Laws Nos. 3168 of 20 January 1980 and 3451 of 16 July 1980) have increased restrictions on individual freedom and security which may be applied by discretionary decision of the Executive, without application to the courts. The first of these provisions authorizes the Government to assign persons to residence in isolated places for a period of three months, by simple order of the Minister of the Interior. The second authorizes the Executive, by decision of the same Minister, "for the purpose of investigating offences against the security of the State which may result in the death, injury or abduction of persons", to hold detainees incommunicado for 20 days without bringing them before the courts. This provision has been applied to persons who cannot be suspected of having committed such offences. The promulgation of these two provisions has

---

1/ The Vicaría de la Solidaridad received the 1978 human rights award from the United Nations.

aggravated the state of emergency because of the Executive's wide powers to deprive the inhabitants of Chile of their liberty. This situation would justify the fears expressed by certain agencies which have the impression that this might mean a return to a situation similar to that of 1977. These fears were confirmed in July and August 1980 following abductions which led to a number of disappearances within a few days. There have been many victims of torture, and one of them has died as a result of torture. The Government has called for the opening of an investigation and those responsible for a number of these acts are said to have been identified. But, the legal instruments which have made these unlawful acts possible are still in force. The Special Rapporteur recommends to the General Assembly that it once more call on the Government of Chile to terminate the state of emergency as an essential measure for restoring human rights in Chile.

427. The number of individual and collective arrests has increased by comparison with previous years, although some of them have only been of a few hours' duration - for example, the arrests carried out during large-scale operations taking place in Santiago following terrorist attacks or acts. Many detainees have been kept in prison in secret places where they have been subjected to torture which, though varying in degree, included in almost all cases physical ill-treatment, mental torture and threats. In spite of the large number of persons arrested and tortured on the pretext of investigation into terrorist acts, those responsible for these acts have not been identified. The number of persons tortured during the period covered by this report is slightly greater than in the same period last year. Actually, the measures ostensibly taken against terrorism were mainly directed against opponents of the Government or persons who had exercised their rights or intervened in defence of human rights, whether in the field of education and culture or of trade-union activities, rural life, information or the specific defence of individual freedom and security. Generally speaking, the new legislation empowering the Minister of the Interior to order arrests has enabled the security agencies to carry out arrests without need of a legal warrant. In certain actions for amparo, it has come to light that these arrests were ordered by the National Information Agency (CNI), acting in excess of its powers. In other cases, an order signed by the Minister of the Interior has been mentioned. In neither situation was a warrant for arrest presented to the persons concerned at the time of their arrest. Many searches have also been carried out without presentation of a warrant. There has also been an increase in the duration of deprivation of liberty (enforced residence) of persons who have taken part in public meetings or demonstrations not authorized by the Government, and particularly in the duration of detention in secret places where many persons have been subjected to torture.

428. The Special Rapporteur is particularly concerned by the lack of protection for persons who remain in the hands of the security agencies for a period which may extend to 20 days. In accordance with their usual practice, the security agencies use torture during interrogation. Such maltreatment, in itself condemnable, merits greater reprobation if those who inflict it are Government officials with instruments of torture, premises, vehicles and weapons for this purpose at their disposal. When officials are authorized by law to dispose of persons at will for 20 days, it may be asserted that the life and physical integrity of these persons are completely without protection.

429. This assertion is confirmed by the fact that the courts do not exercise any type of protection on behalf of persons arrested by the security agencies. In the actions for amparo brought before them, they refrain from considering the legality of the proceedings and of the arrest itself if the Executive informs them that the arrested persons are in its custody. They do not visit places of detention, although aware of the torture and ill-treatment inflicted on detainees, nor do they ask that detainees be brought before them. Moreover, although it has been noted that some judges have investigated a number of cases of manslaughter resulting from torture, those responsible for these crimes have so far never been sentenced, nor have they ever served any sentence for this type of crime. Some court decisions seem to indicate that a number of judges are becoming aware of the situation and perhaps beginning to react. Only the future will show whether these are isolated acts of no special significance or whether they mark a true realization of the position.

430. The almost total absence of protection against arbitrary action by officials with the material means at their disposal who have legal support and can act with impunity has created a climate of terror that is accentuated by the activities of groups which - under different names but concealing their identity - attack, threaten and intimidate people. The members of one of these groups, responsible for several abductions and for torturing a number of people and murdering one of them, are said to have been identified as belonging to one of the security agencies. It took only a few days to identify them when an investigation was carried out at the request of the Executive. As for those responsible for the other acts of intimidation, threats and aggression against persons or institutions, they were not identified in the course of the investigations carried out at the request of the victims or of their families or representatives. The Special Rapporteur is of the opinion that to prevent the security agencies from being able to exercise arbitrary powers against individuals, it is necessary to re-establish the full authority of the courts, abrogating the legislation which restricts their possibilities of investigation and their presence on military premises. In addition, inquiries must be instituted whenever the security agencies commit an abuse, and the culprits must be punished. The Special Rapporteur recommends to the General Assembly that it once more call upon the Government of Chile to restore to the Judiciary all its powers enabling it to protect detainees and investigate violations of human rights; and to ensure that persons under detention are questioned only in the presence of a judge or their lawyer and that the courts fully exercise their powers of supervision as regards the legality of arrest and detention, conferred upon them by Chilean law and the international instruments ratified by Chile.

431. The period under consideration is further characterized by the dismissal of many teachers, especially university teachers, for political reasons (present or past political opinions, trade-union activities, etc.), although the alleged reasons are purely budgetary. Equally, the university authorities have penalized many students for belonging to student associations not approved by the Government or on account of their opinions or their behaviour inside and outside the university. These measures show the almost absolute powers of the vice-chancellors in the administration of the universities, the restrictions on academic freedom and on the freedom of opinion of the whole student population, and the insecurity of scientific and cultural activities, where the work of many years can be reduced to nothing by a decision of the authorities.

432. As regards the trade unions, there have also been many violations of the principles contained in the relevant international instruments. They include, in particular, the dissolution of meetings held in public or private, accompanied by numerous arrests, the dissolution of trade unions by administrative means, the prosecution of trade-union leaders, searches of trade-union premises, arrests and dismissals of trade-union leaders and activists. At the same time, although, subject to the serious restrictions mentioned in the preceding reports, the Labour Plan authorizes some exercise, by about 20% of the working population, of the rights of assembly and collective bargaining and of the right to strike, the remaining 80%, including the workers in the least well paid sectors, still do not enjoy any trade-union right.

433. The right of assembly is also subject to many restrictions. It is at present authorized for trade unions which conform to the Government directives laid down in the Labour Plan. For other workers this right is granted selectively and remains subject to the arbitrary decisions of the military or administrative authorities.

434. There is no change to report in the situation as regards political rights, of which the Chilean people have been deprived since 1973. The authorities have organized a plebiscite for the approval or rejection of a constitution which they are proposing and which does not provide for the restoration of political rights before the next eight years. A plebiscite has been organized for the approval of a new constitution, but the state of emergency remains in force, with the limitations which it imposes on freedom of information, assembly and opinion. There are no electoral rolls and no electoral system with provision for checking the results. A single constitutional text is proposed, drawn up by groups of persons appointed by the Military Government, without the rest of the population having had any opportunity of participating in the preparation of the draft. Approval of this text would not improve the present situation but would give a permanent character and constitutional status to legislation which violates the civil and political rights of the Chilean people. The Special Rapporteur recommends that the General Assembly once more call upon the Chilean Government to restore the exercise of political rights and participation by the people in the conduct of public affairs, and to restore the full enjoyment of trade-union rights, freedom of expression, university freedoms and the freedom of assembly.

435. As to freedom of information, no noticeable change has been observed during the past months. The media have a certain latitude, but there are restrictions imposed by the legal provisions in force during the state of emergency. A self-censorship also still persists, which the media must impose upon themselves in order to survive and to avoid the sanctions which the military authorities inflict on information media which fail to conform to the system of government directives, whether tacit or expressed. The arrest, torture and abduction of a number of journalists by the security agencies, and the refusal of authorization to publish a new organ of the press, are evidence of the limits imposed on the freedom of information and expression. The Special Rapporteur recommends that the General Assembly call upon the Government of Chile to abolish the powers of censorship and repeal the laws which authorize them, and to respect freedom of information, without restrictions.

436. The Chilean Government has not changed its attitude with regard to Chileans living outside the country and wishing to return. During the period covered by this report, the ineffectiveness of actions for amparo to remedy this violation of an

essential right has become apparent. Applications to enter Chile filed with courts by a number of Chilean nationals of an advanced age and in a delicate state of health have been rejected, these persons being considered a danger for national security and internal order. The Special Rapporteur recommends that the General Assembly once more call upon the Government of Chile fully to respect the right of citizens to enter and leave the country.

437. The tragic problem of the persons who have disappeared continues to distress members of their families and their friends, without any solution having been reached in the cases brought before the Supreme Court by the bishops in November 1978. Some cases have been the subject of judicial inquiry and, thanks to the efforts of a number of judges who have played an active role in the investigation, it has been possible to ascertain the fate of 34 missing persons whose corpses were found buried and have been identified. Other investigations have not been conducted effectively, however, and all of them have encountered obstacles arising from a complete lack of co-operation on the part of the military and administrative authorities, which refuse to provide the necessary information. Furthermore, no case can be cited in which legal proceedings have put an end to these violations of human rights, and in which the culprits have been punished and the victims' relatives compensated in conformity with Chilean law and the relevant international instrument and principles. The Special Rapporteur believes that it is necessary to pursue the investigation of these cases by the most appropriate means, and recommends that the General Assembly call upon the Government of Chile to fulfil its duty by providing both the families of the missing persons and the international community, with enlightenment and explanations regarding their fate, and to punish the culprits, compensate the victims' families and take steps to ensure that there is no recurrence of such events.

438. The Chilean people has not obtained any significant improvement in the enjoyment of its economic, social and cultural rights. The rate of employment remains at approximately the level of the past two years without the programmes announced by the Government appearing to have achieved any conclusive results. Some of these programmes, such as the Minimal Employment Plan, represent not a solution but a permanent violation of the right of workers to fair remuneration for their work. The general deterioration of the standard of living for certain sectors of the population, which has repercussions on nutrition, housing, school attendance, etc., might have serious consequences for the new generations.

439. Certain rural sectors, in particular the indigenous populations, are among those where the most extreme poverty is encountered. The indigenous populations are, in addition, threatened with the loss of their cultural and social identity as a result of recent legislation to integrate them, without prior consultation or information, in economic structures which are alien to them and in which they would be at an obvious disadvantage.

440. The Special Rapporteur is concerned about the extreme poverty and absence of protection from which the indigenous communities suffer. He recommends that the General Assembly call on the Government of Chile, in its economic and social plans and programmes, to conform to the international norms and instruments to which it has acceded, and take account also of the specific rights of the ethnic minorities by adopting measures, with their participation and after consultation with them, to promote their development, while at the same time respecting their identity.

Annex I

LETTER DATED 11 FEBRUARY 1980 FROM THE ACTING MINISTER FOR FOREIGN AFFAIRS  
OF CHILE ADDRESSED TO ALL CHILEAN MISSIONS AND CONSULATES ABROAD

Ministry of Foreign Affairs

RR.EE.(DIJUR O.I.) OF.CIRC.RES.No. 21

Subject: Applications to return to  
Chile and for the issue or  
revalidation of passports.

Santiago, 11 February 1980

FROM: THE MINISTER AD INTERIM

TO: ALL CHILEAN MISSIONS AND CONSULATES ABROAD

1. With a view to facilitating your task in connection with the above matter, all relevant circulars and instructions are superseded by this circular, which omits the rules that are no longer in force and clarifies those which may give rise to problems of interpretation.
2. As a general rule, when an application is made for a passport to be issued, revalidated or renewed for persons who are not included in the "List of safe-conducts granted to persons benefiting from the right of asylum, refugees and other persons since 11 September 1973" or in the supplementary circulars ("national list"), it shall be processed immediately and no requirement is laid down concerning the completion of an application for re-entry or any other kind of form, apart from the usual procedure established in the Consular Regulations in such cases.
3. In cases covered by the foregoing paragraph, the passport shall be issued or revalidated for a period of two years.
4. Similarly, persons under 18 years of age, whether or not they are included in the national list, shall, on furnishing you with documentary proof of their age (from a passport, an identity card or another document issued by the national authorities, such as a birth certificate), have their passport issued or revalidated without any further formality. In such cases, the applicant's age when he presents himself at the Consulate for the said purpose shall be taken into account.
5. Persons over 18 and under 21 years of age shall, if they are included in the national list, be treated in every respect like the other persons in the list. Otherwise, the instructions set forth in paragraph 2 of this circular shall be observed.
6. In the event of any doubt regarding an applicant's nationality or identity, the Ministry shall always be consulted. In the case of persons who have lost their nationality, a passport shall not be issued, renewed or revalidated.

7. Persons who are included in the national list must submit an application for them to return to Chile and you shall personally complete the form attached to Confidential Circular No. 4, of 29 June 1979. The instructions in the latter regarding the use of the form are to be understood as fully operative, which means that the form is now a requisite for dealing with the application. If the form in question is not available, a request must be made as soon as possible for it to be supplied in the quantity deemed necessary. Both documents shall be submitted for processing as soon as possible, together with any available background information which may help in arriving at a decision or, where appropriate, with a statement that there is no background information.
8. In the case of persons who are not on the national list but are conducting a campaign against Chile and apply for a passport to be issued, renewed or revalidated, the Ministry (Consular Division) shall be informed of all the particulars, and the issue, renewal or revalidation of the passport, as the case may be, shall be left in abeyance pending a decision by the Ministry of the Interior regarding possible insertion in the passport of the letter "L". In the event of such a decision, the person in question shall be included in the circulars supplementing the national list.
9. For the purposes of the preceding paragraph, the scope of the term "CAMPAIGN AGAINST CHILE" is hereby defined. The following basic points should be taken into consideration when determining whether a person is engaged in such an activity:

  - (a) Publicity, i.e. action undertaken through the mass media (radio, television, press, whether regularly or occasionally, or in the form of pamphlets);
  - (b) Overt participation in gatherings, meetings, assemblies, marches and, generally, any demonstration of a public nature against Chile, and, participation or attempted participation in meetings of international bodies or non-governmental bodies (for example, Amnesty International, World Federation of Trade Unions, etc.);
  - (c) The submission of written or oral information of a negative character to the aforementioned bodies shall also be considered as a hostile campaign. However, simple petitions addressed to United Nations institutions to intervene vis-à-vis the Chilean Government are not considered as part of an anti-Chilean campaign, although the Ministry must be informed of them;
  - (d) If, exceptionally, there are other circumstances which are of similar gravity to that of the circumstances described above and which, in your opinion, undeniably constitute a campaign against Chile, they must be notified in accordance with the instructions given in paragraph 8 of this circular.
10. In the case of Chilean nationals who have acquired the status of refugees and, irrespective of whether they are included in the national list, apply either for permission to return to Chile or for the renewal or revalidation of their passports, the Ministry of Foreign Affairs (Consular Division) shall be informed accordingly and the application shall be left in abeyance pending a final decision. In the event of a decision rejecting the application, the person concerned shall be included in the circulars supplementing the national list. In all cases, you shall inform the Ministry of the reasons and circumstances which caused the applicant to acquire refugee status.



11. Persons who wish to return to Chile, except for those covered by paragraphs 2 and 4, shall in all cases use the requisite official form. If a certified receipt of the submission of the completed and signed application is requested, it shall be supplied in a separate document giving the particulars and date.
12. In the case of consultations pending in connection with a passport, the latter shall be issued, renewed or revalidated for six months and marked "NON-RENEWABLE AT ANOTHER CONSULATE", on the understanding that it does not entitle the holder to return to Chile.
13. If the applicant attaches a power appointing residents in Chile to proceed with his application and authorization of the power in question is requested, the request shall likewise be granted in accordance with the formalities laid down in the Consular Regulations.
14. The following Circulars are cancelled:
  - No. 300, of 21 September 1976
  - No. 348, of 7 July 1978
  - No. 16, of 19 March 1979
  - No. 12, of 11 May 1979
  - No. 70, of 10 September 1979
  - No. 547, of 31 September 1979
15. Please acknowledge receipt of this circular.

ENRIQUE VALDES PUGA  
Brigadier General  
Minister for Foreign Affairs ad interim

Annex II

NOTIFICATION, BY THE HEADQUARTERS OF THE EMERGENCY ZONE OF THE METROPOLITAN AREA AND PROVINCE OF SAN ANTONIO, OF REFUSAL OF PERMISSION TO FOUND, EDIT, PUBLISH OR DISTRIBUTE THE PERIODICAL GENTE ACTUAL

REPUBLIC OF CHILE

JZEERM (0) No. 3550/621

HEADQUARTERS, EMERGENCY ZONE OF  
THE METROPOLITAN AREA AND PROVINCE  
OF SAN ANTONIO

Subject: Rejection of application to  
publish

E-4/1

Reference: Application dated  
29 October 1979 from  
Mr. Victor Manuel  
Marshall Orrego

SANTIAGO

From: HEADQUARTERS, EMERGENCY ZONE OF THE METROPOLITAN AREA AND  
PROVINCE OF SAN ANTONIO

To: MR. VICTOR MANUEL MARSHALL CRREGO

1. The Headquarters of the Emergency Zone of the Metropolitan Area and Province of San Antonio is in receipt of the document referred to above, in which you apply for permission to found, edit, publish and distribute the periodical Gente Actual through Editora Araucaria.
2. In this connection, I would inform you that it is not possible to grant your request, in view of a note from the National Division of Social Communication reporting unfavourably on your application.

Yours, etc.

(Signed) HUMBERTO GORDON RUBIO

Brigadier-General

Commander of the Emergency  
Zone of the Metropolitan Area  
and Province of San Antonio

Copies to:

1. Mr. Victor Marshall Orrego
2. Archives, Department IV.