

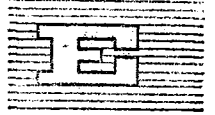
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QUESTION OF HUMAN RIGHTS IN CHILE

Report prepared by the Special Rapporteur on the
situation of human rights in Chile, pursuant to
Commission on Human Rights resolution 11(XXXV)

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INTRODUCTION

1. The Special Rapporteur on the situation of human rights in Chile was appointed by the Chairman of the Commission on Human Rights pursuant to Commission resolution 11 (XXXV) of 6 March 1979. By resolution 33/175 of 20 December 1978, the General Assembly had invited the Commission on Human Rights to appoint, in consultation with the Chairman of the Ad Hoc Working Group from among members of the Group as it was constituted, a Special Rapporteur on the situation of human rights in Chile who should report to the Commission on Human Rights and to the General Assembly, and to formulate this mandate on the basis of Commission resolution 8 (XXXI). By the same resolution the General Assembly had invited the Commission on Human Rights to consider the most effective ways of clarifying the whereabouts of missing and disappeared persons in Chile. At its thirty-fifth session, the Commission on Human Rights authorized its Chairman to appoint Mr. Abdoulaye Diéye as Special Rapporteur and to appoint as experts in their individual capacity Mr. Felix Ermacore and Mr. Waleed M. Sadi to investigate the fate of the missing and disappeared persons.

2. In a letter dated 15 March 1979, addressed to the Secretary-General of the United Nations, the Government of Chile stated that the procedures provided for by the Commission on Human Rights had no legal basis in the United Nations system and did not have the endorsement of Chile, thus lacking any legal or moral force.

In a letter dated 17 May 1979, addressed to the Special Rapporteur, the Government of Chile again stated that it would neither accept nor co-operate with the procedure.

3. In his report to the General Assembly at its thirty-fourth session (A/34/583), the Special Rapporteur examined the grounds on which the Government of Chile based its rejection of the procedure decided on by the Commission pursuant to General Assembly resolution 33/175 and noted that the objections of the Government of Chile were without legal foundation (paras. 1-13). The said report, transmitted to the General Assembly in accordance with paragraph 6 of Commission on Human Rights resolution 11 (XXXV), comprises two documents: a report on the situation of human rights in Chile and an addendum containing the report of the Expert on the question of the fate of missing and disappeared persons in Chile (A/34/583/Add.1).

4. Both documents were available to the Third Committee when it considered the question of the protection of human rights in Chile. The Committee also had before it a letter dated 23 November 1979 from the Permanent Representative of Chile to the United Nations addressed to the Secretary-General, to which was attached a document entitled "Considerations of the Government of Chile on the examination of the present situation of human rights in the country" (A/C.3/34/12).

5. At its 69th meeting, held on 5 December 1979, the Third Committee adopted, as a recommendation to the General Assembly, a draft resolution which was adopted by the Assembly itself at its 106th meeting, held on 17 December 1979, by 96 votes to 6, with 33 abstentions. By resolution 34/179, entitled "Human rights in Chile", the General Assembly noted with concern that both reports in their conclusions clearly indicated that the situation of human rights in Chile had not improved, and

even in a number of areas had deteriorated, compared with that described in the last report of the Ad Hoc Working Group. It expressed its grave concern over the increase in the arbitrary powers of security agencies, the increased number of cases of torture, ill-treatment and unexplained deaths, and the deterioration of the situation with regard to freedom of assembly and association, trade union rights, the presumption of innocence of accused persons, and the treatment of indigenous people.

6. The General Assembly urged the authorities of Chile to respect human rights, in accordance with their commitments under various international instruments, and, in particular: to put an end to the state of emergency and to restore the democratic institutions and constitutional safeguards formerly enjoyed by the Chilean people; to ensure an immediate end to torture and other forms of inhuman or degrading treatment and to identify, prosecute and punish those responsible for such practices; to restore fully the freedom of expression and information and of assembly and association, and the freedom to enter and leave the territory of Chile, as also to restore Chilean nationality to those who have been deprived of it for political reasons; to restore the right of amparo and trade union rights, and to adopt measures to improve the enjoyment of economic and social rights by the population of Chile at large and in particular to respect the rights of the indigenous population.

By this same resolution, the General Assembly requested the Commission on Human Rights, at its thirty-sixth session, to study thoroughly the report of the Special Rapporteur and the report of the Expert on missing and disappeared persons and also invited it to continue to give close attention to the situation in Chile and to extend the mandate of the Special Rapporteur, in accordance with paragraph 6 of Commission on Human Rights resolution 11 (XXXV). It also urged the Government of Chile to co-operate with the Special Rapporteur and with the Expert on missing and disappeared persons.

7. The report submitted to the Commission on Human Rights is designed to supplement the information provided to the General Assembly at its thirty-fourth session and should be examined in conjunction with it, in order to have a clear idea of the trends which can be observed in the situation of human rights in Chile. It does not deal with all the aspects considered in the previous report, but only those areas in which events have occurred or situations changed, when it was relevant to bring these developments to the attention of the Commission in order to update the analysis made in the report to the General Assembly.

This report, like the preceding one, has been prepared on the basis of information received by the Special Rapporteur from various sources. In particular, account has been taken of complaints from individuals, groups and international governmental and non-governmental organizations concerning violations of the human rights of individuals and groups, of testimony heard by the Special Rapporteur at meetings held for that purpose, and of information published in the Chilean press, particularly that relating to statements by members of the Government or to documents of an official nature. The Special Rapporteur has carefully examined and compared information from different sources in order to make a sober and impartial assessment of the situation, being guided in his judgements solely by the texts of the international instruments embodying the most fundamental civil, political, economic, social and cultural rights, which every State should respect and to which every human being is entitled.

I. CONSTITUTIONAL AND LEGAL ASPECTS WITH A BEARING ON HUMAN RIGHTS

THE SITUATION WITH REGARD TO CERTAIN CIVIL AND POLITICAL RIGHTS

8. In its report to the General Assembly at its thirty-third session (A/33/331), the Ad Hoc Working Group highlighted some institutional aspects of the present Chilean Government, characterized by a concentration of the constituent, legislative and executive powers in the hands of the Government Junta and, in particular, of its President (para. 57). The Group indicated that Decree-Law No. 788 of 2 December 1974 had conferred upon the Junta the power to amend the Constitution and to introduce constitutional norms merely by decree-laws in which it is expressly stated that they are issued "in exercise of its constituent power" (paras. 55 and 56). The Group also pointed out that the accumulation of powers in the hands of the Junta, together with the self-imposed limitations of the organs of jurisdictional control in interpreting the laws relating to their own powers, mean that human rights and the legal instruments for their protection are subservient to the will of the military Government (para. 70).

9. In referring (para. 235) to the Council of State, set up by Decree-Law No. 1,319 of 31 December 1975, the Group reported that this was a consultative body which lacked decision-making or supervisory powers and which, according to information received, had never expressed any public criticism of the Government's actions.

The Council of State is continuing to study the text of the draft Constitution which was mentioned by the Special Rapporteur in his report to the General Assembly^{1/} and which, as transmitted by the commission entrusted with its formulation, is inconsistent with the international commitments undertaken by Chile, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (A/34/583, paras. 183-184).

10. The Government has stated that the debate on the draft Constitution is open, although within the framework laid down officially by President Pinochet, which precludes the debate "(a) from being used, directly or indirectly, to call the legitimacy of the Government into question; (b) from being used to give validity as protagonists in Chilean civic life to those propagating ideas or belonging to movements of a totalitarian nature; and (c) from being used to disrupt the political recess in force".^{2/} For his part, General Pinochet told journalists that, notwithstanding the views of his own friends, of many shades of opinion, he "has no political opening-up in mind" - nor does he envisage such a step, "because he does not want to return to the pre-1973 situation" - and that the philosophy which should prevail is "democracy as a way of life, with an authoritarian Government".^{3/}

^{1/} See A/34/583, paras. 181-184, and E/CN.4/1310, paras. 77-84.

^{2/} From the statement issued to the information media by the Minister of the Interior, published in El Mercurio, 30 September 1979.

^{3/} See "Desayuno del Presidente con los periodistas", El Mercurio, 16 November 1979.

11. Although there is now some public debate in Chile on constitutional and institutional issues, echoed in the press, the strict limits that the Government has set for this debate, together with the maintenance in force of all legislation limiting the exercise of civil and political rights, do not indicate progress in relation to the situation described in the Special Rapporteur's previous report; this applies to both political rights and the rights to freedom of expression and information, of association and of assembly. Although the authors of the draft Constitution and the Government state that both the Constitutional Commission and the Council of State are informed of the opinions and observations of all of those who wished to be heard, the fact is that both bodies have conducted their deliberations in secret 4/ and that individuals, groups or institutions expressing views opposed to those of the Government have not had their opinions taken into account in the official draft and have no opportunity for public debate with Government supporters on an equal footing. In this context, the Group on Constitutional Studies - the so-called "Group of 24" - which reflects a wide range of opinion opposed to the Government, was refused permission to hold a function at which it was to express its views on the constitutional reform and also a request for time on radio and television channels made to the National Directorate for Information Media. 5/ The Minister of the Interior based his refusal on the "political aims" of the function and on the desire of its organizers to "challenge the political recess in force". The application for time on radio and television was described by the Minister as "a clearly far-fetched request". He also specified that the debate on constitutional questions should "lie within the fundamental and basic framework" set forth by President Pinochet. 6/ Another group, the Circle for Constitutional Studies, made the following comments on the Minister's statement:

"In view of the exceptional seriousness of the decision taken by the Minister of the Interior and the opinions proclaimed by him, the aforementioned Circle for Constitutional Studies decided to make public its view that the Minister and Head of Cabinet is committing a serious political error in depriving certain citizens of the right, guaranteed by the Fundamental Charter, to assemble in private, for lawful purposes, by resorting to the legal expedient or pretext of presuming criminal intent to lie behind a petition made in due form. Furthermore, the threat of penalizing those who divulge their thoughts on the constitutional proposals which the Government itself has submitted for public discussion openly contradicts previous statements by the authorities that these draft amendments would be widely debated before being promulgated and seriously impairs the legitimacy of the process of formulating a New Political Charter" (La Tercera de la Hora, 30 September 1979).

4/ See "El proyecto sigue igual". Interview with Enrique Ortúzar, Chairman of the Constitutional Commission. Hoy, 28 November to 4 December 1979.

5/ El Mercurio, 14 September 1979.

6/ El Mercurio, 30 September 1979.

12. Regarding the concentration of powers and the lack of jurisdictional checks on the actions of the Executive, no changes can be indicated since the report submitted by the Ad Hoc Working Group to the General Assembly at its thirty-third session (A/33/331, paras. 50-70), and the previously mentioned statements of President Pinochet to journalists serve to confirm this. Referring to certain differences among members of the Council of State concerning the constitutional text which, despite the secrecy of the deliberations, are publicly known in Chile through press commentaries, the President stated that "the draft had not yet reached his hands", that "it could come back very much altered and would have to be studied again" and that the main problem was "where power lies", "how power is generated" and "who has power", questions on which he seems to remain adamant, refusing to accept possible changes, even those suggested by persons supporting his Government. ^{7/} The Special Rapporteur informed the General Assembly at its thirty-fourth session that the institutional structure proposed in the draft Constitution had been criticized as violating the principle of the people's sovereignty, given the position of leadership and the decision-making powers it grants to the Armed Forces (A/34/583, paras. 182-183).

13. To date, the Special Rapporteur has received no information to indicate that changes can be expected in the existing institutional situation or in the enjoyment of political rights by Chilean citizens.

A. State of emergency

14. At the same time, as reported to the General Assembly, the state of emergency declared in Chile on 11 September 1973 remains in force and was recently extended for a further six-month period, until 10 March 1980 (A/34/583, para. 17). The Minister of the Interior informed the Ad Hoc Working Group (A/33/331, para. 78) that the state of emergency is of a preventive nature, but this is not admissible under Chilean legislation, nor is it provided for in international covenants to which Chile is party. Article 4 of the International Covenant on Civil and Political Rights states that "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." At his previously mentioned meeting with journalists, General Pinochet clearly stated: "In my opinion, the country is now living in an atmosphere of widespread tranquillity". ^{8/} This assessment shows the inadmissibility of the state of emergency, since it indicates that the country is not in a situation which "threatens the life of the nation"; nor is the state of emergency, which has already lasted more than six years, "strictly required by the exigencies of the situation". ^{9/}

^{7/} See "Desayuno del Presidente con los periodistas", El Mercurio, 16 November 1979.

^{8/} El Mercurio, 16 November 1979.

^{9/} See A/34/583, para. 19, and A/33/331, paras. 76-79, for an analysis of the legal inadmissibility of the state of emergency in Chile.

B. A new decree-law

15. In addition to Decree-Law No. 2,621 of 25 April 1979, commented on by the Special Rapporteur in his report to the General Assembly at its thirty-fourth session (A/34/583, paras. 21-37), a further amendment to Act No. 12,927 was enacted, establishing another offence against the security of the State. This provision was inserted into article 6 of the Act as a new subparagraph (h). It prescribes penalties for persons soliciting, receiving or accepting money or assistance of any kind from abroad, with the aim of committing or facilitating the commission of offences. Once again, the lack of definition of the conduct constituting an offence prompts the observation that, given the range of political offences which the present Government has incorporated into the legislation and the criminal nature of which has not been defined clearly or precisely, this new provision could be invoked to penalize various types of activities, including the granting of assistance in solidarity with the victims of human rights violations. For example, in commenting on the hunger strike carried out by the relatives of missing detainees in support of their request for the return of the mortal remains found at Lonquén whose identity had been clearly established, the daily newspaper El Mercurio, which backs the official policy, stated in an editorial that if a person dies as a result of a hunger strike, those who helped him carry out his protest are accomplices in a suicide (punishable under article 392 of the Penal Code). The editorial added:

"... if a person enters a church pretending to be fasting not in this spirit, but merely as a political expedient of protest, punishment is provided for in the Internal Security of the State Act, No. 12,927." 10/

16. If the article mentioned expresses official opinion, any international assistance given to organizations carrying out acts of protest, even of a peaceful nature (such as a hunger strike), is now prohibited and those soliciting or receiving such assistance will be offenders. This provision could prevent the remission of funds intended to give support to the families of missing persons, for the Government could allege that this assistance "facilitates the commission of an offence" if some of the relatives carry out an act of protest because of situations directly affecting them, even by peaceful means and without causing any disturbance whatsoever.

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

17. At a meeting with foreign correspondents, General Pinochet stated that the political recess would be maintained in Chile and that those disrupting it should be prepared for the consequences, which could include expulsion from the country. 11/

10/ El Mercurio, 21 September 1979.

11/ Las últimas noticias, 15 September 1979.

18. The Government's policy of preventing many Chileans from entering their country has not been changed. Various reports of the Ad Hoc Working Group 12/ and the first report of the Special Rapporteur 13/ describe the implementation of Decree-Laws No. 81 of 11 October 1973 and No. 604 of 9 August 1974, under which many citizens are denied entry into the country. Amongst them is a group of Chilean writers previously refused permission to return, for whom the Chilean Writers' Association (SECH) applied for a temporary entry permit to enable them to attend a writers' congress. 14/

19. Some recent events confirm the view expressed by the Ad Hoc Working Group in its analysis of the effects of Decree-Law No. 2,191 of 18 April 1978, concerning amnesty (A/33/331, paras. 248-300). The Decree-Law has served as grounds for dismissal of proceedings, and consequent impunity, in cases involving many members of the security agencies responsible for serious crimes against life, but it is not implemented when the aim is to prevent the return of Chileans living abroad. In connexion with the application for amparo */ filed by Segundo Efraín Vargas González and Silvia del Carmen Lienlaf Gómez because they had been denied entry into Chile, the Court of Appeal stated in its decision dated 21 November 1979:

"The applicants Segundo Efraín González and Silvia del Carmen Lienlaf Gómez are now serving a sentence of banishment for 15 and 10 years respectively, as commutation of a sentence previously pronounced against them in case No. 1001-74 of the Office of the Military Prosecutor, Valdivia; accordingly, it is quite obvious that the applicants in question cannot enter Chilean territory, at least while they are serving the sentence that was imposed on them as described above."

In an appeal lodged with the Supreme Court, pointing out that the offences with which these persons were charged were covered by the amnesty granted under Decree-Law No. 2,191, the Court upheld the ruling of the Court of Appeal and did not comment on the plea submitted.

20. Chileans who until recently enjoyed the right to enter and leave Chile without hindrance can no longer do so. For example, Humberto Duranchelle and Orietta Escámez, a married couple who are actors, submitted an application for

12/ See A/33/331, paras. 282-300, and E/CN.4/1310, paras. 129-138.

13/ A/34/583, paras. 225-246.

14/ El Mercurio, 18 October 1979.

*/ Translator's note: A person may apply to a court, directly or through another person, for amparo (literally "protection" or "shelter"), i.e., for enforcement of a right which he considers to have been violated by the judicial power in an erroneous judgement or order, or by the executive power in an unconstitutional enactment or an arbitrary act such as wrongful detention or expulsion. In cases of wrongful detention, the remedy of amparo is analogous to habeas corpus.

amparo to the Court of Appeal in which they stated, inter alia, that they failed to understand why, after being allowed to travel to Chile on various occasions between 1974 and 1979, they were now prevented from doing so. 15/ The same happened to Luis Eduardo Arriaga Onda, who had gone to Chile in 1978 to visit his family but was obliged to leave Chilean territory at Pudahuel airport on 18 December 1979 at a time when he was intending to make a second visit. Similarly, Patricia Fuentes Benavente and Carlos González Villanueva, who are a married couple, and Raúl Manzano Isla were unable to enter Chile to spend Christmas with their relatives. They were turned back at Pudahuel airport shortly before the end-of-year holidays. Entry was also refused to María Isabel Gutiérrez, who disembarked from a plane at Pudahuel with her three children aged six, four and two, but was obliged to return to Buenos Aires because her name appeared on a list of Chileans prohibited from entering the country. 16/

Many other people continue to claim their right to live in or simply to visit their country for various reasons, some related to family crises, such as illness or death, but are refused this right.

21. Owing to this situation, various Chilean institutions have sought a solution to the distressing problem of exiles who wish to return. One such institution is the Catholic Church, whose bishops informed Pope John Paul II of the extent of the problem. 17/ Groups such as the Committee of Relatives for the Return of Exiles - about which the Special Rapporteur informed the General Assembly at its thirty-fourth session (A/34/583, para. 232) - have been set up, as have others which support the return of a particular person, such as the group formed for the former Christian Democrat senator, René Fuentalba. 18/

D. Freedom of expression and information

22. There has been no change in the situation with regard to freedom of expression and information in relation to that described by the Special Rapporteur in his report to the General Assembly at its thirty-fourth session 19/ where reference is also made to earlier reports by the Ad Hoc Working Group.

23. In preceding paragraphs we have mentioned the restrictions on the airing of ideas by those who wish to participate in the constitutional debate by presenting proposals or alternatives differing from those sponsored by the Government. In October 1979, a National Congress of the Association of Journalists

15/ El Mercurio, 28 November 1979.

16/ Solidaridad, No. 81, November 1979.

17/ Solidaridad, No. 81, November 1979.

18/ El Mercurio, 23 November 1979.

19/ A/34/583, paras. 185-199.

was held at which the Government was requested to repeal "all legal and administrative rules prejudicial to freedom of expression" and the provisions related to freedom of information and expression contained in the official draft constitution known as the "Ortúzar draft" were categorically rejected. 20/

24. The Chilean Writers' Association (SECH), for its part, issued a statement in which it expressed concern over the ban on the circulation of Carnets, a review dealing with theoretical and literary subjects sponsored and drafted by a group of independent intellectuals who managed to publish only one edition. The circulation of this publication was prohibited by the Head of the Emergency Zone on 30 October 1979, through an official communication stating that he could not authorize it "in view of the reports from the Evaluation Department of the National Directorate for Information Media (DINACOS) and from the Ministry of the Interior, expressing their opposition to the request". In its statement SECH declared that it felt particularly concerned because, according to the information at its disposal, DINACOS had expressed a favourable opinion towards the publication, whereas the refusal had emanated from the Ministry of the Interior. 21/

25. In October 1979, General Enrique Morel, the Head of the Santiago Zone, sent a circular to all the printing houses in the metropolitan area informing them that they should refrain from printing any new publication not authorized by the Head of the Emergency Zone and reminding them that Proclamation No. 122 was in force. 22/

26. These facts, as also the obstacles confronting journalists in obtaining certain types of information, 23/ confirm what was stated by the Special Rapporteur in his preceding report, coinciding with the opinion of international or regional bodies analysing the situation in Chile regarding freedom of the press. In its country-by-country analysis of the Americas, the Inter-American Press Association (IAPA) described the Chilean situation in 1979 as that of a country

20/ El Mercurio, 14 October 1979.

21/ El Mercurio, 23 November 1979.

22/ Information transmitted by Radio Cooperativa and given to the Special Rapporteur by reliable sources.

23/ For example, the documents of a reporter from El Mercurio were seized by security personnel of the Technical University (UTE) when the journalist went there to carry out a professional assignment related to some cultural events that were taking place, without official permission, at the University. He lodged a complaint with the Carabineros and was able to recover his documents, but with a warning not to return to the University building (El Mercurio, 26 October 1979). Another journalist, a correspondent of British television and the Spanish agency EFE, who was taking photographs of street disturbances following a mass for the missing persons buried at Lonquén, was set upon and beaten by persons dressed in civilian clothing and then taken to a Carabineros vehicle (Hoy, 26 September to 2 October 1979).

which enjoyed no freedom of the press, 24/ and the London-based International Press Institute (IPI) expressed its deep concern regarding the restrictions on the press prevailing in Chile. IPI's director, Mr. Peter Galliner, stated that his organization was expressing its concern because of the constant harassment to which journalists in Chile were subjected and because of the restrictions placed on freedom of expression as far as the country's information media were concerned. 25/

E. Right of assembly and right to freedom of association

27. In the period covered by this report, the authorities withheld permission for the holding of various meetings, and other meetings were broken up by police and security staff, with many arrests occurring as a result. In universities, the holding of unauthorized meetings gave rise to disciplinary measures of varying degrees of seriousness. These restrictions on the right of assembly are directed against groups of persons critical of the Government's policy or are intended to prevent any type of public expression on questions that the Chilean authorities do not wish to be raised or debated openly by the population. Meetings not involving such groups or questions can be held, often without any hindrance.

28. For example, according to a complaint made at a general conference of doctors, the Minister of Health issued a verbal order prohibiting doctors from meeting in hospitals. This prohibition was said to have been orally transmitted to all hospital directors and communicated to doctors at their respective places of work. 26/

In this context, it is relevant to point out that the medical profession had persistently expressed its disapproval of the plan for restructuring the health services and had given its support to the doctrine of social medicine that prevailed in the country until the enactment of Decree-Law No. 2,763 of 3 August 1979, reorganizing these services. 27/

29. As was stated previously, permission was also withheld for a meeting of the "Group of 24" designed to contribute to a debate on the draft Constitution and to make known the conclusions that the members of the Group had reached on this question. 28/ In this instance, the Minister of the Interior requested the Group of 24 to provide information concerning its legal personality and statutes before making a decision as to whether to give permission. The Group replied with the following note:

24/ El Mercurio, 24 October 1979.

25/ Las últimas noticias, 7 October 1979.

26/ El Mercurio, 5 September 1979.

27/ See A/34/583, paras. 362-364.

28/ El Mercurio, 13 September 1979.

"We hereby express to you our most formal protest concerning the procedure applied to the request presented on Friday, 7 September, for permission to hold the function scheduled for today, 13 September, in the Cariola Theatre, so as to explain to the country our views on the new institutional system of democracy for Chile.

"Yesterday, 12 September, at the last minute, we received an official communication from the legal counsel of the Ministry headed by you, requesting a prior report on our legal existence and personality.

"As you well know, this demand is altogether inadmissible, since the rights of petition, assembly and freedom of expression correspond to natural persons. The constitutional rules guarantee these rights to all inhabitants of the Republic. Furthermore, the existence of our group on constitutional studies is public knowledge, and the Government must be aware of it.

"This procedure in fact entails a disregard for our rights of assembly and has been interpreted thus by the communication media, which are announcing today that permission had been refused." 29/

30. The so-called "Provincial Command for the Defence of Labour Rights" was also banned from holding a constituent meeting scheduled for September 1979. The Emergency Zone Command of Concepción City published Proclamation No. 131 signed by the Intendant of the Bio-Bio region to that effect. Other meetings of workers were also banned, as described in the chapter in this report dealing with trade union rights. Permission was also refused for the holding of the Third National Congress of Writers, organized by the Chilean Writers' Association (SECH). As previously explained, this body had requested permission for Chilean writers living abroad to return to the country and the Ministry of the Interior replied by denying authorization for the Congress to take place. 30/

31. The Ministry of the Interior further announced that it would not authorize the holding of a congress on the rights of young people, scheduled for early December 1979. 31/ The National Commission for the Rights of Young People had previously declared that the "First Symposium on the Rights of Young People" would take place between 7 and 10 December. 32/ The meeting took place, although in secret, and was attended not only by young Chileans but by a large number of representatives of national and international, governmental and non-governmental organizations of young people from foreign countries. The foreign representatives were requested by the Ministry of the Interior to leave the country. 33/ They did so, but the Government's attitude prompted a protest from an important Venezuelan party, one of whose leaders had taken part in the congress. 34/

29/ La Tercera de la Hora, 13 September 1979. The Group of 24 repeated its request, but received no reply from the Ministry of the Interior. El Mercurio, 26 September 1979.

30/ El Mercurio, 17 October 1979.

31/ El Mercurio, 1 December 1979.

32/ El Mercurio, 5 December 1979.

33/ El Mercurio, 12 December 1979.

34/ El Mercurio, 14 December 1979.

32. Meetings held without authorization are usually subjected to harassment, generally of a very violent kind, by the police and security forces and those participating are detained for varying lengths of time. 35/ This happened, inter alia, to those persons who met on 4 September to commemorate the traditional date for elections in Chile, before the present military Government was set up; to the groups which on 8 September expressed their solidarity with the relatives of missing detainees through a hunger strike; 36/ to the students in economics and architecture who held a meeting in the cafeteria of the Faculty of Architecture with relatives of students and teachers who had been detained and gone missing; 37/ to those persons who went to the mass, held in the Cathedral Church of Santiago, for the victims whose bodies were found at Lonquén and who were arrested on 15 September; 38/ to the young Christian Democrats who met in front of the house of the former President, Mr. Eduardo Frei, to pledge their allegiance (since the event scheduled to be held on private premises had been prohibited), 72 of whom were arrested; 39/ and to the demonstrators of the Democratic Youth Movement who met in the streets of Santiago. 40/

33. Other meetings of various groups were also prohibited, in particular meetings related to worker and student problems. With regard to meetings of workers, the Minister of the Interior made an official declaration following demonstrations in the city of Santiago, indicating that the Government would not allow these conflicts to lead to breaches of the peace (see the information on trade union rights given in chapter III). In universities some meetings resulted in sanctions being taken against students, consisting of suspensions and expulsions (see A/34/583, paras. 208-212). Recently, seven students of the Faculty of Architecture and of the Faculty of Economics of the University of Chile were suspended as a preventive measure, at the time of the preparation of the administrative enquiry into the previously mentioned events in the cafeteria of the Faculty of Architecture. 41/ In the same way, two students were suspended for a term and two others were reprimanded for having taken part in the organization of an unauthorized cultural meeting which was held at the State Technical University (UTE); 42/ in addition, pursuant to an official communication sent to the Catholic University of Valparaíso by the Intendant of Region V, seven students were temporarily suspended, two of them for having distributed pamphlets and the others for having participated in a march, related to the missing persons in Chile, to the Santa Inés cemetery. Both events took place off the University premises. The Rector explained that "students cannot take part in illegal events or in demonstrations that may tarnish the prestige

35/ See chapter II for an account of the arrests and detentions which took place as a result of unauthorized meetings.

36/ See A/34/583, paras. 96-97.

37/ La Tercera de la Hora, 11 September 1979.

38/ El Mercurio, 23 September 1979.

39/ El Mercurio, 27 November 1979.

40/ El Mercurio, 17 November 1979.

41/ The Special Rapporteur has received a copy of the decision, signed by the Rector of the University of Chile and the Deans of both Faculties.

42/ El Mercurio, 21 November 1979.

of this place of study". The student union of the Catholic University of Valparaíso (FEUC-V) protested against this measure, describing it as "arbitrary". The sanctions against the students were dropped, but the Rector suspended the entire FEUC-V leadership from office and called new elections, which had still not taken place when this report was completed owing to negotiations initiated between the student leaders and the University rectorate. 43/

34. As a result of the penalties imposed on 21 students because of acts of solidarity with the relatives of missing persons, the Commission for the Rights of Young People sent a letter to the Minister of the Interior requesting him to take the necessary measures "to avoid the occurrence of such irregularities in the future". 44/

35. As to the right to freedom of association, the restrictions pointed out in the Special Rapporteur's preceding report are still in force. 45/ The elections held in certain sections of the labour force and in some of the universities improved the functioning and the representativeness of certain organizations, but as was pointed out in the aforementioned report and in other, earlier reports of the Ad Hoc Working Group, the way in which the elections were conducted and the powers of those elected were decided not by the representatives, but by the Government. Furthermore, only a few sectors of the population participated in the election of the new leaders. So far, professional associations have not been permitted to elect their respective authorities. In the light of recent measures tending to deprive these organizations of powers of control over the professional activity of the members of the profession concerned, many of these organizations have claimed their right to function according to their own statutes and to hold free elections. In the preceding report of the Special Rapporteur, mention was made of the objections put forward by professional associations to Decree No. 2,516 of 6 February 1979, eliminating the minimum fees for professionals employed by the State and the obligation to join an association, until then incumbent on all professionals. Information was also given on the request of the Medical Association for authorization to hold elections. 46/ In September, the National Council of the Confederation of Professional Associations of Chile, to which 20 associations with more than 200,000 professionals belong, made a statement requesting a number of minimum conditions to enable it to operate. Among these is the repeal of Decree No. 2,516, affecting the ability to associate and professional fees and, thus, "the power to determine ethics and form unions, an essential requisite for the very existence of the associations". 47/

43/ Hoy, 28 November to 4 December 1979.

44/ Hoy, 28 November to 4 December 1979.

45/ See A/34/583, paras. 215-224 and 277-281.

46/ A/34/583, paras. 221-222.

47/ El Mercurio, 23 September 1979.

36. Later on, the Convention of Pharmaceutical Chemists unanimously requested the Government to permit free elections to be held in professional associations and at the same time rejected a proposal by the Ministry of Health to eliminate the requirement that each pharmacy must have at least one professional pharmacist on its staff.

37. Under a new legal provision, the Architects' Association also suffered a decline in its powers to control the ethics of the profession. An amendment was made to Act No. 7,211 of 1942, by which the Association was established, revoking the power of the Council of the Association to approve the bases, programmes and panels of judges for all competitions on questions falling within its competence and to grant the authorization without which architects could not validly participate in such competitions. 48/

38. Some improvement can be noted with regard to the right of association in universities, as indicated in the preceding report of the Special Rapporteur (A/34/583, para. 217). However, while in some universities elections of delegates have taken place, in none has it yet been possible for the students to elect their own representatives at the highest levels. In some universities students have not yet been authorized even to hold elections.

39. In September the President of the student union of the State Technical University (UTE), who had been appointed by the authorities according to the procedures imposed by the Military Junta, resigned. The resignation was caused by the differences between the student leader and the university authorities concerning the participation and representation of students in universities. A few days previously, the union led by him had published the following statement:

"However, while other universities are promoting and consolidating a new institutional system for students which, although not shared by us, we recognize as entailing an enormous and serious effort, our university is continuing with a system which it is no longer possible or advisable to maintain ...". 49/

In handing in his resignation, the student leader also indicated his disagreement with the suggestion that the student union should administer "a Student Vigilance Service, whose activities would consist in ensuring normality in university life, which has recently been disturbed by meetings, acts of solidarity and assemblies". 50/

40. The attitude of the UTE authorities towards university student associations, according to the complaints of this young leader appointed by these very authorities, is that they must monitor and report on the activities of their

48/ El Mercurio, 12 December 1979.

49/ El Mercurio, 13 September 1979.

50/ El Mercurio, 26 September 1979.

members. This is very much of a policing role, which seems incompatible with the character of a student union. Because of these same differences with the university authorities the Vice-President and all the National Secretaries of the UTE Student Union later resigned. 51/ In October new student leaders were chosen to fill the vacancies, the selection being made by the Chairmen of the the Student Councils appointed by the governmental authorities of UTE. These new student leaders declared in their turn that the student union was undergoing a fundamental crisis, since it was impossible to carry out its directives, irrespective of the intentions behind them, "because the students do not accept or recognize the organization as theirs and do not respond to it". 52/ Furthermore, according to the students, the Rector of UTE reacted to certain petitions presented by them concerning enrolments by informing them "that they did not represent anybody and had not been nominated by anybody" and that, if they persisted in their criticism "they would deserve to be penalized by the University authorities". 53/ It is therefore clear that, even when they are chosen under the rules established by the university authorities, the student leaders have no power of their own to defend the interests of their fellow students effectively. They are always reminded, whenever they assert their claims, that they are leaders only through the good graces of the university authorities.

41. In November, the press published a draft code of ethics for UTE students, which is now under study. This draft describes various kinds of conduct which would expose students to penalties, ranging from reprimands to expulsion from the University. Some of the actions concerned will be mentioned in chapter III, in dealing with rights related to education. One of these provisions seems to affect rights of assembly, in particular since the text makes it a punishable offence to:

"Promote disorder or be involved in activities giving rise to scandal, either within the University or when acting outside it as its representative, thereby compromising the prestige of that institution". 54/

The term "disorder", as used by the Government to describe any act of protest, implies the possibility of expelling from the University any student who attempts to express an opinion critical of or opposed to the official one, either within the University precincts or outside them. In practice, this type of penalty is frequently applied by orders from the university authorities. In the State Technical University (UTE) an attempt is being made to give this type of procedure a regular and institutional character. While this Code is in the process of being approved, those students who participated in a cultural event (previously mentioned) have been penalized by a decision of the authorities concerned - an indication of how the measures provided for in the proposed "Code of Student Ethics" will be applied.

51/ El Mercurio, 27 September 1979.

52/ El Mercurio, 17 October 1979.

53/ El Mercurio, 17 October 1979.

54/ El Mercurio, 17 November 1979.

II. RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON

A. Arrests and detentions

42. In his report to the General Assembly at its thirty-fourth session, the Special Rapporteur described the general characteristics of the arrests carried out by the police and security agencies in Chile. He referred to the arrests that had been made to prevent ceremonies or public demonstrations being held for any reason not provided for and approved by the Government (even if such events were peaceful expressions which did not disturb public order). Reference was also made to the arrests carried out with the participation of the National Information Agency and their characteristics: lack of warrant issued by a competent authority, transfer of the arrested person to secret places of detention, ill-treatment and torture, reports and false accusations supplied to the press, which gives them widespread publicity. He also gave information on numerous cases of short-term detention, intended to intimidate, obtain information or compel the persons arrested to denounce others (A/34/583, paras. 89-111).

43. The information received in the period subsequent to the said report indicates that a further series of large-scale arrests has taken place. In September, 305 arrests were reported, a large number of which took place on account of ceremonies or public meetings. Amongst these, on 4 September, some 110 persons, who had assembled to commemorate the date on which elections were traditionally held in Chile before the present military Government assumed power, were arrested. They were held in prison for five days, in accordance with the powers granted to the President by Decree-Law No. 1,877 of 12 August 1977. 55/ On 8 September, approximately 35 persons were arrested in front of San Cayetano parish church in Nueva La Segura because they had met for a ceremony to express their solidarity with the hunger-striking relatives of missing detainees. 56/ The Minister of the Interior requested that they be brought to trial for offences under the Internal Security of the State Act. 57/ Twelve of the detainees were released by order of the examining magistrate, who ordered that the detention of the remaining twenty-three be extended. 58/ On 17 September, i.e. after 10 days' detention, the 23 persons were released "for lack of evidence". On 11 September, 37 persons were arrested for having sought to render homage to the deceased President Allende on the anniversary of his death by placing flowers on the mausoleum of the Allende family or throwing flowers down in front of the Palacio de la Moneda. 59/ They were all held in prison for five days under the state of emergency regulations, although at the moment of their arrest they were only placing flowers or walking past the Palacio de la Moneda.

55/ Hoy, 12 to 18 September 1979.

56/ El Mercurio, 10 September 1979.

57/ El Mercurio, 14 September 1979.

58/ El Mercurio, 15 September 1979.

59/ Hoy, 19 to 25 September 1979.

44. Another 35 persons were arrested when, having come out of a mass which had been held in the Cathedral for the victims of Lonquén, they were walking along an avenue singing the "Ode to Joy". Some of them were assaulted at the moment of arrest. As in the previous case, they were held in prison for five days.

45. Another series of large-scale arrests took place in November: on 16 November nine young people from the Democratic Youth Movement were arrested while distributing pamphlets in the street. 60/ They were released the following day. 61/ On 23 November, 72 persons were arrested while participating in a peaceful demonstration in front of the house of the former President of the Republic, Eduardo Frei; 62/ on 25 November, nine persons were arrested on coming out of the Cathedral after a mass celebrated by Cardinal Raúl Silva; on 27 November, 52 persons were arrested in a Santiago población; 63/ on 28 November, 400 persons were arrested in another población; 64/ on 29 November, 90 persons were arrested in various poblaciones and 46 others were accused of causing incidents near the National Library in Santiago. 65/

46. On 11 December, 11 persons were arrested while trying to celebrate the thirty-first anniversary of the Universal Declaration of Human Rights. They were detained until 15 December, the date on which the five-day period during which they could be held at the disposal of the Executive Power expired. 66/

47. The large-scale arrests have usually been intended to prevent public expressions of views or public meetings. The persons arrested were mostly kept in prison for a five-day term, although in some cases they were released after shorter periods and in others they were held for a longer time because of requests for their trial from the Minister of the Interior. However, it is worth noting that the persons arrested on these occasions were often subjected to violence and harassment as reported in the following section concerning torture and ill-treatment. The arrests made in poblaciones seem to have been of a particularly violent nature. For example, in the población Nuevo Amanecer, carabineros arrested 57 persons in their homes; in the "F" and "D" sectors of the población José María Caro, 400 people were arrested. Journalists from the magazine Hoy, who say they visited

60/ El Mercurio, 17 November 1979.

61/ El Mercurio, 18 November 1979.

62/ El Mercurio, 27 November 1979.

63/ Población (community housing development or shanty town) is the term given in Chile to areas of poor-quality housing inhabited by low-income groups on the outskirts of large towns.

64/ El Mercurio, 29 November 1979.

65/ El Mercurio, 1 December 1979.

66/ El Mercurio, 16 November 1979.

the población after these arrests, stated that the residents were indignant "because of the harassment" to which they had been subjected. They said that even children were arrested and one of them, the brother of a missing person, was struck with a length of rubber. 67/ The Special Rapporteur has received from reliable sources copies of documents submitted in applications for amparo by some of the persons arrested in the poblaciones. One of them states:

"The person who is the subject of this application was released at about 10 p.m. on the day of his arrest. Nevertheless, I must inform the Court that, while he was being held at the Twenty-first Carabineros Station (Cardenal Caro), my brother was treated brutally by the carabineros who had arrested him. He was kicked, punched and beaten with a rubber truncheon and suffered serious injuries, especially in his ankles because of the kicks he received. They constantly threatened that he would "go missing". (I must point out that his eldest brother is a missing detainee) and the physical and mental coercion lasted throughout the time he was under arrest".

Another document states that the person was kept in a cell, where two individuals in plain clothes beat him with wet sacks because he resisted having his hair shaved off. Once he was released he had a medical examination and the diagnosis was "severe trauma caused by bruising" (the Special Rapporteur has been given a photocopy of the certificate).

48. Many individuals were arbitrarily arrested during this period and the victims were subjected to ill-treatment. The following is an example of the type of procedure used by the security agencies (the text is taken from an application for amparo):

"My son was arrested yesterday, Monday, 3 December, at 5.30 p.m., at our home. He was there with his niece, aged 10 ... and another niece aged six. Because of the way the houses are built, i.e. because they are so close to one another, all our neighbours also witnessed the arrest. My son was arrested by six individuals who were in plain clothes and were carrying submachine guns. They forced their way into our house, covered my son with their guns, handcuffed him and put him into one of their vehicles, a yellow van. Other persons who were in plain clothes and were using a small white Citroën, No. AX330, also took part in the arrest. My son was arrested in what was virtually a mass raid. The van he was put into was also carrying three other prisoners whose hands were tied together and held above their heads. Some of the persons who arrested him appeared to be from the Police Department and others from the National Intelligence Agency. The fact is that they did not reveal their identity or produce a warrant. I therefore reported these serious incidents at the police station. I would inform you that I have inquired about my son at all the police stations in the area, at all the barracks and the prisons. I have not been able to obtain any answer as to his whereabouts or any acknowledgement of his arrest. I therefore have good grounds for fearing that he may be held at some undisclosed place

67/ Hoy, 5 to 11 December 1979.

and may even be ill-treated. You will realize that because of the behaviour of the persons who arrested him and the acts of the security agencies, which have been denounced and proven so many times, I am unable to indicate a place at which he is possibly being held in secret. I would none the less point out that, even though the place is not known, a ruling can be made on this application simply because of the report of his arrest; as in other cases, it has not proved possible to obtain more information from those who arrested him, something which merely aggravated the unlawfulness of the arrests".

Another example of this type of arrest is the following: In July, Mrs. María de la Paz Carvajal Guerrero, along with other inhabitants of the Villa "Pablo Neruda" in Santiago, requested permission to hold a ceremony in honour of the poet on the seventy-second anniversary of his birth. Apparently, because of this request, she was persecuted by the security agencies. On 18 October, she was arrested in the street by persons in plain clothes who obliged her to climb into a vehicle, where she was covered with a jacket. Those arresting her did not reveal their identity nor did they act in accordance with a court warrant. These events took place in broad daylight. She was taken to secret premises, where she was interrogated on her activities, in particular those related to her parish. Later she was removed from the premises and left at the same place where she had been arrested; she was warned not to tell anyone what had happened to her and told that she would be watched.

49. Mr. Manuel Rojas Mendoza and his son Pedro Patricio Rojas Uribe were also arbitrarily arrested. Mrs. Rojas made an application for amparo on behalf of her husband and her son, both of whom had been arrested in their home on 11 September. Her account also shows how these arrests are customarily carried out:

"Manuel Rojas Mendoza, my spouse, was arrested by carabineros, from the Santa Adriana Station, at 14.45 hours on 11 September 1979; the arrest took place in our home; at the Santa Adriana Station I was told that my husband was in the Twenty-first Carabineros Station, located in José María Caro. There, on 12 September, I was told that my husband was indeed in that precinct and they even allowed me to take him food and clothing, something which I have been doing every day until now.

However, I have never been able to see my husband and, because of the mystery surrounding his continuing deprivation of freedom, I fear for his physical integrity.

My son Pedro Patricio Rojas Uribe, was arrested by six armed civilians, who did not identify themselves; his arrest took place in our home on 11 September 1979 at 13.00 hours. Those arresting him proceeded to search our home; they struck my son brutally, as witnessed by Mrs. Erika Salazar, my daughter-in-law. At no time did they show a search warrant or a warrant of arrest. I have not been able to see my son since the said date since, like his father, according to the carabineros, he is in the Twenty-first Station. I also take my son food and clothing every day but I have never been able to see him.

I should like to inform Your Honour that my spouse is a diabetic and is under medical supervision for incipient tuberculosis, while my son is subject to nervous breakdowns.

Neither of them was arrested on a court warrant nor were they apprehended in flagrante delicto and, although several days have passed since their arrest, they have still not been brought before any court, on the assumption that they are to be charged with some offence. All of this paints a picture of the illegal and arbitrary nature of the arrest of the subjects of the amparo proceedings." 68/

50. A warrant issued by a competent authority is hardly ever shown at the time of arrest. The persons concerned are very often subjected to ill-treatment, at the time of their arrest and immediately afterwards in the carabineros stations. They are sometimes transferred to secret premises to place them at the disposal of the CNI, where they are interrogated and frequently subjected to ill-treatment and torture.

51. Since many of these arrests are frankly illegal and carried out without a court warrant or one issued by the Executive Power, the security agencies supply the judges with false information on the cause of the arrest. This was the case with, inter alia, José Manuel Sepúlveda Toro, who was arrested and beaten by carabineros in the locality of Curuncaví. He was later brought before the Office of the Military Prosecutor of the Second District and charged with assaulting carabineros. The version given by the latter, which differs from that of the complainant, is contradicted by Mr. Sepúlveda Toro's physical condition, for he is suffering from paralysis, more particularly in one arm. False information was also given in the case of Miguel Angel Rojas Abarca, a 16 year old student, arrested in the early hours of the morning of 14 October, in his own home and in the presence of his family, by numerous agents in plain clothes from the Police Department. Those arresting him did not have a warrant issued by a competent court nor did they apprehend him in flagrante delicto; the relatives of the minor were not informed of the place to which he was to be taken, or of the reasons for his arrest. On 17 October, after a vain search in various Police Department barracks and other police precincts, his father made an application for amparo on his behalf to the Santiago Court of Appeal. After several days of illegal detention, the detainee was released. The Police Department informed the Court of Appeal by means of Official Communication No. 891 that Miguel Angel Rojas Abarca "was arrested on the corner of Avda. Apoquindo and Manquehue because he was caught with a group of persons in circumstances which gave good grounds for suspecting them of ill intent. He did not give a sufficiently satisfactory explanation of his conduct to dispel the suspicions concerning him, and furthermore was not carrying his identity papers and thus could not prove his identity. He was released once his identity had been checked and it had been found that he had no police record."

According to the report received by the Special Rapporteur, the account given by his parents in the application for amparo, together with the testimony of several relatives who were present at his home at the time of the arrest, categorically refute the Police Department information.

68/ These cases are amongst the numerous detailed complaints that have been received by the Special Rapporteur from reliable sources.

52. Other reports from the security agencies and the Ministry of the Interior do not corroborate one another, since they are contradictory. For example, Mr. Juan Valdés Valdés was arrested in the street on 11 September, while in the company of his wife and four small children. An application for amparo was filed on his behalf before the Santiago Court of Appeal. On 11 September the Superintendent of the Third Carabineros Station gave verbal information that Juan Valdés Valdés "was arrested today at 14.30 hours by Lieutenant Jaime González Fuentes and men of the Unit for causing a disturbance on the public thoroughfare, namely, throwing flowers at the La Moneda building, in homage to Salvador Allende. He is at present being detained in the Unit by order of the Ministry of the Interior". This information was set down in writing in the records of the Court, certified by the signature of the corresponding court official. Later, on 20 September, the Minister of the Interior gave information that Juan Valdés Valdés had no police record in the respective index systems of the Secretariat of the Ministry, "nor had a warrant or order been issued by the Ministry of the Interior concerning him". On 27 September, the Minister of the Interior enlarged on his preceding report, stating that he was providing data on persons "whose names probably refer to the same citizen: Juan Valdés Valdés. Arrested on 31 August 1979 by carabineros from the Twelfth Carabineros Station of San Miguel, for intoxication, and brought before the First Criminal Court of San Miguel. Juan Rolando Valdés González. Arrested on 11 September 1979 on the corner of Moneda and Teatinos, for causing a disturbance, by the intervention of Lieutenant Jaime González Fuentes, an officer of the Third Santiago Station and personnel under his command. Placed at the disposal of this Secretariat of State for infringement of article 6, paragraph (a) of the Security of the State Act by section No. 1 of the same Unit. By Exempt Decree No. 2,459 of the Ministry of the Interior of 12 September 1979, he was detained in the First Station and was released on 16 September 1979".

An examination of these three reports submitted in connexion with the application for amparo clearly reveals contradictions which lead one to wonder whether the Minister of the Interior does not know what decrees he is promulgating and thus has subsequently to correct the information he has given and whether the reports supplied to the judges are reliable, as this type of public document should be.

53. During this period, several arrests also took place under the legislation promulgated by the present Government. These have been commented on by the Ad Hoc Working Group, since the legislation in question is deemed to violate human rights. Amongst those arrested were three trade union leaders of dissolved organizations, tried at the instance of the Minister of the Interior pursuant to Decree-Law No. 2,347 of 17 October 1979. 69/

54. Similarly, the Special Rapporteur has been informed of arrests and prosecutions based on the mere accusation of keeping or distributing printed matter containing political-type propaganda. For example, on 6 November, Mr. Agustín Segundo Lobos Lana, a former member of the Socialist Party, was arrested

69/ For further information on this trial see chapter III, section B.

by the CNI in the locality of Rengo, accused of possessing a mimeograph with which he had been printing "propaganda injurious to the present Government". 70/ On 6 October, Ulises Gómez Navarra and Claudio Zamorano Nuñez: were arrested. Ulises Gómez Navarra was accused of being the editor of a clandestine MIR publication and the prosecution of Claudio Zamorano Nuñez was requested for "aiding and abetting the activities of MIR", since he lived at the same address as the former. 71/ Mr. Jaime Humberto Carrasco and Mr. Claudio Erasmo Figueroa Bahamondes are still serving sentences. They were found guilty by the Supreme Court because printed matter and manuscripts considered to be subversive were found in a building which was in the charge of one of them. 72/

55. Recently, at the instance of the Minister of the Interior, proceedings were opened against several persons for infringement of Decree-Law No. 1,697 of 12 March 1977, dissolving the political parties and prohibiting political activities. In one case, five people were accused of violating the political recess because they publicly attempted to set up an organization called "Talleres Socialistas Democráticos" (Democratic Socialist Workshops). For the time being, the accused are not in detention.

56. During the period under study, many short-term detentions took place with the aim of obtaining information or intimidating the persons concerned. For example, on 27 September, five people were arrested in their homes in the población of San Luis de Macul, municipality of Nuñoa. Armed policemen burst into their houses without showing a search or arrest warrant. These people were held for only 10 hours, during which they were questioned about the activities of other inhabitants of the same población.

Other cases:

Horacio Sergio Ramírez Murguies was arrested by carabineros on 31 August 1979 and taken to secret premises, where he was intensively interrogated regarding his supposed political activities. Mr. Ramírez Murguies worked in a printing house where work was carried out for the Vicaría de la Solidaridad. He was set free on the following day. On 16 October 1979, Enrique Valdemar Calixto Muñoz was arrested in the street and taken to the First Carabineros Station. There he was questioned about the publications (of the Vicaría de la Solidaridad) he was carrying in his briefcase and was warned that he could not sell publications "prohibited by the Government".

57. In this period, the number of arrests seems to have increased in comparison with those in 1978. The figures available to the Special Rapporteur, which complement those given in his report to the General Assembly (see A/34/583, para. 91) are as follows:

70/ El Mercurio, 7 November 1979.

71/ El Mercurio, 1 November 1979.

72/ El Mercurio, 26 November 1979.

	<u>1978</u>	<u>1979</u>
September	99	305
October	29	25
November	19	694
December	4	-

At the time of the preparation of this report, the Special Rapporteur was unable to obtain figures on the number of arrests in December 1979.

58. In view of the above-mentioned facts, the Special Rapporteur repeats the observations made on this subject to the General Assembly at its thirty-fourth session, as recorded in paragraph 111 of the report (A/34/583).

B. Torture and ill-treatment

59. The Special Rapporteur informed the General Assembly at its thirty-fourth session about the use of torture as a common device in the interrogation and humiliation of persons detained in Chile. He reported that, according to evidence and information received, some changes appeared to have taken place, particularly in as much savage torture with a high mortality rate was not currently practised, but, rather, brutal physical and mental torture involving a calculated risk. He also provided information on the participation of doctors in this kind of activity. However, ill-treatment and humiliation are inflicted not only in places designed for that purpose but also on police premises and at the time of arrest. The Special Rapporteur also reported on the death of one person as a result of the torture to which he was subjected while held at a secret place by the National Information Agency (CNI). 73/

60. Recently, various reports have been received concerning persons seized and tortured during 1979, many of them women. One of those reports, relating to an incident which occurred during the second half of 1979, reads as follows:

"She was arrested on 4 August 1979 at her home, Panela de El Arrayán; they forced their way into the house. There was a confrontation and she was injured by a bullet in the shoulder and lost consciousness (wound between the collar bone and the spine).

"When she came to her senses, the house was on fire. She went outside and was arrested there. She was taken to a CNI clinic which she is unable to identify, but since her condition did not improve she was taken to the El Salvador hospital, where she remained until midday on Sunday. There she was x-rayed and given stitches. The doctors behaved professionally, but did not help her. She heard them saying 'none of her vital organs are affected' and they handed her over to CNI, although she had a temperature, was bleeding and had low blood pressure.

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

"She was taken to an unknown place, a basement, where she could hear the sound of trains. The walls in this place were covered with an insulating material called aislapol, but they were black, and she felt that there were movable carpeted floor tiles.

"She remained there blindfolded and naked for seven days.

"On Monday they began to torture her, they beat her, and applied electric current on the 'grill' to her breasts and vagina until she lost consciousness. The result was a vaginal haemorrhage which was still continuing 15 days later.

"She was given a medical examination before being tortured, and while torture was being administered the doctors said: 'Stop, otherwise this bag of bones is going to give out on you'.

"The doctors collaborated fully with the torturers. A drop in blood pressure resulted in the torture being stopped.

"On Monday evening, she was interrogated while seated on a chair. As a result of her weak condition she kept falling and was semi-conscious, so much so that they threw her on to an armchair and woke her up from time to time to interrogate her. The reason for the interrogation was to discover the whereabouts of Andrés Pascal Allende, Secretary-General of the Revolutionary Left Movement (MIR), who had entered the country clandestinely.

"Subsequently, as she had a great deal of pain in the genitals and complained a lot, she was given a pain-killer called Tapal. They continued to interrogate her and to hit her. She fell down and they made her straighten up by hitting her on the forehead. A woman befriended her and gave her cigarettes. Then they dressed her because she was shivering a great deal and her blood pressure was very low. Afterwards they made her sleep beside a dog which smelt her and sniffed at her, it was called Vulcán and they spoke to it in English and at night they let it loose in the yard.

"On Wednesday the interrogation consisted solely of questions.

"She was taken out to point out the houses of other colleagues and she walked along the street. She did not identify any houses. On Thursday they began to beat her again. On Saturday she was brought to the Office of the Prosecutor, where she saw the lawyer. Previously she had signed a statement on her political activities which she did not read.

"She was then sent to the Correctional Institution. She was sent to the Institute of Forensic Medicine for an examination. There she was asked 'And what brings you here?'

"She had been sent because of the wound in her shoulder, but they paid no attention to it. The burn marks on her breasts and haematomas were visible until the end of August. She has intense pain in her back and is in very poor physical condition, very pale".

61. Another woman described in front of a public notary the torture to which she had been subjected. Rosa Levinao Riveros was arrested on 13 June 1979 by officials from the Police Department, held at one of the Department's Stations, handed over some days later to the National Information Agency (CNI) and finally brought before the Office of the Military Prosecutor of the Second District, Santiago, which decided after several months to release her because of insufficient evidence. She was in prison until 30 October 1979. Her account is of the treatment that she received on Police Department and CNI premises, which led to a miscarriage and the loss of the baby she was carrying:

"They took me to the Eighth Judicial Section of the Police Department in Macul, where I was put in a room alongside the detectives' offices. Almost immediately, a group of detectives started to punch and kick me and then let me rest before they started the same thing all over again.

"I kept telling my captors that I was two months' pregnant but it did not make any difference to the awful treatment I received. That same night, or rather in the early hours of 14 June, I was taken to a basement room and there they gave me electric shocks on my pelvis and my breasts. Before that, before taking me to the basement, they blindfolded me, bound me hand and foot and, once I was in the room, laid me out on a kind of cot covered with wet sacks. There I was tortured in the way I have described and every time they did it they covered my mouth with a piece of sacking to muffle my cries and make it difficult for me to breathe. I was desperate from the electric shocks and the punching and kicking, which made the torture intolerable. Several times I thought I was going to die from this treatment, which led to an internal haemorrhage and ultimately caused my miscarriage. I was tortured this way throughout the night and, at seven in the morning, they took me back in a terrible state to the room I had been put in when I first arrived. My brother José Levinao Riveros, my fiancé Heraldito Avendaño Cheuquel and my 17 year old nephew Adolfo Levinao Quidel had also been kept on the premises since 13 June 1979. They were in an adjacent room and were treated very badly. I often heard their cries and, on the night of 13 June, a group of five detectives even showed me my fiancé, who was unconscious in one of the rooms as a result of the ill-treatment he had received. One of the detectives said that if I did not talk, the same would happen to me ...".

62. On 14 September, Radio Cooperativa reported that Patricio Reyes Southerland, who had attempted to put up a political banner in the street and was accused of being a MIR activist, was sent to the Penitentiary hospital by order of the prosecutor for the case. Mr. Reyes Southerland, arrested by the Carabineros, was handed over to CNI and spent 48 hours at secret premises, after which he was found to have a brain and skull injury and haematomas on various parts of the body, which gave rise to the order for his admission to the hospital. 74/

74/ The transcript of Radio Cooperativa news was received from reliable sources.

63. Other security agencies use similar methods, although they do not habitually use devices specifically designed for torture. For example, Carabineros officers have repeatedly been accused of committing abuses and acts of brutality, inter alia, against persons who live in the poblaciones, to which reference was made under the preceding section. Some of those claiming to have been subjected to abuses and ill-treatment by the Carabineros have applied to the courts for an investigation into the offences and punishment of those responsible. The following is a transcript of the relevant parts of a judicial complaint:

"Mr. Elías Lobos Ulloa: At 8.30 p.m. on 17 October of this year I was walking along Calle José Joaquín Pérez with a friend towards my brother's house. At the corner of Calle San Fuentes my friend left me; I was immediately hailed by a couple of on-duty carabineros from the Renca Carabineros Station who were approaching. I walked towards them and I was forcibly arrested by the two men. They immediately began to beat me brutally without my having done or said anything. I fell to the ground, where they continued to kick and punch me; one of them hit me on the back with a pistol butt. I only managed to cover my head. Since the attack continued for a long time, passers-by began to remonstrate with the aggressors, but that only caused them to attack me even more ferociously. Mrs. Carmen Villaseca Videla, the owner of a butcher's shop near the place where the incident occurred, urged the two carabineros to go into her house in order to prevent things from getting any worse ... I was dragged into the house by my hair and they continued to beat me brutally in a room. My aunt, Eva Georgina Lobos Yáñez, President of the Neighbourhood Association, arrived and tried to calm the policemen down; she was pushed violently and knocked to the ground by one of them, falling on her back and hitting her head hard. The situation was so disturbing that the lady of the house telephoned the Renca Carabineros Station and asked for protection to calm the carabineros down. Within a few minutes, a van arrived driven by Sergeant (Second Class) Sergio Oviedo Honorato, who was wearing neither a cap nor a tie and whose tunic was unbuttoned; without any explanation, instead of calming the situation down, he also proceeded to kick and beat me in the room. Then he dragged me out into the street by my hair and they forced me with blows into the police van, where the sergeant continued to beat me. I was taken under detention to Renca Carabineros Station No. 1, where they proceeded to identify me; I was bound hand and foot and flung violently into a cell. A carabinero managed to tell me that I had been detained as a 'marijuana pusher'. The following day I was placed at the disposal of this Prosecutor's Office; I do not know the charges against me".

"Eva Georgina Lobos Yáñez: I endorse the entire statement made by Mr. Elías Lobos Ulloa and I should add that when I was knocked to the floor by one of the carabineros making the arrest I lost consciousness for a few seconds. After they had taken Mr. Lobos to the van, I immediately went with my son, Mauricio Fernández Lobos, a student, to Renca Carabineros Station No. 1, to discover the reason for the attack and arrest, but before I said anything and without any justification, Sergeant (Second Class) Sergio Oviedo Honorato pushed me out of the police premises. My son asked him from the street where the prisoner would be taken. The Sergeant's reaction was to order three more carabineros to arrest him 'for insolence', as he put it. My son was released two hours afterwards having paid a 500 peso bond with a summons to appear before the Renca Police Court. I moved away from the Carabineros station in order to avoid worse consequences and through fear of reprisals."

The medical certificate issued to Elías Lobos Ulloa, following an examination at the José Joaquín Aguirre Hospital, states: "Bruising in the left lumbar region. Old sprain of left wrist." Other persons have made similar complaints of violent ill-treatment on Carabineros premises. Among them are Pedro Bustos González and Gabriel Belarmino Bustos González, arrested on 17 September 1979 and taken to the Paine Carabineros Station. The Special Rapporteur has received copies of the medical certificates confirming the injuries.

64. The accounts of ill-treatment experienced by detainees on Carabineros premises include some by women who have been humiliated and have been physically injured. One such account is as follows:

"(1) We were arrested between 5 and 9 p.m. on Thursday, 29 November, on Calle Alameda, between Miraflores and Mac Iver, by Carabineros officials.
(2) They proceeded to arrest the persons who were on the spot and did so with violence. They kicked and punched us and used truncheons on various parts of our bodies; they did not produce an arrest warrant and they had not caught us committing any crime ... For about an hour they assaulted us indiscriminately with punches, kicks and truncheons. The carabineros (men) proceeded to search us, running their hands over our bodies without any respect for our sense of decency and taking advantage of the fact that we were completely defenceless. One carabinero beat ... on her lower limbs and her belly with a truncheon while she was seated; at the same time, he twisted her nose violently. In the case of ..., they made her hold two pots so as to incriminate her in a pots and pans demonstration that was being held at that time".

The women also state that they were compelled to undress in front of the carabineros, who insulted them with such foul words and offensive remarks that some of the victims reacted physically with vomiting and nausea. They were held for five days in deplorable conditions as regards both the place in which they were kept and the food they were given to eat; they did not even have permission to go to the bathroom and they were harassed continually. Later on, after their release, many of these women had to have medical treatment for skin infections and other ailments contracted during the time they were under arrest.

65. The Chilean Commission on Human Rights has publicly submitted six sworn statements by persons subjected to serious torture during their detention and a list of 10 persons who have lodged complaints with the courts requesting an investigation of those acts. It stated, inter alia, that the persons concerned were requesting that their complaints "should be thoroughly investigated by the courts without obstruction or abuse of the secrecy of the preliminary proceedings; that there should be an end to torture in our country, in accordance with basic humanitarianism; that these acts should not be hushed up by either the authorities, the courts or the press; and that public opinion should be made aware of this serious problem and should support the victims". 75/

66. The Special Rapporteur has followed with interest the development of legal proceedings under which cases of torture are being investigated, as well as the legal proceedings concerning criminal responsibility for the disappearance of people in Chile (see A/34/583/Add.1).

As regards the torture and death of Federico Renato Alvarez Santibáñez, a case referred to at length in his first report, it would appear that some of those responsible have been identified by Justice Alberto Chaigneau del Campo, appointed investigating judge to take the initial steps in the investigation. According to his report to the Court of Appeal, he has managed to establish that the arrest was made by Eduardo Araya Pardo, an officer from Carabineros Station No. 9, at 5.30 a.m. on 15 August 1979 and that at that time Alvarez Santibáñez suffered slight injuries, according to the report by the Emergency Unit of the J.J. Aguirre Hospital, to which he was taken at 6.30 a.m. on the same day. At 4.30 p.m., the Justice concludes, Mr. Alvarez Santibáñez was handed over to members of CNI in accordance with a decree of the Ministry of the Interior and transferred to a CNI house at Calle Borgoño 1470 (Santiago), where he was received with the same injuries by Commander Jorge Andrade Gómez and remained in custody until 1.30 p.m. on 20 August. On that day, following a medical examination which recorded that he was in good physical condition, he was placed at the disposal of the Office of the Military Prosecutor of the First District, Santiago. The Office ordered his immediate transfer to the Penitentiary with an express order to place him in the infirmary due to his poor state of health. He was admitted to the infirmary at 7.45 p.m. and, since his physical condition had deteriorated, he was sent to the Central First Aid Post at 11.40 p.m.; there he was admitted to the Intensive Care Unit and died at 6.50 a.m. on 21 August. Justice Alberto Chaigneau declared that he was not competent and 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". ^{76/} Since the case was brought before the military courts, the Special Rapporteur has received no further information on the proceedings, except for the reports by El Mercurio to the effect that the members of CNI are unconcerned regarding the outcome of the legal proceedings because "although the case is still at the secret preliminary stage, there are indications that the Agency will be let off 'scot-free'" (see this chapter, section F).

67. To date, the Special Rapporteur has not been informed, and has been unable to inform himself through the Chilean press, of a single case in which the perpetrators of a crime against the life and physical integrity of a person, particularly where political persecution is involved, have been convicted and gaoled for such offences.

68. He therefore recommends to the Commission on Human Rights that, in view of the frequency with which acts of this nature occur, the course of the proceedings instituted by the victims and their families should be closely monitored and

^{76/} See A/34/583, paras. 123-127 and particularly annex XVI (h).

that the Government of Chile should be urged to carry out objective and impartial investigations and to punish the guilty parties. Similarly, it should be urged to report publicly on the results of the investigations so that both the population of Chile and the international community can be kept informed of the measures taken to protect such basic human rights.

C. Right to life

69. In his report to the General Assembly at its thirty-fourth session, the Special Rapporteur referred to a number of reports of deaths or attempted homicide which appeared directly to implicate members of military or security agencies. He indicated, further, that in some of these cases, the relatives had instituted legal proceedings in order to have the facts investigated and the guilty persons punished. 77/

70. The Special Rapporteur has since received further reports of murders where the guilty persons would appear to have been officials of military or security agencies. These cases are described below.

1. Jorge Alejandro Cabedo Aguilera. This person was arrested at his home by officials of the Police Department on 16 November. He was taken to the Department's station on Avenida Pedro Aguirre Cerda. His relatives (his wife and two young sons, one aged three years and one aged nine months), were present when he was arrested. The police officials did not produce any arrest warrant issued by a competent court, and they did not indicate where the arrested person would be taken or what were the charges against him. After seeking him in various police establishments, his relatives found him in the place mentioned above. The police at first denied that Cabedo Aguilera was being held there, but, when his wife insisted, they told her that he was in fact there and that he would be placed at the disposal of the court on the following day. They allowed his wife to see him, in the presence of a policeman. When she went again the following day, 17 November, she was not allowed to visit him because - she was told - he was shortly to be transferred to the prison. Since he did not arrive there, his relatives returned to the police station, where they were told that he had died and that they should go to the Institute of Forensic Medicine to recover the body. At the Institute of Forensic Medicine the relatives were told that the body had been brought there by personnel of the Institute from a cell in a police station. The body was handed over for burial on 19 November and the death certificate stated that death had taken place in "Cell No. 1, Avenida Pedro Aguirre Cerda police station". The cause of death was stated as: "bilateral traumatic sanguineous infiltration of the right side of the neck and of the spinal column, left dorsal". According to the certificate, death occurred on 17 November 1979 at 12.45 p.m.

77/ A/34/583, paras. 128 to 136.

2. Julio Hernán Peña Mardones. This youth was playing in the street near his home with other youngsters on 13 November. As they were making a lot of noise with their games, a sergeant, second class, of the Eladio Troncoso Regiment, came out of his house and fired a shot, instantly killing young Julio Hernán Peña Mardones.

3. Ricardo Osvaldo Peña Escobar. Aged 16. At 8 a.m. on 21 August 1979 a person in civilian clothes who said that he was from the 13th Carabineros Station came to this youth's home in the commune of Nuñoa. He asked the youth to accompany him in order to identify some people who had been arrested. A little later, the youth's mother went to the Carabineros Station but was told that her son was not there. She stayed there hopefully and some hours later was told that her son had been taken to a hospital. There she was informed that he was dead but was not told the cause of his death. A nurse suggested to her that she should go to collect his clothes and personal effects from the police station. At 4 p.m. she went to the Institute of Forensic Medicine, where she was allowed to see the body of her son only through a glass case. A friend who accompanied the mother and who was allowed to identify the body when it was still clothed, before it was placed in the glass case, claimed that there were marks of bruising on the face, in particular around the jaw. The next day, at the 13th Carabineros Station, she was given the youth's identity card and birth certificate, but no explanation. The Special Rapporteur has received a photocopy of the judicial deposition in which the mother of this youth applied for an investigation of the facts leading to his death.

4. Ricardo Ruz Zañartín. According to press reports, he was killed on the street on 27 November by carabineros who had stopped him for a search, which he resisted. The victim had been in prison from March 1974 until April 1978 as a result of a sentence by a court martial. He had been released pursuant to Decree-Law No. 2,191 of 18 April 1978, which granted an amnesty.

71. Other deaths in circumstances which suggest that criminal acts were the cause have been reported by the press, among them the death of Mr. Renato Guerra Castilla, Town Clerk of Còquimbo. The newspapers reported that he had committed suicide, leaving a letter in which he acknowledged responsibility for an attack carried out by the Revolutionary Left Movement (MLR) in which a number of municipal installations were damaged. Mr. Guerra Castilla's relatives requested an investigation into the facts, stating that they had not been able to see the body since it had been produced to them in a closed coffin. Legal proceedings have been instituted to obtain an order for exhumation of the remains and an autopsy. 78/

72. In his previous report, the Special Rapporteur referred in detail to the circumstances in which the socialist leader Daneil Acuña Sepúlveda died and the contradictions between the official versions and the versions given by the victim's relatives (see A/34/583, paras. 133-137). Subsequent reports indicate that, by order of the magistrate hearing the case brought by the son of the victim, the body was exhumed for expert examination by the Institute of Forensic Medicine. 79/

78/ El Mercurio, 30 November 1979 and 7 December 1979.

79/ Solidaridad, No. 80, October 1979.

73. Other attacks against the lives of individuals were reported to the courts. They include that involving two young workmen, Luis Alberto Jerez and Luis González. They were driving in a small car when they noticed that they were being followed by another car occupied by two carabineros, who signalled them to stop. According to the complaint, the workmen obeyed. One of the carabineros approached the young men's car and fired a burst from a submachine gun that injured both of them. Afterwards they were accused of "assaulting carabineros, stealing a vehicle and were sent to the Penitentiary". Some hours later, the Military Prosecutor released Jerez, who had been hit by two bullets, but González, who had been wounded by six bullets, was held in prison at the disposal of the military courts. 80/

74. As he indicated in his report, the Special Rapporteur will follow closely the examination of cases brought by the relatives of all the alleged victims. The relatives of the victims are entitled to know the truth about the deaths of these persons and, therefore, to exhaustive investigation, through examination of all the available evidence, of the causes of death and the responsibility of individuals. Likewise, any persons found guilty should be duly punished in accordance with the law.

D. Persecution and intimidation

75. The Special Rapporteur referred, in his first report to the General Assembly, to the persecution to which various persons are subjected by police and security agencies and by unidentified groups which have information concerning the private lives and activities of these persons. 81/

76. Further incidents of a similar nature have occurred in subsequent months. The attention of the Special Rapporteur has been drawn in particular to a series of attacks against the Catholic Church.

During the night of 27/28 August unknown persons entered the premises of the Catholic Youth Centre at Talca after breaking three padlocks. The desks were opened and the papers examined. One of the typewriters showed signs of having been used, which gave reason to fear possible abuse; it might have been used, for example, in order to attribute false documents to the institution. In a message addressed to the parishioners, Bishop Carlos González and Bishop Alejandro Jiménez said:

"The Church has nothing to hide since our work is carried out in the light of day and is not concealed by the darkness of night ... Therefore, any person who wishes to learn about or investigate activities or ideas of our Church would do well to put questions directly to those who work in it". 82/

80/ Hoy, 16 to 22 January 1980.

81/ See A/34/583, paras. 137-145.

82/ Hoy, 5 to 11 September 1979.

In October, unknown persons entered the Bishop's House at Talca, broke windows, forced open doors, looked through private papers and "were able to make use of paper bearing the letterhead and official seals of the Bishopric". Monsignor Alejandro Jiménez, the Suffragan Bishop of Talca, expressed the hope that the authorities would take effective action to put an end to such situations. 83/

77. Other complaints concerning acts of aggression against religious institutions or persons connected with the Church have been transmitted to the Special Rapporteur. They include desecration of the Church of Perpetual Succour by unknown persons during the night of 14 October; a complaint concerning this act was lodged with the courts and their intervention requested. The Redemptionist Fathers have suffered other types of persecution including surveillance, interception of mail and telephoned threats, and persons connected with the Order have been followed and questioned in the street.

In addition, Monsignor Raúl Vío Valdivieso, Vicar of the Coastal Rural Zone, complained that unknown persons had illegally entered the home of two of his advisers, a young married couple. On 13 November they entered the house while the owners were away and went through all their papers and other belongings, including photograph albums. Vicar Vío Valdivieso also reported that, after these events, a motorcar was used to keep watch in front of the young people's house for several days. 84/

78. Various acts of persecution have been denounced by the victims and brought to the attention of the Special Rapporteur. In general, the persons involved have been followed, threatened, physically attacked or abducted for a few hours. For example, Ximena Marcela Díaz Camillero had received anonymous threats relating to her political activities and to those of other persons, including her fiancé Carlos Pávez. This man was arrested on the street by two persons in plain clothes who forced him to get into a car and kept him there for four hours, at the end of which they left him in a deserted place. The victims of these acts lodged a complaint to the courts of intimidation and abduction. Again, Mrs. Victoria de los Mercedes Rodríguez Barrientos instituted judicial action because of the illegal arrest of her brother and complained that from that time onwards she was followed. She said that on 22 October she was stopped on the street by a person who identified himself as a member of the security services. He asked her to show her personal documents, informed her that she was being watched and told her things which showed that he knew a great deal about her and her family.

79. Two 17 year old boys, Aly Núñez and Hernán Pedro, were arrested in Santiago on 10 September by a man in civilian clothes who showed a card which they were unable to see clearly. They were made to get into a car in which there were two armed soldiers and were taken to the Tacna Regiment. There they were interrogated about their participation in a religious service held some hours before. They were also subjected to psychological harassment and told that they must collaborate with the security services. They were released the same evening. On 13 November,

83/ El Mercurio, 16 October 1979.

84/ Solidaridad, No. 84, Second Half of December 1979.

Santiago Avalos Villablanca, the student representative of the Faculty of Philosophy of the University of Chile, was detained by two persons in plain clothes, who did not identify themselves. He was taken to the Sixth Carabineros Station, where he remained for several hours without being shown any judicial order. He was told that he had been accused of being connected with MIR. However, he was released some hours later without any charges being brought against him, which shows that the purpose had been to intimidate him.

Mrs. Gala Torres, the sister of a missing detainee, was attacked in early November by four persons who punched her, causing serious facial injuries. She had to be taken to hospital, where several wounds were found to require stitches. She has lodged a complaint of assault. This case could be connected with the anonymous threats from the so-called "Comando Carevic", whose activities were mentioned by the Special Rapporteur in his first report (see A/34/583, paras. 141-145).

80. With regard to this group's activities, it has been reported that Mrs. Violeta Zúñiga, Mrs. Norma Matus and Mrs. Viriana Díaz have appealed to the courts for protection. The three women belong to the Association of Relatives of Missing Detainees and had received threats from the "Comando Carevic". In recent months, the Court of Appeals declared the petition unacceptable and an appeal against the ruling was lodged with the Supreme Court. Before it ruled on the matter, the Supreme Court requested reports from the Ministry of the Interior concerning the existence of the group; the Ministry replied that it had "no record" of the group. 85/

81. The Special Rapporteur observes that it may be assumed from what happened to Mrs. Gala Torres that, while the group which signs the threats may be unidentified and may have no record, it undoubtedly constitutes a real danger for security of person. All necessary measures should therefore be taken to investigate the origin of both the anonymous threats and the assaults against various persons.

E. Security agencies

82. In his first report to the General Assembly, the Special Rapporteur referred to the many accusations of torture, illegal arrest, persecution and even death made in complaints against the security agencies brought before Chilean courts. He also described the activities of the CNI, which has assumed powers that are not conferred upon it by the legislation in force, such as powers of ordering and making arrests, and detaining persons for periods longer than those laid down by law, in secret places which are not revealed even to the judges responsible for dealing with the applications for amparo submitted on behalf of the detainees. He also pointed out that all these activities, as well as the public statements of the CNI, in which it claims powers not accorded to it by the law, and its repeated refusal to give certain information to the judges, indicate that the Agency has recently acquired even greater powers than those described to the Ad Hoc Working Group during its visit to Chile. 86/

85/ El Mercurio, 30 November 1979.

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

83. On 9 November 1979 the Diario Oficial published "the first of a series of legal reforms designed to bring about certain changes in the structure of the National Information Agency". 87/ Decree-Law No. 2,882 amends Decree-Law No. 1,878 of 12 August 1977, which laid down the basic principles which were to govern the establishment and operation of the CNI.

84. The main effects of the changes made in the legislation are to regulate the operating procedures of the Agency - the delegation of functions by the Director to the Deputy-Director being permitted; to establish that the funds allocated by law to the CNI and the rendering of accounts to the Office of the Controller General of the Republic should be secret; and to modify the system for recruitment of civilian personnel.

85. There are three main types of amendment:

(a) Those connected with the directors of the CNI. It is stipulated that the National Deputy-Director and the Controller of the CNI must be designated by supreme decree, a requirement which did not previously exist. There is also a clause providing that the National Director of the CNI may delegate some of his functions to the National Deputy-Director;

(b) Those concerned with CNI funds. There is an amendment of article 5 of Decree-Law No. 1,878 88/ providing that the funds allocated to the CNI under the Budget Act should be allocated in the form of over-all amounts within the section relating to the Ministry of the Interior and should, for all legal purposes, have the character of secret funds. Similarly, the requisite accounts for the Office of the Controller General of the Republic regarding the resources allocated are to be submitted annually, showing over-all amounts, and on a classified basis.

Thus this decree-law provides that both the receipts and the expenditure of the CNI shall be outside the control of other State bodies, since both allocations and accounts are to be submitted showing over-all amounts on a classified basis;

(c) Those relating to CNI personnel. Paragraph (e) of the single article of Decree No. 2,882 amends the provisions of Decree-Law No. 1,878, article 3, final subparagraph, which reads as follows: "Whenever it is necessary to engage personnel not belonging to the institutions of national defence, such action must be approved by supreme decree, signed in addition by the Minister of Finance. The legal régime and the remunerative levels of such personnel shall be the same as those which apply to the civilian personnel of the armed forces and shall be considered as such for all administrative and disciplinary purposes." 89/ The new provision leaves out the first part of this text, stating simply that "The personnel of the National Information Agency shall be considered as part of the armed forces for all administrative and disciplinary purposes". Thus the requirement of control over the recruitment of civilian personnel is eliminated, and such staff

87/ El Mercurio, 4 November 1979.

88/ See A/32/227, para. 165.

89/ See A/32/227, para. 165.

may henceforward be recruited without a supreme decree. According to the newspaper El Mercurio, this measure "would appear to be intended to protect the secrecy of the deliberations of the CNI, civilian members of the general staff being henceforward subject to the same disciplinary system as the members of the armed forces". 90/

86. In fact, what this provision does, like all the other provisions contained in the decree-law, is to give the CNI greater operating independence and to free it from external control of any kind, including control by other organs of the Executive Power. The total secrecy covering the receipt and management of its funds and of its personnel, who are under military discipline, makes it a privileged institution within the Chilean State.

87. The Special Rapporteur considers that if this decree-law is examined within the general context of the activities of this security Agency in recent times, it will be seen that it represents simply one step further along the path already followed in practice, since the Agency's powers are constantly expanding and it is becoming a truly independent force free of all control, including financial control.

88. As regards the powers to arrest persons and to "gather intelligence" (as compared with the "collecting and processing of information") 91/ which were stated to be outside the framework of the activities of the CNI (although the DINA had possessed such powers) in the document transmitted by the Director of the CNI to the Ad Hoc Working Group during its visit to Chile (see A/33/331, paras. 137-139), these now appear to have been allowed and to be among the tacit, if not legal, powers of the Agency. Thus, El Mercurio states in a commentary explaining the powers of the CNI:

"No more than about 10 per cent of the activity of the CNI is at present devoted to the identification and detention of subversive elements, according to a statement by its directors. On the other hand, the CNI now has a general staff of whom about 65 per cent are civilians and professional people such as lawyers, doctors and experts in political science, which indicates an important change both in its internal constitution and in its functions. With this team the CNI is carrying out its task of giving constant assistance to the Government in all current problems and situations, which are investigated by the CNI from the point of view of national security". 92/

90/ El Mercurio, 4 November 1979.

91/ The CNI pointed to this function as showing "a considerable difference [with DINA] as far as the executive character of the Agency is concerned" (see A/33/331, para. 137).

92/ El Mercurio, 4 November 1979.

The newspaper adds, with reference to the civilian personnel, that "since they are subject to the same disciplinary rules as uniformed personnel, their silence is ensured." Consequently if, as has been stated, 93/ a CNI doctor is accused of participating in actions violating human rights, such as torture, he will be tried by military courts.

89. At the present time the military courts are processing the case opened in connexion with the death of Federico Alvarez Santibáñez as a result of torture inflicted on him while he was in the hands of the CNI, evidence of which is contained in testimony and documents reproduced in the Special Rapporteur's report to the General Assembly at its thirty-fourth session (see A/34/583, paras. 123-127, and annex XVI). However, this case does not appear to be causing any concern either to those implicated in it or to the directors of the CNI, as is clear from the following statement in the El Mercurio article already referred to:

"There is no anxiety in the Agency as to the possible outcome of the judicial proceedings connected with the death of the teacher Alvarez, a member of the MIR, which occurred during the period when he was being legally held on CNI premises. Although the proceedings are still at the secret preliminary stage, there are indications, according to CNI officials, that the Agency will be let off 'scot-free'". 94/

90. In fact, although a number of crimes committed by military personnel in the exercise of their functions against political opponents of the present Government have been convincingly proven, not one of the persons responsible has been convicted and made to suffer the appropriate penalty. Reports are still being received of unlawful arrests, detention in secret places, false information being given to judges and ill-treatment by members of the CNI and other police agencies.

91. During the period of its existence, the CNI has shown that its activities do not differ fundamentally from those carried out in the past by DINA, although its methods are more selective and refined, since apparently, according to the information mentioned above, it has at its disposal professional medical advice on torture. The Special Rapporteur is consequently concerned about the increase in the independence and autonomy of the CNI, since it is precisely the secrecy surrounding its actions, the impunity enjoyed by its members who are responsible for crimes against human rights, and the absence of any control over its activities by competent State organs which enable it to perpetrate the acts of which it is accused and to deprive the country's inhabitants of the enjoyment of their right to security of person.

F. The Judiciary

92. The corresponding chapter of the report submitted by the Special Rapporteur to the General Assembly at its thirty-fourth session (A/34/583) contained a description of the legal powers available to the Chilean judiciary for the protection of persons seeking legal protection, with quotations from a report

93/ See A/34/583, para. 121.

94/ El Mercurio, 4 November 1979.

submitted by the Government of Chile to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 95/ The chapter also included a survey of the manner in which the judges apply the legal provisions in force and of the effectiveness of judicial protection in practice when it is sought in defence of the rights of persons arrested or harassed. It pointed out in particular that the powers of the judiciary, which according to the Government's report are in force, are not in fact exercised by the judges, who passively accept various violations of the laws, particularly those committed by the security agencies with respect to the right to life, liberty and security of person. The Special Rapporteur noted with satisfaction isolated instances in which some judges attempted to investigate offences committed by military and security agencies against detainees, and a ruling of the Supreme Court in the case of an application for amparo in which it departed from its previous practice of not reviewing the substance of the decisions of the Executive Power (A/34/583, paras. 64-88).

93. Contrary to what might have been expected from those isolated occurrences, there has been no progress during the period immediately following that covered by the Special Rapporteur's most recent report; certain independent decisions by the judges have been revoked when they were considered by the higher courts, and others have remained without effect through the application in the military courts of Decree-Law No. 2,191 of 18 April 1978, under which the Government granted an amnesty to persons guilty of serious violations of human rights.

94. The judges have continued to tolerate actions of the Executive Power and the security agencies in the manner described in reports of the Ad Hoc Working Group 96/ and the Special Rapporteur. They still accept arrests carried out without a warrant from the competent authority and without identification of the persons conducting them, physical and psychological ill-treatment and torture, imprisonment in secret places whose location is not revealed even to the judges "for reasons of national security" and the illegal holding of persons incommunicado.

95. The processing of applications for amparo is delayed pending receipt of the information requested from the Ministry of the Interior, which must in turn seek it from the National Information Agency (CNI) since, as was the case with the Directorate National of Intelligence (DINA) in accordance with instructions from the higher courts, judicial contact with the CNI must be made through the Ministry. 97/ The judges have continued to observe these instructions, which directly affect their independence vis-à-vis the CNI. The processing of applications for amparo is also delayed by steps which would be unnecessary if it were the judges' intention truly to carry out their duty of protecting persons from possible arbitrary acts and violations of human rights instead of approving virtually all the Government's actions. For example, in the case of the persons arrested on 17 September 1979 after the mass held for the victims whose bodies were found in the Lonquén kilns and at the request of the Court of Appeals, the Carabineros issued an official statement saying that they had been arrested for

95/ See E/CN.4/Sub.2/430/Add.1.

96/ See A/33/331, paras. 199-212.

97/ See A/34/583, para. 72.

shouting political slogans and then held at the disposal of the Ministry of the Interior for infringement of the Internal Security of the State Act. In those circumstances their immediate release should have been ordered, since shouting political slogans, even if they are against the Government, does not constitute an offence according to the terms of the Act. Furthermore, in a case of this kind, the persons arrested should not have been held at the disposal of the Ministry of the Interior since the latter has no power to detain persons while the state of emergency is in force. 98/

Instead of ordering the immediate release of the persons arrested, the Court ordered that information should be requested from the Ministry of the Interior, thus permitting the period of detention to be extended by several days. Similarly, with respect to the application for amparo on behalf of César Héctor Fredes Rojas, who was arrested on 3 August, there was clear evidence that the CNI had arrested him on the basis of an order issued by the director of that Agency (which is not legally empowered to order arrests) 99/ and was keeping him in its custody in a secret place of detention which it did not reveal "for reasons of national security". There was thus an infringement of specific provisions concerning, firstly, the places to which persons arrested may be taken, and secondly, the conditions for holding persons incommunicado. The court, which had learned of the illegalities committed in this case from the Security Agency itself, should have allowed the application for amparo and ordered that the detainee should be brought before it. In spite of the fact that the defence counsel requested it to take these steps, the court chose to prolong the proceedings by ordering that information should be sought from the Ministry of the Interior. 100/

96. The courts never question official statements by the authorities and, in fact, accept them as evidence of the truth. For example, in the application for amparo submitted in her name Mrs. Sonia Orrego stated that she had been arrested by the CNI, detained together with the teacher, Alvarez Santibáñez, and that she had been subjected to torture while being held prisoner in a secret place. She also stated that she had been threatened with surveillance and re-arrest.

The Director of the CNI told the courts that "as regards the physical coercion to which Sonia Orrego Díaz says she was subjected by personnel of this Agency while being held on premises belonging to this Agency, these assertions are false and completely without foundation".

This statement was sufficient for the Court of Appeals to reject the application for amparo on the grounds that the applicant was already at liberty at the time when it handed down its judgement. The Court did not make any finding with respect to the complaint of torture, nor did it order any inquiry into that matter. The decision of the Court of Appeals was appealed against before the Supreme Court, which decided to request information from the Director of the CNI "so that he may amplify his earlier statement". The Director of the CNI sent a communication to the Court stating:

98/ See A/34/583, paras. 43-44.

99/ See A/34/583, paras. 49-51.

100/ Information received from reliable sources.

"In reply to the question put by the Court, I wish to state that it is absolutely untrue that the person in question was subjected to threats by CNI personnel that she would be re-arrested and placed under constant surveillance if she engaged in political activity. Personnel of this Agency have never threatened released detainees with further arrests or surveillance. Consequently, the National Information Agency emphatically rejects the charges made by the applicant, Sonia Orrego Díaz, as being totally untrue".

On the basis of this statement -- the sole piece of evidence -- and in spite of the written testimony of the victim herself, the Supreme Court confirmed the rejection of the application for amparo.

97. The Special Rapporteur has already informed the General Assembly of the submission by a group of lawyers to the Supreme Court of a statement in which they informed the Court of the irregularities perpetrated in the processing of applications for amparo and the failure to afford protection to those who request it (see A/34/583, para. 73). This statement was submitted in connexion with the death of Federico Alvarez Santibáñez, who succumbed to the torture to which he was subjected, and the failure to grant him the protection sought from the courts by his relatives and lawyers.

98. The lawyers requested the Supreme Court to ensure the following: (1) strict compliance with the decision of 19 December 1932 concerning the consideration of applications for amparo; (2) the amendment of that decision, in accordance with the requests made thereafter, in view of the repeated arrests made by security agencies on the basis of orders and actual powers that are wider and more discretionary than those normally applying to the police; (3) the revocation of the instructions from the Supreme Court to subordinate courts limiting their powers to seek information directly from the security agencies, i.e. without going through the Ministry of the Interior; (4) the submission to the Executive Power of a communication drawing attention to the fact that during the period of a state of emergency arrests may be made only by means of a supreme decree and not by initiatives which have no basis in law; (5) the issue of instructions to the Courts of Appeals to ensure full compliance with all the legal formalities to be observed in connexion with an arrest and to admit applications for amparo where these formalities have not been complied with; (6) the issue of instructions to the Courts of Appeals similarly to ensure the observance of legal time-limits in the submission of information, with a warning that an authority failing to reply will be found guilty of contempt of court; (7) the issue of instructions to the Courts of Appeals that, when they receive a convincing complaint that a person is being held in a secret or clandestine place or is being subjected to maltreatment, they should order a member of the Court to go immediately to that place or should demand that the person in question be brought before the Court without delay. 101/

99. Not one of the above requests, all of them essential in ensuring adequate protection of the right of persons to life, liberty, security and physical integrity, was granted by the Supreme Court, which stated in its decision:

101/ See the complete text in A/34/583, annex XXVI.

"(a) Since the agreed decision of 19 December 1932 on the remedy of amparo is fully in force, the request contained in paragraph 1 is superfluous.

(b) The request contained in paragraph 2 is likewise rejected, without prejudice to what the Court may decide when it deems it necessary.

(c) Since there are no instructions in force regarding demands by the ordinary courts or courts of appeal for information and answers to questions concerning arrests made by the 'security agencies' through the Minister of the Interior - for the instructions that relate to these matters refer to the Directorate of National Intelligence (DINA), which no longer exists - there is no cause for the revocation of such instructions; it might, moreover, be useful to point out that, with respect to information that was requested through the Ministry, this Supreme Court on 18 June 1976 ordered that 'instructions should be given in the form requested, without prejudice to the powers of the court to seek relevant information from the appropriate agencies in special cases'.

(d) The request contained in paragraph 4 is also rejected as inappropriate since it is not for this Supreme Court to tell the Executive Power how the law should be interpreted, although the Court may put a particular construction on legal principles in connexion with matters brought before it.

(e) The request contained in paragraph 5 is not justified, since no complaint has been made about the conduct of the Courts of Appeals in any matters brought before them, nor has this Court been notified of any irregularity which would have required it to act without waiting for a specific request.

(f) There is no justification for the request that the Courts of Appeals should be instructed to 'take great care to ensure full compliance with all legal formalities that have to be observed in connexion with an arrest, particularly as far as the powers to order an arrest are concerned', since the Courts know that they must comply with the law and they proceed accordingly.

This Court also rejects the request that it should instruct those Courts 'to admit applications for amparo based on infringements of those formalities and to order that the relevant information should be transmitted to the Public Prosecutor's Department for the purposes provided for in article 311 of the Code of Criminal Procedure' because that would imply forming a judgement beforehand about a matter not brought before it, and, more seriously, because it would mean telling the Courts how to reach their verdicts, thus destroying the very essence of the Judicial Power.

(g) There is no justification for doing what is asked in paragraph 6, although the Court may adopt any decision it deems fit in relation to a specific case." 102/

100. However, the decision was not unanimous. Four judges of the Supreme Court recorded a dissenting vote, expressing the view that the Court should have acceded to the requests made, with the exception of the second and third, since the instructions issued before the establishment of the CNI regarding the direct transmission of information requested by the judges could not be considered applicable to that agency.

101. The Supreme Court again took the same view in a recent decision upholding the ruling of the Court of Appeals on the case of Hernán Montero, a military prosecutor who not only refused to visit the place of detention to ascertain the condition of the detainee Alvarez Santibáñez (who died later as a result of the torture to which he had been subjected) but did not order the detainee to be brought before him, even though he had been informed that the detainee was being held in an undisclosed place at the disposal of the CNI (see A/34/583, para. 123). Military Prosecutor H. Montero had already seen the subject of the application for amparo and had been able to note his physical condition. However, he had not ordered him to be hospitalized forthwith but had sent him to the medical unit of the Penitentiary to be held incommunicado. The victim's mother filed a disciplinary complaint against the military prosecutor for non-performance of his duties as an officer of justice. The Court of Appeals rejected the complaint and the Supreme Court upheld the ruling, stating that:

"... special consideration was given to facts from which it is apparent that, once the reply had been obtained from the National Intelligence Agency concerning the detention of Federico Renato Alvarez Santibáñez, Military Prosecutor Hernán Montero, was not in a position to make further inquiries about the exact place at which the Agency was holding the detainee and he decided to report the matter to the military judge, which was the proper course to take; accordingly, he cannot be accused of negligence in, or abuse of, his public duties." 103/

In this case too, four judges recorded a dissenting vote.

102. The general view held by the majority of the Supreme Court in this decision was summarized by the newspaper El Mercurio, which supports official policy, in an editorial stating:

"If the Government Junta - in which resides all constituent and legislative power - has issued decree-laws which some consider detrimental to their interests, it is to the Junta that requests for the immediate repeal of those laws should be made. It is an erroneous approach to the problem to try to lay upon the judiciary the responsibility for the shaping of new legal provisions or for the use by the Government of others which already exist.

103/ El Mercurio Internacional, week 28 December 1979 to 3 January 1980.

"As for the maltreatment which, it is claimed, has been practised in recent years in violation of legal provisions, the courts lack the means of preventing the commission of such offences. It is a different matter to say that they should impose severe penalties on the guilty in the cases brought before them for decision". 104/

103. These statements highlight an attitude that contradicts the repeated affirmations of the independence of the judiciary. The independence of any State power, and especially the Judicial Power, is a matter not of refraining from interference in the arbitrary acts committed by another power, but of the scrupulous and conscientious exercise of its powers of control, which are the specific attribute of its function. In the case described, the lawyers asked the Judicial Power not to change the laws, but simply to take a series of measures designed to modify practices violating legal provisions in force and so to ensure the proper observance of those provisions with a view to more effective protection of human rights.

104. Other cases, too, bear witness to the lack of independence of the Chilean judiciary. One particular example is that of the obvious contradictions between two recent decisions relating to extradition. One of them concerns the military personnel, formerly leading members of the security agencies, accused by the Government of the United States of America of participating in the assassination of Orlando Letelier in Washington in 1976. The other concerns Luciano Iglesias Loureiro, the former Argentine trade-union leader resident in Chile and accused by the Argentine Government of participating in the crime of kidnapping an industrialist for ransom.

105. In the first case, the Supreme Court considered that the conditions required for extradition had not been met because there were no "well-founded presumptions" but "mere suspicions" that those accused had participated in the crime. In reaching this conclusion the Court totally rejected a number of statements made before United States courts on the grounds that plea bargaining (permissible under United States law) had taken place between the person who made the statements and the State's judicial representatives. 105/ It also denied the validity of various judicial statements, all reliably documented in the request for extradition, and others made before United States and Chilean Government officials, because these officials were outside their own territory. These were statements received in Chilean territory by the United States attorney responsible for the case of the assassination of Letelier and in United States territory by the Chilean judge responsible for the case regarding the falsification of passports which enabled some of the persons accused of the assassination of Letelier to enter the United States. At the same time, an accumulation of facts, misrepresentation and contradictions on the part of the accused did not, according to the Supreme Court, justify "presumptions" but amounted to "mere suspicions".

104/ El Mercurio, 23 December 1979.

105/ This plea bargaining had been made public, but in the case of one witness the Supreme Court based its conclusion not on the fact that plea bargaining had been made public but on an inference from indirect indications that such bargaining had taken place.

In the second case mentioned, the Court agreed to the extradition of Mr. Iglesias Loureira, in spite of his status as a political refugee, which he was granted by the United Nations High Commissioner for Refugees on 23 October 1979 on the grounds that in his own country his life was seriously endangered. In agreeing to extradition, the Supreme Court declared that the conditions required by article 274 of the Code of Criminal Procedure had been met, since there were, among other things, "well-founded presumptions" of his participation in the crime. These "well-founded presumptions" of the Supreme Court in this case were based on the extrajudicial charges made by a third person to the Argentine police but denied in court because, it was alleged, they had been obtained by means of unlawful coercion which had been reported by the victim; on a communication from the police stating that the accused had also been named by one of the participants in the kidnapping before his death, while he was in a state of "total confusion"; and on the fact that Iglesias had been one of the tenants of the farm where the kidnapped industrialist had been held prisoner. With respect to the latter circumstance, the judgement stated that "although these facts do not of themselves constitute sufficient indication of the participation of Iglesias in the crime described in the first part of this decision (kidnapping for ransom), nevertheless, combined with other circumstances and facts known or brought out during the proceedings, they give rise to presumptions of guilt on the part of Iglesias".

106. With regard to the charges made in an extrajudicial statement before the Argentine police and later denied by the person who made the statement because it had been obtained by means of torture, the Supreme Court said that "the extrajudicial statement of Carlos Roberto González, while being a police communication, has the merit of being information which was brought out in the trial and which the court considers to have evidential force in accordance with the terms of article 110, paragraph 2, of the Code of Criminal Procedure, since it was corroborated by police officials". On the other hand, as regards the extradition requested in the case of the assassination of Orlando Letelier, in spite of documentary evidence submitted by the Government of the United States, the Supreme Court stated:

"The documents referred to above and also mentioned in section (c) are sworn statements made before or by FBI agents and thus constitute only police information, which, as has been repeatedly indicated in this decision, can be treated only as background information, in accordance with the terms of article 110, paragraph 2, of the Code of Criminal Procedure. Consequently, according to article 385 of the Code, these documents do not constitute elements justifying presumptions of guilt on the part of a particular person."

107. It is not the task of the Special Rapporteur to find out whether either of these decisions is in accordance with Chilean legislation. On the other hand, it is part of the task with which he has been entrusted to determine the existence and general observance of legal provisions which ensure to persons living in the territory of Chile the enjoyment of, and respect for, the rights laid

down in articles 1 and 14 of the International Covenant on Civil and Political Rights. The above cases have been mentioned because the Special Rapporteur considers, after a careful reading of the two decisions, that the Supreme Court does not appear to have applied the same criteria in its interpretation of the laws in force in the two cases. In the case of the request for the extradition of the Chilean military personnel in connexion with the assassination of Orlando Letelier, the Supreme Court attached no validity to statements made before competent judicial bodies acting normally in the exercise of their specific functions or to statements made before police officials of the country requesting the extradition. In the case of Iglesias Loureira, on the other hand, it accorded "the merit of being information which was brought out in the trial and which the court considers to have evidential force" to mere police statements, one of which, moreover, was retracted on the grounds that it had been obtained through torture. Furthermore, from a careful reading of the decision concerning extradition of Chilean military personnel in connexion with the assassination of Orlando Letelier, the Special Rapporteur did not find that the Supreme Court had at any time related the various items of evidence brought before it to each other or treated the misrepresentation and contradictions for which all the accused were, it admitted, responsible as giving rise to "presumptions of guilt", as it had in the case of Iglesias Loureira. In addition, he considers that in the latter decision the Supreme Court attached greater validity to extrajudicial statements made by a witness to the police than to statements made formally by that witness before the judge in which he retracted his earlier statements and denied any participation by Iglesias Loureira in the crime.

108. The comparison of these two decisions, together with the behaviour of the Chilean judicial bodies in the investigation and punishment of crimes committed by military and security services personnel against the right to life, liberty and security of person, render it impossible to affirm that persons living in Chile enjoy due protection of these rights or that they can expect an impartial trial without discrimination before independent courts.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

109. The first report of the Special Rapporteur to the General Assembly at its thirty-fourth session (A/34/583) contained an analysis of the situation with regard to economic, social and cultural rights during the period covered. In the short time which has elapsed since that report was issued, the general situation has not changed. The present report will accordingly confine itself to transmitting to the Commission on Human Rights only such additional information as is of importance or may help to give a fuller picture of the situation with regard to these rights.

A. Right to education and culture

110. In his first report to the General Assembly the Special Rapporteur referred to the policy of the Government of Chile with regard to education. He pointed out that there had been a sharp decrease in budgetary expenditure per pupil in the State system in relation to previous years and that expenditure on private education had remained at a considerably higher level, with the result that those pupils who could afford to attend private schools were receiving a better education and had access to the highest levels, whereas the great majority could aspire only to an inferior education (A/34/583, para. 253).

The report also drew attention to the trend in Government policy with regard to education, as it emerged from various official statements and documents, which were quoted. These indicated a trend towards the reallocation of resources to the marginal and very poor sectors, with emphasis on the extension and readaptation of primary education (para. 248). In a public letter to the Minister of Education, President Pinochet confirmed the intention to hand over to the private sector much of the country's educational activity and its determination to promote education in that sector while, at the same time, not expanding educational activity by the State (paras. 250-251). In recent months there have been press reports of a number of new measures which confirm the trends mentioned and give an indication of some of the results of these policies.

111. The following table shows the redistribution of expenditure on education between the various levels which make up the educational system (according to figures published by the Technical Consultancy Office of the Ministry of Education):

Distribution of public expenditure on education 106/

	1974	1975	1976 1977 (percentages)		1978	
Pre-school	1.7	1.7	2.3	2.5	3.7	
Primary	38.4	43.5	48.4	47.0	48.0	69.2
Secondary	13.5	16.4	15.3	14.1	14.7	
Higher	44.9	38.1	33.8	36.1	33.3	30.8
Other	1.5	0.3	0.2	0.3	0.3	
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

112. As has already been observed, within this redistribution by levels of education it is not State education, which is completely free, but private education that has benefited. Only the State's contribution to so-called "free private education" (low-cost private education), but not the amounts allocated to higher-cost private education and State education, have been officially reported by the press.

According to official figures, subsidies to the so-called "free" private schools (see document A/33/331, para. 495, concerning this type of school) amounted in 1979 to 870 million pesos, which represents an average contribution per pupil of 4,337 pesos or, at the present rate of exchange more than \$US 100. 107/ This amount may be compared with the total amount per pupil invested by the State in 1977 in primary education (\$US 82 at the 1976 rate) and in secondary (arts and science) education (\$US 70 at the 1976 rate).

113. According to the Government's plans, the purpose of State education would appear to be to train skilled or semi-skilled workers (as General Pinochet said in his above-mentioned statement) in order to meet manpower needs in certain sectors of production.

114. The decrease in the quality of education provided at the primary level is undoubtedly making access to secondary education more difficult and the low quality of secondary education is in turn creating insoluble problems for the access of State-school pupils to universities. It is the express view of the Government of Chile, as stated by President Pinochet, that secondary education and, in particular, higher education should constitute an exception for young people (see A/34/583, para. 256). In conformity with this view, the obstacles preventing the low-income sectors from deriving full benefit from their right to education are increasing daily. Recently the Minister of Education abolished a privilege formerly accorded to parents with more than one child in the same secondary school. In accordance with this privilege such parents paid only 50 per cent of the enrolment fee; they now have to pay the full fee, which will be increased in 1980. 108/

115. As a result of the policy of promoting private education and the decline in the standard of education provided under the State system, the traditional Chilean system of "broad opportunities for all" in education is being undermined and replaced by another in which the only persons who have broad opportunities are those who can afford the high fees charged by the private schools. Consequently, the students who enter universities will be not those of higher intellectual calibre, but those who were born in homes that are sufficiently affluent to be able to afford, from nursery school onwards, a high-quality education with adequate resources and equipment and sufficient teaching personnel. An article in El Mercurio entitled "Education - a long and controversial path" has described certain social changes which are related to education and are characteristic of recent times. The article states:

"The educational process begins at an increasingly early age. Educational methods and requirements are becoming more complicated, with the result that many parents suffer premature anxiety. For his part, the child is subjected to 'training' which many consider to be excessive and in the long run harmful for both pupils and society".

107/ El Mercurio, 2 December 1979.

108/ El Mercurio, 13 September 1979.

The article goes on to explain the reasons why more affluent parents send their children to private nursery schools, where the rigorous and accelerated intellectual development of the child begins. The education given in schools of this type "in order to prepare the leaders of tomorrow", as was explained in one of the schools visited by the reporter, is very different from that received by children from low-income families who attend State schools. This is pointed out in the heading of the article, which reads "Two separate worlds: private schools for high-income families and the rest". 109/

116. This situation is indicative of a discriminatory tendency in educational matters. There would appear to be, on the one hand, the high-income (or middle-income, in certain conditions) sectors of the population which are enjoying to the full the right to education, and on the other, the middle-income and low-income sectors which have access only to State schools, where the quality of education and training is deteriorating. There would also appear to be a third group - the very-low-income group - to which this right is completely denied. A primary-school headmaster described the situation of the pupils in his school to a journalist in the following terms:

"It is unfair for a child from a low-income family where the parents, because they are unable to feed and clothe him, are unable to send him to school. There was a dramatic case in my school a short time ago. A boy of 14 had to be withdrawn in order to begin work for 1,000 pesos a month. At his age he is not allowed to attend night school.

I believe that in order to make the system fair and socially-oriented, low-income parents should receive a grant or assistance to enable their children to continue their education". 110/

117. Because of the steady decline in their financial resources, the universities are continuing to reduce the number of places which they are offering. In 1980 the eight Chilean universities will offer a total number of 32,448 places which will be competed for by the 120,200 enrolled candidates in the entrance examinations. 111/ Moreover, President Pinochet has announced that consideration is being given to the possibility of closing some university faculties. 112/

A Universities Bill was considered in secret and in a discriminatory manner since only a few university administrators participated (see A/34/583, para. 263). Together with this bill, other legislation relating to the financing of universities has been prepared. 113/ In his first report to the General Assembly, the Special Rapporteur quoted the statement of the Rector and the Deans of the University of Chile, who said that they had not participated in the debate concerning the General Universities Act and that they opposed certain Government directives in this area. 114/

109/ El Mercurio, 16 September 1979.

110/ El Mercurio, 7 September 1979.

111/ El Mercurio, 3 December 1979.

112/ El Mercurio, 7 September 1979.

113/ El Mercurio, 22 September 1979.

114/ A/34/583, para. 263.

118. In a lecture which he gave in the Social and Economic Research Centre of the Society of Jesus, Professor Francisco Cumplido stated, inter alia:

"The universities were undoubtedly a military objective. They were infiltrated by the Government Junta through delegated rectors from outside the universities, who were not only granted the powers of a university rector. Their primary function was specified in Decree-Law No. 50 as being to unify views in higher education in order to make them conform to the goals and purposes established by the Junta".

He went on to say:

"The university is being kept under surveillance. Appointments are reported by security services. Public competitive examinations as a requirement for the appointment of university teaching staff have continued to be held only in exceptional cases".

Professor Cumplido added that within the over-all decrease in the percentage of the total budgetary expenditure on education allocated to the universities (from about 47.5 per cent in 1974 to about 34.8 per cent in 1977), the budgetary contribution to the Catholic University, Santa Leonia University, the Northern University and the Southern University had increased, while the contribution to the University of Chile and the State Technical University (both of which are directly dependent on the State) had declined quite significantly. 115/ Some people have expressed the view that the more appreciable decline in resources allocated to the University of Chile is attributable to political factors "because it is a national university with very high intellectual standards which reflect the traditional spirit of Chile. It is these standards that they want to change". 116/

119. As to the State Technical University (UTE), not only is it experiencing difficulties as a result of its notorious lack of resources, but also its students have been refused permission to elect representatives as in the other universities (see chapter I, section E, relating to the right of assembly and association). In his first report to the General Assembly, the Special Rapporteur quoted an article in El Mercurio describing the serious financial difficulties being encountered by this university, which provides free education "for young people from the lowest social levels, most of whom are unable to pay any kind of school fee" (A/34/583, para. 251).

120. With a view to its application in the State Technical University, work is at present under way on the preparation of a "code of student ethics", which provides for penalties relating to the right to education (ranging from verbal warnings through suspension for various periods to expulsion). The penalties may be imposed, for example, as a result of "any action which disrupts and/or prevents the conduct, and/or thwarts the purposes, of any lecture, class, laboratory work, research work, examination or other type of academic activity", "insistence on imposing a methodology different from that used by the teacher in the course of

115/ El Mercurio, 27 August 1979.

116/ Opinion of René Orozco, former Vice-Rector of the University of Chile (North) in the article "Other trends in the universities", Hoy, 3-9 October 1979.

the development of a specific subject, after the teacher has explained the inadvisability of accepting the methodology suggested", "assuming a representative role to which the student is not entitled" or "using the name of the university in an improper manner", or "failure to comply with academic obligations". 117/

The first and second categories of action described demonstrate the determination of the authorities to prevent all academic debate, since a teacher would only have to observe that a proposal other than one he had used himself was not to his liking for the pupils to be obliged to relinquish the proposal, it being illegal to request a discussion of the question. Any objection that students might make concerning the work of any teacher would be punishable. This rigid system could lead to a limitation of all freedom of expression by students and to intellectual impoverishment by preventing any discussion concerning the subjects studied. The third category of action punished ("assuming a representative role ...") constitutes a very broad provision which could be used to limit freedom of association by preventing the expression of views representing those of unauthorized students' organizations. The fourth category is so broad that it could be used in any situation as a means of punishing different types of behaviour by students.

121. The Special Rapporteur observes that the establishment of regulations of this type, with severe penalties, in no way promotes academic freedoms; on the contrary, it constitutes a serious obstacle to the exercise of such freedoms. He further observes that the range of views that may be expressed by university teachers is restricted by the supervision exercised over the appointment of teachers.

B. Freedom of culture

122. On 16 October 1979 the United States newspaper The Washington Post published an article commenting on the success of the play Tres Marias y una rosa and quoting the text of a memorandum classified as "secret" which was sent by General Odlanier Mena, chief of the National Information Agency, to the Minister of the Interior. The Special Rapporteur has received a copy of the cable which the newspaper used in order to reproduce the memorandum and which originated from an important news agency. In the memorandum, General Mena expressed the view that it would be inadvisable to ban the play in question (which deals critically with social and economic problems experienced by the families of unemployed persons) in order to avoid creating an opportunity for the Government to be stigmatized as "anti-cultural" for its repression of such activities. He added that any repressive action would be counter-productive because it would attract both national and international attention and would ensure that the play was more widely read via secret or clandestine channels. He further stated that, in any case, the play could not exert any influence over the masses because at best its audience would be small in relation to the population of the greater metropolitan area. He suggested that the State should take measures to promote and organize a cultural development fund and establish guidelines for the mass media which it controlled in order that they should not comment, or should play down favourable comment, on this type of artistic expression. He advised the Minister that influence should be brought to bear on the independent press organs to the same end.

123. The above-mentioned cable demonstrates the various forms of cultural repression that are being practised in Chile and among these forms of repression economic factors have an important effect. In the report submitted to the General Assembly at its thirty-fourth session, the Special Rapporteur made specific reference to the reduction of publishing activity and the decrease in expenditure on books and other publications, particularly among families with smaller incomes (A/34/583, paras. 266-268). These families would also be unable to afford to go to the theatre, a consideration which appears to confirm General Mena's argument.

124. The present Government has made a special point of creating economic obstacles for artistic activities - obstacles whose effect is less visible but more effective in that they deprive the population of the full enjoyment of the right to culture. Undoubtedly, specific obstacles and prohibitions have been imposed in respect of certain cultural activities. However, the economic obstacles create a general obstacle which excludes a large sector of the population from the enjoyment of cultural rights. In the area of the theatre, taxes account for 22 per cent of total receipts, except in the case of those performances classified as "cultural" by some universities. Nevertheless, these universities grant this status only to those performances which the authorities find acceptable (A/34/583, paras. 272-273).

125. Censorship constitutes a further restriction on this right (A/34/583, para. 274) and the repression of independent cultural activities completes the picture of severe limitations on rights and freedom in the field of culture. Various activities of this kind have been the subject of prohibitions ordered by the authorities. For example, the Second University Theatre Festival, which was to have been held at Manuel de Salas School, was suspended because the University of Chile authorities refused permission "for administrative reasons", even though a contract had been signed; the members of the audience were dispersed by the Carabineros. 118/ Similarly, publication of Carnets, a review dealing with theoretical and literary subjects (see chapter I, section D), and a writers' congress organized by the Chilean Writers' Association (see chapter I, section E) were banned by means of a note from the Ministry of the Interior which read: "without prior permission from the competent authority a meeting of this nature cannot be held". This note constituted the sole reply to the request that a number of expatriate Chilean writers should be allowed to enter the country solely in order to attend the congress, 119/ which had already received the support of many famous writers all over the world. In this case, the Government preferred to attract the attention of the international community of writers and to present a "repressive" or "anti-cultural" image, rather than permit the reunion within its territory of Chilean citizens in exile with others living in Chile, citizens who together constitute one of the most important sectors of Chilean culture.

C. Trade union rights and freedoms

The Labour Plan

126. In his first report to the General Assembly at its thirty-fourth session, the Special Rapporteur carried out a study of recent trade union and labour legislation

118/ Hoy, 5-11 September 1979.

119/ Hoy, 21-27 November 1979.

enacted by the Government of Chile (A/34/583, paras. 277-297). In the months following the preparation of the report, the analyses and conclusions transmitted to the General Assembly have been confirmed by other studies and by events which took place during that period.

127. In November 1979, the Governing Body of the International Labour Organisation published the report of the Committee on Freedom of Association, which analysed the complaints against the Government of Chile submitted by the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and several other trade union organizations.

128. The Committee analysed a number of other questions submitted to it by the above-mentioned organizations. With regard to freedom of association, it made the following comments on the interference of the political authorities in the management and administration of trade unions:

"The Committee has repeatedly stressed the importance which it attaches to the right of trade unions to organize themselves, their activities and the administration of their affairs. As the Committee of Experts on the Application of Conventions and Recommendations has underlined, in its General Survey on Freedom of Association and Collective Bargaining published in 1973, the supervision exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reporting requirements. Inspection and furnishing of information wherever required by the authorities at their discretion entail a danger of interference in the internal administration of trade unions. Investigations should be limited to exceptional cases when they are justified by special circumstances, such as apparent irregularities revealed by the presentation of annual financial statements or complaints by members of the trade union. Furthermore, the general principle concerning the judicial control of internal acts of an occupational organization in order to ensure an impartial and objective procedure is particularly relevant in regard to the administration of trade union property and finances. In the present case, the Committee draws these principles to the attention of the Government with particular emphasis because of the grave consequences which could result for a trade union if it does not apply the Legislative Decree on these questions, to wit the removal of the trade union leaders concerned from office and their ineligibility for a period of three years".

129. Referring to ineligibility for trade union office, the Committee stated:

"The Committee must recall on this point that legislation which makes detailed provision for election procedures within a trade union or for the composition of its executive bodies is not consistent with the right of organizations to freely elect their representatives.

As far as the requirements for eligibility specified by the Legislative Decree are concerned, the Committee has noted with interest that certain provisions adopted in the course of the organization of the October 1978 elections, and which it had considered incompatible with the principles of freedom of association, have not been taken up in the new

legislation (for example, the prohibition of re-election of officers and the requirements that officers should undertake not to engage in political activities). Nevertheless, the Legislative Decree maintains as a requirement for eligibility the absence of convictions or prosecutions for crimes or mere misdemeanours as well as, in the case of a works union, the requirement of two years' service with the same firm. As for ineligibility because of criminal convictions or prosecutions, the Committee is of the opinion that such a provision can run counter to the principles of freedom of association. In reality, the fact that a person has been convicted - and a fortiori in the case of a mere prosecution - for an activity which, by its very nature, is not calculated to represent a real threat to the proper discharge of trade union functions, should not constitute grounds for disqualification from nomination as an officer of a union. A mere prosecution which results in discharge of the case should not be taken into account in this connexion. Similarly, the seniority requirement in the undertaking negates the right of free election; the dismissal of a trade union leader could, in such a case, make him lose also his position as a trade union leader, and thus deprive the organization of its freedom of action and affect its right to elect freely its representatives and even favour acts of interference on the part of the employer. Furthermore, it appears from article 23 that the nomination of candidates is not contemplated, contrary to a practice which is very common among trade union organizations". 120/

130. With regard to the right to collective bargaining concerning conditions of work, the Committee analysed Decree-Law No. 2,758 of 29 June 1979 and found three types of restrictions, which are similar to those pointed out by the Special Rapporteur in his first report to the General Assembly. 121/ In connexion with the first restriction, which affects the sectors that are denied the right to collective bargaining, the Committee stated:

"Firstly, the Committee points out that collective bargaining will not be allowed in State administrations, in companies or public and private undertakings or institutions whose budgets have been financed in the course of the past two years by the State to an extent exceeding 50 per cent, either directly, or through duties or taxes (article 3), or in certain public utility services managed by private companies. The Government states in this regard that, in conformity with Chilean legislation, there is no collective bargaining for public institutions. In the case of those institutions covered by article 3, the conditions are not listed, again according to the Government, so that the employer can negotiate freely. The Committee feels that it must recall in this respect the terms of the Labour Relations (Public Service) Convention (No. 151), adopted by the International Labour Conference in 1978, article 7 of which specifies that - 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of

120/ The report of the Committee on Freedom of Association is contained in document GB.211/12/10 (211th meeting, November 1979).

121/ See A/34/583, paras. 282-283.

terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters'." 122/

The Special Rapporteur considered it important to point out that, in addition to civil servants, workers in public and private enterprises or institutions which have received more than 50 per cent of their financing from the State in the past two years, and workers in certain public-utility services managed by private companies, the following categories of workers are denied the right to collective bargaining: those who hold apprenticeship contracts, those engaged in temporary jobs (including many agricultural workers) and construction workers. 123/ Since all these workers belong to categories which receive some of the lowest wages in Chile, their situation is a matter of particular concern. Indeed, as stated by the Ad Hoc Working Group in various reports 124/ and by the Special Rapporteur, 125/ it is the workers in these sectors who have experienced the most serious violations of their economic and social rights. Their exclusion from the collective-bargaining process is a further disadvantage that makes their social and economic situation even more precarious.

131. A recent article entitled "The new collective-bargaining process", written by Jaime Ruiz-Togle and published by the magazine Mensaje in issue No. 285 of December 1979, mentions other groups that are denied the exercise of this right:

"If one judges the current collective bargaining process on the basis of a comparison with what existed in the years when trade unions were disbanded, their leaders arrested or deported, and meetings prohibited, there is no doubt that collective bargaining as it exists at present represents a definite step forward. However, the point of reference of the critics of the Labour Plan is not the years of most severe repression, but rather the social history of Chile up to 1973 and what could be built upon it.

In making such a comparison, one should bear in mind those persons who have been left out, who have been excluded, who have not been able to take part in collective bargaining, namely, peasants on small farms (who formerly negotiated through the communal trade unions), construction workers, drivers of public transport vehicles, service station employees, most business employees, 126/ apprentices, seasonal workers, etc. It has been estimated that some 400,000 workers will be able to take part in collective bargaining, whereas until 1973 about 580,000 had this right". 127/

122/ See GB.211/12/10 (211th meeting, November 1979).

123/ See A/34/583, para. 282.

124/ See, for example, E/CN.4/1310, paras. 262-278.

125/ A/34/583, paras. 298-317.

126/ Note by the author of the article: According to the Chilean Confederation of Employees in the Private Sector, of the 150,000 business employees with an average monthly income of 4,500 pesos, only 20 per cent are able to exercise the right to collective bargaining. Some 120,000 low-income employees are denied this right.

127/ Note by the author of the article: With regard to the agricultural sector, a survey carried out in Melipilla showed that of about 6,000 workers, less than 10 per cent have taken part in collective bargaining. Cf. El Mercurio, 28 October 1979.

132. In addition, the Committee on Freedom of Association drew attention to the restrictions relating to the questions which may be the subject of collective bargaining. These restrictions were also referred to in the report of the Special Rapporteur:

"Article 12 of Legislative Decree No. 2,578 enumerates certain matters which may not be the object of collective bargaining. The Committee considers that some of these matters (particularly those which would imply an obligation on the employer to pay salaries to strikers for the strike days, and those which refer to the creation of funds which grant benefits entirely or partly financed by the employer) should not be systematically considered as being outside the scope of collective bargaining".

Many other matters of primary importance relating to working conditions are not subject to negotiation, as indicated by the Special Rapporteur in his first report to the General Assembly. The above-mentioned article on "The new collective-bargaining process" indicates how these restrictions have operated in practice:

"Moreover, many questions, which are directly related to work, have been excluded from the new bargaining process. On the basis of the laws in force, employers have refused to negotiate on matters involving the participation of workers in the management and administration of enterprises. It has not even been possible to negotiate on matters of such direct concern to workers' lives as collective holidays". 128/

133. The third restriction referred to by the Special Rapporteur in his first report to the General Assembly has been dealt with in detail by the Committee on Freedom of Association. It relates to the total ban on concerted action, for the purposes of negotiation, outside the context of the enterprise:

"The Committee wishes to recall in this regard the comments made by the Committee of Experts on the Application of Conventions and Recommendations in its general survey of 1973. As for denying federations and confederations the right to strike and the right to collective bargaining, the Committee of Experts considered that restrictions of this type could give rise to serious difficulties in the development of industrial relations, particularly in the case of small unions which, on account of their limited strength and untrained leadership, may not be able by themselves to further and defend the interests of their members in an effective manner. Regarding the Government's statements on the evil effects of monopolistic practices, the Committee wishes to point out that where clauses in certain collective agreements appear to be in opposition to the considerations of the general interest, a procedure could be envisaged by which the attention of the parties is drawn to those considerations so that they can undertake a new examination, it being understood that they are to remain free in the making of their final decision".

128/ Note by the author of the article: There are no clear rules and regulations concerning what is negotiable and what is not. Many points on the lists have been objected to as illegal by employers (medical service, annual excursions, paid leave, etc.), thus forcing workers to appeal for assistance to the Labour Inspectorate. When the inspectors have acted, they have usually stated that such demands are legal. In other cases, they have submitted the problem to the labour courts. Delays of this kind have slowed down and obstructed the negotiation process.

134. In his report to the General Assembly, the Special Rapporteur referred to some of the limitations on the right to strike, such as the provision that a strike may last only 60 days, and the authorization granted to employers to recruit workers to replace those on strike or to shut down enterprises partially or completely. 129/ In this connexion, the Committee on Freedom of Association stated:

"The Committee also points out that, according to article 58, the employer can recruit such workers as he considers necessary and that under article 62, the workers who maintain their decision not to return to work after 60 days of strike are considered as having voluntarily resigned. The Government states on this point that the average length of strikes in Chile was 21 days, and that it is very important for employers to avoid prolonged work stoppages.

In this respect, the Committee wishes to recall the principle already stated in earlier cases according to which the use of groups of persons to fill the jobs abandoned as a result of a labour dispute may, if the strike is otherwise legal, only be justified if there is a need to assure the functioning of services or industries whose breakdown would create a situation of acute crisis. In the present case, the Committee considers that the combined application of the two above-mentioned provisions involves the risk of weakening considerably the position of the workers and of their organizations in the defence of their occupational and economic interests. Moreover, the Committee wishes to point out that the provision under article 62 involves a substantial restriction of the right to strike since it in fact limits the duration of strikes to a maximum of 60 days".

135. The Committee also pointed out the risks involved in article 65 of Decree-Law No. 2,758, which, in the event of strikes affecting public services or industries considered vital to the economy, essential supplies or national defence, empowers the Government to order the resumption of work with the assistance of the civil or military authorities. In this connexion, the Committee stated that "in general, attention should be drawn to the possible abuses that may result from the mobilization or requisitioning of workers in labour disputes and to the disadvantages of using such measures, which may be justified only by the need to ensure the functioning of essential services in extremely serious situations".

136. In practice, several enterprises have made use of the power granted to them by this provision and have recruited staff to replace strikers. Such action is not difficult in view of the extent of unemployment, which forces many persons to accept temporary contracts and working conditions that are less favourable than usual. Thus the Caupolicán-Chiguayate company decided to recruit new staff to replace 630 workers on strike 130/ and the German Hospital 131/ is reported to have taken similar action. The Celulosa Arauco enterprise set up a camp for unemployed persons near the place where the strike was to have taken place and another enterprise, Proforma, advertised in the newspapers for temporary staff. 132/ Other enterprises (including the Cóndor tile factory 133/ and the Coresa enterprise 134/) have ordered lock-outs.

129/ See A/34/583, para. 290.

130/ El Mercurio, 15 December 1979.

131/ El Mercurio, 23 October 1979.

132/ Mensaje, No. 285.

133/ El Mercurio, 6 December 1979.

134/ El Mercurio, 2 December 1979.

137. In November, Mr. José Piñeira, Minister of Labour, analysed the collective-bargaining process in Chile and observed, inter alia, that:

"The number of strikes is 'infinitesimal' and, in fact, much lower than what we expected during the first stages of implementation of the Labour Plan".

He also stated that:

"Some people with ideas from the past have protested because the Government does not intervene in the disputes, because the Government is not mediating or ordering mediation. I find this type of criticism very surprising because these leaders are the ones who were asking us for free negotiations and free trade unionism; now that we have granted this freedom, they are protesting". 135/

138. The reasons for the two facts that seem to have surprised the Minister of Labour were explained in a statement made at a press conference by Mr. Bernardino Castillo, the president of the National Workers' Union (UNTRACH), an organization that generally supports the Government's policies. Mr. Castillo said that they had been forced to make a statement because they had still not been granted the hearing they had requested of the authorities in order to make known their views before the planned final changes in labour legislation had been made. UNTRACH is made up of trade union organizations in the coal, steel, copper, leather, footwear and banking sectors, and of retired members of these organizations. In his statement, Mr. Castillo said:

"The documents submitted by this union state that, as a permanent institutional framework for labour and trade unions, the new legislation is, at the technical level, clearly regressive and, at the social level, manifestly dangerous. Indeed, the labour and trade union system established therein would be unworkable under normal conditions of civic life because many of its provisions are openly harmful to workers; they divide and alienate the trade union movement; the right to strike actually punishes those who exercise it; the State is deprived of the function of supervising collective labour agreements; the trade unions do not represent all workers in collective bargaining etc.

Consequently, the opinion of the National Workers' Union would be more favourable if the new legislation was intended to remain in force only for as long as the current institutional emergency lasted. In this connexion, it is a positive sign that the trade unions can submit petitions on fluctuations in the consumer price index and that the trade union assemblies can meet to discuss their economic and social situation.

Lastly, we note that the law has created a deep-seated inequality between workers and employers and that examples of real improvements resulting from the implementation of the system have been few and far between, since those that have occurred have been the result of direct agreements reached with the consent of employers. Moreover, the risks and penalties involved in the exercise by workers of the right to strike and the high unemployment rate in the various labour sectors make a mockery of any real attempt by the workers... firmly to uphold their legitimate aspirations". 136/

135/ El Mercurio, 17 November 1979.

136/ El Mercurio, 31 October 1979.

139. On various occasions, Government representatives have expressed the view that the State should not intervene in collective bargaining, since it is a problem that involves employers and workers and depends on the economic situation of both parties. They have stated that they have unreservedly left the matter in the hands of those concerned. However, the labour legislation in force seems to contradict such statements since all its provisions have the effect of eliminating or invalidating any of the traditional ways of making use of the only weapon that gives the least well-off any strength, namely, the fact that they are much more numerous and are able to take concerted action for the purpose of negotiations. The above-mentioned article in Mensaje describes how the labour legislation is applied in practice:

"Under the new system it has been possible to negotiate only on an enterprise basis and not on a branch-of-activity basis. The workers thus find themselves in a cul-de-sac in a competitive system: if they press their claims, the employers reply that they will not be able to withstand the competition; if they ask to negotiate by branch of activity in order to avoid this problem, they are told that this is prohibited by law. It is, of course, obvious that negotiation by branch of activity is much more rational and technical. The type of negotiation now practised in Chile, i.e. on an enterprise-by-enterprise basis, taking the names of the enterprises in alphabetical order, is unknown anywhere else in the world. It has the effect of preventing workers in the same branch or sector from negotiating at the same time and thus deprives them of bargaining power.

The trade-union leaders maintain that, in many cases, even though such action is prohibited by law, employers (in the leather, textile and metalworking branches) have taken concerted action in submitting their replies. In other words, negotiation by branch of activity would appear to be working, but only as regards the employers". 137/

140. A number of trade unions have commented on the Government's intervention in collective bargaining under the legislation which it has enacted to regulate this activity. The trade union in the Sunar textile company, for instance, expressed its dissatisfaction with the results achieved in collective bargaining in the following terms:

"The agreements reached are not the result of normal and fair collective bargaining, but are rather the logical consequence of a Labour Plan which enables the employer to impose his conditions and under which the workers do not have adequate legal tools to defend their interests, rights and gains".

The President of the Federation of Professional Trade Unions in that company stated that "the Labour Plan embodies a set of provisions which in themselves enable employers to wipe out gains made through trade union struggles" and that the workers in the enterprise had voted in favour of a strike, which had not, however, taken place because they considered that a strike would have achieved nothing, since the factory could continue to operate by recruiting other workers. 138/

137/ Mensaje, No. 285.

138/ El Mercurio, 18 November 1979.

141. Strikes were, however, held in some enterprises, including Goodyear. Workers held a peaceful demonstration to request an interview with the Minister of Labour. Of the 300 participants, three were arrested by the Carabineros on the grounds that they had "disturbed public order and held a demonstration without the necessary authorization". 139/ The strikes which did take place, such as those in the Pacific Steel Company (CAP), 140/ Pfizer Laboratories 141/ and Goodyear, 142/ lasted only a short time and ended with acceptance of the employers' proposals.

142. Many of the workers agreed to the low offers made by the employers because they were aware of the fact that striking "did not benefit them", as was stated, inter alia, by trade union leaders in the El As clothing enterprises, the AZA metal works and PANAL. They said that they had made every effort to hold on to previous gains, had had difficulty in interpreting the legal provisions and had avoided strikes for fear of incurring debts resulting from the charges which workers would have to pay out of their own pockets if a work stoppage occurred. 143/ The seven trade unions in the Sunar textile company voted to strike, but did not do so within the statutory time-limit of eight days, and for this reason the union's inaction was "automatically considered as approval of the company's proposals". 144/

Other measures affecting trade union rights

143. The ILO Committee on Freedom of Association also referred, at the above-mentioned meeting to the dissolution of trade union organizations that had been brought to its attention.

In its report to the Commission on Human Rights at its thirty-fifth session, 145/ the Ad Hoc Working Group referred to the dissolution of such organizations by Government decision. The Committee on Freedom of Association stated:

"The Committee notes that the Supreme Court rejected, on procedural grounds, the appeal brought before it by four of the dissolved organizations. The three other matters are still under way. In these circumstances, the Committee can only recall that occupational organizations must not be subject to measures of suspension or dissolution by administrative authority. The Committee is also of the opinion that the right to appeal is not always a sufficient guarantee. In fact it is important that judges can examine the case on its merits and study the reasons for the dissolution of an organization". 146/

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- 139/ El Mercurio, 14 November 1979.
 - 140/ El Mercurio, 17 November 1979.
 - 141/ El Mercurio, 15 November 1979.
 - 142/ El Mercurio, 14 November 1979.
 - 143/ El Mercurio, 14 October 1979.
 - 144/ El Mercurio, 18 November 1979.
 - 145/ See E/CN.4/1310, paras. 208-216.
 - 146/ GB.211/12/10 (211th meeting, November 1979).

144. The Committee on Freedom of Association also dealt with a complaint sent on 28 September 1979 by the Federation of Bay Employees' Trade Unions and the Port Workers' Trade Union concerning the prohibition, by the military authorities in the province of Concepción, of a meeting at which the organizing committee of the "Group for the defence of the rights of workers in the Province of Concepción" was to be appointed. 147/ In reply to that complaint, the Government said that the meeting had been convened by a small group of leaders and was intended to impede normal trade union activities in that province and to disturb public order. It further stated that the establishment of organizations and groups representing workers required the co-operation of the assemblies of the affiliated trade unions. In that connexion, the Committee stated:

"While noting the Government's statements, the Committee points out that the planned meeting was to deal with trade union themes. Moreover, according to the allegations, the organizers and participants were trade unionists from different organizations. In this regard it wishes to point out that the authorities ought to avoid any interference of such a nature as to limit the right to hold trade union meetings or to restrict the legal exercise thereof". 148/

145. In his report to the General Assembly at its thirty-fourth session, the Special Rapporteur stated that, at the instance of the Minister of the Interior, proceedings had been initiated against seven trade union leaders in pursuance of Decree-Law No. 2,347 of 17 October 1978. 149/ The leaders in question had been accused of arrogating to themselves the status of representatives of trade union sectors without having the appropriate legal capacity to do so. The trade union leaders had submitted a petition to the authorities on behalf of the relatives of detained and missing persons. The judge of first instance had ordered that the action against the accused should be dismissed on the grounds that the existence of the offence had not been established, but the Court of Appeals overturned the decision in respect of three of the accused, namely, Alamiro Guzmán, Fernando Bobadilla and Teresa Carvajal, former leaders of the National Industrial Mining Federation, the Association of Retired Employees of the Social Security System and the National Federation of Textile and Clothing Workers, which have been dissolved. It was subsequently ordered that the three leaders should be brought to trial and they were arrested. 150/

146. Workers have continued to be dismissed for engaging in trade union activity, as noted in the previous report (para. 293), reported by the president of the Chemical and Pharmaceutical Federation 151/ and confirmed by the dismissals of four workers at Mineral El Teniente, "for reasons relating to the operation of the enterprise", 152/ and of two trade union leaders at the Puente Alto Paper-Mill. The Minister of Labour ordered the latter employees to be replaced by two other persons, but the workers refused to accept them. 153/

147/ See chapter I, section E.

148/ GB.211/12/10 (211th meeting, November 1979).

149/ See E/CN.4/1310, para. 225, and A/34/583, paras. 294-297.

150/ El Mercurio, 12 December 1979.

151/ "El primer balance", Hoy, 5-11 September 1979.

152/ Hoy, 14-20 November 1979.

153/ Information broadcast by Radio Cooperativa and communicated to the Special Rapporteur by reliable sources.

147. The Special Rapporteur notes that no real changes have taken place since the submission of his most recent report to the General Assembly at its thirty-fourth session. Although the holding of trade union elections has enabled a few limited sectors of workers to exercise certain trade union rights under supervision, which represents a step forward for these groups, a large proportion of the working population are still totally excluded from the enjoyment of these rights. It is a matter of particular concern to the Special Rapporteur that it is the lowest-paid sectors that are in this situation. Moreover, the legislation enacted to regulate trade union activities places such severe restrictions on the full exercise of trade union rights that, although it does represent a step forward in relation to Decree-Law No. 198 of December 1973 (which prohibited any type of activity, but has since been abrogated), it does not betoken any change of attitude on the part of the Government; rather, it reflects the Government's desire to continue, albeit by legal means, the same policy of restricting trade union rights.

D. The problem of employment and the situation of the poorer sectors of the population

148. In his report to the General Assembly at its thirty-fourth session, the Special Rapporteur referred to the problem of employment and the situation of the poorer sectors of the population, while at the same time drawing attention to the nutritional deficiencies suffered by people in this sector and the particularly serious situation of the rural sectors, especially the indigenous communities.

149. The latest official statistics indicate that the serious problem of unemployment has remained unchanged. According to the statistics provided by the National Institute of Statistics, unemployment reached about 13.2 per cent in the Greater Santiago area in October 1979. ^{154/} The unemployment figure given by the Institute for September was 13 per cent. The figures for September supplied by the Department of Economics of the University of Chile show unemployment standing at 12.5 per cent. The predominant reasons for unemployment continue to be layoffs or reductions in staff (71 per cent in June 1979 and 68.9 per cent in September 1979), while persons unemployed because they had voluntarily left their jobs accounted for some 28.9 per cent in June 1979 and about 31.1 per cent in September 1979. ^{155/} The increase in the proportion of unemployed represented by those voluntarily leaving their jobs may be attributable to the fact that certain groups of public employees have been urged to accept voluntary retirement subject to the payment of reduced compensation in order to avoid being dismissed without any entitlement to compensation. This was the case in the State enterprise Endesa, where 350 workers were dismissed. On being notified of their dismissal, they had to tender "their voluntary resignations"; if they failed to do so, their posts were declared vacant and they lost their entitlement to the compensation offered. ^{156/}

^{154/} El Mercurio, 6 December 1979.

^{155/} El Mercurio, 23 November 1979.

^{156/} Hoy, 3-9 October 1979.

150. The transfer of activities to the private sector and the closure of enterprises, both public and private, are resulting in a continuous increase in unemployment. 157/ Where activities are transferred to the private sector, the enterprises taking over the services previously provided by the State sometimes employ some of the dismissed personnel. However, these personnel have to accept reduced wages and the loss of work benefits and seniority. 158/

151. As a means of reducing the rate of unemployment, the Government has enacted legislation designed to facilitate the increased enrolment of workers in the Minimum Employment Plan (PEM), under which the wage offered is no more than 30 dollars a month. 159/ It has been reported that, as a result of the new provisions and in spite of the meagre remuneration, many persons between the ages of 18 and 21 and between 40 and 65 have applied for enrolment in the PEM in positions paying only 1,050 pesos (\$US 25), with no additional remuneration in kind of the type provided in previous years. The fact that the supply of labour for the PEM is abundant indicates the state of need in which a large portion of the population finds itself, especially if one bears in mind that such a wage amounts approximately only to the price of 5 kilograms of meat. 160/ The PEM wage has fallen since it was established in 1975. The PEM, which was initially intended as an emergency measure to alleviate the consequences of the so-called "anti-inflation policy", covered at the outset only persons over 21 years of age and not more than one person per family group. The fixed wage was the equivalent of 2,330 Chilean pesos at current values (approximately \$US 60), whereas at present the cash portion has been reduced by about 50 per cent and a number of supplementary benefits, such as food rations, accident insurance and medical treatment, have been discontinued. 161/

157/ Among the dismissals reported by the press are the following: 300 workers in the Vial import company (La Tercera de la Hora, 2 September 1979); 350 workers in the State Public Transport Corporation (El Mercurio, 22 September 1979); 1,500 workers in three fishing enterprises in the port of San Antonio (El Mercurio, 29 September 1979); some 3,500 officials in the Ministry of Public Health, whose jobs are to be gradually phased out, according to a statement by the President of the Federation of Health Workers (La Tercera de la Hora, 19 September 1979); 161 persons in the National Sugar Industry; 206 persons in the Interamericana Bus Company (Hoy, 3-9 October 1979); 5,400 persons engaged in various types of work at the IANSA plant at Ilanquihue, where the closure affected agricultural work and had serious socio-economic effects (El Mercurio, 26 November 1979); 600 or more miners from the Schwager mines (El Mercurio, 26 November 1979), and so on.

158/ Hoy, 3-9 October 1979.

159/ See A/34/583, para. 306.

160/ See the prices of selected items in A/34/583, para. 310.

161/ El Mercurio, 11 November 1979.

152. The new provisions abolish age-limits and do not take into consideration marital status, family responsibilities, length of contract or number of jobs. 162/ According to Mr. Luis García, Director of the Social Welfare Division, the Government wishes to retain the PEM as a means of assisting the unemployed, similar to machinery existing in other countries:

"The difference would be that here the unemployed must work as a means of counteracting the adverse effects of prolonged inactivity. The aim is to guarantee a minimum income for all Chileans through direct assistance financed by the State. Such a measure would be consistent with the policy of reducing social security taxes as a means of lowering the cost of manpower". 163/

153. The foregoing statements attempt to equate this offer of work - which is remunerated in such a paltry manner that it becomes humiliating for the worker - with assistance to the unemployed. There is a fundamental difference between the two, namely, the work which the persons concerned are compelled to do. Under the PEM, work is given to the extremely poor sectors in exchange for wages which are not even sufficient to pay for one full meal a day; in other words, they do not enable the worker to replace the energy expended in the course of the working day. Bearing in mind that in June 1979 128,450 unemployed were working under the PEM and that, if they had families, they would have to provide for 800,000 persons, 164/ one can appreciate the magnitude of this situation of maximum legalized exploitation by the Chilean State, which now intends to extend the exploitation until it becomes a generalized practice.

154. In his first report, the Special Rapporteur referred with alarm to the situation of PEM workers, pointing out that some of them performed highly skilled tasks while, nevertheless, receiving the standard PEM wage. 165/ The current measures, which give this plan its stability and broad scope, are a cause for serious concern since they reveal the intention of making permanent and generalizing a situation which constitutes a grave violation of human rights.

155. The persistently high rate of unemployment, which is maintained by a succession of measures designed to bring about a shift of manpower towards lower-paid jobs which enjoy less legal protection, constitutes in itself a violation of the economic and social rights of the Chilean people as a whole. The existence of a Government plan established with the purpose of exploiting human labour by remunerating it at a level lower than that necessary to provide for the most basic needs of one person (still less a family group) is a clear violation of the provisions of the International Covenant on Economic, Social and Cultural Rights, to which Chile is a party.

162/ Solidaridad, No. 81, November 1979.

163/ El Mercurio, 11 November 1979.

164/ Solidaridad, No. 81, November 1979.

165/ A/34/583, paras. 306 and 307.

IV. FINAL OBSERVATIONS AND RECOMMENDATIONS

156. The Special Rapporteur appointed by the Commission on Human Rights in its resolution 11 (XXXV) of 6 March 1979 to inquire into the situation of human rights in Chile on the basis of the mandate in Commission resolution 8 (XXXI) of 27 February 1975 has, with the present report and the report submitted to the General Assembly at its thirty-fourth session, fulfilled the mandate given him by the Commission.

157. The various facts which he learned in the brief period since the report to the General Assembly (A/34/583) confirm the observations made at that time, no significant changes being observed in the areas which were under investigation.

158. No changes have been noted in the institutional situation in Chile because the public debate on institutional problems, with a view to the adoption of a new constitution on the basis of a Government draft, is extremely limited in terms of uninhibited expression of political opinions. In general this debate is governed by the same criteria as characterize the operation of the institutions of the Chilean Government. In other words, the final decisions are made by the military authority, regardless of the steps taken earlier. There cannot be said to be a genuine political debate, given the denial of a voice to those who might disagree with the guidelines. No improvement seems to have taken place, therefore, in the possibilities for the Chilean people to participate in Government management by means other than those provided for under the present Constitution, while the political rights guaranteed by the Constitution, suspended in 1973, are still denied. Furthermore, the Executive Power has initiated criminal proceedings against those who, while endeavouring to adjust to the rules which apply during the political recess, seek to form groups to participate in the debate on institutional problems.

159. The state of emergency is still in force under the same conditions as were described in previous reports of the Ad Hoc Working Group and of the Special Rapporteur, a state of emergency under which a number of restrictions are imposed on such basic human rights as the right of assembly, the right of association, freedom of information and of speech, and especially the right to liberty and security of person. Nevertheless, the Government continues to promulgate decree-laws which violate fundamental human rights and which are intended to remain in force even when there is no state of emergency, as was mentioned in the report to the General Assembly (A/34/583, paras. 21-27 and 277-292). A recent decree-law contains clauses which could be used to prevent the entry from abroad of funds intended for co-operation or as an expression of international solidarity with the victims of violations of human rights (see chapter I, section B.).

160. The Government has enacted, with the intention that they should continue in force even after the state of emergency, a number of laws which violate various civil and political rights and guarantees. One of these laws, Decree-Law No. 604 of 9 August 1974, prevents the exercise of such basic rights as that of living in one's own country. The situation has deteriorated recently in certain respects, because the entry into Chile of persons who until fairly recently were able to do so without difficulty has been prohibited.

161. With regard to freedom of information and opinion, the situation remains similar to that described in the previous report because, within the limits laid down by the Government, there does exist some opportunity to disseminate information and to express ideas. Nevertheless, the existence of serious restrictions has again been confirmed by the ban on the distribution of a periodical and by the notice given by the military authorities to printing houses that they may not print unauthorized publications.

162. The right of assembly is still restricted, especially in respect of persons or groups who, in general or with regard to specific issues, hold views which do not conform to those of the Government. The prohibition of indoor meetings and the breaking up by the police of a number of peaceful street gatherings on the ground that they were disturbing the peace confirm the observations made in the previous report. The election at the grassroots level of student representatives in some universities and of representatives among certain workers has enabled some persons to exercise, in a highly controlled manner, the right to elect representatives at those levels. Nevertheless, full enjoyment of the right of association is still denied to most of the population. Furthermore, some recently elected workers' and students' representatives were subjected to disciplinary measures, dismissal or expulsion.

163. The Special Rapporteur recommends that the Commission on Human Rights should urge the Government of Chile fully to restore for all Chileans political rights and the right to participate in the management of public affairs; the right to enter, to leave, to move freely throughout and to live in the national territory; the right to obtain information and the right to express their views without restriction; and the right to freedom of association and peaceful assembly and to unrestricted management of their organizations.

164. The Special Rapporteur also confirms the observations made in his report to the General Assembly at its thirty-fourth session on all matters relating to the right to life, liberty, physical integrity and security of person. The number of arrests and detentions has increased in comparison with the same period of 1978 and irregularities and arbitrariness continue to be the general rule in the conduct of arrests, while acts of persecution directed against persons seeking fully to exercise certain of their civil and political rights still continue. At the time of arrest and afterwards, whether in regular police stations or in secret places of detention, detainees are frequently subjected to ill-treatment and torture. The intensity of torture has perhaps decreased owing to the participation of doctors who see to it that the victim is not allowed to die, but one person nevertheless died of torture in August. The humiliations to which the victims are subjected, together with the physical pain inflicted on them, present a picture of contempt for human dignity and of unlawful acts which seem to enjoy protection, as they still go unpunished by the courts. Furthermore, the Special Rapporteur continues to receive reports of deaths allegedly caused by members of the police or security forces. In the matter of torture and killings, the Special Rapporteur has monitored carefully the work of the courts in investigating the complaints which were lodged but has so far been unable to find a single case in which the guilty have been convicted and punished, even when there was clear evidence of criminal acts, as in the case of those committed against persons long considered missing (see E/CN.4/1381).

165. Although some judges have conducted proper investigations, the decisions taken so far by the judiciary, where crimes committed for political reasons have been involved, have always tended to reflect acceptance of the Government's policy, clearly expressed in public statements, of not punishing those who commit offences of that nature. As to protection of the right to liberty, personal security and physical integrity, the judges also seem not to be concerned to ensure it for the inhabitants of Chile, as they repeatedly reject any application for the enforcement of those rights, even when this is sought in cases involving serious danger to the victim. The judges also seem to make it a rule systematically to reject applications for amparo even when the unlawful act committed by the authorities is a matter of official record.

166. Furthermore, the powers of the security agencies, and particularly those of the National Information Agency, continue to grow, while control over their activities by other State agencies is decreasing. The indulgence of the courts in the face of the irregularities and excesses committed by these agencies, as well as the recent legislation granting them greater autonomy, mean that they have increasingly broad powers to regulate the life of the country and to control the freedom and activities of persons in every walk of life.

167. The Special Rapporteur is particularly disturbed by the persistence of violations of the right to life, liberty, physical integrity and security of person, as these rights are not adequately protected by the State institutions assigned to safeguard them. For this reason he recommends that the Commission on Human Rights should continue to monitor the situation in Chile closely, that it should call the Government's attention to its State responsibilities under its international commitments and that it should also urge it to end those violations, investigate the crimes committed against those rights and punish the guilty.

168. In the matter of economic, social and cultural rights, the Special Rapporteur also confirms the conclusions in his report to the General Assembly (A/34/583). The situation of the less affluent segments of the Chilean population is deteriorating steadily, as is shown by the continuing high unemployment figures and the relationship between incomes and the cost of living. Further evidence of the situation is provided by the Government's plans increasingly to reduce the level of knowledge imparted in primary education and to restrict access to secondary and university education. The increase in the price of books and the obstacles placed in the way of non-Government sponsored cultural activities, which are denied tax exemption and for which higher prices must therefore be charged, are consistent with this policy of the Government. Nor are freedom of cultural expression or academic freedom guaranteed in Chile. Sometimes it is the security services which decide whether a performance or activity is to be permitted or prohibited. In the universities, the range of views which may be expressed in lecture rooms is limited by the Government's control of the appointment of teachers, the severe penalties imposed on students who try to express their own views and the internal rules which are in preparation or already in force.

169. The new legislation relating to trade unions, while it permits controlled exercise by the workers, under very disadvantageous conditions, of certain rights which had previously been totally denied, does not indicate any fundamental change in the attitude of the Government. Very broad sectors are totally denied the right to join unions and the right to collective bargaining and still larger sectors are even denied the right to strike. The implementation of the labour plan has shown that the new legislation does not guarantee the workers protection of their rights and that it imposes on them forms of association and bargaining which do not benefit them and in whose adoption they have played no part.

170. The Special Rapporteur recommends that the Commission on Human Rights should ask the Government of Chile to restore fully the right to join and be represented by trade unions, the right of collective bargaining and the right to strike, so as to enable Chilean workers effectively to protect their interests; and that it should also take into account in its economic and cultural plans the broad sectors of the unemployed and the poor, so as to safeguard for all inhabitants of the country enjoyment of the rights set forth in the International Covenant on Economic, Social and Cultural Rights.