

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CN.4/Sub.2/NGO/83  
21 August 1980

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and  
Protection of Minorities  
Thirty-third session  
(Agenda item 7)

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY  
FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International League for Human Rights,  
a non-governmental organization in consultative status, category II

[14 August 1980]

THE NEED FOR REVIEW OF THE PRACTICE OF INTERNAL EXILE

Introduction

At its twelfth session in 1956 the Commission on Human Rights, recognizing the importance of studies of specific human rights problems, decided to undertake as its first subject of study, the right of everyone to be free from arbitrary exile, as well as arbitrary arrest, and detention. The Committee on the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile was established for this purpose by the Commission in the same year, and the three problems were studied as a unit for six years.

In 1962 at the eighteenth session of the Commission, this Committee submitted to the Commission its "Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile" and draft principles concerning freedom from arbitrary arrest and detention (UN Doc. E/CN.4/826). The study reported that the instances of "exile", which subsumes the category of internal exile, had decreased to the extent that the Committee "did not deem it necessary or desirable to include in the draft principles provisions regulating that institution". Because of this finding, both internal and external exile ceased to be studied by the Commission of Human Rights. In the past few years, the International League for Human Rights has become increasingly concerned about substantial evidence indicating that internal exile is being imposed arbitrarily and under inhuman conditions by a number of governments. In light of this finding, the International League believes a review of the practice of internal exile is warranted.

### The Practice of Internal Exile

Internal exile is the compulsory banishment of an individual or group of individuals to a specific, sometimes remote, region within the boundaries of a State. <sup>1/</sup> Internal exile exists in law or in practice in a number of countries as a penal sanction or as a preventative security measure. In both cases, the main purpose of internal exile is to remove a person from a place where he is considered dangerous or is able to continue engaging in activities which the government deems undesirable. Unlike external exile, which is the practice of excluding a person from the country of which he is a national, internal exile permits the government to continue exercising jurisdiction, and thus control, over the individual being punished. It is perhaps for this reason that political dissenters are frequent subjects of this form of treatment.

The legality of a government's action in imposing internal exile must be viewed in light of Article 13(1) of the Universal Declaration of Human Rights which provides for the right to freedom of movement and residence within the borders of each state. Although this freedom is not absolute, governmental restrictions of it must comport with human rights standards contained in international and domestic law. That "no one shall be subject to arbitrary arrest, detention or exile" (emphasis added) is set forth in Article 9 of the Universal Declaration of Human Rights.

Safeguards against the arbitrary imposition of internal exile are established in other provisions contained in the Universal Declaration, such as the right to "equal protection of the law" (Article 7); the right to a "fair and public hearing by an independent and impartial tribunal, in the determination of any criminal charge" (Article 10); the right of an individual to be "presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence" (Article 11); and the right not to be charged of a penal offence ex post facto (Article 11).

As demonstrated below, these provisions have been ignored by governments in imposing internal exile. Individuals have been sent to remote areas for indefinite periods of time without benefits of trial, counsel, or judicial review.

In addition, the conditions surrounding the exile must accord with international human rights standards. In this regard, the Universal Declaration stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). An example of the inhuman treatment commonly experienced by those forced into internal exile is the denial of adequate and proper medical attention.

### Examples of Government Abuse Regarding Internal Exile

The practice of internal exile, in the form of banning and banishment, is widespread in South Africa. Reports document the banning and banishment of hundreds of persons in the past few years.

Although the circumstances and characteristics of banning orders vary in each case, a common feature to all banning orders is that banned people are restricted in terms of movement, usually to the magisterial district in which they reside.

---

<sup>1/</sup> U.N. Doc. E/CN.4/826, Part V, paragraph 788.

That banning is imposed arbitrarily is readily apparent. Banning is administered by the Minister of Justice. No specific reasons are ever given by the Minister for imposing individual banning orders. Moreover, banned persons have no effective means of appeal against their banning since no independent body exists to review the order and since the courts are expressly denied jurisdiction in matters concerning the imposition of banning.

It is also evident that the conditions of banning are inhuman. In all cases of banning orders, banned persons are prohibited from communicating with each other; they are not permitted to be quoted in public or private; they may not engage in the preparation of material for publication; they are not permitted to attend any political or social gathering, that is any meeting of more than two persons for a common purpose; and they may not enter any educational institution or factory unless special permission is obtained in advance from the Department of Justice.

In the last few years, it has become increasingly common for Africans who oppose government policies to be sent into internal exile to remote and desolate reserves far from their homes for indefinite periods of time - a practice known as "banishment" in South Africa. Under section 5(1) (b) of the Native Administration Act, the State President is empowered "whenever he deems it expedient in the general interest" to order the removal of a tribe, a portion of a tribe or an individual African from one place in the country to another. Under an amendment in 1956, the African concerned is not entitled to any prior notice of a hearing and cannot obtain a stay by recourse to courts. Since 1948, it has been reported that hundreds of Africans have been subjected to this form of internal exile. 2/

While previously internal exile (called relegación) in Chile could only be imposed by court order, a new decree has conferred all authority concerning internal exile to the Minister of the Interior. Under Decree Law 3163 of 6 February 1980 internal exile can be imposed by the Minister of the Interior for up to 90 days without charges, court review or the right of appeal. Since the decree took effect, over 80 individuals have been compelled into internal exile, many to remote areas far from their homes and families. In almost all cases, individuals sent into exile were never charged with a crime, but sent into exile as a "preventative measure". All were denied judicial review and had no opportunity to appeal the decision. While in internal exile, individuals live under severe hardship, many unable to work and to provide adequately for their needs.

In view of this evidence of widespread governmental abuse of internal exile in recent years, we urge the Sub-Commission to include internal exile in the agenda item of "The question of the human rights of persons subjected to any form of detention or imprisonment" and to review annually developments concerning individuals subjected to internal exile in accordance with resolution 7(XXVII) of 20 August 1974, and in doing so, to take into account any reliably attested information from Governments, the specialized agencies, the regional intergovernmental and the non-governmental organizations in consultative status with the Economic and Social Council.

Such a review will enable the Sub-Commission to identify the principal problems surrounding the practice of internal exile and to develop public awareness of violations in this area.

---

2/ "Banishment of Africans in South Africa", United Nations Unit on Apartheid, No. 1/70, January 1970.