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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Special Rapporteur on the situation of human rights in Chile in accordance with paragraph 6 of Commission on Human Rights resolution 1982/25 of 10 March 1982.

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CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
CONTENTS		
INTRODUCTION	1-10	1
<u>Chapters</u>		
I. THE CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS	11-20	5
A. The Political Constitution of 1980	11-14	5
B. Institutionalization of the state of emergency	15-19	6
C. Anti-terrorism legislation and military jurisdiction	20	10
II. THE RIGHT TO LIFE. THE RIGHT TO PHYSICAL AND MORAL INTEGRITY	21-54	11
A. Right to life	21-42	11
1. Cases of abuse of authority or misuse of weapons	23-39	11
2. The death penalty	40-42	16
B. Right to physical and moral integrity	43-54	17
1. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment.	43-51	17
2. Judicial protection of the right to physical and moral integrity	52-54	20
III. THE RIGHT TO LIBERTY AND SECURITY OF PERSON	55-108	22
A. Right to liberty	55-82	22
1. Illegal arrests	55-71	22
(a) Arbitrary nature of arrests	60-61	23
(b) Arrests at public gatherings	62-66	24
(c) Illegal nature of arrests. Competence of security bodies	67-68	28
(d) Judicial supervision of the arbitrary and illegal nature of arrests	69-71	29
2. Missing persons	72-82	31
(a) Results of judicial investigations	74-75	31
(b) New cases	76-80	32
(c) Difficulties experienced by relatives of missing detainees	81-82	34

CONTENTS (continued)

	Paragraphs	Page
B. Right to security	83-108	36
1. Persecution and acts of intimidation	83-95	36
(a) The Comunidad Catacumba case	88-89	38
(b) Other specific cases	90-93	39
(c) Effects of acts of intimidation	94-95	40
2. Conditions of detention in prison establishments	96-108	40
(a) Agreement of 24 July 1978 concerning persons detained for crimes of opinion.	97-99	41
(b) Standard Minimum Rules for the Treatment of Prisoners	100-102	42
(c) State of health of prisoners; the case of botulism poisoning	103-108	43
IV. RIGHT TO FREEDOM OF MOVEMENT	109-132	48
A. Right to enter and leave the country freely	109-127	48
1. Circular of 11 February 1980	115	50
2. Massive exodus of Chileans	116-127	50
B. Freedom of movement and freedom to choose one's residence: enforced residence	128-132	57
V. RIGHT TO PROCEDURAL GUARANTEES	133-164	60
A. Right to an effective remedy	133-156	60
1. The remedy of protection and the remedy of <u>amparo</u> : question of their effectiveness.	137-149	61
2. The Supreme Court decision of 28 April 1982 concerning the right to an effective remedy.	150-156	68
B. Special jurisdiction	157-164	73
1. Right to equality in the administration of justice	157-158	73
2. Competence of the military courts in time of peace	159-160	74
3. Competence of the military courts in time of war	161-164	75
VI. RIGHT TO PRIVACY. RIGHT TO FREEDOM OF THOUGHT, OPINION AND EXPRESSION	165-182	79
A. Right to privacy	165-171	79
B. Right to freedom of thought, opinion and expression	172-182	83

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
VII. RIGHT TO THE PUBLIC FREEDOMS	183-200	90
A. Right of peaceful assembly	183-186	90
B. Right of association	187-193	92
C. Right of participation	194-197	94
D. Right of petition	198-200	96
VIII. ECONOMIC AND SOCIAL RIGHTS	201-215	97
A. Right to work. Access to employment	201-208	97
B. Working conditions	209-211	102
C. Right of children and young persons to special protection	212-215	103
IX. TRADE UNION RIGHTS	216-226	106
A. Right of trade union association	216-221	106
B. Right to bargain collectively	222-225	110
C. Right to strike	226	112
X. CULTURAL RIGHTS. RIGHTS OF MINORITIES	227-248	114
A. Right to education and culture	227-238	114
B. Rights of the indigenous minorities	239-248	119
CONCLUSIONS AND RECOMMENDATIONS	249-269	123
Annex. List of 69 persons subjected to torture (January-May 1982)		

INTRODUCTION

1. By resolution A/36/157, paragraph 7, of 16 December 1981, the General Assembly invited the Commission on Human Rights "to extend the mandate of the Special Rapporteur for another year" and requested the Commission "to report on the human rights situation in Chile, through the Economic and Social Council, to the General Assembly at its thirty-seventh session". In its turn, the Commission on Human Rights adopted resolution 1982/25 of 10 March 1982 in which (para. 6) it decided "to extend the mandate of the Special Rapporteur for one year" and requested him "to report on further developments in the situation of human rights in Chile to the General Assembly at its thirty-seventh session and the Commission on Human Rights at its thirty-ninth session". In addition, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1982/19 of 9 September 1982 in which, inter alia, it recommended to the Commission on Human Rights that "it maintain vigilance in relation to the evolution of human rights and fundamental liberties in Chile".

2. The international community expressed its urgent concern in the above-mentioned resolutions, whose substance constitutes the mandate which it has entrusted to the Special Rapporteur. This urgent concern relates to:

The institutionalization of the state of emergency, which remains in force under the twenty-fourth transitional provision of the Constitution ("the exceptional state of emergency due to threats to internal peace") and article 41, paragraph 4, of the Constitution ("the state of emergency");

The arbitrary detentions and physical or psychological intimidation;

The persecution of persons exercising their freedom of opinion or petition;

The situation of political detainees;

Non-observance of the right to life, persecution, intimidation, the phenomenon of torture and other forms of cruel, inhuman or degrading treatment resulting in unexplained deaths, together with the punishment of those responsible;

The fate of persons reported missing;

The restoration of trade union rights, including the right to strike;

The restoration of civil and political rights and freedoms, in particular the freedom of assembly and association, the right to live in, enter or leave the country freely, and the abolition of the practice of local expulsion.

3. In carrying out his task, as defined by the international community, the Special Rapporteur has paid particular attention to the points of concern mentioned above. He is obliged to report once again that, despite the requests of the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, he did not benefit from the co-operation of the Chilean Government. This Government has in fact withheld its co-operation from the Special Rapporteur since the thirty-fifth session

of the General Assembly; in a document before the General Assembly at that session, 1/ the Chilean Government questioned the procedure followed for the examination of the human rights situation in Chile and stated that that special procedure was "discriminatory". This attitude was considered by the organs concerned; at its thirty-sixth session the General Assembly once again deplored "the fact that the Chilean authorities have consistently refused to co-operate with the Special Rapporteur appointed by the Commission on Human Rights and with other United Nations bodies in the field of human rights". 2/ For its part, the Commission on Human Rights at its thirty-eighth session rejected "the attitude of the Chilean authorities in not co-operating with the Special Rapporteur and not complying with Chile's obligations under various international human rights instruments". 3/ In addition, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended to the Commission on Human Rights that it should call upon the Chilean authorities "to co-operate with the machinery of the United Nations system, implementing fully the concrete measures requested repeatedly by the General Assembly and the Commission on Human Rights in their resolutions". 4/

4. In his most recent report to the General Assembly, the Special Rapporteur deplored the fact that it had not been possible to confirm the official information published by the Chilean press directly through official communications with the United Nations and the Special Rapporteur. The refusal to co-operate proclaimed and implemented by the Chilean Government did not facilitate the task of the Special Rapporteur. 5/ The Special Rapporteur noted that "the Chilean Government's assertion that the procedure instituted for the case of his country is discriminatory and violates the principles of the legal equality and sovereignty of States had no foundation". 6/ He observed that the Chilean Government's position was refuted by recent resolutions of the Commission on Human Rights, which had frequently instituted similar procedures with regard to the human rights situation in various States Members of the United Nations. Consequently, it was clear that "the refusal of that Government to co-operate with the Special Rapporteur cannot be regarded as an attitude legitimized by international norms but rather as a refusal to accept the principles and procedures established by the international community in the field of human rights and applied whenever these rights are the subject of flagrant, gross and systematic violations". 7/

5. With a view to performing his duties during the current mandate, the Special Rapporteur has repeatedly communicated with the Chilean Government, requesting it to co-operate with him. Thus he first addressed a letter to the Chilean Government on 2 May 1982 (transmitted 14 May 1982), informing it of Commission on Human Rights resolution 1982/25 of 10 March 1982, in which the

1/ Document A/C.3/35/10.

2/ Resolution A/36/157, sixth preambular para.

3/ Resolution 1982/25, para. 5.

4/ Resolution 1982/19, para. 1, of 9 September 1982.

5/ Document A/36/594, para. 7.

6/ Document A/36/594, para. 8.

7/ Ibid.

Commission decided to extend his mandate for one year. In addition, he invited the Chilean authorities to come to Geneva between 26 May and 1 June 1982, during the consideration of all information concerning the human rights situation in Chile, in order to work out the general outline of his report to the General Assembly. In that connection, the Special Rapporteur invited the Chilean Government to provide any information at its disposal that might help him in the performance of his mandate. He once again stated that he eagerly desired such co-operation - which would help once and for all to enlighten the opinion of the international community on the human rights situation in Chile - in the context of the exclusively humanitarian goals of his action.

6. Secondly, the Chilean Government received a letter from the Special Rapporteur dated 14 June 1982 concerning the disappearance of Oscar Eliecer Rojas Cuéllar, a Chilean citizen who was reported to have been arrested on 28 December 1981 after entering Chile without authorization. In that connection, the Special Rapporteur requested the Government's co-operation in obtaining as complete information as possible, basing his request solely on humanitarian considerations.

7. Thirdly, on 13 July 1982, the Special Rapporteur communicated with the Chilean Government in order to establish whether a certain document containing references to the co-operation of Chilean citizens with international organs, in particular the organs of the United Nations, emanated from the Chilean authorities. This document appeared to prohibit certain persons and the above-mentioned citizens from entering the country. 8/

8. The Special Rapporteur has received no reply to these three letters. This indicates that the Chilean Government is continuing to withhold its co-operation from the Special Rapporteur during 1982, an attitude which is not consistent with that Government's international obligation to report as a State which has subscribed to the Charter of the United Nations. Moreover, Chile has ratified several international human rights instruments, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the four Geneva Conventions relating to international humanitarian law, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All forms of Racial Discrimination, the Convention and Protocol relating to the Status of Refugees, and the United Nations Convention on the Political Rights of Women. In addition, Chile has ratified the UNESCO Convention against Discrimination in Education and several conventions of the International Labour Organisation. As a State member of the Organization of American States (OAS), Chile is a party to the American Declaration of the Rights and Duties of Man, and the OAS conventions on the civil and political rights of women and the nationality of women. Despite these international commitments, Chile is refusing to report and co-operate with the Special Rapporteur in the performance of his mandate. This situation might appear to incur the international responsibility of the State of Chile since it is not respecting its international commitments either abroad or within the country. The repeated violations of the most fundamental rights within the country is inconsistent with the international instruments it has ratified. Although there are no constitutional or other provisions for

8/ See below, Chap. IV, A.1.: Right to enter and leave the country freely.

the incorporation of international provisions within Chilean legislation, the Chilean representatives in international organs have repeatedly stated that "any international instrument ratified by Chile was published in the Official Bulletin and automatically became part of the country's domestic law"; that implied that the instrument in question, once ratified, would be "self-executing". 9/

9. The working method used by the Special Rapporteur to ascertain the facts concerning the human rights situation in Chile in 1982 has followed the same lines as for the preceding report. Taking account of the Chilean Government's failure to co-operate, the Special Rapporteur has tried to use instead the official information published in the Chilean press. In addition, he has heard the testimony of persons who had personal and direct knowledge of the facts which they described. He has also studied the legislative and jurisprudential texts which were published in 1982 and followed the practice of the Executive. It should also be noted that the Special Rapporteur has received inestimable assistance from the national and international, governmental and non-governmental organizations concerned with the human rights situation in Chile and elsewhere and from the documents and letters emanating from persons in Chile and in other countries. With a view to establishing the facts impartially and objectively, the Special Rapporteur has always collated all the data received and rejected information based on subjective judgements unrelated to tangible proof. Lastly, the Special Rapporteur has tried to relate the facts thus established to the international instruments concerning the international protection of human rights which have been ratified by Chile and to other international provisions under international human rights law, within the context of his mandate.

10. As to the time frame, the present report relates to the events brought to the attention of the Special Rapporteur and established between 1 January 1982 and 30 June 1982. He has nevertheless added events known to him which have occurred since this date in order to make the statement of facts as precise as possible.

9/ Report of the Committee on the Elimination of Racial Discrimination, document A/36/18, supplement No. 18, paras. 268 and 264. Similar statements were made by a senior authority of the Ministry of Labour in Chile in the Committee on the Application of Conventions and Recommendations of the International Labour Conference at its sixty-eighth session, held in Geneva in June 1982; see in this connection provisional record No. 31, which contains the report of that Committee, in accordance with article 22 of the ILO Constitution.

I. THE CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS

A. The Political Constitution of 1980

11. The Political Constitution of 11 September 1980 has been in force since 11 March 1981; it has been studied by the Special Rapporteur in previous reports and has been the subject of important resolutions by the General Assembly and the Commission on Human Rights. Firstly, it has been pointed out that this Constitution did not emanate from the popular will and that it conferred a stable and institutional status of authority on the military Government for a transitional period up to 1989, which represents a radical change in the traditional democratic legal order in Chile. Secondly, the Constitution itself embodies principles which create discrimination on political grounds, in particular in article 8; this is contrary to the principles and rules of international law on this question. 1/ For his part, the Special Rapporteur has noted that, in accordance with the text of the Constitution, particularly during the transitional period, the armed forces are paramount in all matters involving the government of the country. 2/ In an earlier report, the Special Rapporteur observed that at the institutional level, the transitional period consolidates the current situation, which is characterized by serious limitations on human rights. 3/ Moreover, although Chile is a party to the International Covenant on Civil and Political Rights, the new Constitution sets up as basic rules provisions that are contrary to the principles, rights and guarantees enunciated in the Covenant. 4/

12. This Constitution has in fact concentrated institutionalized power in the hands of the military, in that the President of the Republic is subjected to no effective supervision by genuine representatives of the people and his authority has no limitations other than those that might hypothetically be imposed on him by the Constitutional Court or the armed forces themselves. This situation would appear to be contrary to article 5 of the Constitution, 5/ and to article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights. In short, the exceptional powers held by the military, through the President, extend to the executive, administrative, legislative, judicial and enforcement functions, which acquire particular importance during the period of transition and application of various forms of state of emergency. This has prompted the statement that "the transitional provisions of the Constitution reinforce the most relative interpretation of the text of the Constitution, to such an extent that in practice this has resulted in

1/ According to the text of the most recent resolutions of the General Assembly and the Commission on Human Rights.

2/ Document E/CN.4/1428, para. 34.

3/ Document A/35/522, para. 73.

4/ Document E/CN.4/1428, para. 56.

5/ According to the document Las críticas del Grupo de los 24 of the Grupo de estudios constitucionales, March 1981.

the suspension of chapters I and III of the text, depriving citizens of remedies against infringements of their fundamental freedoms". 6/ The new legal and constitutional framework facilitates the possible practice of serious, gross and systematic violations of human rights and could by this fact seriously compromise the international responsibility of Chile as a member of the international community.

13. Among the organs for whose establishment the Constitution makes provision, the one that attracts the most attention is the Constitutional Court established by Act No. 17,997 (published in the Diario Oficial of 19 May 1981). Its composition and functions have been studied by the Special Rapporteur, who noted that it was answerable to the armed forces and was vested with broad powers relating to the constitutionality of laws, treaties and decrees. Particular note should be taken of its competence under article 8 of the Constitution, which confers on it the power to declare unconstitutional "political organizations, movements or parties" which, through their purpose or the activities of their adherents, tend "to propagate doctrines which attack the family or advocate violence or a view of society, the State or the legal order that is totalitarian in character or is based on class struggle". 7/

14. Since the beginning of the Special Rapporteur's mandate, the Constitutional Court has already pronounced on the compatibility of a bill relating to the suspension of pensions paid under the "adjustable pensions" scheme. It declared this bill constitutional and considered that it did not infringe the right to own property. On the other hand, it declared itself incompetent to determine the unconstitutionality of the entire bill relating to the 1925 Constitution and to Constitutional Act No. 3 of September 1976, which the new Constitution officially repeals. 8/

B. Institutionalization of the state of emergency

15. The process of institutionalization of the state of emergency forms part of a theoretical approach to democracy which gives rise to concepts of so-called "authoritarian", "restricted" or "gradual" democracy. Their common denominator is the disruption of the constitutional order by a political crisis, followed by the exception which becomes the rule. As Mrs. Questiaux's report indicates, the lawfulness of the system establishes itself automatically and it is provided with an institutional basis in the form of a new structure for society which will ultimately be submitted for the people's approval, through a constitutional referendum. This process, which has been clearly apparent during the past few years of Chilean legality and whose purpose is transition to "new forms of democracy", embodies the risk of turning into an autocratically-oriented constitutional order. 9/

6/ Chilean Commission on Human Rights, El derecho a la libertad y a la seguridad personal en el orden constitucional y legal chileno, Santiago, May 1982, p. 14.

7/ A/36/594, paras. 21-23.

8/ Hoy, 7-13 July 1972; see also El Mercurio, 22, 24 and 25 July 1982.

9/ "Study of the implications for human rights of recent developments concerning situations known as state of seige or emergency" (E/CN.4/Sub.2/1982/15), 27 July 1982, paras. 129-131.

16. Article 4 of the International Covenant on Civil and Political Rights, on the contrary, establishes the conditions and limitations which must be imposed on any declaration of a state of emergency by a party to the Covenant, which is the case of Chile. It stipulates that the situation must be an exceptional one which "threatens the life of the nation" and that States parties may take measures "to the extent strictly required by the exigencies of the situation". In no circumstances may the measures be "inconsistent with [the party's] other obligations under international law", and in particular they must not "involve discrimination solely on the ground of race, colour, sex, language, religion or social origin". Moreover, the rules of jus cogens relating to human rights or absolute inalienability (Covenant, art.4, para.2) must always be preserved, and the State concerned must inform the other States parties of the "provisions from which it has derogated and of the reasons by which it was actuated" (Covenant, art.4, para.3). Consequently, since the entry into force of the current Constitution (11 March 1981), a double state of emergency has existed in Chile, continuously and uninterruptedly: the "state of emergency" provided for in article 41, paragraph 4, of the Constitution, and the "exceptional state of emergency due to threats to internal peace", provided for in the twenty-fourth transitional provision of the Constitution. Under the first state of emergency, the President of the Republic may restrict freedom of movement and prohibit particular persons from entering or leaving Chile; he may also suspend or restrict exercise of the right of assembly and freedom of information and opinion and impose censorship on correspondence and the communications media. 10/ The second confers on the President of the Republic the power to order persons to be detained for five days in their homes or in places other than prisons; the time-limit may be increased to 20 days in the event of "acts of terrorism having serious consequences". He may also restrict the right of assembly and freedom of information (the latter only with regard to the creation, publishing or circulation of new publications), and prohibit from entering the national territory any persons who propagate the doctrines referred to in article 8 of the Constitution, persons who are accused or have the reputation of being activists subscribing to such doctrines, and persons who commit acts contrary to the interests of Chile or constitute a danger to internal peace. Lastly, the President may subject specific persons to restricted residence in an urban locality within the national territory for a period not exceeding three months under the twenty-fourth transitional provision.

17. In 1982 the two states of emergency were again extended. Thus Supreme Decree No. 187 of the Ministry of the Interior (Diario Oficial of 4 March 1982) declared all the regions, provinces and communes of Chile to be zones in a state of emergency for 90 days as from 6 March. Another decree of the Ministry of the Interior (Diario Oficial of 30 August 1982) extended the state of emergency from 1 September to 1 December 1982. 11/ The reason invoked for extending the state of emergency is always the same: the existence "of an internal danger to national

10/ See in particular A/36/594, para. 29; E/CN.4/1484, para. 16.

11/ El Mercurio, 31 August 1982.

security". As to the "exceptional state of emergency due to threats to internal peace", it continues to be imposed over the whole of the national territory under Supreme Decree No. 198 of the Ministry of the Interior (Diario Oficial of 10 March 1982). Declared still valid are the considerations which motivated the adoption of the previous decrees by which the state of emergency was proclaimed, namely, that in recent times the country has witnessed a series of acts of a terrorist nature and that investigations have revealed the existence of plans to disrupt the public order and internal peace. The exceptional state of emergency due to threats to internal peace was again extended on 10 September 1982 by a decree of the Ministry of the Interior published in the Diario Oficial, in accordance with the considerations contained in Supreme Decree No. 198 of the Ministry of the Interior and the tenth and twenty-fourth transitional provisions of the Constitution. ^{12/} The state of emergency was in turn renewed until 1 December 1982 by decree of the Ministry of the Interior published in the Diario Oficial of 30 August 1982. ^{13/} The joint application of the two states of emergency presupposes the continuation of the situation for nine successive years.

18. This double state of emergency has brought about a sharp disruption of the constitutional order, with the coup d'etat, followed by a slow deterioration of institutions characterized by a redistribution of powers within the institutional framework and by a constant regression of the principle of the legality of any rule of law. Mrs. Questiaux's study outlines the different types of institutions within which the legislative, judicial and executive powers subordinate themselves to the military power. This subordination occurs directly with the seizure of power by the military, who suspend the activity of the legislature (parliament), which is replaced by a para-legislative institution whose functions are purely consultative (legislative junta) and which is totally subordinate to the executive power. As to the judicial power, it is subjected to strict supervision by two methods: appointment of "reliable" judges and reduction of the powers of ordinary courts in favour of those of the military courts. The executive power is in turn subject to the supervision of the military since it is directly exercised by them. Thus in Chile the executive functions are directly assumed by the military, both in the higher entities of the State and in the lower entities (provinces, municipalities, regions). The institutional transformation just described has totally changed the nature of the previous juridical regime in Chile by substituting for the principle of the separation of powers that of the "hierarchization of powers", for the benefit of the military power. This type of model is defined "in terms of the stability of the regime or the stability of the State", which has been the case in Chile, as was suggested by the Human Rights Committee, which considered the two states of emergency to be incompatible with the requirements arising from article 4 of the International Covenant on Civil and Political Rights and their maintenance for several years contrary to article 25 of the Covenant. ^{14/} The same institutional transformation has a profound effect

^{12/} El Mercurio, 11 September 1982.

^{13/} El Mercurio, 31 August 1982.

^{14/} See report of the Human Rights Committee, A/34/40, paras. 14 and 95.

on substantive criminal law and on procedural criminal law (procedural guarantees). Thus the restrictions on the right of defence, the imprecision of the definition of the new crimes of a political nature which are to be tried by military courts, the change in the presumption of innocence, especially in the case of administrative internment, etc. are the characteristics of the present legal framework in Chile which correspond to those referred to by Mrs. Questiaux. 15/ The consequence of the situation will be the failure of the rule of law or of the "primacy of law" and the protection of human rights will accordingly be extremely limited. This situation which the Special Rapporteur has already described in previous reports remains unchanged. In particular, the remedies of protection and amparo provided for in the Constitution, in articles 20 and 21 respectively, are seriously impaired by the combined application of the state of emergency and the exceptional state of emergency due to threats to internal peace. In fact, article 41, paragraph 3, of the Constitution provides for the suspension of the remedy of protection in connection with measures taken in accordance with the provisions which govern the state of emergency and concern constitutional rights and guarantees. 16/ As to the remedy of amparo, it cannot be exercised for the protection of persons subject to measures taken under the twenty-fourth transitional provision of the Constitution and the courts may in no circumstances attempt to determine the grounds for the measures taken by the authority in the exercise of its powers; consequently, they are authorized only to "determine" whether the procedures laid down in the Constitution and ordinary legislation have indeed been followed, but they may not examine the substance of measures affecting the liberty, security and physical integrity of persons. 17/ This is stipulated in the twenty-fourth transitional provision of the Constitution and, moreover, any measures adopted pursuant to this provision "shall not be open to any remedy, except for review by the authority which ordered them" (remedy of review), in other words, the President of the Republic, through the Ministry of the Interior. 18/ According to the Inter-American Commission on Human Rights, "this contradiction becomes evident when the public authorities themselves state, on the one hand, that there is a climate of social peace in the country and, on the other, establish these exceptional measures, which may only be justified in the face of real threats to the public order or the security of the State". 19/

15/ "Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency (E/CN.4/Sub.2/1982/15), 27 July 1982, op.cit., paras. 148-165.

16/ See A/36/594, paras. 44-46.

17/ See A/36/594, para. 48.

18/ See in this connection the presentation by the Chilean Commission on Human Rights to the Chilean authorities on 17 June 1981 concerning the reasons of fact and law which justify the honourable Government Junta providing that the remedy of amparo may not be applied for during the period of application of the twenty-fourth transitional provision of the Constitution.

19/ "Annual report of the Inter-American Commission on Human Rights, 1980-1981" (document OEA.Ser.L/V/II.54 doc.9 Rev.1), 16 October 1981, p.115.

19. The Special Rapporteur has carefully studied the practice followed in 1982 with regard to the subordination of the judicial power to the executive or military power. Specifically, he has referred to the case of Silva Martínez, Castro Rojas and Riffo Navarete, which proves that the subordination of the judicial power is being maintained despite the decision of the Supreme Court of April 1982, which does not seem to have been put into practice. 20/ The Special Rapporteur therefore endorses the recommendations on the inalienability of provisions relating to due process and detention procedures formulated by Mrs. Questiaux, who states that the habeas corpus procedure and similar remedies should not be suspended when it is a question of protecting life and personal freedom. In any event, guarantees should be provided for the reduction of the period during which a person is held incommunicado, a minimum of communication with freely chosen defence counsel, and the public nature of the proceedings during the oral phase of the procedure; with regard to penalties, the death penalty should be abolished for political matters and the principle of the non-retroactivity of criminal laws relating to competence and procedure should be guaranteed. 21/

C. Anti-terrorism legislation and military jurisdiction

20. The twenty-fourth transitional provision of the Constitution has given rise to special legislation, most prominent among which are Decree-Law No. 3627 of 20 February 1981 and Decree-Law No. 3655 of 11 March 1981, which contain a set of provisions whose purpose is to protect public order and which impose extremely severe penalties for acts of terrorism that jeopardize the "highest interests of the country" or attempt to "destroy the very bases of national life". Criminal acts of this nature are heard by the wartime military courts referred to in Book I, Title III, of the Code of Military Justice and the applicable procedure is enunciated in Book II, Title IV, of this Code, the penalties and summary judgements being those provided for in wartime. The Special Rapporteur will devote particular attention to the powers of the wartime military courts. 22/ He has reported, as in previous reports, that the special legislation which was originally intended to serve as a means of combating terrorism, was often also applied to acts corresponding, quite objectively, to the exercise of a right such as the right to freedom of opinion, expression, information, association or assembly. 23/ In addition, a new anti-terrorism bill has been announced providing for the death penalty and "rapid and reliable procedures" to combat alleged acts of terrorism. 24/

20/ See below chap. V, para. 1.

21/ E/CN.4/Sub.2/1982/15, op. cit., para. 203.

22/ See below, chap. V. B.2.

23/ A/36/594, paras. 55-73.

24/ El Mercurio, 28 and 29 August 1982.

II. THE RIGHT TO LIFE. THE RIGHT TO PHYSICAL AND MORAL INTEGRITY

A. Right to life

21. This right, which is proclaimed in article 3 of the Universal Declaration of Human Rights, is spelt out more clearly in article 6, paragraph 1, of the International Covenant on Civil and Political Rights in the following terms: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

22. The right to life is consequently a fundamental right in any society, irrespective of its degree of development or the type of culture which characterizes it, since this right forms part of jus cogens in international human rights law. The preservation of this right is one of the essential functions of the State and numerous provisions of national legislation, including Chilean legislation, establish guarantees to ensure the enjoyment of this right. The present section is devoted to a study of violations of the right to life. In this respect, several officials of Chilean State organs have been accused of violating this fundamental right when in fact they should, by the very nature of their duties, be responsible for protecting it and ensuring that it is respected.

1. Cases of abuse of authority or misuse of weapons

23. In the course of the present mandate various cases of violation of the right to life have been brought to the attention of the Special Rapporteur. In the cases mentioned below, contradictory versions of the facts have been given by the authorities and by the relatives of the victims. These are cases of death characterized by an abuse of authority or misuse of weapons on the part of the State security organs, which thus apparently resulted in a failure to respect the right to life. In this connection, the behaviour of the security organs is directly attributable to the international responsibility of the Chilean State.

Ivan Alfredo Quinteros Martínez

24. This man was reportedly a MIR activist. According to the press, he was killed on 17 December 1981 in a clash with the police in the streets of Santiago. However, the Special Rapporteur has noted reports that his mother, in the complaint which she lodged with the court on 4 February 1982 on grounds of aggravated homicide, states that Ivan left home on a bicycle carrying a package containing Christmas tree lights which the police thought were explosives, and that a National Information Agency (CNI) van crashed into his bicycle, causing him to fall heavily. His mother says that the CNI agents then approached him, ordering him to get up, and that one CNI agent fired at Ivan with his revolver; immediately afterwards the agent grabbed a machine-pistol and fired a burst at him, the bullets also hitting the van. She further states in the text of her complaint that the events were witnessed by dozens of people, most of whom were workmen who happened to be near the scene of the events, and that her son was not carrying any weapon.

Hernán Correa Ortíz

25. According to the official version, security agents were shot at on 28 December 1981 by Hernán Correa, whom their organizations accuse of belonging to MIR and who was killed as a result of this clash. Contradicting this version, the members of the victim's family state, in the judicial complaint which they lodged against the agents who participated in the incident, that Hernán left home with three children and was almost immediately approached by a man in civilian clothes who, by means of threats, tried to force him to stop; he did not comply and was starting to run away when several security agents opened fire on him and killed him. In the text of the complaint, the relatives state that Hernán was not armed at the time of the incident. The three minors who witnessed the events were taken by security agents to the apartment of Hernán's sister, Sonia Correa Ortíz, where they had been due to go. This apartment was searched and all the members of the family were taken to the headquarters of the investigation service, detained and released the following day. Eventually the agent René Moreno was formally charged with the homicide of Hernán Correa. */

Victor Hugo Winlo Barrios

26. According to certain reports brought to the attention of the Special Rapporteur, while Winlo Barrios was being held in pre-trial custody he was taken on 6 January 1982 to the court which was trying him for an ordinary offence. While alighting from the police van, he tried to run away. He had run 20 metres when he was hit by the bullets of the agents who were guarding the van and he died while being taken to hospital. The death certificate attributes death to a "brain and skull injury, acute anaemia and a bullet wound", which seems to indicate that he was beaten with rifle butts while being taken to hospital.

Enrique Reyes Manrique

27. The press reported that on 7 January 1982 this person was killed by four bullets fired by CNI agents while trying to run away after being asked to produce his identity documents. At the same time, other CNI agents were searching the home which the dead man shared with Patricia Garzo Norambuena. The national department of social affairs, in a communiqué dated 8 January, described the dead man as the chief of MIR's central apparatus. 1/ Enrique Reyes, after having been the subject of several political trials, was sentenced to exile in November 1975.

Ernesto Enrique Zuñiga Vergara

28. Investigation service agents shot and killed this man on 16 January 1982. According to the official communiqué, a clash involving firearms started in the street and ended inside a minibus. The communiqué attributed various acts of terrorism to the victim. 1/ Zuñiga had been sentenced in 1973 and had then left the country, his custodial sentence having been converted to exile.

*/ Chilean Commission on Human Rights, Newsletter, August 1982, No. 45, p.7.

1/ El Mercurio, 27 June 1982.

Oscar Constancio Guajardo Palma

29. Guajardo was arrested on 20 January 1982 by investigation service agents because of a possible connection with the theft of a bicycle. He was held in custody at the ninth Police Station until 25 January 1982, when he was transferred to the public prison. On 26 January 1982, his state of health prevented him from being taken to the court, which ordered him to be released for lack of evidence. When he left prison, the members of his family called a doctor because he was suffering from multiple burns which had apparently been caused by electric shocks to various parts of his body. The members of his family lodged the relevant complaint with the court; Oscar Constancio died on 30 January 1982, probably as a result of the presumed torture to which he had been subjected by investigation service agents. The death certificate gives as the cause of death "pneumonia of the lower right lobe".

Tucapel Jiménez Alfaro

30. This man's body was found on 25 February 1982 in his taxi on a side road in the Lampa area some 30 kilometres from Santiago. The first autopsy gave as the cause of death "a brain and skull injury caused by bullet impact and wounds caused by a sharp instrument in the region of the neck". A second autopsy on 13 March 1982 revealed that the body had received five firearm wounds, including one in the brain. He had also been slashed with a knife, which had gone through his neck and come out at the back of the neck. According to Aldo Signorelli of the National Association of Public Employees (ANEP), Tucapel had not been tortured by his abductors; in other words, their sole intention had been to kill him. Tucapel was 60 years old, married, President of the National Association of Treasury Employees (ANEP) and Vice-President of the Democratic Union of Workers (UDT). A former activist in the Radical Party, whose ideology is social democrat in nature, he was considered to be the leader of trade union unity in Chile. The Special Rapporteur has received innumerable communications from trade unions all over the world, non-governmental organizations and persons living in Chile which are unanimous in condemning the abduction and murder of Tucapel Jiménez. The Chilean Commission on Human Rights, in a public statement on 26 February 1982, said that this crime fully highlights "the atmosphere of insecurity and scorn for the essential values of the human being which at present reigns within national society" and demanded that "the facts of this odious crime should be clarified and that those responsible for it should be brought to genuine justice". Another statement emanating from several trade union and professional organizations on the same date affirms that Tucapel's name "joins the long list of political crimes which Chilean justice has so far proved unaccountably incapable of solving"; this statement goes on to say that on the very day of the crime, "all the private telephone lines of the leaders linked to Tucapel were mysteriously blocked", as were those of the trade union organizations of which the persons concerned were members. Lastly, the statement reaffirms the faith of the signatories "in the social understanding, peace and unity of Chileans, in liberty, democracy and social justice", and recalls that the elucidation of the facts and the punishment of the guilty parties involve the prestige of the Chilean police, the courts of justice, the Government and Chile as a whole.

31. The judicial investigation entrusted to the "visiting" magistrate, Mr. Sergio Valenzuela Patiño, has not yet succeeded in elucidating the facts, for which reason 106 trade union leaders, in a document addressed to the President of the Supreme Court, requested that the inquiry into the murder of Tucapel Jiménez should be speeded up. The Court accepted this document and remitted the dossier on the case to the "visiting" magistrate, who has subsequently taken further action in the course of his investigation. 2/

Hugo Riveros Gómez

32. This man was forcibly abducted from his home on 7 July 1981 and his body was found the next day. 3/ The murder was reportedly attributed to a "Humberto Tapia Barraza avengers squad". Tapia was a CNI agent who lost his life in a terrorist incident. The judicial inquiry into Riveros' death, which was entrusted to the Judge of the eighteenth Criminal Court of Santiago, was closed in 1982 by a stay of proceedings; the persons responsible for his death had not been identified.

Luis Antonio Celis Nancuate

33. According to members of his family, in the morning of 27 February 1982 this person was followed to his home by a man in civilian clothes who shot him from behind; he fell to the ground, and two persons got out of a car, came up to him and turned his body over. One of the two said: "That's it". The victim died at 4.50 p.m. on the same day in Barros Lupo Hospital and the death certificate attributes the death to "lumbar and abdominal injuries caused by bullets". On 6 April 1982, the victim's mother lodged a complaint on the grounds of homicide against the carabineros who, according to the investigation, had attacked Luis Antonio. According to witnesses of the events, one of these carabineros was a man called Paredes from the Dávila district, the second was called Luis and the third was not named.

Juan Garrido Contreras

34. According to a communiqué published in the press 4/, Garrido, a 21-year-old taxi driver, was shot in the head on 14 April 1982 at the port of San Antonio. Responsibility for the shooting was attributed to Carabineros sergeant Miguel Angel Medel Ramos, who had been driving a car while drunk when the taxi driver intimated to him that his car had just scratched the taxi: the carabinero immediately shot Garrido and tried to run away, but was stopped by companions of the victim. On 22 April 1982 the offender was detained incommunicado on the orders of the judge of the first Criminal Court, after having been expelled from the Carabineros. Medel has pleaded not guilty.

2/ El Mercurio, 23 July and 29 July 1982.

3/ Cf. document(A/36/594) paras. 142 and 143.

4/ El Mercurio and La Tercera of 15 April 1982.

Roberto Torres Matas

35. Roberto Torres was a 16-year-old boy who died in the town of Osorno on 14 April 1982 after being shot by carabinero Moisés Fuentes Navarro, who was drunk. A joint investigation by the army, the security services and the Carabineros established his guilt. He was dismissed and placed at the disposal of the first Criminal Court of Osorno. After these two latest deaths, General Mendoza, Director-General of the Carabineros, stated on 17 April 1982 that "the background of 27,000 carabineros would be thoroughly examined" with the aim of "eliminating the possibility of further cases of abuse of authority and crimes by members of this police force in the future". Such a measure, which has been awaited for a very long time, would be particularly salutary.

José Desiderio Avendaño Murga

36. According to press reports, Avendaño died on 17 May 1982 in Arica hospital as a result of lesions which caused a skull and brain injury and multiple bruising of the chest and hip. According to the Chilean Commission on Human Rights, Avendaño was arrested on 15 May for drunkenness and the next day was taken to Arica public prison, from which he was sent to the hospital; he was reported to have been in good health at the time of his arrest. The autopsy report referred to "death due to a skull and brain injury, lesions and multiple fractures of the chest and hips". The judicial inquiry into his death was entrusted to the second Criminal Court of Arica; Judge Humberto Retamal summoned 16 other persons who had been arrested on the same night as Avendaño and who had been in the police station and in the prison at the same time. He also summoned Sergio Jiménez, the prison governor, three Gendarmeria sergeants, and José Manriquez, a journalist on the Arica newspaper La Estrella, who had been investigating the case. 5/

Víctor Vielma Pereira

37. According to a report by the Chilean Commission on Human Rights, Víctor Vielma was killed in a fight which broke out on a sports ground in the commune of Maipú. The person responsible for his death was apparently Magnus Cáceres Cáceres, a security services agent, who was subsequently dismissed and charged by the seventh Criminal Court of Santiago. 6/

Jésus Fernando Contreras

38. This was a 20-year-old man who, according to a press article, 7/ was arrested by carabineros and died of a myocardial infarction shortly afterwards while being held on Carabineros premises in Tierras Blancas near the town of Coquimbo. The same source states that "he used to take marijuana and had been arrested because of repeated anti-social actions". The competent Military Prosecutor has reportedly

5/ El Mercurio, 30 May 1982.

6/ Chilean Commission on Human Rights, report for the month of May 1982.

7/ El Mercurio, 19 and 21 June 1982.

instituted administrative proceedings against a number of carabineros. For their part, the victim's relatives, have expressed their intention to call for a thorough inquiry into the causes of the death because they do not find the official explanation of his death to be satisfactory. They have further stated; "We are prepared to call for another autopsy because we do not believe that our brother died of a heart attack". 8/

Jorge Quintanilla Labra

39. A report by the Chilean Commission on Human Rights states that Jorge, aged 17, was arrested on 3 February 1982 by carabineros and persons in civilian dress. According to members of his family, he was taken to Le Valledor slaughterhouse in Santiago, where he was beaten up by the agents who had arrested him. They subsequently released him and he died shortly afterwards in the street. Two carabineros who may have been involved in these events have reportedly been dismissed.

2. The death penalty

Cases involving "Covema", "Calama" and the "Viña del Mar psychopaths"

40. The judicial inquiries into the circumstances of the three above-mentioned cases, the background of which was described in the Special Rapporteur's previous reports, 9/ continued throughout 1982. While reserving the possibility of reverting to these cases later, 10/ the Special Rapporteur wishes to state at this point that the deaths to which these cases gave rise have been attributed to security services agents acting in circumstances equivalent to an abuse of authority.

41. With regard to the Calama case, in which three former CNI agents were sentenced to death in the first instance for having robbed and murdered two employees of the State Bank of Chuquicamata, controversy developed concerning the existence of the death penalty in the Chilean Penal Code. The association of relatives of executed political detainees expressed its view in May 1982, highlighting the fact that the wartime military courts had abused the death penalty since 11 September 1973 by sentencing "to be shot innumerable officials and supporters of the constitutional Government deposed by the military junta", after summary trials in which the rights to defence were simply swept aside.

Cases of the "missing persons from Laja and San Rosendo"

42. The bodies of 19 persons (workmen and members of the liberal professions) who had suddenly disappeared were found in a charnel-house in July 1979. Fifteen carabineros were charged with the murder of these people in the Military Court of Santiago which, in a judgement of 6 January 1982, granted them an amnesty as

8/ Ultimas Noticias, 8 February 1982.

9/ See documents A/36/594 and E/CN.4/1484.

10/ See below, chap. II.B.2: "Judicial protection of the right to physical and moral integrity".

provided for under the relevant Decree-Law of 1978. The victims' relatives appealed to the Supreme Court which, in a decision in May 1982, refused to consider the appeal and dismissed the proceedings. 11/

B. Right to physical and moral integrity

1. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

43. The complete prohibition of torture and cruel, inhuman or degrading treatment or punishment is enunciated in article 5 of the Universal Declaration of Human Rights and in article 7 of the International Covenant on Civil and Political Rights, the latter stipulating that "in particular, no one shall be subjected without his free consent to medical or scientific experimentation". In addition, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 9 December 1975, describes such acts as "an offence to human dignity". Under this Declaration, no State may permit or tolerate these acts. This instrument, in article 1, defines torture, which constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment, in the following terms: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

44. In addition, article 3 of the Declaration stipulates that "exceptional circumstances" may not be invoked as a justification of torture or other similar treatment, a fact which clearly shows that these norms of international law may be cited as jus cogens in respect of any State member of the international community, irrespective of that State's contractual obligations. In these circumstances, the Special Rapporteur expresses his concern about the intensification of the practice of torture and other ill-treatment imputable to the Chilean State acting through agents of its security forces, in particular CNI and the Carabineros.

45. During the period January-May 1982 the Special Rapporteur received a total of 69 reports of cases of torture inflicted on the same number of persons by the Chilean State security services, as shown in the appended list (see annex 1). Of these 69 reports, 30 have been duly proven by means of sworn statements, medical certificates and complaints officially lodged by the victims or their representatives in the courts of justice against the persons who would appear to be responsible for the torture. The situation has thus deteriorated seriously in relation to preceding years (25 cases in 1981 and 47 in 1980, all during the period January-May).

46. The Special Rapporteur expresses his concern about this increase in the number of cases of torture in 1982 because this has become a habitual practice by the Chilean security services, which enjoy the power to detain persons for a period of up to 20 days before placing them at the disposal of the courts.

Furthermore, as in previous years, it has become apparent that security services agents (particularly CNI agents) possess in secret places of detention permanent installations and personnel specializing in sophisticated torture techniques. This fact enables the Special Rapporteur to state that torture and ill-treatment have a de facto institutional character in the Chilean State and manifestly benefit from the tolerance of the administrative and judicial authorities. This situation would appear to be patently contrary to the essential principles of the above-mentioned Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 4 of which stipulates that "each State shall ... take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction". In particular, article 5 of the Declaration provides that "the training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture ...".

47. Similarly, article 6 of the Declaration obliges States to keep interrogation methods under systematic review with the manifest intention of preventing any kind of torture. Articles 7 and 8 oblige States to define acts of torture as offences under their criminal law and provide that any person who alleges that he has been subjected to torture has the right to have his case impartially examined by the competent authorities. Under article 11, the victim must be afforded redress and compensation.

48. The acts of torture have been fully reported to the Special Rapporteur by various non-governmental organizations active in the defence of human rights within and outside Chilean territory. In particular, at a press conference held on 4 February 1982 by the health section of the Chilean Commission on Human Rights, members of that section informed public opinion of the concern they felt in that respect. In particular, these doctors denounced the fact that doctors were present in the secret places of detention and torture, cursorily examined detainees before they were tortured and when they were released, and certified that they were in good health, without indicating either the place in which the medical examination was conducted or the registration number of the signatory in the medical register.

49. The methods of torture customarily practised in 1982 are those which have already been described by the Special Rapporteur in his preceding reports. ^{12/} Thus physical torture (lesions, electric shocks, etc.) is associated with psychological torture (threats, intimidation and all types of pressure). The physical and psychopathological after-effects of the torture inflicted have also been carefully examined. Thus, according to the report emanating from an extremely reliable source which reached the Special Rapporteur, out of a sample of 19 cases of torture, the medical examinations conducted after the victims' release gave the following results: physical torture consisting of kicks and blows all over the body and electric shocks by means of the "cattle prod"

^{12/} See in particular document E/CN.4/1484, paras. 76-95, and document A/36/594, paras. 113-135.

(movable electrodes applied to the most sensitive parts of the body) and the "grill" (fixed or movable electrodes applied to a victim stretched out on a metal bed or covered with oil-cloth); psychological torture consisting of death threats against the victim himself or members of his family, swearing and obscene words, interruption of sleep, injection or forced ingestion of drugs, hypnosis, threats of rape, mock execution and signing of compromising documents. As to the physical after-effects noted in the victims, reference must be made to multiple bruising, contusions and haematomas on practically all parts of the body, and burns caused by the application of electricity to the most sensitive organs. As to the psychological after-effects, all the persons examined suffered from an acute clinical syndrome and a small percentage of them were at the stage of psychiatric clinical seriousness. The commonest clinical reaction is anguish caused by the traumatizing situation experienced. This anguish is characterized by the exteriorization of feelings of anxiety, fear and persecution and by ideas of self-application and imagination of the torture situation, which creates difficulties from the standpoint of sleep, insomnia and nightmares. In 4 of the 19 cases, there were serious forms of psychopathological reaction: situation of permanent mental imbalance or mutism and stupor, childhood regression, guilt feelings with regard to the family, psychomotor agitation of the secondary maniac type, depersonalization, etc. In short, in these 19 cases, it was found that 16 different methods of physical and psychological torture had been applied and caused 20 or so lesions of a physical nature and 12 abnormal psychological reactions. Lastly, emphasis must be placed on the disastrous effect on children of the fact that one or more members of the family group has been subjected to arbitrary detention whether or not accompanied by ill-treatment. Regardless of the financial harm thus suffered by the family group, it is in the psychological sphere that the deepest crisis affecting children occurs. Thus the situations in which a home is subjected to an illegal search or in which a family group is confronted with intimidation, and the forcible removal of the father or the mother cause serious psychological damage in children, who manifest feelings of abandonment, isolation, aggression, depression, disruption of appetite and sleep patterns, despair, rage and rebellious behaviour. In short, anxiety and fear seriously disturb the children thus affected, who suffer physical and psychological damage, as attested by the repeated changes in their behaviour and their sensitivity. In this respect, the Special Rapporteur would recall the Declaration of the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1959; principle 2 of the Declaration provides that the child shall enjoy special protection to enable him "to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity", while principle 9 states that "the child shall be protected against all forms of neglect, cruelty and exploitation".

50. Mention should also be made of the case of ill-treatment and unlawful constraint inflicted, on 29 January 1982, on a group of 18 higher-education students and 40 Mapuche peasants who were arrested in the town of Lautaro and charged with plotting sabotage and other terrorist acts. In fact, what was involved was a voluntary work programme being carried out under a contract between the Professional Association of Mapuche Small Farmers and Artisans (ADMAPU) and students of the Faculty of Pure Sciences and Pharmacy of the University of Chile and the Drama School of the Catholic University. Despite the defamation campaign unleashed against them by the Chilean press, the

Military Prosecutor of Temuco released all of them unconditionally for lack of evidence. After being released the students lodged a complaint against the Carabineros for unlawful constraint and another against the Diario Austral of Temuco and other media in Santiago. 13/

51. Ill-treatment continues to be inflicted in prisons. This is demonstrated by the remedy of protection applied for on 26 May 1982 by the lawyer Sergio Concha Rodríguez in the Santiago Court of Appeal in respect of 29 persons charged or sentenced for offences against the State Security Act and the Possession of Weapons Act; all these persons were detained in the public prison in Santiago. According to the appeal "all these persons are being subjected to a systematic campaign of unjustified persecution and punishment, together with denials of their fundamental rights as human beings by the members of the Gendarmeria serving in the said prison establishment". The text of the appeal spells out the names of five members of the Gendarmeria who, it is claimed, were "directly responsible for all these arbitrary acts and guilty of the ill-treatment to which the said detainees have been subjected". 14/

2. Judicial protection of the right to physical and moral integrity

52. The Special Rapporteur has mentioned earlier in this report the fundamental principles by which States must be guided in preventing and punishing the crimes of torture and other cruel, inhuman or degrading treatment, as stipulated in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is true that the Chilean Constitution and Penal Code embody legal remedies for the punishment of such crimes. Nevertheless, the Special Rapporteur has noted that the proceedings instituted in the Chilean courts of justice against members of the police, army and security bodies considered guilty of having committed various crimes against the physical integrity of persons have ended in the dismissal of proceedings and that the perpetrators of such serious and repeated crimes have not been identified, let alone sentenced by the courts of justice. Generally speaking, there is a violation of the obligations enunciated in article 9 of the above-mentioned Declaration, which reads: "the competent authorities of the State concerned shall promptly proceed to an impartial investigation". The courts actually impede the investigation by means of two extremely frequent procedural stratagems, which consist in not allowing the complainant's lawyer access to the dossier which would enable him to co-operate in the judicial inquiry, and in not undertaking with the requisite promptness the necessary initial acts, namely those intended to identify the persons alleged to be guilty of the crime. It follows that the impunity enjoyed by the security organs is a fact which the Special Rapporteur considers himself obliged to denounce because it presupposes multiple violations of the most fundamental human rights, which frequently take the form of homicide, illegal arrest, unlawful pressure, unnecessary violence, lesions, unlawful association, threats, abductions, unlawful entry, persecution and so on.

53. The Special Rapporteur would cite, by way of exceptions to this general rule, two cases relating to events which occurred prior to the period covered by the

13/ Hoy, 10-16 February 1982, pp. 13-14

14/ El Mercurio, 27 May 1982.

present report, in respect of which the judicial procedure continued throughout 1982. These are the "Calama" and "Viña del Mar" cases in which CNI agents and carabineros are accused of having killed a number of persons. On the other hand, in another sadly notorious case, namely that concerning the Martyrs' Avengers Squad (COVEMA), which also involves events preceding those covered by the present report, the judicial activities designed to shed light on the crimes of abduction, torture, murder and ill-treatment of a group of persons continued with extraordinary slowness in 1982 and the courts have not yet succeeded in identifying the guilty parties, who are reportedly connected with State security bodies.

54. Lastly, the Special Rapporteur has noted the same procedural defects and strategems in the course of the most spectacular proceedings of 1982, such as the inquiry into the death of Tucapel Jiménez and the proceedings instituted against nine members of the Christian left movement for offences against Decree-Law No. 77 of 13 October 1973 concerning unlawful associations. 15/ The same tendency is found in the dismissals of proceedings, which terminate judicial inquiries opened to determine guilt for murders of missing detainees whose bodies have been found in recent years. 16/

15/ See below, chap. V.

16/ See below, chap. III A.2: Right to liberty - Missing persons.

III. THE RIGHT TO LIBERTY AND SECURITY OF PERSON

A. Right to liberty

1. Illegal arrests

55. The general prohibition in article 9 of the Universal Declaration of Human Rights, namely that "no one shall be subjected to arbitrary arrest", appears in a more detailed form in article 9 of the International Covenant on Civil and Political Rights, paragraph 1 of which provides as follows:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

56. In addition, paragraph 2 of article 9 lays down the right of anyone who is arrested to be "informed, at the time of arrest, of the reasons for his arrest" and to be "promptly informed of any charges against him". The right to take proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and the right to compensation when an unlawful detention has taken place complete the safeguards against unlawful arrest and are contained in paragraphs 4 and 5 of article 9 of the Covenant.

57. In 1982 the Special Rapporteur received numerous testimonies of illegal arrests made arbitrarily and on several different occasions by security bodies of the Chilean State. Their general characteristics have been described in preceding reports by the Special Rapporteur. ^{1/} In quantitative terms, table 1 below shows a slight fall in the total number of arbitrary arrests of individuals in the period January-June 1982 by comparison with the corresponding periods for 1980 and 1981. The table has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights.

Table 1

Comparative table of arrests between January and June
for the past three years

Month	Total number of arrests		
	1980	1981	1982
January	17	61	121
February	5	53	58
March	169	115	236
April	68	61	41
May	183	289	74
June	167	35	27
TOTAL	609	614	557

^{1/} See in particular paragraphs 82-104 of document A/36/594, dated 6 November 1981, and paragraphs 34-58 of document E/CN.4/1484, dated 20 January 1982.

58. However, in order to have a true idea of the number of illegal arrests which took place in Chile in the first half of 1982, it must be remembered that, in addition to the figure of 557 arrests given in the table, there was a series of mass arrests at the end of May and throughout June in large-scale operations which can only be described as swoops on the public at large. The press in fact reported a total of 2,255 persons arrested between 28 and 30 May 1982, the alleged aim being, in the actual words of Colonel Ramon Otero, Sub-Prefect of the Metropolitan Area (Santiago) Carabineros Headquarters Services, "to prevent the commission of crime and to safeguard the peace" - despite the fact that, again according to the colonel, "it is not true that there has been a wave of robberies (assaults) in the capital". 2/ In addition to the foregoing there was the swoop conducted by the Carabineros and the civil police in the same manner between 4 and 5 June 1982, which resulted in another 2,870 arrests. 3/ Lastly, on the night of 26-27 June 1982 there was a third operation in which 1,631 persons were questioned, 196 of whom were arrested. As on the previous occasions, the object of the operation was both "preventive and repressive", undertaken by the police "with a view to preventing the commission of crime and arresting persons wanted by the courts, in the interests of keeping the peace". 4/ In order to have an accurate picture of the extent of this operation, it should be borne in mind that, according to the same press article, 800 police officers and 150 police vehicles were involved. The Special Rapporteur notes in this respect that mass operations of this kind clearly violate the principles laid down in article 9(1) of the International Covenant on Civil and Political Rights.

59. In qualitative terms, the illegal arrests of individuals have given the Special Rapporteur the impression that the practice of selecting victims persists. In the first half of 1982, for instance, action by the forces of law and order was directed towards arresting persons in the service of humanitarian bodies engaged in the protection of human rights in Chile or persons occupying key posts in various associations, trade unions or other groups. Particular attention should be paid in this respect to the arrest of leaders of the Peace and Justice Service (SERPAJ) and the Chilean Commission on Human Rights, alleged militants of the Izquierda Cristiana (Christian Left), a leader of the Committee for the Defence of Women's Rights (CODEM) and the Teachers' Association of Chile (AGECH), leaders of the National Trade Union Co-ordinating Body (CNS) and other trade unions, a leader of the Committee for the Defence of Youth Rights (CODEJU), members of the teaching profession, the press and the medical profession, students, especially university students, etc.

(a) Arbitrary nature of arrests

60. Table 2 shows clearly the arbitrary nature of the arrests which took place in Santiago in the first half of 1982. It has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights.

2/ El Mercurio, 1 June 1982.

3/ El Mercurio, 8 June 1982.

4/ El Mercurio, 27 June 1982, reproducing the official communiqué signed by the Prefect Luis Arias Iturralde, of the Police Public Relations Department.

Table 2

Number of persons arrested in Santiago in 1982, brought before a court and charged with terrorism (but not committed for trial in all cases)

Month	Number of persons arrested	Number of persons brought before the courts	Number of persons charged with terrorism
January	58	10	1
February	37	1	-
March	168	8	-
April	11	2	1
May	39	6	-
June	11	2	1
TOTAL	324	29	3
	100%	8.95%	0.93%

61. Thus the 324 arrests which took place in Santiago in the period January-June 1982 resulted in only 29 persons being brought before the courts for political offences, and only 3 of these, namely 0.93 per cent of the total arrested, were charged with terrorism. The table therefore makes it clear that the state of exception which has existed in Chile uninterruptedly for the past nine years and which results from the alternation of a state of emergency with a state of threat to law and order, bears no relationship to the number of persons charged with alleged acts of terrorism - a number which, in the opinion of the authorities, justifies the continuance of the state of exception. The Special Rapporteur's own view, which is widely shared by observers both inside and outside Chile, is that the Government's special powers enable it primarily to persecute political dissidents who are not terrorists at all, and to create a universal climate of fear among the population which is totally at variance with the principles underlying article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

(b) Arrests at public gatherings

62. Arrests of groups of persons, which have taken place mainly at public gatherings, have received wide coverage in the media, in various reports by human rights bodies and in a large number of complaints which have reached the Special Rapporteur. A brief recapitulation of the facts in chronological order will give an idea of the situation.

Between 13 and 15 January 1982, five journalists were arrested by military personnel belonging to the Army Directorate of National Intelligence (DINE).

On 17 January, on the occasion of a gathering held in O'Higgins Park in Santiago, nine persons were arrested and held for periods varying from one to five days; eight of them were eventually released and the ninth was placed under enforced residence.

On 25 January, in connection with the funeral of ex-President Frei, the Chilean Commission on Human Rights reported that 33 persons were arrested and then released five days later, except for two who were placed under enforced residence.

On 29 January, according to information from the Chilean Commission on Human Rights, 54 persons were arrested at Lautaro in the Cautín area. At least 16 of them are said to have been university students and 45 to have been Mapuches. Of these 54 persons, 21 were released five days later after having been subjected to various forms of ill-treatment which the Special Rapporteur has already mentioned. 5/

On 5 February, after a funeral ceremony in memory of ex-President Frei at Viña del Mar, four students were arrested during a spontaneous demonstration.

On 14 February, at Tiura, five Mapuches were detained for three days.

On 19 February, at Punta Arenas, five students were arrested and then placed under enforced residence pursuant to an administrative decision for having written graffiti on walls, thereby "violating the political truce and damaging private property".

On 27 February, a big protest demonstration against the death of the trade union leader Tucapel Jiménez Alfaro resulted in the arrest of 31 persons in Santiago.

On 6 March, following two attempted occupations of land by homeless persons involving some 700 families organized into a Committee of the Homeless, 300 families were arrested by carabineros and the police in the municipality of Conchalí; most of them were released a few hours later. On the other hand, in a further attempt by 400 other families "to occupy waste land" in the municipality of La Granja, a large number of carabineros carrying submachine-guns and wearing helmets and shields intervened. The press mentions a figure of 135 persons arrested in that locality, including 55 women. 6/

On 15 March, at Temuco, 20 more families also tried to occupy waste land. Forty-eight persons were arrested but were released conditionally the same day.

On 31 March, on the occasion of what was called the "Hunger March", a demonstration organized by the National Trade Union Co-ordinating Body (CNS) against the economic policy of the Military Government, some 100 persons were arrested in Santiago, according to information provided by the Chilean Commission on Human Rights. Most of them were released the same day, but 37 were held for five days without any charge being brought against them.

5/ See above, chapter II, section B.1, The prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

6/ Las Últimas Noticias, 7 and 8 March 1982.

On 1 May, according to press articles and reports emanating from the Chilean Commission on Human Rights, 118 arrests took place in the city of Santiago, 9 at Viña del Mar and 21 at Concepción. The arrests took place in connection with ceremonies held to celebrate International Labour Day.

On 15 May, 217 arrests took place in mass sweeps in the eastern part of the city of Santiago. The Chilean Commission on Human Rights reported that the arrests were said to have taken place for the purpose of "ensuring the peace".

On the same day, according to information provided by the Chilean Commission on Human Rights, another 13 persons were arrested in a swoop in the town of Arique.

63. Table 3 below illustrates the fact that the police forces tend at present to make both individual arrests and mass arrests or swoops more or less simultaneously. The information obtained by the Special Rapporteur for May 1982, which is the latest available, gives the following figures:

Table 3^{7/}

May 1982

Breakdown of arrests

Individual arrests	22 persons
Mass arrests	1 221 persons
Mass arrests at public ceremonies	130 persons
Arrests in swoops undertaken in connection with suspected ordinary offences	1 091 persons
TOTAL NUMBER OF ARRESTS	<u>2 464 persons</u>

64. The table shows, however, that the number of individual arrests is tending to decrease while at the same time the number of arrests made during swoops undertaken in connection with "suspected ordinary offences" is increasing. In fact, as the Chilean Commission on Human Rights points out, while it is true that arrests of [political] dissidents have decreased by comparison with the corresponding months of 1981 (from 189 to 152), the police have nevertheless carried out numerous preventive arrests of persons who are merely suspected of alleged ordinary offences. These arrests, which are really wholesale swoops, have involved 1,091 persons, the ground for the preventive action being mere suspicion and not a formal charge or a situation of flagrante delicto. The aim is said to be "to create a climate of universal fear throughout the population and at the same time to enable dissidents to be persecuted on the pretext of combating ordinary crime". 8/

7/ Source: Chilean Commission on Human Rights.

8/ Solidaridad, first fortnight, June 1982.

65. The arbitrary nature of nearly all the arrests emerges clearly in table 4 below, which has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights. The city of Santiago and the months from January to May 1982 have been taken as the basis for the table. This gives the following breakdown for arrests resulting from a purely administrative decision:

Table 4

Year 1982: City of Santiago: breakdown of arrests resulting from a purely administrative decision without the intervention of a court

Year 1982	Jan.	Feb.	March	April	May	Total
1. Total number of persons arrested in month	58	37	168	11	39	313
2. Released without any charge being brought	43	7	21	5	28	104
3. Placed under enforced residence pursuant to a purely administrative decision	3	-	1	2	-	6
4. Expelled pursuant to a purely administrative decision	-	-	-	-	-	-
5. Sub-total of persons arrested and released without any charge being brought in a court	46	7	22	7	28	110
PERCENTAGE	79.31	18.92	12.1	63.64	71.79	35.14
6. Charged in a court and released without any charge being proved	2	2	138	2	2	146
7. Charged in a court for a contravention not constituting an offence	-	27	-	-	3	30
8. Sub-total (6 + 7)	2	29	138	2	5	176
9. Sub-total of persons released without any charge being brought or proved or charged with a contravention (2 + 3 + 4 + 6 + 7)	48	36	160	9	33	286
PERCENTAGE	82.75	97.25	95.24	82.82	84.62	91.37
10. Charged in court and committed for trial	10	1	8	2	6	27
PERCENTAGE	17.24	2.71	4.68	18.18	15.38	8.63
TOTAL NUMBER OF PERSONS ARRESTED IN MONTH	58	37	168	11	39	313

66. As table 4 shows, 110 (35.14 per cent) of the 313 persons arrested in Santiago in the period January-May 1982 were released without any charge being brought against them in a court. Of the remainder, 176 were either released by the courts without any charge against them being proved or were charged with a contravention not constituting an offence. Eventually only 27 persons, i.e. 8.63 per cent of the total of 313 persons constituting the sample, were charged in court and committed for trial. The disproportion in these figures is obvious, and rules out the possibility of concluding on any reasonable grounds that the arrests were based on objective criteria aimed at establishing the commission of criminal acts.

(c) Illegal nature of arrests; competence of security bodies

67. In addition to the arbitrary nature of the arrests, there is the fact that they are obviously illegal, particularly in the case of the individual arrests. The numerous reports and complaints which have reached the Special Rapporteur show clearly the persistence of this practice, which he has already discussed fully in his preceding reports to the General Assembly and the Commission on Human Rights. Briefly, the essential characteristics of the unlawful arrests (which border on abduction) are the following:

- (a) The arrests are made by persons who are not authorized by law to make them: in accordance with article 90 of the Constitution, only members of the Corps of Carabineros and the police are empowered to make arrests. Yet many arrests are made by members of the National Information Agency (CNI) or by unidentified persons ("unknown persons in plain clothes").
- (b) The arrests take place without an arrest warrant having been issued by an official expressly empowered by law to issue it (except in cases of flagrante delicto). In accordance with article 19(7) and the twenty-fourth transitional provision of the Constitution, only a magistrate and, pursuant to the special powers legislation, the Minister of the Interior acting in the name of the President of the Republic, can order an arrest. Yet numerous complaints transmitted to the Special Rapporteur enclosing copies of applications for amparo reveal that the special decree (decreto exento) of the Ministry of the Interior often follows the actual arrest. The result is the frequent violation of the constitutional safeguard in article 19(7)(c), which stipulates that the arrest warrant must be served in accordance with the law; this presupposes that an official copy of the warrant must be handed to the person concerned.
- (c) The arrest is often accompanied by an illegal search of the dwelling of the person concerned without the CNI officials producing the corresponding search warrant, which in accordance with article 73, third paragraph, of the Constitution can only be issued by a court of justice.
- (d) Individual arrests are accompanied by the use of violence and aggressive behaviour on the part of CNI officials; this infringes the right to security and dignity of the persons concerned and their families, particularly their children.

- (e) Those arrested generally finish up either in secret CNI premises in Santiago or in the provinces, in violation of article 19(7) of the Constitution, which stipulates that persons shall be detained in public places set aside for that purpose. Despite renewed complaints on this subject in applications for amparo, the judicial authorities exercise no supervision, since the competent magistrates never visit the secret places concerned.
- (f) Illegal detention in secret places is always accompanied by the practice of holding the person incommunicado. This practice conflicts with the provisions of articles 2, 6 and 7 of the Constitution and articles 298 et seq. of the Code of Penal Procedure, under which only the magistrate dealing with the case may order a person to be held incommunicado, and only for such limited period as that magistrate deems essential for the necessary inquiries to be made having regard to the offence with which the person is charged. 9/

68. These procedures, which demonstrate clearly the illegal nature of the arrests, are a current practice and manifestly violate the principles laid down in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. 10/ The Special Rapporteur wishes to lay special emphasis on this situation; because it leaves the detainee absolutely unprotected; from the outset he is held incommunicado and blindfolded, at the mercy of CNI officials who have absolute power in the matter. Under the twenty-fourth transitional provision of the Constitution, this situation of defencelessness can last from 5 to 20 days until the person concerned is eventually brought before a court. In such circumstances, all the ingredients are present for cases of torture and ill-treatment to occur such as those which the Special Rapporteur has mentioned in the previous chapter. According to the allegations received by the Special Rapporteur, the secret CNI premises are in fact the places where the majority of the violations of individuals' right to physical and moral integrity repeatedly take place. They contain a material infrastructure and a specialized permanent staff, including doctors and paramedical personnel; this fact has enabled the Special Rapporteur to denounce the institutional and thus tolerated nature of these practices. 11/

(d) Judicial supervision of the arbitrary and illegal nature of arrests

69. Judicial supervision of the unlawfulness of arrests and of complaints filed in the courts for ill-treatment of detainees is virtually non-existent. Many complaints which have reached the Special Rapporteur reveal a judicial practice which nullifies any action against the "delitos de acción pública" (publicly

9/ See in this connection the statement made on 26 March 1982 by the Department of Social Welfare of the Archbishopric of Concepción and signed by the Executive Secretary of that department, Jorge Barudi Videla, on the subject of the detention and enforced residence of four persons.

10/ These principles are reviewed in full in Study of the right of everyone to be free from arbitrary arrest, detention and exile, United Nations, Department of Economic and Social Affairs, New York, 1964, 260 pp. (United Nations publication, Sales No. 65.XIV.2).

11/ See chapter II, section B.1, The prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

prosecutable offences) defined in Book II, Title III, section 4, of the Penal Code ("Violations by officials of the rights safeguarded under the Constitution"). Articles 148-159 penalize illegal arrests, the holding of persons incommunicado, ill-treatment and torture, and detention of arrested persons in places not provided for by law; they also penalize persons who assume the right, reserved for the courts, to impose punishments, who practise illegal searches or who order their subordinates to carry out such acts. When a complaint of ill-treatment is filed against the alleged culprits (CNI officials, carabineros or members of the gendarmeria), the criminal proceedings must inevitably be taken in the military courts because the ordinary courts rule that they lack jurisdiction over such cases. The special military courts, which consist of members of the armed forces who have no legal training, close the investigation by dismissing the charges against the officials named in the complaints. The lack of jurisdiction of the ordinary courts over complaints of this kind has been attacked on several occasions by lawyers working for the protection of human rights in Chile, in their statements transmitted to the Special Rapporteur. In the opinion of these lawyers, the torture, ill-treatment and violence of which the members of the security services are accused cannot be defended on grounds of duty because they cannot possibly form part of their functions; they are misdeeds which can definitely be classed as ordinary offences and thus be amenable to the jurisdiction of the ordinary courts.

70. The Special Rapporteur finds himself obliged to draw attention to the impunity which the members of the security services, and in particular the officials of the CNI, enjoy from the Chilean State, which tolerates their conduct. According to certain statements made to the Special Rapporteur, the judiciary has not reacted to the specific charges brought against such officials for alleged abuses. At the juridical level, the CNI is a technical body whose role is to advise senior government circles; it has no appearance of being a secret force of repression. In practice, however, complaints have been made that the CNI consistently uses the same methods and facilities as the former DINA (secret police) and that it enjoys guaranteed impunity which places it beyond the reach of judicial supervision; its methods seem nevertheless to be more selective and more "scientific" than those of the former DINA. None of the complaints filed in the courts for alleged abuses by these officials has succeeded. The only exception which the Special Rapporteur can mention concerns the infamous "Calama affair", in which a number of CNI officials and senior staff were accused of a robbery at the Bank of Chile followed by the murder of two employees; this took place despite the fact that the principal culprit, the former head of the Calama CNI, said that the operation was merely a "routine matter".

71. In conclusion, the Special Rapporteur wishes to point out that, in accordance with article 9(5) of the International Covenant on Civil and Political Rights, "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". In this connection he has been able to verify that none of the complaints referred to above has been instrumental in securing any compensation whatsoever for complainants detained for alleged political offences. A single case is recorded of a person arrested and deprived of liberty for 17 days as the result of a mistake for which the competent authority was liable, and which led to the issue of an arrest warrant by the Santiago Police Court. In this particular case, a Santiago departmental civil court (of first instance), finding that article 19(7) of the Constitution had been infringed,

delivered a judgement "sentencing the Treasury to pay heavy compensation for material and moral damage". ^{12/} It is interesting to note, however, that the person concerned had been arrested because he was alleged to have committed an ordinary offence; this suggests that the treatment differs according to the nature of the offence with which the person is charged.

2. Missing persons

72. The Special Rapporteur has dealt once again with the question of the fate of persons who have disappeared in Chilean territory since September 1973. In this connection he wishes to draw attention to the report submitted to the General Assembly at its thirty-fifth session, a document in which reference was made to the conclusions contained in the reports by Mr. Felix Ermacora submitted to the General Assembly at its thirty-fourth session (A/34/583/Add.1) and to the Commission on Human Rights at its thirty-sixth session (E/CN.4/1363 and 1381). The Special Rapporteur would also refer to the report submitted to the General Assembly at its thirty-sixth session (document A/36/594 of 6 November 1981), paragraphs 258-303 of which contain details of the judicial investigations in progress in regard to complaints filed by relatives of detainees who have disappeared in recent years.

73. Under his present mandate the Special Rapporteur has sought to give this problem special attention in view of the interest and concern repeatedly manifested by the international community. ^{13/} According to absolutely reliable sources, a total of 635 detainees are said to have been missing up to May 1982 on the basis of notices filed with the courts of justice by relatives of the persons concerned; this figure does not include the 34 cases represented by the 15 bodies found at Lonquén in 1978 and the 19 bodies found at Yumbel on 2 October 1979. The judicial investigations, especially when they are entrusted to the military courts, face considerable obstacles, and what is more no tendency has been observed on the part of the authorities to co-operate in the conduct of these investigations. On the contrary, when the examining magistrates of the ordinary courts reach the conclusion that their investigation points towards persons covered by military immunity, they rule that they lack jurisdiction and divest themselves of the case in favour of the special jurisdiction. This makes the investigation even more difficult.

(a) Results of judicial investigations

74. The results of the judicial investigations which took place in 1982 are negative. In regard to the investigation begun in connection with the discovery on 2 October 1979 of 19 bodies of persons living at Laja and San Rosendo, ^{14/} the Military Appeal Court (Military Prosecutor) decided on 8 June 1980 to grant

^{12/} El Mercurio, 5 June 1982.

^{13/} See on this point the report of the Working Group on Enforced or Involuntary Disappearances, document E/CN.4/1492 of 31 December 1981, especially paragraphs 62-64 relating to Chile.

^{14/} This case is dealt with in paragraphs 274-275 of the Special Rapporteur's report issued as document A/36/594.

an amnesty (as provided for in Decree-Law 2191 of April 1978) to the 15 carabineros alleged to have been involved. The lawyers of the victims' families appealed and on 6 January the Military Appeal Court dismissed the proceedings. The same lawyers lodged an application in the Supreme Court to compel jurisdiction. 15/ The Supreme Court rejected this and, confirming the decision of the Military Appeal Court, ruled that the case was dismissed, thus upholding the amnesty granted to the 15 carabineros involved. 16/ Facts given to the Special Rapporteur by the lawyers of the relatives of the persons concerned suggest that major irregularities were committed in both proceedings. In the Special Rapporteur's view, the amnesty was granted improperly, since the names of the beneficiaries were not stated individually, and this would seem to be contrary to the relevant legislation. Secondly, the 1978 Amnesty Decree-Law cannot benefit persons guilty of the offence of abduction of a minor if the minor dies as a result of the abduction, and one of the bodies was that of a minor, J. Carlos Jara Herrera; yet the Military Appeal Court saw fit not to take that point into consideration because, in its opinion, the provision in question was applicable solely to cases of abduction of minors by private individuals and not by members of the forces of law and order. Furthermore, the Military Appeal Court took 17 months to give a ruling on the lawyers' application that it should declare its proceedings null and void, and even then the ruling was not final. Also, the Military Appeal Court did not allow the lawyers to become a party to the proceedings on behalf of the victims' families.

75. A second judicial investigation, concerning the discovery of 14 bodies in the Maipo river in 1976, ended on 28 May 1982 with a stay of proceedings by the special examining magistrate Servando Jordán. The bodies in question were those of 14 other missing detainees; the lawyers of the victims' families lodged an appeal in the Court of Appeal (Second Chamber), which confirmed the stay of proceedings. 17/ Although the case had been closed on the ground that it was impossible to identify the victims and the culprits, in the opinion of the lawyer Hector Contreras the acts were imputable to air force personnel in connection with the persecution of a dissident political group in the period 1975-1976. 18/ During that period, which is when the former DINA was set up, "the secret services [used] disappearances as a method having a rhythm all of its own, which ultimately became a form of concealed extermination of political dissidents; this fits in with the fact that the bodies had been mutilated so as to prevent the victims from being identified". 19/

(b) New cases

76. The Special Rapporteur has also received numerous complaints and heard statements concerning missing persons of whom the security services of the State disclaim knowledge. One such person is Mr. Oscar Eliccer Rojas Cuéllar, aged 35, technical draughtsman. On 22 March 1982 relatives of his filed an application

15/ See the report of the Chilean Commission on Human Rights for May 1982.

16/ El Mercurio, 6 May 1982.

17/ El Mercurio, 25 June 1982; La Tercera de la Hora, 25 June 1982; Solidaridad No. 136, second fortnight, June 1982.

18/ Solidaridad No. 136, ibid.

19/ Ibid.

for amparo in Santiago Appeal Court asserting that he had been detained illegally and held incommunicado by the security services since 29 December 1981. It should be pointed out that Rojas Cuéllar had been arrested and sentenced in 1973 for being an "alleged" MIR activist and for "having gone to Cuba". In 1977 the penalty of rigorous imprisonment to which he had been sentenced was commuted to expulsion and he left for the United Kingdom with his wife Mercedes Valdivia. In February 1982 Mercedes informed his relatives in Chile that Oscar had returned to Chile and had been arrested by plain-clothes officers, as confirmed by various witnesses. Following the dismissal of the amparo application of 22 March 1982 on the ground that the Ministry of the Interior denied having custody of Rojas Cuéllar, his sister filed a habeas corpus application on 24 May 1982; this too was rejected on the facts, although the Chilean Ambassador in the United Kingdom had informed a member of Parliament, Mr. Tristen Garel-Jones, that Rojas Cuéllar had been arrested on a charge of re-entering Chile clandestinely. Once again the Ministry of the Interior informed the Appeal Court that it had not ordered Rojas Cuéllar's arrest and that inquiries showed that the Ministry's departments had not arrested him. In view of this anomalous situation, a letter was sent to the Chilean Ambassador at Geneva in the name of the Special Rapporteur on 14 June 1982 stating that the Special Rapporteur was seeking information on "the whereabouts and state of health of Mr. Rojas Cuéllar". The Special Rapporteur has received no reply to his request.

77. A second reported case concerns Juan Bosco Maino Canales, missing since 1976 and presumed to have been detained by DINA. On 30 September 1981 his mother filed an amparo application in Santiago Appeal Court seeking confirmation of the illegal arrest of Maino on the ground that his detention had been acknowledged indirectly in the courts in Case 294/81, Sheet No. 14 (case relating to Carlos Montes, another detainee). The record of this case shows that the Ministry of the Interior admitted the arrest "of one of his principal collaborators" (i.e. a collaborator of Carlos Montes), "Juan Maino". Moreover, information received by the Special Rapporteur shows that Montes, after his sentence had been commuted to expulsion, stated that some of his papers had been found by the CNI in the hands of Juan Maino. Concurrently, after the dismissal of the application regarding Maino, the Ministry of the Interior is said to have led the defence lawyer to understand that the Maino case "was closed". The opinion of Montes on this point was expressed in a statement made to the inspecting magistrate for missing persons, Servando Jordán; Montes stated: "Maino died from the ill-treatment he received, like myself." If this statement was confirmed, the Maino case would illustrate the way in which court cases concerning missing persons generally finish up, despite any judicial and written evidence which may have been forthcoming.

78. A third case of a person presumed missing is that of Pierre Charles Cardyn Degen, surgeon, aged 38. In April 1982 relatives of his filed an amparo application in Santiago Appeal Court asserting that Cardyn had been detained by the CNI, according to information received by his parents, now living in Canada. The applicants pointed out that "the arrest [should] not come as a surprise, since in July, September and October 1981 the Chilean newspapers had reported clashes said to have taken place at Neltume, where seven alleged 'guerillas' had been killed and others taken prisoner"; and that according to these press reports "the Belgian doctor Pierre Cardyn (who sometimes held himself out to be French) was one of the 'guerillas' and was a wanted man". 20/ The Santiago Appeal Court is said to have ruled that it lacked

20/ According to information transmitted to the Special Rapporteur by a number of human rights bodies in Chile and other countries.

jurisdiction over this amparo application and to have referred the case to Valdivia Appeal Court on the ground that the arrest had taken place within the latter's territorial jurisdiction.

79. As the Special Rapporteur has indicated in the previous paragraph, in many cases arbitrary and illegal arrests really take the form of kidnapping, which leads to the temporary disappearance of the persons concerned. The Special Rapporteur has observed this in connection with some 20 arrests which took place in 1982; in cases of this kind, the amparo applications filed on behalf of the arrested persons are of great importance, since where they succeed it proves that the persons concerned are alive and that the ONI acknowledges that they are detained.

80. Furthermore, the Chilean press reports from time to time that human remains have been discovered in different parts of Chile. For instance, the body of a man showing signs of violence caused by the action of unknown persons was found at Pudahuel in a drain at kilometre 12 on highway 68 from Santiago to Valparaiso. 21/ Other human remains identified as those of Heriberto Arancibia Pardo were discovered at Viña del Mar. 22/ Arancibia disappeared about the middle of 1980 at the same time as his father.

(c) Difficulties experienced by relatives of missing detainees

81. In conclusion, the Special Rapporteur regrets to have to report the difficulties and harassment experienced by members of the Agrupación Chilena de Familiares de Detenidos-Desaparecidos (Chilean Association of Relatives of Missing Detainees). He has received numerous documents containing complaints about the harassment to which persons connected with this association have been subjected on account of their activities relating to it. These documents mention in particular, in 1982, the intimidation inflicted on the Carreño-Araya family, which "for over a month [had received] persistent telephone calls and threats while their home [was] kept under observation", although their only "crime" was "membership of the Agrupaciones de Familiares de Ejecutados Políticos y Detenidos-Desaparecidos (Associations of Relatives of Persons Executed for Political Reasons and Missing Detainees), notification of the death of Alfonso Carreño and a demand for explanations on that subject and a reply concerning the disappearance of Cristina Carreño and Marcelo Concha". 23/

21/ El Mercurio, 3 July 1982.

22/ El Mercurio, 10 July 1982.

23/ According to a public statement of June 1982 signed by the co-ordinating body for these associations.

Mention must also be made of the difficulties experienced by the above association in connection with the "International Week for Missing Detainees" held in Santiago from 24 to 29 May 1982. 24/ The Ministry of the Interior pointed out on that occasion that the Association of Relatives of Missing Detainees was illegal; it banned the proposed events because they had not received official permission. 25/

82. Similarly, in order to mark the anniversary of the publication of the Lista de los 119 (List of the 119), the above association organized a demonstration in the Plaza de Armas in Santiago on 23 July 1982. According to a press article, some 30 persons "set up placards showing photographs of presumed missing detainees" and "the demonstrators carried banners with inscriptions demanding information from the authorities about their missing relatives. The carabineros removed the placards, confiscated the banners and arrested 11 people". 26/ An amparo application was immediately filed on behalf of these 11 persons, 2 of whom were released the same day because they were minors. According to the same sources, the other nine were "released because the Minister of the Interior had not taken proceedings against them" 27/ after several days' detention. The Special Rapporteur would like to draw the attention of the General Assembly once again to the need to urge the Chilean Government to co-operate with a view to the final settlement of the problem of disappearances. In this connection the General Assembly has urged the Government "to investigate and clarify the fate of persons who have disappeared for political reasons, to inform the relatives of those persons of the outcome of the investigation and to prosecute and punish those responsible for such disappearances". 28/

24/ El Mercurio, 25 and 27 May 1982.

25/ El Sur, 25 May 1982.

26/ El Mercurio, 25 July 1982.

27/ El Mercurio, 31 July 1982.

28/ Resolution A/36/157, paragraph 4(e).

B. Right to security

1. Persecution and acts of intimidation

83. Through the combined application of articles 3 and 5 of the Universal Declaration of Human Rights and articles 7 and 9(1) of the International Covenant on Civil and Political Rights, everyone is entitled to security of his person against any arbitrary action taken against him by public officials with a view to intimidating him or subjecting him to unlawful harassment. Specifically, article 1(1) of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly on 9 December 1975 describes as cruel, inhuman or degrading treatment any act inflicted by or at the instigation of a public official on a person for the purpose of "punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons". Aggravated and deliberate forms of cruel treatment are forms of torture under article 1(2) of the Declaration.

84. The legal problem posed by acts of persecution and intimidation of private individuals is to identify the perpetrators and to obtain sufficient objective evidence to establish that the acts in question have been done by persons belonging to the security services and are therefore imputable as such to the Chilean State. Obviously, for this problem to be capable of solution, there must be a judicial complaint by the persons concerned, the judicial investigations that are undertaken must have an outcome and, finally, the Government must collaborate in the elucidation of the facts. As the Special Rapporteur has had occasion to point out in the past, 29/ it is precisely the last two conditions which in many cases are not satisfied. The Special Rapporteur has nevertheless been able on previous occasions to gain the conviction that in some cases acts of persecution and intimidation have been committed by members of variously named security services and secret organizations which knew about the private lives and activities of the persons arrested and also had extensive facilities which they used to intimidate and harass individuals who tried to exercise their basic rights in Chile. 30/

85. During his present mandate the Special Rapporteur has found that this situation remains exactly as it was. For instance, in regard to the threats made to Mr. Ignacio Walker Prieto, the lawyer of the Vicaría de la Solidaridad of the Archbishopric of Santiago, between 31 December 1981 and 2 January 1982, the Cardinal Archbishop of Santiago, Monsignor Raúl Silva Henríquez, addressed a letter of complaint dated 8 January 1982 to Mr. Sergio Fernández, then Minister of the Interior. The Archbishop mentioned among other things "the repetition of acts directed against certain people working for him which had already been the subject of complaints and had been brought to the notice of the police authorities, the judicial authorities and the Government itself". He also said that the persons who had committed those reprehensible acts were fully aware of the activities of the Vicaría de la Solidaridad worker concerned and that they had specifically mentioned those activities in the threats which they had made to

29/ See in particular documents A/34/583 (paras. 141-145), A/35/222 (paras. 161-192) and A/36/594 (paras. 170 et seq.).

30/ See A/34/954, para. 170.

him. The threats came from persons who were organized to commit acts of that kind and were not simply isolated actions, since the perpetrators had succeeded in obtaining the address of the person concerned, his telephone number (which was not in the telephone directory), the name of his wife and other pieces of information." The Archbishop's letter continued by saying that "the Church found it difficult to discharge its mission of pacification, which was a perfectly lawful one, because its workers were persecuted, threatened, imprisoned, etc.". In conclusion, the Archbishop urged "the Supreme Government to give the necessary attention to the facts mentioned in order to prevent their repetition" and requested the Minister "to bring the present note to the notice of the supreme government authorities and also of those who [were] responsible for taking the measures which the situation demanded". Mr. Walker had been the subject of a series of threats to his life, first of all "in a letter delivered personally to his home by two people who had gone specifically to his flat to leave it there, and then in a series of telephone calls referring to the letter and constantly repeating the threats of death which the letter contained", as the Head of the Legal Department of the Vicaría de la Solidaridad of the Archbishopric of Santiago, the lawyer Alejandro Gonzalez Poblete, had stated in his complaint of 7 January 1982; he had added that Mr. Walker had been "co-ordinating and even personally supporting [on the preceding days] a series of complaints against CNI officials for torture".

86. From the quantitative point of view, table 5 below nevertheless shows a marked decline in the number of acts of persecution and intimidation which were the subject of complaints in Santiago city in the first five months of 1982 by comparison with the same period in previous years. The table has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations for the protection of human rights.

TABLE 5

SANTIAGO: Cases of persecution and intimidation

MONTH	1980	1981	1982
January	2	21	4
February	3	5	8
March	12	7	14
April	12	13	6
May	10	20	5
TOTAL	39	66	37

87. Despite this, from the qualitative point of view the prospect remains gloomy, with characteristics very similar to those of the preceding years. The acts of intimidation and persecution are not isolated events but an organized and planned activity. Moreover, they are not committed at random but are directed against persons selected in advance because of their links with human rights bodies, which definitely proves that they have a political aim. Lawyers, doctors, trade union officials, students, members of human rights associations and defence bodies and of agencies of the Catholic Church, etc. have been threatened and persecuted in this way.

(a) The Comunidad Catacumba case

88. In connection with this kind of activity, mention should be made of the Comunidad Catacumba case, which has achieved great notoriety in recent months in Santiago. According to numerous reports which have reached the Special Rapporteur, on 8 May 1982 this clandestine organization sent a statement containing threats to seven lawyers who are members of the Legal Department of the Vicaría de la Solidaridad and all well known for defending human rights in the courts. This gave rise to a criminal complaint filed by the Vicario de la Solidaridad, Monsignor Juan de Castro, in Santiago Appeal Court on 7 June 1982 against members of Comunidad Catacumba "who in recent weeks uttered threats by letter to certain lawyers and persons working for the Vicaría and wrote graffiti on the walls of their homes." The complaint further states that "the threatening letters [had] all [been] sent on the same day and the walls of the homes, which were quite a long way from each other, [had] all [been] disfigured the same night; some of the letters [had been] addressed to the person concerned by his full name, including his second and even third forenames (details which are known only to very close relatives and friends and to the registry office)". The Vicar also mentions in his complaint that this situation suggests "the existence of a dangerous criminal organization with extensive ramifications involving numerous persons at different levels and in different offices who have shared out specific tasks among themselves ...". 31/ The complaint was filed against persons believed to be members of Comunidad Catacumba for the offences of unlawful association and uttering threats. In the opinion of Monsignor de Castro, the aim of the above acts was "to ensure not only that the Vicaría de la Solidaridad refrains in the future from giving the legal assistance in question but also that the lawyers and officials of this agency of the Church and persons working for it cease to place their legal services at its disposal". 32/

89. As examining magistrate to investigate the matter, the Appeal Court appointed Judge Luis Correa Bulo, to whose knowledge further threats received by persons connected with the Vicaría de la Solidaridad were also brought. For instance, on a number of occasions an individual calling himself Sergio Suarez made threats by telephone to the lawyer Sergio Wilson, President of AVEC (Neighbourhood and Community Action), an agency of the Archbishopric of Santiago which has juridical personality and defends private individuals. 33/ Another member of AVEC, Rolando Ríos, was temporarily abducted by unknown persons on 9 June 1982 at a place called Cajón del Maipo. Ríos received a blow on the head which left him unconscious, and his companion Juan Carlos Carrasco is said to have been beaten violently as well. 34/ In addition, on 18 July 1982 a militant believed to belong to the organization calling itself Comunidad Catacumba made himself known under the initials "C.V.N." in an interview published in a morning newspaper. In his statement he expressed the desire that "the Church should purify itself",

31/ Solidaridad, first fortnight, June 1982.

32/ Ibid.

33/ Hoy, 21-27 July 1982.

34/ Solidaridad, second fortnight, July 1982.

because it had been "contaminated by temporal matters". ^{35/} In his opinion the concern of the Church for the poor was the cause of the "enfeeblement of the nation and our values", and he added that his organization would do "the necessary" to achieve its aim. ^{36/}

(b) Other specific cases

90. Other secret organizations have taken it on themselves to harass and threaten private individuals. Two instances are the body calling itself Frente de Estudiantes Nacionalistas de la Universidad Católica (FENUC, Nationalist Students' Front of the Catholic University) and the extreme right-wing movement called Patria y Libertad (Fatherland and Freedom). The former stated that it was responsible on 24 March for threats addressed by letter to a female student, Magaly Lorena Muñoz Hagel. On 13 May she filed a criminal complaint in the competent criminal court for threats, serious defamation and violation of the home, offences which had been committed against her shortly before. Members of the latter organization are said to have entered her home on 6 May and to have drawn the symbol of the organization on her parents' car with a felt pen; these acts of harassment were followed by further threats conveyed by telephone.

91. A similar case was that of Mrs. Haydée López Cassou, Secretary of the Santiago Regional Council of the Medical Association and the mother of Ródrigo González López; he was convicted of unlawful association and was alleged to be a member of the Christian Left party. She filed a complaint in the Sixteenth Criminal Court for the offences of unlawful search, robbery of articles in a dwelling-place and loss and damage which occurred on 28 March 1982 at her home and at that of her son. Mrs. López said that the reason for the searches was not theft "since all sorts of valuable objects, including cash, [had] not [been] taken by the persons who made the search". Both the General Council and the Santiago Regional Council of the Chilean Medical Association made a public statement protesting against these acts.

92. An extreme case was that of Pedro Leonardo López Fabbri, whose name has been included by the Special Rapporteur in annex I to the present report, and who suffered serious torture and unlawful ill-treatment during the 11 days for which he was illegally detained on secret CNI premises at the end of March and beginning of April 1982. He was then brought before a military court, which released him unconditionally for lack of evidence. The CNI nevertheless continued to harass him and persecute him, which led to the filing in Santiago Appeal Court (in April 1982) of an application for protection of his life. In his application the party complained that on 19 April he had been approached by a bearded individual who had pressed a weapon at his stomach and forced him to get into his own car, and then compelled him, with all kinds of insults and threats, to say in minute detail what he had been doing that day. After having verified the truth of López Fabbri's statements by questioning the occupants of another car, a white Mazda, parked nearby, the individual in question came back to López Fabbri's car and, hurling a string of insults at him, said: "You have saved your skin".

^{35/} Solidaridad, second fortnight, July 1982.

^{36/} Ibid.

His arrest, torture, persecution and subsequent intimidation made him fear for his life, to the extent that he sought exile and left Chile on 26 May 1982 for Paris.

93. A preventive amparo application was filed by a group of 24 trade union leaders in the Appeal Court in February 1982. The list of applicants was headed by Tucapel Jiménez Alfaro, who was found dead a few days later. ^{37/} In their application the parties stated: "We have been prevented by carabineros from entering the premises of the Valparaiso Stevedores Federation. The methods used to prevent us from entering give us good reason for fearing for our lives and our physical integrity, and also our freedom." They added a little further on: "Our freedom is trampled under foot ... and what is even more serious ... we fear for our lives and for the integrity of our persons"; and finally: "We are aware that we are being followed and that we are not safe anywhere."

(c) Effects of acts of intimidation

94. The effects which can be caused by situations of harassment and intimidation have been assessed by doctors in the case of Mrs. Dora Gladys Carreño Araya. Mrs. Carreño, aged 38, an engineer-agronomist by profession, married and mother of two children, is the relative of a missing detainee (her sister) and of a detainee who died from torture (her father). According to a complaint mentioned earlier in connection with the Association of Relatives of Missing Detainees, Mrs. Carreño received numerous threats and insults in telephone calls made to her place of work and her mother's home. They began on 4 May 1982, and later on the school attended by her children also received telephone threats to the effect that "something was going to happen to them." Then her daily help was threatened with being kidnapped. According to the medical report sent to the Special Rapporteur, this situation produced in the patient a state of acute anguish which manifested itself in different ways: anxiety, agitation, muscular tension, occipital migraine, irritability, etc. She expressed the intention of leaving the country in order to protect her children and felt exhausted and powerless. By means of psychotherapy, which she is still undergoing, she now contemplates her troubles more calmly and more objectively, although the state of initial anguish persists and is beginning to have repercussions on her relations with members of her family.

95. In the following paragraph the Special Rapporteur will report on the conditions to which prisoners of conscience are subjected in various prison establishments in Chile, whether they are untried prisoners or convicts serving a sentence. He will draw attention to the acts of intimidation and arbitrary punishment which prison staff are reported to inflict on prisoners of this kind. Such acts appear to violate the right to security and physical integrity of the persons concerned.

2. Conditions of detention in prison establishments

96. According to information which derives from various Chilean organizations concerned with the protection of human rights and which the Special Rapporteur has been able to consult, in May 1982 the Chilean prisons contained 180 persons detained for crimes of opinion (or "political prisoners", as they refer to themselves).

^{37/} See above, chapter II A, Right to Life.

It is reported that at least 40 of these 180 prisoners are women. These figures include both untried prisoners and convicted prisoners. They are said to have in common the fact of being prosecuted or having been convicted for offences defined by Chilean emergency legislation (in particular, the State Security Act and the Control of Firearms and Explosives Act), most of which would not be regarded as crimes or offences under the legal system of a democratic society.

(a) Agreement of 24 July 1978 concerning persons detained for crimes of opinion

97. Under the Agreement of 24 July 1978 concluded between the Ad Hoc Working Group of the Commission on Human Rights and the highest authorities of the Chilean Government, the Chilean authorities apparently recognized and accepted the category of persons detained for crimes of opinion. 38/ Under this Agreement, the Chilean authorities undertook to separate ordinary prisoners from persons tried or convicted by military courts or arrested or tried for offences under the Control of Firearms and Explosives Act. This Agreement would appear to have been violated in recent years, as may be seen from previous reports of the Special Rapporteur to the General Assembly. 39/ Accordingly, on 10 February 1981, the Special Rapporteur sent a letter to the Permanent Representative of Chile to the United Nations Office at Geneva, expressing concern over this non-compliance. The Government has not replied to the Special Rapporteur's entreaties. In fact, the practice of grouping prisoners in the two categories together and of isolating persons detained for crimes of opinion from one another has recently become more widespread. This situation has been exacerbated by the numerous arbitrary transfers from one prison establishment to another during the past year. For example, on 9 June 1982, the self-styled "Group of Relatives of Political Prisoners" complained that two persons detained at Rancagua Prison had been "arbitrarily transferred", one to the Parral Prison and the other to the Molina Prison. The Group added that "the transfer took place on 4 June" and that the prisoners "were taken from Rancagua Prison without being informed where they were going and without being allowed to take their clothes or their most basic personal effects". 40/ The Special Rapporteur notes that, according to the Standard Minimum Rules for the Treatment of Prisoners, 41/ and more particularly rule 44 (3), "Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution".

98. Similarly, the Chilean Commission on Human Rights has circulated a list of 32 prisoners held at Santiago who were transferred to prisons elsewhere in the country during the first five months of 1982. 42/ At least seven of these

38/ See document A/36/594, paras. 154-163.

39/ See, in particular, A/36/594, ibid.

40/ El Mercurio, 10 June 1982.

41/ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

42/ Chilean Commission on Human Rights, Report for May 1982, annex No. 2.

32 prisoners are reportedly persons detained pending trial in the Santiago courts and "their defence and visits by their relatives are therefore made more difficult". 43/

99. The modification of the rules governing conditional release which has the effect of restricting the application of this measure is an important new legislative development. This modification was approved by the Government Junta on 22 June 1982, and it provides for the possibility of granting conditional release to persons sentenced to a term of life imprisonment who have served at least 20 years of their sentence. Moreover, persons convicted of a number of serious offences, including individuals convicted "for terrorist activities", will be eligible for conditional release only after they have served two thirds of their sentence. 44/ The texts in force will shortly be amended by a draft law on probation and day release which was under preparation during the last week of May 1982. 45/ The draft prescribes the alternative penalties of day release and probation for persons sentenced to prison terms of less than five years. The day release which will be applicable to persons sentenced to a prison term not exceeding three years is to replace the suspended sentence. Probation is to be applied gradually. In addition, there is a possibility that the measures will apply only to first-time offenders (not to recidivists) and, according to information gleaned by the press, 46/ to persons convicted of economic offences such as the fraudulent issue of cheques. 47/ Mention should also be made of the special detention regime reserved for persons detained for economic offences in the special establishment known as the "Anexo Capuchinos" in Santiago, where most of the prisoners "are held for the offences of tax evasion, swindling and fraudulent issue of cheques". 48/

(b) Standard Minimum Rules for the Treatment of Prisoners

100. The right to security of persons detained in prison establishments is covered by article 10 of the International Covenant on Civil and Political Rights. Paragraph 1 of that article lays down the general principle that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". A further, related principle is the prohibition, laid down in rule 6 (1) of the Standard Minimum Rules for the Treatment of Prisoners, of any discrimination in the treatment of prisoners "on grounds of race, colour, sex, language, religion, political or other opinion...". It follows that these rules and principles are applicable to the entire prison population of a country without discrimination of any kind, including discrimination on political grounds. It is in fact the general situation of persons detained in Chilean prison establishments which causes the Special Rapporteur concern, although most of the complaints which he has received throughout the period under review relate to the particular situation of persons detained for crimes of opinion, a

43/ Ibid.

44/ El Mercurio, 17, 23 and 26 June 1982.

45/ El Mercurio, 1 June 1982.

46/ El Mercurio, 1 June 1982 (editorial).

47/ Ibid.

48/ El Mercurio, 26 May 1982.

situation that would appear to be inconsistent with the right of such persons to security within the prison establishments, which it is the responsibility of the Chilean State to ensure. It should also be noted that the repeated violations of the Standard Minimum Rules for the Treatment of Prisoners might constitute forms of torture or ill-treatment where they involve violations of a prisoner's right to physical and mental integrity, particularly as the detainee is deprived of any defence within the prison. This point emerges a contrario from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which stipulates, at the end of article 1(1), that torture "does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners".

101. The general principles governing the classification and treatment of prisoners, as proclaimed in article 10 of the International Covenant on Civil and Political Rights and in the Standard Minimum Rules for the Treatment of Prisoners, do not seem to be respected in Chilean prisons at the present time, judging from the statement made to the press by Colonel Pedro Monjes Muñoz, Inspector and Regional Director for the Ninth Region, to the effect that "actual prison conditions at present do not make it possible to separate groups in prisons to any great extent". 49/ He further stated that at a meeting of the 13 Regional Directors of the Gendarmeria held on 21 June 1982, the problem of the classification of the prison population was discussed "with a view to separating first-time offenders from recidivists and untried prisoners from convicted prisoners, and also distinguishing according to the degree of criminality of the offences committed by each of them". 50/ The Special Rapporteur expresses the hope that these principles will be translated into reality in the near future.

102. During the period under review, there were violations of the right of prisoners to security, particularly in the case of persons detained for crimes of opinion, who were subjected to arbitrary transfers and to various forms of harassment which the Special Rapporteur has mentioned. In a statement and a letter addressed to the Minister of Justice on 28 January 1982, the Group of Relatives of Political Prisoners in Chile complained about this situation, the overcrowding in the prisons to which these prisoners were allegedly taken, and the fact that they were dispersed, held incommunicado and ill-treated in various ways. The Group demands that persons detained for crimes of opinion should be grouped together by region and should, at the very least, receive treatment consistent with the Statutes of the International Red Cross; significantly, it also calls for a ban on the unrestricted entry of CNI officials into prisons and for an end to the arbitrary transfer measures and harassment to which political prisoners are subjected.

(c) State of health of prisoners; the case of botulism poisoning

103. The Special Rapporteur has already referred, in an earlier report, 51/ to the very serious case of botulism poisoning which occurred in 1981 involving

49/ El Mercurio, 22 June 1982.

50/ Ibid.

51/ E/CN.4/1484, paras. 113-121.

eight persons detained at the Santiago Public Prison, four for "ordinary offences" and four for "crimes of opinion". Two of the ordinary prisoners died in December 1981 from the effects of the poisoning and the other six continued to suffer from those effects during the period under review. This incident has generated international protests and displays of solidarity, expressed in the numerous communications addressed to the Special Rapporteur by many non-governmental organizations and individuals. Of the six persons who survived this presumed poisoning, the one who has suffered the most from complications has been Guillermo Rodríguez Morales. In January 1982, the doctors communicated their diagnosis to the relatives of the victims of the poisoning; it was a case of botulism. Chilean and international humanitarian institutions succeeded in acquiring abroad a supply of anti-botulism serum of human origin for administration to the victims. The six survivors, who had to be connected to an artificial respirator, remained unconscious for several days, in very serious condition. In early January 1982, they were transferred to the Penitenciaría Prison infirmary, and on 1 February they were taken back to the Public Prison; treatment and medical supervision were suspended. Guillermo Rodríguez Morales continued to have difficulties in breathing and, as a result, was rushed to the Penitenciaría Prison infirmary, then to the Posta Central and finally to the Hospital del Tórax on 19 April 1982, when he underwent a tracheotomy. On 20 April, he was again transferred to the Penitenciaría Prison infirmary, and on 23 April was once more rushed to the Posta Central, as a result of a new respiratory obstruction caused by accumulated secretions which had not been removed in time by the infirmary staff; at the end of April, he had purulent secretions, arousing fears of a serious post-operative infection. ^{52/} The Chilean Commission on Human Rights concluded from the events described that "treatment was not always administered under continuous medical supervision ... and this caused successive and increasingly serious crises" which, according to the Commission, are attributable to "the actions of the prison authorities which ... decided to carry out continual, untimely transfers, interrupting the treatment prescribed by the doctors" and also "tightened security around Mr. Rodríguez, chaining the patient to his bed and posting as many as seven guards in his room to watch him". The Chilean Commission on Human Rights also criticizes the failure to publish the "report of the autopsy carried out on the persons who died from the effects of this poisoning, since this report is of vital importance for the diagnosis and treatment of the patient". Lastly, the Chilean Commission on Human Rights notes that "the prison authorities are required faithfully to execute the orders of the Judiciary and to refrain from arbitrary interference in the activities of doctors". ^{53/} The Special Rapporteur expresses concern at the fact that the judicial inquiry into the circumstances of the poisoning and, in particular, its origins has not made the slightest

^{52/} El Mercurio, 13 May 1982: "Life prisoner silenced". La Segunda, 12 May 1982: "Dumb and nearly blind MIR member is sentenced by the Court Martial". Public statement by the Group of Relatives of Political Prisoners, dated 5 April 1982: "Guillermo Rodriguez, despite serious symptoms, after 32 days spent at the Penitenciaría prison infirmary deprived of all care ... is kept chained to the posts of his bed" at the Hospital del Tórax.

^{53/} Public statement of the Health Department of the Chilean Commission on Human Rights, dated 28 April 1982.

progress. Moreover, the judicial inquiries being conducted as a result of the complaints lodged by the relatives of the victims should determine the responsibility of members of the prison staff or others.

104. The poor state of health of the prison population seems inconsistent with the guarantee of physical security and integrity embodied both in article 10 of the International Covenant on Civil and Political Rights and in the Standard Minimum Rules for the Treatment of Prisoners. In this connection, the Special Rapporteur has received substantiated complaints concerning the precarious state of health of persons detained for crimes of opinion, describing their surroundings, the lack of suitable medical care and the effects of prior incommunicado detention on CNI premises and, in many cases, unlawful coercion. According to the Chilean Commission on Human Rights, the situation has worsened as a result of the transfers to other prison establishments, which also fail to meet the minimum requirements of respect for the dignity of the human person. In this connection, mention should be made of an application for the remedy of protection made to the Santiago Court of Appeal on 17 May 1982 by 39 relatives of persons detained at the Santiago Pre-Trial Detention Centre (formerly the Public Prison). In this application, which they filed on behalf of their "relatives and all persons imprisoned at the Pre-Trial Detention Centre", the signatories state that "several of those persons' elementary and inalienable rights as human beings" are "seriously curtailed and flouted as a result of the arbitrary and unjustified attitude of the Gendarmería staff". In particular, the signatories express concern over the "physical integrity and security of the prisoners, their health, their right to work, education and culture, leisure and exercise", rights provided for in the Constitution and the laws as well as in the "Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments to which the Republic has subscribed and which therefore form part of its internal law". These rights were earlier recognized in the Prison Regulations of 30 April 1928 and in the Act establishing the Gendarmería de Prisioneros, as well as in the Standard Minimum Rules for the Treatment of Prisoners.

105. In this application for the remedy of protection, the signatories also denounced "harassment" that causes "a deterioration in the conditions of confinement and overcrowding" in which the prisoners live and that is allegedly designed to "provoke the prisoners into a reaction" which would justify "severe punishment, such as lengthy spells in solitary confinement" or transfer to disciplinary prisons. They also criticize the inadequate diet, the use of incommunicado detention as an arbitrary punishment and the fact that these prisoners, and in particular persons detained for crimes of opinion, are prohibited from taking exercise, whereas "ordinary prisoners have been able to go on taking exercise, which demonstrates the discriminatory and unjustified nature of this measure", that is said to be inconsistent with the Standard Minimum Rules for the Treatment of Prisoners. In addition, work by prisoners "is practically at a standstill, which has economic consequences and affects the health and mental stability of the prisoners". Moreover, it is alleged that these prisoners are not allowed to "receive magazines and reading matter" or to "sing songs". The cells are said to be "continually and arbitrarily searched, with repeated interruptions of the prisoners' sleep at night and confiscation of personal items which are not returned". Finally, the signatories complain about the dispersion of persons detained for crimes of opinion, which "causes serious difficulties, both for the prisoners and for their relatives ... and for defence lawyers, the exercise of the right to a defence being curtailed by the fact that the accused is detained at a

distance from the place of his trial". They also request the Court of Appeal "to dispatch a judge to the Pre-Trial Detention Centre to verify the various abuses complained of". The Special Rapporteur has received no information about what has happened to this important application for amparo, which brings out the general conditions that prevail in a pre-trial detention centre and would not appear to be consistent with the Standard Minimum Rules for the Treatment of Prisoners. The situation would be particularly serious were a judicial inquiry to confirm the assertions made in one statement, according to which:

"about 30 men who are direct victims of repression are divided up in the various rows of the Public Prison, where they live side by side with many ordinary prisoners - informers, criminals, homosexuals, rapists, etc. Between 8 and 11 prisoners (there is generally one political prisoner per cell) live in a cell 3 metres long and 2.60 metres wide in subhuman conditions and an extremely tense atmosphere, overcrowded and without the least privacy". 54/

106. Another communication received by the Special Rapporteur requests support from international public opinion in securing discontinuance of "the practice of holding political prisoners incommunicado", the provision of "effective medical care" and "physical and environmental health" and recognition of the "status of political prisoner". 55/

107. The Special Rapporteur has also received a letter concerning the alleged situation of 10 women detained at the Women's Correctional Institution in Santiago. These women are reportedly dispersed in various parts of the prison and are not allowed to communicate with each other; it is made difficult for them to follow courses at the prison school, read the newspapers, listen to the radio or watch television. In particular, they are not allowed to engage in any activity whatsoever together and they cannot claim any privileges or make any petitions. They are thus the victims of a very subtle form of hostility by the managerial and custodial staff at the prison. There is also a complaint concerning the circumstances in which nine other women were arrested at various points in Santiago in mid-July. According to reports, 56/ the nine women were held incommunicado at CNI premises and seriously maltreated; two of them (Pax Luxoro and Adela Flores Díaz) are said to be continuing to suffer from nervous disorders at the institution where they are currently being held prisoner and to require medical treatment which they cannot obtain within the institution.

108. The foregoing facts lead the Special Rapporteur to make an unfavourable judgement on the living and security conditions of Chilean prisoners, whether untried or convicted. In particular, the reports received by the Special

54/ Public statement of 22 April 1982 by the self-styled "Co-ordinator for Political Prisoners in the Public Prison of Santiago", which has come into the Special Rapporteur's possession.

55/ Public statement of 20 April 1982 by the self-styled "International Commission on Political Prisoners at the Public Prison in Santiago".

56/ Chile Committee for Human Rights Newsletter, No. 45, August 1982, p. 1.

Rapporteur throughout the year under review consistently state that the 180 persons detained for crimes of opinion or prisoners of conscience (or political prisoners, as they refer to themselves) would not be considered to have committed offences in a democratic society. These persons are imprisoned because they come under emergency legislation - the Internal Security of the State Act, the Control of Firearms and Explosives Act, and anti-terrorist legislation - which the Special Rapporteur has already had occasion to criticize and which the Chilean State should repeal.

IV. RIGHT TO FREEDOM OF MOVEMENT

A. Right to enter and leave the country freely

109. The right to leave any country, including one's own, is a universally applicable rule and is enjoyed by every human being under article 13 (2) of the Universal Declaration of Human Rights and article 12 (2) of the International Covenant on Civil and Political Rights. Such restrictions as may be imposed on this right must be provided by law and must be shown to be necessary "to protect national security, public order (ordre public), public health or morals or the rights or freedoms of others" and must be consistent with the other rights recognized in the Covenant (article 12 (3) of the Covenant). Moreover, an alien lawfully in the territory of a State may be expelled therefrom "only in pursuance of a decision reached in accordance with law". In addition, except where compelling reasons of national security otherwise require, an alien must, under article 13 of the International Covenant on Civil and Political Rights, be allowed to submit the reasons against his expulsion and to have his case reviewed by the competent authority.

110. The right of everyone to enter the country of which he is a national is guaranteed by article 13 (2) of the Universal Declaration of Human Rights and by article 12 (4) of the International Covenant on Civil and Political Rights, which states:

"No one shall be arbitrarily deprived of the right to enter his own country."

111. At its fifteenth session, on the basis of proposals submitted by the Special Rapporteur, Mr. José D. Inglés, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a set of draft principles which deal, in particular, with the right of every national of a country to leave that country temporarily or permanently, without distinction of any kind. In addition, it is provided that no one shall be forced to renounce his nationality as a condition for the exercise of that right. The set of draft principles further states that no one shall be arbitrarily deprived of the right to enter his own country and that no one shall be denied that right on the ground that he has no passport or other travel document. 1/ In addition, at its thirty-fifth session, the Sub-Commission deplored "the recurring expulsions of Chilean citizens from the country ... especially persons who are linked to humanitarian organizations and to the Catholic Church". 2/

1/ Cf. Study of Discrimination in respect of the Right of Everyone to Leave Any Country, including His Own, and to Return to His Country. Report submitted by Mr. José D. Inglés, Special Rapporteur, to the fifteenth session (1963) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2/ Resolution 1982/19 of 9 September 1982, third preambular paragraph.

112. The exercise of the above-mentioned rights in Chile has been dealt with in many reports in which the Special Rapporteur 3/ has expressed his deep concern. Basically, the problem derives from the Chilean Government's interpretation of the term "national security" in the context of the maintenance of two states of emergency which empower the President of the Republic "to restrict freedom of movement and prohibit particular persons from entering and leaving the territory" (article 41, paras. 2 and 4, of the Constitution) and "to refuse entry into, or expel from, the national territory" Chilean nationals and foreigners (twenty-fourth transitional provision of the Constitution); in the latter case, it is not possible to appeal to any authority other than that which ordered the measure (the President or, as appropriate, the Minister of the Interior). In addition, under article 41, paragraph 7, of the Constitution, "the measures relating to expulsion from the territory of the Republic and to the prohibition on returning to the country ... shall remain in force after the termination of the state of emergency which gave rise to them for as long as the authority which took them has not expressly revoked them". 4/

113. As stated in previous reports by the Special Rapporteur, the consequences of these measures have been widely criticized, both by many non-governmental organizations and by individuals directly affected. The same situation persisted in 1982, although, as shown by table 6 below, there seem to have been fewer cases than in 1981. The table has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights.

Table 6

Number of persons prohibited from entering Chile

Month	1981	1982
January	10	7
February	23	3
March	29	14
April	20	10
May	4	9
TOTAL	86	43

114. In its resolution 24/82, the Inter-American Commission on Human Rights stated that the Government of Chile had violated article VIII (Right to residence and movement) of the American Declaration of the Rights and Duties of Man by

3/ See, in particular, A/36/594, paras. 316-349.

4/ E/CN.4/1484, paras. 149-165.

prohibiting exiles from returning to their country. That Commission also called upon the Chilean Government to issue the exiles with the permits needed to return to their country and to inform the Commission, within 90 days, of the measures adopted. 5/

1. Circular of 11 February 1980

115. The Special Rapporteur has paid special attention to a circular dated 11 February 1980 (already mentioned in his 1981 report 6/) which the Ministry of Foreign Affairs addressed to all Chilean missions and consulates abroad. The circular specifically refers to the existence of a "national list", namely a list of persons who are debarred from entering the country and whose passports are endorsed with the letter "L". This measure applies, inter alia to persons who "are conducting a campaign against Chile". Paragraph 9 of the circular mentions people who engage in activities "through the mass media", those who engage in "overt participation" in public meetings or who attempt to participate "in meetings of international bodies or non-governmental bodies", as well as those who submit "written or oral information of a negative character to the aforementioned bodies". However, "simple petitions addressed to United Nations institutions to intervene vis-à-vis the Chilean Government are not considered as part of an anti-Chilean campaign, although the Ministry must be informed of them". In a letter dated 13 July 1982 addressed to the Permanent Representative of Chile to the United Nations Office at Geneva, the Special Rapporteur asked to be informed "whether this text really is a document emanating from the authorities of your Government". To date, the Special Rapporteur has received no reply to his letter.

2. Massive exodus of Chileans

116. Repeated complaints have been made to the Special Rapporteur regarding the situation with respect to enforced exile for an indefinite period. According to figures supplied by the Catholic Migration Institute (INCAMI), there are currently approximately 1.2 million Chileans living outside their country. 7/ Considering that Chile's population now stands at 11.1 million, according to statistics for 1980, 8/ it can be seen that a high proportion of Chileans are at present living abroad - in most cases, it may be presumed, against their will. On the basis of these figures, the case of these exiles

5/ OAS/Ser.L/V/II.55, document No. 39, 8 March 1982. Resolution adopted by the Commission at its 742nd meeting, held on the date mentioned.

6/ A/36/594, paras. 316-317.

7/ Data compiled by the Chilean Commission on Human Rights, Report for February 1982, p. 14. Other sources consulted estimate the number of Chileans abroad at between 600,000 and 800,000 persons.

8/ Cf. John Paxton (Editor), The Statesman's Year-Book, 18th edition, 1981-1982, London-Berlin, p. 334.

may be said to form part of the phenomenon of "massive exoduses"; there is a clear link between the large number of Chileans living abroad and the personal circumstances of the individuals concerned or the economic, political or civil problems of present-day Chilean society. 9/

117. Events in 1982 - the year covered by the Special Rapporteur's present report - demonstrate that the Chilean Government is continuing to apply the emergency legislation referred to earlier. In particular, the technique of expulsion from the country through either judicial or administrative measures and the technique of prohibiting entry into the country through the administrative device of the exempt decree (decreto exento) continue to be used. These techniques are incompatible with the right of all Chileans freely to enter and leave their country, in accordance with the international standards applicable to Chile which the Special Rapporteur has already mentioned.

118. The method of exile through judicial decision was applied in four cases during the month of January (Ramona Alfaro Rojas, Juan Díaz Rojas, Emilio Caro Concha and José Anuario Rodríguez); after being held in detention and tortured throughout 1981, these persons were imprisoned at Arica and Iquique, and were finally sentenced to 541 days' exile. By order of the Third Chamber of the Santiago Court of Appeal, the penalty of 541 days' exile was also imposed on Benjamín Cares Yañez, 10/ who was charged with a violation of article 4 (f) of the Internal Security of the State Act because of his position as Secretary of the National Co-ordinating Body for the Regions of the Socialist Party within Chile; he left the country for France on 9 July 1982. 11/ Four other cases occurred during July, when the same Chamber of the Santiago Court of Appeal handed down decisions imposing the penalty of 541 days' exile on José and Carlos Caucamán Pérez, Rómulo Fuentes Silva and Jesús Díaz Cofré, charged with "the offence of propagating Marxist doctrine". 12/ In addition, nine alleged members of the Christian Left Party (Domingo Namuncura, Jorge Osorio, Pablo Fuenzalida, Germán Molina, Eugenio Díaz, Sergio Aguiló, Ramón Piña, Rodrigo González and Raúl Reyes Suzarte) were charged with violations of Decree-Law No. 77 concerning unlawful associations. Eight of them were each sentenced to 541 days' exile by the examining magistrate (first instance); Raúl Reyes was sentenced to 541 days' imprisonment and will have to appear again before the military courts to answer charges of a violation of the Control of Firearms Act. 13/ Finally, Joaquín Vidal Mora,

9/ In this connection, see document E/CN.4/1503 of 31 December 1981, which contains a Study on Human Rights and Massive Exoduses submitted by Prince Sadruddin Aga Khan, Special Rapporteur, to the Commission on Human Rights at its thirty-eighth session.

10/ El Mercurio, 8 June 1982.

11/ El Mercurio, 10 July 1982.

12/ El Mercurio, 31 July 1982.

13/ El Mercurio, 9 July 1982 and 13 August 1982.

a 23-year-old university student, was sentenced by the Supreme Court to 541 days' exile for violating the Internal Security of the State Act "by creating public disturbances". 14/

119. Exile or expulsion from Chile by administrative decision (order of the Ministry of the Interior) was applied on 31 May 1982 15/ in the case of the surgeon Walter Gerard Stein Peters. This person's wife had submitted an application for amparo to the Santiago Court of Appeal because her husband had been arrested on 30 May by Police Department officials. 16/ This arrest was held to be unlawful because the persons who arrested Mr. Stein Peters did not identify themselves, although the Police Department subsequently confirmed that it was detaining him; the arrest was said to be based on an order of the Ministry of the Interior, dated 24 February 1982, which "debarred Stein Peters from returning to Chile", but the persons concerned were not notified of this order. 17/

120. The situation of foreigners residing in Chile, who are clearly exposed to arbitrary conduct by the Administration, also appears to be inconsistent with the requirements of article 13 of the International Covenant on Civil and Political Rights. Foreigners are frequently subjected to arbitrary administrative measures involving cancellation of their permanent or temporary resident permits or denial of permission to enter the country as tourists or to reside in Chile. According to complaints received by the Special Rapporteur, the grounds invoked by the administrative authorities are fairly vague - for instance, "engaging in activities contrary to the interests of Chile" or "negative element". Such assessments have recently been made of several foreign priests who, on these grounds, were refused permission by the administrative authorities to renew their temporary or permanent Chilean residence permits. In connection with the renewal of the residence permits of three priests, Mgr. Silva Henriquez, Cardinal Archbishop of Santiago, addressed a letter to the Minister of the Interior on 11 March 1982, noting that "the Government undertook to contact the competent bishop or religious superior beforehand" and declaring that, in the particular case concerned, "the three [priests] enjoy the full support of the Santiago ecclesiastical hierarchy since they have repeatedly demonstrated their staunch loyalty to the Church's work ... and their strict compliance with the laws in force".

121. Two persons called Jaime Castillo Petruzzi and Beatriz Bataszen who took refuge in the French Embassy in Santiago left Chile for France after being accused by the police of involvement in the events at Neltume and described by the press as "a couple of extremists". 18/ Moreover, during

14/ El Mercurio, 13 August 1982.

15/ Solidaridad, first half of June 1982.

16/ El Mercurio, 3 June 1982.

17/ Ibid.

18/ El Mercurio, 10 July 1982.

the first six months of 1982, there was only one case in which a custodial sentence was commuted into a sentence of exile. This was the case of Ana Luisa Peñailillo, who was sentenced to three years' imprisonment by the military court for an offence under the Control of Firearms Act and the Internal Security of the State Act, and who was just about to start serving her prison term. She was alleged to be connected with Andrés Pascal, the MIR leader, and she, too, was described as an "extremist". She left the country for France on 28 July 1982 with the assistance of the Intergovernmental Committee for Migration (ICM). According to the press, Ana Peñailillo "was regarded as a dangerous prisoner who used to get up on the canteen table and lecture the other inmates. After her admission to the prison, she never missed a single opportunity for politicking, slandering the Government and propagating leftist theories". 19/

122. Apart from the expulsion measures mentioned above, the Government has also adopted other decisions debarring particular individuals from entering the country, in contravention of the requirements of article 12 (4) of the International Covenant on Civil and Political Rights. The situation of exiles is exacerbated by the fact that the exempt decrees prohibiting entry into the country are periodically extended on the vaguest of grounds, such as the safeguarding of national security or domestic peace in Chile, or simply under the pretext that the person concerned is engaging "in propaganda against Chile". The arbitrariness of these measures is illustrated by the fact that there is no effective judicial control on unrestricted administrative practice in this area. As a result, the massive exodus of Chileans is becoming worse as time passes (the state of emergency has been in force for nine years) and as long as the emergency legislation based on the twenty-fourth transitional provision of the Constitution remains in force without interruption. The declaration of a disturbance of internal peace enables the President of the Republic to refuse entry into the national territory to "any persons propagating the doctrines [referred to in article 8 of the Constitution] who are accused or have the reputation of being active supporters of such doctrines or who commit acts contrary to the interests of Chile or constitute a threat to internal peace" (twenty-fourth transitional provision, paragraph (c)). Furthermore, the last paragraph of the provision stipulates that "the powers referred to in the present provision shall be exercised by the President of the Republic by means of supreme decree signed by the Minister of the Interior" and that "measures adopted pursuant to this provision shall not be subject to any recourse other than an application for reconsideration to the authority which ordered them". The consequences of the application of this provision have been examined in great detail in previous reports by the Special Rapporteur. 20/ It may simply be recalled that, by virtue of an exempt decree (decreto exento), the President of the Republic may expel anyone or compel him to remain outside the country without the person concerned having any possibility of appealing to a court of law. Such a measure is obviously contrary to the requirements of the Universal Declaration of Human Rights (articles 9 and 13) and of the

19/ El Mercurio, 29 July 1982.

20/ See, in particular, E/CN.4/1484, paras. 149-158.

International Covenant on Civil and Political Rights (article 12). In the internal legal order, the granting of such exceptional faculties to the Executive constitutes interference in the attributions of the Judiciary, thus disrupting the essential balance of powers within the State. It is instructive, for instance, that a judicial decision providing for temporary exile may in practice be extended, once the penalty is completed, through the procedure of the exempt decree which turns a penalty of temporary exile into a penalty of practically unlimited duration.

123. The Special Rapporteur reiterates his concern over the fate of the estimated 1.2 million Chileans who are the victims of a massive exodus. As emerged from the report prepared by the Special Rapporteur Prince Sadruddin Aga Khan for the Commission on Human Rights, 21/ the exodus of Chileans has two characteristic features: firstly, it is an abiding phenomenon which has already lasted for nine years; secondly, Chileans in exile are not concentrated in one particular place but are scattered among many host countries, particularly the Western democracies. In those countries, Chileans do not always possess the status of refugee provided for in article 1 of the United Nations Convention of 1951 and the New York Protocol of 1967 (both of which instruments have been ratified by the Chilean State), with the result that, in many cases, they are merely de facto refugees. The international community has expressed concern over the need to carry out an accurate census of the numbers of refugees and to amend the domestic legislation regulating their situation and the practice of asylum; such measures should be beneficial to Chilean exiles.

124. Since the beginning of 1982, the ban on entry into Chile has been a matter of constant concern to Chileans in exile, since it is applied even where there are humanitarian grounds for such entry. This is what happened on 24 January 1982, when entry was refused at the airport itself to four persons (Jaime Castillo Velasco, Renán Fuentealba, Claudio Huepe and Andrés Zaldivar), who had arrived with the intention of attending the funeral of former President Eduardo Frei Montalba, of whom they had been associates and friends. 22/ Mention should also be made of the case of Sergio Sotomayor, who was prevented from attending his father's funeral on 30 March 1982 and who was expelled on the same day of his arrival, being immediately put on to a plane bound for Frankfurt. On 15 March 1982, the Argentinian Adolfo Pérez Esquivel, winner of the 1980 Nobel Peace Prize, was also refused entry into Chile. 23/ He had been invited by Mgr. Raúl Silva Henríquez, Cardinal Archbishop of Santiago, for "an exchange of experience with Church bodies concerned with the promotion of social peace and human rights". 24/

21/ E/CN.4/1503, Study on Human Rights and Massive Exoduses, op.cit.

22/ Le Monde and The Guardian, 26 January 1982.

23/ Herald Tribune and The Times, 17 March 1982.

24/ According to a communiqué issued by the Vicaría de la Solidaridad and published in La Tercera and El Mercurio on 16 March 1982.

Yet the official press contained phrases of this kind: "Activism in the cause of human rights, considering as such the most important prerogatives of the human being, is often very close to political activity, particularly if one or other of these rights is subject to restrictions in a particular country." 25/ The Human Rights Defence Committee (CODEH) condemned the ban on the Nobel Prize-winner's entry, describing the authorities' conduct as a "gratuitous affront to the Catholic Church". 26/

125. The Special Rapporteur has already had occasion to refer to the case of Jaime Castillo Velasco, 27/ President of the Chilean Commission on Human Rights, who was expelled from Chile on 11 August 1981. Since the beginning of 1982, Mr. Castillo has availed himself of all possible legal remedies to enforce his right to enter and live in Chile, in accordance with the provisions of the international rules applicable to that country. In particular, Mr. Castillo, with this end in view, submitted an early application for amparo to the Santiago Court of Appeal on 16 June 1982. On 11 August 1982, the Fifth Chamber of this Court rejected the application, stating in particular that Mr. Castillo "... disregarded the political truce ... and sponsored or participated in a series of movements which have proved to be ... a front for others which are at the origin of acts of terrorism with serious consequences". The Court's decision goes on to state that Exempt Decree No. 1493 of 21 September 1981 extending the ban on this person's entry into the country is consistent with legal requirements because "it was promulgated at a time when the state of emergency was in force", it bears the signature of the President of the Republic and it is "in conformity with the requirements of article 41, No. 7, of the Constitution", and that accordingly "it is permanently in effect and remains valid for as long as the authority which promulgated it has not expressly revoked it". Mr. Castillo's defence lawyers immediately submitted three petitions against the decision: the first was an application for clarification addressed to the Court of Appeal itself, requesting further details of the "movements" to which Mr. Castillo allegedly belonged and which were "a front for others" and on the "acts of terrorism with serious consequences" ascribed to the appellant. The other two petitions were an appeal and a complaint both addressed to the Supreme Court and based on the ground that, in the opinion of the defence lawyers, "the ruling was given in an erroneous and wrongful manner by the judges who took the decision appealed against". 28/ The Chilean Commission on Human Rights issued a statement deploring the Appeal Court's ruling and affirming that "the courts and the Government have a moral obligation to permit the individual concerned to return to the country and not to deny him the universally recognized right of any person to live in his own country". 29/

25/ El Mercurio, 18 March 1982, editorial.

26/ El Mercurio, 18 March 1982.

27/ E/CN.4/1484, paras. 160-162.

28/ El Mercurio, 12 and 31 August 1982.

29/ El Mercurio, 13 August 1982.

126. A similar case is that of Alberto Jerez Horta, who was also expelled from Chile on 11 August 1981 under Exempt Decree No. 3289, the validity of which was extended by a further, similar decree numbered 3347 and dated 11 September 1981. Mr. Jerez submitted an application for entry into Chile in March, arguing that "there is absolutely no legal provision stipulating that the extension of the state of emergency under the twenty-fourth transitional clause of the Constitution must in consequence entail the extension for a further six months of an expulsion ordered under a previous state of emergency". 30/ A further application for amparo was submitted to the Santiago Court of Appeal in July, this time on behalf of Andrés Zaldivar Larraín, who was expelled on 15 October 1981. It was argued in the submission that the ban on his entering Chile derived from the application of Decree-Law No. 604 of 10 August 1974 on the grounds that he had "performed acts constituting a danger to the State", but that the new Constitution now in force "replaces or repeals all previous provisions of the same status" as well as "legal provisions contrary to it, including in particular Decree-Law No. 604". Consequently, "it is inappropriate for Supreme Decree No. 360 of 15 October 1980 to continue to be applied [against me], since there are no legal grounds to serve as a basis for such action, nor is it possible to maintain the measure by invoking the new provisions which would theoretically permit exile, since those provisions apply to the future and to acts or actions carried out after the date of their entry into force". 31/

127. Other applications for amparo have been submitted to the Santiago Court of Appeal for similar reasons. In June, for instance, an application for amparo filed by Eliano Ehijo Moya 32/ was rejected by that Court because "the information supplied by the Ministry of the Interior concerning the appellant's alleged activities against the interests of the country provide a sufficient basis for the lawfulness of the debarring order complained of". 33/ Also during June, the Government reaffirmed its intention of continuing to deny entry into the country to Juan Manuel Sepúlveda (a trade union leader) and Jaime Castillo Velasco (see above), and Carlos Briones, Alberto Jerez and Orlando Canturias (lawyers) who had been expelled in August 1981 for publicly expressing support for the so-called "Pliego Nacional" - a list of grievances submitted to the Government by the National Trade Union Co-ordinating Body (CNS) 34/ - even though the authorities had dropped their charges against the leaders of CNS. 35/ Mention may also be made of another application submitted to the Santiago Court of Appeal on behalf of the teacher Marilén Suazo Sepúlveda and her under-age son, who had both been refused entry into the country at Santiago Airport on 8 April 1982 without any apparent grounds; on 12 April the Chilean Consulate in Buenos Aires renewed

30/ See Chilean Commission on Human Rights, Report for March 1982, p.15, and also El Mercurio of 17 March 1982.

31/ El Mercurio, 30 July 1982.

32/ El Mercurio, 23 June 1982.

33/ Ibid.

34/ See A/36/594, paras. 429-430.

35/ Hoy, 23-29 June 1982.

their passports for a period of six months "but endorsed them with the letter 'L', which means that it is impossible for them to return to Chile". 36/ Finally, the decision of 5 July 1982 to deny entry into Chile to Marcia Vergara Gómez, who is under 16 years of age, was denounced by the Committee for the Return of Chilean Exiles and by the Chilean Commission on Human Rights on the grounds that it was an administrative measure which infringed even the internal circular of the Ministry of the Interior of September 1979 through which "the Government informed institutions concerned with the protection of human rights that persons under 18 years of age were not subject to decrees prohibiting entry into the country". 37/

B. Freedom of movement and freedom to choose one's residence:
enforced residence

128. These rights are universally recognized both by the Universal Declaration of Human Rights (article 13 (1)) and by the International Covenant on Civil and Political Rights (article 12 (1)), both of which are enforceable vis-à-vis the Chilean State and applicable to "everyone"; consequently, there is no scope for the slightest discrimination in this respect. Yet, the Special Rapporteur has noted that the Chilean State is continuing to violate these provisions in respect of the exercise of this right within Chile. The aforementioned twenty-fourth transitional provision of the Constitution remains in force, conferring on the President of the Republic exceptional powers with regard to enforced residence; once again, this means giving the Administration powers which typically belong to the Judiciary, such as the power to sentence someone to internal banishment.

129. Since 1980 there have been two methods of applying enforced residence under Chilean law. 38/ Under the first method, involving a judicial sentence, the court may impose enforced residence on a defendant for a period ranging from 541 days to several years on the ground of "probable links with a political party". 39/ It should be pointed out that the evidence of these alleged links with a political party is obtained through the interrogation of prisoners and that these interrogations are frequently accompanied by torture and measures of intimidation. 40/ According to data supplied by the Chilean Commission on Human Rights, 18 persons were sentenced to enforced residence and were serving their penalty in May 1982. 41/ The second method is enforced residence as an administrative measure based on Decree-Law No. 3168

36/ El Mercurio, 28 July 1982.

37/ Chilean Commission on Human Rights, Report for January, annex No. 2.

38/ Chilean Commission on Human Rights, Situación de los derechos humanos en Chile, Report No. 7, July 1982, annex 3.

39/ Ibid.

40/ Ibid.

41/ Cf. Report for May 1982, p. 19.

of 7 February 1980 and on paragraph (d) of the twenty-fourth transitional provision of the Constitution, which was quoted earlier. Under these provisions, the President of the Republic, acting through the Minister of the Interior, may order particular persons to reside in a specific urban locality within the country for a period not exceeding 90 days, without any judicial decision, without any charges whatsoever being brought and without the victim having the opportunity to appeal to any court. These rules make the acts of the administrative authorities completely arbitrary, which is incompatible with the requirements of international law. In addition, according to information which has reached the Special Rapporteur, the Administration uses this power to prevent the exercise of the right to freedom of expression and the right of assembly and petition - rights which are possessed by anyone of any political tendency who opposes the Government's policy by non-violent means.

130. Nevertheless, since the start of his current mandate, the Special Rapporteur has noted that the number of cases of enforced residence through administrative measures was substantially lower during the first five months of 1982 than during the same period in 1981. This can be seen from table 7 below. The table has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights.

Table 7
Cases of enforced residence through
administrative measures

Month	1981	1982
January	11	3
February	11	5
March	5	6
April	7	7
May	15	2
TOTAL	49	23

131. Another positive development which should be mentioned is that the courts have on occasion corrected administrative practice when the enforced residence related to localities which could not be regarded as "urban". For instance, in connection with the enforced residence imposed on Raúl Calfulén Quintrequeo, the Supreme Court decision of 6 May 1982 stipulated that the place to which he had been banished (Sierra Gorda) "is a rural locality" and that, consequently, the enforced residence "is not in conformity with the requirements of the twenty-fourth transitional provision". On

the other hand, the Supreme Court did not grant the application for amparo of Raúl's brother, Segundo Calfulén Quintrequeo, because, according to the Court, the place to which he had been banished (Mamiña) "is an agglomeration possessing urban characteristics, i.e. a town with a small number of inhabitants but possessing urban characteristics"; this was based on a report from the National Statistical Institute. 42/ A third person who was also subjected to enforced residence at the same time as the Calfulén brothers in March 1982 was Carlos Zapata Sepúlveda, Regional Secretary of the Committee for the Defence of Youth Rights (CODEJU). Lastly, in connection with another application for amparo received by the Supreme Court, the Court ordered Juan Olivares Cayul, a student leader at the University of Bio-Bio, to be transferred to an urban locality in order to perform the administrative penalty of enforced residence. 43/

132. From the qualitative standpoint, however, the practice of enforced residence through administrative measures continues to cause the international community, and hence the Special Rapporteur, deep concern. In July 1982, the association of relatives of persons who are or have been subjected to enforced residence issued a statement highlighting the conditions in which a person whose residence is restricted has to live: frequent house searches, violation of the confidentiality of correspondence, obligation to go and sign the police register as many as six times per day and intimidatory measures against individuals visiting the person serving the penalty. The immediate consequences of this practice, which is clearly contrary to article 9 of the Universal Declaration of Human Rights, were also described by this association: they are psychological (distress, isolation, uprooting), economic (no work or family income), physical (deteriorating health, and sometimes malnutrition in children) and social (enforced residence automatically entails loss of employment). When, as frequently happens, the person penalized is a student, he normally loses the benefit of his enrolment and runs the risk of seeing his university career ruined. 44/

42/ Solidaridad, No. 134, second half of May 1982.

43/ Solidaridad, No. 134, second half of May 1982. See also the Report for May 1982 of the Chilean Commission on Human Rights, p. 19.

44/ See Chilean Commission on Human Rights, Report No. 7, July 1982, annex 3.

V. RIGHT TO PROCEDURAL GUARANTEES

A. Right to an effective remedy

133. This is a universally recognized and vitally important right, disregard for which means eliminating all guarantees of internationally recognized substantive rights. The Universal Declaration of Human Rights, in its third preambular paragraph, declares this right to be basic to the State subject to the rule of law:

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

134. Moreover, the right to claim an effective remedy from a competent authority preferably judicial, in the event of a violation of the rights recognized in the Covenant, as well as compliance with the decision of that authority, are guarantees which the States Parties to the International Covenant on Civil and Political Rights undertake to ensure under article 2 (3) of the Covenant. Similarly, article 8 of the Universal Declaration of Human Rights provides:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

135. The importance attached by international instruments to the right to an effective remedy is reinforced, in the Americas, by article 8 of the Inter-American Convention on Human Rights, which is perhaps the most comprehensive international text on the subject. The Special Rapporteur has given special attention to this question in earlier reports. 1/

136. It should also be emphasized that the right to an effective remedy is necessarily accompanied by a whole series of guarantees for the defence, without which the exercise of this right would be illusory. Accordingly, the international rules concerning the right to a fair trial are particularly precise. It is sufficient to mention articles 10 and 11 of the Universal Declaration of Human Rights, articles 14, 15 and 26 of the International Covenant on Civil and Political Rights and article 8 of the Inter-American Convention on Human Rights. All these international provisions except the last-mentioned are enforceable vis-à-vis the Chilean State, since it has expressly accepted them. They proclaim, inter alia, the need for a prompt and effective remedy; the right of a person arrested to be informed of the charges against him; the right to be notified of his indictment by the courts; the right to be tried within a reasonable time; the right to be presumed innocent; the right of the accused to have adequate time and facilities to communicate with counsel of his own choosing and to prepare his defence properly; the right of the accused to be tried in his presence and to examine the evidence against him; the right of the accused not to be compelled to testify

1/ See, in particular, A/36/594, paras. 241-249.

against himself or to confess guilt; the right to appeal to a higher court (principle of dual instance); application of the pro reo principles of non-retroactivity of the criminal law and lawfulness of the offence and the penalty; the principles of equality before the courts, the public nature of proceedings, the independence and impartiality of the court trying the case, etc. The effective exercise of these procedural guarantees in the constitutional and legal context of the Republic of Chile has been a matter of constant concern to the Special Rapporteur in recent years. 2/

1. The remedy of protection and the remedy of amparo: question of their effectiveness

137. The right to an effective remedy is embodied in Chile's internal legislation through two provisions of the Constitution: firstly, article 20 of the Constitution provides for the "remedy of protection", which may be applied for by anyone who considers his fundamental human rights, as listed in article 19 of the Constitution, to have been violated. Secondly, article 21 of the Constitution provides for the remedy of amparo, which may be invoked by "anyone who is arrested, detained or imprisoned in contravention of the provisions of the Constitution or the laws". The competent court to which an application for amparo is submitted "may order the person concerned to be brought before it, and all officials at prison establishments or other places of detention must strictly obey its order"; in addition, it orders the immediate release of the person concerned, ensures that any legal defects are remedied or places the person at the disposal of the competent judge.

138. However, the Special Rapporteur has once again noted that, throughout 1982, the exercise of these two constitutional remedies has been extremely uncertain. This is due to the combined application of various successive declarations of a state of emergency (article 41 (4) of the Constitution) and a state of emergency due to threats to internal peace (twenty-fourth transitional provision of the Constitution). As is well-known, this situation has persisted since the date when the Constitution entered into force (11 March 1981); from that time, the rights of the defence have been suspended in areas which are vital to human rights. More specifically, no legal remedy is available in respect of administrative decisions relating to detention, enforced residence, expulsion, or prohibition of meetings or publications. Moreover, it is apparent that the rights of the defence have been constantly curtailed, with consequences in all spheres of Chile's national life. For instance, a university rector may expel a student without having to justify his decision and without the victim being able to appeal to an independent authority; the President of the Republic has considerable latitude to dismiss officials at his discretion; and the Minister of the Interior may refuse to authorize the opening of a new university without having to give reasons for his decision, which is also unappealable. In short, the Special Rapporteur has noted a steady deterioration in the exercise of the right to an effective remedy during his current mandate.

2/ See, in particular, A/36/594, paras. 55-73 and paras. 225-249; E/CN.4/1484, paras. 59-75.

139. In addition to the factors already mentioned, there are two further reasons for this: firstly, the general feeling that in most cases applications for amparo are futile; secondly, the fact that in 1982 lawyers associated with the protection of human rights continued to be subjected to threats and assaults, as is emphasized in a report by the Legal Department of the Vicaría de la Solidaridad, which notes that these acts of intimidation "have coincided with statements by officialdom assimilating the protection of human rights to 'criminal complicity with terrorism', a rash assertion which can explain any extreme act". 3/ In this connection, the Special Rapporteur notes that, on 7 June 1982, Mgr. Juan de Castro, head of the Vicaría de la Solidaridad, lodged a complaint with the Santiago Court of Appeal "against those responsible for the offence of unlawful association and threats committed by members of the self-styled Comunidad Catacumba". 4/ The complaint states that six lawyers and one journalist connected with this humanitarian organization were threatened by letters and graffiti; the intimidation was designed to ensure that the Vicaría "should in future refrain from providing legal assistance" and that the lawyers "should stop providing their legal services to the Vicaría". 5/ The complainant also stated that he suspected "the existence of a vast and dangerous criminal organization involving many persons of different levels and ranks who perform specific functions within this organization." 6/ During the preliminary inquiries ordered by the examining magistrate in the case, one of the lawyers who had been threatened stated: "I was particularly struck by the fact that the envelope containing the written threats which was sent to my home used my three names ... when I am known in my public and private life only by the third of these names ... [this] suggests that the senders had access to the records of some public identity service such as the Identity Card Office ... Furthermore, the envelope was sent to my private address, which is not listed in the telephone directory and is known only to my friends and family, but which does appear in the records of the Identity Card Office". 7/

140. These are some of the reasons which may explain the decline in the number of applications for amparo submitted to the courts during the first five months of 1982 by comparison with the corresponding period in 1980 and 1981, as shown by the following table. The table has been prepared from information transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights.

3/ El Derecho de Defensa en Chile. Report submitted by the Legal Department of the Vicaría de la Solidaridad to the second National Seminar of Lawyers Associated with the Protection of Human Rights, Santiago, 1982.

4/ El Mercurio, 8 June 1982. See also Solidaridad, first half of June 1982.

5/ Solidaridad, Ibid.

6/ Solidaridad, Ibid.

7/ El Mercurio, 16 June 1982.

Table 8

Applications for amparoCity of Santiago, 1982

MONTH	ON BEHALF OF PRISONERS		EARLY APPLICATIONS		ON BEHALF OF EXILES		TOTAL	
January	20	(46)	1	(1)	-	(-)	21	(47)
February	5	(6)	1	(4)	-	(-)	6	(10)
March	21	(33)	2	(4)	1	(3)	24	(40)
April	18	(38)	1	(1)	2	(3)	21	(42)
May	13	(25)	2	(2)	1	(1)	16	(28)
TOTAL	77	(148)	7	(12)	4	(7)	88	(167)
In 1981	156	(283)	43	(72)	4	(4)	202	(359)
In 1980	129	(265)	25	(40)	32	(33)	186	(338)

Note: The figures between brackets indicate the number of persons covered by the applications.

141. The information concerning judicial practice which the Special Rapporteur has collected during his present mandate corroborate the statements mentioned above. For instance, during the trial of nine persons connected with the Christian Left Party (Partido de Izquierda Cristiana), including senior officials of the Chilean Commission on Human Rights and members of the Group on Constitutional Studies, counsel for the defence drew attention to a number of major procedural irregularities. One of them, namely CNI's refusal to agree to the request for two of its agents who had participated in the arrest and the interrogation of some of the defendants to appear in court, caused counsel for the defence to lodge a complaint. It was requested that the agents concerned should be questioned in the Office of the Military Prosecutor, which the examining magistrate refused to agree to; thereupon the Director of CNI asked that his agents should be questioned on CNI premises, citing a decision of the full Supreme Court in support of his request. When the judge also turned down this further request, CNI transferred the agents concerned to the town of Arica and again asked that they should be allowed to testify before the local military prosecutor under a rogatory commission. The judge finally agreed to this last request and the complaint lodged with the Santiago Court of Appeal was rejected. ^{8/} Finally, eight of the persons accused

^{8/} See Chilean Commission on Human Rights, Report for July 1982, pp. 29-30. See also El Mercurio of 28 July 1982 and 1, 5 and 6 August 1982.

were sentenced to 541 days' exile for an offence under Decree-Law No. 77 of 13 October 1973 concerning unlawful association, and the ninth was sentenced to a prison term of the same length. These sentences are significant because they were imposed on peaceable political dissidents who had previously spent a lengthy period in detention pending trial, the Santiago Court of Appeal having revoked the bail granted to several of them on the grounds that it could "justifiably be presumed that the accused, given their intellectual background, will continue the activities mentioned in the prosecutor's application". ^{9/}

142. By contrast, on 5 February 1982, four students accused of offences under article 6 (a) of the Internal Security of the State Act, which refers to persons who create disturbances or engage in other acts of violence designed to disrupt the peace, were acquitted in first instance. The judgement stated that the offence in question concerned "serious and major disturbances, and not merely disturbances affecting the peace or calm". In the particular case, it was stated, the disturbances ascribed to the four students did not constitute breaches of the public order, defined as "peaceful and harmonious coexistence in a context of mutual respect under the sovereign authority of the State and the law, the legal interest protected being the preservation of social peace and the proper functioning of the country". The judgement concluded that the public disturbances concerned were, rather, designed "to draw attention to questions of various kinds such as the right to education, criticism of the situation of exiles, a request for compensatory adjustments and the anniversary of a proscribed political party".

143. On 8 March 1982 four members of the same family were arrested. Apart from the fact that there were inadequate grounds for this arrest, the circumstances in which it was effected are typical of an unlawful arrest: the arrest was made without the appropriate warrant being issued by an authorized official; consequently, the persons concerned were not notified of a warrant for their arrest in the manner prescribed by law; the individuals who carried out the arrest did not identify themselves, and it was subsequently learned that they were CNI agents; the four persons arrested were taken by force to a secret place of detention, where they were held incommunicado at all times, blindfolded and subjected to various kinds of maltreatment and torture. All these features make the term "arrest" a real euphemism in the circumstances: it would be more accurate to talk of "abduction". Moreover, the twenty-fourth transitional provision of the Constitution was wrongly applied to these four persons, whose "abduction" in the conditions described was extended from 5 to 20 days because of their alleged involvement in terrorist acts.

144. An application for amparo was submitted on the grounds that these four persons had been unlawfully arrested; two of them were released on the eighth day of their detention without any kind of proceedings having been taken in the courts, while the other two (Juan Ibador Castro Rojas and Enzo Iván Riffo Navarrete) were held for 18 days by CNI in a secret place where they were subjected to the illegal

^{9/} Decision of the Santiago Court of Appeal of 10 February 1982.

treatment mentioned. On 17 March 1982, the Santiago Court of Appeal declared the application for amparo admissible and ordered the persons concerned to be brought before it. ^{10/} Neither the Ministry of the Interior nor CNI complied with the Court's order; on 18 March, the Director of CNI sent the President of the Court a note stating that "it is not possible to implement the decision taken", since the two persons were under arrest by virtue of an order of the Ministry of the Interior. In his note, the Director of CNI failed to specify the legal provision under which a person arrested on the order of the Ministry of the Interior could not be placed at the disposal of a court of the Republic when that court ordered such action to be taken; that would seem to constitute contempt of court. Nevertheless, on 18 March 1982, the Court of Appeal rejected the application for amparo without making any finding regarding the alleged involvement of the prisoners in terrorist acts or the unlawfulness of their incommunicado detention at a secret place, thus invalidating its earlier decision ordering the persons concerned to be brought before it. An appeal was lodged with the Supreme Court, which upheld the decision of the Court of Appeal on all points. However, a dissenting opinion was entered by two of the judges, who expressed the view that the Court should have asked the Ministry of the Interior for further information "regarding the nature of the acts which it deemed to be of a terrorist character and which would have provided justification for extending detention by 15 days". The application for amparo received only one dissenting vote - relating solely to the matter of the extension of detention by 15 days - on the grounds that the powers conferred on the head of State by the twenty-fourth transitional provision should be exercised only "when terrorist acts have been committed" and that, in the case under consideration, "the relevant order should have specifically indicated the nature of the terrorist act committed and the manner of the person's apparent involvement in it, since it is for the Court, under the amparo procedure, to determine whether the higher administrative authority has complied with the constitutional provision which it invokes to justify the extension of the detention".

145. Although it rejected the application for amparo, the Supreme Court nevertheless decided to bring the attention of the "full Court" to CNI's refusal to comply with its decision of 17 March 1982 so that it could adopt "as appropriate, the relevant measures". On this occasion, counsel for the persons concerned submitted a petition to the full Court in which he once again affirmed "that the persons covered by the application for amparo are not and have never been involved in terrorist acts of any kind and that accordingly the extension of the period of detention to 20 days was illegal", as were the characteristics of their detention "in a secret place where they were held incommunicado and subjected to torture...". Thus, counsel for the defence went on to state, "CNI has once again sullied the honour of innocent persons", even arranging for insidious and distorted reports to be published in the press. Counsel for the defence also emphasized the fact that CNI "refused to comply with the Court's decision and to bring before it the persons covered by the application for amparo" and described as "highly irregular" the

^{10/} The Court's decision was reported in the press: El Mercurio and La Tercera de la Hora, 18 March 1982.

attitude of the Director of CNI in "refusing to comply with a binding order from a court of the Republic, in flagrant violation of article 73 (4) of the Constitution". He concluded by stating that "CNI has a consistent policy of disregarding court decisions", citing numerous precedents to substantiate his claim.

146. On 17 March 1982, the Committee for the Defence of Youth Rights (CODEJU) sent the President of the Supreme Court a written statement assessing the situation with regard to the human rights of young people and analysing the attitude of the courts. It stated: "CODEJU recognizes that progress has been made as regards the human and material resources applied to improving the administration of justice in Chile". 11/ However, it emphasized that "these reforms of the Judiciary will be useless unless they are accompanied by a fundamental change in the way our higher courts administer justice", particularly in regard to "violations of the rights of individuals"; at present, "the courts are not sufficiently determined to prevent such violations". This led CODEJU to call upon "the Supreme Court to adopt a firm and effective position in defending the rights of individuals, in accordance with the historic responsibility incumbent upon the Judiciary". 12/

147. Between March and April 1982, a further case once again highlighted CNI's customary practices: unlawful arrest, detention of persons in secret places, improper extension of administrative detention up to 20 days, etc. It also provided a further demonstration of contempt for judicial authorities, since the person detained was not brought before the court in accordance with its instructions and the order to release him was not carried out. On 19 March 1982, Juan Carlos Silva Martínez was arrested at his home in Viña del Mar by five persons in civilian clothes (one of them hooded), who stated that they belonged to the local Carabineros station. Up until 23 March 1982, the Carabineros denied being behind Silva's arrest, stating that he was in the hands of CNI but without specifying his place of detention. The administrative authorities extended Silva's detention, during which he was held incommunicado in a secret place, until 5 April 1982; on that date he was placed at the disposal of the Valparaíso Military Prosecutor and transferred to the public prison, where he was detained until 8 April 1982; he was then granted unconditional release, since the charges made against him by the Government were declared to be baseless and completely untrue. During his detention at the secret CNI premises, Silva was ill-treated. Two other persons arrested at the same time as himself - Pedro Leonardo López Fabbri and Basilio Barrientos Arismendi - experienced a similar fate. An application for amparo having been submitted on Silva's behalf, the Valparaíso Court of Appeal declared it admissible and, on 29 March 1982, ordered "the prisoner to be placed at the Court's disposal... by the National Information Agency"; this was to be done "by the Director of this Agency, transmitting his instructions as rapidly as possible". In the same decision, the Court reiterated the order already given to

11/ The official press gave prominence to this statement. See, in particular, El Mercurio of 11, 17 and 19 June 1982 and 1 and 11 July 1982.

12/ Text quoted by the Chilean Commission on Human Rights, Report for March 1982, pp. 17-18.

the Ministry of the Interior to "report within 48 hours, by the same means (telegraph), on the grounds justifying the detention". This time-limit expired without the person concerned having been brought before the Court, and without the Ministry of the Interior having supplied the information requested regarding the grounds for the detention. Given this contempt of court, counsel for the defence made a further request, on 1 April, that the Court's decision ordering the prisoner to be brought before it should be carried out. Finally, on 3 April 1982, the Court of Appeal granted the application for amparo and ordered the Ministry of the Interior to release Silva immediately. On 5 April, the Court, noting that its orders had once again been disobeyed, sent the Ministry of the Interior a communication requesting it to explain "why it failed to comply with the Court's decision ordering the immediate release of the person concerned and, instead, placed him at the disposal of the Valparaíso Military Prosecutor". The Ministry of the Interior ignored the decision of the Court of Appeal, did not reply to its request (which constituted a fresh contempt of court) and submitted an appeal against its decision to the Supreme Court. On 15 April 1982, when the person concerned had instituted criminal proceedings against those responsible for the ill-treatment to which he had been subjected during the period when he had been held incommunicado in a secret place by CNI, the Supreme Court rejected the application for amparo.

148. The Special Rapporteur considers that it is worth examining in some detail the various judicial decisions rendered in the "Silva case", because of the importance of the points with which they deal:

(a) Regarding the extension of the period of administrative detention by 15 days, in pursuance of the twenty-fourth transitional provision of the Constitution, the Court of Appeal considered that "it is justified only when terrorist acts with serious consequences have occurred and provided, of course, that the deeds of which the prisoner is accused bear a relation to those acts, this latter requirement deriving implicitly from that provision". In the view of the Supreme Court, on the other hand, the twenty-fourth transitional provision "does not require that such terrorist acts should be ascribed to the person concerned but simply that their existence must be demonstrated, this being consistent with the purely administrative nature of this detention, which is not at all judicial in character".

(b) Regarding the need to show sufficient grounds to justify the extension of the period of administrative detention, the Court of Appeal found it "essential for the authority to specify these grounds ... [for this] is of vital importance in enabling the Court to determine whether such authority has acted in accordance with the law and within the limits of the cases covered by it; in the present case, in the absence of information, the Court cannot conclude that the prisoner participated in terrorist acts with serious consequences". On the other hand, Judge Osnovikoff, in casting her dissenting vote on the ruling of the Court of Appeal, stated that the twenty-fourth transitional provision "has constitutional status and does not indicate that the authority empowered to apply it is required to specify the acts which could be described as 'terrorist acts with serious consequences'; it is sufficient, in a state of emergency (sic) or internal danger threatening national security, that the authority should be of that judgement". The Supreme Court did not pronounce on this point.

(c) As to the unlawfulness of the administrative detention in a secret place (CNI premises), the Court of Appeal observed that such an act "is contrary to the code of procedure applicable to this subject, which prescribes that places of detention must be public and known, since the power to arrest an individual at his home or in places other than prison establishments, in accordance with the Constitution, in no way implies that he may be detained in secret places". On the other hand, in her dissenting opinion, Judge Osnovikoff considered that the arrest warrants conformed to the legal requirements regarding the place of detention, since they stated that the person concerned "was to be detained in a specific, fixed place on premises belonging to CNI at Valparaíso". The Supreme Court also refrained from pronouncing on this question.

(d) As to the contempt of court constituted by the failure to execute a warrant of habeas corpus, neither the Court of Appeal nor Judge Osnovikoff (dissenting opinion) referred to this issue. However, the Supreme Court considered that "although it is true that the Valparaíso Court of Appeal ordered CNI to bring the person concerned before it and CNI did not carry out this order, it is nevertheless the case that that Court preferred not to insist on the matter and rendered the judgement which is the subject of the application; for this reason this Court refrains from adopting any measure regarding the omission of which that body was guilty".

149. Consequently, in its ruling, the Supreme Court once again took the position that "the human right constituted by the remedy of amparo or habeas corpus does not exist to protect persons who are the subject of administrative detention measures when such measures are carried out by virtue of a warrant and the exercise of these extraordinary powers is subject to no control. Individual security is thus left solely to the decision of the Minister of the Interior and its application by the police services, which deprives citizens of any right of defence". ^{13/} This situation had already been criticized by the Chilean Commission on Human Rights in a petition which it addressed to the Government Junta on 17 June 1981 requesting it to "enact legislation to safeguard the human right of habeas corpus or amparo". Moreover, it was indicated in that document that every possible effort should be made "to prevent persons from being reduced to mere servants of the State". Unfortunately, there has been no reply to this petition. ^{14/}

2. The Supreme Court decision of 28 April 1982 concerning the right to an effective remedy

150. The gravity of the statements just mentioned was, however, attenuated by the decision handed down by the full Supreme Court on 28 April 1982 in connection with the application for amparo on behalf of Juan Ibador Castro Rojas and Enzo Iván Riffo Navarrete, particularly as a result of the communication addressed by the

^{13/} Opinion expressed by the Chilean Commission on Human Rights in its Report for April 1982, p.3.

^{14/} Chilean Commission on Human Rights, Report for April 1982, p.4.

Director of CNI to the Santiago Court of Appeal informing it that "it will not implement the Court's ruling". In response to this contempt of court, the full Supreme Court adopted the decision concerned, addressing itself to General Pinochet "to impress upon him the need to arrange for the National Director of that Service (CNI) to be given instructions informing him" that he must "comply strictly with the constitutional and legal obligation to execute the decisions of the ordinary courts, since he has no power to assess the grounds, appropriateness, justification or lawfulness of a judicial order which he is called upon to carry out". The President of the Republic responded favourably to this request on 30 April 1982, informing the Court, inter alia, "that it could be sure that in future the constitutional and legal provisions applicable in this matter will be strictly respected". Finally, on 4 May 1982, the full Supreme Court received the Minister of Justice who, on behalf of the President of the Republic, "gave the Court explanations regarding CNI's failure to execute the decision of the Court of Appeal". The Minister ascribed the situation created by this contempt of court to "inaccurate information provided on this matter by a legal adviser" of CNI. At the same time, the Minister assured the judges that "the supreme Government is anxious to ensure the adoption of all necessary measures and safeguards, so as to avoid any recurrence of such incidents in the future" and added that "officials who in any way violate a judicial decision or impede its execution will be severely punished". On 4 May 1982, the Supreme Court adopted a decision informing "the head of State that the Supreme Court appreciates his assurances that there will be no repetition of such incidents". 15/

151. The full Supreme Court's decision of 28 April was regarded as particularly important, since it implied the settlement of "a dispute relating to particularly sensitive matters such as the protection of internal security, the individual guarantees of persons accused of acts detrimental to that security and the powers of the courts dealing with applications for amparo during the state of emergency referred to in the twenty-fourth transitional provision". 16/ Máximo Pacheco, President of the Chilean Commission on Human Rights, stated the following: "for the first time in the eight years of this Government's existence, the Judiciary has not only demanded that the Executive should ensure that its law enforcement and security services respect its decisions but has also declared the provisions of the Code of Penal Procedure regarding the remedy of amparo to be still in force, notwithstanding the twenty-fourth transitional provision". 17/

15/ Cf. The text of the three communiqués published in El Mercurio on 11 May 1982.

16/ El Mercurio, 12 May 1982, editorial.

17/ Chilean Commission on Human Rights, Report for May 1982.

152. However, the sources consulted by the Special Rapporteur have emphasized that undue importance should not be attached to the implications of the decision of 28 April 1982 as regards recognition of habeas corpus and other procedural guarantees. The Vicaría de la Solidaridad has observed that it will be necessary to wait for new applications for amparo to be submitted in similar situations before the real willingness of the authorities to apply this decision of the Judiciary can be assessed. Moreover, there is still disagreement within the Judiciary concerning the interpretation of the twenty-fourth transitional provision of the Constitution, since "the majority of Supreme Court judges take the view that no recourse is possible against measures adopted by the authorities in pursuance of this provision. On the other hand, a minority among them - two or three judges - consider that freedoms cannot be left solely to the decision of an administrative authority in a State subject to the rule of law". 18/

153. A fortiori, genuine rectification of such decisions by the courts, entailing full restoration of the right to an effective remedy, should have the following characteristics: 19/

(a) The possibility of analysing the legal grounds for arrest warrants issued by the President of the Republic. In the case of most orders for detention, expulsion from the country or prohibition of return adopted by the Executive, it has not been determined whether or not the orders have any legal basis, since the courts have not insisted on the matter.

(b) Observance of the time-limits prescribed by law so that applications for amparo are examined promptly. Under the practice followed to date, such applications have not been considered within the legal time-limit of 24 hours and the courts have thus acted negligently, to the detriment of those whom the law requires them to protect.

(c) The possibility of remedying defects in the manner in which detention is carried out. This situation occurred fairly frequently during past consideration of applications for amparo by the courts, since they were called upon not only to pronounce on the lawfulness or otherwise of the detention, but also to verify the circumstances in which such detention had been effected and to remedy defects in the manner in which it had occurred. The courts are not, however, exercising these powers in respect of most of the applications for amparo now being submitted.

(d) The need to prosecute those responsible for arbitrary arrests. Practice in recent years has shown the courts' indifference to prosecuting those responsible for arbitrary detention, despite the persistence of such detention and the allegations of torture, incommunicado custody and other irregularities which have already been reported.

18/ Hoy, 19-25 May 1982.

19/ Cf. Chilean Commission on Human Rights, Boletín Informativo Internacional No. 18, May 1982, pp. 2-3.

154. In fact, the reports received by the Special Rapporteur concerning cases occurring after the decision of 28 April 1982 have revealed no change in the situation. For example, the Special Rapporteur has been informed of an application for amparo submitted to the Santiago Court of Appeal on 15 July 1982 concerning the unlawful detention of Paz Luxoro Vicencio on the previous day. This application once again denounced the characteristic features of an unlawful arrest: it was carried out by "agents in civilian clothes" who "claimed to belong to the National Information Agency but who produced neither an arrest warrant nor a warrant to search" the home of the person concerned. These acts constituted "an attack on her personal freedom" and also violated the constitutional guarantees concerning unlawful arrest, embodied in article 19 (7) of the Constitution. The situation is exacerbated by the fact that the person concerned "suffers from a serious neurological complaint" since "she undergoes periodic loss of consciousness, combined with cranial and brachial clonospasms evidenced by encephalographic variations consistent with the clinical symptoms". The crises are aggravated in "stress" situations such as imprisonment or ill-treatment during incommunicado detention. These very serious facts were confirmed by a letter addressed to the Director of CNI on 15 July 1982 by Dr. Paz Rojas, a neuropsychiatrist and the prisoner's personal doctor. The Court of Appeal granted the application for amparo in part and on 16 July 1982 ordered the neuropsychiatrist to visit the CNI premises and examine the prisoner together with a CNI doctor. According to the certified document drawn up on this occasion, CNI refused to comply with the court's decision and to allow the prisoner to be examined, which meant that the doctor was unable to carry out the court's order. Such being the case, it was once again pointed out that the detention of Paz Luxoro was unlawful and that the CNI's failure to carry out the judicial decision was a clear case of contempt of court, and the Court was requested to order the person concerned to be brought before it so as to "verify her state of health directly and ensure strict observance of the procedural guarantees embodied in the Constitution". However, the Court did not grant the application and, after being held incommunicado for five days, the person concerned was placed at the disposal of the military prosecutor, who ordered her to be committed to the Women's Correctional Institution of Santiago. It was not until 20 July 1982 that Paz Luxoro's personal doctor was allowed to visit her. On that occasion, the doctor was able to establish that during the five days of Paz Luxoro's unlawful detention, she had been subjected to various forms of ill-treatment and torture, threats, blows and electric shocks which had provoked "four crises of absence and myocloni and prolonged hemicrania on the left side of the head". Currently "she has a left-side subclavicular ecchymosis of about 5 centimetres in diameter, swelling in the left sternocleidomastoid region, which is painful, and contraction of the back and neck muscles". During the neuro-psychiatric examination, the patient was found to be lucid but somewhat disoriented, with psycho-motor difficulties and anxiety. She also referred to "nightmares, screaming and despair during the first night in the correctional institution". She is in need of permanent neuro-psychiatric supervision. 20/ The Special Rapporteur therefore considers that the case concerned once again highlights the inadequate enjoyment of the right to an effective remedy and to other procedural guarantees in

20/ According to the medical report prepared by Dr. Paz Rojas.

the context of the protection of the most elementary rights of the human being. In conclusion, doubts must remain as to the real significance of the full Supreme Court's decision of 28 April 1982, and the Special Rapporteur has been unable to detect any improvement in the attitude of the Judiciary since that date.

155. These assertions of the Special Rapporteur are corroborated by the recent proceedings in connection with investigations carried out at a court's request in such well-known cases as that of the murder of the trade-union leader Tucapel Jiménez Alfaro. In this case, the complainant's lawyers asked for 15 new judicial steps to be taken, although they stated that they had the impression that "what we have here is an investigation ... which is paralysed in some respects, since the steps requested have not been taken by the auxiliary bodies as promptly as we consider necessary. There is a climate of justified fear demonstrated, for instance, by the fact that the witnesses for the prosecution whom we have presented have received threats to their own lives or the lives of their relatives and have had to leave the country". ^{21/} The leadership of the National Association of Public Employees (ANEP), of which Tucapel Jiménez was the President, submitted an early application for protection on his behalf "in response to the notification which ... the Director-General of Police ... sent the President of ANEP ... informing him that the meetings being held at the headquarters of the trade union of which he is President are contrary to the legal provisions in force". The object of the application for protection was "to draw the Judiciary's attention to the fact that the trade union leaders have no means of defence". They added that they had noted "that a climate is currently being created similar to that which existed during the days preceding the murder of Tucapel Jiménez". ^{22/} Emilio Torres, President of the Confederation of Copper Workers and senior official of the National Trade Union Co-ordinating Body, received a similar warning; according to him, the Director-General of Police "following instructions of the President of the Republic, informed me that my activities as a trade union leader were detrimental to the interests of the country ... and advised me that, if I persisted in my activities, I would be thrown out of Chile". ^{23/} These various developments occurred in connection with the murder of Tucapel Jiménez, the judicial inquiry into which has so far been inconclusive.

156. The judicial inquiry into the case of the "Viña del Mar psychopaths", ^{24/} concerning which the Court of Appeal decided not to conduct a further investigation - a decision which led the injured party's five lawyers to lodge a complaint with the Supreme Court - will probably, according to certain reports, have the same result. ^{25/} The same will doubtless be true of the judicial investigation into the

^{21/} Statement by the lawyer Enrique Silva, reproduced in El Mercurio on 14 August 1982.

^{22/} El Mercurio, 13 August 1982.

^{23/} El Mercurio, 15 August 1982.

^{24/} See above, chapter II, A.1.: Right to life: cases of abuse of authority or misuse of weapons.

^{25/} El Mercurio, 15 August 1982.

"COVEMA" case, 26/ in which the complainant's lawyers requested that the Identity Card Office should establish the real identity of the security agent recognized by Cecilia Alzamero as being one of the persons who abducted her; this request was rejected by the inspecting magistrate. The confrontation between the alleged abductor and the witnesses produced by the complainant "took place on CNI premises, where witnesses were conducted past rows of agents armed with sub-machine guns. The premises were surrounded by detachments of carabineros, Gendarmería officers and CNI agents, as well as large numbers of police vehicles". 27/ Because of the circumstances, the validity of the confrontation, which in fact produced no results, should have been challenged. Finally, the Special Rapporteur considers it necessary to recall at this point the insignificant results of the judicial inquiries requested in the cases of detained and missing persons whose bodies have been found in recent years. 28/

B. Special jurisdiction

1. Right to equality in the administration of justice

157. "It is in relation to trials for political offences that departures are most often made from the principle that everyone has a right to be tried by his natural judge; special courts have from time to time been set up on an ad hoc basis in various countries to try such offences, especially in conditions of political turmoil. Such establishment of a special court to try one person or a group of persons is to be regarded with the gravest suspicion. Even the establishment of special courts having continuous jurisdiction over crimes against the security of the State may carry with it the possibility of discrimination on political grounds". 29/ Moreover, in the Sub-Commission on Prevention of Discrimination and Protection of Minorities it was pointed out that "the distribution of jurisdiction among types of courts by a State may have discriminatory consequences, since the guarantee accorded to the individual may not be the same in all courts". Attention was drawn in particular to "the dangers arising when military courts are given jurisdiction over civilians". 30/ As the Special Rapporteur, Mr. Abu Rannat, points out, "Military tribunals in fact have jurisdiction over civilians in a number of countries; the offences which they are empowered to try are often of a political character". 31/

26/ See above, chapter II, A.1.: Right to life: cases of abuse of authority or misuse of weapons.

27/ Chilean Commission on Human Rights, Report for July 1982, p. 28. See also Hoy, 4-10 August 1982.

28/ See above, chapter III, A.2.: Missing persons.

29/ Mohammed Ahmed Abu Rannat, Study of Equality in the Administration of Justice. Document submitted by the author in his capacity as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations, New York, 1972, p. 49.

30/ E/DN.4/Sub.2/SR.485, p. 10.

31/ See Study of Equality in the Administration of Justice, op.cit., p. 48.

158. In earlier reports to the General Assembly, the Special Rapporteur has already referred to the special situation in Chile in this area. ^{32/} In this connection, he emphasized the considerable extension of military jurisdiction which began on 11 September 1973 and culminated on 10 March 1981 with the promulgation of Decree-Law No. 3655. As a result, military jurisdiction, which was originally conceived as being exclusively for the trial of "military offences" (meaning offences in which the perpetrator and the facts are of a military character), has been completely transformed, to a point where it would be more appropriate to refer to "special jurisdiction". ^{33/} Under article 5 (1) of the Code of Military Justice, " 'military offences' are all those referred to in the present Code or in special laws giving the military courts competence to try such offences". This broad definition has allowed many special laws to be introduced which give the military courts competence to deal with acts classified as being essentially political offences. Examples of such legislation are the Control of Firearms and Explosives Act, the Internal Security of the State Act, Decree-Law No. 77 concerning unlawful associations, Decree-Law No. 81 concerning disobedience and unlawful entry into the country, and Decree-Law No. 640 concerning states of emergency. The result is that, according to figures compiled by the Legal Department of the Vicaría de la Solidaridad, "in our country, 95 per cent of persons tried by military courts are civilians", ^{34/} this completely alters the character of what legal writers, comparative law and international law regard as "military offences".

2. Competence of the military courts in time of peace

159. As regards military justice in time of peace, the exercise of the right to amparo is seriously impaired. Not a single one of the complaints lodged with the Santiago military prosecutors during the last four years on grounds of homicide, arbitrary arrest, wrongful incommunicado detention, unlawful coercion or acts of violence allegedly attributable to members of CNI or other military bodies has resulted in the conviction of the person responsible, even when he has been identified and the offence has been substantiated. In most cases, however, the military prosecutors have been unable to identify the offenders because of the obstructionism of CNI, which has repeatedly refused to reply to communications addressed to it by the military courts, without those courts reacting in any way to that refusal. Moreover, there are lengthy delays before complaints lodged with the military prosecutors are examined; the opening of an investigation is contingent upon the accuracy of the complaint being attested to by its author who, being in detention, is not always able to do so; the author is also required to furnish sufficient proof of the existence of the offence; steps essential to the

^{32/} See, in particular, A/36/594, paras. 55-73.

^{33/} According to the document El Derecho de Defensa en Chile, prepared by the Legal Department of the Vicaría de la Solidaridad and submitted to the Second National Seminar of Lawyers Associated with the Protection of Human Rights, Santiago, 1981, p. 17.

^{34/} See El Derecho de Defensa en Chile, *op.cit.*, p. 5.

investigation are taken late (for instance, the medical report of the Institute of Forensic Medicine certifying the injuries sustained by alleged victims of torture); the inquiry drags on and complaints result in a stay of proceedings because of lack of evidence of the offence or failure to identify the culprit. The foregoing leads the Special Rapporteur to conclude that the military tribunals are not really interested in investigating alleged offences by members of CNI or members of the armed forces where the victims are involved in proceedings relating to alleged political offences. In the light of this situation, lawyers belonging to the People's Rights Defence Committee (CODEPU) have proposed to "draw the Supreme Court's attention to the difficulties which they encounter during the consideration of cases dealt with by the military prosecutors". They also complain that these prosecutors "do not disclose the results of the investigation within the appointed time-limits" or postpone the case without just cause at the investigating stage "through committal decisions or by requesting additional inquiries which entail undue delay in the proceedings". They also ask to be allowed to appeal against "committal decisions and refusals to grant release pending trial". 35/

160. So far, the only response to these requests has been the appointment in May of Major (J.) Christian Plass as Special Prosecutor to handle all proceedings relating to acts of violence and terrorism. This appointment is intended to "expedite all cases" in which subversives in Santiago are implicated, as well as to co-ordinate "all aspects of investigations relating to these proceedings". 36/ Since June, the Special Military Prosecutor has replaced the various military prosecutors competent until that date.

3. Competence of the military courts in time of war

161. The Special Rapporteur has also mentioned the latest provisions adopted in Chile in this area, which are embodied in the aforementioned Decree-Law No. 3655 of 17 March 1981. These provisions reintroduce wartime military courts, which amounts to reviving the procedure of the courts martial. 37/ Decree-Law No. 3655 provides that any offence, whatever its nature, which directly or indirectly results in the death or impairment of the physical integrity "of members of the armed forces or the law enforcement authorities or any offence which, because of its nature and the circumstances in which it was committed, cannot fail to suggest that such persons were the targets because of their official capacity, shall be dealt with by the Wartime Military Courts referred to in book I, title III, of the Code of Military Justice". Thus, at the same time as the Constitution entered into force on 11 March 1981, when the country was not in a state of siege but a state of emergency because of an alleged "threat to internal peace", the wartime military

35/ El Derecho de Defensa en Chile. Statement made by the Concepción branch of CODEPU to the Second National Seminar of Lawyers Associated with the Protection of Human Rights, Santiago, 1981, pp. 3-4.

36/ El Mercurio, 22 June 1982.

37/ See E/CN.4/1484, paras. 59-75.

courts, as well as the procedures and penalties applicable in time of war, reappeared without there existing the objective conditions specified in the Code of Military Justice, which requires that the State should be in "time of war", that the authorities should determine "the part of the national territory in respect of which such courts are to exercise their jurisdiction" and that the authorities should have indicated "the time or period during which such courts are to exercise their jurisdiction". It should be added that, under article 79 of the Constitution, these courts are not subject to the administrative, disciplinary and financial supervision of the Supreme Court. This entails a violation of the right to appeal against a conviction as well as of the principle of legality, since the wartime military judge may act entirely at his own discretion, reaching decisions "according to the dictates of his conscience". It could therefore be said that these courts do not take jurisdictional decisions as such but, rather, mere administrative decisions or decisions regarding military discipline which derive from the power of command of the head of the armed forces, which he exercises either directly or indirectly through the court martial. Mention may be made of other irregularities in the procedure: for instance, evidence is gathered by the Military Prosecutor and weighed according to his conscience, it is impossible to appeal against decisions of the Commander-in-Chief, etc.

162. What should really be emphasized, however, is the inadequacy of the guarantees needed for the right to a legal defence in proceedings in a wartime military court; this inadequacy became apparent in the course of the proceedings against Carlos Veloso and Guillermo Rodríguez Morales and, during the Special Rapporteur's current mandate, the proceedings against Fernando Valenzuela Espinoza. ^{38/} The Special Rapporteur has already drawn attention to the lack of impartiality and independence of these courts, which are more closely related to the military command than to the administration of justice; he has also mentioned the defect of irremovability and the absence, under the wartime procedure, of a committal decision, which makes it difficult for the accused to secure pre-trial release. In fact, detention may be for an indefinite period and the detention order may be issued even when an individual's involvement in an offence is only "suspected". All these special features of the procedure are departures from the guarantees embodied in the Code of Penal Procedure.

163. As regards the right to an effective remedy under military jurisdiction, mention has also been made of the common practice of declaring inadmissible applications for amparo in respect of orders issued by the wartime military prosecutor on the grounds that it was for the Commander-in-Chief "to fully exercise military jurisdiction" over the territory under his authority. According to articles 79 and 86 of the Political Constitution, the power of protection of the Supreme Court is exercised only in respect of the administration of "peacetime" military justice. Thus, the proceedings of wartime military courts do not admit of an application for amparo in the event of an allegedly unlawful arrest, despite the fact that the remedy of amparo is a constitutional guarantee which cannot be countermanded by a lesser-ranking law. The same applies to the right to a defence

^{38/} In this connection, see Brent Knazan, "Consejo de Guerra" in time of peace, report on a visit to Chile from 17 to 24 September 1981, p. 6 et seq.

before the wartime military courts, for if the accused does not choose a lawyer to defend him, the prosecutor may appoint one for him; counsel for the defence is allowed access to the file only between the time when he is appointed and the time when the court martial meets, which may be a matter of only a few hours; the method followed, notably in regard to the examination of evidence, is not an adversary procedure. Finally, it is impossible to appeal against the judgement when the Commander-in-Chief in his capacity as military judge hears the case in single instance; in these circumstances, appeals for review and reversal are excluded.

164. The case of Fernando Valenzuela Espinoza, which occurred in 1982, gives a good illustration of the consequences of the application of Decree-Law No. 3655/1981. Valenzuela was arrested on 9 March by members of CNI, held incommunicado in an unknown place for 20 days and then charged with the murder of a CNI member, Carlos Tapia Barraza, which had occurred in June 1981; 39/ he was placed at the disposal of the Office of the Second Military Prosecutor. His lawyer submitted a complaint to the Office, stating that Valenzuela had been subjected to coercion in the form of "physical and mental torture" during the 20 days which he had spent in pre-trial detention, when he had been "compelled to sign a confession admitting to the murder". On 12 April 1982, the Commander of the military garrison at Santiago ordered the convening of the court martial which was to try Valenzuela. The lawyer of the accused submitted an application for protection in respect of this decision and of the steps taken by the wartime military prosecutor, which meant that Valenzuela "is currently being tried by a wartime military court in accordance with the relevant procedure". Moreover, since there is no war either external or internal, de facto or officially declared, the necessary conditions for suspending certain constitutional rights and guarantees are not satisfied, and the fact of convening a wartime military court and applying the corresponding procedure and penalties is a flagrant violation of article 19 (2) of the Political Constitution; to act in this manner is to make an "arbitrary distinction" in order to try a person who, in other circumstances, would have the right to appear before an ordinary court or a peacetime military court and to benefit from the applicable procedural and other guarantees. 40/ The Santiago Court of Appeal (First Chamber) rejected the application for protection submitted to it on 26 May 1982, declaring that it was not competent in the matter, that the case was not within the jurisdiction of the ordinary courts and that, in accordance with article 79 of the Political Constitution, there was no reason for it to hear the case. 41/ The person concerned then submitted a petition to the Second Military Court of Santiago, in which he asked to be tried by a peacetime court since he had been "placed at the disposal of the wartime court under the provisions of Decree-Law No. 3655 of 1981, notwithstanding the fact that the scope of that Decree-Law does not extend to

39/ El Mercurio, 28 April 1982.

40/ El Mercurio, 27 May 1982.

41/ El Mercurio, 1 June 1982.

victims of particular offences who belong to the National Information Agency", as did Carlos Tapia. 42/ This request having been rejected, Valenzuela's lawyer lodged a new appeal in the form of a complaint submitted to the Supreme Court in order to "induce the Supreme Court to declare inapplicable certain legal provisions, including Decree-Law No. 3655 of 1981", since the Decree-Law in question "violates various norms set forth in the Political Constitution in force". 43/ In response to this complaint, the Supreme Court Prosecutor issued a report in which he stated that under "the 1980 Constitution, CNI does not form part of the armed forces or the law enforcement or security forces". Since the Decree-Law empowering the wartime military courts to deal with cases involving CNI was promulgated after the entry into force of the Constitution, "a law would be necessary". 44/ Logically, Valenzuela should therefore be tried by a peacetime military court, which imposes far lighter penalties. 45/

42/ El Mercurio, 5 June 1982

43/ El Mercurio, 10 June and 10 July 1982.

44/ Hoy, 4-10 August 1982.

45/ Ibid.

VI. RIGHT TO PRIVACY: RIGHT TO FREEDOM OF THOUGHT, OPINION AND EXPRESSION

A. Right to privacy

165. International law understands by this expression protection of the most intimate values of the human individual such as reputation, family life and inviolability of the home and correspondence. This protection is designed to guarantee that the individual will not be a victim of arbitrary interference in the exercise of his rights, particularly by the public authorities. Such is the meaning of article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights which states:

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks."

166. For its part, the Political Constitution of Chile establishes some similar guarantees in its article 19, (4) and (5) and offers the possibility of a remedy of protection of the said guarantees, before the competent Court of Appeal, under the provisions of article 20 of the Constitution. Nevertheless, the retention in force of the state of emergency, proclaimed under article 41, (4) of the Constitution, produces the effect covered by paragraph 3, second subparagraph, of the same article whereby "the recourse of protection is not applicable to states of exception, with respect to actions ... affecting the constitutional rights and guarantees, which, in accordance with provisions governing such states, may have been suspended or restricted". It is true that this is not so in the case of the constitutional guarantees that embody the right to privacy, but the Special Rapporteur has been able to note that, in actual fact, the enjoyment of the said guarantees has been conditioned by the proclamation of the state of emergency. This is the only possible conclusion that can be reached from the repeated violations of all the guarantees making up the right to privacy as a result of the customary practice of carrying out unlawful arrests for political offences; and this is all the more serious when the unlawful arrests are carried out by CNI, which has no authority to carry out arrests of any kind. Unlawful arrests are very frequently accompanied by unlawful searches of the home, by threats and intimidation against close relatives of the victim and by gratuitous attacks on the honour and reputation of himself and his family, it being understood that "honour" means here "the good name and reputation of the person". ^{1/} There is thus clearly no respect for the legal provisions whereby only courts of law are entitled to order, in the context of investigations into criminal cases which are before the said courts, searches of and seizures in the homes of private citizens. Moreover, any judicial

^{1/} Expression taken from the decision given on 7 June 1982 by the First Chamber of the Supreme Court and published in El Mercurio of 8 June 1982.

search warrant must be entrusted to the law enforcement authorities, consisting solely of the officers of the Police Department and the Carabineros, CNI being excluded from such competence.

167. During the period covered by his present mandate, the Special Rapporteur has received numerous accusations and allegations concerning violations of the right to privacy. There was, for instance, the case of the Castro Rojas family 2/ with regard to the inviolability of the home. Another example brought to the attention of the Special Rapporteur concerns illegal entry into the residence of Mrs. Haydée López Cassou, a doctor of medicine, and of her son, Rodrigo González López, accused of being a member of the Christian Left Party. 3/ The First Chamber of the Santiago Court of Appeal rejected an application for the remedy of protection that had been submitted by the Executive Council of the Medical Association of Chile (A.G.) on behalf of its member, Dr. López Cassou, who had alleged that her house had been unlawfully searched and serious damage done to her possessions, on 28 March 1982, in violation of article 19, (5) and (24) of the Constitution. In the view of the Court of Appeal "the facts alleged have not been proved ... the Police Department and ... the Minister of the Interior declaring that no member of their personnel played any part in those acts or was aware of them", 4/ and the appeal was thus rejected. An application to compel jurisdiction having been made to the Supreme Court on 30 April, the Third Chamber of the Supreme Court rejected it and confirmed the decision of the Court of Appeal, taking as adequate evidence the reports of the Police Department and of the Minister of the Interior, despite the allegations by the complainant that her home had been searched by police officers in plain clothes. 5/ Dr. López Cassou then brought a criminal complaint before Criminal Court No. 6 against the perpetrators of the offences of unlawful search, robbery and damage and stated that the offenders had done nothing, in her dwelling, but "search for documents, study them, rummage through files, books and notes, examine the negatives of photographs, take radio sets to pieces and search the interior for hidden objects, all of which conduct is clearly diametrically opposed to the normal behaviour of common criminals". 6/ Consequently, she substituted for the principal motive of robbery that of an unlawful attempt to intimidate herself and her family.

168. Apart from complaints to the courts, which are never successful, concerning unlawful house searches on the occasion of unlawful arrests, usually carried out by members of CNI, the Special Rapporteur has also received some detailed reports on unlawful entries. Thus, the Chilean Commission on Human Rights has

2/ Cf. above, chap. V, sect. A: "Right to an effective remedy."

3/ Cf. chap. III.B.1: "Persecution and acts of intimidation."

4/ El Mercurio, 28 April 1982. See also La Tercera, 28 April 1982.

5/ El Mercurio, 30 April 1982, and La Tercera, 5 May 1982.

6/ Solidaridad, No. 131, first fortnight of April 1982.

taken up the complaint submitted by the Chairman of the Office of the World University Service (WUS), whose premises were apparently searched on the night of 16-17 January 1982. The building was thoroughly searched by persons who entered it by breaking the panes of a window but stole nothing. 7/ On the other hand, the law offices of Mr. Santiago Pereira, a former Christian Democrat Member of Parliament, were searched on 15 February 1982 and during the operation, which was perpetrated without any legal warrant, the lawyer's secretary, Gladys Ayala, was held prisoner; the two individuals who carried out those acts searched desks and cupboards and took away a large number of documents. Mr. Pereira is a lawyer who specializes in social security and employment cases. He is also a member of the Executive of the Committee for the Defence of Trade Union Rights. 8/

169. Furthermore, on 14 April 1982, groups of carabineros, who had been driving around in vans accompanied by persons in plain clothes driving cars disguised as taxis, rushed violently into the "Gabriela Mistral" shanty town declaring that, at that very moment, the inhabitants were holding a "political meeting". The shanty town in question had come into being in March, when 35 homeless families reached an agreement to lease a piece of waste land at the end of the Avenida Recoleta, where they had built mediaguas (huts) despite constant harassment. 9/ In May, searches of ten homes belonging to as many people, who had been detained in Santiago without any legal warrant, were reported. In July also, ten further illegal searches were reported of as many dwellings belonging to persons who were detained at that time. 10/

170. Lastly, the right to honour and reputation has, for some months now, been a subject of major controversy in Chile. As a result of the scandal produced by an unusual change of defendants in the course of the judicial investigation into the murders committed at Viña del Mar ("The Psychopath Case"), the President of the Supreme Court spoke on a national radio and television chain to denounce the part played by the written press in connection with the administration of justice and the honour of private individuals. The President of the Supreme Court accused the press in general of damaging the reputations of individuals, justifying crime, overstepping the bounds of decency and morality, and having no respect for anything or anybody. These statements provoked numerous replies in all the country's press organs, not

7/ Cf. Chilean Commission on Human Rights, Report for January 1982, p.16.

8/ Chilean Commission on Human Rights, Report for February 1982. See also Solidaridad, No. 128, February 1982.

9/ Chilean Commission on Human Rights, Report for April 1982, pp. 19-20.

10/ Chilean Commission on Human Rights, Report for February 1982.

excluding the official press, 11/ as well as protests from the Metropolitan Council of the Journalists' Association of Chile A.G., the National Council of the Journalists' Association of Chile A.G. and the National Press Association. Moreover on 22 March 1982, a group of more than 50 highly reputable barristers addressed to the President of the Bar Association A.G. an important memorial, which openly attacked the statements by Mr. Bórquez whom it accused of making a "partial and serious attack on the freedom of expression and the right to information". 12/ The memorial points out, in connection with the honour and dignity of the human being, that it is a right that must be guaranteed "to all the inhabitants of the country, irrespective of their situation and their personal convictions", and that it "relates to all the aspects inherent therein, as they are currently understood by the conscience of mankind". Further on, it states that "the right to genuine and free participation and the full enjoyment of constitutional rights form an essential part of the honour and dignity of every person". 13/ Next came a quotation from Professor Carlos Soria reading: "Honour encourages respect for and recognition of all the other [rights], the ontological dignity of every individual. It is at this level that the idea that everybody should be treated with respect finds its greatest justification ... the right to honour is equal in all persons, it does not depend on behaviour and it appears as an inalienable and imprescriptible right". 14/

171. The memorial also quotes a sentence by Professor Quintano Ripollés that: "the democratization or, rather, the socialization of honour, formerly a caste privilege, means that this possession has now become a facet of the human personality which, by an inherent right, is an attribute of every human being merely because he is a human being". 15/ All this leads the barristers to conclude in their memorial that "honour embraces or comprehends a whole range of situations and everything which affects or impairs self-esteem or respect for human dignity injures the honour of the individual. Thus, to treat a worker without consideration as a simple piece of merchandise subject to the

11/ See, inter alia, the editorials in El Mercurio of 11, 12, 13, 15 and 16 March 1982; the editorial in La Segunda of 10 March 1982; the editorials in La Tercera de la Hora of 10 and 11 March 1982; the editorial in the weekly Hoy, No. 243 of 17-23 March 1982; and Solidaridad, No. 129, second fortnight of March 1982.

12/ Mensaje, No. 308, May 1982, p. 196.

13/ Ibid., p. 197.

14/ Cf. Carlos Soria, Derecho a la Información y Derecho a la Honra, Barcelona, 1981, p. 125.

15/ Cf. A. Quintano Repollés, Tratado de la Parte Especial des Derecho Penal, Vol. I, Book II, Second Edition, Madrid 1972, p. 1150.

laws of the market; to restrict the citizen's freedom of thought, action or movement; to prevent a person from living in his own country or from taking a full part in public life, etc., undoubtedly constitute serious and grave offences to honour".^{16/} The said memorial also blames the President of the Supreme Court for remaining silent in the many cases of political defendants "who had been given an unconditional discharge owing to lack of evidence, dismissal of proceedings or acquittal, having previously been publicly slandered mainly as a result of false charges emanating from the Police Department or from the National Directorate for Information Media"; of having also silently ignored a recent case of "arrest, holding incommunicado for 20 days, arbitrary detention, psychological coercion and a defamation campaign suffered by some eminent doctors of medicine who had finally been unconditionally discharged, on proof being given of the falsity of the charges levelled against them by the Government". The said memorial also reproaches the President of the Supreme Court for never having made a single comment on the "provisions dictated by the present Government and the measures carried out by the police forces which have seriously impaired the fundamental rights of the people and, consequently, the honour and dignity of the human being, and which have given rise to international condemnation of the serious abuses of every kind that have been committed". Lastly, "nor has the President of the Supreme Court shown any concern regarding the attacks, acts of intimidation, and threats, emanating from official circles and directed against the honour of lawyers defending the fundamental rights of individuals, before the law courts, charging them publicly with being accomplices in the crimes alleged against their clients, solely because they were carrying out their professional duties of defending the said accused".^{17/}

B. Right to freedom of thought, opinion and expression

172. The right to freedom of thought, conscience and religion, together with the right to freedom of opinion are embodied at the international level in articles 18 and 19 of the Universal Declaration of Human Rights and in articles 18 and 19 of the International Covenant on Civil and Political Rights. Article 18 (3) of the latter instrument reads "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".

173. The Special Rapporteur has already had the occasion to state, in his previous reports, that freedom of opinion, especially when that opinion is publicly expressed, is incompatible with the constitutional ban on expressing the slightest degree of political dissidence during the time that the transitional period is in force ^{18/} a period which, according to estimates

^{16/} Mensaje, No.308, May 1982, p.197.

^{17/} Mensaje, *ibid.*, p.198.

^{18/} See above, chap. I, sect. A: "The Political Constitution of 1980".

that are also included in the Constitution, is to last until 1989. It has also been emphasized on a number of occasions that, despite the said generic violation of the right publicly to express an opinion of a political nature, many non-governmental organizations which are active within Chile in the most varied areas, have constantly sought a political space in which non-violent political opposition can express itself. Among these organizations, those connected with the Catholic Church occupy a position of prime importance, as the Special Rapporteur has also pointed out on numerous occasions. This state of affairs has given rise to numerous disputes between the ecclesiastical authority and the civil power. Thus, for example, Mgr. Manuel Camilo Vial, a bishop, in a certificate of good conduct and respectability issued on 26 January 1982 in favour of Rodrigo González López, accused of having been active in the Christian Left Party, stated: "Events of this kind are gradually shutting in our young people and, when these legitimate paths are barred to them, we cannot be surprised if all this young energy turns towards more violent and radical actions. I believe that no one may be persecuted for his ideas and that the rights of every human being must be respected, as long proclaimed in the Gospel of Jesus Christ and confirmed by the United Nations Universal Declaration." For the same reason, Mgr. Jorge Hourton, Auxiliary Bishop of Santiago, writing on 18 January 1982 to the Director of the CNI, said: "It is a feeling very largely prevalent and very deeply rooted in the immense majority of the faithful of the Church in Chile that the persistent application of torture to non-violent offenders is an insurmountable barrier between the Catholic moral conscience and the trust which citizens ought to have in the official bodies whose task it is to supervise public order and the common weal. Moreover, we are persuaded that it is the persistent use of these repressive methods which give the temperature of real Church/State relations; at the moment it is, unfortunately, below zero."

174. For his part, Mgr. Raúl Silva Henríquez, Cardinal Archbishop of Santiago, gave an appraisal, at a press conference, of the political situation in Chile, saying: "there is a moral putrefaction of which we are all aware and from which we all suffer" which has resulted in a great moral crisis in the country. He added that the Church maintains that "freedom and co-operation of all are essential for the building of a society" and that freedom of the press was one of the absolute prerequisites for a resolution of the said crisis.^{19/} Subsequently, the bishops also made a pronouncement regarding the political option whereby lay Catholics, to the exclusion of bishops, priests, deacons and members of religious orders, "may, in accordance with the teachings of the magisterium of the Church, make a choice among the various collective groupings which, in accordance with their mature and responsible judgement, are in keeping with the teachings of the Gospel". The statement deplores the fact that "the word 'politics' should nowadays be used in an extremely ambiguous way, to the extent of being confused with politicking or sectarianism;...that one should be inclined to decry action for social welfare or the defence of human rights by dubbing them 'politics', as if it were a disease to be shunned". The bishops concluded that "the concern for common weal and action in favour of justice, or in other words, politics, are necessary realities in all societies. What is more, they constitute an

^{19/} El Mercurio and La Tercera of 17 March 1982.

outstanding form of charity".^{20/} The confrontation between Church and State has, for some time, been so obvious that even the press is suggesting that bridges of "communication and comprehension" be built between the two establishments, at the same time acknowledging that there are "areas of decision-making belonging to the temporal power into which, for some years now, the clergy has been penetrating in a way which, at this point in time, appears definitive. Topics such as those of the politico-institutional framework, the powers of the trade unions, the options open in matters of economic policy or the protection of internal security are, nowadays, frequently referred to in public by clerics and prelates, and their opinions are of interest to the citizens". It also suggests that there are "pressure groups inside the hierarchy, in accordance with the political sympathies of the prelates" and points out that, in Chile, "there is already in existence a whole organization which controls oral and written media, some of which are explicitly devoted to day-to-day political analysis; pastoral groups of university students and workers; organs for the defence of human rights and other entities within which manifestations having a distinct political significance are inevitable".^{21/}

175. For its part, the memorial sent by a group of more than 50 barristers on 22 March 1982 to the President of the Chilean Bar Association A.G., which the Special Rapporteur has already mentioned, also stigmatizes "the loss of confidence and the bankruptcy of legal authority from which the country is suffering" which has given rise to "a moral crisis of unprecedented proportions" which requires a comprehensive debate which, they suggest, the Bar Association should initiate.^{22/} They attribute the "moral crisis", inter alia, to the part that had recently been played in Chile by the judicature and, in particular, to the attitude adopted by the President of the Supreme Court. It had often happened, the memorial states, that "constitutional rights are violated by the arbitrary and unsupervised action of the security agencies", which results in such irregularities as "the abusive extension of pre-trial detention" or the violation of basic constitutional guarantees such as that which provides that "any act of detention must be based on a legal warrant and carried out by public officials expressly empowered to do so; the place of detention must be public; the detainees must not be tortured nor subjected to unlawful coercion of any kind or to cruel, inhuman or degrading treatment; and persons detained must, within the legal period provided, be placed at the disposal of the courts". The memorial also denounces "the abnormal ineffectiveness of the remedy of amparo" and "the possible responsibility of members of the Carabineros for the very serious crimes committed at Viña del Mar", a responsibility which "would be in addition to that of other public officials belonging to the police and security agencies who have committed serious offences against the lives, security of the person and

^{20/} Caminar juntos en la Iglesia (Let us walk together in the ways of the Church). Pastoral letter from the Standing Committee of the Bishops to the Catholics of Chile. See El Mercurio of 17 July 1982 and its editorial entitled "Religion and Politics" of the same day. See also the weekly Hoy of 21-27 July 1982 ("The consensus letter").

^{21/} El Mercurio, 30 May 1982, editorial.

^{22/} El Mercurio, 30 May 1982, editorial. See also the statement, already quoted, by Mgr. Raúl Silva Henríquez, Cardinal Archbishop of Santiago, at a press conference. El Mercurio and La Tercera of 17 March 1982.

honour of individuals....In short, the most serious ordinary offences and political offences that have been committed in our country in the last few years have been perpetrated by public officials belonging to police and security agencies subordinate to the Government". They conclude that "the fact that the greatest danger to the life, freedom and security of the person of individuals comes from agents of the State who are responsible for seeing that the law is respected and that precisely those values are respected, is an unprecedented absurdity which does violence to the civil peace of our country, makes the rule of law impossible and postpones indefinitely the achievement of social peace. The frequency and the unprecedented gravity attained in the last few years by the crimes and abuses of every kind committed by agents of the State are the result of the excessive power conferred upon them or which they arrogate to themselves under the pretext of defending the security of the State and of the climate of absolute impunity that environs the mass violation of human rights in our country... It has even come to the extreme that an amnesty law is enacted whose main beneficiaries are precisely those who have perpetrated the most serious crimes against thousands of our compatriots" - the missing detainees. The signatories of the memorial attribute a major part of the responsibility for this situation of moral crisis to the behaviour of the Judiciary which, in their view, "has encouraged these violations" and recall "the abdication by the Supreme Court of its disciplinary powers in declining to review the sentences handed down by the Wartime Military Courts; the abnormal ineffectiveness of the remedy of amparo in cases of detention for political reasons; and, in general, the absence of concern, energy and diligence in investigating and punishing the multifarious and divers violations of human rights which, on thousands of occasions, have been promptly reported to the courts".^{23/}

176. The Special Rapporteur fully endorses all the statements set forth in the above paragraphs, which constitute the basis for what is now being called in Chile, with the full support of opinion in the Catholic Church, the moral crisis. Moreover, the Special Rapporteur considers amply justified the attitude clearly expressed by that Church with regard to the repeated complaints of violations of the most fundamental human rights and its behaviour in unflinchingly defending the said human rights. This is, indeed, a necessary consequence of the exercise of the right to freedom of thought, conscience and religion which, in accordance with article 18 (1) of the International Covenant on Civil and Political Rights includes "freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". The Special Rapporteur expresses his gratitude for the attitude adopted by the Catholic Church in the defence of human rights, within the framework of its legitimate exercise of the aforesaid rights.

177. The right to freedom of expression is also proclaimed by article 19 of the Universal Declaration of Human Rights. For its part, the International Covenant on Civil and Political Rights states that "this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice" (article 19 (2)). The

^{23/} Mensaje No. 38, May 1982, op.cit.

exercise of the right to freedom of expression is not, however, unlimited. The same International Covenant on Civil and Political Rights establishes, in article 19 (3) the possible restrictions thereon, which must be expressly provided by law and be necessary to ensure "respect of the rights or reputations of others" and "protection of national security or of public order (ordre publique), or of public health or morals".

178. The Special Rapporteur has already mentioned on previous occasions the constant restrictions imposed on the exercise of this right in Chile, which are not in keeping with the provisions set forth in the said article 19 of the International Covenant on Civil and Political Rights. 24/ By virtue of the combined declaration of the state of emergency (article 41 (4) of the Constitution) and of the state of exception on account of a danger of disturbance of internal peace (twenty-fourth transitional provision, paragraph (b), of the Constitution), freedom of expression and freedom of information have undergone major restrictions which have given birth to abundant special legislation. In this respect, particular mention should be made of Act No. 18,015, of 27 February 1981, which has already been commented upon by the Special Rapporteur. 25/ That Act has now been amended by Act No. 18,050 of 14 July 1982 which replaces articles 3 and 5 of the previous Act and provides that any violation of the measures taken by the President of the Republic with regard to freedom of information "is punishable by a fine of from 10 to 100 fiscal units a year". In the case of a second offence, the fine is doubled but it may not, in any case, exceed 200 fiscal units a year. What is new in this Act, however, is the provision that the perpetrators of any such violation would be regarded as committing "the offence established by this article for the persons referred to in article 29, subparagraphs A and C, of Act No. 16,643 concerning abuses of publicity, as is appropriate to the respective cases". Moreover, if the person sentenced does not pay the amount of the fine within five days, "he shall be punished by way of substitution and constraint to one day's imprisonment per fiscal unit a year up to a maximum of 90 days". 26/ Let us also remember that the editors or legal representatives of dailies, weeklies or periodic publications would be regarded as guilty of such violations and that, in the case of radio or television programmes, etc., the director of the information service or of the broadcasting station in question would be regarded as guilty of the violation. 27/

179. On the other hand, on 10 March 1982, Supreme Decree No. 140 of the Ministry of the Interior was published in the Diario Oficial retaining in effect for all legal purposes the measure subjecting to the authorization of the said Ministry the founding, publishing and circulating of new publications on the national territory. This authorization is, moreover, required for any type of periodical publication and for the publishing of books so that, in practice, this measure is to all intents and purposes a censorship in advance

24/ See, in particular, A/36/594, paras. 350-368.

25/ See A/36/594, para. 354.

26/ El Mercurio, 15 July 1982.

27/ See, also, Chilean Commission on Human Rights, Report for March 1982, pp.20-23.

of all types of written expression of thought, in violation of the provisions of article 19 (12), of the Constitution and also, of course, of article 19 of the International Covenant on Civil and Political Rights. Moreover, this prior authorization by the Ministry of the Interior does not have to be given within any legal period after the application has been submitted, so that it is possible arbitrarily to postpone a decision for months or even years. 28/

180. The Special Rapporteur has received a large number of complaints which highlight the application of the said special legislation throughout the period to which his current mandate relates. Thus the Committee for the Defence of Freedom of Expression of the Writers' Association of Chile has expressed its opposition to the prior authorization regime for the founding, publishing and circulating of new publications. At a press conference held on 31 March 1982, the said Committee expressed the view that "the obligation to apply for authorization is tantamount to a self-censorship which is rendered worse by the tardiness of the Ministry of the Interior in responding". 29/ Other allegations concerning restrictions imposed on freedom of information in the press are connected with the charges brought against two journalists of La Voz de Choapa on a complaint by the Intendant of the Fourth Region, for having rebutted in that newspaper some statements that the Intendant had made concerning the extreme poverty that existed in the Copiapó area, in which there were allegedly "1,000 persons registered in the Minimum Employment Plan and almost 500 inhabitants being fed in the Archbishopric's soup-kitchens". The Intendant maintained that "criticisms of his administrative actions, he being an officer of the army, also constituted insults to the institution of the Armed Forces". 30/ The Court of Appeal of Copiapó, and subsequently the Supreme Court, decided, however, that the criticisms expressed "were covered by the legitimate exercise of the right to inform and to express opinions".

181. As for the publications emanating from the country's universities, their publishing and circulating are subjected to the requirement that the circulation must be purely internal and have the official patronage of the university concerned and the authorization of the appropriate Rector. In view of the fact that the Government has absolute discretion in appointing Rectors, authorization by the Ministry of the Interior is implicit or, in other words, every university publication is also subjected to de facto censorship. This is what happened in the case of the review Nueva Era (The New Era) of the Federico Santa María Technical University which, at the end of 1981, formed the subject of a complaint before the Appeals Court by the Intendant of the Region of Valparaiso who considered that the said publication contravened the legal provisions which forbade, under the twenty-fourth transitory provision of the Constitution, the publishing of new publications without the corresponding permission of the authorities. The

28/ See, in this connection, "El Tema de la Libertad de Expresión" (The question of freedom of expression), an editorial in the weekly Hoy, of 7-13 July 1982.

29/ Chilean Commission on Human Rights, Report for April 1982, p.24.

30/ Chilean Commission on Human Rights, Report for April 1982, p.24.
See also El Mercurio of 17 April 1982.

Court of Appeal of Valparaiso dismissed the case since it considered that the facts described did not constitute an offence; however, the Office of the Intendant has appealed against that decision and it is not yet known what the final decision will be. For its part, the Editorial Board of the Nueva Era made a public statement that it considered what had happened to be a way of "punishing an action as perfectly natural and legitimate as putting together and into circulation the sole medium of student communication within our University, which has been appearing since 1979". The Board also expressed its concern regarding "internal means of communication which are traditional in virtually all the institutions of the country". Its conclusion was that "this state of affairs implies negation of a natural right of the human being who, as a social creature, needs to make known, within the community to which he belongs, his ideas, opinions and anxieties".

182. Lastly, we should mention the note which the Association of Foreign Correspondents in Chile addressed to the National Director of Information Media to protest against the ill-treatment of two of its members at the funeral of Tucapel Jiménez, on 28 February 1982. 31/ A complaint was also made concerning the detention of a press photographer of the weekly Hoy on 1 May. The photographer was detained "by two individuals in plain clothes, who made him get into a car 10 metres away from dozens of carabineros. They beat him, stole his camera and his films and shortly afterwards threw him out on the public highway". 32/ That assault gave rise on 3 May 1982, before Santiago Criminal Court No. 16, to the lodgement of a complaint of "an offence prosecutable publicly". The photographer had to be hospitalized for several days on account of the injuries received. 33/ Similar assaults also took place during the incidents which occurred on 1 May at Concepción, involving reporters from the newspapers Las Ultimas Noticias and El Mercurio. 34/

31/ Chilean Commission on Human Rights, Report for March 1982, p.20.

32/ Chilean Commission on Human Rights, Report for May 1982.

33/ Hoy, 5-11 May 1982.

34/ Chilean Commission on Human Rights, Report for May 1982, p.24.

VII. RIGHT TO THE PUBLIC FREEDOMS

A. Right of peaceful assembly

183. This is a right proclaimed in article 20 (1) of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights. The latter instrument further provides that any restrictions placed on the exercise of the right of peaceful assembly must be in conformity with the law and must be limited to what is necessary "in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights or freedoms of others". This right is also recognized in article 19 (13), of the Political Constitution of the country which authorizes its exercise without prior permission. Moreover, the recourse of protection, established by article 20 of the Constitution, is a legal guarantee against arbitrary or illegal actions or omissions which might disturb or threaten the legitimate exercise of this right. Nevertheless, it must be recalled, as the Special Rapporteur has already done in his previous reports to the General Assembly, ^{1/} that the effective exercise of the right of peaceful assembly, whenever it has a political connotation, has been suspended sine die in the Chilean political regime. The combined application of article 8 of the tenth transitional provision of paragraph (c) of the twenty-fourth transitional provision of the Constitution, together with the special laws adopted for the various sectors, has been tantamount to suspending or very much restricting the exercise of the public rights and freedoms as they are understood by the international instruments mentioned above.

184. The Special Rapporteur has already stated on numerous occasions that this situation of restriction or generalized suspension of the enjoyment of the public freedoms in Chile, is a phenomenon which dates from September 1973, and that no improvement has been recorded since on the legislative or judicial level or in administrative practice. Consequently, the Special Rapporteur has received yet again some very clear evidence that the public freedoms, as a whole, have been completely non-existent during the period covered by his present mandate, particularly with regard to the exercise of the right of public assembly, especially when this right has any political connotation. The administrative banning or suspension of peaceful meetings, press conferences and cultural, political or trade union meetings, is a phenomenon that has frequently been noted throughout 1982, since it is still not possible to hold a non-violent public demonstration of political opposition in Chile, as a result of the application of the aforesaid constitutional provisions, particularly article 8 and the tenth transitional provision.

185. The complaints that have been made to the Special Rapporteur concern, in particular, repeated violations of the right of assembly that should be enjoyed by the country's trade unions, and their leaders, under the principle of trade union freedom enshrined in the Constitution of the International Labour Organisation and the 1944 Declaration of Philadelphia annexed thereto. This is self-evident, since the International Labour Conference has brought out the close link which

^{1/} See, in particular, A/36/594, paras. 304-307.

exists between the effective exercise of trade union rights - including the right of trade unions to meet - and the exercise of the public freedoms within the constitutional and legal framework of any country. 2/ In this connection, the Special Rapporteur has received a complaint concerning a ban on holding trade union meetings at Caletones, on 30 March 1982. Police organs also forbade meetings which were to have been held on 3 and 4 April 1982, of about 200 representatives of the trade unions federated in the Workers' Democratic Union (UDT), to which Tucapel Jiménez had belonged. On 25 March 1982, a press conference by four Santiago trade union leaders was also arbitrarily suspended. On 8 April 1982, the persons affected submitted an appeal for protection to the Court of Appeal, which was rejected on 11 May. 3/ Similarly, the National Trade Union Co-ordinating Body (CNS) has stated that, on 16 April, the security agencies of the State would not permit the Annual General Meeting of the said Confederation, which had been scheduled for the days following that date at Punta de Tralca, in premises loaned by the Church, to be held. 4/ On 17 April, a ban was also placed on holding a forum organized by the National Union of Democratic Students (UNED) for the purpose of studying the university situation. Lastly, the general ban on trade union meetings and assemblies scheduled for 30 April and 1 May was reiterated. 5/

186. When a meeting was convened on 7 May 1982 by the National Association of Public Employees (ANEP) under the title "Unified encounter of Chilean workers" to which were invited all the trade unions and vocational associations which had responded to the call by Tucapel Jiménez for trade union unity, that administrative authorities ordered the meeting suspended. The reason given for the decision was that the meeting would have been a breach of article 40 of Decree-Law No. 2756, whereby "the meetings of trade unions must consist solely of members of the union convening the meetings for the purpose of dealing only with matters of concern to the trade union in question". 6/ Other meetings have also been suspended by decisions of the administrative authorities. Thus, for example, the meeting convened by the Federation of Student Centres of the University of Chile (FECECH) was suspended, since the organizers "received no reply to the application they had made to hold the meeting in the assembly hall of the Institution". 7/ At that meeting, the 282 delegates elected by the students of the University were to have taken office and the question was to have been examined of a "greater participation by the student body in Faculty Councils and the University Council" together with other problems of concern to university students. Lastly, spontaneous assemblies were dispersed by the security agencies on the occasions of the funerals of Tucapel Jiménez and former President Frei, 8/ and on the occasion of the anniversary of the birth of the poet, Pablo Neruda, when there was a popular festival and demonstration at his tomb.

2/ International Labour Conference, Resolution concerning trade union rights and their relation to civil liberties, adopted in 1970.

3/ El Mercurio 12 May 1982. See also, Chilean Commission on Human Rights, Report for April 1982, pp. 24-25.

4/ Chilean Commission on Human Rights, ibid.

5/ Chilean Commission on Human Rights, ibid.

6/ La Tercera, 13 May 1982. See, also, Chilean Commission on Human Rights, Report for May 1982, p.24.

7/ El Mercurio, 17 July 1982.

8/ International Herald Tribune, 1 March 1982. Le Monde, 28 January 1982: 30 arrests. El Mercurio, 20 July 1982: 28 arrests.

B. Right of association

187. Article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights recognize the right to freedom of association, including "the right to form and join trade unions for the protection of his interests". The right of trade union association, which is an essential part of the principle of trade union freedom enshrined in the ILO Constitution - and thus demurrable vis-à-vis the State of Chile - is more particularly protected by ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize. Nevertheless, the exercise of the right of association may be subjected to the restrictions prescribed by the law "which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others" (article 22 (2) of the International Covenant on Civil and Political Rights).

188. For its part, the Political Constitution of Chile recognizes, in article 19 (15), the right to associate "without prior authorization", associations having to be organized in accordance with the law "in order to have juridical personality". Nevertheless, for the regulations concerning the exercise of this right we are referred, by article 19 (15) fifth subparagraph, to a future "constitutional organic law" which has not yet been promulgated. If, in addition, we take into account the discriminatory restrictions incorporated in article 8 of the Constitution ^{9/} and the political recess prescribed by the tenth transitional provision of the Constitution (ban on all party political activities until the aforesaid organic comes into force) and the exceptional powers conferred on the President of the Republic by paragraph (c) of the twenty-fourth transitional provision of the Constitution (power to prohibit the entry into the national territory or to order the expulsion therefrom of persons who propagate the doctrines alluded to in article 8 of the Constitution or persons who act contrary to the interests of Chile or constitute a danger for internal peace), we are forced to conclude that the right of political association is absolutely forbidden in Chile. To this must be added that the fact that the political recess began in September 1973 and, according to the Constitution itself, it will not end until 1989. Consequently, the position is that the various associations or groupings currently existing in Chile which have some kind of humanitarian, political or trade union nature, live outside the law, leading a de facto existence which - it is claimed - is sheltered by article 19 (15) of the Constitution. Nevertheless, since these groupings have no juridical personality they lead an extremely precarious life and are frequently harassed by the Chilean authorities. As for the constitutional ban on the right of association, it is confirmed by the special powers legislation which is prior to the Constitution but is still being applied. This consists of Decree-Law No. 77/1973 banning political parties, Decree-Law No. 78/1973 suspending the activities of all political parties, and Decree-Law No. 1697/1977 dissolving all parties, organs, groups or movements of a political nature, depriving them of their juridical personalities and forbidding them existence, organization, activities, etc.

^{9/} This circumstance has been mentioned on several occasions in preceding reports. See, for example, A/36/594, paras. 304-307.

189. It follows that no party or political association is entitled to act legally within Chile. Even a suspicion of belonging to a "prescribed" political party brings about serious persecution and punishment. It will suffice to recall the charges brought in 1982 against nine persons alleged to be connected with the Christian Left Party, all of whom had been prominent in defending human rights. The persons in question had been unlawfully detained and five of them tortured in December 1981; a long train of absurdities led to them being accused of acts of terrorism, whereby pre-trial detention was increased to 20 days. However, when the persons were placed at the disposal of the Office of the Military Prosecutor (14 December 1981), the original charge was replaced by that of alleged violation of the Possession of Arms and Explosives Act. Moreover, when they actually appeared in court, the charge was changed once again and they were accused of violating the Political Recess Act and the Internal Security of the State Act, which are obviously less serious offences. It was necessary to appeal as far as the Supreme Court to have five of the accused, who had totalled 116 days' detention, released on bail. On 12 April, two other accused were also released on bail. 10/ Lastly, as the Special Rapporteur has already stated, eight of the accused were sentenced in the court of first instance to 541 days of exile each for violating Decree-Law No. 77 (ban on political parties), while the ninth was sentenced to 541 days' short-term imprisonment. 11/

190. Two other persons were arrested on 19 April 1982 and charged with belonging to the "prescribed" Socialist Party. The evidence adduced was so inconsistent, however, that the Court of Appeal discharged them, unconditionally, on 23 April. Another example was that of the arrest of Benjamín Cares Yáñez, accused of being Secretary of the National Co-ordinating Body of Regional Organs of the Socialist Party. He was, ultimately, sentenced in the court of first instance to 541 days of exile; the Ministry of the Interior appealed against the sentence, to the Santiago Court of Appeal which, on 7 June, confirmed the original sentence. 12/

191. The Special Rapporteur has already mentioned the arrests of 11 persons in Santiago, on 23 July 1982, during a demonstration organized by the Association of Relatives of Missing Detainees to ask the authorities for information concerning their missing relatives. 13/ This Association is one of the many in Chile which have a de facto, but precarious, existence since they have no juridical personalities under article 19 (15) of the Constitution, in open contradiction to the provisions of article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights. In addition, a group of teachers in the town of Quilpué has lodged a complaint that there has been an infringement of their personal freedom and freedom of association in that the mayor of the town is insisting on establishing a "professional teachers' association" which, in due course, the said teachers would be forced to join. 14/

10/ See Chilean Commission on Human Rights, Report for April 1982, p.23, and Report for May 1982, p.23.

11/ See chap. III, sect. A.1: "Illegal arrests".

12/ El Mercurio, 31 May, 5 and 8 June 1982.

13/ Cf. above, chap. III.A.2: "Missing persons" See also El Mercurio, 25 July 1982.

14/ Hoy, 4-10 August 1982.

in this connection, the Special Rapporteur wishes to point out that article 20 (2) of the Universal Declaration of Human Rights and article 19 (15), third subparagraph of the Constitution embody the right not to be obliged to join any association.

192. On the other hand, in view of the fact that there is a general refusal to recognize the right of political association, it is hardly surprising that this also affects the right to trade union association. This was clearly brought out at the trial in December 1981 of 10 trade unionists, leaders of the National Trade Union Co-ordinating Body (CNS), who were sentenced by the Court of Appeal to 541 days' short-term imprisonment 15/ on the grounds that - the Court concurring with the case put forward by the Ministry of the Interior - CNS had no recognized juridical personality and, consequently, the accused were illegally representing all the workers combined together in CNS. A complaint regarding that action was submitted to the Committee on Freedom of Association of the Governing Body of ILO and the Committee adopted a recommendation in which it stressed that "the adoption of measures of detention and sentencing against workers' representatives in connection with activities related to the protection of the workers' interests endangers the free exercise of trade union rights".16/ As the Special Rapporteur has already stated, the persons concerned appeal to the Supreme Court and, at that stage, the Government withdrew the charges. 17/

193. Lastly, the Special Rapporteur wishes to recall here the phenomenon of clandestine associations, presumed to be linked to groups of the extreme right and to certain members of the State security agencies, which have frequently been responsible for intimidating, threatening and even killing assumed political dissidents. These are the "Martyrs' Avengers Squad" (COVEMA) and the "Comunidad Catacumba", of which the Special Rapporteur has already spoken elsewhere. 18/

C. Right of participation

194. Both article 21 of the Universal Declaration on Human Rights and article 25 of the International Covenant on Civil and Political Rights proclaim the right to take part in "public affairs", in the sense that all citizens must, without unreasonable restrictions have the right to take part in the conduct of public affairs either directly or through representatives; the right to vote and be elected at periodic elections by universal suffrage which guarantee the free expression of the will of the electors; and the right to have access, on general terms of equality, to public service in the country.

15/ El Mercurio, 19 May 1982.

16/ Committee of Freedom of Association, Case No. 823, (Complaints presented 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 against the Government of Chile). (Two hundred and twentieth session of the Governing Body of ILO, Geneva, May and June 1982, GB.220/8/18, para. 513 (a)).

17/ Cf. above, chap. III.A.1: "Illegal arrests", cf. also below, Chap. IX.1: "Right of trade union association".

18/ Cf. inter alia, chap. V.A: "Right to an effective remedy". See, also, chap. III.B.1: "Persecution and acts of intimidation".

195. As has been brought out on many occasions, the participatory rights have been abolished in Chile since September 1973 and, according to the text of the Constitution itself, this will be the case until 1989. The assertion by the authorities that the citizens exercise their right of participation through the municipalities and the community organizations, combined with the statement that "democracy is not today the only possible form of government, 19/ is totally incompatible with both the spirit of article 25 of the International Covenant on Civil and Political Rights and the letter of article 21 (3) of the Universal Declaration on Human Rights that "the will of the people shall be the basis of the authority of government".

196. As for the right of access, on terms of equality, to public service in the country, a right which is enshrined in article 21 (2) of the Universal Declaration on Human Rights and article 25 (c) of the International Covenant on Civil and Political Rights, the Special Rapporteur has received some allegations that discriminatory practices are applied to the exercise of this right. This has occurred in the case of access to public service of members of the professions, which in practice is subject to a favourable report by the National Information Agency (CNI) concerning the presumed ideology of the person concerned. This is supplemented by the discriminatory clause of article 8 of the Constitution which makes ineligible for public office for a period of 10 years, persons who have been convicted of having propagated "a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare". The article also states that persons made ineligible for the said period of 10 years "will not become rectors or directors of educational establishments or teach thereat or exploit any medium of mass communication, ... neither will they be able to act as leaders of political organizations nor of organizations related to education, or occupy positions of a local, professional, entrepreneurial, student or trade union nature in general". Similarly, if the said persons were public officials, they would lose their posts as a matter of law and could, in no circumstances, be eligible for reinstatement before the period of 10 years had elapsed; in the event of a recurrence of the offence, the duration of the ineligibility period was doubled (article 8 of the Constitution).

197. In a complaint made to the Committee on Freedom of Association of ILO concerning the suppression of 690 jobs in the Postal and Telegraph Service and, in particular, the dismissal of Mr. Hernol Flores Opazo, Vice-President of ANEF, the Committee adopted recommendations to the effect that "acts of anti-union discrimination should not take place under the pretext of dismissals for economic reasons and recalls the importance which it attaches to effective protection, both in law and in fact, against any acts of anti-union discrimination which may be committed against trade union leaders". It also requested the Government "to re-examine the situation of the dismissed trade unionists with a view to their reinstatement". 20/

19/ Cf. A/36/594, para. 308.

20/ Case No. 1,094 (Complaint presented by the Postal, Telegraph and Telephone International and by the National Revenue Employees' Association against the Government of Chile), two hundred and twentieth session of the Governing Body of ILO, Geneva, May-June 1982, GB.220/8/18, para. 273.

D. Right of petition

198. This is a right which is set forth in article 19 (14) of the Political Constitution of Chile in the following terms: "the right to submit petitions to the authorities with reference to any matter of public or private interest, with no limitation other than the requirement to submit such petitions in a respectful and appropriate manner". This right is not, however, included in article 20 of the Constitution, so that privation or disturbance of its exercise cannot legally be brought before the Courts in the form of an appeal for the remedy of protection.

199. Although the right to petition is recognized by the Constitution, the Special Rapporteur has noted that its practical exercise is not without difficulties. Thus the submission of the so-called "National Paper" (Pliego Nacional) by the leaders of the National Trade Union Co-ordinating Body in December 1981, a document in which a series of demands was addressed to the public authorities in connection with the economic and social rights of the workers represented by the said Body, was the immediate cause of the detention and prosecution of the main leaders of CNS, as has already been indicated by the Special Rapporteur. 21/ The administrative authorities have gone so far as to allege that Decree-Law No. 2347 makes the exercise of the right of petition liable to punishment, an interpretation which was applied to Alamiro Guzmán and Manuel Bustos, leaders of CNS. Nevertheless, the trade union leaders have, by virtue of the right of petition, submitted to the Government addresses requesting that articles 26 and 49 of Decree-Law No. 2,758, the "Plan laboral", be retained. The two articles in question, which concern remuneration in the context of collective bargaining, established a system whereby employers had to offer a remuneration whose total could not be less than what the workers had previously agreed to. 22/ Moreover, 106 trade union leaders have addressed a letter to the President of the Supreme Court asking the Court to take appropriate measures to speed up the judicial enquiry into the murder of Tucape Jiméñez, the trade union leader, on 25 February 1982. 23/

200. Lastly, 623 trade unionists addressed a letter to General Pinochet in which they requested an audience to express their views concerning the derogation from Act No. 18,134 concerning collective bargaining procedures. On that occasion General Pinochet stated: "I do not talk to Communists. If, however, the leaders want to hold individual conversations with me, I would be able to receive them". 24/

21/ Cf. above. Section B: Freedom of association.

22/ El Mercurio, 5 June 1982.

23/ El Mercurio, 30 June 1982.

24/ Chilean Commission on Human Rights, Report for July 1982, p.30.

VIII. ECONOMIC AND SOCIAL RIGHTS

A. Right to work. Access to employment.

201. Article 23 of the Universal Declaration of Human Rights establishes as a fundamental principle that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" (para. 1). In addition, the International Covenant on Economic, Social and Cultural Rights (ratified by Chile) provides, in article 6 (1), that States parties "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right". Undoubtedly, the right to work is still far from a reality in most countries, particularly in the light of the economic crisis which has been affecting the whole of the international community for some years. But there is also no doubt, judging from numerous documents before the Special Rapporteur, that the Chilean case presents special characteristics - closely related to human rights in general - which render particularly acute the economic crisis experienced by the Chilean people in 1982. The situation in this country is having profound effects on the enjoyment of the human rights proclaimed by international law and, in particular, on all the "economic and social rights" enunciated in the International Covenant on Economic, Social and Cultural Rights, one of them being the right to work as provided for in article 6 (1). In any event, in a realistic approach to the possibilities of each member State of the international community, article 2 (1) of the Covenant provides that each State party undertakes to take steps, "especially economic and technical, to the maximum of its available resources", with a view to achieving progressively the full realization of the rights recognized in the Covenant. Similarly, ILO Convention No. 122 (1964) concerning employment policy, which has also been ratified by the Chilean State, provides in article 1 (1) that "with a view to ... meeting manpower requirements and overcoming employment and underemployment, each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". In addition, paragraph 3 of the same article stipulates that "the said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices". It should also be noted that, in accordance with the provisions of article 3 of this Convention, "representatives of the persons affected by the measures to be taken shall be consulted" in the application of the Convention; in particular, "representatives of employers and workers shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies".

202. There is a long way to go before all these objectives are achieved in the context of the current economic and social structure of Chile. The Special Rapporteur has already mentioned the country's "moral crisis", 1/ which has been added to the

1/ See chap. VI.B.

"political" crisis that has persisted since September 1973, when the violent break with constitutional legality occurred. To these two crises is now added the "economic crisis", whose most obvious characteristics are the economic recession, a high rate of unemployment, the devaluation of the national currency and the questioning of the economic model which the military Government has established and which consists in pursuing to the bitter end a neo-liberal economic policy. Thus Milton Friedman's prediction that sooner or later economic freedom will collapse before the authoritarianism of the military appears to be coming true. The failure of the neo-liberal economic model has also led to a further political crisis among those who currently wield power in Chile. Jaime Ruiz-Tagle, a Chilean economic expert, observes in a study that the growing wave of discontent caused by the economic crisis has reached vast sectors of management and is even having effects within the armed forces. 2/

203. Unemployment has been the inevitable consequence of the economic recession caused by the failure of the economic model established and the mass dismissal of workers as a result of the application of permissive labour legislation. According to the latest figures, unemployment stands at 21 per cent in the Santiago region and 25-30 per cent in the provinces, the most seriously affected sectors being the construction and extractive industries, agriculture and other industries. 3/ To all this must be added other features of the Chilean economy such as: the gradual privatization of the country's public enterprises, whose number fell from 507 in 1973 to 15 in 1980; the devaluation of the Chilean peso, whose exchange rate on the black market has reached 50 pesos to the dollar; the "extreme poverty" of vast sectors of the population; 4/ the stagnation of the national economy due to a profound recession, industrial production having declined by 15.3 per cent, and agriculture and construction being virtually paralysed since the end of 1981. The construction of new buildings declined by about 64.5 per cent between November 1981 and January 1982 in relation to the same period one year previously. During the first half of 1982, 362 enterprises went bankrupt, as compared with 433 throughout the country in 1981. For the month of May 1982 alone, according to estimates by the Chilean Commission on Human Rights, mass dismissals affected 866 workers in seven Chilean enterprises. 5/ The Commission, on the basis of a survey conducted by the Department of Economics of the University of Chile, put the unemployment rate at 18.4 per cent already in March 1982, the sectors most seriously affected at that time being: activities producing goods, agriculture, extractive industries, manufacturing industries and construction. Also for March 1982, the survey referred to an unemployment rate of 19.1 per cent in the greater Santiago region, of which 3.2 per cent was accounted for by persons seeking their first job. In that month, 235,000 people were unemployed; according to the same source, that figure was likely to increase during the second half of 1982 since no employment had been created and other jobs continued to be eliminated. 6/

2/ Jaime Ruiz-Tagle, "De la crisis económica a la crisis política", Mensaje, No. 309, June 1982, pp. 241-243.

3/ El Mercurio, 16 June and 13 August 1982.

4/ The Times, 14 August 1982: "Jobs lost in Chile inflation fight". See also El Mercurio, 4 June and 9 July 1982, and Hoy 4-10 August 1982. For agriculture, see El Mercurio 7 and 22 July 1982 and Solidaridad, first fortnight of July 1982.

5/ Report for May 1982, pp. 29-31.

6/ Ibid.

204. Consequently, it would seem that the Universal Declaration of Human Rights, which provides for protection against unemployment (art. 23, para. 1) and ILO Convention No. 2 (No. 119) concerning unemployment in accordance with which member States undertake to establish "a system of free public employment agencies under the control of a central authority" (art. 2, para. 1), set very remote objectives, given the current economic situation in Chile. The seriousness of unemployment at the social level was highlighted in a "Statement by the Bishops of Chile" dated 5 June 1982, which says that unemployment profoundly affects its victims not only from the economic standpoint, but also by psychologically lowering the standard of living of the worker and his family. It further causes insecurity, anguish and frustration, it affects the life of the family and, if it persists it causes a sometimes serious imbalance in the unemployed person, whom it transforms into a burden on his family and society. In this statement, the Bishops also affirm that efforts to combat unemployment do not seem to be a priority objective, this problem being considered as a tolerable or minor evil; this approach is not compatible "with the dignity of the human person". Lastly, they issue a general appeal, primarily to the State - which is the entity mainly responsible for the common weal, to promote and create conditions favourable for a significant improvement in the situation. 7/ In this connection, the Government has extended the "Minimum Employment Programme" (PEM), which in June covered about 160,000 persons 8/ and in July approximately 177,718. 9/ In addition, the Government announced in August the imminent creation of 60,000 jobs within 1,100 new projects mainly involving the public works sector. 10/ It should, however, be noted that the PEM provides for wages below the minimum wage; according to estimates by the Chilean Commission on Human Rights, PEM wages never exceed 4,600 pesos (about \$100) a month. 11/

205. As to the right of access to employment in conditions of equality, within the meaning of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights, this is seriously jeopardized in Chile, to the extent that the State's international responsibility is seriously incurred. Under the terms of the above-mentioned paragraph, States parties undertake "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion ...". In similar terms, ILO Convention No. 111 (1958) concerning discrimination in respect of employment and occupation, which has also been ratified by Chile, provides that any distinction in employment or occupation is prohibited, the term "discrimination" including "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (art. 1 (1) (a)). In this connection, the Special Rapporteur has already described the discriminatory consequences, at the political level, of the application of article 8 of the Constitution. 12/ The same discriminatory criteria are applied

7/ See Solidaridad, No. 137, first fortnight of July 1982. See, concerning the repercussions of the Bishops' statement, El Mercurio, 10 and 24 July 1982, and Hoy, 14-20 July 1982.

8/ El Mercurio, 19 June 1982.

9/ According to figures compiled by Hoy and published in its edition of 14-20 July 1982.

10/ El Mercurio, 20 August 1982.

11/ Report for April 1982, p. 26.

12/ See above, chap. VII.B and C.

in the labour sector. The ILO Committee of Experts on the Application of Conventions and Recommendations has already had occasion to express concern about these constitutional provisions which "might result in removing from the scope of legal guarantees against discrimination in employment persons who expressed certain political opinions or ideas not conforming to the views of the established authorities". ^{13/} In fact, Convention No. 111 provides protection against discriminatory measures arising from differences of political opinion and "even if certain doctrines are aimed at fundamental changes in the institutions of the State, this does not constitute a reason for considering their propagation beyond the protection of the Convention, in the absence of the use or advocacy of violent or unconstitutional methods to bring about that result". In addition, the Committee of Experts stated that the definition of "activities prejudicial to the security of the State" contained in article 8 of the Chilean Constitution" must be sufficiently narrow to avoid conflict with the main protection provided for in the Convention in respect of political opinion". Article 8, "in providing for the exclusion of persons from certain employments by reasons of their propagation of certain doctrines, appears not to observe the limits of article 4 of the Convention". In conclusion, the Committee of Experts expressed the hope that "the necessary measures will be taken to bring the provisions in question into conformity with the Convention". ^{14/}

206. The Committee on the Application of Conventions and Recommendations of the International Labour Conference (ILC) subsequently had occasion to consider the report of the Committee of Experts on the application of Convention No. 111 in Chile. In this connection, the employers' members of the Committee "agreed with the Committee of Experts that article 8 of the 1980 Constitution was not in conformity with the Convention and must be changed". The ILC Committee expressed regret concerning "the situation as regards article 8 of the Constitution" and "decided to mention the present case in the general part of its report under the heading 'Continued failure to implement', as one in which there had been continued failure to eliminate serious discrepancies in the application of the Convention". ^{15/}

207. The Special Rapporteur has evaluated from another standpoint the discrimination in political, labour and trade union matters to which the implementation of article 8 of the Constitution is giving rise. He has received testimony concerning the positive certificate of the CNI demanded in practice as a prerequisite for employment in a public service post. If this testimony was confirmed, this would seem to indicate a further violation of the right of access to public office in conditions of equality, as embodied in the above-mentioned articles of the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 111. The ILO Committee of Experts also referred to this problem, which arises from Decree-Law No. 2345 of 17 October 1978, under which the Ministry

^{13/} International Labour Conference, sixty-eighth session, 1982, report III (part 4A): "Report of the Committee of Experts on the Application of Conventions and Recommendations" (arts. 19, 22 and 35 of the Constitution), general report and observations concerning certain countries, Convention No. 111, Chile.

^{14/} Ibid.

^{15/} ILC, sixty-eighth session, Geneva, 1982, provisional record No. 31: "Report of the Committee on the Application of Conventions and Recommendations".

of the Interior is accorded responsibility for conducting the debureaucratization policy and introducing flexibility into administration. Article 5 of this Decree-Law authorizes the Government to terminate the employment of any person working in the State administration, regardless of any legal provision. The Decree-Law has been supplemented by other provisions, such as those of Decree-Law No. 3410/1980, which gives the President of the Republic complete discretion concerning the assignment of officials. Mention must also be made of Decree-Law No. 3357/1980, which empowers the Minister of Education to transfer teachers to places other than those in which they have their main place of work. In this situation, the Committee of Experts expressed the hope that "the Government will make a thorough examination of the various legislative provisions ... in the light of the provisions of the Convention and the Committee's comments, with a view to making decisions relating to appointments, assignments, transfers and termination of employment of public servants once again subject to criteria and safeguards specifically stated in legislation, such as those contained in the Administrative Regulations of 1960." 16/

208. During the discussion to which the question subsequently gave rise in the ILO Committee on the Application of Conventions and Recommendations, the government representative provided information on the reinstatement of a total of 1,525 officials in various ministries; in his opinion, that "showed the spirit of non-discrimination and the guarantee of employment".17/ However, the Special Rapporteur notes that the figure given by the government representative to the above-mentioned ILO Committee is very inadequate, especially if one remembers that, according to other official data cited by the Chilean Ministry of Finance, there were 358,792 public servants in 1974, whereas by 31 December 1981, following the implementation of the above-mentioned legislation, the figure had fallen to 162,583. That was precisely the date of entry into force of a presidential provision ending the mass dismissals in the public service. 18/ The workers' members of the ILO Committee protested against the debureaucratization legislation because it conferred on the Government "absolute power to dismiss officials and, in particular, teachers, who had no protection at all". They further stated that "the Freedom of Association Committee of the Governing Body linked the question of dismissals in contravention of [ILO] Convention [No. 111] with the failure to ensure freedom of association". In the opinion of the latter Committee, no measure involving discrimination against trade unions should be adopted on the pretext of dismissals for economic reasons. Those facts demonstrated that Convention No. 111 was not currently being applied in Chile. Lastly, the workers' members stated in the ILO Committee that a serious appeal must be made to the Government and expressed the hope that the present difficulties would be overcome. The employers' members associated themselves with the workers' members and the Committee decided to express its concern about the legislative provisions on public officials which appeared to be incompatible with Convention No. 111. In the meantime, the Committee "decided to mention the case in the general part of its report under the heading 'Continued failure to implement'". 19/

16/ ILC, sixty-eighth session, 1982, report III (part 4A): "Report of the Committee of Experts on the Application of Conventions and Recommendations", op.cit.

17/ ILC, sixty-eighth session, Geneva, 1982, provisional record No. 31, "Report of the Committee on the Application of Conventions and Recommendations", op.cit.

18/ Information published in El Mercurio of 1 June 1982, giving as the source the Budget Department of the Ministry of Finance.

19/ ILC, sixty-eighth session, Geneva, 1982, provisional record No. 31, "Report of the Committee on the Application of Conventions and Recommendations" op. cit.

B. Working conditions

209. The Universal Declaration of Human Rights (arts. 23 and 24) and the International Covenant on Economic, Social and Cultural Rights (art. 7) recognize the right of everyone to just and favourable conditions of work which ensure a minimum remuneration, the right of everyone without any discrimination to equal pay for equal work, the right of workers and their families to a decent living, the right to safe and healthy working conditions, the right to equal opportunity to be promoted in one's employment and the right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay. These provisions are supplemented by those of a large number of international labour conventions, some of which have been ratified by Chile, including Convention No. 100 (1951) concerning equal remuneration for men and women workers for work of equal value. Article 2 (2) of this Convention provides that this principle may be applied in each member State by means of national laws and collective agreements between employers and workers.

210. The Special Rapporteur has noted that working conditions, in the light of the general economic crisis, are far from being satisfactory and meeting the principles embodied in the international instruments. During the period covered by his mandate, the problem of just and equitable remuneration assumed particular seriousness, in particular in connection with Act No. 18,134 of 1982. The Government has expressed the desire not to exceed, in future collective bargaining, the limits on remuneration in force in July 1979, taking account however of the adjustment corresponding to changes in the consumer price index. The promulgation of Act No. 18,134 met this objective; it was presented as a realistic solution intended to maintain stability of employment and to avert the closure of enterprises. ^{20/} According to the press, which considered this measure to be necessary, "Act No. 18,134 was intended to make the labour market situation more flexible", by remedying the disadvantages arising from the maintenance of a minimum ("bottom") wage, because "in a period of recession", the "bottom wage" had proved too rigid, the labour market situation requiring a decline in real wages in order to prevent enterprises from going bankrupt and unemployment rates from rising". ^{21/} Many trade union organizations informed the President of the Republic that they were opposed to Act No. 18,134. Thus, an important miners' union, the Confederation of Copper Workers, decided at its congress at Punta de Tralca in July that it would hold a "work stoppage in the copper mining industry if the Government did not repeal those provisions of Act No. 18,134 which abolished the allowances and rights which the workers enjoyed by virtue of the fact that the 'bottom salary' used for collective bargaining purposes is that which existed in 1979". ^{22/} In addition, in a public statement on 12 August 1982, the National Federation of Petroleum Workers' Trade Unions (ENAP) said that the Act in question was "unjust and clearly unconstitutional" and that no Chilean was required in all conscience to respect it; the trade unions were

^{20/} El Mercurio, 22 June 1982.

^{21/} Editorial in El Mercurio, 24 July 1982.

^{22/} Hoy, 4-10 August 1982.

prepared to call for the Act to be declared unconstitutional "since it infringes an acquired right enunciated in the Constitution".^{23/} Furthermore, the legal representatives of the Co-ordinating Committee of Telephone Workers' Trade Unions, an association representing 14 trade unions and with a total membership of 4,000 persons, lodged with the Supreme Court an appeal in which they requested it to declare unconstitutional the provisions of Act No. 18,134 relating to collective bargaining. This Committee had begun negotiations with a view to concluding a collective agreement when quite unexpectedly the Telephone Company, forestalling the decision of the arbitration tribunal to which the case had been submitted, amended the agreements in force, lowering the wages and allowances and reducing bonuses. In the opinion of the legal representatives, "the minimum rate fixed in the new Act should not be applied to collective bargaining under way and subject to compulsory arbitration before the promulgation of the Act, which is by this fact unconstitutional. If the Act was implemented, it would jeopardize the constitutional provisions which guaranteed workers' rights". They further stated that "the appeal lodged with the Supreme Court is based on a report ... by Mr. Alejandro Silva, Professor and specialist in constitutional law, who affirms that the Act is unconstitutional".^{24/}

211. The Special Rapporteur has also received allegations concerning the gradual privatization of the health and social security services in general, which would appear to confirm the tendency of the Government to dissociate itself from the welfare functions which are incumbent on the State in this area, in accordance with the Universal Declaration of Human Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (arts. 11 and 12)

C. Right of children and young persons to special protection

212. This right is enunciated in article 25 (2) of the Universal Declaration of Human Rights and, in particular, article 10 (3) of the International Covenant on Economic, Social and Cultural Rights. Under the Covenant, States parties are required to take "special measures of protection and assistance ... on behalf of all children and young persons without any discrimination". They must in particular protect them from "economic and social exploitation". Moreover, "their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law". Lastly, States should "set age limits below which the paid employment of child labour should be prohibited and punishable by law". The prohibition of work by children, the definition of the special conditions in which young persons may undertake light work, and the determination of dangerous or unhealthy work which both children and young persons may not be required to perform have been the subject of many international labour conventions and ILC resolutions. Chile has ratified, *inter alia*, Convention No. 5 (1919) on the minimum age (industrial employment), Convention No. 6 (1919) on night work by young persons (industry), Convention No. 7 (1920) on the minimum age (employment at sea), Convention No. 10 (1921) on the minimum age (agriculture), Convention No. 15 (1921) on the minimum age (trimmers or stokers), Convention No. 16 (1921) on the compulsory medical examination of children and young persons employed at sea, and Convention No. 127 (1967) on the maximum permissible weight to be

^{23/} El Mercurio, 13 August 1982. See Solidaridad, No. 137, first fortnight of June 1982.

^{24/} El Mercurio, 20 August 1982.

carried by one worker. But it should be noted that all these conventions constitute the first provisions of international labour legislation in this area; they are now very old and many have been replaced by new international labour conventions. Particular note should be taken of Minimum Age Convention No. 138 (1973) (not ratified by Chile) which largely codifies the earlier conventions and under which the minimum age for admission to employment should gradually be raised to 16 years. This convention nevertheless leaves a certain leeway in that the minimum age may be fixed at 15 or may coincide with the age at which compulsory schooling ends, whichever is the more favourable.

213. The Special Rapporteur has noted that in practice certain situations have indicated that children and young people can be exploited and employed in clandestine or illegal work and that they can be induced into prostitution. 25/ The economic crisis has also had an influence on the living conditions of children and, in particular, on their diet and housing conditions. 26/ The family allowances prescribed for legitimate children are inadequate. 27/ In addition, there has been a gradual trend towards the privatization of formerly public welfare services for children, including the creation and financing of children's centres. 28/ It should be added that living conditions in these centres do not seem to ensure the necessary balance between the obligation to attend school and the obligation to work imposed on children in these centres. 29/ The Special Rapporteur also emphasizes the need to set up for children vocational guidance and training programmes designed to enable them, as from a certain age, to find a job which will give them a decent living. In this respect, the apprenticeship contract, as provided for in Decree-Law No. 2200, does not seem to respect these principles sufficiently.

214. As indicated by María de la Luz Silva 30/ in a recent study, work by children under 14 years of age is prohibited by Chilean legislation. But it is common knowledge that the relevant legal provisions are not respected when, because of acute economic problems, children are induced to work illegally and clandestinely, which is often the case after the age of 10 in Chile. The economic recession drives many women and children to seek a means of survival, especially when the father is unemployed. As early as in the 1970 census, it was apparent that children aged between 12 and 14 years were recorded as "economically active"; in other words, they were engaged in productive economic activities, either in accordance with the law or outside the law. These children mainly live in rural areas (64 per cent), where they work in

25/ El Mercurio, 14 July 1982.

26/ See inter alia, El Mercurio, 22 July, 2 and 7 August 1982.

27/ El Mercurio, 7 July 1982. Solidaridad, first fortnight of July 1982.

28/ Hoy, 26 May - 1 June 1982.

29/ El Mercurio, 20 July 1982.

30/ María de la Luz Silva, "Urban poverty and child work - elements for the analysis of child work in Chile" in Child work, poverty and underdevelopment, published by Gerry Rodgers and Guy Standing, Geneva, ILO, 1981, pp. 159-177.

agriculture; in urban areas, they work mainly in commerce (21 per cent), manufacturing (11 per cent) and services (10 per cent). 31/ Such classifications are ambiguous, however, because some illegal work is difficult to define, notably retailing in the streets or public transport vehicles. Moreover, temporary or unstable work is a common phenomenon: children work intermittently - from time to time or only a few days a week. 32/

215. Lastly, the Special Rapporteur wishes to emphasize the pernicious consequences of premature work by children and young people. Mrs de la Luz Silva considers that independence acquired too soon through work often leads children to aggressiveness, hostility or delinquency. Moreover, premature child work can be highly dangerous to the child's physical and mental development, in an environment in which survival is always difficult and affection is lacking. 33/ When children are employed in illegal or clandestine work, they cannot form organizations to protect their interests. Legally employed apprentices, too, are forbidden to organize. Moreover, in the informal sector or in the case of unpaid work, the very nature of the work makes organization impossible. 34/

31/ Ibid., p. 165.

32/ Ibid., p. 169

33/ Ibid., p. 175

34/ Ibid., p. 176

IX. TRADE UNION RIGHTS

A. Right of trade union association

216. This right is widely recognized in the international instruments, in particular in article 23 (4) of the Universal Declaration of Human Rights and in article 8 of the International Covenant on Economic, Social and Cultural Rights. It is generally understood as the right of every person, with other persons, to form trade unions and join the trade union of his choice, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are "necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others". (Covenant, art. 8 (1) (a)). In addition, the right of trade union association entails the right of trade unions "to establish national federations or confederations" and the right to "form or join international trade-union organizations". (Covenant, art. 8 (1) (b)). Moreover, the free functioning of trade unions should be ensured without arbitrary limitation. The only limitations permitted under article 8 (1) (c) are those "prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others".

217. In ILO, the right of trade union association is recognized as a constitutional principle and is enunciated as such in the Constitution and the Declaration of Philadelphia of 1944, which is annexed to the Constitution. In addition, Convention No. 87 (1948) concerning freedom of association and protection of the right to organize stipulates, in article 2, that workers and employers "without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization". This right essentially opposes any interference by the State or any public authority in the organization and functioning of legally constituted occupational organizations. Thus article 4 of the above-mentioned Convention provides that "Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority". And, to guarantee their free constitution, article 7 provides that "The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application" of the above provisions.

218. The Special Rapporteur has already had occasion to refer to the trade union situation in Chile in preceding reports, 1/ and earlier in the present report. 2/ But in this chapter attention should be given to the collective dimension of the right of trade union association, since what is at issue is the protection of the rights to freedom and independence of freely constituted occupational organizations,

1/ See in particular document A/36/594, paras. 410-443, and document E/CN.4/1484, paras. 168-181.

2/ See above, chap. VII. B: "Right of association", and also chap. VII. A: "Right of peaceful assembly".

whether they be workers' unions or employers' associations. In this connection, mention should be made of the proceedings instituted in June 1981 against the National Trade Union Co-ordinating Body (CNS), which comprises some 500 Chilean workers' occupational organizations subscribing to the most diverse ideologies under the banner of trade union unity. The point of law at issue in this case concerns the legal personality of CNS. The labour legislation currently in force in Chile does not recognize the large trade union organizations or, in other words, the right to form federations and confederations, contrary to the provisions of the international instruments to which the Special Rapporteur has already referred. For this reason CNS, like many other associations, leads a precarious legal existence and is in practice obliged to take shelter behind article 19 (15) of the Constitution. But as the Special Rapporteur has already indicated, 3/ the right of association provided for under the Constitution has been neutralized since September 1973 by the provisions prohibiting all political activity, this prohibition having been confirmed in the tenth transitional provision of the Constitution. To this should be added the discriminatory effects of the implementation of article 8 of the Constitution and the emergency measures which are provided for in the 24 transitional provision (threat to internal peace) and in article 41 (4) of the Constitution (state of emergency) and are temporarily in force in Chile. The Special Rapporteur has already drawn attention to certain special features of the proceedings against CNS. Thus the prosecutor proposed the provisional suspension of the trial of 10 of the principal leaders of CNS who had been arrested and accused of "illegal representation" since, according to the official contention, CNS was constituted illegally. The defence called 180 witnesses who stated that the 10 accused were indeed trade union representatives, but the examining magistrate rejected their testimony and, on 18 May 1982, in the first instance, the accused were sentenced to 541 days' imprisonment for the "crime" of "illegal representation". 4/ Two of the main CNS leaders (Alamiro Guzmán and Manuel Bustos) remained in prison for six months for repetition of the same "crime", which would appear to be punishable by Decree No. 2347 of 1978. In addition, the persons found guilty were forbidden to act as trade union leaders or to leave the country. When the Santiago Court of Appeal was seized with the appeal by the defence on behalf of the trade unionists, the Government stated, on 14 June, that it was dropping its action. 5/ The official communiqué of the National Directorate for Information Media (DINACOS) stated that "the persons responsible had already been punished for the same acts and in a new judgement the courts, at least in the first instance, again sentenced them for having resumed their "illegal activities". DINACOS added that the Government had dropped its action because it wished to "give the persons concerned the opportunity of reforming, by encouraging them to stop behaving as if they were ignorant of the legal provisions in force and to stop flouting the authorities by maintaining in practice an illegal organization which systematically violates the provisions in force". 6/ For its part, the Executive Committee of CNS replied: "We have not

3/ See document A/36/394.

4/ See above, chap. VII. B: "Right of association".

5/ El Mercurio, 19 and 23 May 1982, Hoy, 23-29 June 1982, El Mercurio, 15 June 1982, and Chilean Commission on Human Rights, report for May 1982.

6/ El Mercurio, 15 and 17 June 1982.

been guilty of illegal representation; we have simply acted on the order of legally recognized representatives, accredited by the Directorate of Labour itself in a report remitted to the court". 7/ The Executive Committee added that it was not challenging anyone and that its attitude was not illegal; it was merely exercising "the rights of association, assembly and petition". 8/ The ILO Committee on Freedom of Association took up these observations and, under its recommendations to the Governing Body, stressed that "the adoption of measures of detention and sentencing against workers' representatives in connection with activities related to the protection of the workers' interests endangers the free exercise of trade union rights". 9/ In addition, it should be emphasized that the Government has continued its action against five other persons who are continuing to suffer the consequences of the trial: Juan Manuel Sepúlveda, the CNS leader who is forbidden to enter the country, and the lawyers Jaime Castillo, Carlos Briones, Alberto Jerez and Orlando Cantuarias, who were expelled from the country in August 1981 for having expressed their solidarity with the accused CNS leaders and given them technical advice. 10/

219. The question of trade union freedom in Chile was taken up on various occasions at the sixty-eighth session of the International Labour Conference (ILC). Thus, for example, the workers' group at the Conference recognized the Chilean trade union leaders in exile as the "genuine representatives of the Chilean workers" and of their trade union movement; in other words, "the official delegation was publicly and internationally disavowed by world trade unionism". 11/ The ILC Credentials Committee also took up the question of trade union freedom in Chile; it decided to "record its concern at the absence of any significant progress in the matter of freedom of association in Chile" and expressed the hope that "the necessary steps will be taken to ensure that the Workers' delegate and advisers of Chile are truly representative of the workers of that country". 12/

7/ El Mercurio, 15, 16 and 20 June 1982.

8/ Public statement made by the Executive Committee of CNS on 16 June 1982. See also the statement made by the Chairman of the Executive Committee on 23 June 1982 on the occasion of the seventh anniversary of the establishment of CNS (p. 3).

9/ See 217th report of the Committee on Freedom of Association, case No. 823 (Complaints presented 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 against the Government of Chile), in document GB.220/8/18, two hundred and twentieth session of the Governing Body, Geneva, May-June 1982, para. 513 (a).

10/ Hoy, 23-29 June 1982.

11/ El Pais, 9 June 1982. See also Solidaridad, first fortnight of June 1982.

12/ See ILC, sixty-eighth session, Geneva, 1982, provisional record No. 19, pp. 19-40: "Report of the Credentials Committee". See also The Guardian, 22 June 1982, and El Mercurio, 4 and 13 June 1982.

220. Reference was made to another case of a specific infringement of trade union rights on the occasion of a complaint presented by the International Confederation of Free Trade Unions (ICFTU) against the Government of Chile concerning the violation of the premises of the National Confederation of Trade Unions and Federations of Agricultural, Forest, Indigenous and Agro-Industrial Workers "El Surco". In this connection, the Committee on Freedom of Association considered that "the right to protection of the property of trade unions constitutes one of the civil liberties essential for the normal exercise of trade union rights". 13/ In relation to interference by the public authorities in the free exercise of trade union rights, the Special Rapporteur has received frequent complaints concerning the violation of trade union premises. Thus, on 11 August 1982, the Ministry of the Interior issued a warning to trade union leaders, who "must respect the provisions of labour legislation and not allow their trade union headquarters to be used for political meetings"; in addition, several important trade union leaders "have been requested to report to the Directorate-General of Police, where the officer in charge has warned them that they could use the trade union premises only for trade union purposes and not for political meetings, and that the leaders must not engage in any act of political militancy". 14/ In another complaint against the Chilean Government, which was taken up by the Committee on Freedom of Association on 1 and 4 March 1982, concerning the assassination of the trade union leader Tucapel Jiménez, the World Confederation of Labour (WCL), the World Federation of Trade Unions (WFTU) and ICFTU state that the early application for amparo signed by several trade union leaders, including Tucapel Jiménez himself, indicated that "they were prevented by the police from entering the premises of the Valparaiso Dockers' Federation, and that the form of police intervention gave them cause to fear for their lives, their physical well-being and their freedom". Their intention in entering the Federation's premises was "to express their solidarity with the port workers". Despite that, "policemen armed with machine guns surrounded the area and armoured cars and police wagons were placed in front of the entrance to the Federation building. In addition, security agents took individual photographs of the trade union leaders so as to make them feel that pressure and threats were being used against them. A high police official prevented the trade union leaders from entering the building without giving reasons or producing a warrant. The signatories add that they are aware that they are being followed and that no place is safe for them. They request the restoration of law and the guarantee of effective protection". In these circumstances, the Committee had no choice but deeply to deplore the murder of Tucapel Jiménez and expressed the view that such a climate of violence constituted a very serious obstacle to the exercise of trade union rights. 15/

13/ See the 217th report of the Committee on Freedom of Association, paras. 276, 284 and 285, document GB.220/8/18, op. cit.

14/ El Mercurio, 15 August 1982. See also Chilean Commission on Human Rights, report for May 1982.

15/ See Committee on Freedom of Association, case No. 1117, paras. 486, 487, 492 and 493, document GB.220/8/18, op. cit.

221. The Special Rapporteur has also received complaints of repeated discriminatory practices by the public authorities against trade unions. Cases in point are the prohibition of press conferences by trade union leaders 16/ and the maintenance as an administrative practice of mass dismissals of public servants. Examples include the dismissal of 690 persons by the Postal and Telegraph Service and the dismissal of the Vice-President of the National Revenue Employees' Association (ANEF), which was the subject of a further complaint to the Committee on Freedom of Association. In view of the complainants, those measures were aimed "at preventing the trade union leaders concerned from continuing to exercise their functions as workers' representatives"; according to the Government, however, "the dismissals were due to the need to rationalize the administration". Nevertheless, the Directorates dismissed a large number of trade union leaders "while at the same time recruiting new employees". The Committee therefore considered it necessary to draw attention to the "importance which it attaches to effective protection, both in law and in fact, against any acts of anti-union discrimination which may be committed against trade union leaders" and accordingly requested "the Government to re-examine the situation of the dismissed trade unionists with a view to their reinstatement in their administration". 17/

B. Right to bargain collectively

222. This is a second essential element in the right to trade union freedom, which has developed considerably within ILO. Thus Convention No. 98 (1949) concerning the application of the principles of the right to organize and to bargain collectively provides, in article 4, that "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements". Of course, workers' and employers' organizations must enjoy adequate protection against any acts of interference by each other and workers must enjoy adequate protection against any acts of anti-union discrimination in respect of their employment (Convention No. 98, arts. 1 and 2).

223. However, it is apparent from numerous complaints brought to the attention of the Special Rapporteur that the Chilean legislation in force limits the exercise of the right to bargain collectively. Firstly, as the Special Rapporteur has already indicated, Act No. 18,134 of 1982 considerably limits the very substance of future collective bargaining by fixing particularly unfavourable conditions for workers, especially with regard to remuneration. 18/ Secondly, it has also become apparent

16/ El Mercurio, 12 May 1982; Chilean Commission on Human Rights, report for May 1982; CNS communiqué, 9 June 1982, etc.

17/ Committee on Freedom of Association, case No. 1094 (Complaints presented by the Postal, Telegraph and Telephone International and the National Revenue Employees' Association against the Government of Chile), 217th report, paras. 257, 270, 272 and 273, document GB.220/8/18, op. cit.

18/ El Mercurio, 25, 28, 30 and 31 July 1982; Hoy, 4-10 August 1982.

that workers' federations and confederations have been absolutely forbidden to take part in collective bargaining. ^{19/} Moreover, the special statute for enterprises, which was promulgated in 1975 and should apply at the same time as the new labour code, will not enter into force in 1982 as planned since the new labour code is still not being implemented. It has been stated that "this statute was conceived at a time when the current labour policy had not yet been sketched out. The preliminary draft of the labour code, which was prepared at that time, enunciated trade union rights and the right to bargain collectively by branch of economic activity. On the other hand, in the Labour Plan, which outlines labour policy, it is provided that collective bargaining should be undertaken on an enterprise-by-enterprise basis," ^{20/} and this is currently the case.

224. In a complaint against the Government of Chile presented to the Committee on Freedom of Association on 28 February 1982, ICFTU denounced the situation with regard to collective bargaining in connection with the fines of 800,000 and 80,000 pesos imposed on the leaders of the National Confederation of Leather, Footwear and Allied Industries Workers by the High Commission against Monopolies. The grounds of the conviction were that "the trade unions of workers in leather undertakings presented draft collective agreements having an identical formal structure and similar claims due to the role of adviser played by the Confederation and its four leaders". This situation is contrary to Decree-Laws No. 211, 2756 and 2758, under which collective bargaining must "exclusively take place within the undertaking, taking into account the socio-economic realities". ICFTU considered that "the sentencing of trade union leaders for having advised first-degree unions reduces the capability of these smaller unions to bargain collectively, which implies a restriction on freedom of association". For its part, the Committee noted that "this matter originated in a restriction imposed on federations and confederations against participating in collective bargaining, which should take place at the level of the undertaking", as provided for in articles 4 and 7 of Decree-Law No. 2758/1979. The Committee had already had the opportunity of analysing Chilean trade union legislation on several occasions and it recalled that "the denial of the right to the right to strike and the right to collective bargaining to federations and confederations 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". On the other hand, the Government considered that "monopolistic practices were having a bad effect on the non-unionized workers, small unions, the unemployed, consumers and the economy of the country in general". In this connection, the Committee pointed out that "where clauses in certain collective agreements appeared 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". The Committee accordingly considered that it must

^{19/} El Mercurio, 29 July 1982.

^{20/} El Mercurio, 29 July 1982.

insist "on the importance of the principle that federations and confederations must be able to bargain collectively or, if they so wish, participate in the negotiations in which their affiliate organizations are engaged". For that reason it recommended the Governing Body to approve the following conclusion, namely, that it expressed the "firm hope that the penalties handed down in the first instance on the National Confederation of Leather, Footwear and Allied Industries Workers and four of its leaders will be lifted" and requested "the Government to keep it informed of the outcome of this affair". 21/

225. In another case submitted to the Committee on Freedom of Association, complaints were presented against the adoption by the Government of Act No. 18,032 relating to dockworkers (Diario Oficial, 25 September 1981). This Act amends Decree-Law No. 2200/1978 relating to labour contracts and the protection of workers, and Decree-Law No. 2756/1979 on trade union organization. The complainants' main argument was that "Act No. 18,032 constitutes a serious step backwards as regards the working conditions of dockworkers". The Committee noted that the trade union leaders who at one point had protested against the adoption of Act No. 18,032 had been placed under house arrest, which, by depriving "trade unionists of the opportunity to carry on trade union activities, is a measure incompatible with the normal enjoyment of the right of association". The Committee further observed that "the new legislation respecting dockworkers places serious limitations on collective bargaining, as does the general legislation on the subject". It also recalled that "legislation should not constitute an obstacle to collective bargaining at industry level" and considered that "the best procedure for safeguarding the independence of the parties would be to allow them to decide by mutual agreement the level at which bargaining should take place". It accordingly held the view that "the new legislation respecting dockworkers places serious limitations on collective bargaining" and that "legislation should not constitute an obstacle to collective bargaining at the industry level". 22/

C. Right to strike

226. Under article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights, States parties undertake to ensure "the right to strike, provided that it is exercised in conformity with the laws of the particular country". This right is in fact an essential element in the right to trade union freedom, as established in the practice of ILO and, in particular, by the Governing Body's Committee on Freedom of Association. The Special Rapporteur has referred on several occasions to Chilean trade union legislation which imposes severe restrictions on the exercise of the right to strike by workers who wish to ensure the defence of their occupational interests. 23/ The situation has not changed during the period

21/ Committee on Freedom of Association, case No. 109, paras. 471-483, 217th report, document GB.22C/8/18, op. cit.

22/ Case No. 1096 (Complaints presented by ICFTU and the International Transport Workers' Federation against the Government of Chile), 217th report, paras. 286-302, document GB.22O/8/18, op. cit.

23/ See in particular document E/CN.4/1484, paras. 166-181.

covered by the present report. This is eloquently borne out by case No. 823 before the Committee on Freedom of Association, to which the Special Rapporteur has already referred. In this case, emphasis was placed on the complaints presented by several international trade union organizations against the Government of Chile concerning the 35 workers of the Panel Textile Undertaking who were dismissed as a result of their trade union activities during the 57-day strike which had been organized in that undertaking. In that connection, the Committee was obliged to note that the dismissals "came very shortly after action had been undertaken by the trade union organizations of the undertaking in support of their claims, and in particular after a fairly protracted strike. In these circumstances the Committee cannot but establish a link between the labour disputes involving the trade unions and the management of the undertaking and the dismissals subsequently announced. In this respect, the Committee must point out that when trade union members and leaders are dismissed for having exercised their right to strike, which is one of the essential means whereby workers and workers' organizations can promote and defend their interests, there is reason to conclude that they have been penalized for their trade union activities and are subject to anti-union discrimination, contrary to the principle of freedom of association. Consequently, the Committee would recall that workers must enjoy adequate protection against any acts of anti-union discrimination both in law and in practice". 24/ The Special Rapporteur can only support without reservation the recommendation of the Committee on Freedom of Association.

24/ Committee on Freedom of Association, case. No. 823 (Complaints presented by ICFTU, WCL, WFTU and several other trade union organizations against the Government of Chile), 217th report, paras. 499, 510 and 513 (a), document GB.220/8/18, op. cit.

X. CULTURAL RIGHTS. RIGHTS OF MINORITIES

A. Right to education and culture

227. The right to education is recognized in the Universal Declaration of Human Rights (art. 26) and in the International Covenant on Economic, Social and Cultural Rights (art. 13). These international instruments enunciate the following guiding principles: education must be directed to the full development of the human personality and the sense of its dignity, and must strengthen respect for human rights and fundamental freedoms; education must enable all persons to participate effectively in a free society, and promote understanding, tolerance and friendship among all nations for the maintenance of peace. Furthermore, the objective of the right to education must be to make primary education compulsory and free. Secondary education, including technical and vocational secondary education, "shall be made generally available and accessible to all" by the progressive introduction of free education (Covenant, art. 13 (2) (b)). Higher education must be made equally accessible to all, on the basis of capacity, by the progressive introduction of free education. Lastly, the right to education also extends to persons who have not received or completed the whole period of their primary education, and to the establishment of an adequate fellowship system and the improvement of the material conditions of teaching staff. The right to education is also defined, at the international level, in the UNESCO Convention against Discrimination in Education, which Chile has also ratified. Chile is not a party to the Protocol to that Convention instituting a conciliation and good offices commission responsible for settling disputes between States parties to the Convention.

228. The Special Rapporteur has frequently mentioned the far-reaching reform which the Chilean Government has been undertaking at all levels of education since September 1973. 1/ During the current mandate, problems relating to primary education were taken up at the first assembly of the Professional Association of Chilean Teachers (AGECH), which was held at Punta de Tralca from 17 to 19 July 1982. 2/ On this occasion the teachers denounced the fact that the relaxation of the principle of State intervention only on a subsidiary basis, which had taken place in the economic sector, had not been accompanied by similar measures in the educational sector, where State intervention was very limited. They protested against the "social selection which characterizes access to the school system", and as a result of which "the majority of pupils are destined to receive only brief technical training before swelling the ranks of the workers". These future adults would thus have only an elementary education which would not endow them with a critical sense. This would serve "an ideological orientation" within "the liberal economic model and political authoritarianism", all in the name of the principle of the subsidiary role of the State, which would "wash its hands" of the matter. 3/ Thus, in the words of a former official in the Ministry of Education, there is a danger that basic education "will be no more than a process of teaching pupils to read and write, which would produce only people who were potential illiterates through lack of use of the rudiments acquired". He added that

1/ See in particular A/36/594, paras. 369-376.

2/ El Mercurio, 25 June and 17 July 1982.

3/ Hoy, 28 July-3 August 1982.

"the flexibility of curricula makes it possible, in practice, to create two separate types of school: firstly, the State school, which is authorized to curtail its normal time-tables and confines itself to teaching only the essential disciplines, and secondly, the private school, which does not have this power and which, on the contrary, is authorized to introduce additional subjects". 4/ Furthermore, the principle of the "subsidiary role of the State" presupposes the gradual abandonment by the State of its responsibilities with regard to education - responsibilities which are now incumbent on the municipal authorities (mayors) until such time as they are entrusted entirely to the private sector. In this situation, the teachers attending the AGECH assembly proposed a preliminary draft statute for education under which teachers would receive the same guarantees as other wage-earners, in particular guaranteed employment, which at present they do not have. They also requested that the State should resume management of education and that the measure which was due to follow municipalization, namely, the privatization of education, should be suspended. 5/

229. The Ministry of Education has introduced a new statute for basic education which applies to 84 per cent of the State education system, in other words, 5,724 schools and 72,531 teachers and administrative officials. 6/ It is specified in the statute that teachers will in future be subordinate to the mayor (president of the competent municipal council), who will also be responsible for paying the corresponding remuneration and will supervise the "professional training of teachers and administrative personnel". 7/

230. As regards university education, the Special Rapporteur has described the most important legislative changes in earlier reports to the General Assembly. 8/ During his current mandate, a new statute has been adopted for the University of Chile; 9/ this forms part of the over-all reform and establishes parallel provisions. The faculty students' associations are placed permanently under the direct supervision of the President of the Republic, who will be responsible, in particular, for appointing and dismissing the university Rector, on the proposal of three members of the Governing Body. Under the authority of the Rector, the University of Chile is administered by two governing organs. The hierarchically senior organ is the Governing Body, which is responsible for approving the most important decisions. It thus nominates the three members who will be responsible for assisting the President of the Republic in appointing the Rector; and it approves the University's over-all development policies, the appointment of central authorities and heads of faculties, the organic and financial structure, and its own rules of procedure. Two thirds of the members of the Governing Body, which is vested with all these powers, are persons appointed by the University Council, and one third persons directly appointed by the President of the Republic. The second organ, in order of importance in the new structure of the University of Chile, is

4/ Ibid.

5/ Ibid.

6/ El Mercurio, 20 June 1982.

7/ Ibid.

8/ A/36/594, paras. 369-376 and 396-402.

9/ DFL No. 153, Diario Oficial, 19 January 1982.

the University Council, which is presided over by the Rector and composed of the Vice-Rector, the deans and senior professors, who are appointed by the Council itself. Thus, given the fact that both the deans and the central authorities are appointed directly by the University Rector, it would appear that the first Governing Body elected is composed of persons designated by the President of the Republic or by the Rector of the University. Consequently, the management of university affairs leaves no room for the participation of representatives of the teaching staff or, of course, student or non-academic representatives. 10/

231. Another new element in the university statute is apparent in article 55, where the question of "university prestige" is considered as a means of preventing the use of teaching for purposes of ideological and political indoctrination. Thus, teachers, students or officials who violate the principle of "prestige" will be dismissed. The statute is thus aligned with the constitutional provisions (article 8 and tenth transitional provision) governing the political and ideological control of citizens, conferring a legal character on practices which have hitherto simply been arbitrary administrative measures expelling from the University students or teachers who have tried to exercise, within or outside University premises, the civil and political rights recognized by international law. The above-mentioned article 55 of the statute stipulates that "no teacher, student or official shall be admitted if he has been expelled from another higher education establishment, in the light of the stated considerations" concerning the political truce. 11/ Thus, as the Special Rapporteur has already indicated on other occasions, academic freedoms are apparently subject to important restrictions. 12/

232. The participation of students in university life is also severely limited because the university statute itself sets aside the principle of autonomy in the organization and representation of students (statute, art. 56). This situation emerged clearly during the electoral period which opened in June in the University of Chile for the nomination of 300 representatives of classes, disciplines or courses in that university. In this connection, two movements manifested themselves: the official movement, represented by the Federation of Students' Associations of the University of Chile (FECECH), which accepted the electoral regulations imposed by the Rector in the decree of 20 May 1982, fixing the electoral period at 2-9 June (five days), even though it had previously proposed an electoral period of 15 days. The second movement was represented by students who advocated abstention from the elections because "FECECH does not represent, vis-à-vis the university authorities, the true concerns of the students and it is preferable to promote the emergence of true leaders independent of the official line," 13/ by creating "genuine space for student freedom and expression". 14/ The result of these controversial elections was an abstention rate of 35.6 per cent according to FECECH and 56.19 per cent according to its opponents. It is true that, at present, FECECH is proposing a certain innovation in the framework of official policy by calling in particular for the replacement, with the authority of the President of the Republic,

10/ See Chilean Commission on Human Rights, report for March 1982.

11/ Ibid. See also El Mercurio, 4, 5 and 8 June and 9 and 13 July 1982.

12/ See A/36/594, paras. 382-395.

13/ Solidaridad No. 136, second fortnight of June 1982.

14/ Hoy, 2-8 June 1982.

of the present delegated rectors (who are members of the armed forces) by civilians, because it considers that excessive militarization can lead to "a new Marxist upsurge in the University within a few years". 15/ A meeting of recently elected student leaders, sponsored by FECECH itself, was reportedly suspended because of obstruction by the university authorities. 16/ Lastly, the Special Rapporteur has already referred, in the present report, to the persecution and illegal detention suffered by allegedly dissident students, 17/ in which a direct part is played by the University authorities and the organs that maintain order within the University.

233. As to the University teachers, the Special Rapporteur has already indicated in other reports to the General Assembly the extreme precariousness of their situation. 18/ At present, arbitrary dismissals of university teachers are continuing. According to information communicated to the Special Rapporteur, some 400 teachers in the Faculty of Medicine have been dismissed without any kind of compensation, unemployment insurance or pension; the persons concerned were between 30 and 40 years of age. However, it has been announced at the same time that retired teachers from the same faculty have been re-employed. 19/

234. The principle that the State should intervene only in a subsidiary capacity has also been applied in recent years in the University of Chile, where there has been gradual privatization of university studies. This has been accompanied by a new university subsidies policy under which the State pays a subsidy of 12 billion pesos, out of which 2,080,429,000 pesos have been used, in 1982, for loans to needy students. 20/ However, this type of low-interest loan has to be repaid within the two years following completion of the university course, 21/ whether or not the student has been awarded a degree or within a shorter period if he does not enrol for courses for two successive years. The annual interest rate is 1 per cent and the value of the loan is determined in monthly units of taxation. The loan may be repaid in cash or in 10 equal and successive instalments, or in 15 instalments when the value of each of them is greater than 40 monthly units of taxation. 22/ It is apparent from official data that out of a total number of 120,000 students enrolled for the current university year, 56.7 per cent or 68,700 have obtained such loans, most of these students following courses at the University of Chile. Lastly, two requests by university rectors that university budgets should receive additional funds have been rejected by the Minister of Education "because of the current situation of the national economy". 23/

15/ Ibid. See also El Mercurio, 8, 10, 11 June 1982.

16/ El Mercurio, 17 July 1982.

17/ See in particular chap. III, A.1: "Illegal arrests".

18/ See A/36/594, paras. 377-381.

19/ El Mercurio, 21 and 25 July 1982.

20/ El Mercurio, 21 and 24 July 1982.

21/ El Mercurio, 21 July 1982.

22/ El Mercurio, 21, 24 and 25 July 1982.

23/ El Mercurio, 17 July 1982.

235. The right to culture, as enunciated in the Universal Declaration of Human Rights (art. 27) and the International Covenant on Economic, Social and Cultural Rights (art. 15), comprises the right of everyone to participate in the cultural life of the community, to enjoy the benefits of scientific progress and to benefit from the protection of the moral and material interests resulting from any scientific, library or artistic production of which he is the author (author's rights). In addition, the States parties to the Covenant undertake to ensure "the conservation, the development and the diffusion of science and culture", while respecting "the freedom indispensable for scientific research and creative activity", in the context of the development of "international contacts ... in the scientific and cultural fields" (Covenant, art. 15, paras. 2-4).

236. The Special Rapporteur has indicated on various occasions in the present report that the obstacles imposed by the authorities, in the current constitutional and legal framework, to the exercise of many rights and fundamental freedoms have had specific repercussions on the cultural life of the country and on the exercise of the cultural rights proclaimed in the above-mentioned international instruments. The restrictions on freedom of expression and the right of assembly and the prohibitions relating to the rights of association and participation are having a particularly adverse effect on the country's culture. In addition, the new system of education, which the Special Rapporteur has described above, is characterized by the establishment of the blatant hegemony of the ruling class, a hegemony which is affirming itself throughout the country in a profound break with Chile's historical past. In the opinion of José Joaquín Brunner, "it is a question of ensuring the hegemony of a class which not only controls production, the market and the State apparatus, but can also influence the everyday life, values and aspirations of individuals or groups. This is the only means of ensuring the permanence of the system, because no domination can be imposed in a durable manner simply through the intervention of the forces of repression and no social order can be continuously based on violence". Consequently, what is involved is the "establishment by force of an authoritarian State which unilaterally places economic, political and social mechanisms in the hands of the bourgeoisie, whom it allows to aspire to genuine hegemony to the extent that it manages to inculcate into society as a whole the ideas, values and elements conducive to a disciplinary culture". ^{24/} According to the same author, the authoritarian cultural model is established in four ways: through the policy of exclusion which manifests itself in the persecution of dissidents; through the policy of control which consists in cordoning off the public domain; through the policy of regulation which is exercised by controlling in the market; and through the policy of production in a uniform ideological-cultural direction. ^{25/} The new conception of national education policy constitutes an extremely important factor in the installation of this cultural model and there has thus been a move away from "functional" education to "authoritarian, stratified and disciplinary society" which, as regards education, "replaces the prospect of integration by another prospect based on differentiation and selection". ^{26/}

237. It is in this context that complaints have been made to the Special Rapporteur concerning restrictions on freedom of expression, in particular freedom of information. These restrictions have, in particular, taken the form of

^{24/} José Joaquín Brunner, La cultura autoritaria en Chile, Santiago, 1981.

^{25/} Ibid.

^{26/} Ibid., chap. V, pp. 125-154.

the prohibition of the student publication Nueva Era of the University of Santa María. 27/ There are also the important restrictions on freedom of information enunciated in the twenty-fourth transitional provision of the Constitution, under which the President of the Republic may prohibit, for a renewable period of six months, the founding, publishing or distribution of new publications. The discretionary character of these measures is total since they "may not be the subject of any remedy, except further review by the authority that took them", in accordance with the same transitional provision, which establishes the "exceptional state of emergency due to threats to internal peace", which has been in force in Chile without interruption since March 1981.

238. A number of intellectuals have graphically described the cultural situation of the country as a "cultural blackout", an expression which is contested by official sectors. 28/ The official press has given great prominence to the return to Chile since 1974 of "over 1,000 qualified persons", according to data provided by the Intergovernmental Committee for Migration (ICM). "These are, for the most part, university teachers, but there are also a large number of engineers, technicians and members of various professions" who apparently left the country between 1972 and 1974 with the intention of "increasing their expertise and seeking more favourable outlets". In this respect, ICM "encourages the implementation of the return programme", which has resulted in "over 1,000 persons being reinstated in industrial enterprises, the public and private sectors, and universities". 29/ On the other hand, there are no data concerning the number of graduates who have left the country in recent years, although it is known, also from ICM data, that most such graduates are in the United States, Australia, Canada and Venezuela.

B. Rights of the indigenous minorities

239. Under article 27 of the International Covenant on Civil and Political Rights, ethnic, religious or linguistic minorities have, in community with the other members of their group, the right "to enjoy their own culture, to profess and practise their own religion, or to use their own language". Chile is also a party to the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 and, concerning the implementation of this Convention, it has transmitted several reports to the supervisory body established under article 8 of the Convention, namely, the Committee on the Elimination of Racial Discrimination.

240. The Special Rapporteur has on various occasions taken into consideration the situation of the ethnic minorities living in Chile. 30/ These minorities are, in fact, the Mapuches (approximately 800,000 persons), 31/ the Aymarás (approximately 30,000) and the Pascuanes (inhabitants of Easter Island). 32/ He has also commented

27/ Chilean Commission on Human Rights, report for March 1982.

28/ El Mercurio, 26 July 1982.

29/ El Mercurio, 18 June 1982.

30/ See in particular A/36/594, paras. 470-490.

31/ Figures taken from Solidaridad, No. 137, first fortnight of July 1982. However, other sources give different figures varying between 600,000 and 1 million.

32/ Solidaridad, January 1982. See also, concerning the problems of the Mapuches, the report of the Inter-Church Committee on Human Rights in Latin America, 21 January 1982, pp. 41 and 42.

on the new legislative instruments relating to indigenous peoples, in particular Decree-Law No. 2568 of 21 March 1979, which has been elaborated on by Decree-Law No. 2750; all these texts establish a regime for the division of indigenous land which affects the Mapuches, in particular, and the rights of first occupant which they possess by centuries-old custom. 33/

241. In accordance with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, States "condemn racial discrimination" and undertake to pursue "a policy of eliminating racial discrimination in all its forms and promoting understanding among all races". With regard to Chile, the Committee has endorsed an earlier report in which the Special Rapporteur emphasized the fact that the legislation applied to indigenous inhabitants in respect of the acquisition of titles of land ownership by the Mapuches does not take into account their institutions, customs or traditions. Moreover, for lack of adequate technical and financial assistance, the Mapuches were in danger of being progressively dispossessed of their lands by economically and socially more powerful groups, a development which would endanger their very survival as an ethnic group. In that connection, the Committee on the Elimination of Racial Discrimination subsequently requested from the Government information on methods of land division and on the reason for the closure of the Indigenous Development Institute, which had previously made an important contribution to the cultural and democratic progress of the Mapuches. 34/

242. Article 4 of the Convention obliges States to condemn "all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form". In this spirit, States parties must declare an offence punishable by law "all dissemination of ideas based on racial superiority or hatred", must declare illegal organizations and propaganda activities which incite racial discrimination, and must not permit public authorities to promote or incite racial discrimination. However, the Committee found that Chile had taken no specific legislative measure to combat racial discrimination and that apparently racial discrimination was not even classified as a legally punishable offence unless it was accompanied by acts of violence, which was plainly inadequate in view of the provisions of article 4 of the Convention. The Government replied that the Convention, having been published in the Diario Oficial, automatically formed an integral part of domestic law. It further stated that, in its opinion, the country's new Constitution met in all respects the provisions of article 1 of the Convention. 35/

243. Article 5 of the Convention, under which States parties "undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction ..., to equality before the law", relates in particular to the following fields: right to equal treatment before the tribunals; right to security of person and physical and moral integrity; enjoyment of civil and political rights; right to inherit; public freedoms; economic, social and cultural rights; and right of access to any place or service intended for public

33/ A/36/594, paras. 482-485.

34/ Document A/36/18 (Report of the Committee on the Elimination of Racial Discrimination), para. 262.

35/ Op. cit., paras. 264-268.

use. The Committee stressed the difficulties involved in reconciling Chilean legislation with the text of the Convention, especially with regard to the exercise in conditions of equality of the human rights governing the political, economic, social and cultural sectors or any other aspect of public life, because of the emergency measures which were in force in Chile under article 8 of the Constitution in the form of the state of emergency and the exceptional state of emergency due to threats to internal peace. The Government replied that national legislation proclaimed equality before the law for both Chileans and foreigners, that the Penal Code forbade any kind of discrimination and that the emergency legislation also applied without discrimination. The Committee expressed doubts on this point and said that States must guarantee the exercise of all the fundamental rights listed in article 5 of the Convention. 36/

244. Under article 7 of the Convention, States parties must adopt measures, "particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination". In addition, under article 3, States "undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". The Committee has received from the Chilean Government no information concerning any measures adopted pursuant to articles 3 and 7 of the Convention. In addition, the Committee has requested the Government to give details of "Chile's relations with the racist regime of South Africa". 37/ Chile established diplomatic relations with South Africa in June 1982.

245. Lastly, article 6 of the Convention provides that States parties "shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and against any acts of racial discrimination which violate his human rights and fundamental freedoms ..., as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination". In this respect, the Committee expressed the wish to receive the relevant legislative texts from the Government in order to ascertain whether any person who was the victim of racial discrimination could indeed obtain redress in the courts. It also expressed interest in ascertaining the powers of the Chilean Constitutional Court "to block any legislative measure which sought to undermine or weaken racial non-discrimination". 38/

246. The Special Rapporteur has received testimony concerning the manner in which the legislation governing indigenous affairs has been implemented during the period covered by his current mandate. In these statements, the Mapuche minority denounces both Decree-Law No. 2578/1979 and Decree-Law No. 2750, because it has taken no part whatsoever in the drafting of these instruments and because they do not take into account the specific cultural features of the Mapuches. Moreover, in its opinion, once the lands of the indigenous communities have been divided, they will no longer be considered "indigenous lands" and their owners will cease to be regarded as "indigenous" from the time when ownership of these lands has been recorded in the land registry. Furthermore, the new legislation does not take into account the existence of other minorities living in Chile, particularly the Aymarás.

36/ Op. cit., paras 265 and 269.

37/ Op. cit., para. 263.

38/ Op. cit., para. 266.

247. The same statements emphasize irregularities in the method of dividing indigenous communal land. In this respect, the Government has announced that in five years all communal land will have been divided up. Moreover, in spite of assertions that land division would be voluntary, in practice it has become compulsory because of the many forms of intimidation used against people who, despite the deceit to which the indigenous inhabitants are often subjected by the media and the Mapuche regional councils (organs of the Government), refuse to accept land division. The application of these land division procedures has, according to the statements, often had the effect of conferring a legal character on the plundering of land which formerly belonged to the Mapuches, overriding the legitimate rights of Mapuche heirs, ruining the unity of families, communes and societies since the land allotted to them no longer meets their needs and doing away with land regarded by the Mapuche minority as "sacred" because, since time immemorial, ceremonies and rites have taken place there. These consequences have been aggravated by the fact that Mapuche families have always had low incomes; it has been calculated that the annual income of a Mapuche family does not exceed 200 dollars per person. From the social standpoint, a poor diet and malnutrition are very widespread evils and educational assistance, which is constantly decreasing, will eventually consist of a mere handful of fellowships awarded by the public authorities. 42.9 per cent of the heads of Mapuche families are illiterate and their state of health and living conditions are precarious. The public authorities pay not the slightest attention to the Mapuches' special cultural features. The practice of lanzamiento (judicial eviction) from land is becoming more frequent. This has been the case with three families from the village of Llinquimán in the Panguipulli region who used to belong to the José Jineo community which possessed 104 hectares 12 kilometres from Temuco. It is the case with plundered Mapuche land where runways have been built at Tirúa in the province of Arauco. It is also the case with the removal of the boundary-marks which resulted in the loss of land by five families in the locality of Aranca. The same statements denounce the proposed national park for the protection of fauna which is to be created in the Lake Budi region on the pretext of safeguarding various species of birds and mammals. There are also said to be plans to create a tourist area around Lake Budi, but if this plan, which covers 26,610 hectares of land, is carried out, the number of persons affected will be 25,000, of whom 90 per cent are Mapuches living in indigenous communities.

248. Lastly, the efforts of the Mapuche community to organize itself are still being impeded by the emergency legislation governing associations. Thus the "Mapuche cultural centres" and the "Ad-mapu organization", not having legal status, are leading a precarious existence. On the other hand, the Government accepts the "Mapuche regional councils", which are subservient to it and through which the public authorities apply the legislation prescribing the division of communal indigenous land - very often against the interests of the minority.

CONCLUSIONS AND RECOMMENDATIONS

249. Pursuant to General Assembly resolution 36/157 of 16 December 1981 and Commission on Human Rights resolution 1982/25 of 10 March 1982, the Special Rapporteur has prepared this report on the situation of human rights in Chile, which he has the honour to submit to the General Assembly through the intermediary of the Secretary-General.

250. For the performance of the task entrusted to the Special Rapporteur under the mandates of the Commission on Human Rights and the General Assembly, the Chilean authorities have always been called upon to co-operate with the Special Rapporteur and with United Nations human rights bodies established under international instruments binding on the Chilean State. In that connection, the General Assembly has deplored "the fact that the Chilean authorities have consistently refused to co-operate with the Special Rapporteur", while the Commission on Human Rights has rejected "the attitude of the Chilean authorities in not co-operating with the Special Rapporteur and not complying with Chile's obligations under various international human rights instruments". As emphasized in the Introduction to this report, the Special Rapporteur repeatedly invited the Chilean authorities to contact him and co-operate in the discharge of his mandate, but they always declined to do so. In addition, he endeavoured to ascertain their views on certain matters related to serious violations of human rights but, again, he received no reply from the Chilean authorities. Accordingly, the Special Rapporteur must once more express his regret at the lack of co-operation by the Chilean authorities in the discharge of his mandate.

251. Both the General Assembly and the Commission on Human Rights have reiterated their grave concern at "the disruption of the traditional democratic legal order and its institutions by the maintenance and expansion of emergency legislation and the promulgation of a constitution that fails to reflect a freely expressed popular will". As the Special Rapporteur has noted in this report, the Constitution of 11 September 1980 has remained in force since 11 March 1981, and under it the armed forces are paramount in all matters involving the government of the country. In particular, the exceptional powers held by the military, through the President, extend to the executive, administrative, legislative, judicial and enforcement functions, which acquire particular importance during the period of transition (up until 1989). During his present mandate, the Special Rapporteur has seen nothing which would enable him to conclude that there has been a change for the better. The persistence of the hierarchical constitutional structure, with all branches of government subject to the supervision of the armed forces, is highly conducive to the possible practice of serious, gross and systematic violations of human rights and could by this fact seriously compromise the international responsibility of Chile as a member of the international community.

252. In addition, there is the persistent institutionalization of the emergency regime, composed of the "state of emergency" provided for in article 41 (4) of the Constitution and the "exceptional state of emergency due to threats to internal peace" provided for in the twenty-fourth transitional provision of the Constitution. The two states of emergency were once again extended in 1982. They grant the President of the Republic exceptional legislative and judicial powers, the application of which entails serious restrictions on human rights, as has been shown in this report. This double state of emergency is a major factor in the breakdown of the constitutional order and the deterioration of institutions, as well as the steady erosion of the principle of legality obtaining in any State

subject to the rule of law. The Human Rights Committee considered the two states of emergency to be incomparable with the requirements arising from article 4 of the International Covenant on Civil and Political Rights and their maintenance over several years contrary to article 25 of the Covenant. ^{1/} The consequence will be the failure of the rule of law or of the "primacy of law", and the protection of human rights will accordingly be extremely limited.

253. The right to life and the right to physical and moral integrity are among the international community's fundamental concerns. The Commission on Human Rights has urged the Chilean authorities "to take effective measures to guarantee the right to life and to prevent ... torture and other forms of cruel, inhuman or degrading treatment resulting, inter alia, in unexplained deaths and to prosecute and punish those responsible for such practices" (resolution 1982/25). The General Assembly has made a similar appeal in its resolution 36/157. The Special Rapporteur has therefore attached special importance to respect for these rights. During the period January-May 1982, he received a total of 69 reports of torture inflicted on the same number of persons by the State security agencies. Of these 69 reports, 30 have been duly proven by means of sworn statements, medical certificates and complaints officially lodged by the victims in the courts of justice. This represents a substantial increase by comparison with the figures for previous years, and the Special Rapporteur expresses his concern over the matter, because this has become a habitual practice of the Chilean security agencies (particularly CNI), which enjoy the power to detain persons for a period of up to 20 days before placing them at the disposal of the courts. Moreover, the security agencies possess in secret places of detention permanent installations and personnel specializing in sophisticated torture techniques. This fact enables the Special Rapporteur to state that torture and ill-treatment have an institutional character in the Chilean State and manifestly benefit from the tolerance of the administrative and judicial authorities. Judicial protection of the right to life and the right to physical and moral integrity continues to be inadequate. The Special Rapporteur has noted that actions brought in the courts of justice against police, army and security bodies allegedly guilty of having committed various crimes against the physical integrity of persons have ended in the dismissal of proceedings without the perpetrators of such serious and repeated crimes having been identified, let alone sentenced by the courts. One example is the judicial inquiry into the death of Tucapel Jimenez Alfaro, one of Chile's most important trade union leaders, which has been in progress since late February 1982 but has still not succeeded in establishing the facts. Consequently, the impunity enjoyed by the security organs is a fact which the Special Rapporteur considers himself obliged to denounce, because it presupposes multiple violations of the most fundamental human rights, which frequently take the form of homicide, illegal arrest, unlawful pressure, unnecessary violence, injury, illicit far-right associations spreading terror, threats, persecution, abductions, unlawful entry and so on.

^{1/} See report of the Human Rights Committee, A/34/40, paras. 14 and 95.

254. The right to liberty is a constant concern both of the General Assembly and of the Commission on Human Rights, which have appealed to the Chilean authorities to "put an end to arbitrary detentions" and "prosecution of persons who exercise their right to freedom of expression and opinion, including the right to petition". The Special Rapporteur has noted that the number of arbitrary individual arrests declined somewhat during the period January-July 1982 by comparison with the corresponding period in 1980 and 1981. However, account must also be taken of the mass arrests carried out in May and June during three swoops which resulted in 6,756 persons being detained. In addition, the Special Rapporteur has drawn attention in this report to numerous arrests of groups of persons at public gatherings; the number of such detentions increased in 1982. The unlawful and arbitrary character of the aforementioned arrests is brought out by the fact that most of the persons detained have not been placed at the disposal of the courts or, if they have been, have been charged with "political" offences and not with "terrorism". The illegality of the arrests is evidenced by the fact that they are carried out by persons who are not authorized by law to make them (CNI agents), without an arrest warrant having been issued by an official expressly empowered by law to give such an order (a magistrate or, where the application of the twenty-fourth transitional provision of the Constitution is concerned, the President of the Republic). The arrest is often accompanied by an illegal search of the dwelling of the person concerned, without the CNI official producing the corresponding search warrant. In addition, victims are held, blindfolded, on secret CNI premises, with the connivance of the judicial authorities, which tacitly accept this illegal procedure. Illegal detention in secret places is always accompanied by the practice of holding the person incommunicado, without the authorization of the magistrate. Judicial supervision of the unlawfulness of arrests and of complaints filed in the courts for ill-treatment of detainees is virtually non-existent in the case of actions brought for what are known as "delitos de acción pública" (publicly prosecutable offences), defined in the section of the Chilean Penal Code concerning violations by officials of the rights safeguarded under the Constitution.

255. The fate of the 635 persons who have disappeared since 1973 has not yet been cleared up by the Government, despite the appeals of the General Assembly and the Commission on Human Rights "to investigate and clarify the fate of persons who have disappeared for political reasons" and "to inform the relatives of those persons of the outcome of the investigation and to prosecute and punish those responsible for such disappearances". The judicial investigations, especially when entrusted to the military courts, have faced considerable obstacles in 1982. Mention should be made of the investigation which was launched after the discovery of 19 corpses at Laja and San Rosendo and of the investigation following the discovery of 14 corpses in the Maipo river, which ended on 28 May 1982 with a stay of proceedings by the examining magistrate.

256. The right to security of Chilean citizens continues to be jeopardized by acts of persecution and intimidation in which the State security agencies are frequently implicated. From the quantitative point of view, there was nevertheless a marked decline in the number of acts of persecution and intimidation which were the subject of complaints (37 cases for the period January-May 1982, as against 66 cases for the period January-May 1981). From the qualitative point of view, however, it should be emphasized that these are organized and planned acts directed against persons selected because of their links with bodies concerned with the protection of human rights, which proves

that they plainly have a political aim. For example, clandestine organizations such as "Comunidad Catacumba" have threatened lawyers from the Legal Department of the Vicaría de la Solidaridad who are all well known for defending human rights in the courts. Other attacks on the right to security of persons have been directed against members of the medical profession, trade unionists and members of associations of relatives of missing persons. Furthermore, conditions of detention in prison establishments threaten the right to security and health of persons serving sentences in Chilean prisons. Despite the Agreement of 24 July 1978 between the Ad Hoc Working Group of the Commission on Human Rights and the Minister of Justice concerning the granting of political prisoner status to certain detainees, and notwithstanding the international community's appeals to "respect the human rights of persons detained for political reasons and to separate them from those detained for criminal offences" (General Assembly resolution 36/157 and Commission on Human Rights resolution 1982/25), the Government has not responded to the repeated requests of the international community. It continues to group together political prisoners and ordinary prisoners. Mention should also be made of the practice of arbitrary transfers from one prison establishment to another during the past year. Lastly, the botulism poisoning case involving a number of persons detained for crimes of opinion has never been clarified.

257. The right to freedom of movement of Chilean citizens has always been one of the major concerns of the General Assembly and the Commission on Human Rights, which have urged the Chilean authorities to guarantee "the freedom of Chilean citizens to reside in and freely to enter and leave the country, and to end the practice of banishments ... which amounts to forced exile from the country" (Commission on Human Rights resolution 1982/25). The right to enter and leave the country freely continues to be challenged by the Government's interpretation of "national security" in the context of the maintenance of two states of emergency which empower the President of the Republic to "restrict freedom of movement and prohibit particular persons from entering and leaving the territory" (article 41 (2) and (4) of the Constitution) and to "refuse entry into, or expel from, the national territory" Chilean citizens and foreigners (twenty-fourth transitional provision of the Constitution). In the latter case, it is not possible to appeal to any authority other than that which ordered the measure, namely the President of the Republic. Forty-three persons were prohibited from entering the country during the period January-May 1982 (as against 86 during the same period in 1981). However, the circular of 11 February 1980 has enabled the Chilean authorities to keep approximately 1.2 million persons in exile; the phenomenon may be regarded as a definite case of massive exodus, since there is a clear link between the large number of Chileans living abroad and the personal circumstances of the individuals concerned or the economic, political or civil problems of present-day Chilean society. Exile or expulsion from Chile by administrative decision (order of the Ministry of the Interior) was applied on several occasions during 1982, and there is no appeal other than to the authority which ordered the expulsion. Moreover, mention should be made of the measures prohibiting entry into the country, in accordance with the twenty-fourth transitional provision of the Constitution, in the case of persons propagating the doctrines referred to in article 8 of the Constitution who have the reputation of being active supporters of such doctrines or who commit acts contrary "to the interests of Chile or constitute a threat to internal peace". The special decrees prohibiting entry into the country are entirely arbitrary,

because there is no effective judicial control on administrative practice in this area. As a result, the massive exodus of Chileans is becoming worse as time passes (nine years already) and as long as the emergency legislation remains in force without interruption. During 1982, entry into the country was refused on various occasions to such opponents of the military regime as Jaime Castillo Renán Fuentealba, Andrés Zaldivar, Claudio Huepe and Alberto Jerez Horta. The Special Rapporteur reiterates his concern over the fate of the approximately 1.2 million Chileans in exile. The right to freedom of movement and freedom to choose one's residence has also been restricted by the fact that the President of the Republic, under the twenty-fourth transitional provision of the Constitution, has the power to order opponents of the Government to reside in remote places for a period of up to 90 days, although the total number of cases of enforced residence during the period January-May 1982 (23) was substantially lower than during the same period in 1981 (49).

258. The Special Rapporteur has also examined the right to procedural guarantees, particularly in relation to the exercise of the right to the remedies of protection and amparo, and the difficulties in exercising it within the constitutional framework because of the permanent existence of the states of emergency. Nevertheless, the Special Rapporteur has taken note of the decision rendered by the full Supreme Court on 28 April 1982 regarding an application for amparo, following the communication addressed by the Director of CNI to the Santiago Court of Appeal informing it that "it will not implement the Court's ruling". The Supreme Court addressed itself to General Pinochet "to impress upon him the need to arrange for the National Director of that Service (CNI) to be given instructions informing him" that he must "comply strictly with the constitutional and legal obligation to execute the decisions of the ordinary courts, since he has no power to assess the grounds, appropriateness, justification or lawfulness of a judicial order which he is called upon to carry out". However, the Special Rapporteur has noted that the decision concerned does not involve full recognition of habeas corpus and other procedural guarantees. In particular, full restoration of the right to an effective remedy should include the possibility of the courts' analysing the legal grounds for arrest warrants issued by the President of the Republic, observance of the time-limits prescribed by law so that applications for amparo are examined promptly, the possibility of remedying defects in the manner in which detention was carried out, and the need to prosecute those responsible for arbitrary arrests.

259. Procedural guarantees continue to be challenged by the application of the legal provisions concerning the extension of the competence of military courts both in time of peace and in time of war, since the exercise of the right to an effective remedy is not always respected. In addition, attention should be drawn to the inadequacy of the guarantees necessary to the exercise of the right to a legal defence in the case of proceedings in wartime military courts, whose jurisdiction has been restored together with the procedures and penalties applicable in time of war. The objective conditions specified in the Code of Military Justice do not exist, since the Code requires that the State should be in time of war, that the authorities should determine "the part of the national territory in respect of which such courts are to exercise their jurisdiction" and that the authorities should have indicated "the time or period during which such courts are to exercise their jurisdiction".

260. The right to privacy has been violated on various occasions, according to the numerous reports brought to the Special Rapporteur's attention during 1982, relating particularly to the right to inviolability of the home of victims of illegal arrests. In addition, the right to honour and reputation has also come under attack in Chile in recent months, particularly during the scandal caused by the change of defendants in the course of the judicial investigation into the Viña del Mar murders ("the psychopath case").

261. The right to freedom of thought, opinion and expression has not been respected either. Mention should be made of the national debate regarding the existence of a moral crisis in the country, in addition to the political and economic crises. All three crises have been denounced by the Catholic Church. The confrontation between Church and State has recently become so obvious that even the press has called for the building of bridges of "communication and comprehension" between the two establishments. The moral crisis is ascribed mainly to the role played by the judicature in Chile in recent times and, in particular, to the attitude of the President of the Supreme Court towards the arbitrary and uncontrolled activities of the security agencies, including irregularities such as the abusive extension of pre-trial detention and violation of constitutional guarantees and fundamental safeguards concerning the right to integrity and security of persons. This is due to the fact that State officials enjoy excessive power - which has either been conferred upon them or which they arrogate to themselves under the pretext of defending "the security of the State". Freedom of expression and freedom of information have been substantially curtailed by the combined declaration of the state of emergency and the exceptional state of emergency due to threats to internal peace, as well as by the application of large numbers of special laws, which have been criticized in this report as establishing a de facto censorship system.

262. The Special Rapporteur, like the international community, has been concerned over the right to the public freedoms and their exercise. He has taken note of the many reports concerning restrictions on the exercise of the right of peaceful assembly; this situation dates back to September 1973, since which time no improvement has been recorded either in the legislative and judicial fields or in the area of administrative practice. During 1982, there have been repeated violations of this right with respect to its exercise by trade union organizations and their leaders. The right of association is suspended until 1989, since the tenth transitional provision of the Constitution prohibits any party political activity, and the twenty-fourth transitional provision of the Constitution confers on the President of the Republic exceptional powers, particularly in relation to persons propagating the doctrines referred to in article 8 in the Constitution or persons who "commit acts contrary to the interests of Chile" or "constitute a threat to internal peace". The result is that humanitarian, political, trade union, or human rights associations or groups are deprived of the protection of the law and lead a de facto and thus precarious existence, frequently exposed to harassment by the authorities.

263. Economic rights have suffered from the existence of a major crisis following the failure of the neo-liberal economic model: recession, unemployment and devaluation of the national currency seem to bear out the prediction of Milton Friedman himself that sooner or later economic freedom will collapse before the authoritarianism of the military. In addition, the right of access to

employment in conditions of equality, without discrimination on grounds of political opinion, has been jeopardized by the application of article 8 of the Constitution and the de facto requirement of a positive certificate from the National Information Agency (CNI) for employment in a public service post. Legislation permitting the discriminatory dismissal of State employees has led to a reduction in the numbers of public servants from 358,792 in 1974 to 162,583 as at 31 December 1981.

264. The situation regarding working conditions, and particularly equal remuneration and enjoyment of just and equitable remuneration, has become especially serious as a result of the application of Act No. 18,134 of 1982, which was strongly opposed during negotiations between workers and employers because it established the levels of remuneration existing in July 1979 as the maximum limits for 1982. Lastly, the right of children and young persons to special protection is jeopardized by the fact that large numbers of children and young persons are employed (and hence exploited) in clandestine or illegal work from the age of 10. The Special Rapporteur stresses the harmful physical and psychological consequences of premature work by children. Moreover, when children are employed in illegal work they cannot form associations to protect their interests. Legally employed apprentices too, are forbidden to organize.

265. Both the General Assembly and the Commission on Human Rights have urged the Chilean authorities to "restore fully trade union rights, especially the freedom to form trade unions which can operate freely without governmental control and can exercise fully the right to strike". The Special Rapporteur regrets to state that he has not detected any positive action in response to the international community's recommendations. Neither the right of trade union association nor the right to bargain collectively nor the right to strike are respected in Chile, as is shown by the numerous complaints submitted by trade union organizations to the Committee on Freedom of Association of the ILO Governing Body.

266. The present situation regarding education and culture does not reveal any improvement. This is because of the maintenance in force of legislation contrary to the right of equal access to instruction in the context of a general education designed to strengthen respect for human rights. In addition, the hierarchical structure of university education has been maintained, thus preventing participation by students and teaching staff. Student protests against this situation have led to persecution, illegal arrests or suspension of normal academic activities. It would seem that those affected are always students alleged to be "dissidents".

267. The rights of indigenous minorities are not duly respected in Chile, because of the application, under the states of emergency, of article 8 of the Constitution relating to the equal exercise of human rights in the political, economic, social and cultural sectors. The reports brought to the Special Rapporteur's attention indicate that irregularities in the method of dividing indigenous communal land and the economic, social, cultural and health situation of the indigenous populations are the most important points.

268. In conclusion, the Special Rapporteur regrets that he is not in a position to report an improvement in the situation of human rights in Chile. None of the recommendations made by the international community has been heeded during 1982, and there has been no indication of the adoption of measures designed to restore the enjoyment of rights and fundamental freedoms in Chile.

269. The Special Rapporteur therefore recommends that the General Assembly should once again call upon the Chilean Government to co-operate with United Nations bodies dealing with the protection of human rights. The Government should put an end to the institutionalization of the state of emergency and re-establish the traditional democratic legal order. Such action would have been sufficient for the international community to detect substantial improvements in the enjoyment of human rights - both civil and political rights and economic, social and cultural rights. In the absence of such a major change, the international community should continue to concern itself with the situation of human rights in Chile, using the means which it deems most appropriate to ensure the full restoration of such rights, so that Chile may finally respect the obligations deriving from the international instruments to which it has freely subscribed.

ANNEX

List of 69 persons subjected to torture
(January-May 1982)

Avendaño, Murga, José
Namuncura Serrano, Domingo
Alvarez Narvaez, Carlos Alberto
Soto Muñoz, Pedro Hugo
Martínez Muñoz, Jorge
Salazar Vasquez, Nolberto Jaime
Gonzales López, Rodrigo Mario
Flor Larcher, Alfonso
Osorio Vargas, Jorge Nicanor
Alvarez Narvaez, Bernardo
Gonzales Arce, Luz Eliana
Caucamán Pérez, José
Caucamán Pérez, Carlos Manuel
Díaz Cofré, Jesús Eduardo
Fuentes Silva, Rómulo Alfredo
Garzo Noranbuena, Patricia del Carmen
Aguilera Cortéz, Nelson Carlos
Reyes Gonzales, Oswaldo Antonio
Díaz Sánchez, José Orlando
Guevara Rocha, Félix Alex
Fuentes Maldonado, Luis Fernando
Castillo Galaz, Rafael
Melo Veaz, Eliodoro
Cruz Soto, Galvarino
Sepúlveda Olivares, Eduardo
Soto López, Sergio Antonio
Castro Muñoz, Segundo Ibador
Castro Rojas, Juan Ibador
Riffo Navarrete, Enso Iván Antonio
Calfulén Quintrequeo, Segundo
Calfulén Quintrequeo, Raúl
Zapata Sepúlveda, Carlos
Olivares Cayul, Juan

Peña Cárdenas, Rita Eliana
Peyrau Noranbuena, Inés
Topez Fabori, Pedro Leonardo
Silva Martínez, Juan Carlos
Polanco Vilches, Raúl Hector
Pérez Spicini, Delicia
Lazzaro Novoa, Enzo Andrés
Enriquez Alfaro, Eduardo Patricio
Fuentes Benavente, Alejandro
López López, Ramón Alberto
Quinteros Ortega, Ramón Héctor
Cerde Taverne, Jorge Enrique
Guell Villanueva, Pedro Enrique
Pino Aguilar, Juan Patricio
Figueroa Sepúlveda, Claudio Antonio
Valenzuela Espinoza, Fernando Enrique
Godoy Fritis, Sergio
Santos Ruiz, Roger
Joffré Villavicencio, Orlando
Riquelme Maturana, René
Ruiz Ruiz, Rosa Elena
Amaya Amaya, Héctor
Cárdenas Quintana, Luis Emilio
Mena García, Cecilia
González Castillo, Sergio
Sepúlveda Ramírez, Jorge
Fuentes Cáceres, Nelson
Moya González, Osvaldo
Lorca Soto, José Damián
Reyes Susarte, Raúl
Aguiló Melo, Sergio
Fuenzalida Zeggars, Pablo
Rocha Guevera, Fidel Alex
Zuñiga Arellano, Víctor Manuel
Ciuffardi Muñoz, Elizabeth
Bruit Gutiérrez, Carlos Enrique