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QUESTION OF HUMAN RIGHTS IN CHILE

Note by the Secretariat

The Special Rapporteur on the situation of human rights in Chile has prepared the present report in accordance with resolution 1982/25 of the Commission on Human Rights, of 10 March 1982. This report supplements the report presented to the General Assembly at its thirty-seventh session (A/37/564) in accordance with the same resolution.

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## CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION .....	1 - 9	1
I. THE CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS .....	10 - 18	5
A. The Political Constitution of 1980 .....	10 - 13	5
B. Institutionalization of the state of emergency .....	14 - 18	7
II. RIGHT TO LIFE. RIGHT TO PHYSICAL AND MORAL INTEGRITY ..	19 - 48	10
A. Right to life .....	19 - 36	10
1. Cases of abuse of authority or misuse of weapons .....	21 - 33	10
2. The death penalty .....	34 - 36	16
B. Right to physical and moral integrity .....	37 - 48	19
1. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment .....	37 - 44	19
2. Judicial protection of the right to physical and moral integrity .....	45 - 48	22
III. RIGHT TO LIBERTY AND SECURITY. MISSING PERSONS .....	49 - 81	25
A. Right to liberty .....	49 - 59	25
1. Illegal arrests .....	49 - 59	25
(a) Arrests at public gatherings .....	51 - 53	26
(b) Arbitrary nature of arrests .....	54 - 57	30
(c) Illegal nature of arrests .....	58 - 59	33
B. Right to security .....	60 - 76	34
1. Persecution and acts of intimidation .....	60 - 69	34
2. Conditions of detention in prison establishments .....	70 - 76	37
C. Missing persons .....	77 - 81	40
IV. RIGHT TO FREEDOM OF MOVEMENT .....	82 - 97	42
A. Right to enter and leave the country freely .....	82 - 94	42
B. Freedom of movement and freedom to choose one's residence .....	95 - 97	46

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
V. RIGHT TO PROCEDURAL GUARANTEES .....	98 - 115	49
A. Right to an effective remedy .....	98 - 112	49
B. Military jurisdiction .....	113 - 115	55
VI. RIGHT TO PRIVACY. RIGHT TO FREEDOM OF THOUGHT, OPINION AND EXPRESSION .....	116 - 129	57
A. Right to privacy .....	116 - 118	57
B. Right to freedom of thought, opinion and expression .....	119 - 129	58
VII. RIGHT TO PUBLIC FREEDOMS .....	130 - 137	65
A. Right of peaceful assembly .....	130 - 131	65
B. Right of association .....	132 - 134	66
C. Right of participation in public life .....	135	67
D. Right of petition .....	136	67
VIII. ECONOMIC AND SOCIAL RIGHTS .....	137 - 141	69
A. Right to work. Access to employment .....	137 - 138	69
B. Working conditions .....	139 - 141	70
IX. TRADE UNION RIGHTS .....	142 - 158	72
A. Right of trade union association .....	142 - 147	72
B. Right to collective bargaining .....	148	74
C. Right to strike .....	149 - 151	75
X. CULTURAL RIGHTS .....	152 - 158	76
CONCLUSIONS AND RECOMMENDATIONS .....	159 - 173	79

ANNEX

## INTRODUCTION

1. The Special Rapporteur was appointed by the Chairman of the Commission on Human Rights under resolution 11 (XXXV), of 6 March 1979. In accordance with Commission resolution 8 (XXXI), of 27 February 1975, the Special Rapporteur submitted a report on the situation of human rights in Chile to the Commission on Human Rights at its thirty-sixth session and to the General Assembly at its thirty-fourth session. At the request of the General Assembly, 1/ the Commission on Human Rights extended the mandate of the Special Rapporteur on an annual basis in 1980, 1981 and 1982. The Commission thus decided on 10 March 1982 to extend the mandate for a further year, 2/ while requesting the Special Rapporteur to report on further developments in the situation of human rights in Chile to the General Assembly at its thirty-seventh session and to the Commission on Human Rights at its thirty-ninth session. On 7 May 1982, the Economic and Social Council endorsed Commission resolution 1982/25. 3/ At its latest session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities 4/ decided to recommend to the Commission on Human Rights that it maintain vigilance in relation to the evolution of human rights and fundamental liberties in Chile. Lastly, at its thirty-seventh session, the General Assembly considered the report of the Special Rapporteur on the situation of human rights in Chile during the first half of 1982. 5/ In resolution 37/183, of 17 December 1982, 6/ the General Assembly requested the Commission on Human Rights to study in depth the report of the Special Rapporteur at its thirty-ninth session, with a view to taking the most appropriate steps, in particular the extension of the mandate of the Special Rapporteur, and reporting on its consideration, through the Economic and Social Council, to the General Assembly at its thirty-eighth session. 7/

2. From a substantive viewpoint, General Assembly resolution 37/183 once again reiterates the priority concerns that have been expressed in earlier resolutions of various United Nations bodies and go to make up the sentiments of the international community with regard to the human rights situation in Chile. These priority concerns, which in turn form the substance of the Special Rapporteur's mandate, are:

The institutionalization of the state of emergency through the two-fold declaration of a "state of emergency" (article 40, paragraph 3, of the Constitution) and of an "exceptional state of emergency due to threats to internal peace" (the twenty-fourth transitional provision of the Constitution);

The ineffectualness of the remedy of habeas corpus or amparo;

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1/ Resolutions 34/179, 35/188 and 36/157.

2/ Resolution 1982/25, of 10 March 1982, operative paragraph 6.

3/ Decision 1982/132, of 7 May 1982, adopted by the Economic and Social Council at its twenty-eighth plenary meeting.

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

5/ Document A/37/564, of 4 November 1982.

6/ Resolution 37/183, of 17 December 1982, was adopted by 85 votes to 17, with 41 abstentions.

7/ Resolution 37/183, operative paragraph 12.

The arbitrary detentions and physical or psychological intimidation;

The persecution of individuals exercising their freedom of opinion or right of petition;

The situation of prisoners of opinion;

The violation of the right to life, the acts of persecution and intimidation, torture and other forms of cruel, inhuman or degrading treatment resulting in unexplained deaths and 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, particularly freedom of assembly and association; the right to live in, enter or leave the country freely, and abolition of the practice of prohibitions on entry to the country;

The observance of the economic, social and cultural rights of the Chilean population in general, and of the indigenous population in particular.

3. In carrying out his task, the Special Rapporteur has paid particular attention to the points of concern thus expressed by the international community. In the course of his current mandate, he has repeatedly approached the Government of Chile requesting its co-operation. 8/ As already indicated, the Special Rapporteur has received no reply to these requests, despite the calls made by the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This situation was once again deplored by the General Assembly in resolution 37/183, which also requested the Chilean authorities to submit comments on the Special Rapporteur's report at the thirty-ninth session of the Commission on Human Rights. 9/

4. Indeed, the Government of Chile has refused to co-operate with the Special Rapporteur and the Commission on Human Rights ever since the thirty-fifth session of the General Assembly, when it called into question the procedure for considering the human rights situation in Chile and held that the special procedure was "discriminatory". 10/ In the Government's opinion, the procedure violated "the principles of the legal equality and sovereignty of States". 11/ This opinion was confirmed on 18 December 1982 by the Minister for Foreign Affairs himself, who affirmed: "Chile will not co-operate with international organs so long as selective and discriminatory policies are applied against our country in matters relating to human rights"; he further stated that the Special Rapporteur had personally shown "a lack of the necessary impartiality and objectivity". 12/ The Permanent Representative and Ambassador of Chile to the United Nations stated on 8 December 1982:

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8/ See A/37/564, paras. 5-7.

9/ Operative paragraph 11 of resolution 37/183, of 17 December 1982. See also document A/37/564, para. 3.

10/ A/C.3/35/10.

11/ See A/36/594, para. 8.

12/ Statements by the Minister for Foreign Affairs, Mr. René Rojas Galdames, reported in the Chilean national press on 19 December 1982.

"My Government cannot agree to the establishment of selective procedures dealing exclusively with the human rights situation in Chile, and will co-operate with the United Nations only when it brings the treatment of Chile within the objective standards that are generally acceptable and universally applicable". He also said that the appointment of a Special Rapporteur meant that "such discriminatory treatment is still being practised, since it was made without the prior consent of the Member State, which is fundamental for any action requiring its co-operation". 13/

5. The Special Rapporteur has already drawn attention to the fact that similar statements have been refuted by many resolutions of the Commission on Human Rights, which have established a number of special procedures in connection with the human rights situation in various States Members of the United Nations. Consequently, it is clear that the refusal 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". 14/ The Special Rapporteur has also pointed out that the Government's unco-operative attitude is inconsistent "with that Government's international obligation to report as a State which has subscribed to the Charter of the United Nations". 15/ Moreover, it should be noted that the Chilean Government has also refused to co-operate with other international bodies. The Inter-American Commission on Human Rights has reported that on 6 May 1981, the Government of Chile unilaterally decided to break off all relations with the Commission and, since that date, has replied to none of the communications addressed to it; this conduct, in the Commission's opinion, "is incompatible with the undertakings entered into by Chile under the Charter of the Organization of American States". 16/

6. Lastly, the Government's accusation of "lack of impartiality and objectivity" is a matter to be decided not by the Special Rapporteur but by the Commission on Human Rights and the General Assembly - the United Nations organs to which he submits his reports. The Special Rapporteur would none the less like to cite here another entirely different statement that "for nine years, the United Nations General Assembly has lived up to its purposes and principles and unflinchingly kept an objective and strict watch on the human rights situation in a country such as Chile, which, in the past, was world renowned for democracy, the rule of law and its high cultural attainments despite the difficulties characteristic of any developing country". 17/

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13/ Statement by the Permanent Representative and Ambassador of Chile to the United Nations, Mr. Manuel Trucco, in the Third Committee of the General Assembly on 8 December 1982.

14/ See A/36/594, para. 8.

15/ See A/37/564, para. 8.

16/ Document OEA/SER.L/V/II.82/Doc. 6, Ref. 1, of 20 September 1982: Annual Report of the Inter-American Commission on Human Rights (1981-1982), pp. 119-120, quotation translated from the Spanish by the United Nations Secretariat.

17/ Cf. document entitled Posición de la Comisión Chilena de Desechos Humanos respecto a la renovación del mandato al Relator Especial de las Naciones Unidas en el caso de Chile, Santiago, January 1983, p. 3.

7. Be that as it may, the Special Rapporteur emphasizes throughout the various chapters of the present report that, by institutionalizing a state of emergency so that it has, de facto, become permanent, the new Political Constitution of 1980 makes a final break with the traditional democratic legal order that Chile enjoyed up to 1973. As a consequence, the new "legality" introduces a legal, political, economic, social and cultural system which is in itself at variance with the general rules of international law on human rights, particularly those set forth in the San Francisco Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights (ratified by Chile). In addition to these international rules, others figure in many international treaties on human rights that have also been ratified by Chile. <sup>18/</sup> Despite all these international undertakings, however, the Government of Chile refuses to co-operate with the Special Rapporteur, fails to comply with its obligation duly to report to United Nations organs, and more particularly, major violations of the international rules on human rights continue to be reported against it, for which reason the international responsibility of the State of Chile is involved.

8. As on previous occasions, the Special Rapporteur has prepared the present report in accordance with the following method of work: first, in view of the Government's failure to co-operate, its reports have been replaced by official notes taken from the Chilean press. Second, the Special Rapporteur has studied the most significant legislative and jurisprudential texts of 1982 and closely followed the practice of the Executive. Third, inestimable assistance has been received from national and international, governmental and non-governmental, organizations concerned with the human rights situation in Chile. Fourth, testimony has been received from persons with personal and direct knowledge of many of the facts referred to in the present report. Fifth, impartial and objective determination of the facts has, as usual, made it necessary to collate the information received, rejecting any that has been based on subjective judgements when no tangible proof has been available. Finally, the facts thus determined have been related to the international treaties concerning international protection of human rights that have been ratified by Chile, and also to other norms of international human rights law, within the substantive and procedural framework of the Special Rapporteur's mandate.

9. As to the time frame, the present report covers the information that has reached the Special Rapporteur and has been duly verified throughout the second half of 1982. Some information for January 1983 has been added in order to bring the report up to date to the greatest possible extent.

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<sup>18/</sup> See A/37/564, para. 8.

I. THE CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS

A. The Political Constitution of 1980

10. As the Special Rapporteur has already mentioned, the Constitution of 11 September 1980 has been in force since 11 March 1981 and has been the subject of important pronouncements by the General Assembly and the Commission on Human Rights. In particular, the General Assembly adopted a resolution on 17 December 1982 in which it restates its previous position regarding the "subversion of the traditional democratic legal order and its institutions, through the maintenance and widening of emergency and exceptional legislation and the promulgation of a Constitution which does not reflect a freely expressed popular will and whose provisions suppress, suspend or restrict the enjoyment and the exercise of human rights and fundamental freedoms". <sup>19/</sup> It was noted that the new Constitution confers a stable and institutional status of authority on the military Government for a transitional period up to 1989. Moreover, the Constitution itself embodies principles which introduce discrimination on political grounds, in particular in article 8. For his part, the Special Rapporteur stressed that, under the Constitution, particularly during the transitional period, the armed forces are paramount in all matters involving the government of the country. <sup>20/</sup> As a result, institutionalized power has been concentrated in the hands of the military, in that the President of the Republic is subject to no effective supervision by representatives of the citizens 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. These exceptional powers extend to the executive, administrative, legislative, judicial and enforcement functions, which acquire particular importance during the period of transition in which two different forms of states of emergency are being applied simultaneously. Taken as a whole, this 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". <sup>21/</sup>

11. The Acting Chairman of the Chilean Commission on Human Rights expressed a similar view when referring to what is known as the "Declaration of Santiago on Representative Democracy" adopted by the Fifth Meeting of Consultation of Ministers of Foreign Affairs in 1959. The Declaration stated that "the Governments of the American Republics should be the result of free elections" and that "the systematic use of political proscription is contrary to the American democratic order". <sup>22/</sup> Accordingly, the Acting Chairman concluded that "the appearance of de facto regimes in Latin America is contrary to the inter-American principle of representative democracy

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<sup>19/</sup> Resolution 37/183, of 17 December 1982, operative paragraph 2. See also A/37/564, para. 11.

<sup>20/</sup> E/CN.4/1428, para. 34.

<sup>21/</sup> A/37/564, para. 12.

<sup>22/</sup> Speech delivered on 13 December 1982 on the occasion of the thirty-fourth anniversary of the Universal Declaration of Human Rights and the fourth anniversary of the Chilean Commission on Human Rights.



and that a de facto regime becomes legitimate to the extent that it provides for "the restoration of an order that guarantees respect for human rights and fundamental freedoms thus facilitating the renewal of a genuinely constitutional and democratic process". 23/

12. Furthermore, the Special Rapporteur has noted that the legislative developments provided for under the Constitution have likewise not materialized to date. Of particular significance is the lack of legislation concerning the right of citizenship, exercise of the political rights and participation in the government, and the possibility of elections in the intermediate social organizations. In the first place, article 18 of the Constitution provides for a public electoral system and an organic constitutional law to determine the organization and operation thereof, for the purpose of regulating electoral processes and plebiscites, in all matters not directly provided for by the Constitution. No such organic law has been enacted; nor is there any public register of citizens. Secondly, article 19, paragraph 15, subparagraph 5, of the Constitution, provides for an organic constitutional law concerning political parties which has not been adopted either. Accordingly, by virtue of the tenth transitional provision of the Constitution, the prohibition on engaging in or promoting any activity, action or transaction of a party political nature, whether on the part of natural or legal persons, organizations, entities or groups of persons, remains in force. Thirdly, article 85 of the Constitution establishes what are called regional electoral courts with responsibility for settling matters connected with trade union elections and elections of such intermediate groups as the law prescribes. An ordinary law - yet to be enacted - is to stipulate the powers and organization of those courts. Since the law in question does not exist, there is no supervision of any elections that may be held, despite the fact that the twelfth transitional provision is itself an indication of the constituent's concern that these courts be put into operation. Fourthly, articles 101, 107 and 109 of the Constitution establish organs in which the people can participate, at the regional and local or communal level, known as Regional Development Councils, Communal Councils and Communal Development Councils whose organization and powers are to be provided for under organic constitutional laws that have not been enacted either. As a result, according to the Constitution itself, the participation of the people in the government and administration of the regions and communes is prevented for the time being. All that is left is a so-called "basic democracy" or type of participation that is purely formal or a manifestation of support for the Government without the people having any influence on the decisions of the regional and communal authorities. The Constitutional Studies Group ("Group of 24") made a statement to this effect in a document published on 11 September 1982 according to which "Although there is much talk of regional and communal decentralization and of the participation of the community at those levels, the fact is that the Government and the regional and communal authorities are fully controlled by officials appointed by the Head of State and who enjoy his complete confidence. No independent organization that is representative of regional or communal interests plays a regular part in the consideration and solution of problems at those levels". 24/

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23/ Ibid.

24/ Constitutional Studies Group "Ante la situación del país: un urgente debate nacional". [In the face of the national situation: an urgent national debate.] Análisis, reprint, September 1982, p. 6. See also Hoy, 8-14 September 1982.

13. As regards the practice of the Constitutional Court, to date it has had competence in only two cases which arose during 1982. In one of them "it authorized an organic law relating to mining concessions that was manifestly in violation of the absolute, exclusive and inalienable ownership of mines vested in the State by virtue of article 19, paragraph 24, of the Constitution". In the other, the Constitutional Court also authorized "a law, supposedly of an interpretative nature, aimed at disavowing acquired social security rights" (Act No. 18.134 of 19 June 1982). 25/

B. Institutionalization of the state of emergency

14. As the Special Rapporteur has repeatedly pointed out, 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 under article 41, paragraph 4, of the Constitution combined with article 40, paragraph 3, thereof, and the "exceptional state of emergency due to threats to internal peace", provided for under the twenty-fourth transitional provision of the Constitution. As for the "state of emergency", this has been extended in turn by Supreme Decree No. 1083 of the Ministry of the Interior (Diario Oficial of 30 August 1982) and Supreme Decree No. 1530 (Diario Oficial of 29 November 1982) for a further 90 days. While it remains in force, 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 communication media. 26/

15. The "exceptional state of emergency due to threats to internal peace", for its part, was again extended by Decree No. 1161 of the Ministry of the Interior (Diario Oficial of 10 September 1982) in the terms in which it had been declared under the previous Supreme Decree No. 198 of the Ministry of the Interior (Diario Oficial of 10 March 1982). It is noteworthy that on the occasion in question the Executive once again did not state the factual reasons which provide the justification for the declarations and extensions of these states of constitutional emergency. It has, moreover, been said that "human rights in Chile are thus subjected to a regime of suppression, suspension or restriction, contrary to article 4 of the International Covenant on Civil and Political Rights, thereby consolidating Chile's marginal position so far as the international rules which govern the matter are concerned". 27/ While the "exceptional state of emergency due to threats to internal peace" remains in force, the President of the Republic acquires discretionary powers to order persons to be detained for five days in their homes or 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 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

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25/ Ibid., p. 4.

26/ A/37/564, para. 16.

27/ Speech by the Acting Chairman of the Chilean Commission on Human Rights on 13 December 1982.

commit acts contrary to the interests of Chile or constitute a danger to internal peace. Lastly, still under the twenty-fourth transitional provision of the Constitution, the President may subject specific persons to restricted residence in an urban locality within the national territory for a period not exceeding three months.

16. From the legal standpoint, the continued state of emergency has meant the de facto disruption of the traditional constitutional order; the political crisis broken by the military coup d'état of 1973 has, in the view of Mrs. Questiaux, turned into a rule whereby the lawfulness of the system is automatically confirmed and the system bestows upon itself an institutional basis aimed at a new structure for society which is ultimately submitted for the people's approval through a constitutional referendum. 28/ The disruption of the constitutional order was accompanied 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. 29/ Mrs. Questiaux's study outlines the different types of institutions within which the Legislature, the Judiciary and the Executive subordinate themselves to the military power. The Judiciary, for instance, is subjected to strict supervision by means of a dual technique: the appointment of "reliable" judges and "associate judges", 30/ on the one hand, and a reduction in the powers of the ordinary courts in favour of the military courts, on the other. The Executive is likewise subject to direct supervision by the military since it is actually exercised by them. As for the Legislature (Parliament), it is replaced by a para-legislative institution whose functions are purely advisory (legislative junta) and which is wholly subordinate to the Executive. Consequently, Chile's previous legal system, in which the principle of the separation of powers prevailed, has been replaced by the principle of the "hierarchization of powers" in favour of the military. 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 of article 4 of the International Covenant on Civil and Political Rights and their maintenance for several years to be contrary to article 25 of the Covenant. 31/

17. The consequence of this situation has been the failure of the rule of law or of the "primacy of law" and the protection of human rights is accordingly extremely limited. For instance, article 41, paragraph 3, of the Constitution provides for suspension of the remedy of protection in the case of measures taken in accordance with the provisions governing the "state of emergency" and the remedy of amparo (enforcement of constitutional rights) cannot be exercised for the protection of persons subject to measures taken under the twenty-fourth transitional provision of the Constitution, since the courts may not attempt to determine the grounds on which such

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28/ 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 June 1982, paras. 129-131).

29/ A/37/564, para. 18.

30/ See infra, chapter V, Section A: "Right to an effective remedy".

31/ A/34/40, paras. 14 and 95.

measures were taken and have to confine themselves to "verifying" whether the procedures laid down in the Constitution and ordinary legislation have been followed. Furthermore, the final paragraph of the twenty-fourth transitional provision of the Constitution stipulates that the measures adopted pursuant to the 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. The Special Rapporteur therefore once again endorses the recommendations on the inalienability of provisions relating to due process and detention procedures formulated by Mrs. Questiaux, to the effect that the habeas corpus procedure and similar remedies should not be suspended when it is a question of protecting life and personal freedom. Similarly, guarantees should be provided for the reduction of the period during which a person is held incommunicado, for a minimum of communication with freely chosen defence counsel and for the abolition of capital punishment for political matters. 32/

18. For its part, the General Assembly of the United Nations recognized on 17 December 1982 that "the Constitution promulgated by the Chilean authorities on 11 March 1981 represents the institutionalization of the state of exception, with grave prejudice to the civil and political rights of the Chilean people and serious limitations to their economic, social and cultural rights". 33/ Accordingly, it once again called upon the Chilean authorities to put an end to the "state of emergency" and the "exceptional state of emergency due to threats to internal peace" and to re-establish democratic institutions, with a view to "ensuring the full enjoyment and exercise of civil and political rights as well as economic, social and cultural rights and fundamental freedoms of the Chilean people". 34/ Against this background, the Constitutional Studies Group arranged a "national debate" on 11 September 1982 "on the crisis our country is experiencing and the alternative solutions" which require "a minimum of public freedoms" including "an end to the states of emergency", the restoration "of the freedoms of expression and opinion and the rights of assembly and association", "personal liberty and security of the person", "an end to the expulsions of nationals and a just and adequate solution to the dramatic problem of the exiles" and "the Judiciary should assume fully the responsibility for the personal freedoms vested in it under the Constitution". 35/ Lastly, attention is drawn to the views of the Acting Chairman of the Chilean Commission for Human Rights who stated that "full enjoyment of human rights is a prerequisite for national unity". He added that what is needed is "a national accord that will make possible the full operation of a system of law that guarantees, protects and restores the universal and constitutional legal norms which will enable the problems affecting our people to be jointly dealt with in a context of freedom, justice and peace" so that human rights become "the consensus ideology of our homelands" where "all Chileans must feel obliged to rise to the challenge of upholding the full enjoyment of human rights in our country". 36/

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32/ E/CN.4/Sub.2/1982/15, para. 203 and A/37/564, para. 19.

33/ Resolution 37/183, of 17 December 1982, last preambular paragraph.

34/ Resolution 37/183, of 17 December 1982, operative paragraph 4.

35/ Análisis, reprint, September 1982, p. 8.

36/ Speech on 13 December 1982.

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

A. Right to life

19. This right, as provided for in article 3 of the Universal Declaration of Human Rights and article 6, paragraph 1, of the International Covenant on Civil and Political Rights, is a fundamental right in any society, irrespective of its degree of development or the type of culture which characterizes it. The international community therefore considers the right to life in the context of ius cogens in international human rights law. It follows that its preservation is an essential function of the State, and there are numerous provisions of national legislation, including Chilean legislation, which establish guarantees to ensure the protection of this right.

20. The present section is devoted to a study of violations of the right to life which occurred in Chile during the second half of 1982. Officials of State security agencies have been accused of violating this fundamental right. Also included in this section is an analysis of the death penalty, which was carried out on two occasions in the second half of 1982, and to which two further offenders have been sentenced by the court of first instance.

1. Cases of abuse of authority or misuse of weapons

21. During the first half of 1982, the Special Rapporteur was informed of 15 cases of violation of the right to life by the State security agencies through the abuse of authority or the misuse of weapons. 37/ The cases noted in the second half of 1982 are described below. As will be seen, conflicting versions of the facts have been given: on the one hand, it is indicated that security agents deliberately brought about death either by premeditation or through the abuse of authority or the use of their regulation weapons. On the other hand, the official version of the facts usually indicates in general terms that the victims committed prior attacks on the security forces or fired on them first. In either case, in so far as judicial inquiries show the State security agencies to be directly responsible, the incidents would entail violations of the right to life directly attributable to the behaviour of the State security agencies and consequently to the international responsibility of the Chilean State.

Juan José Letelier Parra

22. The case concerns a building worker who was arrested by the Carabineros on 25 July 1982, together with his brother, Manuel Jesús. The two men were taken to the Carabineros station at Conchalí (Santiago) and formally charged with "drunkenness and suspicious conduct." According to the account given by Manuel Jesús, his brother told a carabinero, "We are not criminals and if you act like this you're like Corporal Sagredo" (referring to one of those involved in the "psychopaths" case or the Viña del Mar crimes). This response was said to have provoked a violent reaction on the part of the carabinero against Juan José Letelier, whom he ordered to be handcuffed, and, pulling his hair, "punched and kicked him repeatedly until this caused his death". Juan José Letelier was taken to the State Medical Centre (Asistencia Pública), which refused to admit him because he was already dead. 38/

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37/ A/37/564, paras. 23-39.

38/ Chilean Commission on Human Rights, Report for July 1982, pp. 25-26.

The death certificate gave as the cause of Juan José Letelier's death "abdominal traumatism with tearing of the mesentery, haemoperitoneum 2,800 ml and acute anaemia". The official version restricted itself to stating that "in the case of the death of Juan José Letelier - arrested for drunkenness - which occurred early in the morning of 25 July 1982 in the Juanita Aguirre Carabineros station, Conchalí sector, in undetermined circumstances, and in order to establish clearly the criminal and administrative responsibilities that might attach to the staff on duty at the station concerned, the facts have been brought to the attention of the Second Military Court of Santiago". <sup>39/</sup> The deceased person's family itself announced that it would be submitting a criminal complaint.

Julio Morelli Candia

23. The case concerns a trader whose arrest was reported by his family on 13 July 1982, and whose body was found on 2 August 1982 in the place known as Hualqui gorge. The body had stab wounds in the abdomen and showed signs of various blows "believed to have been inflicted by a karate expert". According to the family's version, "as an opponent of the military regime, Morelli has been arrested on various occasions and had been subjected to ill-treatment during his time in the places of imprisonment". <sup>40/</sup>

José Miguel Cerda Alfaro

24. A complaint lodged by the relatives of the victim with Departmental Criminal Court No. 21, Santiago, against officials of Criminal Police Station No. 13, Quinta Buin, Conchalí, drew attention to an offence of unlawful coercion, which led to the death of José Miguel Cerda a few days later. According to the accounts received by the Special Rapporteur, José Miguel Cerda was arrested on 27 July 1982 by Police Department officials under an arrest warrant from Criminal Court No. 21, in which he was charged with having committed a robbery. The police informed his father that he would be brought before the court on the following day, but that did not happen; his mother visited him on that day and found him "in poor physical condition, pale and showing obvious signs of having been beaten". He was placed in the public prison under a judicial order. On 1 August 1982, his family was informed that José Miguel Cerda had died "as a result of a severe nervous breakdown, following which he had hanged himself". On 3 August 1982, when his brother went to the Institute of Forensic Medicine to retrieve the body, he noticed that "there were haematomas on the face and blood in the left ear, as well as further haematomas on the abdomen ... and that these had nothing to do with his supposed hanging". In the opinion of his family, these circumstances "lead us to doubt the possibility of suicide and to reaffirm our conviction that our son was maltreated at Criminal Police Station No. 13, which is the real cause of his death".

Miguel Segundo Gaete Avila

25. According to reports received by the Special Rapporteur, on 9 September 1982 Miguel Gaete was travelling in a taxi accompanied by his friend, Carlos Figueroa, when, at a particular point on the route, in the municipality of Conchalí, he

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<sup>39/</sup> Chilean Commission on Human Rights, ibid., p. 26.

<sup>40/</sup> Chilean Commission on Human Rights, Report for August 1982, p. 7.

was "shot at by a military patrol, receiving a bullet in the back which damaged his spine and liver. He died from his wounds the following day in the emergency unit of the J.J. Aguirre Hospital". 41/ It was subsequently stated that the military patrol "gave an order to stop which the people in the car did not hear, whereupon the shots were fired. The soldiers told the Carabineros that the occupants of the taxi had insulted them on the way past". 42/ On 1/ September 1982, Miguel Gaete's widow lodged with the Office of the Second Military Prosecutor of Santiago a complaint of homicide against military forces belonging to the Buin regiment - some 10 to 12 soldiers travelling in a canvas covered truck, and wearing field uniform. According to the complaint, Miguel Gaete and his companions, "when preparing to take the right-hand lane, were hit by numerous shots, following which a number of soldiers came up to the vehicle, opened its doors and shouted abuse, alleging that its occupants had insulted them". On realizing that Miguel Gaete was seriously injured, two of the soldiers took him to hospital in the taxi in which he had been travelling. The soldier who drove the taxi was arrested by the Carabineros and released the following day.

Sergio Pereira Luna

26. According to reports received by the Special Rapporteur, on 15 October 1982 a special task force of Carabineros Station No. 1 arrested 40 persons - customers and staff - in the Tabaris Bar in Santiago. The operation was directed by a Carabineros sub lieutenant named Soto, who sent 20 of the detainees to the Carabineros station, while the other 20 remained in the bar doorway surrounded by carabineros armed with submachine-guns. Officer Soto asked all the detainees to produce their documents, insulting them and threatening them with death, while brandishing his submachine-gun; suddenly, whether by accident or design, he let off a burst of gunfire, injuring two of the detainees, who were admitted to the J.J. Aguirre Hospital. One of them, Sergio Pereira Luna, was shot in the arm, the bullet passing inside the body, damaging vital organs and leaving him clinically dead; his actual death occurred in November. Lieutenant Soto ordered the immediate release of all the remaining detainees who had witnessed what had occurred, while at the same time justifying Pereira's detention by "accusing him of being a criminal", despite the fact that he had no police record. 43/ On 29 October 1982, Pereira's family filed a criminal complaint with the Office of the Third Military Prosecutor in Santiago on a charge of attempted murder, which shortly afterwards was expanded to a charge "against Sub Lieutenant Rubén Soto Bradley, of the uniformed police, of aggravated homicide, unlawful entry, unlawful arrest and fabrication on the part of the Carabineros". 44/

Joanna Ortíz Cid

27. This case concerns a 22-year-old girl who died on 5 November 1982 as a result of a shot fired by a police department official in Santiago. 45/ According to her family's account, Joanna Ortíz "was shot when trying to kick away a pistol which had

41/ Chilean Commission on Human Rights, Report for September 1982, p. 36.

42/ Chilean Commission on Human rights, ibid.

43/ Chilean Commission on Human Rights, Report for October 1982, pp. 39-40.

44/ El Mercurio, 24 November 1982.

45/ ibid., 10-16 November 1982.

been dropped by one of the policemen" who had entered her home in search of her brother, Ricardo Ortíz. The official police statement, on the other hand, indicated that the girl "shot at the police, obliging them to respond to her attack". 46/ According to other sources, there had previously been a discussion between Joanna Ortíz, her relatives and the detectives. According to eyewitnesses, there was no attack by the deceased; rather, the incident occurred "when the young woman struggled with one of the police officers who was carrying a weapon, which he dropped. When she saw the weapon on the ground she kicked it under a piece of furniture. At that point, the disarmed detective shouted to his colleagues to fire", which they did. 47/

#### Dagoberto Cortés Guajardo

28. According to the account widely reported in the national press, Dagoberto Cortés was shotdown by Carabineros forces on 23 November 1982 in an armed clash. Dr. Elizabeth Rendic Olate was arrested in the same incident. 48/ The incident occurred when the car in which the persons concerned were travelling collided with a taxi occupied by four persons at the intersection between Pedro Montt Avenue and the South Panamerican Highway. Dagoberto Cortés got out of his vehicle, shouted at the taxidriver and struck him in the face with a pistol; he then drove off immediately. The taxi driver reported the incident to the Carabineros, who shortly afterwards intercepted the vehicle of Dagoberto Cortés, who fired three shots in the direction of the police. Of the four carabineros who responded to the attack, only one actually hit Dagoberto Cortés, with a shot in the left temple which killed him instantly. 49/ The death certificate gave the cause of death as "cranioencephalic traumatism caused by a bullet". Dr. Elizabeth Rendic's version of the facts has not yet been obtained, since, up to the time of completion of the present report, she has been kept incommunicado on secret CNI premises. According to the Chilean Commission on Human Rights, Dagoberto Cortés had been arrested previously by DINA agents, on 3 February 1975, and had been held incommunicado at the Villa Grimaldi for 24 days, during which he was tortured. After being released in December 1976, he lived in Belgium as a refugee, and his relatives were unaware that he had returned to Chile illegally - an act which, according to the press, occurred in June 1980, when he "immediately joined the central structure of the proscribed MIR". 50/ The press also reported that Dagoberto Cortés had received military training in Cuba and Libya and had taken part in various bank raids, as well as in the attacks on the President of the Supreme Court and the Minister for Foreign Affairs which have taken place in recent years. 51/

#### Emiliano Fernández

29. The Chilean Commission on Human Rights reports that Emiliano Fernández, the owner of a café in the sector known as Medicamino in Talcohuano, was murdered by

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46/ Hoy, ibid.

47/ Chilean Commission on Human Rights, Report for November 1982, p. 16.

48/ El Mercurio, 29 and 30 November 1982.

49/ La Segunda, 30 November 1982.

50/ La Nación, 30 November 1982.

51/ El Mercurio, 30 November 1982. See also Chilean Commission on Human Rights, Report for November 1982, p. 1.



Enrique Román, a lance-corporal in the Carabineros, on 4 December 1982. 52/ According to the account given by his widow, who was an eyewitness, on the day in question "a man in uniform and a civilian whom he knew came into the café; they ordered something; when the time came to pay they didn't have enough money, so I agreed that they could pay later. It was then that Corporal Enrique Román began to wield his gun, pointing it at everybody there. Seeing this, Emiliano said to him: 'Listen, don't play about with that in here; it could be dangerous ... Can't you see the place is full of people?'. On hearing this, the carabinero removed the safety catch, pointed the gun at him, and fired." Emiliano Fernández died almost instantly. The Prefect of Carabineros appeared to confirm the facts by stating, with respect to Corporal Enrique Román, that "from the moment he committed this act he ceased to be a carabinero and became a common criminal". The murderer was arrested and brought before the Second Criminal Court of Valcahuano. 53/

30. Judicial investigations undertaken in connection with complaints brought before the courts against officials of security agencies for abuse of authority having fatal results have had varying results. For instance, the CNI agent Luis E.V. Marchant Franklin, who killed Abel Segovia Retamal on 20 May 1981, was sentenced to 5 years' imprisonment for this act. On appeal, the Santiago Court of Appeal decided to reduce the sentence to 541 days, with the result that the CNI agent was released immediately. 54/ Also, police officer René Moreno Cabello was committed for trial on a charge of the homicide of Hernán Correa Ortíz 55/ on 28 December 1981. Although the accused has now been released on bail, the Santiago Court of Appeal upheld the committal ordered at first instance in respect of officer Moreno. 56/ Again, in the case of the homicide of Filomena Moya Díaz on 20 October 1981, the Carabineros officer Juan Aravena Meza was found guilty by Santiago Criminal Court No. 11 of having killed her with three gun shots, and was sentenced to 10 years' imprisonment. He has lodged an appeal. 57/ On the other hand, Santiago Criminal Court No. 21 acquitted police officer Juan Víctor Hunter de la Fuente of the homicide of Rosa Virginia Bustos Fierro, which happened in May 1981 when the police opened fire on the taxi in which she was travelling. According to the judgement, Hunter "had to resort to the right to defend society and there was no better way of so doing than by using his weapon as soon as all the possibilities of arresting a suspected assailant had been exhausted". 58/ However, the account given by Rosa Virginia Bustos' taxi driver and companion gives another picture: "We were out for a drive in the taxi ... and at a particular moment, as we were chatting, she said there was an armed man ahead. When I realized this I was scared and took the Pudahuel road ... then I heard a shot. I told Rosa to get down on to the floor. She ducked towards the window. I heard another shot which struck the door, whereupon I accelerated. Then I asked her to sit up but she didn't reply. I put my hand round the back of her head but couldn't move her". 59/

52/ Chilean Commission on Human Rights, Report for December 1982, p. 36.

53/ Chilean Commission on Human Rights, ibid.

54/ Chilean Commission on Human Rights, Report for July 1982, p. 27.

55/ For the background to this homicide, see A/37/56A, para. 25.

56/ El Mercurio, 25 August 1982.

57/ Chilean Commission on Human Rights, Report for September 1982, p. 40.

58/ El Mercurio, 26 September 1982.

59/ El Mercurio, ibid.

31. The Special Rapporteur informed the General Assembly of the homicide of trade union leader Tucapel Jiménez Alfaro, which happened on 25 February 1982. 60/ The lengthy judicial investigation carried out by Inspecting Magistrate Sergio Valenzuela has not thus far produced any satisfactory results. The preliminary inquiries were held in secret in May 1982, and counsel for the complainants applied for certain steps in the proceedings to be taken including, in particular, a face-to-face meeting towards the end of July 1982 between trade union leaders Valericio Orrego, Patricio Pezoa and Carlos Santamaría and CNI officials. This took place at the premises of the CNI itself, without any notable results. On 2 August 1982 counsel for the complainants asked for access to the papers in the case and on 12 August 1982 they applied for 12 further steps in the proceedings to be taken, eight of which were approved. According to information received from the Chilean Commission on Human Rights, Patricio Pezoa and Carlos Santamaría left the country "under threat of death". They said they had been asked by three CNI officials "to put a tail on Tucapel Jiménez in the days before his murder". 61/ Counsel for the complainants, who have received anonymous telephone threats, asked the Inspecting Magistrate for the help of a specialized unit of Carabineros ("OS-7") in clarifying the facts. This is how the CNI officials who were watching Tucapel Jiménez in the days before his death - Jorge Fernández, Nelson Hernández and Raul Lillo - came to be identified. 62/ Apparently, these CNI officials were connected with the pro-Government trade union leaders Caludio Orrego, Missael Galleguillos and René Sotolichic. 63/ In the opinion of counsel for the complainants the motives for the crime were political since "for several months before these events" Tucapel Jiménez "had been discussing with trade union leaders the possibility of achieving worker unity by means of a general strike". 64/

32. For his part, Hernol Flores, the current President of ANEF (the trade union organization of which Tucapel Jiménez used to be President), speaking at a press conference held on 15 October 1982, described the meagre results of the judicial investigation as a "farce" and added that "this is surprising because the Government has asserted categorically that it is interested in clearing up the crime. However, the information we have obtained proves that this is no more than a good intention". 65/ As a result of these remarks the Ministry of the Interior applied for proceedings to be instituted before the courts for an offence under the Internal Security of the State Act, article 6 (3) of which provides for the offence of disrespect to the authorities, but the matter was finally dropped. On 12 November 1982, counsel for the complainants applied to the

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60/ A/37/564, paras. 30-31.

61/ Chilean Commission on Human Rights, Report for August 1982, pp. 5 and 6.

62/ Chilean Commission on Human Rights, Report for September 1982, p. 6.

63/ Chilean Commission on Human Rights, ibid.

64/ Chilean Commission on Human Rights, ibid.

65/ Chilean Commission on Human Rights, Report for October 1982, p. 7.

Examining Magistrate who was investigating the homicide of Tucapel Jiménez for eight further steps in the proceedings to be taken. In addition, on 17 November 1982, they also applied to the President of the Supreme Court for his co-operation in ensuring that the "further procedural steps requested are fully implemented". 66/

33. Another lengthy judicial investigation which went on throughout the second half of 1982 concerns the case of the "Martyrs Avengers' Squad" (COVEMA). 67/ It involves the kidnapping, torture and interrogation to which a group of people were subjected during July and August 1980. One of them, the journalism student Eduardo Jara Aravena, died shortly after having been released as a result of the torture he suffered while in custody. Two sets of proceedings were instituted, one by the Government and the other by the victims, and a judge of the Santiago Court was appointed to investigate the facts. The Ministry of the Interior and the Ministry of Defence announced that CNI and the Carabineros had carried out an investigation and had established that the members of COVEMA were Police Department officials and had been placed at the disposal of General Carlos Morales Retamal, who was to hold preliminary inquiries. A few days later the persons under arrest were brought before the Inspecting Magistrate, who discharged them unconditionally after five days' detention, except for two: the Superintendent of the Homicide Squad and the Deputy Superintendent of the Assault Squad. The latter were charged with the maltreatment of Nancy Azcueta, one of those abducted, although both have now been released on bail. For a year and a half the papers in the case were kept secret until, at the beginning of 1982, counsel for the complainants obtained access to them and realized that there were several gaps. In the view of one of the counsel for the complainants, the grounds for the Minister of the Interior's statement to the effect that "the perpetrators of the offences were officials of the Police Department" should be the subject of a judicial investigation, since the latter denied it from the outset. The same lawyer also considers it appropriate to investigate the alleged participation of persons connected with other Government services in the incidents which are the subject of the complaint. According to the complainants the offenders consisted of a team made up of personnel from a number of services, including people from the Police Department. In a written application submitted by counsel for the complainants to the Santiago Court on 23 August 1982 a request was made for several inquiries to be carried out, which had been refused by the Inspecting Magistrate. The Court of Appeal allowed the application, although rejecting the submission that the Magistrate in question should be punished, and ordered that the majority of the inquiries requested should be carried out; this has been done, although the proceedings are again being held in secret.

## 2. The death penalty

34. On 22 October 1982 two former CNI officials, Gabriel Hernández Anderson and Eduardo Villanueva Márquez, were executed by shooting at Calama Prison after a long trial in which they were found guilty of robbing and murdering two persons

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66/ Chilean Commission on Human Rights, Report for November 1982, p. 2.

67/ A/37/564, para. 40.

employed at the State Bank in the municipality of Chuquicamata ("Calama case"). 68/ At third and final instance, the Supreme Court upheld the death sentence imposed on the former CNI agents; a third person involved in the events, the taxi driver Julio Díaz Meza, also a former CNI official, was sentenced to life imprisonment. Lastly, the sentences of Carlos Arenas and Gabriel Villanueva, to five years' and one day's imprisonment for being accessories, were upheld. A request addressed to the President of the Republic for commutation of the two death sentences was rejected in view of the "very serious circumstances surrounding the crimes committed" and "the duty of the President of the Republic to ensure the protection of justice in the common interest". 69/ On the basis of these two executions, the Association of Lawyers for Human Rights made a public statement in which it opposed the application of the death penalty, pointing out that "unfortunately, our society has been the victim of other even more heinous crimes which have gone completely unpunished, such as, for instance, the murder of people after the most degrading treatment has been inflicted upon them and also the disappearance of hundreds of our compatriots after their arrest". The Association also considers that the facts of the Calama case are tragically clear inasmuch as they reveal "an unbelievable fanaticism" because violence was used in the name of so-called "superior reasons". The Association also observed that "this crime occurred because there are secret security services operating with irrational discipline, methods and motivations". 70/

35. Lastly, the accused Jorge José Sagredo Pizarro and Carlos Alberto Topp Collins, who were involved in 10 crimes committed between August 1980 and February 1982 at Viña del Mar (the "psychopaths" case) 71/ were sentenced to death on 8 January 1983 by a court of first instance, which found them guilty of four out of the 10 murders in question. They were also sentenced to 116 years' imprisonment for the other homicides. 72/ Counsel for the accused lodged an appeal. 73/ It should be noted that judgement at first instance was delivered although a complaint had already been lodged against the Examining Magistrate by the lawyers acting for the relatives of the victims. The complaint was based on the refusal of the Examining Magistrate to investigate the new facts that had arisen after a spontaneous, last-minute confession by Jorge José Sagredo, "who said that he belonged to a unit headed by Luis Gubler". 74/ It should be recalled that on

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68/ See A/37/564, para. 41.

69/ According to a statement by the National Directorate for Information Media (DINACOS), 7 October 1982.

70/ Solidaridad, first half of October 1982, p. 4.

71/ A/37/564, para. 40.

72/ Hcy, 12-18 January 1983.

73/ El Mercurio, 10 January 1983.

74/ Chilean Commission on Human Rights, Report for December 1982, p. 37.

3 March 1982 the Police Department brought Luis Gubler before the Inspecting Magistrate as the sole defendant on the basis of an extra-judicial confession in which he stated that he had committed several of the Viña del Mar crimes. The Police Department also submitted a ballistics report, a blood test and statements by seven witnesses who recognized Gubler in a series of face-to-face confrontations. However, suddenly, on 7 March 1982, the Carabineros handed over two other suspects, namely, Carabineros officers Jorge Sagredo and Carlos Alberto Topp Collins, who were said to have confessed to the 10 Viña del Mar crimes. The report of the Carabineros was apparently prepared in some haste as it was unaccompanied either by ballistic reports or by witnesses' statements. Subsequently, it was explained that Sagredo had participated in only some of these crimes and that Topp Collins had confessed to participating only in the rapes, thefts and robbery to which the victims of the said crimes had been subjected. In these circumstances, the relatives of the victims submitted a total of seven complaints, but the Inspecting Magistrate at the time gave Luis Gubler an unconditional discharge, and charged only the two police officers referred to with the offences of homicide, theft and rape. In August 1982, the new Inspecting Magistrate ordered the closure of the pre-trial proceedings, and this order was upheld by the Valparaiso Court of Appeal on 11 August 1982. Counsel for the complainants submitted a complaint to the Supreme Court because they disagreed with the closure of the pre-trial proceedings, as did Officer Jorge Sagredo's defence counsel, who considered that there were serious differences between the accused, as well as action pending, such as reconstruction of events, testimony, expert reports, etc. None the less, the complaint was dismissed on 22 August 1982 by the Supreme Court. The Court also dismissed another complaint by the relatives of one of the victims, who called for Luis Gubler to be tried. An appeal has been lodged against the latter ruling, but a decision in the matter is pending. It seems that Luis Gubler and other civilians were part of an extremist right-wing unit known as the "Miraflores Squad" which operated in the area where the events took place and some of the victims of the "psychopaths" had been active in political parties of the left.

36. The Special Rapporteur, for his part, would draw attention to the work undertaken by the Economic and Social Council and the United Nations General Assembly on the question of the death penalty. <sup>75/</sup> In this connection, the General Assembly considered in 1977 the first five-year report of the Secretary-General on capital punishment <sup>76/</sup> and adopted a resolution in which it reaffirms that the main object to be pursued in this field is that of "progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment". <sup>77/</sup> In this context, the Special Rapporteur has already expressed his support for the proposition that "capital punishment should be abolished, particularly where political matters are concerned". <sup>78/</sup>

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<sup>75/</sup> See document ST/HR/2/Rev.1: United Nations Action in the Field of Human Rights, New York, 1982, pp. 143-146.

<sup>76/</sup> E/5616, Corr.1 and 2 and Add.1.

<sup>77/</sup> Resolution 32/61, of 8 December 1977.

<sup>78/</sup> E/CN.4/Sub.2/1982/15, of 27 July 1982, para. 203. See above, chapter I, B.: "Institutionalization of the state of emergency".

B. Right to physical and moral integrity

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

37. The Universal Declaration of Human Rights (article 5), the International Covenant on Civil and Political Rights (article 7) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution of 9 December 1975) constitute the international legislative framework for establishing the complete prohibition of such acts. The fact that these rules have the status of jus cogens norms of international law means that they may be cited in respect of States members of the international community, irrespective of their contractual obligations and also irrespective of the particular situations concerned (state of emergency or otherwise).

38. The Special Rapporteur informed the General Assembly that during the period January-May 1982, he received a total of 69 reports of torture inflicted on the same number of persons by the Chilean State security agencies. 79/ He also received a total of 63 reports for the period June-December 1982 which, added to the 69 previous cases, gives a total figure for 1982 of 132 reported cases. 80/ Compared with the totals for 1981 (68 cases) and 1980 (100 cases), this figure shows a considerable increase in the number of reports received by the Special Rapporteur, originating from various non-governmental organizations inside and outside Chile, which base their reports on sworn statements, medical certificates and complaints by the victims in the courts of justice. The Special Rapporteur has not, however, taken into account other insufficiently proved cases, in which the persons concerned did not consult a doctor or approach the courts or solidarity organizations "out of fear or ignorance of the services that are offered" 81/ and, consequently, their state of physical and mental health is not known. There are also the difficulties that are often encountered in duly proving that a person has been subjected to an act of torture or aggression inflicted by a security agent. 82/ Furthermore, the number of known reports in Chile in this regard has led various non-governmental organizations to set up a National Anti-Torture Committee. 83/

39. Among the cases reported in the second half of 1982, the Special Rapporteur draws attention to the unlawful arrest and physical coercion to which the lawyer René Osvaldo Carvajal Zúñiga and María Eugenia Darricarrere Andreo, leader of the Chilean Teachers' Association, were subjected from 30 September 1982 on in the city of Concepción, and the arrest and maltreatment of José del Carmen Ortiz Aravena, Provincial Chairman of that Association, on 4 October 1982. 84/ Ortiz Aravena was

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79/ A/37/564, para. 45 and annex.

80/ See below in the annex to this report for a list of the 63 persons alleged to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment, during the period June-December 1982.

81/ Chilean Commission on Human Rights, La práctica de la tortura en Chile durante la vigencia de la Constitución política de 1980, December 1982, p. 37.

82/ In this connection, see the International Herald Tribune of 22 September 1982.

83/ Hoy, 15-21 December 1982.

84/ El Mercurio, 10 and 15 October 1982; La Tribune de Genève, 12 October 1982.

arrested by a group of armed civilians, taken to a secret place and confronted with María Eugenia Darricarrere; he was released 30 hours after being arrested, during which time, according to the complaint submitted to the Third Criminal Court of Santiago, he endured "physical and psychological torture which have impaired my emotional and nervous stability, as well as multiple injuries which have been confirmed by private doctors I have consulted since my release". María Eugenia Darricarrere and René Osvaldo Carvajal in turn lodged complaints against CNI officials, stating that they had been subjected to "torture and ill-treatment during the time we were detained in a secret place". 85/ Eleven days after their arrest, they were handed over to a military court and charged "with having planted an incendiary bomb in the vicinity of the Regional Intendant's Office". 86/ These charges were categorically denied, however, by various non-governmental organizations concerned with human rights. For instance, the Committee for the Defence of the People's Rights (CODEPU) asserted in a public statement of 6 October 1982 that "it is surprising" that "an attempt is being made to convince the population that an incendiary bomb was planted in our city in the vicinity of the Regional Intendant's Office, under the gaze of the public and the large contingent of police guarding the building on the day of the incident, by two individuals known for their participation in workers' and teachers' organizations in our region". The statement indicates that "two serious offences have been committed that warrant the severest punishment possible: first, the unlawful abduction of two individuals who were picked up by force in the street and are being incarcerated in secret places to which both their relatives and their lawyers are denied access, and second, the offence of unlawful coercion and torture to which they are being subjected". 87/

40. The Special Rapporteur also wishes to draw attention to the complaint lodged against the Minister of the Interior by the Santiago chapter of the Chilean Journalists' Association, which reports that on 2 December 1982 five journalists were assaulted by a group of civilians, on the occasion of a gathering organized by the National Trade Union Co-ordinating Body in the Plaza Artesanos in Santiago. The complaint states that "the attacks were carried out by an organized group of persons in civilian clothes with the complicity of carabineros at the scene, who stood by impassively"; it requests that "the civilians who perpetrated the attacks should be identified and brought to trial" and calls upon the Director-General of Carabineros to "report publicly on the paramilitary group operating inside the Carabineros". 88/ It is presumed that the assailants "belong to a special Carabineros unit and that some of them - identified in the Plaza Artesanos as CNI agents - previously worked for the National Information Agency". 89/ The same incident gave rise to a criminal complaint lodged by five lawyers with Criminal Court No. 22 and a complaint lodged by another lawyer with the Office of the Second Military Prosecutor "for the offence of causing injuries in an attack against us" and for "unnecessary violence and injuries", respectively. 90/ The criminal complaints were filed against "civilians who were unidentified, but easily identifiable by the detachment of Carabineros that took part in the events" at the Plaza Artesanos in Santiago on 2 December 1982.

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85/ Solidaridad, first half of October 1982, p. 5.

86/ El Mercurio, 15 October 1982.

87/ El Mercurio, ibid.

88/ El Mercurio, 8 December 1982.

89/ Hoy, 8-14 December 1982.

90/ El Mercurio, 11 December 1982.

41. Table 1 below, shows the methods of physical and psychological torture, coercion and ill-treatment inflicted on the individuals who have reported such acts between January and September 1982.

Table 1 :/

Methods of Physical and Psychological Torture

(From 1 January to 30 September 1982)

Physical torture	No = 57	Psychological torture	No = 67
Punches and kicks all over the body or in specific places	57	Blindfolding	48
The "telephone"	3	Being kept naked	14
Electric shocks by means of the "grill"	20	Obscenities and insults	22
Electric shocks applied to sensitive parts of the body	42	Interruption of sleep	17
Sexual torture	5	Continuous strident music	15
Being compelled to remain in a certain position	22	Threats of death and disappearance directed against the persons concerned and/or their relatives	28
Water torture	-	Threats of torture, rape or detention directed against the persons concerned and/or their relatives	39
The "parrot perch"	1	Pressure to co-operate under threat and/or as a result of persuasion by "good" torturer	3
Cigarette burns	1	Mock execution	5
Food and water withheld	6	Forcing a person to hear or witness another person being tortured	3
Continuous powerful beams of light	1	Eating excrement and drinking urine	1
Stringing up	7	Injection and swallowing of drugs	6
		Hypnosis	3
		Conditioning by headphone, sometimes accompanied by electric shocks	1
		Video-filming, photographs or tape-recording	6
		Signing of compromising documents	10

/ Source: Chilean Commission on Human Rights, La práctica de la tortura en Chile durante la vigencia de la Constitución política de 1980, Santiago, December 1982, p. 31.



42. With regard to acts of physical torture, table 1 shows that, out of a sample of 67 reported cases, 42 cases involved electric shocks to sensitive parts of the body, 20 cases electric shocks by means of the "grill", 57 cases punches and kicks and 22 cases, being forced to remain in certain positions. As far as the methods of psychological torture used in the same sample of 67 cases are concerned, 48 of the persons concerned were kept blindfolded, 22 were subjected to obscenities and insults, 39 received threats of torture, rape or detention directed against themselves or their relatives and 28 received threats of death and disappearance directed against themselves or their relatives. In 10 cases the victims were forced to sign compromising documents, in 17 cases their sleep was interrupted continuously and in 14 cases, the persons concerned were kept naked.

43. Similarly, the clinical effects and manifestations observed, which are the consequence of the acts of torture inflicted, have been physical, psychological, or a combination of both. For instance, persons who have had a medical examination after they were subjected to acts of torture showed signs of physical injury "usually to their skin in the form of bruising, multiple ecchymoses, multiple grazes and scabs caused by the use of electric shocks; haematomas ... perforated eardrum, injuries on the wrists or ankles ..., diminished sensitivity and ... generalized allergies experienced by most of the patients". <sup>91/</sup> The most common psychological manifestations continue to be "reactions of anguish", "manifestations of extreme fear worsening towards night-time and resulting in persistent insomnia". Somatic manifestations of "anxiety and anguish, pain in the region of the heart, tension headaches, generalized muscular tension and epigastric pains" are also observed. There are also "feelings of fear and dread, self-applying sensitive symptoms of a feeling that one is being watched and followed, that at any time one may be re-arrested and that the threats to the family and oneself may be put into effect". <sup>92/</sup> In a smaller group of patients, clinical states of greater complexity were observed, such as dissociated psychomotor agitation, a depersonalization syndrome of the secondary type, childhood regression, and one case of attempted suicide on secret CNI premises.

44. The effects of ill-treatment on the physical and mental health of prisoners of conscience in gaols constitute a special case. These effects are more numerous because of the difficulty experienced by doctors and solidarity organizations in gaining admission to prisons, the bad health conditions in gaols and the frequent harassment inflicted on the prisoner of conscience by members of the Gendarmería. From the psychological viewpoint, there are also the pressures on him stemming from the economic difficulties occurring in his own family and from the damage to his public reputation and personal honour inflicted by the media.

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

45. Although the Chilean Constitution and Penal Code embody legal remedies for the punishment of this kind of crime, the Special Rapporteur has nevertheless noted that the proceedings instituted in the courts "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

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<sup>91/</sup> Chilean Commission on Human Rights, ibid., p. 37.

<sup>92/</sup> Chilean Commission on Human Rights, op. cit.

the perpetrators of such serious and repeated crimes have not been identified, let alone sentenced by the courts of justice". <sup>93/</sup> This matter is closely related to the problem of proving the security agencies' involvement in this kind of act. It has been pointed out, in relation to the 67 cases making up the sample in table 1 above, that members of the National Information Agency (CNI) were implicated in 43 cases, that CNI agents collaborated with members of the Police Department in seven cases, that members of the Carabineros were associated with CNI agents in three cases, that Police Department staff acted alone in five cases and Carabineros staff in five other cases, and that the Army Directorate of National Intelligence (DINE) was involved in three cases.

46. However, the application of emergency legislation, conferring extensive powers on the Executive while restricting those of the law courts, has led to a special jurisdiction being established for the military courts, which are the tribunals competent to try any members of the security agencies who may be accused of having committed such offences. Thus, 33 complaints submitted during the first six months of 1982 did not produce any result, and military courts invariably order a stay of proceedings on the ground that "the commission of the offence complained of is not fully proven". This is because the Military Prosecutors confine their investigation to taking statements from the officials alleged to be involved, who are questioned at their own quarters, and simply reject the charges on the grounds that the complaints are motivated by "political considerations and are designed to tarnish the image of the security agencies and the armed forces, and that such conduct is typical of terrorists and extremists". A medical examination ordered by the court would be one way of corroborating the tortures, but this step is frequently delayed for several months, by which time any possible physical mark has disappeared. It has also been pointed out that military courts usually deny counsel for the complainant access to the dossier and refuse most of the steps that are requested with a view to shedding light on the facts. Consequently, in most cases it is impossible to identify the alleged culprits. The sworn statement made before a notary on 14 October 1982 by María de los Angeles Sanhueza Oroz, describing the various forms of torture inflicted on her during her detention at secret CNI premises would appear to be an exception. One passage in her account indicates that she was examined by a doctor "who advised my torturers not to continue giving me electric shocks, since there might be problems. This doctor's name is Pérez Castro and he is identified in the proceedings instituted against me for alleged infringement of the Internal Security of the State Act".

47. Even in cases where it has been possible to identify security agency officials alleged to have abused their authority with resulting injuries to the persons concerned, the investigations conducted during the second half of 1982 have not gone well. For instance, there was the case of the three students who, while driving along the Avenida Costanera in Santiago on 2 August 1982, were assaulted by Admiral José Toribio Merino Castro's guard, who fired at the students during the incident and wounded two of them. The Naval Court Martial, which was competent to hear the case since the members of the escort belonged to the military, found in its judgement of first instance that "there was no offence to warrant punishing the members of the escort". <sup>94/</sup> Finally, mention should be made of a further

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<sup>93/</sup> A/37/564, para. 52.

<sup>94/</sup> El Mercurio, 19 December 1982.

criminal complaint filed in June 1982 by Luís Alberto Gaete Martínez in Criminal Court No. 5 of the Department of Aguirre Cerda. The complaint is lodged against an employee of the Police Department Co-operative, Manuel Meza Montaner, for "the offences of robbery, domiciliary trespass, threatened assault and usurpation of authority" allegedly committed against the complainant on 6 June 1982. The outcome of the proceedings is not yet known.

48. The Special Rapporteur would, however, like to draw attention to the only positive verdict by judicial bodies in this regard which he was able to trace during the second half of 1982, although it concerned events that occurred on 11 March 1981. On that date, Marcela Pino Arraño and Isabel Durán Mella were arrested by mistake (as is stated in the actual proceedings) and subjected to excessive violence in a police unit. On 18 August 1982, the full judge of the First Military Court of Santiago closed the pre-trial proceedings and charged Second Sergeant of Carabineros Héctor Vega Soto with "the offence of committing excessive violence" against the persons concerned. The Prosecutor is calling for "41 days' imprisonment" for the policeman considered to be the perpetrator of this offence. <sup>95/</sup> At the time of the committal decision, Héctor Vega had been released on bail.

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<sup>95/</sup> El Mercurio, 27 August 1982.

III. RIGHT TO LIBERTY AND SECURITY OF PERSON, MISSING PERSONS

A. Right to liberty

1. Illegal arrests

49. During 1982, the Special Rapporteur received considerable evidence of illegal arrests made arbitrarily by security bodies of the Chilean State. The general characteristics of such arrests have been described in preceding reports by the Special Rapporteur.<sup>96/</sup> In quantitative terms, table 2 below shows an increase in the number of arrests in 1982 by comparison with the immediately preceding years. The figures in it were transmitted to the Special Rapporteur by a number of Chilean organizations dealing with the protection of human rights:

Table 2  
Comparative table of arrests over the last 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
July	120	61	54
August	75	27	58
September	124	33	102
October	75	40	174
November	78	96	31
December	48	38	237
TOTAL	1 129	909	1 213

<sup>96/</sup> A/36/594, paras. 82-104; E/CN.4/1484, paras. 34-58; A/37/564, para. 57 et seq.

50. The table shows that in 1982 the total number of arrests increased by 33.44 per cent as compared with 1981 and was also slightly higher than the figure for 1980. In qualitative terms, individual arrests continued to focus on those who had shown any kind of disagreement with the prevailing political, social or economic system. Accordingly, as in the first six months of 1982, there was a predominance of arrests of people engaged in the promotion of human rights, trade-union leaders, members of groups of relatives of missing detainees or prisoners of conscience, or people associated with groups in the Catholic Church that have influence in the fields of culture and human rights.

(a) Arrests at public gatherings

51. Arrests of groups of persons, especially at public gatherings, have received wide coverage in the media, in reports by human rights bodies and in a large number of complaints which have reached the Special Rapporteur. As stated in the report to the General Assembly, there were a considerable number of arrests of this type in the first six months of 1982. 97/ With regard to the last six months of 1982, there was a trend towards an increased number of arrests at public gatherings. As the motive for such gatherings was generally a desire to protest against the growing economic crisis, the majority of citizens arrested under these circumstances were taking part in street demonstrations or were slum dwellers seeking somewhere to live. Arrests also occurred during this period in student circles, particularly at the university level.

52. The table below gives, on the basis of information provided to the Special Rapporteur by non-governmental organizations concerned with the defence of human rights in Chile, a sample view of individual arrests and arrests at public gatherings over the past three years. The table shows clearly the trend towards growth in the numbers of arrests at public gatherings; such arrests were considerably more numerous in 1982 than in previous years.

Table 3

Comparative table of arrests at public gatherings and individual arrests during the past three years

Month	Individual arrests			Arrests at public gatherings			Total number of arrests		
	1980	1981	1982	1980	1981	1982	1980	1981	1982
January	17	61	30	-	-	91	17	61	121
February	5	53	23	-	-	35	5	53	58
March	25	115	36	144	-	198	169	115	236
April	68	61	39	-	-	2	68	61	41
May	126	50	32	57	239	42	183	289	74
June	17	35	27	150	-	-	167	35	27
July	113	46	16	7	15	38	120	61	54
August	56	27	17	19	-	41	75	27	58
September	109	33	34	15	-	68	124	33	102
October	39	31	11	36	9	163	75	40	174
November	78	96	19	-	-	12	78	96	31
December	25	38	26	23	-	211	48	38	237
TOTAL	678	646	312	451	263	901	1 129	909	1 213

53. The following is a recapitulation of arrests at public gatherings over the last six months of 1982:

On 17 July 1982, on the occasion of a pilgrimage to Pablo Neruda's tomb in the General Cemetery to mark the anniversary of his birth, carabineros arrested 28 of the participants. 98/ The applications for amparo filed on their behalf stated that, in making the arrests they had shown the participants were committed offences against the security of the State, the carabineros had displayed "serious ignorance of the country's literary and cultural history and of national legislation". Except for two of their number who, on instructions from the Ministry of the Interior, were placed under restricted residence orders, those arrested were released five days later.

On 23 July 1982, the Asociación de Familiares de Detenidos Desaparecidos (Chilean Association of Relatives of Missing Detainees) organized a demonstration in the Plaza de Armas in Santiago, where they set up a banner referring to the problem of the missing detainees and covered some of the gardens in the square with placards showing photographs of the missing persons. Eleven of the above-mentioned relatives were immediately arrested. According to the application for amparo filed on their behalf, their action had been intended to "bear witness to our unshakable determination to go on asking about them [the missing detainees] until we get an answer" and the demonstration had marked "another anniversary of the publication of the lying Lista de los 110 (List of the 110) which attempted to deceive the entire community by stating that the missing persons had died abroad. All those arrested were released after five days' detention and on the following day the same individuals submitted a written statement to the Santiago Court of Appeal in which they once again drew attention to the unresolved problem of those who had disappeared between 1973 and 1977, pointing out that "on 13 July 1982, the present CNI (formerly DINA) and carabineros arrested us - without any warrant or legal cause - for wishing to find out the truth about what happened to our relatives who are missing detainees." They complained to the Court that "we have been denied our rights in our search for information from an authority which ... does not comply with the legal decisions compelling it to provide information. All in all, the behaviour of the Judiciary has not changed ...".

On 28 July 1982, five persons were arrested as they left a requiem mass in memory of various leaders of the Christian Democratic Party, held in the Parish of San Lázaro (Santiago). Three of those arrested were held incommunicado and released five days later. 99/

On 29 July 1982, Police Department Officials armed with submachine guns arrested 24 workers employed under the Minimum Employment Programme (PEM) at their work place. According to information submitted by various human rights organizations, the detainees were interrogated with punches and kicks to make them confess who had put up in the work place a placard reading "Help us to buy bread because we are hungry. PEM workers". They were released the following day. 100/

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98/ El Mercurio and Las Noticias of 18 July 1982; see also El Mercurio of 20 July 1982.

99/ Chilean Commission on Human Rights, Report for July 1982, pp. 8-9.

100/ Chilean Commission on Human Rights, ibid., p. 12.

On 19 August 1982, a peaceful demonstration was held in the centre of Santiago during which a large number of people protested about the economic situation in the country, with particular reference to the scourge of hunger. According to newspaper reports, the carabineros used teargas grenades and arrested 34 people, a large number of whom were detained until 24 August 1982 in Santiago Carabineros Station No. 1. 101/

On 20 August 1982, the anniversary of the birth of Bernardo O'Higgins, there was a demonstration by the Comité Pro Retorno (Committee for Repatriation) which took the form of the laying of a wreath referring to the exile of that great man. Carabineros arrested 10 people, all relatives of exiled Chileans, who were members of the aforesaid committee. They were interrogated at Carabineros Station No. 2 and released the following day. 102/

On 5 September 1982, the anniversary of the communist Youth Movement, a large number of young people made a pilgrimage to the General Cemetery to pay tribute to Victor Jara and Leandro Arratia. As they left the cemetery, carabineros broke up the group and arrested four persons, who were detained until 10 September 1982. The Ministry of the Interior placed two of them under restricted residence orders. 103/

On 9 September 1982, a service was held in the church of La Recoleta Franciscana to mark the end of a 10-day hunger strike which had been held there by two of those accused of belonging to the Christian Left. 104/ At the conclusion of the service, the participants began a march towards the centre of the city which was broken up by carabineros. Three people were arrested. On the following day, one was released because he was a minor and the three were brought before a judge of the Santiago Court of Appeal on a charge of contravening the provisions of the Security of the State Act. Nevertheless, they were released unconditionally, as having no case to answer on 15 and 17 September 1982.

On 1 October 1982, the house of Professor Rodolfo Gabaude Labra in Valparaíso was searched by unidentified persons in plain clothes who said they were looking for leaflets. The Professor was nevertheless arrested three days later in the street, for no apparent reason. Four other persons were likewise arrested in similar circumstances. After several days of interrogation accompanied by both physical and psychological torture, as reported by various human rights organizations, they were released.

On 27 October 1982, there was a protest rally against the Government in the centre of Valparaíso. Eighteen people were arrested and, on the following day, eight amparo applications were filed with the Court of Appeal on behalf of all those arrested. On the same day, the eleven men arrested began a hunger strike as a protest against "the ill-treatment one of them had suffered in prison". 105/ All of them, with the exception of Harnadie Orrego, were released the following day.

On 7 October 1982, three students and a white-collar worker were arrested as they left the Santiago Metropolitan Cathedral for singing songs and shouting protests about the system of exile. Carabineros broke up the demonstration with tear gas.

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101/ El Mercurio and La Tercera de la Hora, 20 August 1982.

102/ Chilean Commission on Human Rights, Report for August 1982, p. 12.

103/ Chilean Commission on Human Rights, Report for September 1982, p. 14.

104/ Chilean Commission on Human Rights, ibid.

105/ Chilean Commission on Human Rights, Report for October 1982, p. 20.

On 25 and 27 October 1982, eleven students were arrested in various demonstrations which took place in Santiago in protest at the situation in the university, to which the Special Rapporteur will refer later. 106/

Also during October, large numbers of people were arrested when vacant land in the "La Victoria" shanty town in San Miguel was occupied. A total of 97 people were arrested on this account. Nineteen more people were arrested in incidents occurring after the occupation of the land. Three further persons were arrested for organizing a community soup kitchen in La Victoria. 107/ Finally, three other people were arrested when they went to the San Miguel town hall to protest against these incidents.

On 2 December 1982, the National Trade-Union Co-ordinating Body (CNS) summoned the workers of Santiago to a public meeting to be held in the Plaza Artesan to demand better working conditions. The meeting was prohibited by the Intendant of Santiago. In consequence, there was a large turnout of carabineros and a group of 40 men in plain clothes and armed with sticks and chains brutally attacked all those present. Those who fell to the ground continued to be beaten. When a group of lawyers present on the spot urged the officer commanding the carabineros to arrest those guilty of this provocation, he refused to do so. As a result, three trade-union leaders were seriously hurt and six lawyers suffered varying degrees of injury, as did seven journalists covering the events in their professional capacity. The press reported a total of 50 arrests. 108/ Most of those arrested were released five days later. 109/ However, five people were placed under restricted residence orders and two of the most prominent leaders of the CNS were expelled from the country. The complaints lodged by the lawyers, journalists and trade-union leaders concerned resulted in the appointment of a special inspecting magistrate, who has embarked on the appropriate enquiries.

On 15 December 1982, a series of meetings was held in the largest towns in Chile to protest against the human rights situation in the country. According to press accounts, some 208 people were arrested in the city of Santiago, on this occasion. Most of those arrested were detained for five days on police premises, where they were interrogated by agents of the CNF, and were then released without charges being preferred. However, 12 of them were placed in secret CNF compounds on 19 December 1982 and remained there for three days: among them were a leader of the Teachers' Association of Chile (AGECH), a trade-union leader and an official of the Vicaría de la Solidaridad of the Archbishopric of Santiago. Five others of those arrested, including a 16-year old minor were accused of assaulting carabineros and brought before Military Court No. 2. However, this court ordered their unconditional release, on the grounds that there was no case to answer, on the following day. Finally, 13 people were subjected, on 21 December 1982, to the administrative penalty of restricted residence because "It was obvious from the fact that they were carrying similar leaflets and propaganda from Marxist movements and that the political slogans they were shouting were the same in all the localities where they were arrested that there had been prior concertation between the demonstrators". 110/

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106/ See below, chapter X A: "Right to education and culture".

107/ Chilean Commission on Human Rights, Report for October 1982, p. 16.

108/ El Mercurio, 6 December 1982.

109/ Vicaría de la Solidaridad, Report for December 1982.

110/ Las Ultimas Noticias, 21 December 1982.



Similar mass protests occurred in Valparaíso, coinciding with an electricity blackout which affected half the city. The carabineros arrested over a hundred people. Only one was accused of assaulting carabineros and brought before the relevant court; three were ordered into restricted residence. Finally, there was a similar march through the main thoroughfares in the city of Concepción. The carabineros arrested four people who were brought before Military Court No. 2 accused of assaulting carabineros. Only two were committed for trial, and they were released on bail.

On 28 and 29 December 1982, large-scale police sweeps were carried out in various poor districts of Santiago. As on other occasions which have already been reported by the Special Rapporteur with regard to the first six months of 1982, 111/ such sweeps are carried out on the pretext of apprehending criminals, but they frequently result in abuses of power which ecclesiastical observers have described as "intolerable". Thus, the "14 January" shanty town was raided by the army at 3 o'clock in the morning on 28 December 1982. Houses in the area were then searched by members of the carabineros, the police and unidentified persons in plain clothes. The searches were conducted with undeniable violence. In total, the houses of over 100 families were searched and all the inhabitants of the area save 18 were arrested. According to press accounts, the number of those arrested was 1,550; 112/ the official announcement described such acts as "a precautionary police" operation. Those arrested, including the women, were roughly handled, interrogated by ONI agents and then gradually released without being charged. The "Nuevo Amanecer" district was a similar raid at 5 a.m. on 29 December 1982. One thousand two hundred heads of household and male children were removed from their homes by uniformed and plain-clothes security forces. One thousand five hundred people were then arrested and herded onto a roundabout while their houses were searched. 113/ They were gradually released, without charges being preferred against any of them. A letter from the Vicaría de la Solidaridad for the eastern district of Santiago stresses "we find it intolerable that, in order to search for possible or presumed offenders, an entire neighbourhood should be roused from its sleep, the privacy of the home should be invaded, whole families should be scared and impressions of violence and terror should be imprinted on the minds of children".

(b) Arbitrary nature of arrests

54. Table 4 below shows the arbitrary nature of most of the arrests in a sample covering the city of Santiago for 1982 as a whole. It has been prepared, as usual, from information transmitted to the Special Rapporteur by a number of Chilean organizations working for human rights.

55. As will be seen, of the 345 people arrested in Santiago in the course of 1982, only 39 were brought before the courts and only six of them, namely 0.71 per cent of the total number arrested, were charged with terrorism. The table therefore makes it clear that the state of exception which has existed in Chile 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. On the contrary, as the Special Rapporteur has already reported, these special powers are used "primarily to persecute political dissidents who are not terrorists at all and to create a universal climate of fear among the population". 114/

111/ A/37/564, para. 58.

112/ La Segunda, 29 December 1982, and La Tercera de la Hora, 30 December 1982.

113/ Hoy, 5-11 January 1983, pp. 11-12.

114/ A/37/564, para. 61.

Table 4  
Number of persons arrested in Santiago in 1982, brought  
before a court and charged with terrorism

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	0
March	168	8	2
April	11	2	1
May	39	6	0
June	11	2	1
July	52	7	1
August	56	0	0
September	55	2	0
October	143	0	0
November	20	1	0
December	194	-	-
TOTAL	845 (100%)	39 4.62%	6 0.71%

56. The following table, showing arrests in the city of Santiago during 1982 resulting from a purely administrative decision, amplifies the sample to include any type of legal proceedings for alleged offences of a political character. The table has been prepared from information transmitted to the Special Rapporteur by the various non-governmental human rights organizations working in Chile.

57. Thus, of the 845 persons arrested in Santiago in the course of 1982, 467, or 55.26 per cent, were released without any charge being brought in a court. Another 339 people were released by the courts without any charge being proved against them or were charged with a contravention not constituting an offence. Only 39 people, or 4.58 per cent of the 845 were charged in court and committed for trial. The disproportion in these figures is obvious and the Special Rapporteur is forced to conclude, as he did in his report to the General Assembly, that

Table 5

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	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Total number of persons arrested in month	58	37	168	11	39	11	53	56	55	143	20	194	845
Released without any charge being brought	43	7	21	5	28	4	36	40	32	42	7	157	422
Placed under restricted residence pursuant to a purely administrative decision	3	--	1	--	2	1	2	2	5	2	1	23	42
Expelled pursuant to a purely administrative decision	--	--	--	--	--	--	--	--	1	--	--	2	3
Sub-total of persons arrested and released without any charge being brought in a court	46	7	22	7	28	5	38	42	38	44	8	182	467
PERCENTAGE	79.32	18.92	12.1	63.64	71.79	45.45	71.70	75.00	69.09	30.56	40	93.81	55.26
Charged in a court and released without any charge being proved	2	2	138	2	2	--	6	4	15	99	11	15	292
Charged in a court for a contravention not constituting an offence	--	27	--	--	3	4	2	10	--	--	--	1	47
Sub-total (6 + 7)	2	29	138	2	5	4	8	14	15	99	11	12	339
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	9	46	56	53	143	19	194	806
PERCENTAGE	82.75	97.25	95.24	81.82	84.62	81.81	36.79	100	96.36	100	95	100	95.38
Charged in court and committed for trial	10	1	8	2	6	2	7	--	2	--	1	0	39
PERCENTAGE	17.24	2.71	4.68	18.18	15.38	18.18	13.21	0	3.64	0	5	0	4.58
TOTAL NUMBER OF PERSONS ARRESTED IN MONTH	58	37	168	11	39	11	53	56	55	143	20	194	845

"it rules out the possibility of concluding on any rational grounds that the arrests were based on objective criteria aimed at establishing the commission of criminal acts", and that the arrests were thus 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". 115/

(c) Illegal nature of arrests

58. The reports and complaints which have reached the Special Rapporteur on this subject lead to the same conclusions as those set out in his report to the General Assembly. 116/ However, note should be taken of the abusive use which, according to the complaints transmitted to the Special Rapporteur, the Government is making of transitional provision 24 (a) of the Constitution. By virtue of that provision, the President of the Republic has absolute discretion to order the arrest of persons on the grounds of a "state of threat to law and order". Discretion under this provision has only one limitation, that of time, as stated in the provision itself: the period of detention under these special powers may not exceed five days. However, the provision envisages a second exception to the regular and ordinary regulations relating to arrests, namely that the period of detention may be prolonged up to 20 days if "serious acts of terrorism have been committed". Consequently, there should be some rational link between the "serious act of terrorism" and a person whose detention is prolonged. However, the executive applies these powers indiscriminately and keeps people illegally detained for 20 days even when it has been established beyond doubt that they are in no way connected with alleged terrorist acts.

59. The Special Rapporteur has received information which makes it clear that, in the course of 1982, the GNI held, for various periods, 103 people, 29, or 28.15 per cent, of whom were detained up to 20 days. But of these 29, only 6, as stated above, were brought before the courts accused of offences of a terrorist nature, while the remainder were accused of offences of a political nature or released without any charge being preferred. During the same year, the carabineros and police detained 20 people for more than five days; many of them were placed under restricted residence, pursuant to an administrative decision, without having been charged formally before any court. Complaints have been made to the courts about this practice of illegally prolonging the period of detention when the relevant amparo applications have been filed, and on some occasions the courts have requested the Ministry of the Interior to indicate "the terrorist acts that have prompted the prolongation of the periods of detention". The Ministry of the Interior has never replied directly to such requests; it has, however, delayed its own handling of relevant amparo applications so that the administrative detention situation disappears - owing either to the release or to the subjection to another administrative measure (restricted residence or exile) or the committal for trial of the person concerned - before the court seized of such an application can pronounce any assessment of the illegality of the prolongation of administrative detention.

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115/ A/37/564, paras. 66 and 61 respectively.

116/ A/37/564, para. 67.

B. Right to security1. Persecution and acts of intimidation

60. The judicial complaints by persons affected by various acts of persecution and intimidation have not led to any positive result. As the Special Rapporteur has already pointed out in his report to the General Assembly, if the judicial investigations undertaken in this context are to be successful 'the Government must collaborate in the elucidation of the facts'. 117/ No such collaboration, however, has been noted during the second half of 1982.

61. A quantitative analysis of the acts of persecution and intimidation which were the subject of complaints during 1982 has enabled the Special Rapporteur to establish that such acts continue to be of considerable gravity. Table 6, which is set forth below and was prepared on the basis of data supplied to the Special Rapporteur by the various non-governmental organizations concerned with the protection of human rights inside Chile, is sufficiently indicative of the situation.

Table 6

Acts of persecution and intimidation that were the subject of complaints in Santiago

Comparative table for the last three years

Month	1980	1981	1982
January	2	21	4
February	3	5	8
March	12	7	14
April	12	13	6
May	10	20	5
June	7	6	16
July	7	19	5
August	17	5	5
September	9	8	15
October	5	6	19
November	21	23	4
December	13	40	24
Total	113	140	125

117/ A/37/564, para. 84.

62. The table shows that the total number of acts of persecution and intimidation that were the subject of complaints in the Santiago area during 1982, with a total of 125 reported incidents, is mid-way between those which were the subject of complaints in 1980 and 1981.

63. The Special Rapporteur has likewise noted that the qualitative analysis of the incidents reported presents certain features similar to those of the two previous years and to those in the first half of 1982. As he observed in his report to the General Assembly: "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". 118/ This is why proceedings in the case reported by the Special Rapporteur in his report to the General Assembly ("Comunidad Catacumba" case) were stayed by the examining magistrate. On an appeal lodged with the Court of Appeals in Santiago, the latter again ordered a stay of proceedings without having managed to ascertain the identity of the people hiding behind the secret association "Comunidad Catacumba". 119/

64. Moreover, Patricia Verdugo Aguirre, the journalist with the weekly "Hoy", received repeated threats and a parcel containing a rotten fish, without any identification of the sender. Her application for protection filed with the Court of Appeals in Santiago was dismissed, as was her appeal to the Supreme Court. 120/ Yet on 4 November 1982, more anonymous threats were received and their purpose, according to a statement by the Metropolitan Council of the Association of Journalists, was "to intimidate this journalist in her professional duties". 121/

65. On 25 August 1982, the premises of the Committee for the Defence of the People's Rights (CODEPU), a non-governmental organization that provides legal advice for prisoners of conscience, carries out studies on the observance of human rights in Chile, and publicly denounces cases of torture and deaths in alleged clashes or in the course of detention, were set on fire, broken into and looted. The Agrupación de Familiares de Presos Políticos (Association of Relatives of Political Prisoners) had its headquarters at the same premises. On 26 August 1982, 14 persons connected with CODEPU were arrested and subsequently released. According to official sources, CODEPU is "a front organization of various groups made up of the disbanded MAPU, Izquierda Cristiana (Christian Left) and Christian Democrat parties. 122/ According to the application for amparo filed on behalf of several persons under arrest Blanca Rengifo, a lawyer and nun who is a member of the Governing Council of the organization in question: "We were taken to a secret place of detention and so we were blindfolded". The applicant also stated that she was interrogated "about my life-time activities as a nun and about CODEPU"; she further stated: "they made me sign a statement and some documents - without letting me read them - saying I had not been subjected to ill-treatment". 123/ According to the public statement issued by the organization in

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118/ A/37/564, para. 87.

119/ A/37/564, paras. 88-89. El Mercurio, 10 November 1982 and 14 December 1982.

120/ Hoy, 25-30 August 1982.

121/ Hoy, 17-23 November 1982. See also Chilean Commission on Human Rights, Report for November 1982, p. 15.

122/ La Segunda, 31 August 1982, and El Mercurio, 27 August 1982.

123/ Chilean Commission of Human Rights, Report for August 1982, p. 25.

question, "the nature and characteristics of the incidents leave no room for doubt as to their origin. There can be no question here of mere chance, as the CNI claims ... recently our headquarters have been under constant surveillance and on two occasions, at night, the doors have been forced and the premises searched, without open and brazen removal of our belongings, as has happened this time". The statement concludes: "The incidents we are exposing are not unexpected nor do they surprise us in the sombre social, ethical, legal and political climate in our country nowadays". 124/ Lastly, on 27 August 1982, CODEPU filed a criminal complaint against the National Information Agency (CNI) for "larceny, theft and arson". 125/

66. Other acts of persecution and intimidation involved students from various university centres, throughout the second half of 1982. Specifically, Marcela Palma Salamanca, secretary of the Students' Centre of the Faculty of Philosophy, complained of her abduction and subsequent ill-treatment by three unknown persons when "men interrogated her about her university activities and other student leaders" at the Faculty. The incident took place on 31 August 1982 and when the student refused to answer their questioning "they hit her and then subjected her to humiliating treatment, releasing her after 11 p.m. on the same day at the same place as they had forced her to get into a vehicle". 126/ Similarly, during the month of October 1982 there were complaints of acts of intimidation against seven students at the Higher Academy of Pedagogic Sciences and against five students at the University of Santiago, according to information provided by the Vicaría de la Solidaridad. 127/

67. As a consequence of the lengthy judicial investigation into the murder of trade union leader Tucapel Jiménez Alfaro on 25 February 1982 128/ his nephew, Carlos Jiménez Retamal, received anonymous telephone threats, according to a document submitted to the inspecting magistrate who is handling the investigation into the killing of the trade union leader. 129/ In the same context, Hernol Flores, who has taken over from Tucapel Jiménez as President of the ANEP, was the subject of a complaint by the Ministry of the Interior regarding certain alleged comments about the conduct of the judicial enquiries into the murder in question. In the end, the Ministry of the Interior refrained from judicial action. 130/ The complainant lawyers in the affair of the "Viña del Mar crimes" or "case of the psychopaths" were subjected to similar intimidation. On 20 December 1982, the lawyers in question each filed an application for protection with the Valparaíso Court of Appeal after receiving "various anonymous threats, including threats of death". 131/ One of the lawyers, Laura Soto, said that, on two occasions, unidentified persons had threatened her with death.

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124/ Public statement by the Committee for the Defence of the People's Rights (CODEPU) on 26 August 1982.

125/ La Segunda, 27 August 1982.

126/ El Mercurio, 4 and 7 September 1982.

127/ Vicaría de la Solidaridad, Report for October 1982, pp. 24-28.

128/ For the facts, see A/37/564, paras. 30-31.

129/ El Mercurio, 18 September 1982.

130/ Chilean Commission on Human Rights, Report for November 1982, p. 35.

131/ El Mercurio, 20 December 1982.

68. On 2 December 1982, a large number of workers gathered in the Plaza Artesanos in Santiago to protest about the country's economic situation. Permission was withdrawn at the last moment, so the gathering could not be cancelled in time. Members of the Carabineros were present when a large number of unidentified civilians proceeded to attack many of the people assembled there. 132 On the basis of those acts, five lawyers filed a criminal complaint "for the offence of assault" and "against civilians who were not identified but easily could have been identified by the detachment of Carabineros which was present at the incident". Six lawyers, seven journalists and three trade union leaders were injured. The criminal complaint makes it clear that the unidentified civilian assailants were acting in an organized manner and were carrying "clubs wrapped up in newspapers and a few had walkie-talkies". Although the lawyers repeatedly asked the Carabineros to stop them and arrest them, the civilians continued to act with the utmost impunity.

69. Finally, the Special Rapporteur has received allegations that Judge Arnoldo Dreyse of the Santiago Court of Appeals used the text of a decision reached by him in his capacity as Judge of First Instance in order to express a number of opinions which were considered by the attorneys in the case as "improper treatment". The lawyers in question, Alfonso Insunza Bascuñán and Fernando Zegers Ramírez, lodged an appeal, which was allowed, with the Supreme Court, in plenary session, against the above-mentioned judge, on the grounds that "Judge Dreyse unquestionably exceeded his authority in that the language used and the expressions and turns of phrase which were the subject of the appeal were detrimental to the attorneys" and that, by acting in this manner "he failed to accord them the proper deference". The decision of the Supreme Court concludes by allowing the appeal "only in so far as Judge Dreyse's attention should be drawn to the gravity of the matter and he should be cautioned that he will be subjected to disciplinary measures if there is a recurrence of the same conduct". 133 One of the judges was in favour of applying the disciplinary measure of a private warning.

## 2. Conditions of detention in prison establishments

70. According to information submitted to the Special Rapporteur by the non-governmental organization known as the Committee for the Defence of the People's Rights (CODEPU), at the end of November 1982 the Chilean prisons contained a total of 171 persons detained for crimes of opinion, or "political prisoners", as it calls them. Of these, 25 are reported to be women. In addition, a high percentage of such detainees are being held pending trial (at least 126), illustrating clearly the lengthy nature of the proceedings to which such detainees are subjected. As the Special Rapporteur pointed out in his report to the General Assembly, the common denominator is said to be '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'. 134

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132/ El Mercurio, 4 December 1982.

133/ El Mercurio, 22 December 1982.

134/ A/37/564, para. 96.



The Agreement of 24 July 1978 concluded between the Ad Hoc Working Group of the Commission on Human Rights and the Minister of Justice is still not being applied to this category of prisoners. Under the terms of the 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". 135/ The Special Rapporteur also informed the General Assembly of his concern regarding the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners within Chilean prisons, particularly with respect to persons detained for crimes of opinion. 136/

71. During the second half of 1982, the Special Rapporteur received a large number of reports and accounts of the unsatisfactory conditions to which prisoners are subjected in Chilean prisons. According to the same sources, the situation of persons detained for crimes of opinion appears to be particularly distressing. According to a report by CODEPU and the Group of Relatives of Political Prisoners in Chile, the conditions in prison establishments are unhygienic and the facilities inadequate, which is seriously detrimental to the physical and psychological or mental health of persons detained for crimes of opinion. 137/ The Special Rapporteur also received reports of the subjection to threats and mistreatment of two women detained in the Correctional Centre for Women in Santiago. One of the women concerned, Inés Peyrau Norambuena, in respect of whom an application for protection was made to the Court of Appeals of Santiago on 4 October 1982, described the ill-treatment to which she was subjected by Victoria Cañete, a member of the staff of the Centre. The Court was requested "to take all the necessary legal measures to restore the rule of law and provide effective protection" to Inés Peyrau and to her future son "since their rights to life and to physical and mental integrity were threatened". The application for protection also described the threats made against her by the above-mentioned staff member when informing her that "her physical integrity and that of her son would be violated". Consequently, the Court was asked to provide protection "for the right to life and physical and mental integrity of the individual" and "the life of the unborn child by prohibiting the use of any unlawful coercion".

72. Another application for protection was submitted to the Santiago Court of Appeals by Rita Peña Cárdenas, who, when pregnant, was also detained in the Santiago Correctional Centre for Women under circumstances similar to those of the above case. The application requested protection for the rights "of my personal integrity and individual security, my health, the life of my unborn child, the right to work, education and culture". The applicant names "the warden ... and the prison warden Victoria Cañete", and alleges that she was subjected to "repeated threats" and to especially discriminatory and harsh treatment under the prison regime, particularly the "unjustified confiscation of my belongings". The Court of Appeals dismissed the application for protection and, upon appeal, the Supreme Court upheld the ruling of the lower court. The warden named in the application for protection "denied the

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135/ A/37/564, para. 97.

136/ A/37/564, paras. 100-101.

137/ Association of Relatives of Political Prisoners, Report on the health situation of political prisoners, Santiago, November 1982.

charges made against her and said that she simply carried out the orders of the warden ... as stipulated in the prison regulations". 138/

73. The Social Rehabilitation Centre at Colina, a new detention centre, described to the press as "considered to be the most modern in South America the only one of its kind", 139/ is actually renowned for the discriminatory treatment to which persons detained for crimes of opinion are subjected there. According to one non-governmental organization, a sergeant and a commander the guard were noted "for their special qualifications and proficiency, not in rehabilitation, but in the degrading and humiliating treatment of detainees". 140/ According to the same source, "the food provided and working and health conditions" were causes for serious concern. Indeed, "a risk of malnutrition, as a result of the inadequate protein and vitamin content of the food provided, was also noted by the delegation of the International Red Cross". Moreover, according to other sources, "prisoners are punished by beatings administered by three to five prison warders and are continually threatened". 141/ These circumstances were reported in an application for protection submitted to the Court of Appeals of Santiago by four of the persons detained for crimes of opinion at the Colina Centre. Specifically, they referred to the "arbitrary and unjustified treatment received at the hands of the prison warders", and requested the appointment of a visiting judge to visit the prison and report his findings, regarding the reported occurrences to both the International Red Cross and the Colina Rehabilitation Centre". 142/

74. On 8 December 1982, the Group of Relatives of Political Prisoners, together with other popular organizations, occupied the offices of the Metropolitan Cathedral to stage a hunger strike with a view to obtaining, among other things, an "amnesty for political prisoners". On this occasion, units of Carabineros arrested 16 persons, and two members of the Group were subjected to the administrative sanction of restricted residence. 143/ In this connection, the persons detained for crimes of opinion in the various centres in Santiago, Valparaíso and Concepción instituted a hunger strike which lasted until 15 December 1982.

75. As part of a television programme on "terrorism", four accused persons being detained in prison establishments appeared before the cameras, and "made video-recorded statements in which they admitted having committed crimes". The defence attorneys submitted an application to the full Supreme Court requesting "an investigation of irregularities alleged to have been committed in the course of the

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138/ El Mercurio, 31 December 1982.

139/ El Mercurio, 25 September 1982.

140/ CODEPU, Boletín de diciembre de 1982, p. 10.

141/ Chilean Commission on Human Rights, Report for December 1982, p. 24.

142/ El Mercurio, 31 December 1982.

143/ According to the Chilean Committee on Human Rights, Report for December 1982 pp. 23-24.

programme" which amounted to a breach of the "secrecy of pre-trial proceedings". Persons concerned stated that these recordings were made in the secret detention premises of the CNI over a period of 20 days, during which each of them was held incommunicado, and that the statements were memorized beforehand, with the help of blows and threats, i.e. under unlawful pressure". 144/ However, they were presented on the television programme as "being interviewed".

76. Finally, the Special Rapporteur notes that during December 1982, six persons detained for crimes of opinion in various prison establishments in Chile had their prison sentences commuted to exile and were accepted as refugees by Belgium and Norway. As the Special Rapporteur noted in his report to the General Assembly, these measures were positive since they afforded the individuals concerned "the minimum conditions for remaking their lives, although in the traumatic situation of exile". 145/

C. Missing persons

77. The Agrupación de Familiares de Detenidos - Desaparecidos (Chilean Association of Relatives of Missing Detainees) has sent to the Special Rapporteur an updated list of the cases outstanding in the significant problem of the persons who, particularly between 1973 and 1978, disappeared after having apparently been arrested. The list, drawn up with the assistance of Chilean human rights organizations, contains a total of 662 cases outstanding and the attention of the Commission on Human Rights is therefore drawn once more to the need to urge the Chilean Government to co-operate with a view to a final settlement of the problem of disappearances. In this connection, it may be recalled that 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 persecute and to punish those responsible for such disappearances". 146/

78. In his report to the General Assembly, the Special Rapporteur gave a list of 34 cases of which the judicial investigation had been concluded. 147/ To these must be added 18 new cases which have now been clarified; they relate to bodies found in hidden graves in the Mulchén area (in the neighbourhood of El Morro, Carmen, Maitenes and Pemehue). Consequently, the total number of cases clarified

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144/ Chilean Commission on Human Rights, Report for December 1982, p. 25.

145/ A/37/564, para. 108.

146/ General Assembly resolution 36/157, para. 4 (e). See also A/37/4, para. 82.

147/ A/37/564, para. 73.

has risen to 52. The judicial investigation into the case of the hidden graves in the Mulchén area was concluded on 29 December 1980 by the decision of the inspecting magistrate from the Concepción Court of Appeal that he lacked jurisdiction to continue investigating the material facts in the case since he had concluded from his inquiries that members of the armed forces were implicated in the murder of the 18 people concerned 148/ and by his withdrawal from the case in favour of the military courts.

79. The Mulchén case is an example of the negative results of judicial investigations, for such inquiries do not satisfy the requests for clarification submitted by the relatives of the victims. The Special Rapporteur has already referred to the fact that the Government, as the authority which should be the guarantor of human rights, not only fails to conduct proper inquiries but even puts obstacles in the way of judicial investigations and goes so far as to condone concealment of evidence (for example, it has been reported on more than one occasion that records of prisoners going back more than three years have been burned). Furthermore, the 1978 Amnesty Decree-Law transforms judicial investigations into a mere formality since, even when they end in the identification of the perpetrators of the disappearances under consideration and of their accessories before, during and after the fact, none of them will be punished because they will immediately benefit from the application of the amnesty. Finally, the courts confine themselves to a formal inquiry and once the victim has been located and the perpetrators have been identified, they cannot do otherwise than apply the amnesty. Of the 662 cases outstanding, only 130 cases of missing detainees are currently under investigation in the Department of Santiago, which gives an idea of the paucity of judicial action on the subject.

80. The appointment of inspecting magistrates means that, in most cases, the crimes which have been committed are proved, as happened in the Mulchén case mentioned above. But this procedural result does not lead to the complete clarification of the matter, since the work of the inspecting magistrate is bound to end in a declaration of incompetence and withdrawal in favour of the special jurisdiction when it establishes the crime and the participation in it of persons with military privileges. Subsequently the military courts wind up the investigations by ordering the stay of these pre-trial proceedings on the pretext that "no crime has been proved", although the ordinary courts have reached exactly the opposite conclusion with respect to the same cases.

81. The Special Rapporteur concludes that the Chilean authorities should co-operate fully in the investigation of the cases of the 662 missing persons so that the wishes of the international community, which have been widely expressed, may be definitively satisfied.

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148/ Vicaría de la Solidaridad, Annual Report for 1980, pp. 52-54.

#### IV. RIGHT TO FREEDOM OF MOVEMENT

##### A. Right to enter and leave the country freely

82. The Special Rapporteur has paid special attention to the exercise of this right in previous reports. 149/ As regards the period covered by the second half of 1982, there have been no legislative changes indicative of improvement. The Government of Chile continues to give an undue excessively broad interpretation to the term "national security", particularly in the context of the maintenance of the two states of emergency that empower the President of the Republic to "prohibit particular persons from entering and leaving the territory" and "to refuse entry into, or expel from, the national territory" Chilean nationals and foreigners. This is implicit in the combined application of article 41, paragraphs 2 and 4, and of the twenty-fourth transitional provision of the Constitution which provide respectively for the declaration of a state of emergency and of a disturbance of the internal peace of the State. When the President or, as appropriate, the Minister of the Interior make use of the twenty-fourth transitional provision, "it is not possible to appeal to any authority other than that which ordered the measure". 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". 150/ Lastly, the Special Rapporteur has noted the continued application of the circular of the Ministry of Foreign Affairs of 11 February 1980, which 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 covers persons who are conducting a campaign against Chile, which term means those 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" (para. 9 of the circular). 151/

83. It is virtually impossible to arrive at an accurate estimate of the number of persons directly affected by these legislative measures and who, because of them, are compelled to live outside the country, thus giving rise to the phenomenon (which the international community has repeatedly condemned) of political exile. In this connection, in his report to the General Assembly, the Special Rapporteur quoted the figure of 1.2 million persons which was provided by the Catholic Migration Institute (INCAMI). 152/ However, this figure is believed to include not only Chileans exiled on political grounds, but also emigration of an economic and social kind. Although the Government has declined to publish the list of persons who figure on the "national list" and who are therefore prevented from returning to Chile, authorized Government sources have said that they number about

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149/ See, in particular, A/37/564, paras. 109--126.

150/ See A/37/564, para. 112.

151/ See A/37/564, para. 115.

152/ See A/37/564, paras. 116 and 123.

"10,000 or 11,000". <sup>153/</sup> However, other sources suggest that the political exiles number about 38,000 persons, without counting members of their immediate families. <sup>154/</sup> In view of the discrepancies in the information provided by the various sources, the Special Rapporteur would stress the need for the Government to publish the names of the persons prevented from returning to Chile, with a view to laying down some minimum bases of legal certainty and, at the same time, enabling the problem of Chilean exiles, which has been before the international community since 1973, to be tackled with the necessary objectivity. It would then be up to the Government to clarify the situation, at least from a strictly quantitative standpoint. A number of non-governmental human rights organizations which operate in Chile, such as Vicaría de la Solidaridad, the Chilean Commission on Human Rights and the Committee for the Return of Chilean Exiles, made public statements to this effect during October 1982.

84. In another context, the Special Rapporteur has followed closely the Chilean Government's first positive gesture towards solving the exile problem. It concerned an announcement made by the President of the Republic, in the course of a public speech on 25 October 1982, that he was to appoint a Special Commission to undertake a review of the problem. <sup>155/</sup> The Special Commission was finally established by Decree No. 1456 of 8 November 1982, <sup>156/</sup> article 1 of which provides that the object of the Commission shall be "to review and propose to the President of the Republic solutions concerning the position of persons who have been prohibited from entering the country". Pursuant to article 2 of the Decree, the Commission was composed of the Minister of the Interior (acting as Chairman), the Minister of Justice, the Chairman of the Council of State and attorneys Valenzuela and Rivadeneira. The Under-Secretary of the Ministry of the Interior acted as Secretary to the Commission. The establishment of the Special Commission was received very favourably by all the Chilean human rights organizations and, generally speaking, by all the news media. <sup>157/</sup> The Vicaría de la Solidaridad also issued a public statement on 9 November 1982, in which it expressed satisfaction at the Government's initiative. It qualified this, however, by addressing "a request to the relevant authorities to arrange for the names of persons who are prohibited from entering the country to be made public as soon as possible". On 26 October 1982, the Chilean Commission on Human Rights issued a statement to the same effect, adding that "in any event, the authorities will have to respect the principle that, in the final analysis, it is the Higher Courts of Justice that weigh the points of law and fact on which the measures relating to a prohibition on entry are based, and which decide, in the light of the merits of each case, on the applications for amparo submitted by those concerned along with the Commission's findings". <sup>158/</sup>

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<sup>153/</sup> According to statements by Mr. Manuel Trucco, Permanent Representative of Chile to the United Nations, as reported in the newspaper El Mercurio of 29 October 1982.

<sup>154/</sup> According to the Committee for the Return of Chilean Exiles, the review Hoy in its issue of 3-9 November 1982, The Times of 18 November 1982, and the Chilean Commission on Human Rights, Report for December 1982, p. 2.

<sup>155/</sup> El Mercurio, 26 October 1982.

<sup>156/</sup> Diario Oficial of 10 November 1982.

<sup>157/</sup> Realidad, November 1982, editorial; El Mercurio, 12 November 1982, editorial; Mensaje, December 1982.

<sup>158/</sup> The Committee for the Return of Chilean Exiles expressed similar views in its statement on 26 October 1982. See, in this connection, El Mercurio, 10 November 1982, and Hoy, 17 November 1982.

85. The Chilean Government also informed the United Nations Secretary-General of the establishment of the Special Commission; as the Minister for Foreign Affairs himself stated, "The establishment of the Commission which is considering the question of the return of exiles was one of the reasons that prompted a favourable change in the attitude of a number of countries regarding the human rights situation in Chile". <sup>159/</sup> The Minister went on to say that "even the United States delegation to the United Nations referred to it in approving terms and said that it is indicative of an improvement in the human rights situation in the country". <sup>160/</sup>

86. On completing its work, the Special Commission prepared an advisory report which it submitted to the President of the Republic on 16 December 1982. The report was not published, on the grounds that it was an "internal working document". On 29 December 1982, the dissolution of the Commission was announced, although the relevant Decree was not published in the Diario Oficial. <sup>161/</sup> However, on 24 December 1982, a list was published of 125 persons who would be allowed to enter the country immediately. In January 1983, a second list was published with 79 names <sup>162/</sup> which, together with the previous list and another 39 persons who were permitted to return in September 1982, makes a total of 243 persons authorized to return to the country in the last five months of the Special Rapporteur's current mandate.

87. It is clear that the results of the Special Commission's work have not lived up to expectations. For instance, in a statement made on 24 December 1982, the Chilean Commission on Human Rights described itself as "deeply saddened that the promises of reconciliation and unity of the national community and the hopes which so many families have justifiably nurtured ... have again been frustrated". It added "we are gratified that 125 persons have been authorized to return to Chile, but are concerned that the Government has recognized that over 10,000 persons are in exile and that other reports put this figure at over 30,000". Moreover, in a press release dated 30 December 1982, the Committee for the Return of Chilean Exiles made the same point, stating that "the current of hope that flowed through the lives of certain exiles came to an end when it was cut off by an act of cruelty and once again endangers their mental well-being, since they are confronted by uncertainty as to whether their return to the country is a question of a pardon by the authorities, which does not depend on respect for persons and their rights".

88. The Special Rapporteur, for his part, would point out that the final solution to the problem of exile must involve repeal of the emergency legislation referred to earlier, since it represents the legal framework to which recourse is had in order to maintain the prohibitions on entry and administrative expulsions that create the phenomenon of strictly political exile. Throughout the second half of 1982, the Government continued to make use of these measures and ordered further prohibitions on entry.

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<sup>159/</sup> El Mercurio, 12 December 1982. In a report on the statements by the Minister on 11 December 1982.

<sup>160/</sup> El Mercurio, same date. Chilean Commission on Human Rights, Report for December 1982, p. 31.

<sup>161/</sup> Hoy, 5-11 January 1983.

<sup>162/</sup> El Mercurio, 15 January 1983.

89. In this connection, it should be noted that, in its judgement of 31 August 1982, the Supreme Court dismissed the appeal of Jaime Castillo Velasco who had had recourse to the courts to challenge the government measure prohibiting entry which has been hanging over him since 11 August 1981, when he was expelled from Chile. 163/ On that occasion, the Supreme Court upheld the opinion of the Santiago Court of Appeal to the effect that the prohibition on Castillo's entry, decided pursuant to article 41, paragraph 4, of the Constitution, was not subject to review by that Court because "it is not necessary to consider the Government's reasons first for expelling him from the country and afterwards for prohibiting his re-entry, since these are stages that have already been completed and that provided grounds at the appropriate time for the application of other remedies" (clause 2 of the judgement of the Supreme Court). As for invoking the right to be tried by the courts, the Supreme Court also endorsed the opinion of the Court of Appeal to the effect that, during the state of emergency, the Executive can elect either to act judicially or to exercise its emergency powers (clause 17), which would mean that the Judiciary abdicates its exclusive jurisdictional power and makes it possible for the Executive actually to impose sentences in administrative proceedings. Furthermore, clause 3 of the judgement in question invokes article 41, paragraph 7, of the Constitution, stating that the Decree on prohibition of entry issued under a state of emergency has permanent effect: it remains in force as long as the authority which issued it has not expressly revoked it". According to a study conducted by the Vicaría de la Solidaridad, the doctrine laid down in these decisions is extremely serious, since it leaves the way open for this type of reasoning ... to become the general rule. By virtue of the temporary powers provided for in transitional article 21, a person can be expelled from the country, then article 41, paragraph 4, is invoked to prevent him from entering the country, and this prohibition is given permanent effect". 164/

90. The Special Rapporteur has also referred to the similar position of Andres Zaldivar Larrain, who is also in exile. 165/ The application for amparo filed with the Santiago Court of Appeal was unanimously dismissed on the grounds that "there is no need to re-analyse the Government's reasons for prohibiting the appellant's entry into the country when it issued Decree 360 of 1980" and that, pursuant to article 41, paragraph 7, of the Constitution, "the prohibition on entry into the country decreed during the state of emergency takes effect as from that moment, and those effects cease only when the decision is revoked by the issuing authorities, even although the state of emergency which gave rise to it may have ceased". 166/ An appeal lodged with the Supreme Court was likewise dismissed, the judgement of the Court of Appeal being upheld in its entirety. 167/

91. Four other persons were re-embarked and sent back at Santiago International Airport, their right to enter the country being denied. They were: Oriana Moraga Gómez, on 30 November 1982, together with her five year-old daughter; Marcela Ortíz de Zarate Broughton, on 21 December 1982; Héctor Pontigo Poblete, on 22 December 1982 and Father Gonzalo Arceyo S.J., on 27 December 1982. In

163/ See background in A/37/564, para. 125.

164/ Vicaría de la Solidaridad, El Derecho a Vivir en la Patria, (the right to live in one's country). Archbishopric of Santiago, 13 September 1982, p. 9.

165/ A/37/564, para. 126.

166/ El Mercurio, 3 September 1982.

167/ El Mercurio, 15 October 1982, and Chilean Commission on Human Rights, Report for October 1982, p. 30.



the same connection, the trade-union leader Silvio Victorino Espinoza Sánchez was expelled from the country by administrative decision on 4 September 1982. He had been detained on 24 August 1982 at secret CNI premises, subjected to torture, and his administrative detention unlawfully extended to 20 days, despite the application for amparo filed on his behalf.

92. A similar fate was suffered by the trade-union leaders, Manuel Bustos Huerta, President of the National Trade Union Co-ordinating Body (CNS), and Héctor Cuevas Salvador, President of the National Building Confederation, and also a leader of the CNS, who were expelled on 3 December 1982 by decree of the Ministry of the Interior. 168/ Both expulsions were condemned by trade-unions and student organizations, popular groups, and former Chilean members of parliament. A communiqué signed by 16 persons connected with the disbanded Christian Democrat Party stated that expulsion is "not only an infringement of human rights, but is also incompatible with the most elementary notion of reconciliation and national unity". It added that "on this basis, it is not possible to ensure the co-existence of all Chileans". The Committee for the Return of Chilean Exiles, for its part, said that "it has been clearly demonstrated that there is no real intention on the part of the authorities to solve the exile problem". Furthermore, the Confederation of Private-Sector Employees, in another statement, called for "the complete restoration of trade-union freedom, in accordance with the norms introduced by ILO and the United Nations". Groups such as the Association of Poor Metropolitan Communities, the Committee for the Defence of Youth Rights (CODEJU), Committee for the Protection of Human and Trade-Union Rights, and the Association of Relatives of Missing Persons, expressed similar views. 169/ Several applications for amparo were filed, two of which, submitted on behalf of Héctor Cuevas, were dismissed by the Court of Appeal on 11 January 1983. Another application for amparo, submitted on behalf of Manuel Bustos, was dismissed by the Court of Appeal. 170/

93. On 5 December 1982, Carlos Podlech Michaud, President of the National Association of Wheat Producers, was also expelled from the country. 171/ An application for amparo filed with the Santiago Court of Appeal was dismissed on the grounds that the said person, "shielding behind trade-union office, waged an active campaign of rebellion against the authorities", according to a communiqué issued by the Ministry of the Interior on 6 December 1982. The Court of Appeal held that Exempt Decree No. 4022 of the Ministry of the Interior was issued pursuant to transitional provision 24 (c) of the Constitution and that "the grounds for the measure are failure on the part of the subjects of the amparo proceedings to comply with the order denying permission to hold a trade-union meeting at the SOFO premises". Furthermore "using powers that are exclusive to it,

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168/ El Mercurio, 4 December 1982.

169/ El Mercurio, 5 December 1982. See also El País of 7 December 1982; Hoy, 8-14 December 1982; and the Chilean Commission on Human Rights, Report for December 1982, pp. 29-30.

170/ El Mercurio, 12 January 1983.

171/ El Mercurio, 6 December 1982.

the Executive applied to Mr. Podlech measures that are provided for in the Constitution and that do not allow of any remedy other than review by the authorities which ordered them. 172/ An appeal has been filed with the Supreme Court which, at the time of writing, had not delivered judgement. 173/ Similarly, the Supreme Court unanimously dismissed the appeal lodged by Julieta Hortensia Carrasco Salvo, who had also been prohibited from entering the country on the ground that she "constitutes a danger to the internal peace of the State", pursuant to transitional provision 24 (c) of the Constitution. 174/

94. The method of exile through judicial decision was likewise upheld by the Santiago Court of Appeal in the cases of Jose and Carlos Caucamán Pérez, Rómulo Fuentes Silva and Jesús Díaz Cofré, charged with "the offence of propagating Marxist doctrine". 175/ The same applies to the judgement at first instance passed on the nine alleged members of the Christian Left Party who had been charged with violations of Decree-Law No. 77 concerning unlawful associations: the Court of Appeal upheld the judgement at first instance, although on appeal the Supreme Court altered the sentence of exile to a sentence of suspended imprisonment subject to supervision by the Convicted Offenders' Aid Association. 176

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

95. As already noted, both freedoms are severely restricted in Chile as a result of the application of transitional provision 24 (d) of the Constitution, under which the President of the Republic, acting through the Minister of the Interior, may order any person to reside in a specific urban locality within the country for a period not exceeding 90 days, without any judicial decision, without any charge being brought and without the possibility of appeal to any court, all on the grounds that there is a danger that the internal peace of the State will be disturbed. The possibility of enforced residence imposed by judicial sentence also exists. 177/ Table 7, below, gives comparative figures for 1981 and 1982 in respect of the number of cases of enforced residence that have been imposed by the Executive, according to information supplied to the Special Rapporteur by a number of non-governmental organizations concerned with the protection of human rights in Chile.

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172/ El Mercurio, 31 December 1982.

173/ El Mercurio, 2 January 1983.

174/ El Mercurio, 2 September 1982.

175/ A/37/564, para. 118.

176/ See A/37/564, para. 118, and El Mercurio, 2 October 1982.

177/ A/37/564, para. 129.

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
June	1	2
July	1	2
August		2
September	1	11
October	5	3
November	2	6
December	1	25
TOTAL	50	74

96. As can be seen from table 7, there has been a significant increase in the number of cases of enforced residence ordered by the Executive pursuant to transitional provision 24 (d) of the Constitution, which is always directed against those who publicly manifest their disagreement with the existing political, economic and social system in Chile. Mention must be made in this connection of the 25 cases of enforced residence imposed during December 1982 as a result of participation in a public demonstration that took place in Santiago on 15 December 1982, with a view to protesting at the situation of economic crisis afflicting the country.

97. The method of judicially enforced residence was recently used by the Supreme Court in the case of Héctor Malatrassi, Alfredo Iriarte and Luis Portilla who were charged with unlawful association and sentenced to two years' exile by the Court of Appeal for an offence under the State Security Act. 178/ Moreover, on 7 December 1982, the Minister of the Interior issued five decrees of enforced residence in respect of the same number of persons for having participated in a gathering that took place on 2 December 1982 at the Plaza Artesanos de Santiago, to which the Special Rapporteur has already referred. 179/ Lastly, three other people, members of the Committee for the Defence of Youth Rights (CODEJU), were also subjects of the administrative measure of enforced residence during December 1982 according to information received from the Chilean Commission on Human Rights. 180/

178/ El Mercurio, 29 December 1982.

179/ El Mercurio, 3 December 1982. See above, Chapter III, A, 1 (a): Arrests at public gatherings.

180/ Chilean Commission on Human Rights, Report for December 1982.

V. RIGHT TO PROCEDURAL GUARANTEES

A. Right to an effective remedy

98. International rules make extensive provision for the right to claim an effective remedy from a competent authority, preferably judicial, in the event of a violation of the rights recognized in them, and also recognize the obligation to comply with the decision of that authority (article 2 (3) of the International Covenant on Civil and Political Rights and article 8 of the Universal Declaration of Human Rights). With regard to Chile's internal legislation, the Special Rapporteur has already referred to the remedies "of protection" and "of amparo", established in articles 20 and 21 of the Constitution respectively. 181/ A third procedure is provided for in article 21 (3) of the Constitution, which states that an application for amparo "may be lodged on behalf of any person who unlawfully suffers any other privation, perturbation or threat to his right to personal freedom and individual security". This is the "early application for amparo", the filing of which enables the respective judiciaries to order the measures of amparo known as the remedy of ordinary amparo "deemed conducive to the reinstatement of the rule of law and to securing due protection of the person concerned". However, in many cases the Courts of Appeal in practice confuse the "early application for amparo" of article 21 (3) of the Constitution with the "remedy of protection" provided for in article 20 of the same instrument. There would appear to be an exception to this practice in the judgement of 23 September 1982 declaring admissible an early application for amparo lodged on behalf of Manuel Fernando Rubio Manrique, inasmuch as there is agreement to "instruct the National Information Agency (CNI) to refrain from holding the person in question ... as no arrest warrant has been issued by a competent authority". The person in question had indeed submitted the application because he had been detained by the CNI and interrogated about his alleged political activities at a time when no arrest warrant had been issued against Rubio Manrique.

99. Table 8 below makes a comparative study of the total number of applications for amparo submitted in the city of Santiago in the past three years, with special reference to each month in 1982. It has been prepared from information sent to the Special Rapporteur by various non-governmental organizations dealing with the protection of human rights in Chile.

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181/ See A/37/564, para. 137.

Table 8  
Applications for amparo  
City of Santiago, 1982

Month	On behalf of prisoners		Early application		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)
June	8	(8)	5	(30)	4	(4)	17	(42)
July	20	(48)	5	(15)	1	(1)	27	(64)
August	25	(27)	2	(2)	2	(3)	29	(50)
September	27	(27)	6	(9)	..	(-)	33	(36)
October	21	(39)	6	(9)	..	(-)	27	(48)
November	9	(13)	..	(-)	..	(-)	9	(13)
December	70	(163)	2	(2)	3	(3)	75	(168)
<b>Total</b>	<b>257</b>	<b>(491)</b>	<b>34</b>	<b>(79)</b>	<b>14</b>	<b>(18)</b>	<b>305</b>	<b>(588)</b>
<b>In 1981</b>	<b>255</b>	<b>(420)</b>	<b>93</b>	<b>(747)</b>	<b>19</b>	<b>(26)</b>	<b>367</b>	<b>(593)</b>
<b>In 1982</b>	<b>311</b>	<b>(892)</b>	<b>79</b>	<b>(139)</b>	<b>77</b>	<b>(91)</b>	<b>457</b>	<b>(1 122)</b>

Note: The figures in brackets indicate the numbers of persons covered by the applications.

100. The wide use of the technique of recourse to the remedy of amparo in the Chilean law courts is not, however, as effective as might be expected in view of the fact that the lives, safety or freedom of persons are at stake. In his report to the General Assembly, the Special Rapporteur noted the exercise of this kind of remedy during the first six months of 1982, to have been uncertain, and this trend was generally maintained during the second half of 1982. 182/ He also pointed

182/ A/37/564, para. 138.

out that this uncertainty is directly related to the combination of successive declarations of a state of emergency (article 41 (4) of the Constitution) and of a state of emergency due to threats to the internal peace of the country (twenty-fourth transitional provision of the Constitution) which has been maintained since the date when the Constitution entered into force (11 March 1981). In the circumstances, the right of defence in areas vital to human rights has, in many respects, been suspended: for instance, no legal remedy is available in respect of administrative decisions relating to detention, enforced residence, expulsion, or prohibition of meetings and new publications. 183/

101. The information collected by the Special Rapporteur concerning judicial practice during the second half of 1982 corroborates the application of this emergency legislation. In this connection, mention should be made of the protracted trial of nine persons allegedly connected with the Christian Left Party (Partido de Izquierda Cristiana), including senior officials of the Chilean Commission on Human Rights, members of the Group on Constitutional Studies and of the Peace and Justice Service (Servicio Paz y Justicia) (SERPAJ). 184/ As well as the various procedural regularities that occurred in the first phase of this trial and which have already been mentioned by the Special Rapporteur, 185/ a number of judicial errors have also been made in this case:

In the first place, the examining magistrate in the case delivered his judgement at first instance on 11 August 1982, 186/ charging the nine persons concerned with the offence of "unlawful association" under Decree-Law No. 77 of 1973, which banned political parties and activities of that kind. The judgement states that "they were engaged in subversive activities directed towards organizing the outlawed Christian Left Party, with the specific aim of participating actively in political subversion against the legally established Government". The examining magistrate based his findings on an extrajudicial confession purported to have been obtained from the persons concerned in the secret premises of the CNI, where they had been detained incommunicado and subjected to torture. For their part, the prisoners had complained to the examining magistrate that they had been tortured and threatened by CNI agents, and they denied any involvement in the offence of unlawful association. Consequently, they denied the validity of the extrajudicial interrogation and statements obtained by unlawful coercion by the CNI in the secret places of detention.

102. The finding of the examining magistrate calls into question the independence of the Chilean judiciary, and is further proof that the exercise of the right to an effective remedy is uncertain. Thus, in the judgement in question, the magistrate used political and ideological arguments that could hardly be considered compatible with the independence of any judiciary. Referring to the period of constitutional emergency prevailing in Chile, he said that the activities of the persons concerned had been "incompatible with the institutional evolution which the country has mapped out and needs" (twenty-second clause) and justified the sentence of exile as being deserved by anyone who "in secrecy threatens the evolution of the national institutional system ... since the Government is systematically carrying through a phase in the return to institutional normality" (twenty-second and twenty-eighth clauses).

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183/ Ibid.

184/ A/37/564, para. 141.

185/ Ibid.

186/ Hoy, 3-9 November 1982.

103. Moreover, the judgement confirms the CNI's authority to detain, despite the fact that, according to article 90 of the Constitution, this security body is not authorized to make arrests and still less to subject unlawfully detained persons to interrogation under coercion in secret places. Neither does Decree-Law No. 1878, of 13 August 1977, which conferred legal status on it as a 'specialized military agency', recognize the CNI to have this power. However, for the examining magistrate, the CNI "also has de facto an official function which is public knowledge" (third clause) and "the CNI's premises are secret for reasons of security" (seventh clause): he thereby showed considerable tolerance of the arbitrary and illegal procedures which are habitual in CNI premises. Further, the examining magistrate took the view that "the actions of the Director or members of the CNI are those of an official agency, and thus the documents issued by them in the course of their duties are official instruments for the purposes of the criminal law." (third clause). Therefore, documents that accused persons were compelled to sign in the secret premises of the CNI under threat have been viewed as "official instruments" constituting admissible evidence against them, 187/ and that without any reference to the circumstances in which those statements were obtained. On the other hand, a deposition in the presence of the examining magistrate himself denying participation in the acts described in the said extrajudicial confessions "extorted by force has no value as evidence for a trial judge who, in exercise of his discretion, takes as proven all the charges made by the Government, in accordance with the annexes attached to the case by the CNI." 188/

Finally, attention should be drawn to the distortion in the judgement arising from the judge's power to assess the evidence "in exercise of his discretion" when this faculty cannot imply "tolerance to allow other methods of proof than those expressly specified by law", since an assessment in exercise of discretion does not extend to acceptance of an interpretation that is outside the law or unlawful." 189/

104. In the second place, the judgement at first instance, under which the nine persons involved were sentenced to 541 days' exile, was confirmed in all points by the Santiago Court of Appeal. When a further appeal was lodged, 190/ the Supreme Court, in a ruling on 9 December 1982, amended the sentences of exile to 541 days' imprisonment. The sentence was remitted for eight of the persons concerned and they were placed under the control of the Patronato de Reos (Offenders' Association). 191/ It should be noted that, although the Supreme Court changed exile to imprisonment, it nevertheless continued to state that the persons concerned were guilty of non-violent political dissidence and, still more important, did not pronounce on whether the CNI possessed police powers or on the probative value of the assertions made by the agents of that security agency. Raúl Reyes Suzarte's sentence of 541 days' imprisonment was not remitted.

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187/ In this connection, see Vicaría de la Solidaridad, El Derecho a Vivir en la Patria, Archbishopric of Santiago, 13 September 1982, pp. 11-14.

188/ Ibid., p. 14.

189/ Ibid., p. 14.

190/ El Mercurio, 26 August 1982.

191/ El Mercurio, 10 December 1982.

105. As regards the application of the right to an effective remedy, the Special Rapporteur notes that the Santiago Court of Appeal made a positive judgement on 14 December 1982 in connection with an application for protection submitted on behalf of Oriana Isabel Olivos Marín, a student who had been sent down from the University by a decision issued against her by the Academic Vice-Rector of the University. The notice of her expulsion stated that it was motivated by the fact "that she had been caught carrying and distributing pamphlets calling upon the students to rebel against authority". The Court of Appeal declared the application for protection admissible under the right to an effective remedy because "the background information provided cannot be viewed as indicative of an internal investigation of a formality commensurate with the seriousness and impartiality needed for the implementation of a measure as serious as expulsion". It went on to say that "a disciplinary measure was applied against her in an arbitrary manner ... without hearing her and leaving her unaware of the charges made against her". Consequently, "the application is admissible ... and the decision is hereby revoked ... and the petitioner's enrolment in the University of Santiago remains valid".

106. With regard to the powers in respect of administrative detention claimed in practice by the National Information Agency (CNI), the Special Rapporteur earlier informed the General Assembly of the contents and scope of the Supreme Court decision of 28 April 1982 in which the Supreme Court requested the Executive "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 to carry out". 192/ This decision was the outcome of the CNI's refusal to comply with a legal decision requesting the appearance in court of two persons on whose behalf an application for amparo, the main objective of which is a ruling of habeas corpus, had been submitted. At the same time, the Special Rapporteur pointed out that the subsequent practice of the judiciary and the CNI seemed inconsistent with the full application of that decision; this also seems to have been the case throughout the second half of 1982. The case of Elizabeth Rendic Olate is significant. She was arrested by carabineros on 28 November 1982 193/ and immediately handed over to the CNI. On 29 November 1982, an application for amparo was filed on her behalf, requesting that the court should order her to be brought before it. The same application was made on 2, 7 and 9 December 1982, and on none of these occasions did the court accept the contents of the application for amparo. Indeed, the Special Rapporteur has not discovered a single instance of an application for amparo to the Santiago Court of Appeal between 28 April 1982 and the end of the year in which the Court agreed to order the detained person to be brought before it. Consequently the Supreme Court's decision of 28 April 1982 cannot be credited with being the least effective. On the contrary, the Courts of Appeal continually avoided ordering action to be taken; that would not appear to be in conformity with the spirit of the decision by the Supreme Court.

107. Throughout the second half of 1982, the Special Rapporteur once again noted other important shortcomings in the exercise of the right to an effective remedy, particularly the remedy of amparo. Hence, he feels compelled to draw attention to the slowness in processing applications for amparo, which would in no way appear consonant with the legal requirement of 24 hours, as specified in article 308 of the Code of Penal Procedure. Thus, in the above-mentioned case of Elizabeth Rendic, 23 days elapsed before the application for amparo was heard. According to information

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192/ A/37/564, paras. 150-153.

193/ El Mercurio, 1 December 1982.



received by the Special Rapporteur, for a sample of 60 applications for amparo submitted in the second half of 1982 to the Santiago Court of Appeals, the results in terms of the period that elapsed between the submission of the application and the judgement at first instance were the following: none of the applications for amparo was heard before the fifth day, nine of them were dealt with between the sixth and tenth days after being filed; 18 were dealt with between the eleventh and fifteenth days; 21 were not dealt with until the sixteenth to twentieth days after their submission, and 12 remained pending for more than 20 days. The average time for processing these 60 applications for amparo was 16 days, which is very far removed from the immediate effect which article 308 of the Code of Penal Procedure wished to impart to this particular legal guarantee.

108. The Special Rapporteur has also noticed that, when an application for amparo has been filed, courts take no steps to request information directly from the arresting authority, particularly when the CNI is involved. That suggests that they continue to apply the Order of the Ministry of the Interior of 1 August 1980 which stated that any request for information concerning a person alleged to have been arrested was to be handled by the Ministry of the Interior alone. It is also apparent that the Ministry of the Interior delays for several days divulging this kind of information when it is sought by the Courts of Appeal, which themselves fail to set peremptory deadlines for the Ministry. All this means that the requirement in article 308 of the Code of Penal Procedure that the remedy of amparo should be processed and a decision given within 24 hours remains devoid of substance. Finally, although the customary unlawful defects persist in the forms in which the detentions occur (in a secret place, holding a person incommunicado without a court order, failure to produce a court order when an arrest or a raid takes place, etc.), the courts do not pronounce themselves on those aspects.

109. A further problem that arose for the first time in 1982, and which would appear to point to the Judiciary's lack of independence is the appointment of the "associate judges" of the various Appeal Courts and sections of the Supreme Court. The Code of Court Organization of Chile prescribes that, in the event of incapacity or temporary disability, the magistrates who sit in these courts are to be replaced by associate judges. Since such persons do not enjoy the constitutional guarantee of irremovability and are usually lawyers who freely exercise the legal profession, the Code provided, in order to assure their independence, that the Bar Association, the Supreme Court and the President of the Republic should be associated in their appointment. Thus, article 219 of the Code stated that the Bar Associations shall annually draw up lists of lawyers meeting the relevant legal requirements from which the associate judges were to be selected. In all, the General Council of the Bar Association proposed 45 lawyers for the Supreme Court, 40 for the Santiago Court of Appeal, 25 for the Presidente Aguirre Cerda Court of Appeal, 25 for the Valparaíso Courts of Appeal and 15 for the rest. In the second phase, the Bar Association forwarded the lists to the Supreme Court, which selected for the various courts lists of three candidates that were submitted to the President of the Republic. He completed the appointment process by selecting one name from each list of three proposed. At no time might other names not included in the original proposals made by the Bar Association be added.

110. Decree-Law No. 3637 (Diario Oficial of 10 March 1981) amended article 219 of the Code of Court Organization, ending the initial involvement of the Bar Association in the process of appointing associate judges and, at the same time, eliminating the role of the Supreme Court in designating its own associate judges. Consequent upon this amendment, the new selection procedure entered into force with the nominations for 1982, resulting in a flagrant loss of associate judges' independence vis-à-vis the Executive, on whose decision they depend for their reappointment at the end of

their annual or triennial term, depending on whether they have been appointed to a Court of Appeal or to the Supreme Court. Further, the possibility for the Bar Association to assess conduct of these lawyers in the discharge of their judicial functions has been ruled out.

111. In practice, the associate judges' loss of independence was made glaringly obvious during 1982 in many decisions by the Courts, particularly those which related to the handling of applications for amparo or protection or to criminal proceedings instituted against political dissidents. An example of this is the application submitted by Ricardo Bravo, a lawyer of the Vicaría de la Solidaridad, to the Santiago Court of Appeal challenging the authority of the associate judge Claudio Illanes and stating that "the procedural and constitutional guarantee of the irremovability of judges does not apply in respect of associate judges ... so that, if their performance is not to the Government's liking, in January of the following year their services are dispensed with and they lose the status of associate judge. Therefore, tenure in the post of associate judge will, in the final analysis, depend on the President of the Republic, since he makes the appointment". 194/ This application concludes that "in the overwhelming majority of cases in recent years where associate judges have taken part in a decision, they have invariably gone against the dissident and whenever a decision is in favour of a political dissident, it is adopted against a negative vote by the associate judge". 195/ This submission was made on the occasion of the challenge to an associate judge who was a member of the Court of Appeal scheduled to hear an application by Hector Malatrassi Aguilera, who had been sentenced at first instance to two years' exile for alleged unlawful association.

112. The Special Rapporteur has received information that confirms the timeliness of challenges to associate judges who endanger the independence of the Judiciary. Thus, in the judgement rendered at first instance by the Santiago Court of Appeal in the case of the closure of the magazine APSI, 196/ the appeal against the closure of the magazine was rejected, with two associate judges voting in favour of that decision and the senior judge voting against. In the same case, the interpretative decision of the Supreme Court on 25 January 1983 was adopted with the favourable vote of an "associate" judge. A similar situation occurred in case No. 23/81 when, in a judgement rendered at second instance, the Santiago Court of Appeal sentenced nine alleged members of the Christian Left Party (Partido de Izquierda Cristiana) to exile. On that occasion, the penalty of exile was imposed by the favourable vote of two associate judges against the negative vote of the senior judge. A further example is that of the decision of 14 December 1982, which the Special Rapporteur has discussed above whereby the application for protection concerning the university student Oriana Isabel Olivos Marin, who had been sent down from the University by an administrative decision, was accepted. The judgement was adopted notwithstanding the vote against it by the associate judge.

#### B. Military jurisdiction

113. As regards the military courts in time of peace, the Special Rapporteur has already referred in his report to the General Assembly to the restrictions occurring, in the context of his competence, in relation to ordinary procedural guarantees. 197/ In addition, military courts repeatedly fail to comply with article 317 of the Code of Penal Procedure, according to which anyone who is aware that a person is being detained in a place not falling within the category of those intended to serve as

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194/ El Mercurio, 8 September 1982.

195/ Ibid.

196/ See below, Chapter VI. B, "Right to freedom of thought, opinion and expression".

197/ A/37/564, paras. 159-160.

a house of detention or prison "shall be obliged to report the fact on pain of criminal responsibility to any of the officials indicated in article 83 (magistrates and police), who must transmit the complaint to the court they deem appropriate". Article 317 also states that, on receiving such a report, a magistrate "shall immediately go to where the detained or abducted person is and shall have him released" if there is no charge against him. Non-compliance with article 317 is particularly apparent in the instances of detention by CNI agents, where the premises concerned are secret, despite the requirement in article 19 (7) (d) of the Constitution that all places of detention should be public. The Special Rapporteur has received information from counsel in cases concerning human rights, indicating that 65 complaints under article 317 of the Code of Penal Procedure were submitted during 1982. The objective of those complaints was to get the military courts, which are the only ones allowed to enter military camps (it should be recalled that CNI premises are regarded as military camps) to visit the unlawful places of detention in question. In not one single case, however, did the competent military court visit the CNI camp. In some instances, it confined itself to telephoning the Ministry of the Interior to request information concerning the detention of the person concerned.

114. Again, the Special Rapporteur has found that the procedural defects persist in the cases before military courts that involve political dissidents. He has also noted the considerable slowness of such trials, which, despite the existence of a Special Military Prosecutor, whose appointment he has already recorded, are handled by the military prosecutors. 198/ The slowness of the proceedings is reflected in the large number of untried prisoners held in Chilean prisons. 199/ The military courts are also unwilling to grant pre-trial release to accused persons, who sometimes serve a period of imprisonment longer than that attaching to the offence for which they are detained. This was the case of Ricardo and Elizardo Aguilera Morales, and that of Adalberto Muñoz Jara. Finally, it should be noted that military courts do not allow lawyers to acquaint themselves with the facts of the investigation during the proceedings, which obviously complicates the exercise of the right to defence.

115. With respect to military courts in time of war, the Special Rapporteur has already drawn attention to the considerable restrictions on the right to a legal defence and the right to an effective remedy imposed by their summary proceeding. 200/ In the case of Fernando Valenzuela Espinoza, to which reference has already been made, it should be noted that the Supreme Court rejected the action of unconstitutionality which the defendant's counsel had brought against Decree-laws Nos. 3655 and 2882, the first of which re-establishes the jurisdiction of military courts in time of war, while the second confers the status of members of the armed forces on the members of the CNI for all jurisdictional and disciplinary purposes. Both decrees were held by Valenzuela's counsel to be unconstitutional, since their application would entail the defendant's "being tried by a military court in time of war", when he was requesting that the case should be heard by an ordinary court, or by a military court in time of peace. 201/ The Court of Appeal also rejected an application for protection lodged by Valenzuela, the object of which was to ensure that the decrees in question would not be applied, since they were held to be unconstitutional. This judgement, and the earlier one, suggest that Valenzuela will ultimately be tried by a wartime military tribunal, 202/ together with Raúl Castro Montañares, with whom he is "accused of alleged participation in the murder of a former CNI member, Carlos Tapia" 203/ presided over by a Military Prosecutor in time of war.

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198/ A/37/564, para. 160.

199/ See above, chapter III B, "Conditions of detention in prison establishments".

200/ A/37/564, paras. 161-164.

201/ El Mercurio, 21 October 1982.

202/ El Mercurio, 29 December 1982.

203/ El Mercurio, 22 November 1982

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

A. Right to privacy

116. With regard to the right to inviolability of the home, during the last six months of 1982 the Special Rapporteur recorded various illegal searches of the premises of humanitarian and ecclesiastical organizations or organizations which are in some way connected with the defence of human rights. Thus, for example, the Archbishop of Santiago complained about the search conducted by carabineros of a chapel in the Lo Hermida district in Santiago. In his letter of protest, he describes "the inexcusable outrage on the premises of the Chapel of Our Lady of Hope ... the residence of a community of Sacred Heart nuns". 204/ The search was conducted on 20 August 1982, without a court order; the police were apparently "looking for leaflets ... and seizing teaching materials for children and a file with information about undernourished children in the area and even going so far as to remove the paper from the walls". 205/

117. The Special Rapporteur has already referred to the burning, searching and looting of the headquarters of the Committee for the Defence of the People's Rights (CODEPU), which took place on 25 August 1982. 206/ According to a communiqué issued by the International Anti-Torture Association on 28 August 1982, the headquarters were entered and searched without legal warrant by a group of persons who took away ... papers, documents, tables and even heaters, in a red truck without registration plates, of the type used by CNI agents". Subsequently, the premises were set on fire and the building was surrounded by detachments of CNI agents and carabineros who arrested everyone approaching CODEPU headquarters. They were taken off to CNI premises and illegally detained there. The aforementioned Association stresses "the seriousness of the theft of confidential reports of CODEPU lawyers who are responsible for defending a large number of Chilean political prisoners". Apparently the Association of Relatives of Political Prisoners also has its headquarters on the CODEPU premises. Official sources described the Committee for the Defence of the People's Rights "as a front organization for various groups of activists from the disbanded MAPU, Christian Left and Christian Democratic parties"; they also stated that "the body was collecting funds ... to finance the activities of the so-called Association of Relatives of Missing Detainees and for other political purposes"; these sources also stressed that CODEPU "is a body without juridical personality and is hence illegal". 207/

118. Three family homes were also searched - one by Police Department personnel, one by individuals in plain clothes and one by individuals in plain clothes who identified themselves orally as belonging to the Police Department. The

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204/ El Mercurio, 21 August 1982.

205/ Ibid.

206/ See above, chapter III, B.1.: "Persecution and acts of intimidation".

207/ El Mercurio, 1 September 1982.

Chilean Commission on Human Rights reports that these searches took place during the month of October. 208/ Similarly, in mid-November 1982, the Archbishop of Santiago complained of another search in which unknown persons broke into the building where Caritas-Chile has its headquarters and searched, confiscated and burned documents and books". 209/ The facts were brought to the attention of the courts by the Archbishop. The house of Antonio Ilmiza, President of the National Federation of Petroleum Workers, was searched on 4 December 1982. This illegal act was carried out by individuals in plain clothes who stated that they were Police Department officials. The governing body of the Federation complained and asked for protection "before the country has another Tucaoel Jiménez case to mourn". 210/ Finally, mention should be made of a series of searches conducted in various districts in the Greater Santiago area in the early hours of the morning by large numbers of soldiers and police, who proceeded to arrest hundreds of the inhabitants: on 15 December 1982 the Miras 3 district was searched in this way by carabineros, special forces and CNI agents. On 26 December 1982, a search was conducted in district '14 de Enero de la Cisterna". In this case, troops surrounded the district in the early hours of the morning, and at 5 a.m. Carabineros and Police Department personnel and unidentified civilians proceeded to search the houses systematically. Some houses were broken into, padlocks being forced or empty houses, doors broken down, etc. A total of 116 houses were searched and in some cases objects and/or documents of various types were taken away. 211/

#### B. Right to freedom of thought, opinion and expression

119. Decree No. 3259 (Diario Oficial of 29 July 1981) stipulated that "the founding, printing and circulation of new publications in Chilean territory must be authorized by the Ministry of the Interior". Infractions of this provision are punishable under Act No. 18,015. Similarly, Decree No. 1029 prohibits the media, for the duration of the state of emergency, from giving prominence to news about "acts or behaviour of a terrorist or extremist nature that have occurred in Chile". Violations of this provision are also punishable under Act No. 18,015. 212/ These two Decrees have been retained in force during 1982. Decree No. 3259 was prolonged by two successive Decrees - No. 140 (Diario Oficial of 10 March 1982) and N. 530 (Diario Oficial of 10 September 1982). Under Decree No. 140, "publications emanating from Chilean universities, provided that they are circulated internally, are sponsored officially by the university concerned and are authorized by its rector" are exempt from the limitations imposed by the Decree. On the other hand, the successive Decrees extending the declaration of the state of emergency throughout 1982: namely Decree No. 187 of 4 March 1982, Decree No. 625 of 1 June 1982, Decree No. 1083 of 30 August 1982 and Decree No. 1530 of 29 November 1982, have kept Decree No. 1029 of 1981 permanently in force. At the same time, it should be

208/ Chilean Commission on Human Rights, Report for October 1982, p. 39.

209/ Hoy, 17-23 November 1982.

210/ Chilean Commission on Human Rights, Report for December 1982, p. 35.

211/ According to the Chilean Commission on Human Rights, ibid.

212/ For background information, see A/36/594, pp. 131-133.

noted that Act No. 18,015 of 27 July 1981, which was applied under Act No. 18,105 (Diario Oficial of 30 July 1982), has been amended. The amendments pose a still greater threat to freedom of expression, since violations of the restricting freedom of information are transformed from mere administrative offences", which was how they were classified in Act No. 18,015, into crimes, with all the consequences that such a change of classification has under Chilean law. Hence, a convicted offender who fails to pay the fine imposed within five days of executable sentence being pronounced "will be liable in lieu to one day's imprisonment for each annual fiscal unit, up to a maximum of 90 days". The high fines envisaged, which range from 10 to 100 annual fiscal units (between \$US 4,000 and \$US 40,000), involve the risk that prison terms will be imposed on journalists and other persons who infringe the Government's restrictions on the right to freedom of expression.

120. The Director of the magazine Hoy has recorded the methods currently used by the Executive to impose a de facto system of prior censorship. He states in particular that "the censors, acting on mere suspicion, have refused to authorize the enterprise publishing Hoy to bring out another review, a fortnightly magazine dealing with subjects other than Chilean domestic matters". 213/ On the other hand, on 5 November 1982, the writer Pablo Huneeus reported the Minister of the Interior as saying that "the Government has not the slightest intention of placing restrictions on creative work and this check prior to the authorization of new publications is designed solely to rule out any advocacy of terrorism and the circulation of books reflecting ideologies of violence". 214/ Nevertheless, the writer Bernardo Subercaseaux, who is a member of the Committee for the Defence of Freedom of Expression, does not share this view. He complains of the fact that "the Ministry of the Interior took 733 days to authorize publication of the book Gracias a la vida, Violeta Parra, Testimonio, which he co-authored". 215/ Finally, the Chilean bishops published a document entitled "El renacer de Chile" in which they stated "Independent intermediate organizations have been destroyed or broken up and the media are limited by censorship". 216/

121. Throughout the last six months of 1982, the Special Rapporteur was able to observe a large number of acts by the Government which involved serious attacks on the right to freedom of expression. For instance, on 2 September 1982, the Government banned a Radio Chilena programme entitled "A esta hora se analiza". The station is owned by the Archbishopric of Santiago and the programme was scheduled to carry a public debate in which the Cardinal Archbishop of Santiago himself was to have taken part. 217/ The Minister Secretary General of the Government stated that the programme was cancelled "because it is inappropriate to broadcast a programme which at previous times had been a political debate and which presented individuals who were wholly identified with political parties". The Santiago chapter of the Chilean Journalists' Association complained that the action constituted "an act which infringes and restricts the freedom of the press, information and expression". Further on in its statement it added: "this is a

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213/ Hoy, 7 June 1982, p. 5.

214/ La Segunda, 5 November 1982.

215/ La Segunda, 9 November 1982.

216/ Hoy, 22-28 December 1982.

217/ La Tercera, 3 September 1982, and El Mercurio, 4 September 1982.

very serious matter, since it implies the acceptance of rules of prior censorship and at the same time inhibits the broadcasting of news and information programmes". 218/ Another radio broadcast cancelled by order of the Government was the programme "Controversia", scheduled to be transmitted on 7 September 1982 over Radio Agricultura. This was due to a "suggestion" from the Ministry of the Interior. 219/ The president of the broadcasting station requested an interview with the Minister Secretary General of the Government to "clarify" the position of the authorities with regard to the transmission of the programme. 220/

122. Restrictions on freedom of expression have also been directed against publications. Thus, on 3 September 1982, the Ministry of the Interior filed a complaint with the Court of Appeal against the Aconcagua publishing house for an alleged offence under article 3 of Act No. 18, 000. The offence "consisted in publishing a book of political analysis entitled Modelo Económico Chileno: Trayectoria de una Crítica without requesting the necessary authorization from the Ministry of the Interior". 221/ On this occasion, the Ministry of the Interior asked the court to confiscate the books and to impose the appropriate fines on the management of the publishing house. The publishing house maintained that the book concerned was a compilation of articles published in various reviews from 1975 onwards and that therefore it was technically a reprint. 222/ The examining magistrate ordered all copies of the book in circulation to be seized. 223/ In reaction, 64 writers and journalists protested in a public statement against rest restrictions prejudicial to freedom of expression under which the complaint filed by the Ministry of the Interior against the Aconcagua publishing house forms part of a systematic campaign to ruin it financially. 224/ Finally, on 16 December 1982, the Santiago Court of Appeal re-opened the proceedings against the Aconcagua publishing house, notwithstanding the stay of proceedings ordered by the examining magistrate. Throughout this period, the circulation of the book Modelo Económico Chileno: Trayectoria de una Crítica, which was a collection of various papers on economics, continued to be prohibited. 225/

123. Furthermore, the Special Rapporteur has observed that the National Customs Service acts as a censor on some occasions. Thus, it prevented the entry into Chile of a reprinting of Jorge Edwards' book Personas Non Grata. On 17 December 1982, an application for protection was filed with the Santiago Court of Appeal by the

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218/ El Mercurio, 4 and 5 September 1982.

219/ Las Últimas Noticias, 8 September 1982.

220/ El Mercurio, 9 September 1982.

221/ El Mercurio, 4 and 6 September 1982.

222/ El Mercurio, 6 September 1982.

223/ El Mercurio, 8 September 1982.

224/ El Mercurio, 11 September 1982.

225/ El Mercurio, 17 December 1982.

author in respect of exempt decision No. 1761 of the Customs and another application of the same sort by the publishing house which printed the book. It was pointed out by the petitioners that "the Administrator of Customs has no authority to prohibit the import of a book under the powers granted to him by article 17 of Decree-Law No. 329 (National Customs Service Organization Act)". 226/ Finally, one positive development which should be noted is the judicial decision rejecting the application of the Intendant of the Fifth Region for a ban to be placed on the publication of Nueva Era, a review issued at the University of Valparaíso. According to the Intendant, the review had to obtain prior permission to be circulated, in accordance with the twenty-fourth transitional provision of the Constitution. The students, however, held that Nueva Era had been in circulation since 1979 and could not be considered a new publication within the meaning of the constitutional provision concerned.

124. In addition, the Government prohibited the "La Frontera" and "La Araucana" radio stations in Temuco from broadcasting news programmes, commentaries or interviews, with the exception of official communiqués, by virtue of Decree No. 1686 of 6 December 1982, which refers to article 41 (4) of the Constitution and Decree No. 1530 of 17 November 1982. Both decrees relate to rules restricting freedom of expression during the state of emergency. 227/ On 10 December 1982, the Chilean Broadcasters' Association issued a public statement expressing "its surprise at this unprecedented measure which interferes with the programming of radio stations". The owner of the two radio stations against which this administration action had been taken complained that he "had been the victim of two kidnapping attempts in Temuco and on the second occasion he had even been shot at". 228/ Apparently, these administrative measures were linked to a meeting scheduled by the Temuco farmers which was in turn banned by the Government; it proceeded to arrest the president of the 'Wheat-growers' Association, Carlos Podlech, who was subsequently expelled from the country, also by administrative decision. 229/ The Journalists' Association issued a formal protest because "it is its duty to complain about the fact that this station has been prohibited from broadcasting non-official news items, commentaries and interviews, as opposed to official Government communiqués". It went on: "once more this method of censorship is being used to limit the range of information and decision". 230/

125. The Special Rapporteur has also received reports that a number of journalists have been arrested by the police or have been the victims, while exercising their profession, of assault or attacks, campaigns of intimidation and ill-treatment by unknown persons in full view of carabineros. For this reason, the Santiago chapter of the Chilean Journalists' Association issued a chronological list of acts of this sort "in which journalists have been the victims of regression and their right to provide information has been restricted by bodies responsible for law and order and internal security and by the administrative authorities". 231/ The Association mentions various acts of this type which took place in the first six months of

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226/ Las Ultimas Noticias, 21 December 1982.

227/ El Mercurio, 8 December 1982.

228/ La Segunda, 16 December 1982.

229/ See above, chapter IV, A: "Right to enter and leave the country freely".

230/ See La Segunda, 17 and 18 December 1982; Las Ultimas Noticias, 11, 16 and 25 December 1982.

231/ La Tercera, 24 December 1982.



1982 and which have already been reported by the Special Rapporteur. 232/ With regard to the second half of 1982, it should be noted that in August the journalist María Ortiz Parra was dismissed from her post at the Chillán Professional Institute by a decision of the Rector of the University. 233/ On 9 August 1982, a journalist on the review Hoy, Patricia Verdugo Aguirre, filed an application for protection and an early application for amparo with the Santiago Court of Appeal on the grounds that "my life and the lives of the members of my family are endangered" seeing that "on 6 August 1982, a package was delivered to my house wrapped in pink paper (attached) and with printed handwriting in blue pencil, containing a dead fish, gutted and evil-smelling". 234/ The Supreme Court upheld the decision of the Court of Appeal rejecting this amparo application as inadmissible. 235/ In addition, the Santiago chapter of the Journalists' Association issued a protest against the 'temporary detention of the journalist Carlos Cisternas and the press photographer, Santiago Llankín'. According to the published statement, 'these professional newspapermen were arrested by the police on reaching the international airport to cover the prospective arrival of the ex-Minister of Justice, Jaime Castillo'. They were accused of 'distributing offensive pamphlets'. However, the Journalists' Association "insists that the facts are not consistent with the statements of the highest Government authorities about respecting journalists when they are doing their duty of keeping public opinion informed about daily events". 236/

126. On 2 December 1982, at a public meeting convened by the National Trade Union Co-ordinating Body, in the Plaza Artesanos, Santiago, seven journalists were violently assaulted by unknown persons armed with truncheons, clubs and chains. The Journalists' Association lodged a complaint 'for assault and battery, robbery with violence, criminal damage and unlawful association'. Particular reference is made to 'the attitude adopted by the Carabineros, whose officers and men looked on impassively'; 'a number of journalists and lawyers asked the Carabineros officers for protection ... but the representatives of law and order remained unmoved'. Specifically, a journalist named Daniels, who was wearing his credentials on his lapel, 'was bleeding profusely as a result of being clubbed on the head. He therefore tried to mount a Carabineros bus in search of help; in an inexplicable gesture, three of them ejected him violently from the vehicle'. In addition to the Journalists' Association, the Chilean Commission on Human Rights, the Chilean Broadcasters' Association and the Union of Press Photographers protested about these events. However, the Minister of the Interior, who bears ultimate responsibility for the police, accused journalists of provoking this type of incident. On 14 December 1982, the Santiago Journalists' Association adopted a decision to "file a complaint against the Minister of the Interior" and to "request the Supreme Court to appoint an inspecting magistrate to investigate the events which took place on 2 December in the Plaza Artesanos" - a request which was agreed to. 237/ The inspecting magistrate appointed and named two Carabineros officers to testify in the preliminary inquiries, 238/ while the Minister of the Interior informed the President of the Santiago Journalists' Association that he "had begun

232/ A/31/564, paras. 172 et seq.

233/ Las Últimas Noticias, 8 August 1982.

234/ El Mercurio, 10 August 1982.

235/ El Mercurio, 20 August 1982.

236/ Las Últimas Noticias, 9 October 1982.

237/ La Segunda, 16 December 1982.

238/ El Mercurio, 26 December 1982.

an investigation to clarify the facts" and promised "to instruct Carabineros and Police Department personnel to respect press credentials". 229/

127. The Special Rapporteur has received evidence about the proceedings resulting from the closure of the magazine APSI by administrative decree, under the twenty-fourth transitional provision of the Constitution even though it was not a "new publication" when the Constitution entered into force. The National Journalists' Association and the National Press Association immediately protested against the closure, which took place on 24 September 1982 pursuant to exempt decree No. 574 of the Minister of the Interior. This rescinded, with immediate effect, the authorization to circulate granted to the review in 1976, prohibiting its circulation and distribution in Chile. The Decree maintained that APSI "has resumed articles dealing with national issues ... and has therefore exceeded its national authorization, making it eligible to permanent closure since it had not requested authorization from the Ministry of the Interior as a new publication". An application for the remedy of protection was filed with the Santiago Court of Appeal by the enterprise which owns APSI, stating that Decree No. 574 "was an arbitrary and unconstitutional measure which should be annulled by the courts, since there was no provision in Chilean law authorizing the Ministry of the Interior ... to close down a review permanently or cancel an authorization granted prior to the entry into force of the 1980 Constitution". On this occasion, the contested Decree represented a clear attempt at prior censorship which could be extended to other information media if, as the Government claimed, "any modification or alteration which they proposed to make in their subject matter or areas of reporting had to obtain prior authorization from the Ministry of the Interior". The Court of Appeal, two of whose members were "associate" judges rejected the application, only the regular judge voting in favour of granting it. The National Press Association issued a public protest over the fact that a matter as sensitive as the extent of freedom of information under the Constitution in force should be decided by persons who have assumed the position of judges of the Court by a decision of the Government itself in appointing them as "associate" judges, a fact which completely nullifies the impartiality and independence that were to be expected from the Court'.

128. An appeal was made to the First Chamber of the Supreme Court, which by unanimous decision of 5 January 1983 granted the application for the remedy of protection for the magazine APSI, accepting the applicants' argument that "the President of the Republic cannot obstruct the exercise of freedom of information; and every citizen has the right, conferred by the Constitution, to disseminate information, the administrative authorities cannot prevent anyone from exercising his right to found, publish and maintain newspapers, reviews, periodicals or books, as authorized by article 19, paragraph ..., fourth subparagraph, of the Constitution, although they can limit the extent of this right". The decision adds that "the Minister of the Interior has exceeded his authority by closing down the review" and that "neither is he empowered to revoke authorizations granted prior to the entry into force of the constitutional provision". It therefore concludes that "the twenty-fourth transitional provision is not applicable in such cases, without prejudice to the general rules in ordinary legislation which prescribe penalties for offences by the press. Consequently, the Supreme Court ruled that the magazine APSI could continue to be published throughout the country as it had been up to that time. This is a welcome decision. It should be noted that, on 8 January 1983, the Minister of the Interior submitted a request to the Supreme Court for an interpretation of the decision because "the publishing and circulation of

the aforesaid magazine APSI having been expressly authorized in the special field indicated in the original authorization, an extension to subjects foreign to that field does not appear to be supported by any of the restrictions listed ... Such a right relates to this entity as a specialized publication on topical international subjects and the economic analysis of foreign problems". He therefore requested the decision to be clarified to the effect that 'it refers to the magazine APSI as being duly authorized in respect of subjects belonging to its special field'. 240/ The First Chamber of the Supreme Court, in its decision of 25 January 1983, accepted the argument of the Minister of the Interior. The decision was adopted by 3 votes to 2, one associate judge voting in favour of it. On 28 January 1983, the journalists concerned requested the Supreme Court to take disciplinary measures against the three judges who handed down the decision because it is incompatible and in contradiction with the decision of 5 January 1983, which was final.

129. Finally, the Special Rapporteur would like to refer to freedom of artistic expression as a form of freedom of opinion and expression. In this connection, Proclamation No. 82 of 13 August 1975 by the Commander of the Emergency Zone of the Metropolitan Area and the Province of San Antonio, relating to permission to hold cultural meetings, was maintained in force during 1982. Specifically, paragraph 9 of the Proclamation stipulates that musical events must be authorized in advance by the Carabineros; in practice, application is made to the police unit responsible for the sector where the premises are located in which the concert is to be held, specifying the number of performers and the type of music they are to play. Permission is not always granted. Thus, the group "Nuestro canto", which had scheduled a recital in homage to Violeta Parra on 30 April 1982, never received permission or indeed any explanation. The situation is rather similar with regard to impromptu artistic performances such as, for example, street theatre shows, particularly in the centre of Santiago. The Santiago Town Council regards performances of this type as "clandestine trading" and liable to receive the same treatment as street-hawking. Fines and days of imprisonment "for lacking a permit". Many groups of this sort have requested such permits, but "in the Municipality, the classification 'street artist' does not exist". 241/

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- - 240/ El Mercurio, 13 January 1983.

241/ Solidaridad, No. 133, v. 9; No. 134, p. 16-17. APSI, No. 179, pp. 23-24.

VII. RIGHT TO PUBLIC FREEDOMS

A. Right of peaceful assembly

130. The Special Rapporteur noted in his report to the General Assembly that the effective exercise of this right, particularly when it has a political connotation, has been suspended sine die in the Chilean legal context. Thus, the combined application of article 8 of the Constitution and the tenth transitional provision and paragraph (c) of the twenty fourth transitional provision of the Constitution together with the special legislation adopted in specific sectors, is tantamount to suspending or very much restricting the exercise of the public rights and freedoms and, in particular the right of peaceful assembly 242/ 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 the non-violent public expression of political dissent is still not possible in Chile. Thus for example, the Special Rapporteur referred to the detention of 23 persons who had assembled at the General Cemetery on 10 July 1982 to pay their respects at the tomb of the poet Pablo Neruda 243/ Eleven other persons were arrested on 25 July 1982 during a demonstration held in the Plaza de Armas in Santiago on behalf of missing detainees and organized by the Association of Relatives of Missing Detainees. 244/ Following another demonstration held on 19 August 1982 in the Paseo Ahumada in Santiago to protest the situation of economic crisis in the country, 29 persons were detained by the police 245/ Similarly, on 21 August 1982, carabineros arrested 10 persons who were paying a tribute to the liberator, Bernardo O'Higgins, by placing a wreath on his statue; the meeting had been organized by the Association of Relatives of Exiles 246/ Another demonstration which took place on 2 September 1982 in the corridors of the Santiago Court of Appeals and in which 100 persons gathered to demand justice led to the arrest of 12 students. 247/ Ten other students were arrested by carabineros when they marched in the streets of Valparaíso on 3 September 1982 in protest against unemployment and the economic situation. 248/ Two other students and a professor were arrested on 9 September 1982 for demonstrating against the court decision to exile nine persons alleged to be connected with the Christian Left Party. 249/ On 11 September 1982, five students and two employees were arrested and charged with violating the Internal Security of the State Act when they demonstrated in the streets of Santiago to commemorate the anniversary of the founding of the Communist Party Youth Movement". 250/

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242/ A/37/564, para. 183

243/ A/37/564, para. 136 in fine See above, chapter III, A 1 (a): "Arrests at public gatherings" See also El Mercurio 20 July 1982.

244/ La Tercera, 23 July 1982

245/ El Mercurio, 20 August 1982.

246/ La Tercera, 21 August 1982

247/ El Mercurio 3 September 1982

248/ La Tercera and El Mercurio, 4 September 1982

249/ Hoy, 22-28 September 1982

250/ El Mercurio, 18 September 1982

131. The Special Rapporteur also noted that a number of suspensions were ordered by administrative authorities in connection with the requirement that permission must be requested in order to hold peaceful meetings. Thus, a demonstration against exile, which was to be held on 24 September 1982, was suspended by carabineros. 251/ Many meetings of workers' and employers' occupational organizations have also been suspended: the Ministry of the Interior denied permission for a meeting of the National Taxi-Drivers' Federation on 25 October 1982. Similarly, permission was denied on 2 December 1982 for a joint trade union meeting which was to be held in the town of Temuco and organized by the National Association of Wheat Producers. 252/ As already stated, the Government also prohibited a meeting of the National Trade Union Co-ordinating Body, which was to be held on 2 December 1982 in Plaza Artesanos in Santiago. In addition, the police suspended and broke up a number of gatherings which took place on 15 December 1982 in various Chilean towns and in which the demonstrators were protesting against the economic situation. 253/

#### B. Right of association

132. The Special Rapporteur has referred on a number of occasions to Decree-Law No. 77 of 8 October 1973, which bans Marxist-oriented parties, as well as the Christian Left Party. In addition, Decree-Law No. 78 of 11 October 1973, which was followed by Decree-Law No. 1697 of 11 March 1977, outlaws all other political parties, organs, movements, groups and factions. Moreover, the twenty-seventh transitional provision of the 1980 Constitution provides that the political recess will continue until the organic law referred to in article 19 (15)(5) of the Constitution prescribes rules governing political associations. It is quite possible that the declaration of a political recess will remain in force until 1989, as provided in the Constitution itself. The penalties that may be imposed for violations of the political recess range from imprisonment to restricted residence or expulsion (exile).

133. The well-known case of the nine persons alleged to be members of the Christian Left Party is highly illustrative: they were sentenced at first instance to 541 days of exile and the sentence was upheld at second instance by the Court of Appeal. 254/ The Supreme Court heard the appeal in the case and gave eight of the accused a suspended sentence of 541 days of imprisonment under supervision of the Prisoners' Aid Society; the ninth person received the same prison sentence without remission. It should be pointed out that the Supreme Court changed the penalty without altering the charge of unlawful association and without ruling on the validity of the extralegal evidence that the CNI had supplied to the court, a matter with which the Special Rapporteur has already dealt. 255/

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251/ Las Ultimas Noticias, 24 September 1982.

252/ La Tercera, 3 December 1982.

253/ La Tercera, 3 December 1982; El Mercurio, 17 December 1982. See above, chapter III, A.1 (a): "Arrests at public gatherings".

254/ Hoy, 3-9 November 1982. See the commentary on this sentence in José E. Trias, Human Rights in Chile: Notes on a sentence of exile, report transmitted to the Special Rapporteur by Americas Watch, a non-governmental organization, December 1982.

255/ El Mercurio, 10 December 1982. See above, chapter V, A: "Right to an effective remedy".

134 There has also been a large increase in the numbers of "study centres", "study workshops" and other cultural groups as a channel for political activity that is prohibited by law. For example the so-called 'Democratic Project for a National Consensus' (PRODEN) was established for the purpose of conducting 'alternative studies which will lead Chileans towards a historical democratic institutional system'. The founders of this association appear to include 'the conservative socialist alliance, radical, Social Democrat, UDEM, Christian Left, Christian Democrat and National leaders' <sup>256/</sup> Its manifesto of 24 November 1982 states that "the process of democratization must be initiated forthwith, it is therefore necessary to draw up a schedule for the transition period... to establish a legal framework so that citizens' rights may be freely exercised, to restore respect for fundamental human rights and to re-establish fully effective institutions. We reject violence, terrorism and persecution". <sup>257/</sup>

#### C. Right of participation in public life

135 As already pointed out, the rights of political participation provided for in international instruments and, in particular, in article 25 of the International Covenant on Civil and Political Rights have been suspended in Chile since 1973. <sup>258/</sup> However, article 16 of the 1980 Constitution provides that there will be a public electoral system and that a constitutional organic law will govern its organization and operation, as well as the manner in which elections and plebiscites are to be held. No such organic law has yet been adopted and there are therefore no public records of persons who qualify as citizens. The organic law on political parties provided for in article 19 (1), (5) of the Constitution has also not been enacted. Similarly article 53 of the Constitution refers to regional electoral courts which would be responsible for ruling on the validity of trade union elections and elections held by the intermediate groups prescribed by law. The powers, organization and operation of such courts are to be determined by an ordinary law, which has also not been adopted. In addition, articles 101, 107 and 109 of the Constitution set up so-called regional development councils, community councils and community development councils as channels for the participation of citizens at the regional, local and community levels. However their actual existence depends on the enactment of organic constitutional provisions which have so far not been adopted thus preventing citizens from taking part in local government and administration in the manner prescribed by the Constitution.

#### D. Right of petition

136 This right is recognized in article 19 (14) of the Constitution, which states that everyone has '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'. Pursuant to this right, 625 trade-union leaders belonging to the Labour Studies Commission requested an audience with General Pinochet on 22 July 1982 so that they could express their concern about the country's economic problems. However, he

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<sup>256/</sup> Hoc, 1-7 December 1982.

<sup>257/</sup> Hoc, 1-7 December 1982.

<sup>258/</sup> See A/37/564, paras 194-195.

refused to receive the petitioners and the concerns of the trade-union leaders, who represent 288 trade unions, trade-union federations and confederations, were published in a document that was made public in August 1982. On 20 December 1982, moreover, the Chilean Bishops' Conference made a public statement announcing that it had unsuccessfully requested an audience with the President of the Republic to discuss the current political and economic situation. In the document that was made public, they noted that there are three basic conditions for Chile's recovery: respect for human dignity, recognition of the value of labour and a return to full democracy. Accordingly, they noted that it is urgently necessary to open up the channels of political participation that have been closed off as a result of the prolonged state of emergency and political recess since "any abuses there might have been are no justification for disrupting the normal life of the nation for so long" since "this is not healthy and it has led to the consequences we are now bemoaning". 259/

VIII. ECONOMIC AND SOCIAL RIGHTS

A. Right to work. Access to employment

137. During the second half of 1982, the Special Rapporteur received a considerable number of reports underlining the increasingly high level of unemployment among Chile's active population. As has already been noted in the report to the General Assembly, the unemployment is the 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". <sup>260/</sup> Generally speaking, the effectiveness of article 23, paragraph 1, of the Universal Declaration of Human Rights could be open to doubt, so far as the provision regarding "the right ... to protection against unemployment" and the various relevant regulations of the International Labour Organisation are concerned. The various sources consulted vary in their estimates of the current real rate of unemployment. For instance, the Chilean Academy of Christian Humanism, puts the figure at about 30 per cent of the active population. Furthermore, the Economic Commission for Latin America (ECLA) indicated recently that the city of Santiago has the highest rate of unemployment - 25 per cent - of the main Latin American cities. <sup>261/</sup> On the other hand, according to official statistics published by the National Statistical Institute (INE) and quoted in the statement of the Ministry of Finance and Economics concerning "the state of the economy", <sup>262/</sup> the average rate of unemployment for 1982 was 21.3 per cent. To this figure must be added the 272,000 persons registered with the Minimum Employment Programme (PEM), that is, workers who perform a full day's work for remuneration equivalent to 38.6 per cent of the minimum legal wage and who furthermore receive no family allowances or social security benefits; their wage for December 1982 was equivalent to \$US 28. Accordingly, the inclusion of the PEM workers among the jobless would give an unemployment rate of 28.7 per cent of the total active population, which represents 1,061,000 unemployed in 1982 out of a working population of 3,700,000 persons. Other sources, however, arrive at a rate of 30 per cent by adding to the figures mentioned above a further 2 per cent representing workers who are registered in a new Minimum Employment Programme which is remunerated at the rate of 4,000 pesos. <sup>263/</sup>

138. The economic crisis, which has been widely reported and the existence of which has been recognized even by the public authorities, is particularly apparent from a number of indicators. In the first place, the Minister for Economics and Finance acknowledged that the Gross National Product had dropped by 13 per cent during 1982. <sup>264/</sup> Secondly, 1982 also saw a significant drop in the flow of foreign capital, which was 67.5 per cent less in January-November 1982 than in the same

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<sup>260/</sup> A/37/564, para. 203.

<sup>261/</sup> Hoy, 29 December 1982 - 4 January 1983.

<sup>262/</sup> El Mercurio, 15 October 1982.

<sup>263/</sup> See J. Ruiz-Tagle, "Mantención del modelo y profundización de la crisis", Mensaje, No. 315, December 1982, p. 666. See also El Mercurio, 19 September 1982.

<sup>264/</sup> El Mercurio, 15 October 1982.



period the previous year. Thirdly, a decline in currency reserves totalling 1,495 million United States dollars was recorded during 1982. Fourthly, there was a general financial crisis which compelled the Government to take over several large banks in January 1983. Fifth, a total of 1,000 firms went bankrupt in 1982, which is twice the number of bankruptcies that occurred in 1981, according to information provided by the Office of the Official Receiver for Metropolitan Santiago.

B. Working conditions

139. The Special Rapporteur has referred at length to the content of Act No. 18,134 of 19 June 1982 and its adverse effects on questions of collective bargaining and particularly on the establishment of working conditions as regards remuneration and wages. <sup>265/</sup> Owing to the widespread opposition which this Act occasioned during the second half of 1982 on the part of professional organizations of workers, the Government was compelled to consider amending it. <sup>266/</sup> Accordingly, Act No. 18,134, together with Decrees No. 2758 of 1979 and No. 2200 of 1978, was amended by Act No. 18,198 of 29 December 1982. <sup>267/</sup> Under the new legislation on collective labour agreements, "once a collective agreement has expired, its provisions shall remain in effect as an integral part of the individual contract of each worker who was party to such a collective agreement". However, an important exception is introduced in that this general rule will not apply to "such arrangements for periodic readjustment as have been agreed with the employer and such rights as may only be exercised or enjoyed collectively" - which will mean in practice that the workers may find themselves subject to a virtual wage freeze unless they are able to negotiate a new collective agreement collectively which provides for a system of periodic wage readjustment. In general, the provision in question conflicts with the spirit on which the so-called Labour Plan of 1979 was based, since the latter guaranteed workers a minimum periodic readjustment, 12 months after the collective agreement had come into force, at a percentage rate equivalent to the variation in the consumer price index during the same period. This ensured that the purchasing power of workers' wages was restored and, in the new contract, the employer had to abide by previously agreed readjustment clauses.

140. The limitations thus imposed on collective bargaining are perhaps made more distressing by the fact that, with an unemployed population that fluctuates around 30 per cent of the active population, the trade-union organizations have little room for negotiation with employers. <sup>268/</sup> Moreover, it has been noted that "in real terms, minimum incomes have dropped far more than the wages of the better paid workers", so that it could be argued that the effects of unemployment and loss of purchasing power have been felt most acutely by the lower-income groups. <sup>269/</sup> For

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<sup>265/</sup> A/37/564, para. 210.

<sup>266/</sup> El Mercurio, 1 October 1982; 26 November 1982, 28 December 1982.

<sup>267/</sup> Diario Oficial, 31 December 1982.

<sup>268/</sup> Mensaje, No. 315, December 1982, p. 667.

<sup>269/</sup> See J. Ruiz-Tagle, "La situación salarial de los trabajadores más pobres", Mensaje, No. 315, December 1982, pp. 684-687.

instance, the Labour Economics Programme of the Academy of Christian Humanism found that while, according to official statistics, the consumer price index rose by 11.4 per cent throughout 1982, the same index rose by 19.6 per cent in real terms for the less affluent classes. This phenomenon can be explained by the "sharp rises affecting such commodities as bread, noodles, sugar and paraffin, which are important consumer items for low-income families". Also, "the poorest workers, with their depleted incomes have to help to keep those members of their families who have lost their jobs. Poverty among the masses is becoming increasingly acute". Moreover, "the lack of Government concern at the wages of the poorest segments of the population contrasts with the support given by the State to industrial and financial circles; purchase from banks of portfolios that have fallen due, dollar subsidies for those in debt, debt rescheduling, and so on". 270/

141. Lastly, the Special Rapporteur wishes to draw attention to the continued fall in the number of persons covered by the State social security services. According to official sources, whereas as at 31 December 1980 a total of 2,342,892 persons contributed to Social Security Funds, representing 65.7 per cent of the total labour force, this figure fell by 31 December 1981 to a total of 2,232,604 contributors representing 61.3 per cent of the labour force. 271/ Consequently the conclusion to be drawn is that the resources which the economy affords for ensuring the material basis for economic and social rights are continually shrinking.

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270/ Ibid.

271/ According to information provided by the National Statistical Institute, the Office for Supervision of Pension Fund Administrators (AFP) and ODEPLAN.

## IX. TRADE UNION RIGHTS

A. Right of trade union association

142. The right of workers to form professional organizations, or the freedom of trade union association includes, according to the principles contained in the Constitution of the International Labour Organisation and in the Declaration of Philadelphia of 1944, the freedom to establish the necessary administrative, operations and financing bodies. Nevertheless, the Special Rapporteur has noted the enactment of Act no. 18196 of 26 December 1982, 272/ which lays down additional regulations governing financial and personnel administration and budgetary matters, and containing a number of provisions affecting trade-union organizations. Specifically, article 36 of the Act amends Decree no. 2756 concerning trade-union organizations, in providing that "trade unions may not negotiate or receive, directly or indirectly, contributions, donations, loans, or, in general, any other type of financing from the enterprises in which their members are employed". Similarly, they are also prohibited from negotiating or receiving direct or indirect financing from individuals or corporate bodies abroad. The Act also provides that those responsible for the acceptance of such financing shall be dismissed from office and shall be "disqualified from holding any trade-union office for a period of three years". The trade union must also refund any amount improperly received, with all officials implicated in the improper receipt being jointly responsible for such refund.

143. The purpose of this legal measure would clearly seem to be to restrict the financing needed by the major trade union bodies in order to achieve their aims. Paradoxically, an application for withdrawal of immunity and disqualification of officials of worker's union no. 1 of the Goodyear company in Chile is currently before the 19th Civil Court of Santiago. The application was lodged by the head of the Trade-Union Organizations Department of Labour, who alleged that "with the agreement of both sides, the trade-union organization in question received from the company fuel for the union ambulance used to take workers who are victims of industrial accidents or are otherwise incapacitated to hospital". It was this mere fact that prompted the application now before the courts, an unused feature of the case being that the company itself was a party to the proceedings and paid the fine imposed on it by the Directorate of Labour.

144. The Special Rapporteur also notes as acts detrimental to the freedom of trade union organizations to organize and operate, the expulsion from Chile of Manuel Bustos and Héctor Cuevas, officials of the National Trade Union Co-ordinating Body, for having participated in the workers' rally held on 2 December 1982 in Plaza Artesanos in Santiago. Another reprehensible act detrimental to the freedom of employers to form professional organizations was the administrative expulsion of Carlos Podlech Michaud, Chairman of the National Wheat Producers' Association, on 5 December 1982. Also detrimental to the right of trade union association were the limitations of the right of assembly imposed on trade-union organizations by the Ministry of the Interior, and extending even to meetings to be held within their own private premises. A case in point is the prohibition of meetings on the premises of the National Trade Union Co-ordinating Body in Santiago. In addition, freedom of expression on labour matters is seriously threatened, according to Eduardo Ríos, President of the Democratic Union of Workers and of the Federation of Clerical Workers of Bahía, who stated that "we trade unionists have a perfect right to protest against the restriction of our labour rights". 273/ Similarly, the

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272/ Diario Oficial, no. 31453, of 29 December 1982.

273/ La Tercera de la Hora, 12 August 1982.

President of the National Association of Public Employees, Hermol Flores, was summoned by the Director of Investigations "for a warning regarding the performance of his trade-union duties". The President of the Association of Labour Lawyers described the act as "intimidation of union officials in the performance of their duties as representative officials". 274/ Finally, faced with the continued reluctance of the Telephone Company to engage in collective bargaining concerning the working conditions of its 4,000 workers, the trade union concerned announced that it was presenting "a complaint to the International Labour Organisation". 275/

145. The Committee on Freedom of Association of the Governing Body of the International Labour Organisation examined the restriction imposed on the National Association of Public Service Employees (ANEF) on 7 May 1982, prohibiting it from holding meetings at its own headquarters. In that regard, the Committee recalled that, although the Government of Chile had not ratified ILO Convention No.87 concerning freedom of association, nevertheless, Chile, "on becoming a member of the ILO, undertook to respect certain principles, including the principle of freedom of association", since "the function of the International Labour Organisation in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice". Consequently, the Committee considered itself competent to examine complaints of acts which "affect substantially the attainment of the ILO's aims and purposes as set forth in the Constitution of the Organisation, the Declaration of Philadelphia and the various Conventions concerning freedom of association". 276/ Referring to the allegation concerning the prohibition of the meetings of ANEF, the Government stated that the organisation in question, being "legally constituted as a private law association, is not entitled under the Civil Code to carry on trade union activities". However, the Committee pointed out that "the workers in the public sector have had to form this type of organization precisely because section 166 of the public service regulations prohibits employees and workers in the government service to form trade unions. For years, however, the organisations set up by workers in the public sector, such as the ANEF, have been carrying on trade union activities". Consequently, "the Committee must note with concern ... that not only has the Government failed to grant trade union rights to public employees ... but in addition it has, by prohibiting meetings organised by the ANEF, impaired the free exercise of the activities of this organization". Consequently, "the Committee wishes to draw the Government's attention to the fact that public employees should, like workers in the private sector, be able to establish organizations of their own choosing to promote and defend the interests of their members and that these organizations should be entitled to organize their activities and, in particular, to hold meetings without interference from the public authorities." 277/ Finally, in its recommendations, the Committee stated that "the right of assembly on the part of workers' organizations constitutes one of the fundamental elements of trade union rights". It also pointed out that "public employees should be able to establish organizations of their own choosing", with the right to "organize their activities and, in particular, to hold meetings without interference from the public authorities". 278/

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274/ La Tercera de la Hora, 13 August 1982.

275/ El Mercurio, 25 and 26 August 1982.

276/ 218th report of the Committee on Freedom of Association, Doc.GB.221/6/16, 221st session, 6-19 November 1982, cases Nos.1126, 1136 and 1137 (complaints presented by the International Confederation of Free Trade Unions against the Government of Chile), para. 212.

277/ Ibid. paras. 213-215.

278/ Ibid. para. 216.

146. In addition, in case No.823 of the Committee on Freedom of Association, complaints were made of persecution of ten officials of the National Trade Union Co-ordinating Body. The Committee was notified by the Government that it had decided not to pursue the legal proceedings instituted against the ten union officials, since it considered the CNS to be an illegal organization under the terms of Decree No.2347, of 1978. In that connection, the Committee again urged "the Government to adopt amendments to bring the trade union law into conformity with the principles of freedom of association" and requested "the Government to keep it informed of any developments as regards the trade union legislation". 279/

147. In case No.1152, the Committee on Freedom of Association considered the complaint concerning the dismissal of the President of the National Federation of Workers in Commerce and Co-operatives of Chile. The Government stated that an inspector of the Ministry of Labour had imposed a fine equivalent to \$US 450 on the company in question. The Committee observed that "the imposition of relatively modest fines on undertakings which have infringed provisions protecting trade union leaders is not always a strong enough deterrent to prevent acts of anti-union discrimination. One way of affording effective protection might be to consider the dismissal of a trade union leader null and void". The Committee also recalled Workers' Representatives Recommendation, 1971 (No.143), paragraph 6 of which listed a number of measures which might be adopted to ensure effective protection of workers' representatives. Those measures included "the reinstatement of workers' representatives in their jobs in the event of unjustified dismissal with payment of unpaid wages and with maintenance of their acquired rights; provision for laying on the employer the burden of proving that the dismissal was justified; recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce". 280/

#### B. Right to collective bargaining

148. On 1 July 1982, the Committee on Freedom of Association received a complaint from the National Confederation of Trade Unions of Workers in the Building, Wood, Construction and Allied Industries of Chile. The complainants alleged that their company, in collusion with the Directorate of the Ministry of Labour, had deprived the 1800 workers of the Colbún-Machicura hydroelectric complex of the right to collective bargaining. The bargaining committee had even lodged an appeal for protection with the Santiago Court of Appeals against the Ministry of Labour, an appeal which had been declared inadmissible on the grounds that the Court was not competent to deal with matters related to collective bargaining. In this connection, the Committee on Freedom of Association recalled that it had always considered "that the right of free collective bargaining is a fundamental trade union right for all employees not covered by the safeguards provided by civil service regulations". The Committee also recalled International Labour Convention, 1981 (No. 154) concerning the promotion of collective bargaining, which proposes that the benefit of collective bargaining should be applied "in all branches of economic activity, with the sole possible exception of the armed forces and police". In the Committee's opinion, there should therefore be "no obstacles to collective bargaining in the building sector". Finally, the Committee recommended that the ILO Governing Body should approve its conclusion stating that "the right to free collective bargaining should apply to all branches of economic activity, with the sole possible exception of the armed forces and police", and expressing the hope that "the Government will

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279/ Ibid. case No.323, para. 257.

280/ Ibid. case No.1152, paras. 269-270.

take the necessary measures to amend the legislation with a view to granting the right of collective bargaining to workers on fixed-term contracts in the building sector". 281/

C Right to strike

149. The Special Rapporteur has already referred to the restrictions imposed by Chilean legislation and practice on the exercise of the right to strike in the context of labour relations. 282/ During the second half of 1982, a number of new restrictions of this right were noted. For example, on 17 August 1982, the Diario Oficial published a decision of the Ministry of Economics prohibiting workers in 40 enterprises considered as "crucial to national defence and security and of importance to economic security" 283/ from exercising the right to strike. The companies concerned were the Railways, Telephone and Airline Corporations, the National Explosives Enterprise, CHILECTRA and the State Bank. In addition, on the announcement of a strike to be held on 28 September 1982 by two unions of the National Coal Corporation, the Ministry of the Interior warned that "the Government will apply the full rigour of the law to any person encouraging or carrying out the announced stoppage". 284/

150. In November 1982, the workers at the Goodyear Company held a work stoppage in support of the reinstatement of the collective bargaining process which the company had suspended. In a public statement reported in the press, the company said that it did not have "the slightest intention of settling this dispute, since there are any number of persons ready to work" in place of the strikers, for the same pay and wages. 285/ The workers at the company had made repeated requests for meetings with the Minister for Labour in an attempt to reach a compromise, but the request was not granted. It should be recalled that the right to strike, as envisaged in Chilean legislation, is not an absolute guarantee for workers, since employers are empowered to continue operations and are thus able to hire workers to replace strikers, which is extremely easy to do, given the high rate of unemployment. In addition, companies can conclude individual labour contracts with workers who renounce their right to strike once a labour dispute has lasted 30 days.

151. Finally, on 12 January 1983, trade-union leaders in the building industry and at the Colbún-Machicura hydroelectric complex condemned "the dismissal of 98 workers, including 4 women and 42 workers' representatives". 286/ This mass dismissal occurred during a strike staged by 1400 workers at the hydroelectric complex, in response to an offer made by the management under the collective bargaining procedure. It was also reported that "four women yesterday joined a hunger strike being staged by 50 or so workers protesting against the action taken by management in order to break the strike", which, according to union leaders, involved the hiring of unemployed workers from another area. 287/

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281/ Committee on Freedom of Association. 218th report, document GB/221/6/16, 221st session, Geneva, 16-19 November 1982. Case No.1144 (complaint presented by the National Confederation of Trade Unions of Workers in the Building, Wood, Construction and Allied Industries against the Government of Chile), paras. 231 and 233.

282/ A/37/564, para. 226.

283/ El Mercurio, 19 August 1982.

284/ El Mercurio, 17 September 1982.

285/ El Mercurio, 25 November 1982. See also Chilean Commission on Human Rights, Report for November 1982, p.33.

286/ El Mercurio, 13 January 1983.

287/ El Mercurio, 13 January 1983.

## X. CULTURAL RIGHTS

152. During the second half of 1982, the Special Rapporteur has received extensive information concerning growing unrest among teachers and students in various fields of study in Chilean universities as a result of their own specific economic and academic situation and of the country's economic, social and political situation at the present time. Generally speaking, students, teaching staff and cultural associations such as the Andres Bello University and Cultural Association have been calling for urgent measures to avoid the "imminent collapse" of the system of higher education, including the abolition of the system of Government-appointed rectors named directly by the President of the Republic; the dismantling of the system of supervision employed in the universities; the reinstatement of professors and lecturers who were dismissed; the establishment of a body to defend the rights of academic staff; the opening of channels for genuine student and teacher participation in the making of decisions relating to academic life; the maintenance in real terms of State budgets for universities; and the setting up of an institution to carry out a sound assessment of the quality of education and of curricula. 288/

153. Student unrest has become evident in university faculties in the second half of 1982. Events such as academic meetings sponsored by students or teachers and student meetings and demonstrations led to the suspension and expulsion from university premises of a large number of students. It should also be noted that three university members were detained in the neighbourhood of the Faculty of Physics and Mathematics of the University of Chile on 25 August 1982. According to the National Union of Democratic Students (UNED), "agents of the security forces" were responsible for those detentions. Two of the persons concerned "were subjected to questioning and physical and psychological maltreatment during detention". 289/

154. On account of the kidnapping and threats to which Marcela Palma Salamanca, the secretary of the Students' Centre of the Faculty of Philosophy, was subjected on 31 August 1982 290/ and owing to the expulsion of three students and the suspension of the academic year in the School of Theatre, 186 students of the Schools of Theology, Philosophy and Journalism of the Catholic University of Chile began a 24-hour fast on 22 September 1982 in the premises of the National Federation of Christian Way of Life Communities of the Society of Jesus. In this connection, they stated that "we regard it as a moral duty at this time to express our concern at the events that have recently shaken our university"; and that "we consider it necessary for normal university life that the penalties be reconsidered forthwith, that light be shed on the case of Marcela Palma and that measures be taken to guarantee the safety of students and their leaders". 291/ An application for a remedy of protection was made to the Court of Appeal on behalf of the three students of the School of Theatre of the Catholic University of Chile. The application challenges the expulsion measures against the students on the grounds that "their exercise of the right to own property was denied, threatened and impaired by an

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288/ In this connection, see Chilean Commission on Human Rights, Report for December 1982, p. 42. See also Hoy, 5-9 November 1982, and El Mercurio, 6 and 12 November 1982.

289/ El Mercurio, 28 August 1982.

290/ See above, chapter III, B.I., "Persecution and acts of intimidation".

291/ El Mercurio, 23 September 1982. See also Hoy, 15-21 September 1982.

arbitrary and unlawful decision taken by the Rector of the Catholic University ... and contained in Rectorial Decree No. 95/82 of 7 September, which causes the students in question serious moral and material harm, inasmuch as, in the absence of information justifying such action, it has been decided to suspend the academic year of that School and, further, to prohibit those students from entering any of its premises for the remainder of this year". 292/

155. Of the total of 48 members of the teaching staff of the Faculty of Law and Social Sciences of the University of Concepción, 4) disagreed with the changes made in curricula and decided "not to set foot in the Faculty as long as the Rector and the Dean remain in office". 293/ This led to the first strike by university teaching staff which had taken place in Chile in the last nine years and which paralyzed the law School of the above-mentioned University. The reason for the protest was apparently Rectorial Decree No. 434/82, which made substantial changes in the law School curriculum, including the elimination of practical training in court and the closing of the legal aid office, two facilities which benefited persons of modest means; as a result, over 500 cases had to be abandoned. End-of-term and degree examinations were also said to have been abolished. 294/

156. With regard to student demonstrations, one which was held at the Catholic University of Valparaiso on 3 September 1982 led to the detention of at least 10 students when it was broken up by the Carabineros. The Rector of the University stated on that occasion that "this demonstration was organized from outside the university by elements belonging to illegal political groups" and that, "if it is established that students of this university took part in these disturbances, the appropriate measures will be applied". 295/ For its part, the Ministry of the Interior stated that the twenty-fourth transitional provision of the Constitution would be applied to the 10 detainees. Under that provision, the Executive Power may detain anyone believed to be involved in acts liable to disturb the internal peace of the State for a period of five days, which may be extended to 20 days. 296/ Other demonstrations took place on 7 September 1982 at the Oriente campus of the Catholic University. Two hundred students gathered "to demand a statement of support from the authorities in connection with the situation involving the philosophy student Marcela Palma, who claimed to have been detained, questioned and harassed by three persons". 297/ On this occasion, the students also urged "the Rector to retract the statement he had made to the press to the effect that he wondered whether Marcela Palma had actually been detained or whether the affair was merely a pretence for launching a campaign of demonstrations for political purposes". 298/ The Rector

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292/ El Mercurio, 24 September 1982.

293/ El Mercurio, 11 August 1982. See also Hoy, 18-24 August 1982.

294/ Hoy, 18-24 August 1982.

295/ El Mercurio, 4 September 1982.

296/ El Mercurio, 5 September 1982.

297/ El Mercurio, 8 September 1982.

298/ Ibid.



stated that "the University will in no way allow the type of Co-government that is in fact being sought by the students, who are arrogating to themselves representative powers which they do not possess ... some people seem to have forgotten that the University has a Rector and that he is its sole representative". 299/

157. For his part, the Auxiliary Bishop of Santiago, Monsignor Jorge Hourton, publicly expressed support for the students' demands and this led to an official reaction from the Catholic University of Chile in which it was stated that "it is a sad and surprising thing for a Bishop of the Chilean Church to give his blessing to the 'angry reaction' of a group of students who have tried, with absolutely no justification whatsoever, to link the University to the regrettable events which concern the secretary of the Students' Centre of the Faculty of Philosophy and which this Rectorate has vigorously condemned". 300/ It was also announced that "the Government will register a private protest with the hierarchy of the Catholic Church" over the content of the Bishop's statement. 301/ On another occasion, the Cardinal Archbishop of Santiago declared that "I am aware of the sorry situation of some of our students in the University. The violence that is sometimes used against them, the lack of justice and fairness in dealing with their well-founded demands and the penalties they have sometimes received for what cannot, by our Christian lights, be regarded as offences - all fill me with sorrow and concern". 302/

158. Lastly, the Special Rapporteur notes that demonstrations, stoppages and suspensions of academic activity continued to take place in October at the Catholic University of Valparaíso, the Higher Academy of Pedagogical Sciences and Federico Santa María Technical University. 303/ With regard to the month of November 1982, it should be pointed out that, at a press conference, the University Pastoral Mission criticized the structure of higher education, stating that the presence of Government-appointed rectors meant that "political power was present in the universities". The University Pastoral Mission also referred to the detention of four students of the Higher Academy of Pedagogical Sciences, to the suspension and expulsion of students from the University of Santiago and to the presence of guards with communication equipment and prods which they used to give students at these two academic centres electric shocks. 304/

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299/ Ibid.

300/ El Mercurio, 10 September 1982.

301/ El Mercurio, 11 September 1982.

302/ El Mercurio, 22 November 1982.

303/ Chilean Commission on Human Rights, Report for October 1982, pp. 45-47.

304/ Chilean Commission on Human Rights, Report for November 1982, pp. 23-24.

## CONCLUSIONS AND RECOMMENDATIONS

159. Pursuant to Commission on Human Rights resolution 1982/25 of 10 March 1982 and to General Assembly resolution 37/183 of 17 December 1982, the Special Rapporteur has prepared this report on the situation of human rights in Chile, which he has the honour to submit for consideration to the Commission on Human Rights.

160. The Special Rapporteur must once again express regret at the lack of co-operation on the part of the Chilean authorities in the discharge of his mandate during the second half of 1982. The General Assembly has deplored this attitude and has again called on the Chilean authorities to "co-operate with the Commission on Human Rights and its Special Rapporteur and to submit the commentaries on his report at the thirty-ninth session of the Commission on Human Rights". 305/

161. With regard to the influence of the Political Constitution of 1980 on respect for and protection of human rights, no change occurred during the second half of 1982 to indicate any improvement in the situation. As stated above, the Constitution of 1980 itself disrupts the traditional democratic and legal order and the traditional institutions of the Chilean people by failing to reflect a freely expressed popular will. Under the existing constitutional structure, all branches of government have been hierarchically structured and are subject to the supervision of the armed forces. Through the President of the Republic, the armed forces unlawfully assume legislative and judicial functions, in addition to strictly executive functions, during the so-called "transitional period", which, according to the provisions of the Constitution of 1980, will continue until 1989. Furthermore, the institutionalization of a double state of emergency which has become de facto a permanent situation ("state of emergency" and "exceptional state of emergency due to threats to internal peace") very much facilitates the practice of gross and systematic violations of human rights which could raise serious questions regarding the international responsibility of Chile as a member of the international community.

162. Respect for the right to life and the right to physical and moral integrity has been treated as one of the Special Rapporteur's priority concerns, in accordance with the wish expressed by both the Commission on Human Rights and the General Assembly. Fifteen violations of the right to life through the abuse of authority or misuse of weapons by members of State security agencies were reported in the first months of 1982. 306/ A further eight cases were reported during the second half of 1982. In addition, the Special Rapporteur received reports of 69 cases of torture or other forms of cruel, inhuman or degrading treatment during the period January to May 1982. 307/ Sixty-three further reports were received during the second half of 1982, bringing the total for 1982 to 132. This figure is appreciably higher than those for 1981 (68 cases) and 1980 (100 cases), which leads the Special Rapporteur to reaffirm his earlier conclusion that "torture and ill-treatment have an institutional character" and benefit "from the tolerance of

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305/ Paragraph 11 of resolution 37/183, of 17 December 1982.

306/ See A/37/564, paras. 23-39.

307/ See A/37/564, para. 45 and annex.

the administrative and judicial authorities. 305/ Furthermore, judicial protection of the right to life and the right to physical and moral integrity continues to be inadequate. Actions brought in the courts of justice for violations of the right to life for which individuals connected with State security agencies are presumed responsible, produced various results. In 1982 results which were clearly negative in the "COVEM" and "Escapal Jimenez" cases. Moreover, the criminal complaints made in 1982 against members of the security forces, particularly the CII, for violations of physical and moral integrity, have all been dismissed by the military tribunals, without the perpetrators having been identified, let alone sentenced. Finally, during 1982 the death penalty was carried out on two former members of the CNI ("Calama" case), and two former carabineros received the same sentence at first instance ("psychopath" case). In this connection, the Special Rapporteur recalls the objective of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment". 309/ particularly in respect of cases of a political nature. 310/

163. The right to freedom is also denied with excessive frequency, particularly in respect of persons attempting to exercise freedom of expression and opinion regarding political matters. In 1982 1 215 unlawful arrests were reported, a figure slightly higher than those for 1981 (989 cases) and 1980 (1,127 cases). As far as the form of arrest is concerned, the number of "individual" arrests declined considerably (from 646 cases in 1981 to 314 in 1982) while those carried out in connection with mass demonstrations increased to a greater extent (from 263 cases in 1981 to 301 in 1982). The arbitrary and inadmissible nature of detentions is demonstrated clearly by the fact that of a total of 547 persons officially arrested in the city of Santiago in 1982, 37 (6.76 per cent) were brought before a court and only 6 (0.71 per cent) were formally charged with "acts of terrorism". No less illegal is the way in which the arrests are made (without a judicial or administrative arrest warrant, and without a search warrant when it is necessary to enter a private residence) arrests frequently made by persons who are not legally authorized to do so such as members of the CII) with the connivance of the judicial authorities, which tacitly permit such procedures. In addition, judicial supervision of the illegal or arbitrary nature of arrests is practically non-existent.

164. The right to security of Chilean citizens is at times violated by acts of persecution and intimidation in which the State security agencies are implicated. The number of cases reported in 1982 in the city of Santiago (125) falls between the figure for 1980 (130 cases) and 1981 (110 cases). In qualitative terms, most of the cases appear to represent organized and planned acts directed against persons associated with organizations for the protection of human rights, which would indicate that the acts of persecution and intimidation have a political purpose. With regard to the conditions of detention in prison establishments, there continue to be reports of acts of persecution and intimidation which violate the right to physical and moral integrity of persons detained in Chilean prisons for

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308/ See A/37/564 para. 253.

309/ Resolution 3.161, of 3 December 1977.

310/ E/CN.4/Sub.2/1982/15, of 27 July 1982 para. 203.

crimes of opinion of whom there are at present some 171, 125 of them being held pending trial. It should also be noted that the Agreement of 2 July 1978 between the Ad Hoc Working Group and the Minister of Justice is not being observed fully and consistently, since the Chilean authorities have unilaterally decided to put an end to it. Under the terms of the 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'. 311/

165. The fate of the persons who have disappeared for political reasons in Chile since 1973 - the number of unresolved cases has increased to 632 - has not yet been made clear by the Government, despite the appeals of the General Assembly and the Commission on Human Rights to investigate and clarify the fate of such persons, to inform their relatives of the outcome of the investigation and to punish those responsible for such disappearances. In this regard, the co-operation of the Chilean authorities is absolutely essential.

166. The right to freedom of movement and violations thereof in Chile have also received the attention of the international community on many occasions. Most recently, the General Assembly urged the authorities to respect the right of Chilean citizens to live in, and freely enter and leave, Chilean territory, without restrictions or conditions of any kind and to cease the practice of "relegación" (assignment of forced residence) in particular of persons who participate in trade union activities, academic life or the defence of human rights. 312/ On 8 November 1982, a Special Advisory Commission was set up to study and propose to the President of the Republic measures regarding the situation of persons who had been prohibited from entering the country. Although the Commission's findings were not published, it is worth noting that, during the past five months of the current mandate of the Special Rapporteur, a total of 2/3 persons have been allowed to enter the country. While this is a first positive step on the part of the authorities to resolve the situation of nine cases of exile in which many persons find themselves, it cannot be considered adequate. The Special Rapporteur has pointed out in this report that at least two conditions must be met. Firstly, an official list of persons prohibited from entering the country should be published; the number of persons in political exile, in the strict sense of the term, may be between 11,000 (unofficial figure given by the authorities) and 38,000 (according to human rights organizations). Secondly, the double state of emergency under which the Executive enjoys discretionary power to prohibit entry into the country, or to order expulsions or the assignment of forced residence should be terminated. The number of assignments to forced residence increased in 1982 (74 cases), compared with 1981 (60 cases).

167. The right to procedural guarantees, particularly the exercise of the right to effective remedy when some right or fundamental freedom has been infringed or threatened, continues to be subject to serious restrictions within the legislative framework of the double state of emergency. The full potential of the decision issued by the Supreme Court on 28 April 1982 313/ was not confirmed in the practice

311/ A/37/564, para. 97.

312/ Resolution 37/183 of 17 December 1982, para. 7.

313/ See A/37/564, paras. 150-156.

of the courts of justice throughout the second half of 1982. Furthermore, the independence of the judiciary could be seriously jeopardized by the new legal regulation concerning the appointment of associate judges of the Courts of Appeal and the various Chambers of the Supreme Court. 314/ The new selection procedure does away with the role of the Bar Association, while at the same time increasing the discretionary powers of the Executive in respect of appointments and removals of judges. Finally, the procedural guarantees are extremely difficult to apply under military jurisdiction, particularly in the case of proceedings conducted before wartime military courts, the re-introduction of which has already been referred to by the Special Rapporteur. 315/

158. The right to freedom of thought, opinion and expression is also seriously restricted by the legislation accompanying the continual extensions of the double state of emergency. Moreover, under Act No. 18150, 316/ what had previously been simply "administrative offences" against measures restricting freedom of information were classified as "crimes", with the result that failure to pay large fines will mean the imposition of penalties involving deprivation of liberty. During the second half of 1982, the restrictions affected in particular radio broadcasting, the publication or importation of specific books and news periodicals, and frequent acts of persecution and intimidation directed against journalists. It is worth noting the closure by the authorities of the magazine APSI under the twenty-fourth transitional provision of the Constitution. Following a number of appeals, the Supreme Court 317/ found that the Minister of the Interior "exceeded his authority in banning the publication". Nevertheless, the authority in question requested a clarification of the ruling, on the understanding that PSI would be authorized only to publish news on international, not Chilean, items. 318/ The decision on 25 January 1983 by the First Chamber of the Supreme Court accepted the argument of the Minister of the Interior.

16). The right to public freedoms, particularly those of assembly and association, are also subjected to severe restrictions. The Special Rapporteur has already noted that the right of political association has been suspended until 1989 (tenth transitional provision of the Constitution) and any breach of that provision is liable to heavy penalties (twenty fourth transitional provision and article 3 of the Constitution). 319/ In addition, humanitarian associations and groups, together with those concerned with the protection of human rights, are forced to operate outside the law, thereby leading de facto and consequently precarious existence, and being subjected to frequent harassment by the authorities. Finally, the exercise of the right of participation in public life is impossible, even in middle-level bodies such as the Regional and Communal Development Councils, for the appropriate post constitutional legislation has not always been enacted.

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314/ Decree-Law No. 3637 (Diario Oficial, 10 March 1981), which was first implemented in 1982.

315/ See A/37/564, paras. 151-164.

316/ Diario Oficial, 30 July 1982.

317/ Judgment of 5 January 1983.

318/ Interpretative ruling of 12 January 1983.

319/ See A/37/564, paras. 187-193.

170 With regard to the exercise of economic, social and cultural rights, the situation in Chile is becoming increasingly further removed from the international norm, as a result of the special characteristics of the country's worsening economic and social crisis. Working conditions, particularly with regard to levels of remuneration, are becoming increasingly unfavourable to workers who are not unemployed. 320/ Lastly, the deficiencies in the enjoyment of cultural rights have not changed at any level of the education system. The second half of 1982 saw an increase in student protests, particularly in the universities.

171. In the area of trade union rights, the General Assembly recently urged the Chilean authorities to re-establish the full enjoyment of such rights, in particular, the right to organize trade unions, the right to collective bargaining and the right to strike. 321/ During the second half of 1982, the Committee on Freedom of Association of the ILO Governing Body had to consider further complaints from various trade union organizations concerning alleged violations of the above-mentioned rights. It is self-evident from the recommendations adopted by the Committee that the Chilean authorities have not introduced a single improvement, as far as respect for trade union rights is concerned, in terms of either legislation or practice. On the contrary, Act No. 18196 of 26 December 1982 322/ prohibits trade union organizations from receiving information from companies or from abroad. Furthermore, a number of leading figures in professional organizations of workers and employers have been expelled from the country, a situation which is incompatible with the principle of trade union freedom as embodied in the ILO Constitution.

172. In conclusion, the Special Rapporteur regrets once again that he is forced to state that the human rights situation in Chile did not improve during the second half of 1982. As on previous occasions, none of the recommendations made by the international community has been heeded, and there has been no indication of the adoption of measures designed to restore the enjoyment of human rights and fundamental freedoms, either at the legislative or judicial levels or in the practice of the Executive.

173. Consequently, the Special Rapporteur recommends that the Commission on Human Rights should once again call on the Chilean Government to co-operate with United Nations bodies concerned with the protection of human rights. In particular, the Government should be requested to put an end to the institutionalization of the state of emergency and to re-establish the traditional democratic legal order. Such action would be sufficient to enable 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 a change of this nature, 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 respect the obligations deriving from the international instruments to which it has freely subscribed.

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320/ Unemployment stands at between 21.3 per cent (official figure) and 30 per cent (according to other sources) of the economically active population.

321/ Resolution 37/183 of 17 December 1982, para. 6.

322/ Diario Oficial No. 31453 of 29 December 1982.

ANNEX<sup>\*/</sup>

List of 63 persons subjected to acts of torture and other cruel,  
inhuman or degrading treatment

(June - December 1982)

Tapia Quezada, Ricardo Miguel  
Flores Días, Adelia Irma  
Ovalle Farias, Caty Irene  
Ortega Troncoso, Nelda Julieta  
Liberona Sánchez, Luis Alberto  
Soto Pizarro, Alberto del Carmen  
Rubio Manríquez, Pablo Humberto  
Espinoza Sánchez, Silvio Victorino  
Roldán Arellano, Rolando Enrique  
Palma Salamanca, Marcela  
Muñoz Cea, Carlos Gastón  
Muñoz Muñoz, Segundo Eulogio  
Castro Montanares, Raul Hernán  
Radrigán Plaza, Cecilia de las Mercedes  
Molina Echevarría, Tatiana Gilda  
Hartard Gómez, Mauricio René  
Moreno Osses, Dina  
Carvajal Zamorano, Luis Ernesto  
Gaete Martínez, Luis Alberto  
Palma Zúñiga, Mario Roberto  
Moya Carrasco, Yolanda Cecilia  
Veienzuela Escobero, Héctor Valentín  
Cea Lillo, Raul Delfín  
Rivera Arcos, Juan Alfredo  
Medina Voss, Caupolicán Roberto  
Arenas Muñoz, Pablo Eduardo  
Maldonado Vera, J. Antonio  
Orellana Loyola, Raul Ernesto

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<sup>\*/</sup> This annex supplements the one contained in document A/37/564.

Saavedra Caballero, Cristián Leonardo  
Rendic Olate, Elizabeth  
Ramírez, Juan Domingo  
Daniels, Manuel Francisco  
Délano, Manuel  
Zúñiga, Luis  
González, Luis  
Hales Dib, Jaime  
Mejías Silva, María Raquel  
Rojas Güida, Cecilia  
Hermosilla Molina, Carmen  
Morales Puelma, Roberto  
Loyola, Eduardo  
Mondaca Acosta, Alfredo  
Alegría, Héctor Orlando  
Curipán Toledo, Luis Alberto  
Silva Linderos, Juan  
Iriarte, Alfredo  
Malatrassi, Patricio  
Portillo, Luis  
Sanhueza Ruiz, María de los Angeles  
Trincado, Roberto  
Concha, Verónica  
Reveco Soto, Benjamín  
Darricarrere Andreo, María Eugenia  
Carvajal Zúñiga, René Osvaldo  
Galanda Labra, Rodolfo  
Leiva Junquera, Humberto  
Francia Wills, Claudio  
Madrid Reyes, Juan Carlos  
Moya Carrasco, Yolanda Cecilia  
Palma Silva, Mario  
Figueroa Ortega, José Luis  
Saavedra Caballero, Cristián  
Ortíz Aravena, José