

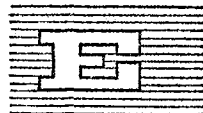
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COMMISSION ON HUMAN RIGHTS  
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QUESTION OF HUMAN RIGHTS IN CHILE

Note by the Secretariat

The Special Rapporteur on the Situation of Human Rights in Chile has prepared the present report in accordance with resolution 21 (XXXVI) of the Commission on Human Rights, of 29 February 1980. This report supplements and completes the report presented to the General Assembly at its thirty-fifth session by the Special Rapporteur in accordance with the same resolution.

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CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction .....	1- 9	1
I. Constitutional and legal aspects with a direct bearing on human rights .....	10- 56	4
A. The plebiscite of 11 September 1980 .....	10- 20	4
B. Text of the new Constitution approved by the plebiscite of 11 September 1980 .....	21- 56	8
II. Right to life, liberty, physical and moral integrity and security of person .....	57-121	17
A. Arrests and detentions .....	57- 74	17
B. Torture and ill-treatment .....	75- 86	21
C. Abductions and false imprisonment .....	87- 99	25
D. Right to life .....	100-103	29
E. Persecution and intimidation .....	104-121	35
III. Right to reside in, enter and leave the country .....	122-130	39
IV. Concluding observations and recommendations .....	131-145	41

## INTRODUCTION

1. In resolution 11 (XXXV), of 6 March 1979, the Commission on Human Rights authorized its Chairman, pursuant to General Assembly resolution 33/175, of 20 December 1978, to appoint Mr. Abdoulaye Diéye as Special Rapporteur on the situation of human rights in Chile; on the basis of the mandate set forth in Commission resolution 8 (XXXI), of 27 February 1975, and in co-operation with the Chilean authorities, the Special Rapporteur was to investigate the human rights situation in Chile and submit a report to the Commission on Human Rights, at its thirty-sixth session, and to the General Assembly, at its thirty-fourth session.

2. In resolution 21 (XXXVI), of 29 February 1980, the Commission on Human Rights, recalling General Assembly resolution 34/179, of 17 December 1979, having studied thoroughly the report of the Special Rapporteur and the report of the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile, expressed its regret that the Chilean authorities had refused to co-operate with the Special Rapporteur and the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile and declared that it was convinced that it could not consider terminating the mandate of the Special Rapporteur until a number of concrete steps were taken by the Chilean authorities towards restoring full enjoyment of human rights and fundamental freedoms in that country. The Commission strongly urged the Chilean authorities to respect and promote human rights in accordance with their obligations under various international instruments and, in particular, to take the following concrete steps that would enable the Commission to consider terminating the mandate of the Special Rapporteur and to report to the General Assembly at its thirty-fifth session and to the Commission on Human Rights at its thirty-seventh session on the implementation of these steps:

(a) Restore democratic institutions and constitutional safeguards with the object of terminating the state of emergency, which has facilitated the violation of human rights;

(b) Take effective measures to prevent torture and other forms of inhuman or degrading treatment and to prosecute and punish those responsible for such practices;

(c) Restore fully freedom of expression and information and of assembly and association;

(d) Restore fully trade union rights, especially the freedom to form trade unions which can operate freely without government control and can exercise fully the right to strike;

(e) Allow Chilean citizens freely to enter and leave the country, and provide the possibility for those who have been deprived of Chilean nationality for political reasons to regain it;

(f) Restore fully the right of amparo;

(g) Restore the rights, in particular the economic, social and cultural rights, of the indigenous population.

3. The Commission also urged the Chilean authorities to investigate and clarify the fate of persons who have disappeared, to inform relatives of the outcome of the investigation and to institute criminal proceedings against those responsible for such disappearances and punish those found guilty. It further urged the authorities scrupulously to respect the duty of their judiciary to employ fully and without restriction its constitutional power in matters of amparo in order to protect individuals from arbitrary arrest or detention and thereby prevent cases of disappearances. The Commission also decided to extend the mandate of the Special Rapporteur for another year and requested him to report on the situation of human rights in Chile to the General Assembly at its thirty-fifth session and to the Commission on Human Rights at its thirty-seventh session and also to deal in his report with the problem of disappeared persons in Chile.

4. At the thirty-fifth session of the General Assembly, the Chilean Government reaffirmed the position which it had already explained in its letter of 15 March 1979 addressed to the Secretary-General of the United Nations, and which it had maintained in the Commission on Human Rights, namely, that it did not recognize "the legitimacy of ad hoc entities established for the sole purpose of dealing with the situation of human rights" in Chile, because "such entities do not fall within the framework of the prevailing United Nations rules". 1/

5. The General Assembly also had before it the Special Rapporteur's report issued as document A/35/522, in which he described his efforts to secure the co-operation of the Chilean Government and mentioned the Government's refusal in that regard.

6. At its 79th meeting, held on 3 December 1980, the Third Committee adopted as a recommendation to the General Assembly a draft resolution which the Assembly endorsed at its 96th meeting, on 15 December 1980, by 95 votes to eight, with 39 abstentions. In resolution 35/188, entitled "Protection of human rights in Chile", the General Assembly expressed regret that, according to the report of the Special Rapporteur, there had not been improvement in the human rights situation in Chile, and that in certain respects it had, on the contrary, deteriorated in comparison with the same period a year earlier, particularly as regards the alteration of the traditional democratic legal system and its institutions and the repression of the human rights activities of the Catholic Church and of academic life. It noted with increasing concern that the Chilean authorities continue to ignore the repeated appeal of the international community reflected in the various resolutions of the General Assembly and other international organs and have failed to take urgent and effective measures to investigate and clarify the fate of persons who have disappeared. The General Assembly again urged the Chilean authorities to co-operate with the Special Rapporteur and invited the Commission to extend the mandate of the Special Rapporteur for another year. It also requested the Commission to study thoroughly the report of the Special Rapporteur at its thirty-seventh session.

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1/ The letter dated 10 November 1980 from the Permanent Representative of Chile to the United Nations addressed to the Secretary-General is contained in official document A/C.3/35/10, of the Third Committee.

7. The report submitted to the Commission on Human Rights is intended to supplement the report submitted to the General Assembly at its thirty-fifth session. By considering the two reports together, the Commission will be able to form an opinion on developments in the situation in Chile over the past year.

8. The most significant event during this period was the completion of the long process of preparing a new Constitution reflecting the procedures that the Chilean authorities have decided on in connection with Chile's institutions and laws. This Constitution was approved by plebiscite. The Special Rapporteur has considered it helpful to describe in detail the provisions of the Constitution that have a direct bearing on enjoyment of human rights in Chile and on protection of such rights for Chileans.

9. This report also updates the previous report in matters relating to the right to life, liberty and security of person and the most recent developments in this regard have made it necessary to supplement the relevant chapters. The present report, like its predecessor, has been prepared with due regard to all the sources of information accessible to the Special Rapporteur. They include communications received from international governmental and non-governmental organizations and complaints from individuals or groups inside and outside Chile. The Special Rapporteur has also heard statements by witnesses and has attached special importance to official documents and to texts published by the Chilean press. He has given careful consideration to news items received from various sources and has compared them with one another and with those appearing in official Chilean publications; if they have not been denied by such publications, he has taken note of the fact. In his examination of the situation, the Special Rapporteur has taken account of the texts of international instruments relating to fundamental human rights.

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

A. The plebiscite of 11 September 1980

10. In his report to the General Assembly, the Special Rapporteur discussed the plebiscite held on 11 September 1980 to enable the Chilean people to accept or reject the text of a new Constitution proposed by the present Government. He also mentioned the criticisms made of the plebiscite in opposition circles, the procedure for preparing the proposed text and the objections raised as to the validity of the plebiscite. 1/

11. According to the official figures, the new text was approved by the people. After the final count, the Minister of the Interior stated that there had been 4,203,615 votes for (67.06 per cent), 1,893,420 against (30.19 per cent) and 173,705 spoiled ballot papers (2.77 per cent). 2/

12. The Special Rapporteur wishes to draw attention to certain aspects of the arrangements for the plebiscite that might help to give an idea of the conditions in which the Chilean people were called upon to vote on the new Constitution.

The plebiscite: conditions in which it was held and arrangements

13. The restrictions on civil and political rights referred to in the report submitted to the General Assembly at its thirty-fifth session 3/ underwent no change between 11 August 1980, when the plebiscite was announced, and 11 September 1980, the date on which it was held. The state of emergency in force throughout the country was extended for six months on 10 September 1980 by the publication of a decree-law to that effect 4/ in the Official Journal of the same date.

14. The opposition raised a number of objections to this plebiscite. On 3 October 1980, Mr. Patricio Alwin, a former deputy, transmitted to the secretary of the Board of Polling Officers a document bearing 46 signatures, in which he exposed the infractions and irregularities alleged by him to have occurred in the course of the plebiscite, including, in particular:

(a) The maintenance in force of the state of emergency restricting the exercise of a number of civil and political rights, and of Decree-Laws Nos. 3,168 and 3,451, which give the Executive discretionary powers to keep any person under observation for 20 days, to order enforced residence in any part of the country for up to three months and to expel him from Chilean territory; 5/

(b) The lack of options open to the electorate, since the Government had stated that rejection of the text of the constitution would lead to "chaos" or "a return to the situation existing before 11 September 1973", without providing any clarification in that connection, either in official statements or in the decree-law containing the arrangements for the plebiscite; 6/

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1/ A/35/522, paras. 56-62.

2/ El Mercurio, 16 October 1980.

3/ See A/35/522, paras. 10-50.

4/ El Mercurio, 11 September 1980.

5/ See A/35/522, paras. 24-48.

6/ See the comments on this matter in document A/35/522, para. 56.

(c) The marked discrepancy in matters of substance between the two parts of the text of the Constitution, the main part of which will enter into force only after a nine-year transition period, and also the fact that approval of the text entails the election of General Pinochet as President for the whole period of transition. Yet, the electorate could not vote separately on each of these three elements and were compelled to approve or reject the three proposals en bloc; 7/

(d) The lack of information on the questions covered by the plebiscite. In particular, it was said that the Government used every means available to it, with its political, economic and coercive power, for its propaganda in favour of a "yes"-vote (press, radio, television, meetings, posters), whereas the opponents of a "yes" vote were authorized to hold only one public demonstration and were able to make only very limited use of a few radio stations and newspapers. All propaganda on public thoroughfares was prohibited, and more than 150 persons were arrested for possessing or distributing leaflets opposing the plebiscite;

(e) The lack of electoral rolls and up-to-date information on the population, which casts doubt on the authenticity of the figures issued by the Government concerning the number of eligible voters. This objection ties in with those raised about irregularities in establishing and operating the polling stations; 8/

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7/ In this connection see A/35/522, para. 61.

8/ The authors of the document report various infringements of Decree-Law No. 3,465, of 12 August 1980 (see A/35/522, para. 56), including the fact that the polling station officials were chosen, not by lot but by the mayors, who selected persons in whom they had full confidence and rejected anyone who could not be fully relied on to support the Government. Furthermore, the polling stations operated without any supervision and without members of the public being allowed to keep a check on them; it was possible to vote several times at different stations, for in the absence of electoral rolls, voters were required simply to present an identity card, which was marked with a stamp that was as easy to erase as the ink used to take the thumb-print, ink was supposedly indelible for 24 hours. The document also states that article 9 of Decree-Law No. 3,465 was not observed, since calculations based on a sample survey of polling stations in the Metropolitan Area show that 37.72 per cent of the voters cast their votes at stations where the number of ballot papers deposited exceeded the number of 300 fixed in that article (some stations recorded 400 or 500 votes). The authors question the accuracy of the figures for the number of votes cast, because a total figure of 500 would have meant an uninterrupted stream of voters, each one taking only 57 seconds to vote, and this was not the case. They point out that, in previous referendums, with only 200 voters to each polling station, some congestion had occurred, whereas on this occasion there had not even been any queues, except at a small number of stations.

(f) The lack of supervision of the balloting by persons other than those appointed by the authorities, the rule established in Decree-Law No. 3,465, of 12 August 1980, whereby all blank ballot papers were to be counted as "yes" votes, and the irregularities in the balloting. 9/

In support of the fifth objection (concerning the number of voters), the authors make a detailed analysis of the number of votes cast in previous ballots and in the plebiscite of September 1980, taking into account the assumed increase in the population of Chile.

15. The Special Rapporteur closely followed the conduct of the campaign, from the time the plebiscite was announced up to the opening of the polls. He was therefore able to confirm that the complaints from the opposition about the means of publicity made available to the supporters and to the opponents of the text of the Constitution were justified. From the information which appeared in the press at the time, it is clear that the facilities available to the two groups were by no means the same. The Government propaganda contained an element which can be regarded as a genuine obstacle to the free and conscious expression of the will of the people. In announcing the plebiscite to the Chilean people, President Pinochet stated clearly that rejection of the draft approved by the Government Junta would signify a return to the situation which had existed prior to 11 September 1973. 10/ This assertion was then reiterated in other official statements, including that of General Sergio Badiola, Minister of State, who described the plebiscite as offering a choice between "freedom, on the one hand, and chaos and anarchy, on the other". 11/

16. Again, Decree-Law No. 3,465, of 12 August 1980, omitted any reference to the consequences of a victory for the opposition. However, aided by the information media favourable to the Government (most organs of the press, radio and television approved and supported the Government policy) others took on the task of clarifying the situation announced by the authorities. For example, Mr. Marcelo Valdés, President of the Confederation of Producers, Wholesalers and Retailers, predicted "panic in the banking sector, a black market in foreign currency, a rise in interest rates, unemployment, and renewed inflation", if the draft constitution was rejected. Mr. Antonio Ladad, President of the Association of Heads of Business Enterprises, said that business would be paralysed, imports would be halted, and the

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9/ Decree-Law No. 3,465 stipulated that the counting should take place "in the presence of the public". However, according to the document in question, at some polling stations, the public was kept at a distance which made it impossible to see how the ballot papers had been marked, and in other cases were denied access to the polling stations. The document adds that blank ballot papers were not counted separately (they were added to the "yes" votes) and that, in many instances, ballots which were spoiled or indicated an obvious intention to vote "no", were counted as blank papers and added to the "yes" votes.

10/ El Mercurio, 11 August 1980.

11/ See A/35/522, para. 59.



country would experience shortages, rationing and unemployment, and Mr. Nelson Radice, Vice-President of the National Confederation of Small Industries and Crafts (CONUPIA), predicted a recession for the small industries and crafts sector. 12/ Similarly, Mr. Guillermo Elton, President of the Chilean Chamber of Commerce, predicted price rises, shortages of consumer goods and a relapse into instability; 13/ while Mr. Ignacio Errazúris, Deputy Executive-Secretary of the Foreign Investments Board, asserted that foreign investors would withdraw from a country which "again embarked on an uncertain course, a country with, in the final analysis, a shaken political, economic and social edifice". 14/

17. It is also certain that the opportunities open to the opposition to express their views were limited, as a result not only of the maintenance of the state of emergency but also of acts by the police and security forces, which apprehended anyone attempting to organize a meeting or express his opinions. The press reported numerous arrests of persons distributing leaflets that called for rejection of the proposed constitution. 15/

18. In this way, the Government widely publicized its position, with dire warnings that the population would sink into poverty if the constitution was rejected. It is therefore irrefutable that Chileans opposed to the new constitution were virtually deprived of the fundamental right to express their opinions.

19. The Special Rapporteur heard evidence from observers confirming that the objections to the procedure for verifying the validity of the results of the plebiscite were justified. He notes that the very conditions in which the plebiscite was held - quite apart from the procedures that were condemned (absence of electoral rolls, lack of supervision of voting and counting by persons independent of the

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12/ El Mercurio, 7 September 1980.

13/ El Mercurio, 6 September 1980.

14/ El Mercurio, 9 September 1980.

15/ The following cases were among those reported: seven persons arrested on 18 August for having distributed leaflets (El Mercurio, 20 August 1980); 12 persons arrested on 23 August for having taken part in a public demonstration (El Mercurio, 26 August 1980); six persons arrested on 27 August for having distributed leaflets calling on people to take part in a demonstration of opposition (La Nación, 28 August 1980); nine persons arrested on 1 September for being in possession of written propaganda (El Mercurio, 4 September 1980); four persons arrested on 5 September for being in possession of leaflets containing a summary of the speech made by the former President, Eduardo Frei (El Mercurio, 6 September 1980); 25 persons arrested in Valparaíso on 8 September for having taken part in a meeting on private premises at which former President Eduardo Frei made a speech (El Mercurio, 9 September 1980) and 54 persons arrested at various points in the centre of Santiago on 8 September, following demonstrations deemed to be disturbances of the peace (El Mercurio, 10 September 1980).

Government, etc.) - mean that the plebiscite can be viewed as further evidence of the little importance attached by the Chilean authorities to the aspirations and rights of the Chilean people, in particular the right to express their opinions. The maintenance of the state of emergency, marked by the lack of guarantees of liberty and security of person, together with the restrictions on the rights of assembly, association, information and expression, mean that the plebiscite was nothing more than a demonstration of the discretionary powers of the Government. The authorities made no effort to organize a credible referendum. On the contrary, they resorted to certain formalities in an attempt to legitimize their hold on power, thereby merely confirming their contempt for the principles enunciated in article 21 of the Universal Declaration of Human Rights and reaffirmed in article 25 of the International Covenant on Civil and Political Rights, to which Chile is a party.

20. Finally, it is curious, to say the least, that a referendum of such importance - given the far-reaching changes that it introduces - should have been announced, arranged and held within the space of a month. One might well ask what the reason was for such haste, particularly when a number of draft constitutions are known to have been prepared or in the process of preparation for more than a year, without any attempt ever having been made to take account of views other than those favourable to the Government.

B. Text of the new Constitution approved by the plebiscite of 11 September 1980

21. In his report to the General Assembly at its thirty-fifth session (A/35/522), the Special Rapporteur enumerated and explained the main provisions which had been promulgated by the present Chilean Government and, in particular, placed restrictions on the exercise of fundamental human rights. He also referred to the draft Constitution which was to be the subject of a plebiscite on 11 September 1980 and pointed out in that connection that "the text of the draft brings together, in a single body of law, various provisions promulgated by the military Government". 16/

22. Reference was made in that report to a number of the provisions of the new Constitution that relate to fundamental human rights. The present report examines the text of the Constitution in greater detail, with the aim of supplementing the earlier report.

The "transitional provisions"

23. The so-called "transitional" provisions are contained in a separate section at the end of the Constitution. They comprise a set of rules which waive the application, or defer the entry into force, of other rules laid down in the first part of the Constitution. Furthermore, a number of these provisions confer additional powers on the President of the Republic and the Government Junta. 17/

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16/ See A/35/522, para. 60.

17/ The transitional provisions elevate to the rank of constitutional norms a number of provisions which are already in force and were commented on at the time by the Special Rapporteur. See document A/35/522, paras. 24-48, commentary on Decree-Laws Nos. 3,168 and 3,451.

24. The parliamentary-type institutions established in the first part of the Constitution are suspended and will not function for a period of nine years. The right of the people to nominate candidates for the presidency of the Republic, an office with very extensive powers, is also suspended for a period of not less than nine years. On completion of the presidential term of office of eight years, during which time, as stipulated explicitly in the Constitution, the office of President of the Republic will be held by General Pinochet, the military Junta will nominate a new candidate, who will be accepted or rejected by a plebiscite. If his candidacy were to be rejected, General Pinochet would have to relinquish the presidency one year later and call presidential elections. If, in a further plebiscite, the people approve the candidate proposed by the Junta, not until eight years later (that is, after a period of 16 years) would the people be able to nominate their own candidates under procedures to be determined in future legislation. The entry into effect, within the prescribed time-limits, of the rights and institutional provisions set forth in the Constitution is also subject to approval by the military Junta, which may propose amendments to the Constitution, to be approved by a plebiscite. Consequently, during the period in question, a plebiscite would be the only means established in the Constitution for consulting the people. Two plebiscites held in Chile under the present régime <sup>18/</sup> give grounds for questioning the validity of this means of expression of the conscious and informed will of the people. The Congress or Parliament, governed by the first part of the Constitution in matters pertaining to elections and functions and consisting of two Chambers (Deputies and Senators) that would constitute the legislative power, would not be elected until nine months after the beginning of the second presidential term and would take office three months later. Consequently, in the nine years beginning March 1981, when the new Constitution is to enter into effect, there will be no Parliament, and the legislative power will be in the hands of the military Junta.

25. In practice, the so-called "transitional" provisions create a situation different from that envisaged in the articles of the first part of the text, which would come into force only after nine years. Consequently, these provisions take precedence over those which are not transitional but none the less play a secondary and ancillary role.

26. The provisions of the Constitution that do not enter into force straight away might be amended in the nine years ahead. The powers conferred on the military Government under the new Constitution are very broad, and the methods for introducing legislative amendments remain entirely under the Government's control. This report would not appear to be the appropriate place to consider texts that could well meet the same fate as the Constitutional Acts promulgated in 1976. <sup>19/</sup> Accordingly, it will deal, within the context of human rights, with the rules that are contained both in the "transitional provisions" and in the body of the Constitution and are due to enter into force in March 1981.

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<sup>18/</sup> See E/CN.4/1266, paras. 36-44.

<sup>19/</sup> See A/35/522, paras. 51-55.

27. The Special Rapporteur takes the view that, in keeping with his mandate, he should inform the Commission on Human Rights of the legislative texts that have been adopted during the period covered by the report and will enter into force in the immediate future.

The concentration of power and the impairment of control procedures

28. In the report submitted to the General Assembly at its thirty-fifth session, it was stated that the Constitution reproduces numerous texts promulgated by the Government since 1973 and already discussed in previous reports of the Ad Hoc Working Group and the Special Rapporteur. The new provisions make for a considerably greater concentration of power in the hands of the military Government, as the Ad Hoc Working Group pointed out in the report on its visit to Chile. 20/

29. In that report, specific reference was made to the lack of any genuine control over the acts of the Executive by the other State authorities, which had either been abolished or had lost their independence or traditional powers. The new text restricts still further the powers of institutions which were previously responsible for monitoring the acts of the Executive and protecting the rights of the people. The new organs that will seemingly exercise such control form part of the military authorities, or are established by them. Consequently, it is the military authorities themselves that are responsible for monitoring their own actions.

30. The Government Junta will continue to exercise constituent and legislative powers. A National Security Council will be established to advise the President of the Republic on legislative matters and it will also be authorized to give its opinion on any event, act or matter "which it considers as presenting a serious danger to the foundations of institutional government or potentially jeopardizing national security". In addition, this body will have access to all information concerning the internal and external security of the State. Authorities or officials will be obliged to provide it with all the requisite information and any refusal to do so will be penalized. For the next eight years, the National Security Council will comprise the President of the Republic, the members of the Government Junta and two civilians, namely the President of the Council of State and the President of the Supreme Court. As a result, the latter will be involved, at the institutional level, in matters of surveillance and security, functions diametrically opposed to those traditionally performed by that office, which were to administer justice with impartiality and to ensure that other State authorities did not abuse their authority by violating or disregarding the human rights of the population. The independence of the judiciary is thus jeopardized, for in organizational terms it will become part of an agency performing tasks devolving exclusively on the Executive. Its specific functions relate to "internal security", in other words, its purpose is to keep a check on activities critical of, or opposed to, the Government. As a member of a body concerned with "the internal security of the State", the highest-ranking member of the judiciary will be involved in duties that normally fall to the Executive. Consequently, there is a considerable risk that his own powers and authority will be restricted in practice, despite the texts that reaffirm the independence of the judiciary.

31. A Constitutional Court is also being set up and will exercise powers of constitutional supervision over the authorities, functions which were previously the preserve of the judiciary and the Office of the Comptroller-General of Chile. 21/ Nevertheless, for the next eight years, the majority of the members of the Court

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20/ See A/33/331, para. 70.

21/ See A/33/331, paras. 170-181.

will be chosen by the President of the Republic, the National Security Council and the Government Junta. 22/ On this question, Mr. Hernán Montealegre, who is a lawyer and also teaches at the Academy of Christian Humanism, said in an article entitled "A Constitution bogged down in the past": 23/

"The very authority that should be subject to supervision is the one that designates those who are to carry out the supervision, by removing that function from the independent power of the judiciary and, in particular from the Supreme Court. What intransigence this Government shows in flaunting its discretionary powers and ensuring that they are exercised under the formal and confusing cover of legal instruments and authorities".

32. In addition, the powers formerly exercised by judges in protecting the rights of the population are restricted by specific constitutional provisions which will be dealt with later.

33. Under the new institutional scheme of things, the President of the Republic acquires special powers, far greater than those he lawfully possessed before the approval of this Constitution. He retains the powers he held as President of the Junta, since he continues to be part of the Junta, despite the fact that another representative of the army is also a member. It would take too long to list the powers of the President of the Republic, which include the power to promulgate texts on various matters relating to the law. What is more, he is empowered to replace, at any time, the general officer of the army who is a member of the Government Junta and is therefore merely a representative of the President within the institutional body which exercises legislative and constituent powers.

34. With the new structures created by this Constitution, particularly during the transition period, the Armed Forces are paramount in all matters involving the government of the country, and so it can be said that Chile will remain in the hands of a military body which has in fact strengthened its powers and scaled down the checks and balances that existed previously. This type of government, which was previously of an exceptional and temporary nature, has become stabilized and institutionalized.

#### Special powers of the President of the Republic during a state of emergency

35. The new Constitution empowers the President of the Republic to declare various states of emergency, with much greater powers than he had during the seven years of military government after 1973.

36. The President may, in the event of "internal war or internal disturbances", declare a state of siege with the approval of the Council of State; 24/ indeed, such a measure may take effect immediately, even before the Council of State comes to a decision, if the National Security Council has agreed to it. A declaration of a state of siege empowers the President of the Republic to:

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22/ The Constitutional Court will comprise seven members, including three judges of the Supreme Court, chosen by that Court, one member chosen by the President of the Republic, two by the National Security Council and one by the Junta.

23/ Mensaje No. 293, October 1980.

24/ A body which still exists and which was established by the current Government. See A/31/253, paras. 106-111.

"Transfer persons from one place to another in Chilean territory, confine them in their own homes or detain them in places which are not prisons or places intended for the detention of ordinary prisoners and expel them from Chilean territory. He may, moreover, 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, restrict exercise of the right to freedom of association and to form trade unions and impose censorship on correspondence and the communications media".

37. Furthermore, the President may likewise declare a state of emergency or disaster in all or part of Chilean territory. Under a state of emergency, the following measures may be taken: restriction of freedom of movement and a ban on certain persons entering or leaving the country, suspension or restriction of the right of assembly, restriction of freedom of information and opinion, and censorship of correspondence and the communications media.

38. The twenty-fourth "transitional provision" confers on the President an exceptional power which is entirely new in Chilean law, namely, that of declaring, on his own initiative and on the basis of simple "acts of violence", whose seriousness he alone is competent to assess, a new type of state of emergency (estado de excepción). The declaration of the state of emergency may be renewed after six months. The President is thus empowered to take very serious measures, such as those provided for in the event of internal war or internal disturbances - situations in which he may declare a state of siege. 25/

39. During the state of emergency, the President may adopt any measures taken under a state of siege, except order persons to be arrested, transferred from one place to another in Chile, expelled from the country, or place restrictions on exercise of the right of association and trade union rights. Under the terms of the twenty-fourth provision, the President may order persons to be detained for up to 20 days, order them to reside in a specified area for a period of up to three months, restrict the right of assembly and freedom of information and deny Chileans and foreigners entry into Chile or expel them from the country. 26/ It will be seen below that as in a state of siege, no appeal may be made by anyone affected by measures ordered by the President of the Republic.

40. Such an exceptional régime (renewable every six months) may be declared even if others are still in force. If it is applied at the same time as the state of emergency (valid for 90 days), which the President may also declare without consulting any other authority, restrictions peculiar to a state of siege will in practice be imposed. Such a case may arise because the text of the new Constitution expressly provides that the President "may simultaneously declare two or more states of emergency, if the grounds authorizing him to do so exist" (article 40, paragraph 5). It will be enough merely for the President of the Republic to interpret the facts in this way and the restrictions then imposed on human rights will be the same as during a state of siege. Thus, the restrictions will depend exclusively on his discretion and no specific situation of internal war or internal disturbances will be needed in order for them to be imposed.

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25/ See A/35/522, paras. 68-69.

26/ See the text of the twenty-fourth provision in document A/35/522, para. 68.

41. The terms of the twenty-fourth provision do not take account of the international commitments undertaken by Chile. In no sense can it be said that suspension of rights and guarantees, as allowed for in that provision, is justified by a "public emergency which threatens the life of the nation" or that it is applied "to the extent strictly required by the exigencies of the situation" (article 4 of the International Covenant on Civil and Political Rights).

Consequences of states of emergency in terms of human rights and protection of such rights by the courts

42. As already noted, many fundamental human rights are severely curtailed during states of emergency which the President may declare on his own authority, without consultations or any other procedure designed to halt arbitrary acts. Thus, liberty and security of person are dependent on the will of the President alone, as are trade union rights, the rights to freedom of association, assembly, information, expression and communication and the right of Chileans freely to enter or leave their country. The Government also arrogates to itself the power to expel Chileans from the country or to prohibit them from entering it in times of emergency. These measures relating to expulsion or refusal of entry "will 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" (article 41, paragraph 7).

43. As stated previously, earlier provisions of an exceptional and temporary nature had restricted the liberty and security of persons, their right to remain or to live on Chilean territory and other rights. They endure under the new Constitution and are ranked as constitutional rules. Legislation violating fundamental human rights, which was believed to have been enacted for a particular purpose and had been so defined by the Chilean authorities, has thus become a permanent feature of the country's basic law. The text of the new Constitution also contains provisions which considerably reduce the power of the judiciary to protect persons who claim that their rights have been violated or are being threatened. For example, articles 20 and 21 lay down the legal conditions in which applications for remedies of protection and amparo may be made and specify the measures to which such applications may immediately give rise. Further on, however, in the section relating to states of emergency, it is stipulated that applications of this kind may not be made during a state of general alert or a state of siege and that, during states of emergency, an application for protection may not be filed in connection with measures taken by the authorities in accordance with the constitutional provisions governing such states. In neither case are the courts allowed to "attempt to determine the grounds for the measures taken by the authority in the exercise of its powers". Such a provision deprives judges of one of the important powers they enjoyed under the previous Constitution, namely, that of determining whether power was being exercised in a reasonable manner, without misuse or abuse, i.e. whether there had been any arbitrariness or injustice, either with regard to the substance of the matter or to the severity of the penalties imposed. Accordingly, a matter which has been discussed during the last seven years of military Government and interpreted by the Ad Hoc Working Group 27/ and by the Special Rapporteur 28/ as implying a restriction, by the Chilean judges themselves, on their monitoring and protective functions has been settled once and for all by reducing the powers of the judiciary.

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27/ A/33/331, paras. 185-198.

28/ A/34/583, paras. 77-79.

44. In those seven years, some judges did make use of their power to monitor and keep a check on the substance of the acts of other State authorities and the Special Rapporteur took it to be a promising sign that might herald greater independence for the judiciary in the future. The new Constitution rules out any possibility of independence and of monitoring activities in such matters. Henceforth, if a person is detained throughout the duration of any one of the states of emergency, without any grounds for detention, the Chilean Courts will be unable to put an end to such deprivation of liberty, since they cannot "determine the grounds for the measures taken by the authority". In such instances, protection of human rights is therefore an illusion.

45. In the case of the state of emergency provided for in the twenty-fourth provision, mentioned in paragraph 38 above, the judges have no possibility of protecting the rights of individuals. The measures applied under this provision cannot be reviewed by judges because the provision expressly rules out such a possibility by stating that such measures "shall not be subject to any appeal other than reconsideration by the authority which ordered them". The rule embodied in the twenty-fourth provision is arbitrary in two ways, because it authorizes the President to suspend a set of guarantees and fundamental rights on his own authority and without reference to the generally established rules, and because it prevents the judges from reviewing any decision taken by the President under the powers he has arrogated to himself by declaring the state of emergency. People are thus totally deprived of any defence or protection of their rights.

46. Again, the Supreme Court will be deprived of a power it possessed under the Constitution that will remain in force until March 1981, namely, to review decisions taken by the military courts in time of war. It is quite clear that the Supreme Court, which traditionally exercised this power, has refused to exercise it under the present military Government, something which has given rise to serious criticism. <sup>29/</sup> The new Constitution removed the wartime military courts from the administrative, disciplinary and financial control of the Supreme Court. Henceforth, under a provision set forth in the Constitution, the decisions taken by the wartime military courts will not be subject to any review by the Supreme Court.

47. All the restrictions placed on the powers of the judges lead to the conclusion that the new Constitution does not ensure respect for the principles embodied in articles 9 and 14 of the International Covenant on Civil and Political Rights.

#### Disqualification on political grounds

48. In his report to the General Assembly at its thirty-fifth session, the Special Rapporteur made some observations on new constitutional provisions which specify disqualification on the grounds of present or past political activities. <sup>30/</sup>

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<sup>29/</sup> See A/31/253, para. 375 and annex XXII.

<sup>30/</sup> See A/35/522, para. 71.



49. In this respect, article 3 of the Constitution provides that:

"Any act by a person or group of persons designed to propagate doctrines which attack the family or advocate violence or a view of society, the State or the legal order that is totalitarian in character or is based on class struggle shall be unlawful and contrary to the institutional order of the Republic.

Political organizations, movements or parties which, because of their aims or the activities of their members, are intended for such purposes shall be unconstitutional.

The Constitutional Court shall be responsible for trying offences against the provisions of the preceding subparagraphs.

Without prejudice to the other penalties established in the Constitution or the law, persons who are or have been guilty of the offences referred to above shall not be able to perform public duties or hold public office, whether or not elective, for a period of ten years from the date of the Court's decision. Similarly, during that period, they may not act as rectors or directors of educational establishments or teach therein, operate any of the mass media, act as directors or administrators thereof or perform duties therein connected with the broadcasting or dissemination of opinions or information; nor may they act as leaders of political organizations, educational or neighbourhood organizations, or professional, employers' students' or trade union organizations in general.

If, at the time of the Court's decision, the persons referred to above also hold a public post or office, whether or not elective, they shall automatically lose it.

Persons penalized under this provision may not be rehabilitated during the period specified in the fourth subparagraph.

The duration of the disqualification stipulated in this article shall be doubled in the event of recidivism."

50. The Special Rapporteur notes that this article makes it a punishable offence to express certain political and social opinions which are neither clearly nor precisely defined, and that this may affect very large sectors of the Chilean population. Moreover, it creates very definite discrimination on the grounds of political or social ideas and is plainly a breach of the provisions of articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights and articles 2 and 3 of the International Covenant on Civil and Political Rights, to which Chile is a party. The Special Rapporteur also notes that the activities penalized cover not only those found to have taken place after the entry into force of the article but also earlier activities (the text refers to persons "who are or have been guilty of the offences referred to"). Hence, article 15 of the International Covenant on Civil and Political Rights is also breached. Under this article of the Constitution, participation in the political, social, economic and cultural life of the country can be completely ruled out and enjoyment of the rights and guarantees recognized in various provisions of the International Covenants can be completely withheld (in particular, the rights and guarantees enunciated in articles 19, 22 and 25 and 26).

Political rights

51. Political activities will still be prohibited, as they have been up to now. <sup>31/</sup> The tenth transitional provision stipulates that "Pending the entry into force of the basic constitutional law on political parties referred to in article 19, paragraph 15, it shall be prohibited to engage in or to encourage any activity, action or measure of a party political nature, whether by natural or legal persons, organizations, entities or groups of persons. Anyone contravening this prohibition shall be liable to the penalties laid down by the law".

52. Article 19, paragraph 19, places a restriction on trade union organizations: they and their officials may not engage in party political activities.

Over-all effects of the application of the new Constitution on the human rights of the Chilean population

53. Many provisions of the new Constitution that violate human rights and restrict the guarantees that safeguarded them under the previous Constitution were already in force in Chile; they were contained in various decree-laws which the Ad Hoc Working Group and the Special Rapporteur have commented on at the time.

54. In practice, those texts were used as legal justification for many of the violations of human rights that have been committed in the past seven years. The 1925 Constitution, however, enabled judges to review measures taken by the Executive and to protect the rights of individuals, even though this power was exercised only in exceptional cases. Such protection will no longer fall within the competence of the judges because the country's basic law deprives them of the power to rule on the substance of measures taken by the authority in exercise of the powers conferred by the Constitution when a state of emergency is declared.

55. Many of the measures applied in the last seven years also contravened constitutional provisions because they were enacted by the Junta "in exercise of its constituent power", something that made them the interim and temporary measures typical of an exceptional situation. The fact that they are included in the new Constitution means that they now rank as supreme legislative provisions, thus eliminating any possibility of challenging them through the courts.

56. The new Constitution creates a legal situation that departs from principles for which the country's previous constitutional texts had laid firm foundations in Chile's history and its legal and institutional traditions. Since Chile is a party to the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, it should be pointed out that the new Constitution sets up as basic rules provisions that are contrary to the principles, rights and guarantees enunciated in those Covenants and also flout other rules. Chile nevertheless undertook to take the necessary steps to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenants (article 2 of the International Covenant on Economic, Social and Cultural Rights and article 2 of the International Covenant on Civil and Political Rights).

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<sup>31/</sup> See A/35/522, paras. 14 and 75-81.

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

### A. Arrests and detentions

57. The information that the Special Rapporteur gave to the General Assembly 1/ describes the situation with regard to arrests and detentions in 1980. The report points out that many arrests are made late at night, at the homes of those concerned, by ten or more heavily armed agents in civilian clothing, who produce no arrest or search warrant, search houses and force the members of the family to sign blank sheets of paper. Such conduct is similar to that of DINA (Directorate of National Intelligence), which was responsible for the disappearance of many persons from 1973 to 1977.

58. The person arrested is taken to an unknown destination by those who have arrested him, and the members of his family are tormented by fear and anxiety because they do not know what has happened to him. Sometimes, the persons arrested disappear for several days before the security agencies admit to having them in their hands. Most of them are taken to places that are kept secret and they are questioned and subjected to various kinds and degrees of torture. They are even forced to sign papers and statements which they are occasionally allowed to read. They are photographed and filmed while making statements under duress.

59. In August and September, many people were arrested for making it known in one way or another that they refused to accept the text of the Government's draft Constitution. In Santiago alone, 74 persons in all were arrested for that reason. Some of them were taken to police premises, while others, who were blindfolded, were taken to secret places and were ill-treated. Most of those who were taken to Carabineros barracks were released after a few hours, but they were charged with creating a public disturbance and distributing propaganda without official authorization. For example, Mr. Angel Valdebenito Mejías and Mr. Julio Ezequiel González Mella were arrested by carabineros on 9 September 1980 during a demonstration in favour of a "No" vote in the plebiscite of 11 September. They were detained for several hours and, before they were released, were forced to pay a fine of 500 pesos and to sign a statement that they had not been ill-treated.

60. María Georgina Araya Negrete, Ricardo Antonio Lavín Muñoz and Juan Carlos Morales Soto were arrested on 2 September 1980 on the same grounds (accused of spreading propaganda against the text of the Constitution. Three armed individuals wearing civilian clothes made the arrest and, in doing so hit them about, especially Maria Georgina Araya Negrete, who was only 15 years old. They took them to Carabineros station No. 26 and tortured them throughout the night. The girl was released on 3 September and the men on 4 September, at police premises that were different from the ones at which they had been tortured.

61. During the days leading up to the plebiscite, many other people were arrested for activities aimed at rejecting the text proposed by the Government. Although they were soon released, they were all detained in police premises, ill-treated, humiliated and even sentenced to pay fines after being accused of creating a public disturbance.

62. Many persons were arrested for saying that they disagreed with the text proposed by the Government. Others were arrested because they protested against the prison conditions which political detainees had to endure. Christmas visits were restricted in 1980 and only two persons were let in for two hours, whereas

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1/ A/35/522, paras. 96-103.

in 1979 an unlimited number of relatives had been allowed in for four hours. This gave rise to discussions and to protests by relatives who gathered opposite the Santiago Prison, and the prison authorities banned all visits.<sup>2/</sup> A week later, the newspapers reported that 14 relatives waiting on 4 January at the main gate of the same prison to see the detainees, were not allowed in and were arrested.<sup>3/</sup> According to a statement by the Association of Relatives of Detainees, four of the persons detained, all women, were placed at the disposal of the CNI.<sup>4/</sup>

63. Other persons were arrested for allegedly belonging to political groups which had been banned under provisions enacted by the Junta, including Decree-Law No. 77, of 13 October 1973, which dissolved and declared unlawful various political parties and laid down the penalties for persons who disregarded the ban on joining them or spreading propaganda in support of them.<sup>5/</sup>

64. In early November, 33 persons accused of being members of banned political parties were arrested in the communes of Curicó and Molina. Seven of them were assigned to enforced residence in remote places, 25 were released after a few days and only one was brought to trial. According to the statements they made under oath, all the persons arrested were apparently subjected to unlawful coercion. The arrests were made, usually with violence, by armed civilians who claimed that arrest warrants had been issued by Carlos Eva, the military prosecutor.<sup>6/</sup> However, only one of the persons arrested in this way was placed at the disposal of the Office of the Military Prosecutor.

65. Trade union activities, exercise of the right of association or freedom of expression in universities or in cultural life, and social activities not included among those allowed or protected by the Government, led to many arrests. As a rule, the persons arrested for activities of this kind were accused of serious offences, such as subversion and terrorism. They include five students of teacher-training at the University of Chile at La Serena who were arrested on 30 August 1980 as a result of a complaint by the regional Intendant, who accused them of belonging to an extremist cell aimed at creating chaos in the region. It was also said that they had been assisted in their activities by a priest and a lawyer who worked for the Archbishop of La Serena.<sup>7/</sup> After remaining in prison for 108 days, however, they were unconditionally released; this clearly shows that the accusations against them were groundless. Despite that judicial decision, the Rector of the University of Chile decided to expel those students from the University.<sup>8/</sup>

66. Spreading false information about persons who have been arrested is still a common practice among the security agencies. Many persons are accused of "extremist" or "subversive" activities, and sometimes they are also accused of having

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<sup>2/</sup> Hoy, No. 180, 31 December to 6 January 1981.

<sup>3/</sup> El Mercurio, 5 January 1981.

<sup>4/</sup> Ibid.

<sup>5/</sup> Several cases were reported in the press; for example, on 18 July, five persons accused of being members of the Socialist Party were arrested and brought to trial (El Mercurio, 11 September 1980); in October, the authorities arrested six persons who were accused of being members of the Revolutionary Communist Party and of engaging in political indoctrination activities (El Mercurio, 11 October 1980); in November, they arrested four persons who were accused of distributing printed political tracts (El Mercurio, 9 November 1980).

<sup>6/</sup> Solidaridad, No. 105, second fortnight of November 1980.

<sup>7/</sup> See chapter II, section E, para. 112.

<sup>8/</sup> El Mercurio, 27 December 1980.

committed terrorist offences. However, the persons who perpetrated serious terrorist acts in Chile in 1980, such as the murder of a carabinero on the Santa Lucía hill, the murder of Lieutenant-Colonel Roger Vergara 9/ and the abductions by members of the so-called Comando de Vengadores de Mártires (COVEMA) (Martyrs' Avengers Commando) who killed one of the persons they had tortured, have still not been identified. 10/

67. On various occasions, it has been announced that a person under arrest was guilty of serious terrorist offences. For example, in early September, the National Information Agency (CNI) reported the arrest of two extremists who were said to have taken part in an attack against three banks located not far from one another. The persons caught were Mario Muñoz Espinosa and Eduardo Arancibia Ortiz. According to the same source, the latter had confessed that he had also fired the shots which had caused the death of a uniformed police captain. 11/ A person who was arrested with them and then released reported in a written judicial statement that Mario Muñoz Espinosa, with whom he had been held in a secret place belonging to CNI, had been subjected to cruel and unrelenting torture. The torturers tried to force him to say that he was guilty of the attack on the banks and of the bombing of the CNI investigation premises which had taken place on 5 September 1980. One month after the arrest, on 7 October 1980, the examining magistrate, Enrique Paillós, stated that there were no grounds for bringing Muñoz Espinosa and Arancibia Ortiz to trial for the offences with which they had originally been charged. After remaining in the hands of CNI for 20 days and being tortured and publicly accused of serious crimes, they were both sentenced for a much less serious offence.

68. Arrests intended to secure possible confessions and statements accusing third persons of punishable acts are frequent. A person who was arrested on 9 September had the following story to tell:

"They made me clench my fingers and use just my fists to lean against the wall. They began to question me and hit me all over, particularly my chest, with bags of wet sand ... Then they took me to a corner, made me hold onto some metal objects and gave me two electric shocks ... They tied my feet with metal wire and questioned me about Osvaldo Flores. As a result of the torture, I had to admit that Flores was a member of the resistance ...".

69. According to the account contained in the document, the tortures were continued, along with threats of death. The account then says:

"... they made me make a statement containing things I had not said, for example, that I was organizing extremist groups to overthrow the dictatorship and set up a Marxist-type socialist government; that one of my neighbours, named Isolda Amaro, had given me Christian Democrat leaflets and that I was collaborating with the people who supported that policy; during that time they did not stop beating me ... They gave me a medical examination, they threatened to take me to Station 5 on the Southern Pan-American highway and kill me ...". 12/

This person was released on 11 September without appearing before a judge.

9/ See A/35/522, paras. 90 and 93.

10/ See A/35/522, paras. 135-140. In November 1980, Ernesto Baeza, the former Director of the Police Department, told the newspaper, La Tercera de la Hora, that "COVEMA was invented by certain undesirables to cover up and to make people forget the crime of Commander Roger Vergara and the murder of a guard during the attack on the three banks".

11/ El Mercurio, 10 September 1980.

12/ Application for amparo by Esteban Andrés Espinosa to the Santiago Court of Appeal.

70. In November, Chile held the first "National Day of Lawyers in Defence of Human Rights", organized by the Vicaría de Solidaridad. In the matter of arrests and detentions, the participants said that the number of arrests in 1980 had been lower than in 1979 in absolute terms, but the number of arrests of individuals reported to the Vicaría de Solidaridad had increased from 372 in 1979 to 616 in 1980. However, the number of mass arrests for demonstrations or other reasons had declined.

71. Violence and large-scale use of men and weapons, failure to produce arrest warrants, raids on homes without search warrants, threats and interrogations of relatives and neighbours, accusations of offences by the persons placed under arrest that are later proved false since most of the accused were not brought to trial on the charges laid against them by the security agencies - these are the typical features of arrests of individuals, as noted above. The security agencies, particularly the CNI, continue to make arrests without warrants from the competent authorities. In doing so, they have had the co-operation of the Minister of the Interior, who later issues decrees ordering the arrest of persons already in the hands of those agencies, which have thus been able to arrest people at their whim and then inform the Ministry of the Interior, which confirms the action by means of a decree. This illegal procedure, which has become a common practice, is described in writing in certain legal files. For example, in the case of Germán Guillermo Haisohn Arismendi and Ricardo Jesús de la Riva Martín, who were arrested on 9 April 1980, on the same day the National Information Director sent a note to the Minister of the Interior stating:

"In accordance with the usual procedure, a special decree should be issued ordering the detention of the above-mentioned members of MIR 13/ in the premises of the National Information Agency".

It should be noted that, under a measure adopted in 1980, 14/ the Minister of the Interior may order arrests to be made during a state of emergency by means of a decree signed by him and bearing the formula "On the instructions of the President of the Republic", but there is no provision which authorizes the security agencies themselves to take steps of this kind.

72. On several occasions, the Special Rapporteur has drawn attention to the irregular nature of this practice. 15/ The fact that it is constantly and publicly used without any objections from the judiciary constitutes conduct that violates the principles enunciated in the international instruments which protect liberty and security of person (article 9 of the International Covenant on Civil and Political Rights). In this way, it is the security agencies that decide whether a person should be arrested and the competent authority merely confirms their decision. The security agencies also make accusations that they communicate to the media and hold detainees (and their lives and physical integrity) at their disposal for an arbitrary period of time, since detention in secret places may last up to 20 days. 16/

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13/ Members of the Movimiento de Izquierda Revolucionaria (Revolutionary Left Movement).

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

15/ See A/34/583, paras. 47-51.

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

73. As the Special Rapporteur has repeatedly pointed out in his reports,<sup>17/</sup> the increase in the number of arrests of individuals in 1980 and the arbitrary manner in which they were decided upon and carried out are the direct result of the extensive powers that are granted in practice to the security agencies. The changes that, to all intents and purposes, were to be made in the functions of these agencies when DINA was dissolved and the CNI was established have not taken place. In fact, the CNI, like the other security agencies, tends to make ever greater use of the DINA methods that sadly marked the years of the most serious violations of human rights in Chile.

#### Enforced residence

74. In the Special Rapporteur's report to the General Assembly at its thirty-fifth session, reference was made to the enactment of Decree-Law No. 3,168 of 20 January 1980, which authorizes the Minister of the Interior to take, during the state of emergency, measures assigning persons to enforced residence for periods of up to three months, without such persons being judged beforehand and without the judges being able to take part in the decision or review such a step.<sup>18/</sup> Between March and early December 1980, more than 100 persons completed or were in the process of completing periods of enforced residence ordered under this rule. They were all assigned to inhospitable places far removed from their homes and encountered serious housing and subsistence problems. Of the 36 persons arrested at Curicó in early November, 20 were placed at the disposal of the military court of Curicó on the instructions of the Minister of the Interior, who requested that they should be tried for infringing the law relating to the internal security of the State. Seven of those 20 persons were exonerated by the military prosecutor of Curicó. The Minister of the Interior nevertheless assigned them to enforced residence. Twelve of the persons were released unconditionally by the Talca Court of Appeal, which found no valid reason to bring them to trial. One week later, however, they were again arrested and assigned to enforced residence in inhospitable places in northern Chile. Mr. Jaime Castillo, President of the Chilean Commission on Human Rights, stated in this connection that it may "therefore be considered that enforced residence is taking the place of a penalty which could not be imposed on them because there were no grounds for doing so. It must therefore be characterized as an abuse of power".<sup>19/</sup>

#### B. Torture and ill-treatment

75. In his report to the General Assembly at its thirty-fifth session, the Special Rapporteur stated:

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

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<sup>17/</sup> See A/35/522, paras. 193-216.

<sup>18/</sup> See A/35/522, paras. 24-35. See also paragraphs 104 to 113, which relate to the penalties of enforced residence imposed in the first half of 1980.

<sup>19/</sup> Solidaridad, No. 106, first fortnight of December 1980.

76. The Special Rapporteur also referred to Decree-Law No. 3,451, of 16 July 1980, which empowers the Minister of the Interior to hold detainees for a period of up to 20 days without having to inform the judicial authorities.<sup>20/</sup> In practice, this power is exercised by the security agencies. Persons arrested by these agencies are taken, blindfolded, to secret premises where they are interrogated and very often subjected to varying degrees of cruel treatment and physical abuse, depending on the circumstances.

77. Under Decree-Law No. 3,451, these powers may be exercised in connection with "investigations into offences against the security of the State which have resulted in the deaths, attacks on the physical integrity or the kidnappings of persons". It is apparent from information available to the Special Rapporteur that, during the month after this decree-law came into force, more than 30 people spent a period of time in excess of five days (the maximum permissible for an investigation not involving the kind of offence referred to in the decree-law) in secret centres. Over 20 of them were victims of ill-treatment and torture. None of these people had been arrested for the purposes of investigation into offences involving the deaths, attacks on the physical integrity or the kidnappings of persons.

78. Valeriano Dinamarca Bravo, one of these detainees, spent 18 days in a secret centre, from 26 July to 13 August. On 13 August, he was brought before a military prosecutor, who declared that he lacked jurisdiction because the offences with which the detainee was charged did not come under military law. Criminal proceedings have now been brought against him before the ordinary courts, for offences against the law on State security. The accused stated that, during the 18 days that he spent in a secret place of detention, he was subjected to the following ill-treatment: he was forced to consume excrement, was tortured by electric shocks all over his body and was beaten so brutally that he suffered tympanic lesions and his body was covered with bruises, with haematomas. In addition, he was compelled to make statements before a television camera that were prejudicial to him. Other people who had been arrested at the same time and were released also had to repeat before the cameras phrases which those who had had them arrested forced them to say under threat of torture.<sup>21/</sup>

79. The kind of torture that persons under arrest have complained about in recent months is similar to that described by the Special Rapporteur in earlier reports:<sup>22/</sup> electric shocks, beatings, suffocation, mock killings and all kinds of moral humiliation and physical assault. The following is taken from a complaint filed with the first military prosecutor (army and Carabineros) on 6 August 1980:

"Then, during the 14 days I was in the hands of the CNI, I was tortured in a barbaric manner; my ears were tugged brutally, I was repeatedly struck on both ears at the same time, and current was passed through my feet and the back of my neck while I had a cloth around my head to make me suffocate. In the end, I was undressed and placed on the 'grill' where I was given electric shocks all over my body, particularly the testicles. This torture took place on Saturday, 19 July and Monday, 21 July last. On Tuesday, 29 July, I was brutally beaten and thrown onto a bed; several of my torturers leapt on me and tried to hang me, and finally, they made me play Russian roulette by putting a revolver up against my neck and face".

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<sup>20/</sup> See A/35/522, paras. 36-48.

<sup>21/</sup> Solidaridad No. 100, first fortnight of September 1980.

<sup>22/</sup> See A/34/583, para. 121.



80. The intensity of the torture and the brutality of the treatment to which the detainees are subjected depends not on their ability to withstand it but on the effectiveness of the methods used to humiliate and terrorize the detainee and, if possible, to make him supply information. Neither the age nor the sex of the victims is taken into account so as to spare them ill-treatment or use less severe torture.

81. Many women have protested that they have been subjected to ill-treatment and torture. Among them, a young girl of 15 years of age, arrested on 2 September 1980, disclosed before the Court of Appeal that she had been struck while she was lying on the ground and sexually assaulted by a captain from the Carabineros station No. 26. 23/

82. Very often the persons who have been tortured are released, and others are simply accused of engaging in political activities since the exercise of political rights is prohibited in Chile. Sometimes, they receive prison sentences, simply on the basis of a decision by the Minister of the Interior. For example, in the districts of Molina and Curicó, 33 people, some of them schoolteachers, were arrested between 1 November and 7 November 1980. All were apparently unlawfully subjected to severe ill-treatment (they state that they were beaten, forced to consume excrement, subjected to electric shocks, etc.), and they have so testified under oath. Of the 33 detainees, seven were sent to remote places on the order of the Minister of the Interior, who invoked Decree-Law No. 3,166 of 20 January 1980 24/ in this connection. So, without being charged with any offence and simply on the basis of an arbitrary decision by the Minister of the Interior, they were assigned to enforced residence. Twenty-four others were released and only one person was brought before a military prosecutor. The people who made the arrests said that they had acted under a general warrant of investigation from the military examining magistrate, Carlos Eva. However, even if such a warrant was in fact issued, it could not have authorized them to inflict ill-treatment on dozens of innocent people or torture them. The fact that many detainees were assigned to enforced residence suggests that they were punished for reasons of a political nature, for if they had broken any laws or regulations they would have been brought before the appropriate courts. The conclusion to be drawn, therefore, is that, under a general warrant of investigation issued to a security agency, 25 people, who had nothing to do with the offence being investigated by the military investigating magistrate who issued the warrant, could be arrested, tortured or assigned to enforced residence in remote areas of the country.

83. A number of the people who maintain that they have been tortured in recent months say that they had to make statements before the television cameras after being forced, as usual, to sign documents that they were forbidden to read. This filming imposed by the torturers heightens and prolongs the detainee's sense of insecurity well beyond his stay in prison. The following passage, taken from a precautionary application for amparo preventivo submitted by the wife of an accused person who is in prison, well illustrates this fact. She tells of her arrest, which took place several days before the application was made. The people who arrested her took her to a secret camp, where they tortured her with electric shocks while she was being interrogated. Her detention lasted five days, and the following is an account of what happened to her on the last day:

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23/ Application for amparo No. 753-80.

24/ See A/35/522, paras. 24-35.

"About mid-day, they told me they had to film my statements so as to be sure that once I was released I would not lie about the way I had been treated and would not go back on the statements I had made.

I was taken by car to another place after they had stuck adhesive tape on my eyes and made me wear glasses; after a short journey, part of it along a dirt track, we arrived at a place that I did not know.

I was led in and the adhesive tape was taken off; I found myself in a sort of padded studio, equipped with spotlights, a television camera and a huge screen on which a serial was being shown at the time.

A woman there made up my face; near her there were four men. The instructions given to me earlier were repeated and I had to start to let them film me.

The idea was to show me, to make it clear that I was the wife of a person who had been convicted for armed assault, that I had travelled abroad to get help for political prisoners, that I had seen Chileans from different political parties, including people from the MIR.

Lastly, they made me read out a message criticizing violence and terrorism, even though I was the wife of a political prisoner. They made me repeat that my husband had been tried and sentenced for armed assault. At the end I had to express gratitude for the courteous treatment I had received from the security agencies of the Chilean Government.

We returned to the place where I had been detained and there I was filmed while stating that I had not been ill-treated in any way during my detention. My personal affairs were returned to me except for the things taken from my house". 25/

84. Many of the people who had been tortured reported that doctors were present at the camps where torture is carried out. These doctors act as assistants and their role is not to ease the sufferings of the victims but to take calculated risks in increasing the effectiveness of the ill-treatment inflicted in order to obtain confessions and terrorize the detainees.

85. The teams formed for this purpose apparently include an ever-increasing number of specialists (for instance, in make-up, photography and filming). By participating in such a serious offence as that of contributing to the physical, psychological and moral torture of detainees, all members of such teams become the accomplices of the torturers.

86. The above information, taken from numerous complaints received by the Special Rapporteur, confirms the observations made in the report submitted to the General Assembly 26/ regarding the increasing use of this form of treatment on detainees, particularly political detainees, within Chile's institutional and legal order. The security agencies of the State apparently devote large resources to the establishment (including equipment, material, remuneration and general maintenance) of a whole apparatus designed to break down the resistance of the régime's political opponents and to terrorize them by resorting to ever more refined methods of physical, psychological and moral torture. Far from paying heed to the repeated appeals of

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25/ Application for amparo No. 686-80.

26/ A/35/522, para. 131.

the General Assembly to put an end to torture and other forms of inhuman and degrading treatment, the Chilean authorities continue to inflict this kind of treatment on detainees and are tending to make it a lasting and institutionalized feature of the activities of their security agencies.

C. Abductions and false imprisonment

87. In his report to the General Assembly at its thirty-fifth session, the Special Rapporteur referred to a number of abductions and stated that one of the victims had died from ill-treatment and torture. In this connection, he set forth in detail the complaints submitted by Guillermo Hormazábal, Mario Romero, Néstor Gonzalo Romero, Nancy del Carmen Azcueta, Haisam Cheghoury Said and Cecilia Almazora.<sup>27/</sup>

88. These persons were abducted at the end of July 1980 and held in false imprisonment for periods ranging from a few hours to 10 days. In some cases, the captors said that they belonged to the Martyrs' Avengers Commando (COVEMA).

The first official statements in this connection denied all participation by Government officials in the abductions and imprisonments.<sup>28/</sup> In addition, the daily newspaper "La Segunda", in the issue of 5 August, and "La Tercera de la Hora" of 6 August 1980 published the text of a communiqué which was received through the post and contained the following statement: "In view of the ineffectiveness of the security forces and the police, we have today formed the Martyrs' Avengers Commando (COVEMA). We are assuming the responsibility that you and society would not take on. God and the fatherland".

89. Following the abduction of Guillermo Hormazábal and Mario Romero, the Minister of the Interior requested the Court of Appeal, on 31 July, to appoint an examining magistrate to carry out an investigation into these events. On 5 August, the Minister of the Interior requested that the investigation should also cover the abduction and false imprisonment of Néstor Romero, Cecilia Almazora and Eduardo Jara (the latter is deceased) and, on 15 August, that it should likewise include the case of Nancy Azcueta and Juan Capra.

90. Independently of the proceedings instituted by the Ministry of the Interior before the Court of Appeal, President Pinochet decided that General Carlos Morales, Chief of the State of Emergency Zone, should be entrusted with the task of conducting the inquiries into these cases. Nothing leaked out about the inquiries carried out by General Morales until 16 August, on which date the press published a communiqué issued by the National Directorate for Information Media (DINACOS), couched in the following terms:

"As a result of investigations carried out by the Chief of the Santiago State of Emergency Zone, General Carlos Morales R., it is now known that the following members of the Police Department took part in the events that were the subject of inquiries and have been arrested: Eric Antonio Concha Arias, Mario Escárate Escárate, Manuel Hernández Fernández, Domingo Pinto Arratia and José Opazo Gómez.

The said persons were today brought before the examining magistrate of the Court of Appeal, Alberto Echevarría Lorca, who is in possession of all the papers relevant to the inquiry".<sup>29/</sup>

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<sup>27/</sup> See document A/35/522, paras. 135-136.

<sup>28/</sup> Statement by the Ministry of the Interior (La Tercera de la Hora, 31 July 1980); statement by General Pinochet, dated 5 August 1980, in which it is said that the security services "have nothing to do" with these abductions (El Mercurio, 6 August 1980).

<sup>29/</sup> El Mercurio, 16 August 1980.

91. The persons named by General Morales were brought before the examining magistrate, who questioned them and ordered them to be detained at the Investigation Centre under a normal régime. On 20 August, Mr. Echevarría ordered that José Opazo, Chief of the Homicide Squad, and Eduardo Rodríguez, Deputy Chief of the Assault Investigation Squad, should be charged with maltreatment of Nancy Azcueta. <sup>30/</sup> But when the accused went through the normal "identification" procedure on 1 October 1980, neither Nancy Azcueta nor any other of the abducted persons identified them as their captors or torturers. <sup>31/</sup> On 4 October, the two officers were released, since the count against them (maltreatment) did not involve any compulsory requirement to keep them in detention.

92. Proclamation No. 128 issued by the Chief of the State of Emergency Zone of the Metropolitan Area and of San Antonio prohibited "publication and dissemination by the media of photographs or portraits of officials or former officials who are charged during the investigations being carried out by the courts and administrative authorities in connection with the unlawful arrests and imprisonments which have recently been of concern to the public".

93. In December, despite the fact that Mr. Echevarría Lorca had questioned many people and taken various steps, <sup>32/</sup> it was still not known who was responsible for the abductions, the torture and the death being investigated, and only two people had been formally charged in connection with the torture to which Miss Nancy Azcueta was subjected.

94. Other cases of abduction, similar to those dealt with in the report submitted to the General Assembly at its thirty-fifth session (A/35/522), were reported subsequently. They are as follows:

(a) Pablo Caro Aravena: Arrested at his home on 26 May 1980 by persons who said they were members of the CNI. An application for amparo was submitted to the Santiago Court of Appeal. Pablo Caro Aravena was released on 29 May and, in his statement to the Court, said he believed that he had been held by the CNI, which was acting in co-operation with one of the police squads investigating the bank hold-ups attributed to extremist groups. He further stated that he had been detained at the premises of the Police Department headquarters, subjected to extreme torture, interrogated about his alleged political activities and then released when the people who were holding him realized that a person who was not part of the group that had arrested him knew where he was being held.

In connection with the application for amparo, the Court sought clarification regarding the arrest; in his reply of 30 May and 12 June 1980, the Minister of the Interior denied that Pablo Caro Aravena had been arrested. The Commissioner for the metropolitan area, Juan Salinas Solís, stated on 19 June that "the person who was the subject of the application for amparo was not arrested during May and, moreover, no warrant to arrest him was issued".

(b) Omar Hernández Mandiola and Waldo Alfaro Aracena: These two men were abducted on 29 July 1980 by a large group of persons, dressed in civilian clothes but heavily armed, who had several cars and vans. On 1 August, they were released and left the premises of the Police Department headquarters, at which they had been

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<sup>30/</sup> El Mercurio, 21 August 1980.

<sup>31/</sup> El Mercurio, 2 October 1980.

<sup>32/</sup> El Mercurio, 18, 29 and 30 October 1980.

held. On Tuesday, 29 July and Wednesday, 30 July, they were confined in a room and heard the names being mentioned of other people who had been abducted at the same time, which made them think that José E. Jara and the group of persons who were arrested and detained at the same time, were there too. Mr. Hernández and Mr. Alfaro were subjected to torture similar to that described by Nancy Azcueta. 33/

(c) Alejandro Navarrete Couble and Eduardo Pérez de Arza: These two doctors were abducted on 29 July as they were going off to lunch together outside the psychiatric hospital at which they work. Their car was intercepted in the street by a taxi from which five persons armed with sub-machine guns alighted. Dr. Navarrete had been arrested in May 1980 by CNI officials who wanted to question him to find out the whereabouts of one of his sisters, who was apparently believed to be a member of a political group on the left. At that time, he was held in accordance with legal requirements and he was not subjected to any physical or moral violence.

While held in false imprisonment in July, Dr. Navarrete was cruelly tortured (stripped of his clothing, hung head downwards from an iron bar, various parts of his body subjected to electric shocks 34/), and again asked where his sister was. He spent some time in a room where he heard the names and voices of other people, among them José Eduardo Jara, who was moaning and asking for help. What he claims to have heard while imprisoned is corroborated by other people's accounts. Dr. Perez de Arza, who was probably abducted simply because he was in the company of his colleague, was not subjected to any ill-treatment, although, like the others, he was blindfolded for the whole of the time he spent in the place to which he was taken by his captors. The two doctors were released on 30 July. 35/

(d) Miguel Bustamante Bustamante, Miryam Guzmán Meneses and Alicia Díaz: These people were abducted on 22 July 1980 by five persons who were travelling in five cars and had their faces covered by Balaclava helmets. They claimed to be members of the Martyrs' Avengers Commando (COVEMA). 36/ Bustamante was interrogated and beaten up. The next day, the people in question were abandoned in a vehicle which had had its tyres punctured. Mr. Bustamante, a dentist, and his fiancée, Miss Miryam Guzman, both domiciled at Chiltan, disappeared again on 13 August 1980, and Mr. Bustamante's father then submitted an application for amparo. On 22 August, they reappeared and said that they had been held for five days by the CNI. At the time of the second abduction, the dentist's surgery was searched; some property was destroyed, and a camera, some films, photos and video cassettes were taken away. It was also on this occasion that the CNI acknowledged that it had made the arrests. 37/

(e) Cristián Yañez Fuentes: The victim of this abduction was a schoolboy, only 11 years of age, who says that he was forced to get into a car where, after being blindfolded, he was questioned about the activities of his father, a civil servant. He was also asked if he was related to a journalist called Yañez. He was allowed to go three hours later. 38/

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33/ See A/35/522, para. 136(c).

34/ This type of torture was also practised against the person of Nancy Azcueta.

35/ La Tercera de la Hora, 14 August 1980.

36/ See A/35/522, para. 136(a).

37/ La Tercera de la Hora, 14 August 1980; El Mercurio, 15 August 1980.

38/ El Mercurio, 9 August 1980.

(f) Rubén Díaz and Rubén Jiménez: At daybreak on 5 August 1980, individuals who did not disclose their identity came looking for these two unemployed young men at their home. They beat them up brutally and then let them leave.

95. The above cases concern abductions committed by persons who did not say they belonged to the security services but had material resources and acted with the apparent assurance that they ran no risk and were not afraid of being surprised. They are not the only cases reported, but the Special Rapporteur has included only cases that were described in the Chilean press and were therefore brought to the attention of the public, and other complaints which are from reliable sources and are supported by incontrovertible documents.

96. The reported cases of abduction and disappearance have been very closely examined and followed by the Special Rapporteur. Very often he has been able to establish, on the basis of the official reports published a few days after the abduction, that the person was held by one of the security agencies, more particularly the CNI. The cases in question are not discussed here. However, the Special Rapporteur feels bound to point out that the detentions carried out by the security agencies under the powers conferred upon them by Decree-Law No. 3,451, of 16 July 1980, 39/ are very similar to the unlawful abductions of which certain members of the Police Department are guilty.

97. The large number of communication which report abductions or disappearances suggests that a large part of the Chilean population live in a climate of great insecurity. In addition to the arrests by the security agencies there are the abductions attributable to officials acting, in the words of the Minister of the Interior and the Minister of Defence, "on the fringe of the law and in breach of the express instructions of the Government". Members of the official agencies rarely disclose their identity, so that the persons who are apprehended and their families or eye witnesses of the arrests, may well think, very often with good reason, that the arrests are in fact abduction.

98. With regard to these abductions, the explicit statements by the Government implicating members of the Police Department perhaps gave ground for hopes that a rapid and effective enquiry would result in the guilty persons being identified and charged. To date, however, only two of the persons responsible have been charged, and it has not been possible to identify the others. Some of the people who were abducted have said they were surprised and perplexed to see that the inquiry had still not yielded any positive result, particularly since the examining magistrate was in possession of highly valuable information to complete his investigations. 40/ The precise and matching information supplied by witnesses and the report of the Chief of the State of Emergency Zone should make it possible to clear up the facts promptly as well as the identity of the guilty parties.

99. The Special Rapporteur would point out that this inquiry is extremely important for the security of the Chilean people. To allow such acts to go unpunished is simply to encourage them and to make them more widespread, which is what happened between 1973 and 1977, when hundreds of Chileans disappeared after being arrested, and the authorities have yet to accept the responsibility incumbent upon them for these disappearances.

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39/ See A/35/522, paras. 36-48.

40/ Solidaridad, No. 102, first fortnight of October 1980.

D. Right to life

100. In his report to the General Assembly at its thirty-fifth session, the Special Rapporteur referred to previous reports in which a number of cases had been mentioned of deaths attributable to acts by members of the Chilean security services or armed forces. He mentioned other similar cases during the period covered by the report and drew attention to the State's responsibility regarding violations of the right to life committed on its territory - a responsibility which is even greater when the people who commit the violations in question are its own servants and should in fact be safeguarding that right. 41/

101. The Special Rapporteur has received further complaints concerning deaths brought about by Chilean officials.

In these complaints, the following details are given:

(a) Bernardo Enrique Solorza González. He was arrested on 18 April 1980 at the same time as his brother Ricardo Antonio. The latter was released after a few hours. Two days later, at the Intelligence Service, the food brought in by this person's father was returned to him, intact. The following day the father was informed that his son had hanged himself and that the body was at the mortuary. At the local hospital he was given a document which indicated a place of death outside the premises of the Intelligence Service, although he had been told that that was where his son had hanged himself. On examining the body, the father immediately noted traces of blows to the head, large dark blotches on the chest (on a level with the heart) and on the right side of the groin, and that the testicles were badly mangled. A priest who saw the body stated that no mark of hanging was visible and that the face did not have the appearance typical of that type of death.

The victim's father lodged a homicide complaint against the staff of the police station at Talca. 42/

(b) Miguel Angel Muñoz Hernández, aged 16, was close to his home with a group of friends on 5 March 1980. When a man called for help, the youngsters approached the place the cries were coming from and found a detachment of carabineros already on the spot. In the confusion which followed, one of the carabineros aimed his weapon at the group and fired. Miguel Angel Muñoz Hernández was killed at once. The man who fired the shot was identified. The youngsters who were in the company of the victim were arrested.

(c) Renato Antonio Mendoza Villagrán. He was arrested on the street on 1 July 1980 by carabineros, who were identified. Eyewitnesses to the arrest

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41/ See A/35/522, paras. 141-152.

42/ A copy of the application to the court has been communicated to the Special Rapporteur.

state that he was struck when he was forced to get into the police vehicle. In view of the injuries caused by the blows, he had to be taken at once to the first aid post, where he died shortly afterwards. The death certificate mentions "asphyxia due to inhalation of vomit". The carabineros maintain, for their part, that he was found dead on the street. A complaint has been lodged against those who made the arrest.

(d) Luis Trejo Sánchez. On 12 October 1980, while he was in a stationary car in the company of his fiancée, Trejo Sánchez, a teacher was killed by a pistol shot in the head fired by a carabinero. The latter stated that he had had an altercation with the victim, and claimed, as an excuse, that he was drunk at the time. The carabinero was dismissed and criminal proceedings were instituted. The victim's parents brought criminal charges against the man responsible. 43/

The victim's fiancée, an eyewitness, stated that the man responsible had not been drunk and that his action had not been accidental; she stressed the arrogance of his attitude. 44/

(e) Ruben Orta Jopia and Juan Ramón Olivares Pérez. On 6 November, the press in Chile announced that, the day before, two persons belonging to the MIR (Revolutionary Left Movement) had been killed in the course of an armed confrontation in Santiago. According to these reports, members of the CNI (National Information Agency) who were on patrol in a vehicle had intercepted another vehicle containing two persons who attacked them on the spot, firing a burst from a submachine-gun at the CNI men as they were approaching their vehicle. The CNI men had been forced to retaliate, killing the two extremists. 45/ According to the press, Ruben Orta Jopia and Juan Ramón Olivares Pérez were travelling in an old car loaded with weapons, at a time close to the curfew, in a place in Santiago a few yards from a CNI post.

The security agency reported that it had not lost any men but that the car they had been using bore eleven bullet impacts, most of them towards the rear. 46/ The father of Ruben Orta Jopia requested that an investigating judge be appointed to examine the circumstances surrounding his son's death, claiming that his son had been put under surveillance and had been followed several days before his death. His request is supported by 43 lawyers. 47/

The other victim, Juan Ramón Olivares Pérez, had been imprisoned in Chile from December 1974 to March 1976, when his sentence had been commuted to exile. 48/ His brother, Mario Samuel Olivares Pérez, is one of the people named in the lists of disappeared persons. 49/ The sons of Olivares Pérez stated, in a letter addressed

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43/ El Mercurio, 19 and 22 October 1980.

44/ El Mercurio, 29 October 1980.

45/ El Mercurio, 3 November 1980.

46/ Solidaridad No. 104, November 1980.

47/ Solidaridad No. 105, second fortnight of November 1980.

48/ El Mercurio, 11 November 1980.

49/ See Dónde Están? vol. 7, p. 1,592.



to the periodical Hoy, that their father did not know how to drive and had never had a car, since he could not afford to buy one on his wage as a workman. They added: "Is it conceivable that someone could have the idea of carrying weapons in an old car which wasn't his own, at one o'clock in the morning?". 50/

(f) Alejandro Rodrigo Sepúlveda Malbrán. On 24 December 1980 three explosions occurred inside a bus on the service between Santiago and San Bernardo and set off a fire. According to the version given by the carabineros, a person alighted from the vehicle and ran off, pursued by two carabineros who were in the vicinity. When he was overtaken by the pursuers one kilometre away, he reportedly tried to get free and to snatch the weapon they were aiming at him, as a result of which one of the carabineros had been obliged to fire. 51/ The deceased was Alejandro R. Sepúlveda Malbrán, 25 years of age, who was in possession of forged identity papers. 52/ On 29 December, relatives filed a precautionary application for amparo preventivo for 10 members of the family, claiming that the family was constantly being persecuted and that some of its members had recently been arrested for the questioning as to the whereabouts of Alejandro R. Sepúlveda Malbrán. 53/ According to a letter received by the Special Rapporteur, several members of the family have been arrested, and sometimes tortured, since 11 September 1973. One of Alejandro's brothers, named Alvaro Sepúlveda Malbrán, returned to Chile on 30 September 1979 with his papers in order, but a decree issued in January 1980 prohibited him from entering the country. Pursuant to that decree, he was arrested by the CNI in November 1980, accused of having entered Chile secretly. The letter states that he was released four days later, after being tortured. Another of Alejandro's brothers, Juan Manuel Sepúlveda Malbrán, an official of the National Trade Union Co-ordinating Body, was arrested on two occasions in recent years and he too is said to have been beaten. He was assigned to enforced residence and, in 1980, he was sentenced to 541 days' imprisonment pursuant to Decree-Law No. 2,347, of 17 October 1978. His sentence was later commuted and, for three years, he was required to sign a register once a week at the Discharged Prisoners' Office. It is stated in the letter that the death of Alejandro R. Sepúlveda Malbrán is part of the harassment and the violation of human rights to which the family is subjected; some of its members are in exile, while those living in Chile are constantly being persecuted.

102. The Special Rapporteur has followed attentively the progress of inquiries and legal proceedings initiated as a result of deaths caused by officials of the security agencies or the armed forces. In the past few months he has learnt of important decisions concerning some of those proceedings:

(a) Federico Renato Alvarez Santibáñez. The Special Rapporteur has examined a number of reports on the circumstances in which this person, whom the CNI held in a secret place, met his death as a result of torture. He has also cited the testimony of persons who were tortured at the same place and heard the victim's

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50/ Hoy, 10 and 16 December 1980.

51/ El Mercurio, 26 December 1980.

52/ Hoy, No. 180, 31 December 1980 to 6 January 1981.

53/ El Mercurio, 30 December 1980.

cries, and he has reproduced the clinical record of the Central First Aid Post, to which Alvarez Santibáñez was rushed, only to die a few hours later. He has also reproduced the report of Mr. Alberto Chaigneau, the investigating judge for this case. 54/ Mr. Chaigneau's report contains the following conclusion:

"These expert findings are consistent with the substance of the investigation, from which it emerges that, at the time he was apprehended, Federico Renato Alvarez Santibáñez was suffering from a contusion of the left parietal bone when taken to the National Information Agency unit, where he remained in custody for five days. Shortly after leaving there, he was in a state of dehydration which produced an uraemic syndrome which, because of his diminished valence and the fracture and other subsequent complications, was to lead to his death. Consequently, it may be presumed that the facts investigated would constitute the crime of homicide and there is no alternative but to hold the officer of carabineros who arrested him and the officials of the National Information Agency who interrogated him responsible as accomplices, and, as an accessory, the physician who issued a certificate of good health when Alvarez was taken from the Agency.

Orders reveal that the officials mentioned were acting in the course of their official duties or in connection therewith and, in accordance with the relevant legal provisions, I have sent the file in question and an X-ray of the deceased kept in the records of the Central First Aid Post to the Santiago Second Military Court for it to continue with substantiation of the proceedings, since the ordinary courts are not competent in this matter." 55/

The victim's widow requested the military court that followed up the proceedings to indict the three persons involved but the court refused to do so. The Court Martial confirmed this decision on 8 August 1980. The mother of Alvarez Santibáñez lodged an appeal with the Supreme Court, which rejected it on the following grounds:

"The information provided hitherto in the case under consideration shows that there was indeed needless recourse to violence; on the other hand, there seem to be no valid grounds for thinking that particular persons committed incriminating acts or rendered themselves accessories thereto by participating in them or covering up the facts".

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54/ See A/34/583, paras. 123-126 and annex XVI; E/CN.4/1362, para. 66; A/35/522, paras. 148-150.

55/ See A/34/583, annex XVI.

This decision was adopted by three votes to two. According to the minority view, there were "sufficient reasons to impute the death of Federico Alvarez Santibáñez to needless violence inflicted on him - physical violence which resulted in a fracture of the cranium or complications due to ill-treatment ...". 56/

In its decision, the Supreme Court took the view that the case had in fact involved needless recourse to violence, but not homicide - a term used by investigating judge Chaigneau and one clearly justified by the known facts. At all events, the Supreme Court refused to order indictment of the carabinero who had struck the blows at the time of the arrest and the CNI officers who interrogated the victim and ill-treated him for five days, although the persons had been identified. It seems inexplicable that the Supreme Court should have concluded that there were "no valid grounds for thinking that [these] persons" were implicated.

(d) José Eduardo Jara. The Special Rapporteur has mentioned the death of this person, who was abducted along with others by a so-called "Martyrs' Avengers Commando" (COVETA) and subjected to physical abuse which resulted in death. 57/ The death of José Eduardo Jara aroused the indignation of the population and President Pinochet ordered General Carlos Morales, the Chief of the State of Emergency Zone, to investigate the facts. The report of General Morales has never been published, but as a result of information provided by the CNI and the carabineros, it was stated in an official communiqué signed by the Minister of the Interior and the Minister of Defence that "certain officers of the Intelligence Service, who had acted on the fringe of the law and in breach of the Government's express instructions, apparently bore responsibility for the incriminating deeds". 58/ The following day, the Director of the Intelligence Service, General Ernesto Baeza, refused to endorse that statement. Several members of the intelligence staff were arrested, 59/ and the media maintained that, in the light of official information, the responsibility of the said officers for the abduction and murder of José Eduardo Jara had been established. 60/ Mr. Alberto Echevarría was appointed the investigating judge in proceedings initiated as a result of a number of abductions which had occurred during the same period as that of the student, Jara; in particular,

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56/ El Mercurio, 3 November 1980.

57/ See A/35/522, para. 136.

58/ El Mercurio, 12 August 1980.

59/ La Nación, 12 August 1980.

60/ La Nación, 12 August 1980; La Tercera de la Hora, 12 August 1980; Las Últimas Noticias, 12 August 1980; El Mercurio, 12 and 14 August 1980.

the young woman Cecilia Alzamora, abducted at the same time as her fellow student and held in the same place, was an eyewitness to some of the incidents which had caused his death. The officers placed under arrest were held at the Investigation's Centre, where the judge questioned them. The investigating judge took a number of steps, including orders for the arrest of four other officers in the same department. 61/ Two of the officers were formally charged with the ill-treatment suffered by one of the abducted persons, Miss Nancy Azcueta. They were the former head of the Homicide Squad, Commissioner José Opazo, and the deputy chief of the Assault Investigation Squad, Assistant Commissioner Eduardo Rodríguez. 62/ The other officers were released. In September, the Supreme Court appointed Mr. Alberto Echevarría as investigating judge to inquire into the death of José E. Jara. 63/ The judge ordered a number of steps, including identification by the prisoners of the accused, Opazo and Rodríguez. According to the press, none of the abducted persons called on to make the identification had recognized the accused as being the people who had captured or tortured them. 64/ A few days later, the release of these two officers was authorized, and they regained their freedom. The judge continued to question a number of officers of the Intelligence Service. He also issued an order to find Osvaldo Romo Mena, known for his activities in the DINA (Directorate of National Intelligence) and accused of being responsible for the disappearances of many persons during the early years of the military Government. The investigating judge Servando Jordán issued a summons against Osvaldo Romo Mena and ordered a search for him, as a result of testimony pointing to his responsibility for many disappearances, but he never managed to have this person brought before him. The mother of José E. Jara lodged a complaint against six officers and leading officials of the Intelligence Service to whom her son's death should seemingly be attributed. 65/ Despite all these measures, the people responsible for the death had still not been identified by December 1980. However, there is apparently a report from General Carlos Morales to General Pinochet that details the investigations carried out in order to ascertain who was responsible. It was on this report that the Minister for the Interior and the Minister of Defence based their findings in determining the responsibility of the officers of the Intelligence Service in the abductions. It is hard to concede that, in view of these investigations, it has not even been possible to identify the guilty persons and bring them before the courts.

103. The deaths mentioned in this report and in earlier reports are the result of actions by members of the security agencies and the armed forces. The perpetrators of these murders sometimes acted arbitrarily on their own initiative, for the simple reason that they were in possession of firearms and knew that they were of assured of impunity. In such cases there have been instances in which the guilty persons were faced with serious charges, but never in any cases of death where matters of a political nature were involved. Up to now, there is no known case in which the penalties established in law have been imposed on the perpetrators of crimes of this sort.

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61/ El Mercurio, 22 August 1980.

62/ El Mercurio, 21 August 1980.

63/ El Mercurio, 27 September 1980.

64/ El Mercurio, 2 October 1980.

65/ El Mercurio, 30 October 1980.

B. Persecution and intimidation

104. During the second half of 1980, there was a recrudescence of persecution and intimidation of political opponents. The Special Rapporteur informed the General Assembly, at its thirty-fifth session, of various kinds of persecution (surveillance, shadowing, threats, illegal raids on people's homes, illegal interrogation, assault, etc.) 66/ of political opponents. He also reported on harassment of members of the Catholic Church and officials of institutions belonging to or connected with the Church. 67/

105. The acts of persecution and harassment are sometimes committed openly by the Chilean security agencies and sometimes in secret. At times they are the work of unidentified groups, as in the case of the threats signed with various names: Death Squad, Commando Carevic, or FIAMA (Anti-Marxist Front).

106. The Special Rapporteur has recently learned of fresh acts of persecution against the Catholic Church. On 2 August 1980, two parish churches, the Church of the Lord's Ascension and St. Christine's were desecrated. Armed civilians, who did not reveal their identities and made a thorough search of the buildings in each church, participated in both operations.

107. There have also been instances of illegal raids on the homes of officials of institutions belonging to or connected with the Catholic Church. In particular, incidents of this kind occurred on 5 August 1980, at the home of Mr. Humberto Gino Pastorini Moya, a nursing auxiliary at the San Roque Polyclinic of the Vicaría de Solidaridad, and on 4 September 1980, at the home of Mr. José Antonio Cancino Sánchez, legal adviser to the Property Management Department of the Archbishopric of Santiago. Mr. Cancino Sánchez's wife was subjected to intimidation, in the form of threats against the lives of her husband and children.

108. Mr. Juan Luis Escalona Pérez, an official of the Workers' Pastoral Vicariate in Concepción, was also reported to have been a victim of various acts of harassment on the part of the police. In particular, he was arrested on 30 September by several officers of the Intelligence Service who raided his home. The judge was told that the detention, which lasted three days, was on the grounds of "vagrancy".

109. In an application submitted to the Santiago Court of Appeal on 10 September 1980, Father Patricio Hernán Rojas González asked for protection, stating that, as he was returning to the presbytery in the parish of the Good Shepherd on the night of 29 August, he noticed standing outside his door a car that security personnel had used on other occasions to keep a watch on the presbytery. There were four people in the vehicle, which suddenly started up and bore down on the priest with the obvious intention of knocking him over. He managed to avoid a head-on impact, but was hit on the side. He also reported that, beginning some two years previously, he had repeatedly been threatened, persecuted or assaulted, sometimes by unidentified persons, and sometimes by persons known to belong to the National Information Agency (CNI). This priest is the head of the Catholic Pastoral Group of the University of Chile.

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66/ See A/35/522, paras. 161-189.

67/ See A/35/522, paras. 180-192.

110. On 18 November 1980, Father Juan Manuel Montecinos González, a priest at the Catholic Cemetery, filed an application for amparo before the Court of Appeal, declaring that he was constantly being persecuted and kept under surveillance by five individuals who drove around in a car that he was able to describe.68/

111. On the evening of 3 November, a group of unknown persons attacked the San José Parish Centre in the mining town of Curanilahue and took away a social worker, Mr. Luis Olivares, an employee of the Archbishopric of Concepción-Arauco. Mr. Olivares was giving interviews and his abduction took place in the presence of three nuns assigned to the parish and of peasants who were in the offices at the time. His abductors burst into the Centre unannounced.69/ The CNI subsequently declared that it had arrested Mr. Olivares on the street, under a decree issued by the Minister of the Interior, because he had dealings with a member of the MIR (Revolutionary Left Movement) who was under house arrest in Quenchí, in the province of Chiloé.70/ The Auxiliary Bishop of Concepción, Mgr. Alejandro Goic, denied the CNI's claim that the arrest had been made "on the street" and added that: "In view of the methods habitually used by the CNI, any accusation of a political nature made by that organ against the official in question strikes us as being highly suspect". Although the accusations made by the CNI were not proved, Mr. Olivares was made to take up enforced residence placed under house arrest in Curepto; he has not been tried, and there has been no indication of the reasons for this step.

112. In his report to the General Assembly, the Special Rapporteur referred to baseless accusations made through the media against persons connected with the Catholic Church.71/ In September, following the arrest of a group of students at La Serena University, Channel 7 of Chilean National Television reported this item and added that "the extremists were defended by the lawyer of the Vicaría de Solidaridad, Mr. Pedro Escandón Orellana, and by the priest at La Serena's Lourdes Church, Waldo Alcalde Rivera".72/ It did not mention from what sources the information had been received. The Archbishop of La Serena, Mgr. Juan Francisco Fresno, wrote to the Director of Chilean National Television to deny the accusations. He stated in his letter that Mr. Pedro Escandón Orellana was the legal adviser to the Social Action Department of the Archbishopric of La Serena and that both the priest and the legal adviser accused of advising the supposed extremists, rejected violence and terrorism, had no connections with any group that advocated such conduct, and considered the statements broadcast by the television service to be slanderous. Channel 7 broadcast the Archbishop's comments briefly on 29 September 1980.73/

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68/ Hoy, 3-9 December 1980.

69/ El Mercurio, 4 November 1980.

70/ El Mercurio, 5 November 1980.

71/ See A/35/522, paras. 188-191.

72/ SEDOC. 15 September 1980. National News. Church, Channel 7, programme: 60 minutes. 8.30 p.m.

73/ SEDOC. 29 September 1980. National News. Church, Channel 7, programme: 60 minutes. 8.30 p.m.

The Archbishop of La Serena, Mgr. Juan Francisco Fresno, instructed Mr. Escandón to act as defence counsel for Mr. Roberto Acuña Aravena, the son of Daniel Acuña Sepúlveda, who, as described in detail in earlier reports, was apparently killed by members of the security agencies.<sup>74/</sup> That defence, assumed at the express request of Mr. Acuña Aravena, is among the activities conducted by the Catholic Church in defence of human rights. Baseless accusations through the mass media are a form of persecution that might ultimately intimidate those concerned and so prevent them from continuing to defend those rights.

113. The Special Rapporteur has been informed of harassment and persecution of members of various circles that show opposition, in one way or another, to Government policy. In academic circles, for example, many students have been penalized by the university authorities because they disagreed with the measures taken in the universities. Several students have been detained and assigned to enforced residence in other areas, and there are numerous complaints of persecution. The latter include one by a student of economics at the University of Chile, Mr. Julio Antonio Miranda Pino, whose home was searched on 4 August 1980 by four civilians, who said that they were security agents and claimed that Mr. Miranda Pino was in contact with a political detainee. Since Mr. Miranda Pino was not at home, they questioned his wife about his activities and produced a list of 15 persons, all of them students of economics and friends of her husband. Mr. Miranda Pino reported this incident in a statement made under oath before a notary.

114. In December, the press reported that a group of young students from the University of Chile were on a hunger strike in the Metropolitan Cathedral in an attempt to obtain an explanation of "the reasons for the persecution of Miss Patricia Torres". She is a student leader at the University of Chile who, according to her comrades, is the subject of an arrest warrant issued for unknown reasons. The students have asked for physical protection for Miss Torres, a clear statement of the grounds for the arrest warrant, and an assurance that any accusations made against her will be examined within the framework of the ordinary system of justice.<sup>75/</sup>

115. Persons who return to Chile after living abroad for a while are still kept under surveillance and, in addition, are often persecuted. A serious incident of this nature was revealed by Mrs. Ximena Lucia Erazo Latorre, who had lived for six years in Ecuador, in her precautionary application for amparo preventivo on 14 August 1980. She reports in the application that, on 17 July 1980, she was arrested by CNI agents without being charged, and that she was held in custody for one day. On 17 August, two CNI agents turned up at her home; one urged her to collaborate with the Agency by giving him the names of exiles who wanted to return to Chile, particularly those who were getting ready to do so. The fact that the same agent continued to telephone her prompted her to apply for amparo as a precautionary measure because of the threat to her personal safety implicit in the attempt to force her to become an informer for the CNI.

116. This case tallies with the complaints the Special Rapporteur has received on earlier occasions about harassment of exiles who return to Chile, a matter referred to in his report to the General Assembly at its thirty-fifth session.<sup>76/</sup>

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<sup>74/</sup> See A/34/583, para. 133, and A/35/522, para. 147.

<sup>75/</sup> El Mercurio, 21, 22 and 24 December 1980.

<sup>76/</sup> See A/35/522, para. 167.

117. The relatives of persons who are living abroad for political reasons also seem to be victims of harassment. The Special Rapporteur was informed that the homes of relatives of exiles opposed to the Government had been searched and are kept under surveillance and that sometimes the relatives themselves receive threats or are arrested for questioning about the exiles' activities.

118. The relatives of persons who are missing or have died for political reasons seem to suffer similar harassment. They include a member of the Association of Relatives of Persons Executed for Political Reasons, Mrs. María Dolores García Olano, the widow of Dr. Héctor García García, who was executed in 1974. Mrs. García Olano stated that she had received through third parties messages informing her that she was under constant surveillance by the security agencies. For that reason, she made a precautionary application for amparo preventivo to the Court of Appeal of Pedro Aguirre Cerda County. According to press reports during the first half of November, some dozen persons had filed the same kind of application after their homes had been raided or they had been shadowed.<sup>77/</sup> One case is that of Ruben Orta Jopia, who was killed in an alleged clash with security agents after he had filed such an application.<sup>78/</sup>

119. Five other persons declared that they had been arrested by the CNI without any reason being given and without any warrant, and that they had spent one or two days in the hands of one Agency for questioning.

120. In general, the acts of persecution or intimidation are carried out by members of the security agencies or by persons who do not give their identities but seem to have facilities available to them and to be in possession of information on the private and professional backgrounds of the persons they are pursuing or of members of their families. The victims of such persecution are opponents of the regime from all circles: political, cultural, educational trade union and social. The persons who defend human rights are also persecuted, irrespective of whether they are priests, lawyers, close relatives of missing persons who try to discover the fate of their dear ones, or other persons who bring actions for amparo on behalf of detainees being held in secret places. The fact that a person belongs to the family of a political detainee deemed to be "subversive" seems to be reason enough for him to be persecuted.

121. Persecution and intimidation are violations of the rights to life, liberty and security of person. They are also bound up with the exercise of all other human rights, whether political, civil, social, economic or cultural. So long as the perpetrators of such violations go unpunished, so long as Chilean courts evade responsibility for protecting those rights, Chilean society will be dominated by fear, the fear that is an insurmountable obstacle to all forms of participation in the life of society.

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<sup>77/</sup> Solidaridad, No. 105, second fortnight of November 1980.

<sup>78/</sup> See this chapter, section D.



### III. RIGHT TO RESIDE IN, ENTER AND LEAVE THE COUNTRY

122. The measures taken by the Government to prevent many Chilean citizens from returning to Chile have been described in various reports by the Ad Hoc Working Group and the Special Rapporteur. 1/ The reports in question also referred to decisions against persons who had applied to return to Chile and they mentioned the position adopted by the courts in connection with appeals by such persons.

123. In October, the Government decided to forbid the return to Chile of Mr. Andrés Zaldívar, a leader of the Christian Democrat Party, a political party which, like other political organizations, bodies and movements, was disbanded under the terms of Decree-Law No. 1,697, of 12 March 1977. Mr. Zaldívar, who had once held the post of Minister of Finance in Chile, was making a tour of a number of countries, together with his wife.

124. In a statement, Mr. Sergio Fernández, the Minister of the Interior, explained this measure by saying that, in a report published in a Mexican newspaper, Mr. Andrés Zaldívar had sought to defend "his argument that a military government different from the one now in office might well be set up in Chile" - which "means in essence support for the possibility of a split among our Armed Forces and our forces of law and order". 2/

125. The Mexican newspaper denied that Mr. Zaldívar had said that his party was in contact with the armed forces. In a later statement, the Minister of the Interior pointed out that the measure was preventive and not punitive, and that it had been taken because of the earlier behaviour of the political leader, whose statements in the Mexican newspaper were merely "the culmination of behaviour adopted consistently inside and outside Chile ...". He added that the measure could be reviewed only if Mr. Zaldívar undertook "officially and publicly to respect the legal order, under specified conditions" indicated in the Government's statement. Those conditions were mentioned earlier in the statement and the Government indicated that "it will not on any account admit" anybody who intends "to refuse to respect the constituted authority, the system in force and the new constitutional régime freely and independently adopted by the Chilean people". 3/

126. Mr. Andrés Zaldívar filed an application for amparo with the Court of Appeal, demanding that his right to return to Chile be protected. In the application to the Court, he stated:

"The Government also asserts that I refuse to respect the constituted authority, the legal system in force and the new Constitution. In this respect, I wish to point out that nobody in Chile can deny that a particular legal order and an established Constitution and Government do exist and that we are all subject and subjected to them. This is the reality and no one can ignore it. Nevertheless, to recognize this reality does not in itself mean to endorse it; on the contrary, everyone retains his right to disagree with that legal order, that Constitution and that Government in matters relating not only

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1/ See A/33/331, paras. 424-467, A/34/583, paras. 225-246 and A/35/522, paras. 285-299.

2/ El Mercurio, 17 October 1980.

3/ El Mercurio, 18 and 19 October 1980.

to the activity of the Government and its conduct of affairs but also to the rules of the legal order and the rules of the Constitution, which are by nature capable of being changed. Because of his freedom of conscience and thought and civic rights which must be observed, every citizen can advocate a change in the situation, provided he does so through peaceful means and, in keeping with the concept of the rule of law, rejects violence as a course of action". 4/

127. The Court of Appeal rejected the application for amparo, on the grounds that the decree of the Minister of the Interior forbidding Mr. Zaldívar to return to Chile was consonant with the established rules, that the legal objections to Decree Law No. 604 of 9 August 1974 5/ were entirely without foundation; that Mr. Andrés Zaldívar had failed to observe the ban on engaging in political activities, and that he had referred in injurious terms to the plebiscite of 11 September 1980 whereby the Constitution had been adopted 6/ - in other words, "he has not displayed the respect or observance that any legislative system or any authority is entitled to demand, and his remarks have gone well beyond straight forward criticism or the lawful right to disagree". 7/ Mr. Andrés Zaldívar lodged an appeal with the Supreme Court. 8/

128. In the decision in question, the Court of Appeal does not specify to what extent the right to disagree may be exercised in Chile, but it is reasonable to conclude that it is to be exercised within very narrow limits.

129. The circumstances in this case of a ban on returning to Chile, a case that is one among many, simply add to the uncertainty already experienced by the people of Chile. The case is evidence that a mere temporary departure from Chile may signify loss of the right to return. Judgement of criticisms of the Government's actions or arguments in support of opposing views, both inside and outside Chile, are left to the discretion of the administrative authorities, which decide whether the person concerned is liable to such a grave penalty as that of disrupting his normal life at home in his own country and obliging him to live far away from his home and country.

130. The Special Rapporteur has learnt of a number of applications for amparo in connection with refusals by the Chilean Government to allow persons of Chilean nationality living abroad to return to their country. The courts have confirmed such administrative measures in almost all instances and have not taken into account any humanitarian considerations such as the age or health of the applicant or his relatives. 9/

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4/ El Mercurio, 27 December 1980.

5/ See A/33/331, para. 433.

6/ See chapter I of this report.

7/ El Mercurio, 30 December 1980.

8/ El Mercurio, 31 December 1980.

9/ See A/35/522, para. 296.

#### IV. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

131. In his report to the General Assembly at its thirty-fifth session (A/35/522), the Special Rapporteur formulated observations that were the outcome of a detailed examination of the human rights situation in Chile during the first eight months of 1980.

132. In the present report, his concern has been solely to bring this examination up to date in the light of the information and communications that have come to his knowledge since the previous report was completed and are important in filling out the general picture of developments in the situation in 1980, for the purposes of submitting it to the Commission on Human Rights in conformity with Commission resolution 21 (XXXVI), of 29 February 1980. The Special Rapporteur takes the view that the observations and recommendations submitted to the General Assembly in his initial report are still valid, for subsequent events have simply confirmed the trends observed up to the time when that report was completed. Consequently, the present report refers solely to certain matters that deserve special attention because of their importance during the latter months of 1980.

133. As indicated in the above-mentioned report to the General Assembly, on 11 September 1980 the Chilean authorities held a plebiscite so that the population could approve or reject a new Constitution which had been prepared by persons designated by the Government and discussed exclusively by the authors of the text and the Chilean authorities.

134. The text of the new Constitution was approved by a plebiscite held on that date. The plebiscite itself did not fulfil the requisite conditions for it to be considered as a valid expression of the will of the Chilean people. The maintenance of the state of emergency, the absence of guarantees to safeguard liberty and security of person, the restrictions imposed on the rights of association, assembly and information and on all political rights, not to mention the fear and persecutions suffered by the population in general and by the opposition in particular, may be regarded as factors that made any referendum unconvincing. Along with these serious obstacles to the exercise of human rights are the irregularities in the procedure for consulting the people, for example, the irregularities which seem to have occurred in the balloting and the counting of the votes. All this leads to the conclusion that the plebiscite was once again a discretionary act on the part of the Government and not a genuine consultation of the Chilean people.

135. The text of the Constitution approved for the nine years to come contains many legal provisions adopted by the military authorities during their seven years of government, provisions which have been examined at various times by the Ad Hoc Working Group and the Special Rapporteur, who have considered that the effect of these provisions is to violate human rights. The new Constitution concentrates more powers in the hands of the Executive and, in particular, of the President of the Republic. The powers of traditional supervisory authorities, such as the judiciary, have been diminished and the legislative and constituent powers are still exercised by the military Junta. The Constitution provides for the establishment of other supervisory organs, such as the Constitutional Court, the members of which are appointed for the most part by the military authorities. From the marked preponderance of the military authorities in all the organs of government it can be inferred that the military Government, initially imposed on a provisional emergency basis, has thus acquired stable institutional authority.

136. The new Constitution confers very broad powers on the President of the Republic to decree various kinds of states of emergency, some of which may be ordered simply at the will of the President, regardless of whether or not genuinely serious troubles do exist. Such states of emergency seriously jeopardize the enjoyment of human rights and, in particular, the right to liberty and security of person, trade union rights, the rights of association, assembly, information and expression, and the right of Chileans freely to leave or return to their country. The possibility of judicial protection of human rights during such states of emergency is severely curtailed and, in some instances, even eliminated.

137. Again, the new Constitution introduces a number of disqualifications based on a Chilean's past or present political behaviour, something which constitutes discrimination on grounds of opinion and, for large sectors of the population, means in fact that they are completely excluded from the country's social, economic, political and cultural life. At the same time, all political activity is still prohibited until the Government enacts an organic constitutional law concerning political parties, but no date has been set for this law.

138. In the matter of enjoyment of human rights, the new Constitution does not in any way signify an advance over the period preceding its adoption; on the contrary, it introduces further obstacles to protection of these rights by the courts and, generally speaking, confers constitutional status on an entire range of provisions that were issued earlier and were denounced as violations of human rights.

139. The rights to life, liberty and security of person have been discussed in this report in order to ascertain, with the aid of greater information, the over-all trends observed during 1980.

140. Mass arrests and imprisonment have declined during this period, but the number of arrests of individuals has risen. In the main, the competent authority has not even drawn up, let alone issued, a warrant for such arrests. Sometimes, when the period of arrest is extended, a decree by the Minister of the Interior orders the arrest and, as an afterthought, endorses the arbitrary action of the security agencies. The judiciary has never opposed this practice. Many persons have been held for more than five days, incarcerated in secret places in the hands of the security agencies and subjected to torture, but they have not been charged with any offence against the security of the State that has led to "death, injury or abduction" - the sole grounds for authorizing a longer period of detention under the terms of Decree-Law No. 3,451, of July 1980. The terms of this text have been abused by the security agencies in order to persecute political opponents. <sup>1/</sup> The typical features of these arrests have been the use of violence and the deployment of weapons and personnel, something which terrorizes the population and creates a climate similar to that experienced in the years before DINA was disbanded. A few of the persons arrested have been released by the judges when the charges against them have proved to be groundless, but despite the release order by the court some of them have been made to take up enforced residence in inhospitable places on the orders of the Minister of the Interior.

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<sup>1/</sup> In his comments on the promulgation of Decree-Law No. 3,451 (A/35/522, para. 213), the Special Rapporteur expressed his fears regarding this development.

141. Many detainees have been subjected to torture and ill-treatment while in the hands of the security agencies; according to complaints brought to the knowledge of the Special Rapporteur, the number of such persons is approximately the same as for the previous year. This fact, together with the increase in the facilities and the powers that appear to be available to the security agencies, confirms the observation that torture has become a common practice in Chile.

142. The lives of individuals are not respected, as can be seen from the cases mentioned in the relevant chapter, which describes deaths that can be ascribed to members of the security agencies, either for political reasons or because of the irresponsible use of weapons and of the powers of these agencies. According to all the information concerning judicial inquiries into deaths caused by the security agencies, the people responsible for these deaths have not been punished so far, not even when they have been identified. The inquiries are even less effective in the case of crimes against political opponents. The meek behaviour displayed by the judges when they are called upon to try these crimes and the importance they attach to evidence in favour of the accused, when the people responsible are identified, is even greater proof of the lasting danger to those who are suspected of engaging in hostile political activities or simply holding ideas that conflict with those of the Government.

143. The Special Rapporteur considers that if the security agencies are to be prevented from continuing to exercise arbitrary powers against individuals, it is essential to keep an effective check on the activities of these agencies, to restore all the powers of the judiciary and to repeal the laws curtailing those powers, particularly the laws that prevail during the states of emergency. Moreover, judges must fully exercise their powers and take on the responsibility for protecting human rights, a responsibility that is inherent in their duties. The Special Rapporteur would remind the Commission on Human Rights of the recommendations that he made to the General Assembly in this regard in paragraphs 426 to 430 of document A/35/522.

144. In the present report, the Special Rapporteur has also highlighted information concerning the right to live in one's own country. The case mentioned reveals a deterioration in the situation in this respect, since someone who had travelled abroad for a short period has been prevented from returning - and this is equivalent to expulsion - solely because he had expressed dissident political views. In this connection, the Special Rapporteur wishes to reiterate the recommendations set out in paragraph 436 of the above-mentioned document.

145. The present report should be considered together with the report submitted to the General Assembly at its thirty-fifth session. The Special Rapporteur has not reverted to many of the matters examined in the first report, because the situation, as compared with the situation during the first eight months of 1980, has remained unchanged. The observations and recommendations set forth in the report in question are to be regarded as reiterated in full in the present report, because not the slightest change has occurred in respect of any of the human rights discussed earlier. The new Constitution, which not only fails to guarantee adequate protection of human rights but impairs still further the rights that were embodied in the previous Constitution, contravenes the commitments undertaken by Chile as a party to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, more particularly the obligation to adopt legislative or other provisions to give the effect to the recommendations contained in the Covenants.