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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Ad Hoc Working Group on the Situation of Human Rights in Chile in accordance with paragraph 8 of Assembly resolution 32/118 of 16 December 1977.

ANNEX

Report of the Ad Hoc Working Group to inquire into the
situation of human rights in Chile, submitted in
accordance with General Assembly resolution 32/118

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INTRODUCTION

1. The Ad Hoc Working Group to inquire into the situation of human rights in Chile was originally established under resolution 8 (XXXI) adopted by the Commission on Human Rights on 27 February 1975. 1/ In accordance with that resolution the Chairman of the thirty-first session of the Commission, Mr. G.A. Allana, appointed four members of the Commission to serve on the Group in their personal capacity and to operate under his chairmanship. The composition of the Group is as follows: Mr. G.A. Allana of Pakistan (Chairman-Rapporteur), Mr. Leopoldo Benites of Ecuador, Mr. A. Diéye of Senegal, Mr. F. Ermacora of Austria and Mrs. M.J.T. Kamara of Sierra Leone.

2. Under Commission resolution 8 (XXXI) the Group was mandated to inquire "into the present situation of human rights in Chile" on the basis of various resolutions previously adopted by organs of the United Nations, the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, of a visit to Chile, and of oral and written evidence to be gathered from all relevant sources. The Group was required to submit a progress report, through the Secretary-General, to the General Assembly at its thirtieth session and to report to the Commission on Human Rights at its thirty-second session (for the text of the resolution see annex I). Since the Group was first established in 1975, its mandate has been renewed three times by the Commission on Human Rights, acting at the invitation of the General Assembly, 2/ and with each renewal the Group was requested to report to the following sessions of the General Assembly and of the Commission on Human Rights.

1/ The Sub-Commission on Prevention of Discrimination and Protection of Minorities had recommended to the Commission that it study the situation of human rights in Chile (resolution 8 (XXVII)) and the General Assembly, in resolution 3219 (XXIX), had endorsed that recommendation.

2/ In 1976 the Group's mandate was renewed by Commission resolution 3 (XXXII) at the invitation of the General Assembly in resolution 3448 (XXX). In 1977 the Group's mandate was renewed by Commission resolution 9 (XXXIII) at the invitation of the General Assembly in resolution 31/124. In 1978 the Commission renewed the Group's mandate in resolution 12 (XXXIV) acting at the invitation of the General Assembly in resolution 32/118.

3. The Group has adopted six previous reports, three of which were submitted to the General Assembly and three to the Commission on Human Rights. ^{3/} The present report is the seventh adopted by the Group. Each of its previous reports contained information on the activities of the Group during the period in question, including the Group's relations with the Government of Chile, oral and written evidence gathered by the Group from relevant sources and the Group's conclusions on the situation of human rights in Chile. In many cases recommendations were made by the Group to the Government of Chile for steps to be taken to improve respect for human rights.

4. As noted above, a visit by the Ad Hoc Working Group to Chile was one of the elements of its mandate when the Group was established in 1975. This had received the agreement of the Government of Chile at the time, and during the following months this agreement was reiterated and discussions took place between the Group and the Government which resulted in an agreement on the modalities of the Group's visit. However, on 4 July 1975, after the Group had assembled in Lima, Peru, prior to the visit to Chile scheduled to begin on 10 July 1975, the Government informed the Group that the visit was cancelled "until a more auspicious occasion". Unable to visit Chile but remaining under an obligation to perform as completely as possible the task entrusted to it by the resolutions establishing it, the Group took those steps necessary to gather oral and written evidence from all relevant sources. In so doing the Group held meetings in New York, Geneva, Caracas and Mexico City during the period 1975-1978 for the purpose of receiving information from individuals, from representatives of governmental and non-governmental organizations and from the Government of Chile. In relation to the visit to Chile, the General Assembly and the Commission on Human Rights repeatedly called upon the Chilean authorities to admit the Group.

5. The Group has consistently adopted an attitude of seeking to obtain the co-operation of the Government of Chile, as envisaged in the resolutions by which it was established. The Group contacted the Government of Chile prior to the elaboration of its reports with a view to enabling the Government to submit oral and written information or observations. With reference to that part of its mandate calling for a visit to Chile, the Group continued to engage in discussions with representatives of the Government of Chile in 1976 and 1977 for the purpose of arriving at an agreement on a visit which would respect the terms of the Group's mandate and its own rules of procedure. However, these discussions, which are fully reflected in the relevant reports of the Group to the General Assembly, did not then result in such an agreement.

^{3/} The reports adopted by the Group and the resolutions adopted by the bodies concerned in relation to the situation of human rights in Chile are as follows: progress report to the General Assembly at its thirtieth session (A/10285), General Assembly resolution 3448 (XXX); report to the Commission on Human Rights at its thirty-second session (E/CN.4/1188), Commission resolution 3 (XXXII); report to the General Assembly at its thirty-first session (A/31/253), General Assembly resolution 31/124; report to the Commission on Human Rights at its thirty-third session (E/CN.4/1221), Commission resolution 9 (XXXIII); report to the General Assembly at its thirty-second session (A/32/227), General Assembly resolution 32/118; report to the Commission on Human Rights at its thirty-fourth session (E/CN.4/1266), Commission resolution 12 (XXXIV).

6. The Group in its reports has called the attention of the international community to two particular concerns relating to the situation of human rights in Chile: the impact of foreign economic aid and assistance on respect for human rights in Chile and the necessity of providing for humanitarian, legal and financial aid to those detained or imprisoned in Chile under the state of siege and other emergency legislation, to those forced to leave the country and to their relatives. With regard to the first matter, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in part I of its resolution 11 (XXX) of 21 August 1977, appointed a rapporteur, Mr. Antonio Cassese, to analyse the volume, origins, development and significance of the assistance given to the present régime in Chile and to study whether a quantitative or qualitative change in the aid now being given might contribute to restoring respect for human rights in Chile. The Rapporteur submitted a progress report 4/ to the Commission on Human Rights at its thirty-fourth session (1978). The Commission in its resolution 12 (XXXIV) requested the Rapporteur to present his report to the Sub-Commission at its thirty-first session (August/September 1978) and instructed the Sub-Commission to transmit the report to the General Assembly at its thirty-third session. 5/

7. With regard to the question of humanitarian, legal and financial aid to victims of violations of human rights and their relatives, the Sub-Commission, in part II of resolution 11 (XXX) of 21 August 1977, recommended that a voluntary fund be established to receive contributions and distribute humanitarian, legal and financial aid to those detained or imprisoned in Chile under the state of siege or other emergency legislation, to those forced to leave the country and to their relatives. The Commission on Human Rights, in its resolution 13 (XXXIV) of 6 March 1978, invited the Economic and Social Council to recommend to the General Assembly the establishment of a voluntary fund, which the Council did in its resolution 1978/15.

8. The activities of the Ad Hoc Working Group up to the adoption of its report to the General Assembly at its thirty-second session (A/32/227) are fully reflected in that and previous reports. The Group's report to the General Assembly at its thirty-second session was introduced by the Chairman-Rapporteur of the Group at the 56th meeting of the Third Committee. The Assembly, having considered the Group's report, the documents submitted by the Chilean authorities and the reports of the Secretary-General, adopted resolution 32/118 of 16 December 1977.

9. The Group's activities subsequent to the adoption of its report to the General Assembly at its thirty-second session are reflected in its report to the Commission on Human Rights at its thirty-fourth session (E/CN.4/1266). That report includes the text of the letter dated 29 November 1977 sent by the Chairman-Rapporteur to the Permanent Representative of Chile to the United Nations Office at Geneva informing him that, with a view to the preparation of its report to the Commission on Human Rights at its thirty-fourth session, the Group would be ready to receive any information the Government might wish to submit and to meet with representatives of the Government during meetings the Group was to hold in Geneva in January 1978. The Group's report also contains information on the

4/ E/CN.4/1267.

5/ For the report, see E/CN.4/Sub.2/412.

organization and results of the National Consultation of 4 January 1978 and on the letter of 5 January 1978 sent by the Government of Chile to the Secretary-General in which the Government referred to the National Consultation and expressed its views on its relations with the Working Group and the Commission on Human Rights, stating that "it is absolutely useless to prolong the situation as brought about by the Working Group".

10. The Government of Chile replied to the letter of 27 November 1977 from the Group's Chairman-Rapporteur by a letter of 13 January 1978 ^{6/} which made reference to the Government's letter of 5 January 1978 to the Secretary-General, enclosed a copy of that letter and stated, inter alia, that the Chilean Government "deems it inappropriate and unnecessary to attend a meeting of the kind proposed by you". On examining the letter from the Government of Chile to the Secretary-General, the Group found that it contained statements and demands which had already been placed before the Group by the Chilean representatives and rejected by it on valid grounds.

11. The Group prepared and adopted its report to the Commission on Human Rights at its thirty-fourth session during meetings in January 1978 in Geneva. The Chairman-Rapporteur introduced the Group's report to the Commission at its 1453rd meeting, and the Commission, after having considered the Group's report and the observations and other information submitted by the Government of Chile, adopted, by a roll-call vote of 24 to 3, with 4 abstentions, resolution 12 (XXXIV) of 6 March 1978 (see annex II). In response to General Assembly resolution 32/118, the Commission, in resolution 12 (XXXIV), extended the mandate of the Working Group for one year and requested it to report to the General Assembly at its thirty-third session and the Commission on Human Rights at its thirty-fifth sessions. In resolution 12 (XXXIV) the Commission also called upon the Chilean authorities to admit the Working Group to Chile, thereby contributing to an impartial examination of the human rights situation in the country. The Economic and Social Council in its decision 1978/23 approved the decision of the Commission to extend the Group's mandate and, acting upon the Commission's recommendation, requested the General Assembly to make arrangements for the provision of adequate financial resources and staff for the implementation of Commission resolution 12 (XXXIV).

12. After the close of the thirty-fourth session of the Commission on Human Rights contact was again taken up between the Group and representatives of the Government of Chile, and at meetings in May 1978 an agreement was reached which enabled the Group to visit Chile in July 1978. For details of the Group's relations with the Government of Chile, its work after the thirty-fourth session of the Commission and the visit to Chile, see chapter I below.

13. This, the seventh report of the Group, was prepared during meetings held in Geneva from 5 to 22 September 1978. It is based on the information obtained during the Group's visit to Chile and during hearings held in New York and Geneva and on the Group's own observations. The Group has included, to the extent possible, the relevant information and observations submitted by the Government of Chile on matters covered by this report. Pursuant to the terms of the agreement which led to the Group's visit to Chile, further observations of the Government of Chile are contained in annex LXXXII.

^{6/} For the text of the letter of 13 January 1978, see E/CN.4/1266, annex III.

I. VISIT BY THE AD HOC WORKING GROUP TO CHILE

A. Discussions with representatives of the Government of Chile
and agreement on a visit by the Group

14. On 21 March 1978, after the end of the thirty-fourth session of the Commission on Human Rights, the Director of the Division of Human Rights addressed a letter to the Permanent Representative of Chile to the United Nations Office at Geneva transmitting a copy of Commission resolution 12 (XXXIV) and calling attention to the extension of the Group's mandate and the Commission's call upon the Chilean authorities to admit the Ad Hoc Working Group into Chile. At the request of the Chairman-Rapporteur, the Director informed the Government of Chile, in that same letter, of the Group's plans to meet to decide on its programme of work during the second half of May 1978 and inquired if the Government would wish to send representatives to discuss relevant matters with the Group during these meetings. Reference was made to statements by the Chairman-Rapporteur at the thirty-fourth session of the Commission on Human Rights expressing the hope that such meetings could take place and that an agreement would be reached on a visit by the Group. By a letter dated 17 April 1978 the Permanent Representative of Chile to the United Nations Office at Geneva informed the Director of the Division of Human Rights that the Government would send representatives to the meetings of the Group, at which he hoped all pending matters could be raised. At the request of the Permanent Representative of Chile to the United Nations, the Group's meetings were held in New York instead of Geneva. 1/

15. As a result of the above, the Group held a series of meetings in New York from 18 to 26 May 1978 during which it met on several occasions with the representatives of the Government of Chile, Ambassador Sergio Diez, Ambassador Miguel Schweitzer and Counsellor Octavio Errazuriz. During these meetings the question of the Group's visit to Chile and issues directly involved in such a visit were discussed as well as questions relating to the rules of procedure of the Group and exchanges of information between the Group and the Government.

16. At the end of its meetings in New York, on 26 May 1978, the Group was informed of the acceptance by the Government of Chile of the principle of a visit by the Group to that country and, with the exception of the duration of the Group's visit, agreement was reached on a memorandum providing a basis for the visit. The Group had determined that two weeks was the minimum time necessary to carry out the visit adequately as part of its mandate. The representatives of the Government of Chile stated they were not at that time authorized to agree to a visit of two weeks' duration, and they requested ten days within which to inform the Group, through the Director of the Division of Human Rights, of the Government's acceptance or rejection of a two-week visit. The representatives of the Government stated that no counter-proposals or modifications with respect to the memorandum would be suggested.

17. On 5 June 1978 the Permanent Representative of Chile to the United Nations informed the Secretary-General of the Government's acceptance of the visit of the Group according to the terms of the memorandum agreed to by the Group and the

1/ For these letters see annexes III and IV.

representatives of the Government of Chile, which provided for a visit of two weeks. A letter to this effect was handed to the Secretary-General for transmission to the Chairman of the Group. Upon receipt of this letter, the Chairman of the Group officially transmitted the memorandum of 26 May 1978 to the representative of the Government of Chile, stating that the memorandum and the Government's acknowledgement would constitute the agreement regarding the Group's visit. ^{2/} The Chairman of the Ad Hoc Working Group released a press statement on 9 June 1978 in which he reported on the agreement for the visit and stated that the exact date of the visit would be fixed by mutual consultation and consensus. ^{3/}

Memorandum of 26 May 1978

18. The memorandum of 26 May 1978 provided for a two-week visit by the Group to Chile during which the Group would enjoy freedom of movement throughout the country and freedom of investigation, that is, access to prisons, places of detention and interrogation centres, the possibility to interview freely and privately persons, groups and representatives of institutions and access to pertinent files and documents. The memorandum contained the Government's assurances to the Group that "no person who had been in contact with the Group would for that reason be subjected to coercion, sanctions, punishment or judicial proceedings". The Group attached particular importance to this guarantee. In addition, the Government gave the Group an assurance concerning the privacy and unimpaired conduct of its activities and the security of the Group and accompanying staff.

19. The memorandum also contained the Group's statement of its understanding of certain aspects of its mandate. The Group was of the opinion that its future reports should cover the situation of human rights in Chile from the most recent extension of the Group's mandate, but this did not imply that the substance and conclusions of prior reports would be affected. The cases or situations mentioned in prior reports which continued to exist could be the subject of study. Provision was made for exchanges of information between the Group and the Government; the Group would, to the extent permitted by its mandate and its obligation to witnesses, communicate to the Government those areas and cases of concern to it in order to enable the Government to submit its views. A two-day meeting after the visit to Chile with representatives of the Government was agreed on for this purpose, and the information and views of the Government would be taken into consideration in the preparation of the Group's report and included as the Group deemed appropriate. Information on those substantive areas of concern on which the Government had not had the opportunity to make observations would be transmitted to the Government before the adoption of the Group's report. The observations of the Government of Chile would be annexed to the Group's report or included in an addendum thereto. While the weighing of evidence was, by the nature of its mandate, the responsibility of the Group, the Group recognized that the character of the source of such evidence, its direct and reliable nature, the possible motivation of the source and the concordant nature of other information were all elements to be taken into consideration. It was recognized that information and reports from any official sources, both national and international, could be relevant in particular areas, such

^{2/} For the Chairman's letter, the memorandum of 26 May 1978, and the letter, from the Permanent Representative of Chile to the United Nations acknowledging receipt of the memorandum, see annexes V, VI and VII.

^{3/} For the press statement see annex VIII.

^{3/} For the press statement see annex VIII.

as economic, social and cultural rights, but not to the exclusion of other evidence. To enable the Government to take the steps necessary to facilitate the visit, an indicative but not exhaustive list of persons and places the Group might wish to visit would be submitted.

20. Subsequent to the agreement on the visit of the Group, and as provided for in the memorandum of 26 May 1978, contact was maintained between the Group and the representatives of the Government of Chile. The dates for the Group's visit were fixed by mutual agreement at 12 to 26 July 1978. Information was transmitted to the Government on certain elements of the Group's eventual programme of work in Chile, and an exchange of correspondence took place concerning the assurances contained in the memorandum of 26 May 1978.

21. The Group held meetings in New York on 10 and 11 July 1978 to consider the programme of work it would undertake in Chile and to discuss this and other matters with the representatives of the Government of Chile.

22. Ambassadors Sergio Diez and Miguel Schweitzer were appointed by the Government of Chile as liaison officers with the Group for the visit.

B. Visit by the Group to Chile

23. The visit of the Ad Hoc Working Group to Chile began with its arrival in Santiago on 12 July 1978 and ended with its departure on the evening of 27 July 1978. The visit was originally scheduled to end on 26 July, but, because of its heavy programme of work, the Group requested and the Government agreed to a one-day extension.

24. The following members of the Ad Hoc Working Group took part in the visit to Chile: Justice Abdoulaye Diaye, Professor Felix Ermacora, Mrs. Marian J.T. Kamara. Ambassador Leopoldo Benites, on the advice of his physician, did not visit Chile with the Group because of a serious health condition. ^{4/} The Chairman-Rapporteur, Mr. Ghulam Ali Allana did not take part in the visit for personal reasons which the Group shared. In this regard the Chairman issued a statement on 3 August 1978 after the end of the Group's visit in which he reviewed the relations between the Group and the Government of Chile concerning the question of the visit ^{5/} and in which he stated:

"... when the Commission on Human Rights met in February this year in Geneva, and I had introduced the report of the Group, I found that the Government of Chile was in no mood to abide by its previous solemn commitment to allow the Group to visit Chile to carry on its on-the-spot investigation. I was anxious that this part of our mandate should be fulfilled, so that the moral prestige of the United Nations could be firmly established in carrying on investigations of this nature.

^{4/} Mr. Benites transmitted a certificate from his attending physician in which the avoidance of any physical or mental stress was recommended. The certificate is in the files of the Group.

^{5/} For the full text of this statement see annex IX.

"I therefore evolved a plan in my mind to resolve this difficult deadlock. The essence of this plan was that the Government of Chile should reiterate that it would allow the Group as a whole to visit Chile, without putting any conditions or restrictions. If this were to be done, the Government of Chile would be informed that I would voluntarily abstain from accompanying the Group on its visit to Chile. The formula was subsequently pursued with the Government of Chile, who ultimately agreed to it ...".

25. In view of the non-participation of the Chairman, the Group decided that the chairmanship should rotate between the members taking part in the visit.

26. Upon arriving in Chile the Group issued a statement to the press concerning its mandate, the purpose of its visit, and the assurances of the Government concerning persons contacting the Group. This statement indicated that the Group's offices were located at the Latin American Demographic Centre, a United Nations institution located at the headquarters of the Economic Commission for Latin America. The Group's arrival, the subjects dealt with in the press statement and other matters connected with the Group's visit received wide coverage by the Chilean press, radio and television. Upon its departure from Chile, the Group also issued a statement to the press. 6/

Programme of activities during the visit

27. The Group established its programme of activities during the visit with the purpose of obtaining objective and balanced information from all relevant sources on matters falling within its mandate. In determining its programme the Group took into consideration suggestions made by the Government of Chile before and during the visit. The Group also received information from independent organizations and groups and to the extent possible in the time available the Group heard private persons who expressed a wish to provide information. The Group received more than 300 written requests from persons wishing to appear before it, in relation to a wide range of subjects falling within its mandate. In many of these cases extensive written material was submitted along with the request for a hearing. The Group was unable to hear in person each individual requesting to appear before it. In order to accommodate as many persons as possible the Group on many days extended its hearings late into the evening. The programme of activities carried out by the Group appears in annex XII.

28. The Group held most of its meetings during its visit at its offices at the Latin American Demographic Centre. Close consideration was given to visits by the Group outside Santiago, in particular to Concepción, Valparaíso and other cities but the Group was aware that to make maximum use of the limited time available for the mission, care had to be taken not to spend excessive time travelling. Further a period of heavy rain while the Group was in Chile made travel outside Santiago difficult. The Group nevertheless travelled to Valparaíso on 22 July 1978 where it met with the Bishop of Valparaíso, heard testimony from relatives of missing persons and trade union leaders, and visited the Valparaíso gaol.

6/ For the statements issued to the press on 12 July and 27 July 1978, see annexes X and XI respectively.

29. During the two days following its arrival in Chile, the Group made visits of protocol to the following officials: His Excellency General Augusto Pinochet Ugarte, President of the Republic; Admiral José Toribo Merino, member of the Government Junta; Carabineros General César Mendoza Durán, member of the Government Junta; Air Force General Martini Lema, representing General Gustavo Leigh Guzmán, member of the Government Junta, absent at that time from Santiago; Mr. Hernán Cubillos, Minister of Foreign Affairs; Mr. Sergio Fernández, Minister of the Interior; Mr. Israel Borquez, President of the Supreme Court; Mr. José M. Eyzaguirre and Mr. Enrique Urrutia, former Presidents of the Supreme Court. During the visit to Valparaíso, the Acting Chairman made a visit of protocol to the Prefect (Intendente) of the Region, Admiral Troncoso Daroch.

30. The Group also met in working sessions with Government Ministers, Judges of the Supreme Court and Court of Appeals of Santiago and other officials. These meetings took place throughout the period of the visit, which enabled the Group to discuss with the responsible official the information the Group was receiving. The Group met in working sessions twice with the Minister of the Interior. The Group also had working meetings with the following ministers and officials: the Director of the National Planning Office (ODEPLAN) and the Minister of National Planning, Mr. Roberto Kelly; the Minister of Justice, Miss Mónica Madariaga; the comptroller-General of the Republic, Mr. Osvaldo Iturriaga; the Director of the National Information Agency (CNI), General Odlanier Mena.

31. Working meetings took place between the Group and the following judges: the President of the Supreme Court, Mr. Israel Borquez; the President of the Court of Appeals of Santiago, Mr. Aldo Guastavino; Court of Appeals Judges Hernán Cereceda, Sergio Dunlop and Maria O'Neill.

32. The Group visited the Cardinal Primate of Chile, Raúl Silva Henríquez, and met with the Bishop of Valparaíso, Monseñor Emilio Tagle, during its visit to that city. The Group was also able to meet with the following members of the Council of Pastors of Protestant Churches in Chile: Mr. Julio Lajtonyi, lay president of the Lutheran Church and of the Lutheran Council; Bishop Carlos San Martín of the United Methodist Pentecostal Church; Mr. Hermes Canales, minister of the Evangelical Pentecostal Church; Mr. Luis Pozo Burdiles, Baptist minister; Mr. Javier Vásquez, minister of the Evangelical Cathedral of Santiago; Mr. Hugo Gacs, a Pentecostal minister. Unfortunately, although the Group wished to meet with representatives of the Episcopal Conference of the Catholic Church, it became impossible to arrange such a meeting due to the death of a Chilean Bishop.

33. The Group met with three former Presidents of Chile: Mr. Jorge Alessandri, Mr. Eduardo Frei and Mr. Gabriel Gonzales Videla. It also met with the former Comptroller-General of the Republic, Mr. Héctor Humeres.

34. The Group received information from representatives in Chile of the International Labour Organisation, the Office of the United Nations High Commissioner for Refugees and the Intergovernmental Committee for European Migration.

35. The Group visited several government-sponsored centres for aid to the poor in the Santiago suburb of Renca; the Paula Jara Quemada Centre for Children (Centro para Niños Paula Jara Quemada); a work centre for workers under the Minimum Employment Programme (PEM); an establishment of the Mothers' Centres (Casa de Centros de Madres) and a child nutrition centre of the Corporation for Child Nutrition (CONIN) (Corporación Para la Nutrición Infantil).

36. On two occasions the Group visited the headquarters of the Vicaría de la Solidaridad of the Archbishopric of Santiago. Information was provided to the Group on the programmes of the Vicaría in its numerous fields of activity. In connexion with the activities of the Vicaría, the Group visited a nutrition centre (COMIDOR), a medical clinic and a workshop for the unemployed. The Group also visited the Vicaría de la Pastoral Obrera of the Archbishopric of Santiago and received information on its activities in the field of trade union rights and labour conditions. The Department of Social Service of the Archbishopric of Concepción provided to the Group detailed information on its programmes of activities in Concepción.

37. During the Group's hearings at the Latin American Demographic Centre and during the visit to Valparaíso, individuals and representatives of organizations and groups provided information on a wide range of subjects. Representatives of the Association of Relatives of Missing Detainees informed the Group of the general aspects of the problem of missing detainees and the Acting Chairman attended a meeting of some 500 members of the Association during which information was provided on specific cases of missing persons. During its visit to Valparaíso, the Group received information from individuals concerning missing persons. Trade union leaders testified before the Group in Santiago and in Valparaíso concerning the conditions affecting the Chilean worker, and in Santiago, two persons testified before the Group and presented a letter expressing support for the Government which carried more than 3,000 signatures.

38. Members of the Group attended religious services in churches in a poor parish of Santiago on Sunday, 16 July 1978. After the services the members met and spoke with those persons who approached the Group.

39. During its meeting with the Director of the National Information Agency (CNI), the Group requested to visit an installation under CNI authority known as "Villa Grimaldi". Many reports had linked Villa Grimaldi with the detention of persons now missing and with recent cases of arrest and ill-treatment. Consent was readily given for a visit by the Group on the following day. The Group also received permission to visit Villa Grimaldi accompanied by two witnesses, one of whom alleged that he had been detained there in 1975 together with persons now missing and the other that he had been detained and ill-treated there in February 1978. A description of this visit is found in chapter IV and annex XXXII.

40. The Group also went to Santiago Prison, where it visited the area ("Calle 5") where political detainees were held and interviewed in private certain inmates designated by the detainees as their representatives. In addition, the Group spoke with prison officials and visited the prison hospital. Similarly, during its trip to Valparaíso the Group visited the Valparaíso gaol, inspected the cells of the political detainees and interviewed them privately.

41. During its visit to Chile the Group received extensive documentation from official sources and, in response to requests from the Group, the Government provided other documents, for example arrest decrees, lists of arrested persons, medical certificates, legal provisions, reports on missing persons and other material. As mentioned above, the Group's requests to visit places of detention met with the agreement of the Government. In general the Group fully enjoyed the freedom of movement and the freedom of investigation provided for in the memorandum

of 26 July 1978. The Government deserves commendation for the manner in which it fulfilled both the spirit and the letter of its undertakings on co-operation with the Group, for which the Group wishes to record its appreciation.

42. With respect to two matters, the Group was not able to carry out the activities it had wished - a visit to "Colonia Dignidad" and a meeting with retired General Manuel Contreras Sepúlveda, the former head of DINA. "Colonia Dignidad" is a private non-profit corporation located between Santiago and Concepción and it has often been reported that individuals were detained and tortured by DINA there. With this in mind and upon the expression by the representatives of the Government of Chile of their willingness to try to arrange a visit by the Group to "Colonia Dignidad", a formal request was made in that sense. However, the Group was orally informed that the members were invited to visit "Colonia Dignidad" in their individual capacities and that the visit could not be part of the Group's meetings. An investigation by the Group as such was rejected. For the letter officially transmitting the response of "Colonia Dignidad" see annex XIII.

43. Retired General Manuel Contreras Sepúlveda as an individual and DINA, of which he was the Director, have been associated on many occasions by numerous witnesses with the arrest and detention of persons now missing and with the torture of detainees. Most recently DINA and General Contreras have been implicated in the death of former Minister Orlando Letelier who died on 21 September 1976 when a bomb exploded in his car in Washington D.C. 7/ General Contreras also was recently the subject of a criminal complaint in connexion with the disappearance of detainees. Because the Group believed General Contreras to be a key element in relation to missing persons and the techniques of arrest, detention and torture of DINA, the Group orally requested the representatives of the Government of Chile, Ambassadors Diez and Schweitzer, and the Director of the CNI to arrange a meeting between the Group and General Contreras. The representatives of the Government orally informed the Group that they were unable to compel General Contreras to meet the Group. On 21 July 1978 the Acting Chairman of the Group addressed a letter to Ambassador Diez officially requesting the Chilean authorities to arrange a meeting. On 25 July 1978, Ambassador Diez answered that General Contreras held no official post, that he was retired from the armed forces and that the Government, as it had done with other persons not belonging to the Government whom the Group wished to meet, had informed General Contreras of the Group's wishes. The address and the telephone numbers of General Contreras were given to the Group to enable it to contact the General. On 26 July the Secretary of the Group telephoned one of the numbers that had been given and was informed that General Contreras had been absent from Santiago for 15 days and could not be reached. During its meetings in Geneva in September 1978 the Group wrote to General Contreras, at that time under house arrest in Santiago in relation to extradition proceedings, requesting him to answer a number of questions. 8/ Up to the date of the adoption of this report no response has been received.

7/ Information concerning the death of Mr. Letelier and allegations of the involvement of DINA agents was included in the Group's report to the Commission on Human Rights at its thirty-third session. That report also reflects the denials by Chilean authorities of any link between Mr. Letelier's death and the Chilean security services (E/CN.4/1221, paras. 196-199).

8/ For these questions see annex XIV.

44. The Group decided to keep as detailed records as possible of the information received while in Chile. This was done through the tape recordings of almost all its meetings and the preparation of minutes of each meeting based on written notes.

45. The supporting staff for the Group's visit to Chile was provided by the Division of Human Rights at Geneva, United Nations Headquarters, New York, and the headquarters of the Economic Commission for Latin America at Santiago. The Director of the Division of Human Rights, Mr. Theo C. van Boven, represented the Secretary-General and the following members of the Division's staff accompanied the Group: Mr. Thomas E. McCarthy, Secretary of the Group; Mr. Augusto C. Willemsen-Diaz, Human Rights Officer; Mrs. Mirta de Teitelbaum, Human Rights Officer; Ms. Sandra Belcourt, Secretary; Ms. Luz Cuellar, Secretary. Ms. Belela Herrera of the Santiago Office of the United Nations High Commissioner for Refugees, was appointed to act as liaison officer with persons wishing to submit information to the Group. Interpreters, translators, précis writers and a sound engineer from United Nations Headquarters New York were temporarily assigned to the Economic Commission for Latin America (ECLA) in order to service the Group during its visit. ECLA assigned Mr. Luis Carlos Sanchez, Chief of the Information Services, as Information Officer for the Group. It also provided administrative, secretarial, security and other services without which the visit would not have been possible. The Group wishes to thank all the staff members who tirelessly and with dedication provided indispensable support for its visit. It also wishes to thank the Executive Secretary of ECLA, Mr. Enrique Iglesias, the Secretary of the Commission, Mr. Jorge Viteri, and the Chief of the ECLA Division of Administration, Mr. Joseph El Haj, for the support they made available.

C. Meetings of the Group in New York and Geneva subsequent to the visit

46. After leaving Chile, the Group held a series of meetings in New York from 31 July to 4 August 1978, in which all the members of the Group participated. The purpose of these meetings was for the members to evaluate the visit among themselves, to hear testimony and to exchange views with the representatives of the Government of Chile as provided for in the memorandum of 26 May 1978.

47. During its meetings in New York with the representatives of the Government of Chile, the Group transmitted to them on 2 August 1978 a memorandum concerning information which the Group wished to receive from the Government. On 3 August 1978 the Chairman addressed a letter to the Permanent Representative of Chile to the United Nations transmitting information on specific and general situations which had come to the attention of the Group during its visit and on which the Group invited the views of the Government. On 3 and 31 August and 4 September 1978 the Government transmitted information in this regard to the Group. 9/

9/ For copies of the memorandum of 2 August 1978, the Chairman's letter of 3 August 1978 and the communications transmitting the information and the replies of the Government of Chile see annexes XV, XVI, XVII, XVIII, XIX, and XX. On 19 September 1978 the Government transmitted additional information on the proposed constitution (see Chapter III) and on 20 September 1978 the Government communicated to the Group information concerning missing persons (see Chapter V).

48. During its series of meetings in Geneva from 5 to 22 September 1978, the Group continued its exchange of views with the representatives of the Government of Chile. It requested the Government to transmit to General Contreras the questions which the Group wished him to answer (see annex XIV) and the Group was informed of the Government's agreement to do this.

49. The Group wishes to state its conclusion that the relations between the Group and the Government of Chile during this year have been much more fruitful than in the past.

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

A. Constitutional and legal rules applying to the institutions of
the present Government of Chile - powers of the
various branches of government

50. In its progress report submitted to the General Assembly at its thirtieth session, the Working Group described the constitutional and legislative provisions relevant to this study (A/10285, chap. III). That report quoted Decree-Law No. 1, published in the Diario Oficial of 18 September 1973, which stated that "the Forces, constitutionally consisting of the Army, Navy, Air Force and Corps of Carabineros, represent the organization with which the State has endowed itself for the preservation and defence of its physical and moral integrity and of its historical-cultural identity." In the same decree, the Government Junta, assuming the Supreme Command of the Nation, designates as President of the Junta General Augusto Pinochet Ugarte and declares that "the Junta, in the exercise of its mission, shall guarantee the full effectiveness of the powers of the Judiciary and shall respect the Constitution and laws of the Republic to the extent possible in the present situation of the country".

51. The same progress report (A/10285) quotes Decree-Law No. 806 of 16 December 1974, which states that "the executive power is exercised by the President of the Government Junta, who, with the title of President of the Republic of Chile, administers the State and is the Supreme Chief of the Nation, with the powers, attributions and prerogatives vested in him". It further states that the constitutional and legislative powers belong to the Junta as a group. The report also gives an account of the dissolution of the National Congress by Decree-Law No. 27 of 21 September 1973.

52. During its visit, the Group had various working meetings with Ministers and other higher authorities of the Government, in the course of which it obtained information concerning the structures and mechanisms of the functioning of power in Chile, particularly those relating to the exercise of and respect for human rights.

53. The Minister of Justice, Miss Mónica Madariaga, told the Group in the course of a meeting that a complete breakdown in the traditional form of democracy had led to an attempt to re-establish patriotic values, and to a quest for historical and cultural identity. That had required flexibility, even at the cost of offending against the hierarchical principle of the legal rules which had led the country to the situation as it had existed in 1973 and which had ended at that time. She added that the decree-laws issued by the Government Junta were genuine laws, because the Government was convinced of the legitimacy of the political movement of September 1973, which was based on the general expression of the will of Chileans, who had called upon the armed forces to take over power. ^{1/} For his part, Mr. Osvaldo Iturriaga, Comptroller-General of the Republic, told the Group that the decree-laws whereby the Government Junta exercised the legislative power had the same validity as the laws previously enacted by Congress. He added that that equivalency was recognized in international legal doctrine and had precedents in Chile itself.

^{1/} Minutes No. 28 of 24 July 1978.

54. According to the information received by the Group, the 1925 Constitution, with the modifications which were made in it in 1943, 1957, 1958, 1967, 1970 and 1971, but without introducing any fundamental change in its basic structures, and with those instituted by the decree-laws issued by the present Government, is considered in Chile to be still in force. No other coherent constitutional text has replaced that Constitution, apart from the decree-laws issued for the operational necessities of the present Government. The machinery for the separation of powers and for providing a check on the acts of each of those powers is still formally in force, with the particularity that, by Decree-Law No. 128 of 12 November 1973, the Junta took over the Legislative and Constituent Powers, while the President of the Junta assumed the Executive Power.

55. The sole limitation on the exercise of these powers is to be found in Decree-Law No. 788 of 2 December 1974 (see annex XXI), according to which decree-laws subsequent to that date which changed the Constitution or were opposed to its provisions would have such amending effect only in cases where the Government Junta expressly stated in the text of the decree that it was issued in exercise of the Junta's Constituent Power. The same Decree-Law confirmed the legal rules which had modified constitutional precepts before it was promulgated, even where their promulgation had not been accompanied by a statement to the effect that constituent powers were being exercised.

56. Some lawyers who were interviewed by the Group pointed out that Decree-Law No. 788 sanctioned a legal aberration, namely that unconstitutional rules, which should ipso facto be null and void, had on the contrary acquired constitutional status and were being given priority over other rules.

57. The accumulation of the constituent, legislative and executive powers in the Government Junta and its President gives the military Government discretionary powers in all areas of the country's life. While the Group was visiting Chile, decisions were taken introducing changes in the composition of the Government Junta, and these were criticized in comments made to the Group. These criticisms related, on the one hand, to the failure to consult the people regarding such a major step which was of concern to all Chileans, and, on the other hand, to the arbitrary interpretation of the provision on which the action was based. The facts are as follows:

58. By means of an official communiqué, made public through all the media, news was given of the dismissal of General Gustavo Leigh Guzmán from his post of Commander-in-Chief of the Air Force and member of the Government Junta. The communiqué cited his "absolute incapacity" to carry out the duties of those posts, since he "had repeatedly departed from the Principles and Postulates inspiring the Movement of 11 September 1973". This resolution was signed by the remaining three members of the Junta and was based on Decree-Law No. 527 of 17 June 1974. 2/

59. Article 18 of Decree-Law No. 527 states that "should it be necessary to replace one of the members of the Government Junta, on account of his death, resignation or absolute incapacity of any kind, the Junta shall appoint the institutional Commander-in-Chief or Director-General of Carabineros who is to

replace him", while article 19 provides that "In the event of there being any doubt as to whether the incapacity which prevents a member of the Government Junta from exercising his functions is of a nature such that he should be replaced, in accordance with the procedure prescribed in the preceding article, it shall be for the remaining members of the Junta to resolve the doubt in question".

60. A few days before the decision referred to, a number of newspapers in Chile and elsewhere had published statements to journalists by General Leigh expressing opinions which, as he himself said, were not shared by other members of the Government. 3/

61. Although the notion of "absolute incapacity", to which Decree-Law No. 527 refers, is not clearly defined in that instrument, the adjective "absolute" preceding "incapacity" would seem to have been inserted for the purpose of avoiding flexible or broad interpretations of the text. Thus, the measure looks rather like a punishment, and this would not be in strict conformity with the terms of the said legal provision, issued by the Government Junta to regulate its own functioning. A Chilean lawyer who gave evidence before the Ad Hoc Working Group during its visit to Chile expressed the view that the term "absolute incapacity" obviously related to matters of fact, such as death, illness, etc., but not to a difference of opinion on the part of one of the members of the Junta. He added that the decree of dismissal showed that the Government did not implement its own decree-laws, even when they concerned members of the Junta. 4/

62. For the purposes of the inquiry entrusted to the Ad Hoc Working Group, it is very important to consider the impact of these vast discretionary powers on the institutions whose duty it is to ensure respect for legality and the protection of human rights.

63. The Group was able to ascertain that, according to law, the Office of the Comptroller-General (an organ, independent of the ministries, which reports solely to the President of the Republic and to Congress and which possesses, inter alia, powers to check the legality and constitutionality of the supreme decrees and decisions of the Heads of Departments), 4/ and also the Judicial Power, should be in a position to supervise the acts and decisions of the Junta and of the President of the Republic. In theory, the structure and functions of the Judicial Power and the Office of the Comptroller-General of the Republic have not undergone any significant changes. 5/

64. Nevertheless, since the Junta holds the combined constituent and legislative powers, it is able to: (a) change the structure, functions or powers of the

3/ The statements by General Leigh were reproduced in extenso in the review Hoy, No. 61, of 26 July-10 August 1978.

4/ See section E below, on the Office of the Comptroller-General.

5/ At various meetings with the Group authorities and judges of the Supreme Court repeatedly stated that the Judicial Power was completely independent, that judges could not be removed from office and that Chile was the only country which had judges with 30 or 40 years' service.

Judicial Power and of the Office of the Comptroller-General; (b) remove judges, magistrates or officials; and (c) abolish or suspend the institutions in question.

65. It seems pertinent to mention here the reply of the present Comptroller-General of the Republic, Mr. Osvaldo Iturriaga, to the question asked him by the Group about the independence of the Comptroller-General: the Comptroller-General's independence of the Executive Power is safeguarded because the post is a permanent one and the incumbent can only be removed, like the judges of the Supreme Court, by means of political action by Congress. Nevertheless, the situation is not the same under the current régime since the Government Junta, which has taken over the Legislative Power, could oust him by means of a decree-law. 6/

66. The officials staffing the supervisory institutions and institutions for the protection of human rights cannot but feel the weight of the Junta's extensive powers. The freedom from removal from office guaranteed them by the Constitution of Chile, through the machinery established for a State based on law, is not currently operative. In fact, the Government has already broken on one occasion with the tradition of appointing the Comptroller-General from among the career officials of the Office of Comptroller-General by appointing as Comptroller-General, on 1 January 1978, Mr. Sergio Fernández, former Minister of Labour and present Minister of the Interior. Mr. Fernández was appointed to the post on the eve of the national referendum of 4 January 1978, to replace Mr. Héctor Humeres, who had applied for retirement. He remained in the post for only three and a half months (see section E below). Mr. Iturriaga informed the Group that the appointment had been made freely by the President, without any regard for customary practice. 7/

67. Although the constitutional provisions concerning the non-removability of judges and of the Comptroller-General remain, the Government can change the decisions of the supervisory powers, as recognized by Mr. Héctor Humeres, former Comptroller-General, in his meeting with the Group, when he stated: The present Government has never resorted to an Overruling Decree since it can resort to a decree-law. The nature of the Office of the Comptroller-General has not changed, in as much as the Government, if confronted with an adverse ruling by the Comptroller, can resolve the matter by means of a decree-law. 8/ (Decree-laws are exempt from the "recording" procedure as will be seen in section E below).

68. Various lawyers who were interviewed by the Group informed it for their part that, at the beginning of the period of military Government, between 60 and 80 magistrates with leftist affiliations had been expelled from the profession. 9/ They also stated that the judges were empowered to enforce their decisions. However,

6/ Minutes No. 1 of 14 July 1978: meeting of the Group with Mr. Osvaldo Iturriaga, Comptroller-General.

7/ Ibid.

8/ Minutes No. 2 of 14 July 1978: meeting of the Group with Mr. Héctor Humeres former Comptroller-General.

9/ According to the President of the Santiago Court of Appeals, no judge has been removed from office on political grounds.

the Group was informed by a number of lawyers that the Executive Power had refused to obey orders from the Judicial Power, such as orders to set persons at liberty following actions for the enforcement of rights (amparo). That showed that the judges were not free to carry out an independent judicial investigation.

69. In its meetings with representatives of the Judicial Power and the Office of the Comptroller-General, the Group was able to discover that these organs have abridged their own powers (see section E below) and interpreted in a restrictive way their powers of jurisdictional control (see section F below). Mr. Israel Bórquez, President of the Supreme Court, emphasized that the Judicial Power was still as independent as it has always been, since the provisions regarding the state of emergency were the same as those of the 1925 Constitution. During the state of siege, the Constitution conferred certain extraordinary powers on the Executive, and the Judicial Power naturally could not prevent the Executive from exercising those powers. 10/

70. The Group finds that the accumulation of powers in the hands of the Junta, together with the abridgement of their own powers and the restrictive interpretation placed upon the relevant legislation by the organs of jurisdictional control, means that human rights and the legal instruments for their protection are subservient to the will of the military Government.

B. State of siege and state of emergency; exceptional powers of the Executive; the curfew

1. Raising of the state of siege; validity of the state of emergency

71. By Decree-Law No. 3 of 11 September 1973, a state of siege was declared throughout Chilean territory. It was maintained until 11 March 1978 by successive semi-annual extensions and in varying degrees in accordance with article 6 of Decree-Law No. 640 of 2 September 1974. In each of the reports submitted to the General Assembly and the Commission on Human Rights, the Group discussed the legal provisions concerning the state of siege and other emergency régimes, and the consequences of their application on the exercise of human rights in Chile. 11/

72. On 10 March 1978, El Mercurio announced the raising of the state of siege. At the same time, it informed the public that the state of emergency would be maintained, its validity having been renewed for successive six-month periods, like that of the state of siege. The newspaper added: "A state of emergency having been declared, the areas in question remain under the jurisdiction of local commanders designated by the Government, whose powers and duties are defined in the above-mentioned Internal Security of State Act, articles 34 et seq.".

73. Decree-Law No. 644 of 10 September 1974 provides for the declaration of "areas and states of emergency" as one of the emergency régimes. Article 10 states that this régime will be governed by the already existing rules. Until the promulgation

10/ Minutes No. 26 of 24 July 1978: meeting of the Group with the President of the Supreme Court.

11/ E/CN.4/1188; A/31/253; E/CN.4/1221; A/32/227 and E/CN.4/1226.

of Decree-Law No. 1,877 of 12 August 1977, the state of emergency was governed solely by the Internal Security of the State Act, No. 12,927, of 1958. Under that Act, the declaration of a state of emergency is the exclusive prerogative of the President of the Republic, exercised by supreme decree, which must bear the signature of the Ministers of the Interior and Defence. 12/

74. Article 31 of Act No. 12,927 provided that the President could exercise this power only once and for a period of up to six months. This article was amended by Decree-Law No. 1,281 of 10 December 1975, which deleted the words "only once". There is at present no limitation on the number of times one or several areas may be declared to be in a state of emergency (E/CN.4/1188, para. 32).

75. In reply to the note which the Secretary-General of the United Nations addressed to the Government of Chile, asking for information on the steps taken to implement paragraph 4 of General Assembly resolution 31/124, the Government of Chile said in its letter of 20 April 1978:

"In view of the progressive normalization of all activities throughout the country, the state of siege was terminated in Chile on 11 March 1978.

"... Now that the state of siege has been terminated, the extraordinary power of the President of the Republic to deprive citizens of their liberty has ceased and the procedure for the protection of rights is once again in full force.

"... the power of the President of the Republic to deprive of their nationality nationals abroad who seriously damage the national interest has also ceased, as has his power to confine persons indefinitely to places other than prisons or to their homes.

"... persons detained by administrative order cannot be kept in detention for more than five days, at the end of which they must be either released or brought before the competent court; in any case, any authority ordering a detention is still obliged to notify the family of the detainee within 48 hours following the detention.

"With the termination of the state of siege there also expired the competence of the Wartime Military Courts, so that all offences committed in Chile are now dealt with and punished by the ordinary courts, or by the Peacetime Military Courts over which the Supreme Court of Justice exercises full corrective and economic supervision in accordance with article 86 of the National Political Constitution."

2. Legal justification for the state of emergency

76. In accordance with the provisions of Act No. 12,927 of 6 August 1958, a state of emergency may be declared in two cases: (a) In case of war, external attack or invasion, where attack or invasion has actually occurred or there are serious

12/ El Mercurio, 10 March 1978. A state of emergency was declared for the first time by the Military Junta on 18 September 1973 by Decree-Law No. 4.

reasons for assuming they will occur; (b) In case of a "public disaster". It is this latter cause, "public disaster", which was cited for the declaration and successive extensions of the state of emergency in Chile. This provision, which was added to the original text of Act No. 12,927 in June 1960, was included in order to deal with the disaster situation prevailing in the south of the country owing to the earthquakes of May 1960. It should therefore be understood that this provision could be applied only in the case of disasters or catastrophes produced by natural phenomena and that only the area affected could be declared an emergency area.

77. In declaring the country's entire territory to be in a state of emergency, the Government interpreted the text of the Act in disregard of its origin and intention. But even if the term "public disaster" were to be construed to cover serious social disturbances, the Group can see no reason for the declaration of the state of emergency; and in taking this view it bases itself not only on what it observed directly during its visit, but also on the Chilean Government's statements. Mr. Sergio Fernández, the Minister of the Interior, said in his speech commenting on Decree-Law No. 2,191, concerning amnesty, of 18 April 1978: "... As every Chilean can today see for himself, our country enjoys peace and order, which guarantee the safety of the individual and his family". Also, the preamble to the decree refers to "the general calm, peace and order now being enjoyed throughout the country, with the result that internal unrest has ended and it is now possible to lift the state of siege and the curfew throughout Chilean territory". 13/

78. At his meeting with the Group, the Minister of the Interior said that the state of emergency was essentially of a preventive nature, and that the present calm which the country was enjoying was a consequence of the emergency measures; there was no knowing what the situation might be without them. 14/ In the opinion of the Group, the state of emergency, as justified by this Government official, cannot be regarded as consistent with the rules of law adduced as the basis for it.

79. The terms of the law make it clear that a precise and specific fact must be cited as having caused the "public disaster" justifying the state of emergency. This interpretation is borne out by the limitations as to space (only the area affected may be declared an "emergency area") and to time (prior to the amendment introduced by Decree-Law No. 1,281, a state of emergency could be declared only once and only for a period of six months). With reference to the state of emergency in case of war, external attack or invasion, the law says expressly that the provision applies "where attack or invasion has actually occurred or there are serious reasons for assuming that it will occur". As for the declaration of a state of emergency in the case of public disaster, the law does not provide for this "where there are serious reasons for assuming that it [i.e. the disaster] will occur". Chilean law thus knows no "preventive state of emergency" for reasons of public disaster, as referred to by the Minister of the Interior.

13/ The text of the speech and the decree were transmitted to the Economic Commission for Latin America by note verbale No. 196 of 20 April 1978.

14/ Minutes No. 29: meeting with Mr. Sergio Fernández, Minister of the Interior.

3. Special powers vested in the President of the Republic and other government organs by the legislation of the Junta

80. In 1977, the Group expressed its concern at Decree-Law No. 1,877 of 12 August 1977, "because it modifies Act No. 12927 of 6 August 1958 on the security of the State ... by conferring on the President of the Republic new exceptional powers of arrest for a period up to five days ..." (A/32/227, para. 164). The same report contains the text of this Decree-Law, article 2 of which states:

"the references to the state of siege contained in Decree-Laws Nos. 81 and 198 of 1973 and No. 1009 (article 1) are hereby declared also to be applicable to the state of emergency regulated by Law No. 12927 of 1958".

Decree-Law No. 1,877, which amends the constitutional provisions, was issued by the Government Junta by virtue of its "Constituent Power".

81. Under Decree-Law No. 1,877, the President of the Republic retains, while the state of emergency is in force, the same power of arrest that he enjoyed under the state of siege. During the state of emergency, however, the length of time a person can be held is limited to five days. The President of the Republic exercises this power, under Decree-Law No. 1,009, article 1, "through the bodies vested with special responsibility for ensuring that national life proceeds normally". These bodies decide what "persons ... are believed to be guilty of endangering the security of the State" (Decree-Law No. 1,009, art: 1).

82. The Group was informed by the President of the Supreme Court that this power is not subject to any form of control by other authorities or organs of the State. 15/

83. In its various reports to the General Assembly and the Commission on Human Rights, the Group has analysed the action taken by these authorities in charge of security. The present report also comments on what the Group has observed of the activities now taking place in Chile (see section D below, and chap. IV).

84. While the emergency régimes are in force, persons arrested under the Presidential powers may be kept in preventive detention for five days at the disposal of the security authorities.

85. With regard to arrests and detention not carried out by virtue of the powers vested in the President during states of emergency, Constitutional Act No. 3 16/ establishes that persons may not normally be held for more than 48 hours, but that the judge may, by an order stating the reasons, extend that time-limit for not more than five days (art. 1, 6 (b)). However, while the emergency régimes are in force, and in the case of acts affecting the security of the State, the period may be extended to 10 days (Constitutional Act No. 4, art. 13). 17/

15/ Minutes No. 26: meeting with Dr. Israel Bórquez, President of the Supreme Court.

16/ See the text of Constitutional Act No. 3 (A/C.3/31/6/Add.1, annex 6).

17/ See the text of Constitutional Act No. 4 (A/C.3/31/6/Add.1, annex 7).

86. Article 1 of Decree-Law No. 1,877 also modified the state-of-siege provisions relating to the place of detention, specifying that it must be "at the residence of the person concerned or in a place that is not a prison", omitting the provision that it must not be "on premises for the imprisonment of common criminals". Interrogation centres or the premises of the Carabineros Investigation Service may thus now be used for this purpose. However, Supreme Decree No. 146 of 10 February 1976 gives a limitative list of the places at which the persons referred to in article 1 of Decree-Law No. 1,009 may be detained. The Group presumes that this provision, designed to safeguard the security of detainees, is still valid, since article 1 of Decree-Law No. 1,009, too, is valid. 18/

87. Decree-Law No. 1,877 has also made applicable to the state of emergency Decree-Law No. 81, which permits the expulsion of persons from the country, and Decree-Law No. 198, which restricts the freedom of trade-union assembly (see chap. VI and chap. X, section C). With regard to the powers of the Executive Authority to deprive a person of his nationality during states of emergency, see chapter VI, section B.4.

4. Powers of the emergency-area commanders

88. Once a state of emergency has been declared, the areas in question are placed under the jurisdiction of the area commanders appointed by the Government, whose attributions and powers are vested in them under Act No. 12927 on the Internal Security of the State, articles 34 et seq.

89. El Mercurio informed its readers of the lifting of the state of siege, at the same time as it gave news of the subsistence of the state of emergency and the powers of the military commanders of the emergency areas:

"The powers vested in the military commander include the following: to prohibit the dissemination of news concerning military matters, imposing such censorship as may be necessary on the Press and on cable and radio communications; to suppress unpatriotic propaganda; to make arrangements for such total or partial evacuation of districts, towns or areas as is deemed necessary for the defence or evacuation of the civilian population; to issue edicts establishing regulations for the services under his command and rules to be observed by the civilian population; to give any orders or instructions he may deem necessary for the maintenance of order in the area; and to suspend, for not more than six issues as regards the Press, and for not more than six days as regards broadcasting, the printing, distribution and sale of newspapers, magazines, leaflets and printed matter in general, and broadcasts by radio or television or any other similar means, which disseminate opinions, news or communications which are liable to create

18/ In the report submitted by Chile in accordance with article 40 of the International Covenant on Civil and Political Rights (CCPR/C/1/Add.25), the analysis of Decree-Law No. 1,877 and other provisions amending Act No. 12,927 governing powers and guarantees during the state of emergency makes no mention of Supreme Decree No. 146 or of Supreme Decree No. 187 of 28 January 1976 (see the information on both decrees in A/31/253, paras. 122-132).

alarm or disaffection among the population, distort the true nature of the facts, are manifestly false or contravene the instructions given to such media for reasons of public order." 19/

The foregoing powers are explicitly set out in the Act mentioned above and in Decree-Law No. 1,281 of 11 December 1975, which amended article 34 of the Act, adding power to suspend publications and radio and television broadcasts. 20/

90. As to the powers of the authorities during the state of emergency, the Minister of the Interior told the Group that the military authorities were totally independent of the administrative authorities and had different powers under the Security of the State Act. They had no power of detention, whereas the administrative authorities could detain or expel people or prevent their entry, but had no military authority. In the military sphere, under the Act, no powers were subject to the jurisdiction of the courts, but only to the control of the higher authority. 21/

.5. Legal protection under the emergency régimes

91. The Group considers that under the emergency régimes the exercise of the powers possessed by the judges and the courts to protect personal freedom and safety are of fundamental importance. At the present time, judicial practice tends to minimize the Judicial Power's possibility of intervening in respect of acts committed by the Executive Power (see section F below).

92. In the note from the Government of Chile to the Secretary-General of the United Nations to which reference has been made above (para. 75), it is stated that, with the termination of the state of siege, "the procedure for the protection of rights is once again in full force". On 19 March 1978, El Mercurio published the opinions of Jaime Guzmán, a lawyer and professor of constitutional law, on the Government's decision not to extend the state of siege: he said that it was not true that the procedure for the protection of rights (amparo) had been "restored", since the state of siege had not suspended it. He continues: "The procedure for the protection of rights continues to be in force, without limitations at the present time other than those stemming from the nature of the provisions of Decree-Law No. 1,877".

93. The limitations mentioned by the lawyer and in addition those arising from the provisions of Constitutional Act No. 4 still impose serious restrictions on personal freedom and safety. Moreover, the Group was informed of some cases in which the Ministry of the Interior or the security organs denied for some time having arrested a person, and also failed to observe the time-limits prescribed in the legislation mentioned above. 22/

19/ El Mercurio, 10 March 1978.

20/ E/CN.4/1188, para. 181.

21/ Minutes No. 29: meeting of the Working Group with Mr. Sergio Fernández, Minister of the Interior.

22/ See in chapter IV the cases of Haydée Palma Donoso and Luis Maturana Maturana.

94. As to the availability of the remedy of protection enunciated in Constitutional Act No. 3, chapter II, article 2, there has been no change in the situation as reported by the Ad Hoc Working Group to the General Assembly at its thirty-second session (A/32/227, paras. 61-65), for since the issue of Decree-Law No. 1,684, that remedy has ceased to exist in all situations of emergency. This is also stated by the Government of Chile in its report submitted under article 40 of the International Covenant on Civil and Political Rights. 23/

95. Consideration of the legislation in force, as well as the meetings held and the opinions obtained by the Working Group during its visit, confirm what was stated in the Group's report to the General Assembly (A/32/227, para. 164) and to the Commission on Human Rights (E/CN.4/1266, para. 8), to the effect that the amendments to Act No. 12,927 introduced by Decree-Law No. 1,877 are tending to transform the state of emergency into a new form of state of siege.

96. Although the imposition of a time-limit for detention under arrest is a measure which represents an improvement on the previous situation, the administrative and military authorities retain a series of powers which are free of any form of control by other authorities and constitute serious limitations on human rights.

6. Likely duration of the state of emergency

97. It was mentioned earlier that six months was the maximum period laid down in the Internal Security of the State Act for which an area could be declared to be in a state of emergency, and also that the modification introduced by Decree-Law No. 1,281, which deleted the phrase "only once", now made it possible to extend that period indefinitely. The Group asked the Minister of the Interior what the intentions of the Government were on that matter. Mr. Sergio Fernández replied that the possibility of ending the state of emergency depended on the circumstances, since the task of those who governed was to foresee problems rather than wait for them to arise. When the present six-months period of emergency ended constitutionally on 11 September 1978, therefore, the Government would decide to terminate, continue or intensify it, after examining the prevailing situation with the Ministry of the Interior. 24/

98. From all this the Group is bound to conclude that an exceptional measure intended to be applicable for a limited period and over limited areas has been transformed into an institutional restriction on human rights throughout the country for an indefinite length of time.

7. New declaration of a state of siege in a specific area of the country

99. On 1 September 1978, the Government declared a state of siege in the degree of simple internal unrest in the Province of El Loa, where a dispute involving labour problems had broken out in the copper mines at Chuquicamata. In announcing this measure, which was instituted by Decree-Law No. 2,326, El Mercurio, on

23/ CCPR/C/1/Add.25, p. 6.]

24/ Minutes No. 29: meeting of the Working Group with the Minister of the Interior.

2 September, listed the powers vested in the President of the Republic under the state of siege, and also referred to the limitation of certain guarantees and the operation of military courts. The following is the text of the article in question:

"In accordance with the existing rules of law which have been in force since 1974, the principal consequences of the state of siege in the degree of simple internal unrest are as follows:

"1. POWER OF ARREST. The President of the Republic is empowered to effect arrests 'at the residence of the person concerned or in a place that is not a prison or not a place intended for the detention or imprisonment of common criminals'. 25/

"2. POWER TO TRANSFER PERSONS. Under Decree-Law No. 527, the Head of State is empowered, during a state of siege, 'to transfer persons from one department to another'. Like the power referred to above, this power is exactly the same as that conferred under article 72 of the Political Constitution of the State.

"3. POWER TO EXPEL PERSONS OR TO RESTRICT THEIR RE-ENTRY INTO THE COUNTRY. The third basic consequence of the state of siege is the power conferred thereunder to order a person to be expelled or banished from the country 'when the best interests of State security so require', and to withhold authorization to re-enter the country, which must be sought by persons who have left it in an illegal manner, who have been expelled or on whom a sentence of exile has been imposed. 26/

"4. LIMITATIONS ON ACTION FOR ENFORCEMENT OF RIGHTS. During a state of siege, and in conformity with the relevant case law, the courts acknowledge that they have no power to question the reasons of the President of the Republic for having persons arrested or transferred in the exercise of his lawful powers, since the power to designate a person as a threat to the security of the State has always, and unanimously, been considered as being of a political rather than juridical nature. However, this does not preclude, during a state of siege, action for enforcement of rights (amparo) or the acceptance of such action if a person has been arbitrarily detained. 27/

"5. DEPRIVATION OF NATIONALITY. This is a special power which was established under the amendment introduced into the Political Constitution of the State by Decree-Law No. 175. The amendment provides that during a

25/ Chapter VI of this report deals, in addition, with the Executive Authority's power of expulsion, which can also be exercised during a state of emergency, and the power to refuse Chileans permission to enter the country, which exists even in a normal situation.

26/ In section B.3 of this chapter, an analysis is made of the differences between the state of siege and the state of emergency with regard to the President's powers of arrest.

27/ See section F.2 below on case law in matters of amparo.

state of siege a person may be deprived of Chilean nationality if, while abroad, he has caused serious harm to the interests of the State. 28/

"6. OPERATION OF MILITARY COURTS. The laws in force specify that, when a state of siege is declared in the degree of internal security or the degree of simple internal unrest, the provisions of the Code of Military Justice, Book I, Title II, concerning military courts in peacetime and their jurisdiction will be applicable while the provisions of Book II, Title II, of the Code will be applicable to criminal procedure in peacetime and the penalties established in peacetime will be increased by one or two degrees. However, even if the state of siege is in force at its two lowest degrees, certain offences that are classified as particularly serious and are specifically named in the Internal Security of the State Act must be tried by wartime military courts. As is well known, these courts operate on the basis of Councils of War and final judgement is rendered by a military judge (El Mercurio Documentation Centre)".

100. In a leading article published on 2 September, El Mercurio makes the following comments:

"The decree is based on the information given by the Governor of the province concerning events which have affected the discipline of the work force and the pursuit of vital economic activities which the Government is obliged to safeguard and protect.

...

"The people of Chile cannot but support the Government in its endeavours to safeguard law and order, and must therefore place full trust in the warnings given by the authorities concerning an imminent communist threat to the work of Chuquicamata. Such support should not, however, be confused with support for the methods which have been used to deal with the labour problem:"

8. The curfew

101. In its reply to the note from the Secretary-General of the United Nations, the Government of Chile further stated that "The Supreme Government has now announced, on 3 April 1978, that the curfew, that is, the ban on movement in the early hours of the morning, has been lifted throughout the country".

102. During the Group's visit to Chile in July, it saw no sign of any restrictions on motor traffic at night in Santiago. However, according to a statement by General Enrique Morel, Commander of the Santiago Emergency Area, the restrictions are still being enforced. El Mercurio's report on this statement reads as follows:

28/ On deprivation of nationality and the operation of this measure during a state of siege and other emergency situations, see chapter VI, section B.4, and Decree-Law No. 175 in annex LIX.

"He said that there were as yet no changes in the restrictions on night traffic. While studies had been made of the situation, they had not yet taken final shape. Between Friday and yesterday, a total of 61 vehicles had been found using the roads during the prohibited hours without a permit ...". 29/

9. The state of emergency and limitation on human rights permitted under international law

103. As the Group has stated in the past, 30/ the generally accepted international law of human rights would permit States to take measures which derogate from their human rights obligations when there is, in the words of the International Covenant on Civil and Political Rights, a "public emergency which threatens the life of the nation". 31/ Certain basic rights cannot be the subject of derogation, such as the right to life and to freedom from torture. Further, derogations are permitted only "to the extent strictly required by the exigencies of the situation".

104. In relation to this, the Group during its visit witnessed nothing nor did it receive any information which would contradict the substance of the Minister of the Interior's statement of 19 April 1978, in which he described the complete calm, peace and order reigning today in Chile. On other occasions the Minister of the Interior and other Chilean authorities have stated in substance the same views on conditions in the country and such a statement is also found in Decree-Law No. 2,191 of 18 April 1978 concerning the amnesty (see chap. III). In the light of its own observations and based on the statements of the Chilean Government, the Group was unable to find that a situation existed in Chile which "threatens the life of the nation", and thus cannot but conclude that the requirements of international law which would permit limitations to be imposed on human rights have not been met. 32/

105. In the past the General Assembly, the Commission on Human Rights and the Group itself have all called upon the Chilean authorities to end the state of siege and its limitations on human rights. The Group now sees even more reason for putting an end to the state of emergency and calls on the Government of Chile to do so.

29/ El Mercurio, 12 August 1978.

30/ E/CN.4/1188, paras. 59, 60, 74-76.

31/ Article 4 of the International Covenant on Civil and Political Rights. See also article 15 of the European Convention on Human Rights and article 27 of the American Convention on Human Rights.

32/ The Group notes that the Government of Chile, in relation to article 4 of the International Covenant on Civil and Political Rights, has treated the state of emergency as being equivalent to the state of siege since it did not make any notification of a change in the situation as para. 3 of article 4 of the Covenant would have required. See document CCFR/C/2 of 14 February 1977.

C. Institutional changes; the Ministry of the Interior
and its role in relation to the right to liberty
and security of person

106. On 5 April 1978, President Pinochet made a statement in which he announced a series of proposals relating to the institutions of the Chilean Government and a number of measures which the Government intended to adopt as part of a transition towards a new "institutionality". He announced that, inter alia, it was intended to pardon or commute the sentences of persons convicted by military courts and to permit greater participation by civilians in the Government. 33/

107. On 12 April the lawyer Sergio Fernández, who had previously held the office of Comptroller-General, was appointed Minister of the Interior with authority, granted by the President, to nominate the members of a cabinet and to carry out his institutional plan. In this connexion President Pinochet stated:

"... the establishment of the new Chilean institutionality will be the responsibility of a single person.

"As I have already stated, just as in implementing the economic measures I conferred on a single Minister responsibility for carrying out the economic plans, so in this case the new institutionality must be in the hands of a single head who will direct his actions along that path". 34/

108. On 14 April the membership of the new cabinet was announced; it was composed of "11 civilian Ministers and five military members". 35/ Decree-Law No. 2191, ordering an amnesty, was issued three days later.

109. El Mercurio made the following comments on the changes in the structure of the Government:

"The structure of the Government will therefore take the following form. The Armed Forces, the Carabineros and Investigations remain under the responsibility of the Minister of National Defence, General Raúl Benavides Escobar. The economic programmes of the various Ministries will continue to be directed by the Minister of Finance, Mr. Sergio de Castro. The Government's political activity and progress towards the new institutionality have been entrusted to the Minister of the Interior, Mr. Sergio Fernández, who will be responsible for co-ordination and liaison between all Ministers, harmony between foreign and domestic policy, and the relationship between the protection of internal order and the police authorities subordinate to the Ministry of National Defence.

33/ El Mercurio, 6 April 1978.

34/ El Mercurio, 14 April 1978.

35/ El Mercurio, 15 April 1978.

"... Until now the President of the Republic has spent his time and risked his popularity by intervening personally in many problems which by their nature were the responsibility of Ministries. The new formula enables the President to exercise his responsibility for governing and running the nation from the higher level which befits him". 36/

110. According to the description given in El Mercurio, the Minister of the Interior is responsible, inter alia, for "the relationship between the protection of internal order and the police authorities subordinate to the Ministry of National Defence". This Ministry exercises responsibility over the investigation services of the Armed Forces and of the Carabineros, while the National Information Agency (CNI), an organ which forms part of the so-called Ministry of National Defence, is directly related to the Ministry of the Interior, in accordance with the provisions of Decree-Law No. 1878, article 1, paragraph 2, establishing CNI (see A/32/227, para. 165).

111. Mindful of the recent governmental changes in the organization of functions as outlined above, and wishing to obtain information about the implications of the changes and to ascertain whether the role assigned to the Minister of the Interior would result in a new approach to the protection of human rights, the Group interrogated various witnesses and interviewed the Minister of the Interior and the Under-Secretary of the Interior. In that interview the Group asked the Minister for information on the security services. It asked, inter alia, to be provided with the list of persons detained by DINA but the Minister replied that he did not have such a list. He explained that during the period when it had been operational, DINA had had the authority to arrest individuals and only at a later stage to submit an official letter reporting the details of the case and requesting a decree from the Ministry of the Interior. Those decrees were kept in the archives of SENDET (National Executive Secretariat for Detainees), as had been decrees ordering the release of detainees, which also could be promulgated only by the Ministry of the Interior. SENDET, which had been established on 31 December 1973 to put an end to the disorganization which had existed previously when each department had arrested and held detainees separately, had kept a list of detainees until its disbandment on 26 April 1978, whereupon the list had been handed over to CNI. It was difficult to know which detainees had been held by DINA, since detainees had also been held by the Armed Forces and the Carabineros, and the decrees were not filed by category.

112. The same interview was attended by the Under-Secretary of the Interior, Mr. Enrique Montero, who was the last official to occupy that post during the Junta Government. Mr. Montero said he absolutely ruled out the possibility that a DINA employee had made arrests without recording them in SENDET. 37/ The Group concludes that, although the Ministry of the Interior was frequently aware of the arrests and detentions which took place, it did not take the necessary measures to prevent the obvious irregularities which occurred and have been described in the earlier reports of the Group.

36/ El Mercurio, 16 April 1978.

37/ Minute No. 18, 20 July 1978.

113. At present the Ministry of the Interior does not record information on arrests in its own offices, since it exercises direct control over CNI, which is the organ responsible for this function. However, because CNI is not empowered to arrest individuals except when they are caught in the act of breaking the law (see sect. D below), in which case it must immediately request an order in writing from the Ministry of the Interior, it is hard to imagine that the Ministry is unaware of arrests effected outside the judicial channels.

114. It is appropriate, in this connexion, to recall that the Ministry of the Interior, in connexion with the official judicial communication of May 1978 sent in the action for enforcement of rights submitted on behalf of Luis Maturana Maturana, in which it was asked whether this person was being detained, replied: "No order or decision affecting him has been issued by this Ministry and there is no record of his having been arrested by any of the security services", whereas the Director of CNI gave the Group information indicating that, at that same time, Luis Maturana Maturana was in fact being detained (see chap. IV, cases of Héctor Riffo Zamorano and Luis Maturana Maturana).

115. Before the changes in the Cabinet took place, the announcement of information of this type, which denied that persons who were in the hands of the security services had been detained, was a common practice. 38/

116. On 25 January 1978, the former Minister of the Interior informed the Court of Appeals that Aurora Elvira Figueroa, Diuro Giadrosie Figueroa and Guillermina Figueroa Dirán were not being detained. According to the report submitted to the Group by the Director of CNI, those persons were on CNI premises between 16 and 20 January, and were subsequently placed at the disposal of a military court (see chap. IV, case of Haydée Palma Donoso and others).

117. In chapter V information is given on the action taken by the Group in connexion with missing persons. In this connexion the Group would like to quote the following statement that the Minister of the Interior made on 15 June 1978:

"The country must understand that the defeat of violent and organized subversion, failing which ordinary citizens would suffer the consequences of such subversion, and, furthermore, the maintenance for Chilean homes of peace and security which represent a notable exception in the midst of the disorder and terrorist violence that now pervade the world constitute a challenge which

38/ The Vicaría de la Solidaridad, in its submission to the Supreme Court in March 1978, quotes various cases in which the Ministry of the Interior denied that persons who were actually being detained had been detained during the period under examination: actions for enforcement of rights No. 164-77 on behalf of Juan Eduardo Berríos Marales; No. 200-77 on behalf of Víctor Condori Valencia; No. 206-77 on behalf of Francisco Troncoso Valdés; No. 242-77 on behalf of Juan Carlos Villar Ehijo, etc.

has required constant, self-sacrificing and preventive action on the part of security organs, under conditions in which no legal proceedings can be brought against such action on the grounds that it is subject to criteria peculiar to a time of normality". 39/

118. At a press conference held on 29 April 1978, the Minister of the Interior, Mr. Sergio Fernández, stated:

"Consequently, there can be no talk of a change in the Government's course of action. On the contrary, this course remains unchanged and indeed could not be otherwise, since the doctrinaire principles which guide and determine this course represent a set of the highest humanistic, national and Christian values. They are, therefore, not susceptible of compromise or changes determined by a particular situation. The new measures represent a refinement of working procedures at the ministerial level". 40/

119. The Group considers itself obliged to state that, despite the participation of civilians in the Government, the methods of action and the approach to human rights do not appear to have changed. The work of the Ministry of the Interior, which is responsible for the activities of the security services under its authority, does not appear to include among its fundamental preoccupations the protection of liberty and security of person.

D. The specialized State security agencies; the role of CNI compared with that of DINA

1. Background information

120. In all its reports the Group has reviewed the role and activities of the security agencies in view of the fact that they have been the principal perpetrators of the serious violations of the right to life, physical integrity, and liberty and security of person.

121. Commenting in its previous report on the dissolution of DINA, the Group stated:

"The Group has received information from reliable sources that since the dissolution of the DINA, individuals engaged in arrests and searches have continued to identify themselves as members of the DINA and to use DINA credentials. In addition, Chilean security forces continue to be involved in arrests and searches and the activities of the Carabineros have increased. In any event, since the dissolution of the DINA there has been no fundamental change in the methods of arrest, search and interrogation nor in the freedom enjoyed by the security agencies in violating the right of Chileans to liberty and security of person" (E/CN.4/1266, para. 85).

39/ El Mercurio, 16 June 1978.

40/ El Mercurio, 30 April 1978.

122. From the number and type of offences dealt with in the text of Decree-Law No. 2191 of 18 April 1978 granting an amnesty, and the statements made by the Minister of the Interior when commenting on the criticisms made of the Decree (see chap. III) it can be inferred that the Government to some extent acknowledges the "mistakes" that have been committed by the security agencies. It was the Chief Executive himself, in referring to the dissolution of DINA, "who initiated this new stage of questioning by formally declaring that DINA had made 'mistakes'". 41/

123. This fact was also recognized by Enrique Montero, Under-Secretary of the Interior, during an interview with the Group, when he agreed that it was possible that DINA had committed excesses, but such cases were investigated and those responsible were sought. 42/

Government information concerning the security agencies

124. It appears from the information which the Group was able to obtain during the interviews it held that there is a variety of security agencies in Chile: the intelligence agencies of the Armed Forces which are not authorized to make arrests (although they have done so in the past, as the Minister of the Interior himself admitted); 43/ the Investigation Service and the Carabineros Investigation Service (SICAR), which are empowered to make arrests either by judicial warrant or by order of the executive; and CNI, which does not have powers of arrest either, other than in cases of flagrante delicto, where it has the same authority as any citizen. 44/

125. In accordance with the recent structural changes in the ministries (see above, sect. C, on the Ministry of the Interior), all these agencies, except CNI, are answerable to the Ministry of National Defence. CNI, although forming part of the system of national defence, is a subordinate body of the Supreme Government itself, to which it is linked through the Ministry of the Interior.

2. Comparative analysis of the decrees establishing DINA and CNI

126. In its previous reports, the Group made a comparison between Decree-Law No. 521 of 18 June 1974 establishing DINA and Decree-Law No. 1878 of 12 August 1977 establishing CNI (A/32/227, para. 165), and also examined the differences and similarities in the powers of arrest granted to the agents of those bodies (E/CN.4/1266, para. 84).

41/ Message to the country, 11 September 1977. Quoted in "La lección de la DINA", Mensaje, No. 270, July 1978.

42/ Minute No. 18, 20 July 1978.

43/ Minute No. 18, 20 July 1978. Interview with the Minister of the Interior.

44/ Ibid.

127. During the Group's visit to CNI, General Odlanier Mena, Director of CNI, handed the Group the text of Decree-Law No. 1876, dissolving DINA, and Decree-Law No. 1878, establishing CNI, together with a paper setting out what the Government regards as the main differences between the two bodies.

(a) Nature of these agencies and their place in the structure of government

128. The paper begins by pointing out the following differences:

"DINA was an agency coming under the direct authority of the Governing Junta but, despite its military character, was not established as an integral part of the system of national defence."

"CNI, on the other hand, is one of the institutions of national defence, a status which confers on it a far more official character. Moreover, the relationship of subordination to the Governing Junta has been abolished by the provision linking CNI to the Supreme Government through the Ministry of the Interior. This affords the people a guarantee since they will know for certain the medium through which information will be channelled and the Ministry concerned is accessible to the general public."

129. Decree-Law No. 1878, establishing CNI, states, in article 1, paragraph 2, that:

"Notwithstanding its status as a military body forming part of the system of national defence, the National Information Agency shall be linked to the Supreme Government, in the performance of its specific tasks, through the Ministry of the Interior."

130. Decree-Law No. 521, on the other hand, established DINA as a subordinate body of the Governing Junta. However, the fifth preambular paragraph of Decree-Law No. 1009 of 8 May 1975 refers to "specialized organs of a technical and professional character used by the President of the Republic ...". This provision indicates that DINA was at the direct disposal of the President as well.

131. CNI has been incorporated into the system of national defence in order, as the Government note indicates, to confer on it "a far more official character". The object is not merely to give CNI a measure of respectability, but to bring it within a framework of authority and discipline designed to prevent the occurrence of situations alien to that framework.

132. CNI's direct dependence on the Supreme Government is simply the confirmation of a situation existing in practice in the case of DINA, which, in making arrests under the state of siege on the authority granted by Decree-Law No. 1009, acted by delegation of a presidential power.

133. The Group notes that the two changes mentioned in the Government statement do not, in themselves, represent an improvement in the protection of any human right, since human rights remain dependent on the use which the President of the Republic, the Ministry of Defence and the Ministry of the Interior make of their respective powers.

134. With respect to the staff of CNI, article 3 of Decree-Law No. 1878 states that "its staff shall be formed by its own established personnel and personnel from the institutions of national defence", whereas article 3 of Decree-Law No. 521 referred only to staff from the institutions of national defence. It might be supposed that the established staff consists of the 20 per cent taken over from DINA, which General Mena mentioned in his explanations to the Group. 45/

135. The fact that DINA was an agency of a military character did not make it more ready to observe the principle of respect for some human rights but, on the contrary, made it more inclined to regard itself as immune from all restrictions and control. CNI's place in the system of national defence and its link with the Ministry of the Interior do not fundamentally modify the previous situation and cannot, therefore, be regarded as fundamental factors serving to distinguish it from DINA.

136. Furthermore, CNI, like DINA, is empowered to recruit staff not belonging to national defence institutions (article 3). It can thus acquire auxiliary personnel who are not subject to the internal rules of those institutions and whose good conduct will not be guaranteed even to the extent allowed by membership of a disciplined body of men.

(b) Functions and powers

137. The second difference noted in the document submitted by General Mena is the following:

"DINA had the task of gathering intelligence, which implies checking the information collected.

"CNI is merely required to collect and process information, and there is therefore a considerable difference as far as the executive character of the agency is concerned."

138. The Group notes that the difference pointed out by the Government might allow the inference to be drawn that, whereas DINA was assigned an active role in the "checking of information", CNI merely acts as a compiler and processor of information. If that were so, it would have to be concluded that the powers of arrest granted by article 1 of Decree-Law No. 1009, which was issued for the purposes of the state of siege and later declared to be applicable to the state of emergency, referred not to CNI but to other "bodies vested with special responsibility for ensuring that national life proceeds normally and that the established institutional order is maintained". This assumption could be reconciled with the incorporation of CNI in the national defence system as a body assigned the function of collecting information - for example, by undertaking questioning - but not that of arresting or detaining persons.

139. General Mena informed the Group that "CNI does not have powers of arrest, as DINA did; this is a matter for the General Department of Investigations, which can hand the detained persons over to the ordinary courts or to the Ministry of the Interior in order that they should be brought before a judge or released within a period of five days, or that a decree should be issued placing them at the disposal of CNI". However, the document submitted by the Director of CNI goes on to state:

"DINA was empowered to arrest and detain persons under article 10.

"The decree establishing CNI does not authorize it to detain persons; when it wishes to do so it must request an order from the Military Prosecutors (Firearms Control Law) or from the Investigating Judges, in the case of proceedings for offences against the Security of the State Act (No. 12,927), or it must obtain from the Ministry of the Interior a warrant of arrest supported by reasons."

140. In the three situations mentioned above, CNI is empowered to detain persons and also to search occupied or empty premises (see E/CN.4/1266, para. 84). Furthermore, it has the power to arrest in cases of flagrante delicto, which might be numerous in the case of an agency which handles all information on security. When it catches a person in flagrante delicto, CNI is required to inform the Ministry of the Interior, which issues the necessary warrant a posteriori.

141. According to the document quoted, the arrest warrant issued by the Ministry of the Interior must be supported by reasons. This does not necessarily mean that the Ministry must indicate the grounds on which the person concerned is detained; it will merely have to state that it deems a person dangerous for the security of the State, as has been done in recent decisions of the Supreme Court relating to expulsion (see chap. III, sect. C.3).

142. In accordance with its specific functions, CNI has the responsibility of questioning detained persons, and it has special premises for that purpose. General Mena stated that a person detained on the orders of the Minister of the Interior or an investigating judge was taken to CNI premises for questioning in order to determine his or her involvement. 46/

143. The specific functions of CNI are described in article 1 of Decree-Law No. 1878 as follows:

"... to gather and process at the national level, all the information originating in the various fields of action required by the Supreme Government for the formulation of policies, plans and programmes, the adoption of measures necessary to safeguard national security, the normal development of national activities and the maintenance of the established institutional order".

144. This article entrusts CNI with functions that are national in scope, and that enable it to intervene in all spheres of activity: politics, administration, finance, labour, culture, information, etc. In this field, as in that of its authority to gather information, the decrees creating CNI and DINA are practically identical.

(c) Remedies and financial autonomy

145. Article 11 of Decree-Law No. 1878 states that: "The National Information Agency shall be the legal successor of the Directorate of National Intelligence for all of the settlement of estate purposes". CNI, however, has greater financial autonomy and more extensive sources of income than DINA.

146. In accordance with the provisions of article 5 of Decree-Law No. 1878 CNI:

"... shall be endowed with public funds from the following sources:

"(1) Funds allocated to it annually under the national budget, as specified in the section relating to the Ministry of the Interior;

"(2) Funds assigned to it by special Acts;

"(3) Other goods and resources that it acquires or collects, under any title, for its own purposes".

147. Decree-Law No. 521 specifies that "the annual budget law shall include, in global terms, the resources necessary for financing the expenditure requested by the Directorate of National Intelligence".

148. The budget of the new body, CNI, will therefore be larger than that of DINA, because it will comprise not only funds appropriated in the annual budget law, but also those earmarked for it by special acts, and in addition it may acquire goods and resources under any title for its own purposes.

149. The Director of CNI will be responsible for the management and administration of the public property and funds and may perform any legal act likely to further the Agency's purposes (article 6 of Decree-Law No. 1878). Such powers were not granted to the Director of DINA. CNI enjoys the same exemptions from customs duties and import taxes which had been granted to DINA. Moreover, as General Mena explained to the Group, although CNI could not itself request technical assistance from foreign organizations, it could do so in certain specific cases, through the Ministry of the Interior.

150. CNI's administrative autonomy ensures that all its financial activities, which benefit from exceptional privileges will, furthermore, enjoy the greatest possible secrecy, because the funds allocated to it are managed in the form of private transactions, which do not entail the formalities inherent in Acts of a public or State character. Nor does the public know the origin of all the funds used to finance the organization, because article 5, which authorizes various sources of funds, goes on to state that confidential regulations governing the provisions of the article concerning the origin of resources will be issued within a period of 180 days.

(d) Rights of the Director and staff

151. The National Information Agency "is to be directed by a general or a high-ranking officer in active service of the Forces or of the forces of order..." (article 2 of Decree-Law No. 1878).

152. Article 2 of Decree-Law No. 521 stated that "The Directorate of National Intelligence shall be directed by a general or a high-ranking officer of the National Defence Forces in active service...". The Group sees no difference in this regard.

153. Article 10 of Decree-Law No. 1878 confers upon the Director of CNI a right which did not appear in the Decree-Law that established the DINA. It states: "The provisions of articles 191 and 192 of the Code of Penal Procedure shall apply to the National Director of Information."

154. These provisions of the Code of Penal Procedure refer to persons who are exempt from the obligation to appear in court.

155. They include the President of the Republic, former presidents, State Ministers, senators and deputies, the Comptroller-General, intendants and governors, generals, members of the Supreme Court or of the courts of appeals, prosecuting counsels and judges, persons who enjoy diplomatic immunity in the country, and nuns and women who, because of their status or position, are unable to appear without serious difficulty and those who, because of illness or some other impediment, find it impossible to do so.

156. Since the high officials of ministerial bodies - like military personnel of a rank lower than that of general - are not exempt from the obligation to appear before a court, it is to be supposed that the Director of CNI is assimilated to the highest authorities and personalities of the country. Such assimilation is in accordance with the exceptional powers and privileges enjoyed by this body.

157. DINA's officials were not required to appear before courts of justice, on the pretext that this could lead to their exposure as intelligence agents, according to the reply given by the Minister of the Interior to a judge (see below, sect. F).

158. However, this privilege was not based on any legal provision. An article in the review Mensaje refers to the attitude adopted by General Contreras Sepúlveda, Director of DINA, to summons issued by courts of justice:

"For his part, the Director of DINA, then Colonel Manuel Contreras Sepúlveda, supported this refusal to appear in courts of justice, not on the basis of any legal provision because, as has been said, there is none, but by stating that that was 'his position'; in addition, he claimed to have received express 'orders' in the matter. For example, in response to the summons by the Court of Appeals which stated that 'whatever the authority to which the Director is subject, he is under a legal obligation to provide this Court with information on the above-mentioned circumstances', he said, 'I must once again reiterate my position that I have to comply strictly with the orders of the

President of the Republic and inform you that information of any kind concerning detained persons should be supplied to the courts of justice, by the Minister of the Interior or by the National Service for Detained Persons.' (Action for enforcement of rights, Case No. 772-74, Court of Appeals of Santiago.)" 47/

159. At present, the Director of CNI has the legal right not to appear before courts of justice.

160. The staff of CNI is not legally entitled to this privilege. The Under-Secretary of the Interior, Mr. Enrique Montero, informed the Group during the interview that the investigation services and CNI are not exempt from jurisdiction. He said that the situation was different today: previously, DINA officials were not obliged to appear before the court to make a statement. Today, investigation officials are required to do so. 48/ On the other hand, General Mena, in describing the responsibilities of CNI officials, said that there had been no specific cases in which officials of that body had been denounced but that they were not exempt from the law on responsibility. Nevertheless, they enjoy the privilege of having questions submitted to them in writing and of replying to them in writing as well. 49/ This means that they are not required to appear before the courts.

161. The Group observes that there are, in this matter, two different views of the privileges of CNI staff. On the one hand, the Under-Secretary of the Interior states a point of view that corresponds to the text of the decree-law; on the other, the Director of CNI refers to the existence of a privilege which is not expressly mentioned in that text.

(e) Restricted provisions

162. The document submitted by the Director of CNI to the Group draws attention to the following as a major difference between DINA and CNI:

"Lastly, special mention should be made of the fact that Decree-Law No. 1878 establishing CNI is a public document and contains no confidential articles.

In this way, the law and the Government have tried to ensure that the body set up reflects the policy of greater openness and that everyone is acquainted with its purposes, powers, and nature".

47/ Mensaje, No. 270, July 1978.

48/ Minute No. 18, 20 July 1978.

49/ Minute No. 7, 17 July 1978.

163. The Group notes that there are, however, two types of restricted provisions according to the text of Decree-Law No. 1878:

(a) Those which refer to its budget (article 5, last part), to which reference has been made above;

(b) Those which refer to its Organic Regulations. Article 3 of Decree-Law No. 1878 states:

"The organization, internal institutional structure and duties of the National Information Agency shall be established by a set of Organic Regulations decreed on the proposal of its Director"

and its transitional article establishes that:

"The Statutes, of a confidential nature, referred to in article 3 of this Decree-Law shall be issued within a period of 150 days".

164. Decree-Law No. 521 contained three secret articles. On the other hand, neither the sources of its funds, its budget nor its Organic Regulations were confidential.

165. The Group has not examined the possible implications of these restricted provisions, which concern bodies with vast powers and functions that cover virtually all spheres of national activities. However, it notes that if there are in fact no restricted provisions, this could constitute a guarantee that such bodies are not authorized to engage in activities contrary to the enjoyment of human rights.

3. Activities of the security agencies

166. In chapter IV, concerning arrests and detentions, the Group provides information on one case in which it was able to establish beyond any doubt that the security agencies employ methods which violate the right not to be subjected to ill-treatment or torture, as well as on other cases which it was unable to study as thoroughly.

167. The Group notes from witnesses' statements that these agencies are co-ordinating their activities, but that this does not entail any basic change in the kind of methods they use.

168. In practice:

(a) The persons who carry out the detentions may be officials of the Carabineros investigation services or unidentified individuals, depending on the particular case. It frequently happens that they do not show any arrest warrant or identify themselves. Nor are the persons detained informed of the reasons for their arrest or the place where they are being taken;

(b) At the time the arrest takes place, the persons concerned are almost invariably beaten. In cases of multiple arrests (public events or demonstrations) it frequently happens that those concerned are also beaten;

(c) Other security bodies appear to inflict ill-treatment and harm on detained and arrested persons. Reports to this effect relating to the Carabineros were also received. As regards persons dressed in civilian clothing, the witnesses were in many cases unable to determine whether the persons concerned were investigators or CNI agents;

(d) Whatever the agency carrying out the arrest, detained persons are handed over to CNI when it is decided to interrogate them and, in such cases, are often subjected to maltreatment and frequently to torture of differing degrees of severity;

(e) Aside from the information received concerning detentions and interrogation, reports were received of threats of various kinds, house searches conducted without any legal warrant, permanent watching and following and other forms of intimidation practised against members of trade unions, politicians, members of religious orders, social assistance or neighbourhood organizations, students, inhabitants of shanty towns and, in general, against any person who ventures to express any form of disagreement with the views of the Government or with any aspect of its concept of "national security";

(f) Reports were received of two cases involving the death, in 1978, of persons who had previously been arrested. According to witnesses, these persons were subjected to torture. According to official information, they committed suicide or were shot by investigators acting in self-defence. As is mentioned in chapter IV, 50/ the official versions have been contested by witnesses.

169. Taking into account the factors described, the information supplied by the Government, the information provided by various witnesses and the findings made by the Group on the basis both of its own observations and of its assessment of further testimony from experts, the Group feels obliged to make the following comments:

(a) Whatever the aims of the new organization and the distribution of activities as between the various security agencies may be, maltreatment and torture continue to be employed, although not systematically and as an established practice, in violation of articles 9 and 10 of the International Covenant on Civil and Political Rights;

(b) Frequently, not only the specialized security and intelligence services but also police institutions participate in such violations;

(c) Although the functions assigned to CNI by Decree-Law No. 1878 have been limited by the law as far as the arrest and detention of persons is concerned, they

50/ The official information concerning these deaths was published in El Mercurio and La Tercera de la Hora on 19 January 1978.

have not been restricted in other areas, in accordance with the provisions of Decree-Law No. 1878. Consequently, this agency continues to enjoy exceptional powers and prerogatives, as DINA did, and it also receives co-operation from other agencies in carrying out arrests and detentions.

E. The Office of the Comptroller-General of the Republic:
its role as an organ verifying the constitutionality
and legality of the decisions of the executive

170. The Office of the Comptroller-General of the Republic is a characteristic feature of the Chilean constitutional system. It is independent of the executive power and exercises financial, legal and administrative control over government acts. Mr. Osvaldo Iturriaga, Comptroller-General of the Republic, told the Group that, as part of its financial control functions, it verifies public revenue and investment, draws up the general balance sheet for the public accounts and inspects the income and expenditure accounts of persons and institutions handling public assets. As part of its legal control function, it verifies the legality and constitutionality of the "supreme decrees" of the executive power and of the "orders" of the various public administrative departments. He also said that the Office of the Comptroller-General of Chile was the only one in the world that had the power to monitor acts of the executive power in advance. That control extends to the supreme decrees which bear the signature of the President of the Republic and of a Minister, or of a Minister alone by order of the President, and to the orders signed by the heads of the various administrative services. The control is exercised through the procedure of "taking cognizance", whereby, before a decree or order is registered, the Office of the Comptroller-General verifies its legality and constitutionality. 51/

171. Article 1 of Act No. 10,366 provides that:

"The Comptroller-General shall take cognizance of supreme decrees and orders of Heads of Department, which must be passed by the Office of the Comptroller-General, and he shall pronounce judgement on any unconstitutionality or illegality within a time-limit of 30 days following the date of their receipt; but he shall allow them to proceed if, in spite of his representations, the President of the Republic, armed with the signature of all his Ministers, should insist that this be done.

"Representations made shall bear the signature of the Comptroller-General, and in the event of insistence, the fact shall be recorded in the annual report which the Office of the Comptroller-General is required to submit to the President of the Republic and to the National Congress."

172. Consequently, the Comptroller-General of Chile is a key official in the Chilean legal system and can play a decisive role in the protection of human rights. This has in fact been his function in the past. Mr. Iturriaga, the Comptroller-General, told the Group that if his Office finds something wrong with the form or substance, it returns the decree or order, without processing it, to the executive, stating its objections to particular points. The provision in question has no legal effect in such cases. The executive may then: (a) amend the decree or order, meeting the objections made by the Comptroller's Office; or (b) issue an "overruling decree", signed by the President and all Ministers of State, obliging the Comptroller's Office to process the provision it had challenged. (The present Government has not issued any overruling decrees.) For the purposes of statistical information, he indicated that, of the more than 81,000 decrees and orders received during the first half of 1978, the Comptroller's Office returned approximately 10 per cent. 52/ Mr. Humeres, the former Comptroller-General, also told the Group that the grounds for returning ordinary decrees had been cited in equal measure under the various Governments. Where decrees had been returned for substantive reasons, the Alessandri Government had restored to an overriding decree in two cases, the Frei Government in 21 cases, and the Allende Government in approximately 100 cases. The present Government has not done so at all since it can resort to a decree-law. 53/

173. The powers conferred by law on the Comptroller-General indicate that his Office is empowered to exercise real judicial supervision over the acts and decisions of the Government. "Taking cognizance" as referred to in the article above consists in the pronouncement which the Comptroller-General is required to make regarding the constitutionality and legality of all supreme decrees and orders of Heads of Departments. This procedure is mandatory, and the Comptroller may reject a supreme decree or an order. As far as laws are concerned, his powers are limited to verification of their legality, which means ascertaining whether the text promulgated is identical with that passed by Congress, which was dissolved by the Junta on 21 September 1973 (see A/10285, para. 87). At present, the verification of legality is restricted to the registration and filing of decree-laws, together with the background data concerning them. The Office of the Comptroller-General may issue instructions or comments on them, but they do not affect the measures themselves, which enter into force automatically. Consequently, what is involved is not really the exercise of supervision over legislation but mere registration of the various decree-laws, without legal consequences.

174. The Comptroller-General is also empowered to regulate his own supervisory activity in respect of supreme decrees and orders, and he may decline to take cognizance of certain types of provisions. Thus, the Comptroller-General is authorized, under article 1 of Act No. 10,336 of 10 July 1964, to exempt from this procedure one or more ministries or departments in certain cases. The clause which authorizes him to do so reads as follows:

52/ Minute No. 1, 14 July 1978.

53/ Minute No. 2, 14 July 1978.

"Notwithstanding, the Comptroller-General may exempt one or more ministries or departments from the procedure for taking cognizance of supreme decrees or orders granting licences, holidays and paid leave, or referring to other matters which he does not consider essential. As far as supreme decrees are concerned, this exemption shall apply only to decrees signed 'by order of the President of the Republic'. Exemption may be granted for fixed periods and abrogated by the Comptroller-General, automatically or following a request from the President of the Republic, according to the use that is made of this option."

175. Mr. Héctor Humeres, the former Comptroller-General, informed the Working Group, that he had held office from 11 August 1967 to 31 December 1977. He also stated that after the military coup d'état of 11 September 1973, he agreed with the de facto Government that the cognizance procedure should be suspended for a period of 60 days, that is to say that the office of the Comptroller-General during this period would merely register all decrees, without making any judgement as to their merits. At the end of 60 days all decree-laws would be registered for reasons of historical continuity and authenticity, but without any judgement on their constitutionality or legality, while cognizance would be taken of supreme decrees and orders. This system came into force as of 11 November 1973. 54/

176. According to information received by the Working Group, Order No. 1100 was issued on 10 November 1973 (that is to say, one day before the resumption by the Office of the Comptroller-General of its power to take cognizance), under which the Office of the Comptroller-General was no longer required to take cognizance of decrees and orders dealing with the following subjects:

(a) Detentions carried out under the emergency régimes provided for in the Constitution.

(b) Expulsion orders and orders concerning abandonment of the country and prohibiting certain persons from entering Chile for reasons of State security.

177. The above-mentioned provision (article 1 of Act No. 10,336 of 10 July 1964) refers to supreme decrees or orders granting licences, public holidays, paid leave, or other non-essential matters. The exemption from taking cognizance of decrees concerning fundamental human rights, such as the right to liberty and security of person and the right to live in one's own country or to enter it, is not authorized by the law. In contrast to the actual course of events, the law does not authorize the Office of the Comptroller-General to exonerate itself, from fully discharging functions which enable it to supervise the acts and decisions of the executive power. Thus, the Comptroller's Office has disregarded one of the legal mechanisms designed to safeguard human rights effectively.

178. On 14 July 1977 the Office of the Comptroller-General, under Order No. 600, reassumed its powers to take cognizance, and article 6 of that order states that matters related to certain human rights (arrests and detentions, expulsions, prohibitions on entry into Chile) are subject to the "cognizance" procedure.

179. On 31 December 1977 Mr. Héctor Humeres left his post, having reached retirement age. Article 3 of Act No. 10,336 provides that the Comptroller-General shall be appointed by the President, with the agreement of the Senate, which was dissolved by the Junta. At present, it is the President alone who appoints the Comptroller-General. He appointed Mr. Sergio Fernández to succeed Mr. Humeres (see above, sect. A). Mr. Fernández, who had been Minister of Labour until then, stayed in his new post a little more than three months before leaving to become Minister of the Interior. During his period of office as Comptroller-General, he took cognizance of the supreme decree calling the national consultation (see E/CN.4/1266, paras. 42-44) and also issued Order No. 113 of 26 January 1978, similar to Order No. 1110 of 10 November 1973. In this way, the Office of the Comptroller-General again relinquished, as during the greater part of the period of government of the Junta, its powers in regard to the protection of certain fundamental human rights.

180. Mr. Humeres, the former Comptroller-General, told the Group 55/ that he had applied for retirement at the time when the budget bill of 1 December 1977 was passed, because under it the Office of the Comptroller-General lost its financial independence and effective auditing role and he did not wish to continue in office, since he did not wish to see the powers of the Office of the Comptroller-General reduced in relation to other departments. At the same time, he denied that his leaving office was related to his objections against the national consultation. 56/

181. The Group should note that the law on the organization and powers of the Office of the Comptroller-General of the Republic gave it independence and powers of judicial control. Nevertheless, the limits imposed by the Military Junta and those self-imposed by way of orders incompatible with the rules governing its functions and reducing its essential powers, prevent it at present from carrying out the role it fulfilled in the days of constitutional Governments, especially as regards the safeguarding of legality and the protection of human rights.

55/ Minute No. 2, 14 July 1978.

56/ See E/CN.4/1266, paras. 42-45.

F. The judiciary: its functions of jurisdictional control and its role in the protection of human rights

182. The Group has repeatedly referred in its reports to the conditions under which the Chilean judiciary functions and their consequences for the protection of human rights, in particular the right to liberty and security of person (A/31/253, chap. VI; E/CN.4/1221, paras. 80-84; and E/CN.4/1266, paras. 75-77). In its report to the thirty-second session of the Commission on Human Rights (E/CN.4/1188, paras. 44-50), the Group also analysed the legislative changes which had been made with regard to the guarantees and privileges afforded to members of the judiciary.

183. In section A above, it referred to the legal and practical circumstances which interfere with the independence of the judiciary as a result of the concentration of power in the hands of the military Junta by virtue of the emergency régimes.

184. During its visit to Chile, the Group studied the functioning of the judicial system and its current role in the protection of human rights. The Group's investigation focused mainly on two aspects: (1) the effectiveness of existing judicial remedies for the protection of human rights and, in particular, the right to life, liberty and security of person; and (2) the effectiveness of judicial machinery applied to relevant rules in cases of alleged violations of human rights and in determining responsibility in this regard.

1. Judicial remedies for the protection of human rights

185. In principle, existing Chilean legislation contains two remedies for the protection of life, liberty and security of person. One of these remedies, incorporated in Chilean legislation in Constitutional Act No. 3, article 2, is the remedy of protection, which affords broad protection for all the guarantees laid down in Constitutional Act No. 3, article 1. Decree-Law No. 1684 of 31 January 1977 provided that the remedy of protection would not be applicable in emergency situations. This provision eliminated a means of protection which had been granted by the same Governing Junta only a short time previously. According to the Chilean Government, this remedy "cannot be reconciled with emergency situations However, according to the judicial precedents established by the Supreme Court, this remedy is allowable even in emergency situations provided that the application submitted and the decision taken on it do not relate to a matter involving national security. For example, applications for this remedy have been allowed when the claim related to the payment of taxes."^{57/} Decree-Law No. 1684 notwithstanding, the Supreme Court considers the remedy of protection applicable to property rights, but it has not decided that it should be applicable for the purposes of protecting life, liberty and security of person.

^{57/} Report submitted by the Government of Chile under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/1/Add.25). For information concerning judicial decisions on this subject, see A/32/227, paras. 63-65.

186. The other remedy is that of amparo (enforcement of rights). In 1976, the Government of Chile informed the Commission on Human Rights in an "Explanatory memorandum relating to Supreme Decree No. 187 containing regulations for the protection of persons detained as a result of the state of siege", in which it mentions guarantees such as a medical examination, a written order for detention or search, places of detention and inspections of such places, that "failure to comply with the above requirements will mean that the detention is arbitrary and that habeas corpus (amparo) is then applicable, and this, in the last instance, requires a ruling from the Supreme Court". This statement does not tally with that made to the Group by the President of the Supreme Court who, replying to the Group's questions concerning the scope of the remedy of amparo, said that its purpose was to provide a remedy against improper judicial detention, not administrative detention. Consequently, in the first place, the remedy was inapplicable in the case of detention by the Ministry of the Interior; and in the second place, amparo was concerned not with inquiring into a person's whereabouts but with providing a remedy for illegal detention. If the application for amparo is rejected, the case may be taken in the first instance to the Court of Appeals and in the second instance to the Supreme Court. In recent cases, the Supreme Court had to reject applications for amparo where detention had been ordered under the state of siege or where the person concerned was not under detention, but it ordered a thorough investigation by the competent ordinary judicial authorities to find out whether the person was under detention or had disappeared. The Vicaría de la Solidaridad asked for an investigating judge to be appointed for all such cases. The Supreme Court turned down the request for two reasons: first, because the investigating judge appointed would be using the police investigation services which came under the Ministry of Defence, to which the investigating judge would be subordinate; and, second, because it would be more efficient for the competent judges to use their own investigating service for the inquiries. He added that the measure in question would introduce a political element designed to discredit the executive power.

187.

187. Subsequently, when enlarging upon his explanation, he stressed that the purpose of amparo is to remedy the mistakes of the country's ordinary courts, not to inquire into arbitrary abductions or into detentions by the Executive.^{58/}

188. During its stay in Chile, the Group was informed by a group of lawyers that this is not the way in which the courts have traditionally interpreted the legislation on the remedy of amparo. This interpretation of its scope detracts from the very meaning of the remedy of amparo, which thus becomes simply a device for protecting the Judicial Power against arbitrary acts by the same Judicial Power. Strictly speaking, individuals are thus deprived of all legal protection against the other Powers and are therefore at the mercy of possible arbitrary measures by them. In the absence of other remedies performing this function of protecting life, liberty and security of person, the Group notes that, under Chilean legislation as currently interpreted by the judiciary, protection within the full meaning of article 9, paragraph 4, of the International Covenant on Civil and Political Rights does not exist.

^{58/} Minute No. 26, 24 July 1978: discussion with the President of the Supreme Court of Chile.

189. In 1977, referring to the non-extension of the state of siege, the Government of Chile explained that

"In the present state of emergency, grounds for an action for enforcement of rights include both insufficient grounds for detention and non-compliance with the procedural formalities. This does not conflict with the traditional power set out in Decree-Law No. 1877 59/ ... whereby the President of the Republic, during a state of emergency, may order the detention of any person for up to five days in his own home or in some place other than a prison. After five days, the detained person must be either released or brought before the courts to be dealt with."60/

190. This information specifies the scope of the remedy of amparo during the state of emergency, namely, after a period of five days, during which the arbitrary nature of the detention cannot be questioned, and if the detained person is brought before the courts, the Court of Appeals decides whether or not it is in order to grant amparo in response to possible arbitrary measures. The executive retains its prerogatives in regard to the arrest and detention of individuals, but those prerogatives are subject to the time-limits laid down in Decree-Law No. 1877 (see sect. B above).

191. The Group was given a copy of the submission made to the Supreme Court by the Vicaría de la Solidaridad in March 1978, in illustration of the problems encountered in the administration of justice. The Vicaría's interpretation of the legal scope of the remedy of amparo under Chilean legislation differs fundamentally from that of the President of the Supreme Court. The submission states:

"The remedy of amparo has been so established in our legislation as to be fully capable of constituting an effective safeguard for liberty and security of person. Its applicability both in situations of legal normality and under exceptional régimes, its preferential and urgent application, the analysis which it requires judges to make of matters of form and substance pertaining to the detention of an individual, the specific mechanism of habeas corpus which it places in their hands and which enables them either to have the detainee brought before them or to remove the court to the place where he is, and the power which it confers on magistrates to pursue the question of the possible criminal liability of those who made the arrest for any abuses they committed, demonstrate the exceptional importance which the law attributes to this remedy".61/

59/ For comments on this Decree, enacted on 12 August 1977, see sect. B above.

60/ Report submitted by the Government of Chile under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/1/Add.25).

61/ Vicaría de la Solidaridad, submission on the occasion of the inauguration of the Judicial Year, March 1978.

192. However, current judicial practice in this respect corresponds to the point of view upheld by the Supreme Court. The submission mentioned above states at a later point that it is clear from an analysis of the applications for amparo dealt with during the first half of 1977 that in no case was habeas corpus of the detainee granted, even when the applicant himself requested it as being appropriate. The courts did not shift their seat either to deal with serious accusations in cases of prolonged detention incommunicado or when faced with claims that detainees were being held in places not recognized by the law as detention centres. The above submission also remarks that:

- "the court's opinion is formed exclusively on the basis of reports from the representative of the executive, the Minister of the Interior ... The applications are judged almost without exception according to what that
- o official reports, without any major consideration of the information submitted by the applicant concerned. There is no discussion by the court of the statements made by the Minister of the Interior, even when the background material submitted in support of the application renders them suspect or, as sometimes happens, implausible Furthermore, this practice on the part of the courts of rejecting applications for amparo, both when the Ministry of the Interior reports that it has issued a detention order in respect of a person and when it denies having done so, limits the scope of the application and turns it into a sort of action by the individual against the Ministry of the Interior".62/

193. The practice mentioned in the last sentence of this quotation is consistent with the position maintained by the Supreme Court, as described to the Group by the President of the Court. The President said that the Supreme Court had to reject applications for amparo where detention had been ordered under the state of siege or where the person concerned was not under detention.63/ This information is sought from the Ministry of the Interior, and it is it that states whether or not the person is under detention. That is how the situation was described to the Group by the President of the Court of Appeals, Mr. Aldo Guastavino, who said that the applications rejected included cases in which the Ministry of the Interior reported that the person concerned was not under detention, and that in such instances investigation of the case was referred to the criminal courts.64/

194. Limitation of the scope of amparo (which is the rapid and expeditious means provided by law for remedying instances of arbitrariness and abuse of power) does not concern deprivation of freedom alone. Even when they are apparent from the documentation placed before the court,65/ such obvious irregularities as the holding

62/ Ibid.

63/ Minute No. 26, 24 July 1978.

64/ Minute No. 27, 24 July 1978: meeting between the Group and Judges of the Santiago Court of Appeals.

65/ See A/31/253, para. 378, which describes a case of an application for amparo in which the Ministry of the Interior gave contradictory information concerning a detention and the Court dismissed the application without checking the origin of or the reason for the false information.

incomunicado of persons detained under orders issued by the executive for periods longer than is permitted in the case of judicial incommunication, at risk to their health and in circumstances which place them at the mercy of the officials who arrested them (and who have repeatedly been pointed out as having been guilty of ill-treatment and brutality) also go uninvestigated. It would appear that the Judges of the Supreme Court bear special responsibility for the decline in the power of the judiciary in Chile. The Group has already reported on rulings by the Court of Appeals aimed at preventing persons from being held incomunicado during the state of siege on the grounds that the practice was not authorized by law.^{66/} In this connexion, as stated by the Vicaría de la Solidaridad, the Supreme Court has come to accept the argument of the Ministry of the Interior that a person detained and isolated by order of the executive is not held incomunicado, but "deprived of visits".^{67/} In the case of three persons amnestied and expelled from the country, the Court of Appeals accepted the application because it was of the opinion that the Ministry of the Interior ought to state explicitly the grounds for the expulsion; the Supreme Court, at the request of the Ministry of the Interior, revoked that decision because it was of the opinion that the bases for the Government's decision in the case were not subject to scrutiny by the courts and the Government is not obliged to state the reasons for which it considers certain persons to constitute a danger to the security of the State (see chap. III, sect. A).

195. Referring to matters which may constitute an offence, the Minister of Justice said that, under the Chilean legal system, as soon as the judicial power received information concerning a particular matter, it instituted proceedings automatically, and no private plaintiff was required. In matters pertaining to the protection of society, there were prosecutors who were empowered to ask for proceedings to be instituted.^{68/} On this matter, the Vicaría de la Solidaridad said, in its submission of March 1978, that "nor are there any known cases in which, as provided in article 311 of the Code of Penal Procedure regulating this remedy, the background documents have been made available to the Office of the Public Prosecutor (Ministerio Público) to enable it to bring charges in the event of abuses committed in connexion with detentions".

^{66/} See A/31/253, paras. 383 and 384, which describe a decision by the Court of Appeals having the effect of limiting the ability of the executive to hold incomunicado persons detained by virtue of the state of siege.

^{67/} Vicaría de la Solidaridad, Submission on the occasion of the inauguration of the Judicial Year, March 1978.

^{68/} Minute No. 28, 24 July 1978: meeting between the Group and the Minister of Justice.

196. An attitude similar to that which prevails with respect to applications for amparo, when the legal right protected is the right to life, liberty and security of person, forms the basis for the decisions of the courts in cases concerning the right of Chileans to live in their homeland (see chap. III, concerning the Law of Amnesty and chap. VI, concerning exile).

197. This tendency on the part of the judiciary not to exercise its authority and powers against the executive is confirmed by the courts' relinquishment, in the judgements they have rendered, of their constitutional prerogative to review decisions of military tribunals. The President of the Supreme Court said that, under the state of siege, military tribunals dealt with particular cases; neither the ordinary courts nor the Supreme Court could interfere with these wartime military tribunals.^{69/} It must be said that the wartime military tribunals have ceased to function now that the state of siege no longer applies (although they continue to function for proceedings instituted when it was in force), but the position revealed by the Court's decisions is consistent with its attitude towards other Government bodies.

198. The Group wishes to point out that the judiciary's relinquishment of the exercise of its powers in so important a field as that of the protection of the right to life, liberty and security of person, whether on the grounds that there exist rules that the Junta has laid down in exercise of its legislative and constituent authority and that the courts do not object thereto, or on the grounds that the courts are establishing a body of precedent which increasingly restricts those powers, would seem to prove that in Chile the judiciary is in the present circumstances not a force capable of monitoring and protecting fundamental human rights against possible arbitrariness and abuse of executive power. In most cases judges have voluntarily given up those functions. As a result, the private citizen who submits an application for amparo is left without any kind of protection against an executive which enjoys very extensive powers and which is frequently accused of being responsible for the acts that cause such protection to be sought.

2. The effectiveness of judicial machinery in the investigation of responsibility for violations of human rights

199. Investigations of human rights violations appear to be subject to limitations similar to those indicated in respect of the protection of human rights.

200. In the course of the Group's discussions with the Minister of the Interior concerning the problem of missing persons, the Minister stated that, however serious or important the case might be for those concerned, it could not be so exceptional as to warrant such extraordinary measures and deprive independent

^{69/} Idem. The Supreme Court of Justice of Chile declared, on 21 August 1974, that it had no jurisdiction to make pronouncements on complaints against the wartime military tribunals (see A/31/253, para. 395). As is stated in documents submitted to the Group by lawyers, this decision is in contradiction with provisions of the Constitution and the law and with the earlier jurisprudence of the Supreme Court.

bodies, such as the judiciary, of their constitutional and legal powers. That would be a serious affront to them and would set a grave precedent in Chile's legal history, since it would imply distrust of the courts.70/

201. A variety of facts leads the Group to believe that this lack of trust in the country's law courts under the present circumstances in relation to penal law has, rather, stemmed from the activities of the executive throughout the period during which the military Junta has been in power. The retention of wartime military tribunals over a lengthy period of time in which, according to official statements, "the circumstances which led to the declaration of a state of war no longer obtain" (Decree-Law No. 1181 of 11 September 1975) and when the "situation of internal conflict" has "already been overcome" (Decree-Law No. 1876 of 11 September 1977), show that the executive or the military prefer to remove detainees from their competent judges and entrust proceedings to special courts. However the decisions of the military tribunals do not appear to carry the same weight as those of the ordinary courts, since the amnesty made it possible to erase the sentences which they imposed.71/

202. For her part, the Minister of Justice informed the Group that in all its acts, the Government of Chile respected the judicial power. Accordingly, although the amnesty erased the offence and the penalty, it had not been possible to include in it persons under the jurisdiction of the judicial power.72/

203. The Group cannot say that such respect has been apparent in all the Government's acts. In an article entitled "La lección de la DINA" ("The lesson of DINA") the review Mensaje which is published in Santiago, Chile, states the following:

"It is astonishing to encounter legal writings by no less a person than the then Minister of the Interior [General Raúl Benavides Escobar], stating that to provide information to the law courts about the activities and agents of DINA would constitute a violation of their 'invulnerability as intelligence agents' (Case No. 10,262, Fourth Criminal Court, San Miguel) and would jeopardize the 'conditions of absolute secrecy under which the security services operate' (Case No. 2,680, Eleventh Criminal Court, Santiago). The Minister took no heed of the fact that the request of the courts did not refer to the technical and professional aspects of the DINA agents' work but to their possible involvement in acts which constitute offences throughout the territory of the Republic and irrespective of the citizen by whom they are committed - a matter which is, by its very essence, one of public interest."73/

70/ Minute No. 29, 25 July 1978.

71/ See chap. III on the decree-law granting amnesty, No. 2191 of 18 April 1978.

72/ Minute No. 28, 24 July 1978.

73/ Mensaje, Santiago, Chile, No. 270, July 1978.

204. The executive's attitude of non-assistance for investigations carried out by the judiciary has considerably reduced the effectiveness of the judiciary in discharging its functions in those cases in which it was called upon to determine responsibility for criminal acts committed in violation of human rights. The security services, which come under the direct authority of the Supreme Government, have repeatedly refused to appear in court in order to testify. The article quoted above goes on to state:

"In all the thousands of actions for amparo, the mass of criminal proceedings instituted in respect of missing persons, and the cases brought for torture, illegal arrest, abduction and murder, it proved impossible to secure the appearance of DINA officials before the judicial authorities."

205. Nor did the Government demonstrate confidence in the country's courts by issuing decrees such as Decree-Law No. 1775 of 20 May 1977,^{74/} currently in force, which, as the President of the Supreme Court told the Group, curtailed the power of the ordinary judges to enter barracks or other military premises for the purpose of investigating an offence. The President of the Supreme Court also stated that the Decree provided that such inquiries should be carried out by the military tribunals at the request of the ordinary courts and that if, in an application for ampara, the person concerned was held on military premises, the regular judicial authorities had no right of entry.^{75/}

206. This decree-law reduces the powers of the judges to take immediate action in drawing up an indictment by carrying out the preliminary investigations (article 6 of the Code of Penal Procedure) and to conduct inquiries and searches on military premises, which must be carried out through the intermediary of the military tribunals. It should be noted that, on 13 September 1976, the Government had issued Constitutional Act No. 3, which in article 3 makes the Appeals Court judges responsible for ensuring that the arrest, detention or imprisonment of any individual is in accordance with due legal procedure, vesting the Court with the power to "forthwith adopt such measures as it deems necessary" and "order the individual to appear in court". Here again, those various powers remain at the discretion of the military tribunals, which in the last resort decide how speedily to act on the measures ordered and, even more important, whether or not to carry them out. According to the Vicaría de la Solidaridad, many investigations ordered by the judges have been held up or blocked by procrastination on the part of the military authorities or failure to carry out judicial orders (see annex XXIV, which reproduces part of annex 2 of the submission of the Vicaría de la Solidaridad to the Supreme Court in March 1978).

207. The readiness of the courts to tolerate the refusal by officials of the security agencies to appear before the judges when summoned, the refusal of the courts themselves to sit at places of detention, the suspension of proceedings in cases in which the offence appears well attested or in which inquiries are in

^{74/} See in annex XXII the text of Decree-Law No. 1775 and in annex XXIII articles 6 and 158 of the Code of Penal Procedure, which were amended by Decree-Law No. 1775.

^{75/} Minute No. 26, 24 July 1978.

progress (see annex XXIV), the restrictions imposed by decree-laws and other restrictions established by mere ministerial orders, are limitations whose consequences are reflected in the results of investigations. An example of a change in procedure introduced by a purely administrative order is Ministry of Justice communication No. 57 of 14 July 1976, prohibiting direct official communication with DINA. The Supreme Court confirmed this change by its decision of 18 June 1976. This order continues to be applied to CNI.^{76/}

208. The outcome of this situation is that until the time when the Vicaría de la Solidaridad made its submission to the Supreme Court, in 500 cases brought before the ordinary criminal courts, "none of the inquiries made have reliably clarified the fate of any missing person nor has there been any punishment of those responsible".^{77/}

209. Nor have those guilty been identified, in circumstances where the security agencies have been accused of crimes as serious as those committed in the case of the minor Carlos Veloso.^{78/} In this case, the court ordered the release of the persons falsely accused of abduction (who had, moreover, been tortured to force them to confess their responsibility for a crime they had not committed), but the proceedings were closed and the investigation was terminated, thus leaving the culprits unpunished, in spite of the accumulation of evidence that would have justified continuation of the inquiry. In the cases brought to determine the fate of missing persons, long and complicated proceedings, where there was reliable evidence of their detention by the security forces, proceedings have been continued solely through the efforts of the complainants, since the courts took no initiative whatever in the investigation, extending over years without being able to determine the identity of those responsible for the abduction and disappearance. One of the cases which was brought to the knowledge of the Group refers to eight persons who were arrested in Valparaíso and whose fate, since the moment of their arrest, which was proved to have taken place, remains unknown. The case is described in chapter IV, section A, and sheds light on the initiatives taken by the relatives and lawyers of missing persons before the courts.^{79/}

210. The Chilean courts have been inclined to close possible avenues for the investigation of offences alleged to have been committed by the security forces, sheltering behind the intricate network of legislation promulgated by the Junta and its ministers, making use of procedural devices or simply setting aside the legal rules and procedures in force. In essence, the efforts of the courts should be

^{76/} The information was furnished to the Group by lawyers interviewed in Chile. In its submission of March 1978 the Vicaría de la Solidaridad provides information concerning the refusal of the courts to enter into direct official communication with CNI and other agencies coming under the Armed Forces (see annex XXIV).

^{77/} Vicaría de la Solidaridad, Submission on the occasion of the inauguration of the Judicial Year, March 1978.

^{78/} See A/32/227, paras. 88-90, and E/CN.4/1266, paras. 57 and 79.

^{79/} See also in annex XXIV the difficulties encountered by persons who apply to the courts requesting inquiries to establish the whereabouts of missing persons or to identify those responsible for violations of human rights.

directed towards ascertaining the truth. In the great majority of their decisions, however, they tend to decline their judicial responsibility and to take refuge in the principle of authority enunciated by the Government on 9 March 1977 in answer to the petitions submitted to the Supreme Court on 8 May 1977 by the relatives of missing persons.^{80/}

211. Recently, a judge declared herself incompetent to hear a charge brought by relatives of missing persons against General Manuel Contreras Sepúlveda and others.^{81/} The case was transferred to the military court. The lawyers for the petitioners took the matter to the Court of Appeal, on the ground of the judge's refusal to undertake the preliminary inquiries concerning which the Code of Penal Procedure, article 6, states: "Irrespective of the court that is called upon to hear a criminal case, judges ... shall be required to undertake preliminary inquiries concerning the charge if it relates to an offence committed within the territory of their jurisdiction ..." (see Code of Penal Procedure, article 6, of which the full text is reproduced in annex XXIII).

212. All that the Group saw and heard during its visit, as well as the evidence provided to it in writing by various persons relating to the cases and proceedings in which they have an interest, lead it to formulate the following observations:

(a) While there exist, in Chilean legislation, provisions adopted to ensure the protection of the life, physical integrity, freedom and safety of individuals, their application is so limited by the enactments of the Government Junta and the interpretations placed on the legislation by the courts that it cannot be affirmed that these rights are properly protected.

(b) Likewise, there exist legal norms which provide the means of determining responsibility for and punishing offences committed in violation of human rights, but action by the courts against government agencies accused of responsibility has been restricted by the limiting provisions decreed by the military authorities, by the courts' deference to the decisions of those authorities, even when those provisions conflict with legal principles that are in force, and perhaps also by the weight of a governmental structure that places judges, as it does the rest of the people, at the mercy of arbitrary decisions by authorities who escape any judicial control.

(c) While it is true that the President of the Supreme Court and all the judges whom the Group met sought to stress independence, there can be no doubt that this independence and this role of the judiciary are purely theoretical. Is it not true that the fate of the judges themselves depends on the discretionary authority of the Junta, that, as the law stands at present, it is possible to dismiss a judge, even if he is a member of the Supreme Court, and that he would have no remedy whatsoever against such a measure?

^{80/} See E/CN.4/1266, para. 76. The report reproduces parts of the Government's press communiqué concerning the application of 2,542 Chileans to the Supreme Court requesting it to raise with the executive the question of the serious situation of the missing persons. In this communiqué, the Government stated that it would not hesitate to apply with the utmost vigour and whenever necessary the legitimate principle of authority to assure conditions of peace and order.

^{81/} El Mercurio, 12 August 1978.

G. Civil and political rights; outlines of the institutional proposals

1. Background

213. Article 21 of the Universal Declaration of Human Rights provides the following:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country.

"(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

214. Identical principles, expressed in largely similar terms, are embodied in the International Covenant on Civil and Political Rights ratified by Chile and in the American Convention on Human Rights adopted by the Conference held in San José, Costa Rica, in 1969.

215. The Group has referred in its previous reports 82/ to the destruction, after the assumption of power by the military Junta, of the existing democratic system in Chile, which included a congress elected by universal suffrage. The traditional system of political rights guaranteed in Chile for over a century was completely set aside through the exercise of governmental power on the basis of the state of siege and the state of emergency. Even the situation during the short period of military rule in 1925 cannot be compared with the destruction of the democratic system and of political rights by the present military Junta.

216. The Group, as a result of its visit to Chile, the interviews it had in that country and its study of all the relevant information received, has the impression that Chilean society today is divided into two classes: the small and powerful governing class and the large class which is governed. A third class has emerged, made up of persons in exile who hold strong political opinions. The economic system is designed to support the governing class, and between that class and the larger class of the governed there is a gap not bridged by any democratic links, as there is no democratically organized system of representation in Chile today. Even though persons associated with now dissolved political parties are allowed to express in the mass media their political opinions on some general and specific matters, they are not consulted by the Government on public affairs. When consultations do take place, such as those on the preliminary draft of the labour code with representatives of trade unions recognized by the Government, the persons consulted do not know if their advice will be taken into account or not.

82/ See A/10285, paras.213-217, and A/32/227, paras.66-70.

The present method of government in Chile destroys democratic concern and any sense of democratic responsibility in the people, and no matter how important it is claimed the present system is to State security, law and order and the economy, it can only be characterized as democratically sterile. Freedom, to the extent it exists in Chile today, is tolerated freedom.

217. With this background in mind the Group deals in the following paragraphs with recent developments relating to the drafting of a new constitution in Chile.

2. Official statements giving outlines of the Junta's institutional proposals

218. In November 1973, a commission was appointed to draft a new Constitution. Its work is confidential, and the only information available to the public concerning the possible approach it is taking comes from official statements by some of its members and, in particular, from the speeches of President Pinochet.

219. The Group must point out that the outlines which can be discerned from these statements are not always consistent, except in some respects, to which attention will be drawn later in this document.

220. In the "Declaration of Principles of the Government of Chile" of March 1974, it is stated that:

"The Armed Forces and the Forces of Order have set no time-limit on their stay in government, since the task of moral, institutional and material reconstruction of the country requires a profound and prolonged effort. In the final analysis, it is essential to change the mentality of Chileans ... Nevertheless, although the Governing Junta sets no time-limit, it will, in due course, hand over political power to whomever the people may elect by a universal, free, secret, and informed vote." 83/

221. On 9 July 1977, in his "Chacarillas statement", General Pinochet announced a completely new régime which he described as "a democracy which would be authoritarian, secure, unifying and instrumental in technological progress and genuine social participation" and formulated a three-stage programme consisting of "recovery, transition and normality or consolidation", indicating that the second stage would begin in 1980 and the last stage between 1984 and 1985. He also said that the Constitutional Acts would continue to be developed progressively and that the phase initiated by their promulgation should end by 31 December 1980. He also described the governmental structure that would exist from that date as a two-part system, formed by the President of the Republic and a Chamber of representatives, whose members would be appointed by the Governing Junta. 84/ The basic details given in this document concerning the emergence of the new Constitution and the formation of the future public authorities make no mention of the participation of the people by a universal, free, and secret vote. It refers only to the election of part of the Legislative Chamber by "direct popular vote, according to electoral

83/ See A/10285, para.216.

84/ For the complete text of the statement, see document A/32/227, annex XIV.

systems which will favour the selection of the most capable and avoid the political parties again becoming mechanisms monopolizing citizen participation". The President would be elected by the Legislative Chamber. The election to which the President referred was envisaged for the period of "normality".

222. On 6 January 1978, following the announcement of the results of the national consultation of 4 January, General Pinochet said at a public meeting that there would be no more elections, voting or consultations for 10 years. 85/

223. When the state of siege expired on 10 March 1978 and, for the first time since the Junta's assumption of power, was not renewed (see chap. II, B), some further indication was given of the Government's institutional plans.

224. On 5 April 1978, General Pinochet made a statement (see annex XXV) in which he announced that a new draft Constitution was being prepared and that the Commission entrusted with the task was to submit its draft by 31 December 1978. The draft was to follow the Government's policy guidelines and incorporate the legislation promulgated up to that date by the Junta.

225. The main points of that statement, as far as civil and political rights are concerned, are the following:

(a) The essence of political power will continue to be "vested in the Armed Forces and the Forces of Order, but its more immediate exercise will be fully shared with the civil population, who will thus move from collaboration to participation";

(b) A Parliament will be established which "will consist of either one Chamber or two Chambers, depending on the decision taken on the basis of the studies in progress, but the substantial majority of Congress members who, under the institutional system in its final form, will be elected directly by the people by universal suffrage, will be appointed by the Government during the transitional phase, which will coincide with the first session of the Congress". Other bodies will also be created, such as the "Constitutional Tribunal, the body entrusted with the task of exercising the security power and any others which it may ultimately be agreed to provide for".

(c) According to what the President said, the Constitutional Acts do not seem to be regarded as suitable instruments for the future:

"It was originally thought that the transitional phase would be governed by a series of Constitutional Acts, which would cover the entire constitutional spectrum ... However, the political significance of the national consultation, the clarification of ideas which we have achieved and the progress made by the Commission entrusted with the task of carrying out the relevant studies have led the Government to move towards the completion and entry into force of the new comprehensive and definitive Constitution at the earliest possible date".

(d) In this statement, the possibility of submitting the text of the new Constitution to a plebiscite was also mentioned.

226. According to a report which appeared in La Tercera de la Hora on 8 April 1978, Enrique Ortúzar, President of the Constituent Commission, speaking at a press conference held on 7 April, gave the following clarification of some of the ideas outlined by General Pinochet:

"The Security Organ or Power will have the task of ensuring the survival of the State. It will be formed of representatives of the Armed Forces and a representative of the Supreme Court, the Senate and other bodies.

"Enrique Ortúzar said that the recovery phase would terminate with the plebiscite on the Constitution. The transitional phase would then begin. During that phase the Executive Power, a nominated Legislative Power, an independent Judicial Power and the Governing Junta would function, with the Governing Junta acting as the Constituent Power and the power responsible for maintaining security".

227. To sum up, it emerges from the foregoing official statements that there are two factors which remain unchanged in relation to earlier statements and proposals;

(a) The Armed Forces will continue to hold basic political power;

(b) The State bodies which are intended to constitute the normal and definitive machinery of government will not be set up through an electoral process in which the people will be consulted.

228. Recently, on 16 August 1978, El Mercurio announced that, at a ceremony to be held on that day, the preliminary draft of the new Political Constitution of the State prepared by the Commission of experts presided over by Enrique Ortúzar would be handed over to the Government. This announcement stated:

"The preliminary draft of the new Political Constitution is contained in a document which up until now has been kept strictly secret. It includes proposals for an institutional reform entailing the structuring of a new democracy, whose characteristic features President Pinochet himself has summed up in such words as 'authoritarian', 'secure', 'unifying' and 'instrumental in technological progress and genuine social participation'."

229. The reasons for keeping the text secret were explained by the President of the Republic at a press conference reported by El Mercurio on 24 August 1978:

"He stressed that the basic proposals of the Ortúzar Commission were in line with their antecedents and that they would not be revealed as yet, in order to avoid fruitless discussions arousing 'the Latin temperament of Chileans', which might cause confusion at the current stage".

230. Nevertheless, Mr. Enrique Ortúzar, describing the work done, promised that it included sweeping innovations and entailed the formation of a vigorous modern democracy equipped with appropriate legal instruments to enable it to defend itself against totalitarian infiltration and political demagogy. He also said that the provisions embodying constitutional rights, which would, in particular, strengthen freedom of private initiative and the creative capacity of the human being, were especially important. In addition to announcing a "strengthening of the Presidential system", Mr. Ortúzar confirmed some of the features already revealed in previous statements by the President, such as the establishment of a

Constitutional Tribunal and the role which the national defence forces are to play in the new structure. 86/ The Group notes that Mr. Ortúzar did not speak of the strengthening of any of the human rights set forth in the Universal Declaration of Human Rights. 87/

231. President Pinochet has observed the following:

"Nevertheless, I believe it would be appropriate to say that, while we are convinced that there are some Chileans, motivated by serious and honest beliefs, who would wish to make only some minor changes to the 1925 Constitution, or contribute their ideas to the present preliminary draft, there are others who, in their overweening ambition to achieve power, regard the current procedure as an opportunity to attack the Government. This attitude we will not accept, from whatever source it may come.

"...

"It may be that a group of Chileans honestly believes that there is an almost mandatory obligation to go back to the previous situation. Such a belief is influenced by our 150 years of democratic life, which shaped the conviction that this is the only natural institutional condition and that any departure from it can at the most be justified only temporarily. However, we may affirm that Chile never departed from the system of institutions or the rule of law, despite that day on 11 September when an approaching civil war was aborted". 88/

232. The Group notes that the foregoing words indicate a firm intention on the Government's part not to allow any criticism of its policy, and a belief that the period which began on 11 September 1973 should be regarded as one characterized by the "rule of law", implying that the latter is not an objective to be aimed at but already exists and is in force.

233. The Group also observes that none of the official statements made in recent years suggests that the Government will abide by the promise made by the Junta on taking power, a promise recalled not long ago in an article by Jorge Rogers Sotomayor, the Chilean expert in political law and author of the book La Incógnita Constitucional:

"In keeping with institutional precedent, as laid down by what was the first Military Junta Government in the Manifesto of 11 September 1924 (in which was recorded the solemn promise 'WE HAVE NOT ASSUMED POWER WITH THE INTENTION OF KEEPING IT'), the new Junta of the Commanders-in-Chief of the Armed Forces and the Forces of Order, set up on another 11 September, in 1977, was even more explicit and went still further in defining its historic mission, stating in its "Declaration of Principles" that "THE GOVERNING JUNTA WILL, IN DUE COURSE, HAND OVER POLITICAL POWER TO WHOMEVER THE PEOPLE MAY ELECT BY A UNIVERSAL, FREE, SECRET AND INFORMED VOTE". 89/

86/ El Mercurio, 17 August 1978.

87/ On 19 September 1978 the Government of Chile transmitted to the Group a copy of the article which appeared in El Mercurio on 7 September 1978 and which reproduced part of the proposed text for the new Constitution of Chile.

88/ El Mercurio, 17 August 1978.

89/ Published in El Mercurio, 10 May 1978. The emphasis is the author's own.

3. The procedure for approving the text of the new Constitution

234. On 16 August 1978, during the ceremonial presentation of the preliminary draft prepared by the Commission which is elaborating the text of the new Constitution, Sergio Fernández, the Minister of the Interior, announced that the deadline for the submission of the complete text had been extended to the first half of 1979. He also stated that the preliminary draft would be sent to the Council of State for its consideration and that the Governing Junta would take a decision in the light of the Council's opinion. The Government's decision would form the basis of the next text of the Constitution which the Commission was to draw up. The new Constitution would then be submitted to a plebiscite. 90/

235. The Group has reported previously on the establishment, membership and functions of the Council of State, set up by Legislative Decree No. 1319 of 31 December 1975. Former Presidents of the Republic who are resident in Chile are members of the Council of State, except for former President Frei, who refused to join it for several reasons, inter alia, because he thought it would have no power and would be unable to take any initiative, and that the Government would not be required to follow its recommendations. 91/

236. During its visit to Chile, the Group talked to Mr. Gabriel Gonzalez Videla, a former President of Chile, about the Council of State. He said that the experience and democratic course of the past were fully reflected in its membership, but that its influence on the President of the Republic had diminished greatly since the mistake it had made in opposing the holding of the consultation in the belief that the outcome would be unfavourable; it had failed to foresee that the people would not disregard the appeal made by General Pinochet and had underestimated his influence over the masses. 92/ The Group was also informed that the Council of State never openly criticized the Government's acts and carried no weight in the Government's decisions.

237. Nothing is known about the way in which the proposed plebiscite is to be held.

238. On 29 April 1978, El Mercurio published a declaration by the Christian Democrat Party objecting to the way in which the institutional process was being carried out by the Government. It stated that:

"The new Constitution is being prepared by persons who belong to a minority group in the life of the country, and is to be submitted to a plebiscite in which the people will be confronted by the dilemma of having to approve or reject a text which has been prepared on the basis of an utterly unacceptable procedure".

239. The Group was informed that it is not yet known whether there are any definite official plans to prepare the electoral rolls. This would suggest that there will be another consultation held in conditions similar to that of

90/ El Mercurio, 17 August 1978.

91/ With regard to the Council of State, see A/31/253, paras.106-111.

92/ Minute No. 20, 21 July 1978.

4 January 1978 (see E/CN.4/1266, paras.42-47). Persons interviewed by the Group in Chile said that they had voted "yes" in that consultation because of the fear generated by the prevailing political situation.

240. Nor is anything known of plans for supervising the electoral process and ensuring its integrity.

241. General Pinochet has made it known that he intends to inform the people about the text of the Constitution but that it is being kept secret for the time being because, as he said: "I cannot ask the people whether or not they like a recipe unless they know whether it is good or bad". 93/

242. However, nothing is known about the choice that will be offered. Jorge Rogers Sotomayor, in the article quoted above, points out that:

"What has been explained so far is that the decision will be taken by means of a plebiscite, but no light has been thrown on the various and mutually exclusive options that must be put to the vote, since a decision by the people on a single option does not constitute a 'plebiscite'. Unless there is a range of choice, there will be no element of 'election' in the process". 94/

243. In its report under article 40 of the International Covenant on Civil and Political Rights, the Government of Chile merely states that "the draft ... will be submitted to popular vote by means of a plebiscite. It is important to emphasize that both the permanent and the transitional provisions of the draft will be submitted to the plebiscite".

244. It goes on to state that: "If approved by the country, the new constitution will govern citizen participation in public affairs, the right to vote and to be elected, all within the framework set forth in the Government's Declaration of Principles ...". 95/

245. The Group notes that the new constitutional provisions are to be approved as a whole, whether they relate to the transitional period or are planned to apply in a normal situation, although the date on which such a situation will be deemed to have commenced has not been indicated with any precision. This means that Chileans might be compelled to approve or reject rules which may prove mutually contradictory. A plebiscite of this kind has no historical precedent and the proposal to hold it appears contrary to elementary principles of law.

246. The Group hopes that the new Chilean constitution will be drawn up within a year and that it will guarantee civil and political rights at least to the extent provided for by the International Covenant on Civil and Political Rights, to which Chile is a party. The new constitution, in the Group's view, should provide the means for democratic participation by all Chileans, even those living abroad, in decisions relating to the principal public affairs at the local, regional and national levels.

93/ El Mercurio, 24 August 1978.

94/ El Mercurio, 10 May 1978.

95/ See CCPR/C/1/Add.25, p.52.

247. The Group deplores the apparent failure of the Government to reestablish the electoral roll destroyed in 1973. From a technical point of view, only such an electoral roll can guarantee a fair, impartial and free participation of all citizens, inside and outside Chile, in the planned consultation on the new constitution. The reestablishment of the electoral roll, in the opinion of a witness of high stature, would take only a few months. In the view of the Group, an objective consultation on the new constitution requires an immediate start on the reestablishment of the electoral roll and the guarantee of the exercise of political rights.

III. DECREE-LAW NO. 2,191 OF 18 APRIL 1978 GRANTING AMNESTY

A. Promulgation of Decree-Law No. 2,191: Consequences

248. On 18 April 1978 the Government of Chile issued Decree-Law No. 2,191 granting amnesty to persons who had committed certain offences and whose situation was that described in the text. On the following day the Decree-Law was promulgated by publication in the Diario Oficial. 1/

249. The preambular part of the Decree-Law granting amnesty lays stress on the general calm, peace and order enjoyed in the country which made it possible to lift the state of siege and the curfew. The amnesty is also based on the need to strengthen the bonds uniting Chileans and the concord and harmony between them, casting aside meaningless hatreds.

250. The amnesty received wide publicity in the Chilean press, as well as abroad. A few days before Decree-Law No. 2,191, was issued, President Pinochet had announced that an amnesty law was being studied which would apply to all persons against whom proceedings had been instituted before military courts. 2/ Two days later, President Pinochet reverted to the subject but this time spoke only of remission or commutation of the penalty of imprisonment to that of banishment (extrañamiento). On this occasion, he said that "this measure, inspired by humanitarian motives, will also serve to ensure that henceforth no-one can say that in Chile there are persons who are deprived of freedom for political acts committed in the past" and he went on to warn "that the above-mentioned decision by the Government over which I preside should be interpreted as a gesture of conciliation and not as a sign of weakness, because anyone who makes any mistake in that regard will henceforth lay himself open to the full severity of the law". 3/

251. On 20 April 1978, the Ministry of Justice and the Director-General of the Gendarmerie announced that "2,071 persons appeared to be eligible for the amnesty, of whom 950 had been sentenced by military courts and 1,121 had gone abroad after their sentences had been commuted to banishment". 4/ During its meeting with lawyers, the Group was informed that most of the persons who had been sentenced by military courts and who were eligible under the amnesty were not in prison but outside, because they had been released conditionally or had been sentenced to internal exile and the sentence was being carried out in the places to which the judges had assigned them. Some days previously, the penalty of imprisonment had been commuted to that of banishment in the case of a number of persons who came within the provisions of the Decree-Law concerning amnesty and for that reason they had left Chile or were in the course of doing so.

1/ The full text of the Decree-Law is reproduced in annex XXVI.

2/ El Mercurio, 4 April 1978.

3/ El Mercurio, 6 April 1978.

4/ El Mercurio, 21 April 1978.

252. On 13 May 1978, the Ministry of Justice issued a statistical report concerning persons sentenced by military courts who had been confined in various penal establishments in Chile and who had been released under Decree-Law No. 2,191. They numbered 153 in all. 5/

253. Not all the detained persons who benefited from the amnesty regained their freedom in Chile. In some cases, they were expelled or kept in prison until they decided to leave Chile once an entry visa for another country had been obtained. The following is an example of the procedure followed. On 26 May 1978, El Mercurio reported that 30 detainees confined in the Central Prison had instituted an action for enforcement of rights in the Court of Appeals, and requesting protection, as a result of the expulsion from Chile of four persons benefiting from the amnesty, Héctor Armando Reyes Núñez, Sergio Enrique Sepúlveda Colome, Víctor Jugo Herasman Sepúlveda and Jorge Arturo Martínez Muñoz. The last-named stated before the Group that he had tried to resist being transferred to a destination unknown to him without an order from the competent authority and that he had been beaten while being forcibly removed from the prison. During its visit to Chile, the Group received a copy of the text of this action which expressed the concern of the prisoners at the removal and subsequent expulsion of the amnestied persons who, just when they hoped to be freed, were sent to the Tres Alamos camp without being shown an expulsion order or decree. The Group was also told of the existence of a decree issued by the Minister of the Interior ordering the expulsion from Chilean territory of the four persons because he considered that they constituted a danger to the internal security of the State. 6/

254. The four expelled persons instituted an action for enforcement of rights against the measure, which was accepted by the Court of Appeals because it considered that the decree ordering the expulsion should have had a proper legal basis, as required by the law. The Government appealed against this decision to the Supreme Court. During its visit to Chile, the Group was present at the hearing in which the pleas of both parties were presented to the Supreme Court. The latter subsequently rejected the petition for enforcement of rights, stating that "the assessment of the grounds on which an expulsion order is based is not subject to judicial review ..." 7/ and thus confirmed the expulsion.

255. Supreme Decree No. 60 of 10 May 1978, signed by the Ministers of the Interior and Defence, further ordered the expulsion of Horacio Marotta Rozman, Diana Duhalde Ruiz, Isidoro Liendo Vera, Inés Naranjo Ponce, Rodrigo del Tránsito Muñoz Muñoz and Elizabeth Olivares Fontt. Rodrigo del Tránsito Muñoz Muñoz entered an appeal for protection against the measure, but the Santiago courts declined to accept his petition, declaring itself incompetent to review decisions of that kind by the executive power. 8/ In short, the Supreme Court is of the opinion that if the executive power considers that a person constitutes a danger, this is sufficient for the person in question to be expelled or refused authorization to return to the country.

5/ El Mercurio, 14 May 1978.

6/ A copy of Decree No. 0062 of 12 May 1978 ordering expulsions is reproduced in annex XXVII.

7/ El Mercurio, 18 July 1978.

8/ Minute No. 6: Statement by Rodrigo del Tránsito Muñoz Muñoz. This statement is consistent with the contents of a document handed to the Group by lawyers in Chile.

256. The periodical Hoy summed up the events of the two days following the amnesty as follows, in its article "The dividing lines of freedom":

"However, although ICEM had no problems in the Correctional Establishment, it encountered them in the Central Prison. CNI agents entered the prison building and arrested there Victor Heressman Sepúlveda, Héctor Reyes Núñez and Enrique Sepúlveda Coloma, just as they were leaving to regain their freedom under the amnesty decree. A police statement later said that a decree issued by the Ministry of the Interior, dated 12 May, had ordered their transfer abroad because they 'were highly dangerous'.

"Thus ended days of tension between those held and those who were freed. The information emanating from the Government indicated that all or some of the amnestied persons would have to leave the country. For that reason, they instituted an action for enforcement of rights which they later withdrew. On Friday, in the Office of the Second Military Prosecutor, Horacio Marotta and Isidoro Liendo signed a statement before notary Arturo Carvajal indicating that they were leaving without being expelled, because they had been told that they were in danger. ICEM, therefore, was protecting them." 9/

B. Scope of the Decree-Law concerning amnesty

257. The scope of the Decree-Law varies according to the acts, situations and persons covered by it.

Article 1

258. Article 1 applies to all those who, "as principals or accessories, committed criminal offences during the period of the state of siege between 11 September 1973 and 10 March 1978, unless at the present time they are in the process of being tried or have been convicted." According to this article, the amnesty extends to all categories of offence, both ordinary and political, with the exception of those mentioned further on in the decree, committed between 11 September 1973 and 10 March 1978, for which the person accused had not been tried or convicted on the date of the Decree-Law. It should be pointed out that this article does not apply to persons convicted by the ordinary criminal courts or judges of those courts. On the other hand, it is apparent from article 2 that the persons who benefit from the amnesty are those who have been convicted by military courts. Decree-Law No. 2,191 makes it clear that the decisions of the ordinary courts are to be respected, while those of the military courts do not appear to enjoy the same degree of validity.

259. A number of proceedings instituted to identify those responsible for the disappearance of persons were quashed definitively, it being held that the acts came within the scope of article 1 and had been committed within the period specified in the Decree-Law concerning amnesty (four actions in the Seventh Court, five in the Eighth Court and one in the Sixth Court) according to the periodical Qué Pasa. This publication reported that the lawyers instituted actions for

9/ Hoy (Santiago, Chile), 17-22 May 1978.

enforcement of rights in the Court of Appeals, arguing that the missing persons had been abducted and that abduction was a continuing offence, and, accordingly, the offence continued to be committed until such time as the abducted person recovered his freedom. They also pointed out that article 1 of Decree-Law No. 2,191 granted amnesty to all persons who, as principals or accessories, had committed criminal offences and that implied that those responsible should be identified in judicial proceedings and their involvement in the offences established before they could avail of the benefits of the amnesty. 10/

260. On 27 May 1978, El Mercurio reported that the criminal court judges of Santiago had pronounced approximately 300 definitive dismissals in cases of "presumed misadventure" (proceedings aimed at establishing the whereabouts of persons responsible for disappearances) since the entry into force of Decree-Law No. 2,191 and in consequence of its provisions. The newspaper also reported that almost all the documents relating to the cases were in the criminal department of the Court of Appeals.

261. Subsequently, the Court of Appeals reversed the decisions of the court of first instance in a number of cases, on the ground that "article 1 of Decree-Law No. 2,191 grants amnesty to persons who, as principals or accessories, committed criminal offences during the stated period and that, in accordance with article 413 of the Code of Criminal Procedure, there cannot be definitive dismissal until the investigation seeking to verify the corpus delicti and to identify the offender has been completed". 11/

Article 2

262. Article 2 covers all persons who, "at the date of entry into force of this Decree-Law, have been convicted by military courts since 11 September 1973". This article extends the effects of the amnesty to persons convicted by military courts between the same dates, even for acts committed before 11 September 1973, but excludes those against whom proceedings had been instituted, namely, persons whose case, on the date of the Decree, was pending before a military court.

263. In explaining why persons in respect of whom proceedings were instituted had been excluded, the Minister of Justice informed the Group on 24 July 1978 that although the amnesty erased the offence and the penalty, it had not been possible to include in it persons under the jurisdiction of the judicial power. 12/

264. Persons benefiting from article 2 include those whose prison sentence imposed by a military court had been commuted to exile, those who were already outside the country or who were in the process of leaving it. The article also covers other situations such as the case of the persons responsible for the assassination of General René Schneider in 1970, who had been convicted after 11 September 1973. 13/

10/ "First dismissals arising out of the amnesty", Qué Pasa, 1-17 May 1978.

11/ El Mercurio, 11 June and 14 June 1978.

12/ Minutes No. 28 of 24 July 1978.

13/ El Mercurio, 22 June 1978.

265. The Court Martial, in the case of the four carabineros responsible for the offence of unnecessary violence which brought about the death of one person on 5 December 1975, had to interpret the scope of the term "convicted" in article 2 of Decree-Law No. 2,191 and stated, among other things, that "the distinguishing feature of the amnesty law whose scope is being defined in this decision, is that it is very broad, not to mention its more liberal approach to cases before military courts. In the circumstances, therefore, it would be in accordance with neither the letter nor the spirit of the law to maintain that article 2 of Decree-Law No. 2,191 required that the offender's sentence should be final and without recourse". 14/

266. This interpretation was subsequently challenged by the State Defence Council which petitioned the Supreme Court to declare null and void the Court Martial's decision to dismiss the case on the basis of the Decree-Law concerning amnesty, on the grounds that article 2 must be interpreted in a restrictive sense and that the word "convicted" has the meaning of sentenced by virtue of a definitive judicial decision against which there is no appeal. 15/ So far the Group has not received any information concerning the Supreme Court's decision on the matter.

Article 3

267. Article 3 excludes from the scope of the amnesty, as referred to in article 1, persons in respect of whom proceedings are pending for various crimes and offences which it enumerates (see annex XXVI). These exceptions do not include offences which are particularly serious - and which are therefore covered by the amnesty - such as homicide, bodily injury, slander and libel, robbery, illegal seizure, wilful damage to property, fraud, offences against the public credit (forgery, false testimony, perjury), the kidnapping of adults, the violation of the home and correspondence, etc.

268. During the Group's interview with the Minister of Justice, the latter stated that the Government's objective in enacting the Decree-Law concerning amnesty had been to call upon all elements in the country to return to the national way of life and to assure the isolated groups of Marxists who had been involved in clashes and had killed not to fear retribution for those offences, even if they had been common offences committed with a political motivation. Certain crimes and offences, however, had not been included in the amnesty because it was obvious that no political ideal was involved, as in the case of the corruption of minors. 16/

Article 4

269. Article 4 of Decree-Law No. 2,191 excludes from the scope of the amnesty persons shown to be responsible for the acts being investigated in indictment No. 192-78 of the Santiago Military Court, ad hoc prosecutor's office. The Minister of the Interior, in referring to this case, stated that "it is the

14/ Las Ultimas Noticias, 24 May 1978; El Mercurio, 24 May 1978.

15/ El Mercurio, 23 July 1978.

16/ Minutes No. 28, 24 July 1978.

hope of the President of the Republic - as he has already indicated to the country at large in connexion with the case before the Santiago Military Court which is well known to all - that the facts will be brought to light and that the investigation will continue. ..." and went on to explain that the case involved the assassination of Orlando Letelier and that "the amnesty does not apply to any person whose participation in such a reprehensible crime is proved." 17/

Article 5

270. Lastly, article 5 states that "persons benefiting from this Decree-Law who are outside the territory of the Republic shall comply with the terms of article 3 of Decree-Law No. 81, of 11 October 1973, for the purpose of re-entering Chile".

271. Article 3 of Decree-Law No. 81 states: "Those who left the country to seek asylum, those who abandoned the country without complying with the procedure laid down or who were expelled or forced to leave the country or were sentenced to exile, may not re-enter the country without the authorization of the Minister of the Interior; such authorization must be sought through the appropriate consulate."

272. Mónica Madariaga, the Minister of Justice, on being questioned by reporters concerning the effects of the amnesty for persons who had been expelled and exiled, stated:

"The situation of persons who were expelled from the country without a sentence being pronounced against them will remain the same as it was before the enactment of this provision; such persons are subject to all the provisions of Decree-Law No. 81. Persons who were exiled under Decree No. 604 by virtue of a decision which commuted their sentence of deprivation of liberty in Chile to exile abroad, are pardoned and should comply with the general provisions of Decree-Law No. 81 in order to re-enter the country.

"All persons who sought asylum in embassies or who left the country with ICEM assistance without a passport because they were afraid that some action might be taken against them should comply with the provisions of Decree-Law No. 81; however, the amnesty also applies to these persons." 18/

C. Critical analysis of the Decree-Law concerning amnesty

273. Various criticisms were levelled at Decree-Law No. 2,191 both within the country and abroad, some of them being made without prejudice to the positive aspects of the amnesty. These criticisms consisted in raising objections concerning: (1) the legal aspects of the Decree-Law, in so far as it gives rise to contradictory legal situations and arbitrary legal acts of a serious nature; (2) the persons to whom it applies, as its purpose is said to be to pardon those responsible for assassinations, torture and other offences committed during the administrative of the Junta rather than to grant a genuine amnesty to political opponents; (3) the restrictions it imposes on the return of Chileans who are outside the country.

17/ El Mercurio, 20 April 1978.

18/ El Mercurio, 20 April 1978.

1. Legal objections

274. During its visit to Chile, the Group received a copy of a petition submitted by 14 lawyers 19/ in which the Supreme Court is requested "to impress upon the legislative powers the need to amend the amnesty law in a manner which will not affect the country's penal legal order" and "to hand down a decision in plenary which, through the due process of the law, will serve to correct contradictory interpretations and mitigate the flagrant injustices which would be brought about by a literal interpretation of this Decree-Law".

275. The legal objections raised in this petition include the following:

(a) The amnesty covers a large number of ordinary offences which have nothing whatever to do with the political and social situation which it is intended to remedy. For example, all offences which affect rights guaranteed by the Constitution; all offences against public credit - forgery, false testimony and perjury; offences committed by civil servants in the performance of their duties with the sole exception of embezzlement, fraud and extortion; offences against the institution of the family and against public morals, with the exception of the abduction and corruption of minors, rape, and incest; the offences of homicide, bodily injury, duelling, slander and libel; and the offences of illegal seizure, fraud and wilful damage.

(b) A distinction is made, without any apparent justification, in the selection of the offences to which the amnesty applies. For example, homicide and bodily injury are pardoned but not robbery with violence or intimidation; the amnesty covers the offence of wilful damage but not that of arson and other kinds of wilful destruction.

(c) The amnesty favours persons who have committed and been charged with offences but does not apply to persons who are standing trial or have been convicted. For example, the fates of two persons responsible for the same homicide - one of whom has been apprehended and tried and the other who is a fugitive - will be very different indeed: the former may even be sentenced to death whereas the latter's record may not even be brought to trial. Article 2 is also arbitrary in that a pardon is granted to the persons who have committed, been charged with and sentenced for an offence but not to those standing trial; it also introduces an additional element of discrimination by extending the exemption to cover many offences committed before 11 September 1973, subject only to the condition that the sentence in such cases was handed down by a military court before that date.

276. The Supreme Court, sitting in plenary on 23 May 1978, decided to reject the petition of the 14 lawyers. One of the Judges of the Court, Mr. Retamal, recognizing the importance of the comments contained in the petition, considered it desirable to transmit it to the Minister of Justice for information and, through her, to the members of the Legislature. 20/ This suggestion by Judge Retamal reveals awareness of the merits of the comments and must be regarded as a positive element in that Judge's attitude.

19/ See annex XXVIII where this petition is reproduced in extenso.

20/ El Mercurio, 25 May 1978.

277. Another lawyer submitted to the Group a document in which it is stated that "this decree concerning amnesty violates a basic principle of legal hermeneutics because, although an amnesty should invariably be a boon, the persons whose prison sentences were previously commuted to exile are now at a disadvantage. Previously they were aware of the reason and the duration of their sentence, but all they know now is that they cannot return to their country - although they do not know why (the acts for which they were sentenced have been erased) or for how long they must remain far from their country". 21/

2. Objections connected with the pardon of crimes against human rights

278. The Vicars of the Santiago Archbishopric issued a statement, published in El Mercurio on 9 May 1978 (see annex XXIX), in which, after indicating that they had appreciated the spirit of harmony and national reconciliation implicit in the amnesty and recalling the suffering of the families of persons about whom nothing further had been heard after they had been arrested, they go on to state: "We cannot refrain from loving them and weeping with them because, in our view, the amnesty decree to all intents and purposes puts an end to any hope of their learning what happened to their husbands, fathers, sons or brothers".

279. Relatives of the missing detainees held a press conference during a journey they made in Europe with the object of drawing the attention of world public opinion to their problem. They are reported by the newspaper Le Monde to have made the following statement during this press conference:

"Do not let yourselves be deceived by the amnesty granted by General Pinochet, they said. Do not believe that there is any liberalization. The amnesty does not apply to the 1,500 persons who are missing any more than it covers a number of so-called prisoners held for offences under the ordinary law. It does, on the other hand, apply to members of the political police, to the torturers who were responsible for the repression. How can victims and their executioners be placed on the same footing?" 22/

280. The objection raised by the relatives of the missing detainees was also expressed to the Group by relatives of persons who had died while they were in the hands of the security services. The proceedings these persons instituted in order to determine who had been responsible for the deaths have been dismissed.

281. On 15 June 1978 the Minister of the Interior made a statement in order to give the Government's views on the question of the missing persons. This statement contained a reference to the objections to which the Decree-Law concerning amnesty had given rise. He said:

"The amnesty has had extensive support in the more responsible spiritual and civic circles in our country. Only a few fanatical elements have tried to impugn it and criticize it, stating that it covers security officials who may have committed certain excesses during the period in question.

21/ Document submitted during one of the Group's hearings in Chile.

22/ Le Monde, 10 May 1978.

"With the moral strength that comes from always facing up to the truth, I shall dispose of this bold accusation with one simple question: 'What are the critics trying to say?' Perhaps that the Government should pardon those who from the trenches of the extremist (Marxist) movement fomented a civil war while, on the other hand, it should maintain the penalties for those who may have been too zealous in combating this extremism? Only a completely deranged mind could dream up such a grotesque, unjust idea that is far removed from the most elementary sense of reality". 23/

3. Restrictions imposed on the return of persons now living outside Chile and of persons who have been expelled

282. The Group referred previously to the expulsion from Chile of persons covered by the amnesty (sect. A above) and to the scope of the amnesty in relation to article 5 of Decree-Law No. 2,191, as well as to article 3 of Decree-Law No. 81 (see sect. B above), which remains in force during the state of emergency, under the provisions of Decree-Law No. 1,877 (see chap. II, sect. B).

283. The Minister of Justice, when asked by journalists what exceptions there were to the amnesty, replied:

"Persons who have been expelled constitute a special case. Their situation has nothing to do with this Decree-Law but is covered by Decree-Law No. 81. With or without this amnesty law, their situation will remain unchanged although they have the benefit of amnesty at any time. I shall, within a few hours, be sending a circular to the heads of penal institutions requesting them to take appropriate measures in this matter." 24/

284. The Ad Hoc Working Group received a large number of individual communications from relatives and groups of persons which refer to the serious limitation article 5 implies for those who, because of the amnesty, had hoped to be able to return to their relatives and friends in their country.

285. The case of César Godoy Urrutia is taken here as an example in order to present the legal considerations on which objections to the Decree-Law concerning amnesty are based.

286. César Godoy Urrutia, a former communist deputy and a well-known educator who is 76 years of age, tried to return, assuming that there was no legal obstacle preventing him from doing so. Godoy Urrutia had in fact left Chile of his own free will, his passport had been in order and no proceedings had been brought against him or sentence imposed on him, so that he was not covered by the provisions of Decree-Law No. 81. He had had no difficulty in renewing his own passport, as well as that of his wife, at the Chilean embassies in Brazil and in Mexico. His passport contained no mention of any restriction or any special marks. 25/ On 27 April 1978 he landed at Pudahuel (the airport close to Santiago), where he was forbidden to enter Chile and was forced to leave on the same flight,

23/ El Mercurio, 16 June 1978.

24/ El Mercurio, 20 April 1978.

25/ Minutes No. 25 - testimony of Mrs. María Herrera Ferrer.

which continued to its destination in Buenos Aires. On that same day, the Under-Secretary of the Interior stated that that action had been taken under Decree-Law No. 81. The following day, 28 April, it was stated that the measure had been taken in conformity with Decree-Law No. 604, which empowered the Government to prevent the return of persons considered to constitute a danger to the security of the State or who had slandered the Government while abroad. 26/ The next day, while his wife was making an appeal to the Supreme Court, contradictory information was issued concerning the existence of a decree prohibiting the entry of Godoy Urrutia into Chile; whereas the Department of Investigation maintained that the decree was dated 19 January 1978, the Ministry of the Interior stated that the decree in question (Decree No. 2412) was dated 23 February 1978, although when a copy of the decree was appended to the action for enforcement of rights addressed to the Supreme Court, it bore the date 28 February 1978. 27/

287. César Godoy Urrutia later submitted, from the consulate in Buenos Aires, through the Ministry of the Interior, a request for permission to enter Chile, stating that he was prepared to sign the application required by the Chilean Government; his request was denied. 28/ The action for enforcement of rights presented to the Court of Appeals, and also presented on appeal to the Supreme Court, was rejected. 29/

288. Witnesses who testified before the Ad Hoc Working Group stated that following the promulgation of the Decree-Law concerning amnesty, about 1,700 persons had been denied permission to enter Chile; this figure includes family members. The Group was unable to verify this figure but many names and lists supplied by official sources were published in the press (see chap. VI concerning exile, where this point is considered in more detail).

289. In the report submitted by the Government of Chile in accordance with article 40 of the International Covenant on Civil and Political Rights the Government, in reference to article 12 of the Covenant, states:

"The 1925 Political Constitution of the State, in its article 10, paragraph 15, guarantees 'Freedom to reside at any place in the Republic, to move from one place to another, or to depart from the national territory without being subject, other than as determined by law, to arrest, prosecution, imprisonment or local banishment, provided that the police regulations are complied with and always excepting any damage to third parties'.

26/ See annex XXX. See also information concerning Decree-Law No. 604 in E/CN.4/1266, paras. 95 and 96.

27/ "The decrees against César Godoy", Hoy (Santiago), 10-16 May 1978.

28/ Minutes No. 25.

29/ El Mercurio, 7 June 1978.

"As was stated in connexion with article 9 of the Government, our constitutional rules, as set forth in article 1, paragraph 6, of Constitutional Act No. 3, also guarantee the right to liberty and security of person and, consequently, the right to reside and remain at any place in the Republic, to move from one place to another, and to enter or depart from the national territory, provided that legal requirements are observed and always excepting any prejudice to third parties.

"Article 1, paragraph 6 (a), of Constitutional Act No. 3 provides that no one shall be deprived of or restricted in his personal liberty, except in the cases and in the manner laid down by the Constitutional Acts, the Constitution and the laws.

"In laying down the rules mentioned above, the constituent power made provisions for three specific rights under the guarantee of personal liberty:

"1. Freedom of movement, by virtue of which all inhabitants may move from or to any place in the national territory, and depart from and return to it;

"2. Freedom of residence, under which any person can become domiciled or reside in the place of his choice, change his domicile or residence and establish another; and

"3. Protection against arbitrary acts, according to which no one can be subjected to arrest, prosecution, imprisonment or local banishment except in the cases and in the manner laid down by law.

"Restrictions on the above-mentioned rights can be imposed only for reasons of national security, in emergency situations which endanger the attainment of national objectives. Under article 2 of Constitutional Act No.4, the following are cases of emergency: situation of external or internal war, civil commotion, latent subversion and public disaster." 30/

290. Decree-Law No. 604, invoked in the case of Godoy Urrutia, is manifestly inconsistent with the above-mentioned constitutional rules. It might be thought, from the terms of the above-mentioned report, that its provisions applied to a state of emergency by reason of public disaster. However, the powers conferred on the executive power by this Decree-Law are not among those referred to in Decree-Law No. 1,877, amending Act No. 12,927 of 1958 concerning the internal security of the State, which conferred on the executive power, during the state of emergency, a number of powers which it had formerly had only in the case of a state of siege (see chap. II, sect. B). Nor does it emerge from its text that it is applicable only in the case of states of emergency.

291. Decree-Law No. 604 gives the Executive wider powers than does Decree-Law No.81, since it gives it the power to deny permission to enter Chile, not only on the ground of previous or current acts, but also on the ground of potential danger. The Decree-Law states that entry into Chile shall be forbidden to persons who "in the opinion of the Government, present a danger to the State". 31/

292. As has been made clear in its public statements, the Government of Chile considers this provision to be still in force. Since the power in question is not inherent in the state of emergency, the Group must conclude that it is not subordinated to such a state of exception, and that it constitutes a provision of a permanent nature, contrary to the rules of the Chilean Constitution and to the International Covenant on Civil and Political Rights, in particular to its article 12, paragraph 4.

293. In the case we have given as an example, the arbitrariness of the action taken may prove to be even greater having regard to the fact that the person prevented from returning to his country is 76 years of age, is in poor health (having recently had to undergo surgical treatment) and is seeking permission to return to Chile so that he may spend the last years of his life in his own country.

294. In a statement issued by the National Directorate of Social Information on 5 May 1978, the Ministry of the Interior expressly confirmed that the provisions restricting entry remained in force:

"1. Decree-Law No. 81 provides that persons who have left Chile by seeking asylum or without following the normal procedures, who have been expelled or obliged to leave the country or who are serving sentences of banishment (extrañamiento), may not re-enter the national territory without the permission of the Minister of the Interior, which should be applied for through the appropriate consulate.

"Furthermore, Decree-Law No. 604 gives the Government the power to prohibit the entry into Chile of persons who commit acts contrary to the national interest or who present a danger to the security of the State, even where the reason for or the circumstances of their previous departure from the national territory do not fall within any of the special cases referred to in the aforesaid Decree-Law No. 81. Persons affected by the prohibition under Decree-Law No. 604 may not re-enter Chile without permission from the Minister of the Interior.

"2. The amnesty recently decreed by the Government applies to certain specified offences and their consequences, provided that the offences were committed within the period during which the State of Siege was in force (11 September 1973 to 10 March 1978) and also that the persons affected were not being prosecuted or had not been convicted on the date of the publication of Decree-Law No. 2,191 granting the aforesaid amnesty.

31/ See the full text of Decree-Law No. 604 in annex XXX.

"That Decree-Law extended the benefit of the amnesty to persons who within the same period were convicted by military courts, provided such conviction was after 11 September 1973.

"It is important that public opinion should be fully aware that this measure, which reflects the wish of the Government for national reconciliation, does not in any way alter the legal situation concerning re-entry into Chile of persons to whom Decree-Laws Nos. 81 and 604 are applicable, save insofar as it enables persons who have incurred the penalty of banishment (extrañamiento), to apply for readmission to Chile on the same terms as the other persons referred to in those instruments, i.e., only with the permission of the Minister of the Interior.

"3. Consequently, each application for readmission will be considered and decided upon according to the circumstances, under the procedure which was, of course, followed prior to the recent amnesty.

"Nevertheless, to avoid any misunderstanding or confusion in the matter, the Minister of the Interior considers it his duty to make it clear to all citizens that his carefully-considered decision not to permit the re-entry into Chile of any person involved in the international campaign against Chile or in any international Marxist activity is irrevocable". 32/

295. The Government's decision set out in the closing sentence of that announcement, the provisions of Decree-Law No. 604 and the testimony heard by the Group lead it to conclude that individuals may be excluded from Chile on the sole ground of holding opinions the "dangerous character" of which is to be judged solely by the Government.

296. The situation is further aggravated as a result of the interpretation placed by the courts on their powers of judicial review of acts of the executive power. On 17 July 1978, the Supreme Court, in its judgement in the case of the expulsion of Héctor Armando Reyes Núñez, Sergio Enrique Sepúlveda Coloma, Victor Hugo Heresman Sepúlveda and Jorge Arturo Martínez Muñoz (see para. 253 above), stated as follows:

"It must be pointed out that, as this is a case of a power reserved solely to the Government, the assessment of the grounds on which the decision to expel was based is not subject to any judicial review; in these circumstances, it is necessary to draw attention to the fact that the Supreme Decree providing for the expulsion satisfies the requirements of the law, since it was issued when the country was in a state of emergency, bore the signatures of the appropriate ministers and stated the reason or ground on which it was based, namely that, according to information in the possession of the Ministry, the Chilean citizens expelled represented a danger to the internal security of the State, there being no legal requirement to specify or refer in detail to this information or evidence". 33/

32/ El Cronista (Santiago), 5 May 1978.

33/ El Mercurio, 18 July 1978.

297. After considering the foregoing, the Group made the following observations:

298. The effects of article 2 of Decree-Law No. 2,191 extent to political opponents, but the amnesty is limited by article 5 and by Decree-Laws Nos. 81 and 604, which have been used in order to expel from and to prevent the entry into Chile of persons formally within the scope of the amnesty. These enactments, and the interpretation placed by the courts on their own power to review their application are limitations which appear to nullify the objectives proclaimed by the Government in issuing Decree-Law No. 2,191 and limit its impact, since a very large number of Chilean citizens now outside Chile are excluded from the amnesty.

299. Article 1 of Decree-Law No. 2,191, because of the broadness of its wording and the variety of offences it covers, has the effect of giving the benefit of the amnesty to members of security bodies suspected or accused of acts of torture, murders, responsibility for disappearances and other offences committed through abuse of power during the period specified in the amnesty. For example, the innumerable instances which occurred of temporary suspension of criminal prosecutions for murder or responsibility for disappearances (see E/CN.4/1266, para. 76) would be covered. The amnesty also benefits persons who committed ordinary offences of various kinds, between 11 September 1973 and 10 March 1978 and who have so far succeeded in eluding any judicial consequences.

300. In general, it must be pointed out that, as a legal rule, the amnesty appears to conflict with the objectives set forth in this respect in official statements. It is, therefore, inoperative in relation to these objectives. Nevertheless, it must be admitted that it has benefited certain political prisoners, and this is a positive feature.

IV. LIFE, LIBERTY AND SECURITY OF PERSON

A. International standards and Chilean constitutional and legal provisions

301. The international community has constantly emphasized the importance of the right to life, liberty and security of person and the necessity for effective national measures for their protection. 1/ The Group in earlier reports has dealt with the international standards and with Chilean constitutional and legal provisions relating to these rights. 2/ These provisions establish rules requiring written arrest orders, except in cases of flagrante delicto, placing time-limits on the length of detention and permitting detention only in public places intended for that purpose. 3/ Special powers have been given to the President of the Republic by the Constitution and laws to arrest and detain persons in their own homes or places which are not gaols during states of siege. Most recently decree-law No. 1877 empowered the President to so arrest and detain persons during a state of emergency. In 1975 and 1976 a series of measures were enacted designed to give greater protection to persons arrested during a state of siege by limiting the time of detention to five days, requiring notification of family members, limiting detention to three places (Puchancavi, Tres Alamos and Cuatro Alamos), requiring medical examinations of detainees and providing for inspections of detention places and the investigation of irregularities. 4/ In August 1977 these rules were extended to detentions under the state of emergency. 5/ Excerpts from the relevant acts are reproduced in annex XXXI.

302. From its analysis of the relevant provisions and its discussions with Chilean authorities, in particular the Minister of the Interior, 6/ the Group understands the Chilean law governing arrest and detention to be as follows. Arrests without prior written order may be made only in cases of flagrante delicto, the person must be brought within 24 hours before a court and he may only be detained in his home or a public place intended for detention. The National Information Agency (CNI) can make this type of arrest, but the person may not be questioned before being brought before a judge except if so ordered by a decree of the

1/ Universal Declaration of Human Rights, articles 3, 9, 10 and 11; International Covenant on Civil and Political Rights, articles 9 and 10; American Declaration of the Rights and Duties of Man, articles I and XXV.

2/ See A/31/253, paras. 116-132 and para. 302. For more details on Chilean constitutional and legal norms see A/C.3/31/6/Add.1, the initial report of Chile under the International Covenant on Civil and Political Rights (CCPR/C/1/Add.25) and the Chilean response to the General Assembly's questionnaire on torture, A/33/196.

3/ Constitution of 1925 and Constitutional Act No. 3 (see annex XXXI).

4/ Decree-law No. 1009 of May 1975, supreme decree No. 187 of January 1975 and supreme decree No. 146 of February 1976.

5/ Decree-law No. 1877, article 2. Many provisions have been enacted aimed at ensuring that the rules on arrest and detention are observed (see A/33/196).

6/ Meetings with the Minister of the Interior, 18 and 25 July 1978, and meeting with the Director of the National Information Agency (CNI), 17 July 1978.

Ministry of the Interior. In cases other than flagrante delicto, a written order must be obtained and the detainee notified. If the arrest is made by decree issued pursuant to the President's special powers during states of siege or emergency, the detainee's family must be notified in writing within 48 hours, the person himself may be detained only in one of the three places designated by supreme decree No. 146 and he must be released or turned over to a court or the Minister of the Interior within five days. With regard to arrests not in flagrante delicto and not under the President's special powers, the general constitutional rules apply: a written order from a public official is required, detention can only be in a person's home or in a public place intended for detention and the detainee must be brought to court in 48 hours, a period that can be extended to five days by a judge's order. If a state of emergency is in force, the 48 hours period is extended to 10 days in cases affecting national security.

B. Methods of investigation into cases of arrest, detention and ill-treatment

303. Extensive and detailed information was received by the Group during the visit to Chile on arrests and detentions relating to political or national security matters which had taken place in Chile during 1978. It was impossible to deal with all the cases on which the Group received information. However, the Group studied in detail certain cases of a typical nature, cross-checking the information it received on these cases with the information provided by the Government. In this way the Group has been able to arrive at an overview of the situation and to cite certain verified cases as examples.

304. The case of arrest, detention and ill-treatment which the Group studied most thoroughly in Chile and Geneva was that of Rodrigo del Tránsito Muffoz Muffoz. A description of the methods of investigation used in this case is given below. The other cases of arrest and detention dealt with in this chapter, section C, subsections 2 (b), (c), (d) and (e), were also examined closely by the Group. Information on them was received while the Group was in Chile and the Government also submitted information to the Group with respect to each case. However, because of lack of time, the Group was not able to study them to the same extent as the Muffoz Muffoz case. In relation to the arrests in the town of Peñaflor (subsection (d)), the Group raised the matter with the Government of Chile, which provided the Group with a number of relevant documents. In connexion with the cases of Dr. Haydée Palma Donoso (subsection (b)), Hector Riffo Zamorano (subsection (c)), Luis Maturana Maturana (subsection (c)) and Armando del Carmen Barría Oyarzun (subsection (e)), the Group transmitted to the Government of Chile on 3 August 1978 the basic information on each case which the Group had received during its visit to Chile. On 4 September 1978 the Government submitted its observations on these cases.

Investigation into the Muffoz Muffoz case

305. Mr. Rodrigo del Tránsito Muffoz Muffoz first appeared before the Group in Santiago, Chile, on 16 July 1978 when he testified concerning his arrest, his detention and ill-treatment in Villa Grimaldi, his being placed at the disposal of the military courts, his subsequent imprisonment in Santiago Prison and the

medical care he received there. The following day, 17 July 1978, during the Group's visit to the CNI headquarters, the Director of the Agency, General Odlanier Mena, provided the Group with a list of persons who, since January 1978, had been detained and interrogated by CNI. Mr. Muñoz Muñoz was listed as having been detained from 16 to 23 February 1978 in connexion with MIR (Movimiento de la Izquierda Revolucionaria) activities. However, the Director stated that there had been no cases of maltreatment under his authority and that, while Villa Grimaldi was a place under the authority of CNI, it was not used for purposes of interrogation. At the Group's request, the Director agreed to a visit by the Group to Villa Grimaldi, together with two witnesses selected by the Group.

306. On 18 July 1978 the Group visited Villa Grimaldi, together with Mr. Muñoz Muñoz, the Director and Deputy Director of CNI, and Ambassador Miguel Schweitzer. The Group was able to inspect the Villa and its compound, and Mr. Muñoz Muñoz showed the Group the places where he stated he had been held. Mr. Muñoz Muñoz was questioned by the Group in the presence of government officials. At one point Mr. Muñoz Muñoz stated that he recognized two persons present at Villa Grimaldi and he was confronted with them. The Group was informed that one belonged to the Villa's staff and the other was a CNI employee. The minutes of this visit are included in annex XXXII. During the visit Mr. Muñoz Muñoz stated that he had been photographed along with other detainees in a blue-tiled room in Villa Grimaldi and that the photograph had been published in a Chilean newspaper. The Group subsequently found that three newspapers (La Tercera de la Hora, El Cronista, El Mercurio) in their editions of 24 February 1978 had published photographs of Mr. Muñoz Muñoz. The photograph published in La Tercera shows Mr. Muñoz Muñoz against the tiled wall of the room in the one-storey building called "Bodega" opposite the main building in Villa Grimaldi (see annex XXXIII). The Group is satisfied that Mr. Muñoz Muñoz had been detained in that building.

307. In the afternoon of that same day, 18 July 1978, the Group visited Santiago Prison and was able to inspect a record of a medical examination of Mr. Muñoz Muñoz. The Group received a copy of this record (No. 3,544) which shows that Mr. Muñoz Muñoz at that time was suffering from injuries resulting from external causes (see annex XXXIII).

308. While the Group was in Chile, the Government submitted to it a file of background information on Mr. Muñoz Muñoz which contained a memorandum and 14 annexes. These annexes included reports of medical examinations of Mr. Muñoz Muñoz made during his detention, some of which stated that he was clinically healthy. Also included in the annexes were statements, including one signed by Mr. Muñoz Muñoz himself, to the effect that he had attempted to commit suicide. In order to clarify the question of the attempted suicide, the elements of the alleged ill-treatment and torture of Mr. Muñoz Muñoz, and the causes of the marks on his body which the doctors had observed, the Group invited Mr. Muñoz Muñoz to testify before it again during its meetings in Geneva in September 1978. The Group also requested that two doctors examine Mr. Muñoz Muñoz and the medical documents on his case provided by the Government of Chile. The Group also discussed this case with the representatives of the Government of Chile during its September 1978 meetings in Geneva. For more details see sections C and D of this chapter.

309. The case of Mr. Muñoz Muñoz raises problems in the areas of arrest, ill-treatment, torture and places of detention which are examined in more detail in the following sections of this chapter. With regard to this case and contrary to the statements by the Director of CNI that Villa Grimaldi was not used as a place of detention and that detainees were not maltreated, the Group concludes that it is beyond reasonable doubt that Villa Grimaldi was used as a place of detention and that Mr. Muñoz Muñoz was ill-treated and tortured by security agents in February 1978. Based on its thorough examination of this case, the Group cannot exclude as manifestly ill-founded other statements on arrest, detention and ill-treatment which were not studied so thoroughly. This refers in particular to the case of Mr. Barria Oyarzún.

C. Arrest and detention 7/

1. Number of arrests in 1978

310. A total of 985 arrests connected with political or national security matters have been reported for the first seven months of 1978 (including 780 persons detained during an unauthorized May Day meeting): January, 77; February, 17; March, 16; April, 24; May, 812; June, 30; July, 9. Violations of the Security of the State Act and the law on the control of arms are the reasons generally given for these arrests. Charges are made of subversive activities, illegal printing activities, distribution of prohibited literature, undertaking political activities or participating in unauthorized demonstrations. In some cases the accusations include acts of violence or the preparation of such acts. In the following table the number of arrests for 1976, 1977 and 1978 are set out. The 780 arrests that took place on May Day 1978 have not been included.

7/ The Group has dealt with this subject in previous reports: A/10285, paras. 124-155; E/CN.4/1188, paras. 78-109; A/31/253, paras. 134-142; E/CN.3/1221, paras. 89-129; A/32/227, paras. 83-100; E/CN.4/1266, paras. 49-61.

Arrests for political or national
security reasons 8/

	<u>1976</u>	<u>1977</u>	<u>1978</u>
January	65	4	77
February	34	4	17
March	26	7	16
April	63	45	24
May	94	44	32
June	26	21	30
July	54	19	9
August	97	26	
September	39	68	
October	19	36	
November	15	52	
December	20	20	
	<u>552</u>	<u>346</u>	

311. In addition to information on arrests, the Group received confidential information on cases of intimidation which consisted in entering and searching homes, usually at night, questioning persons about their political or humanitarian activities, following persons or watching their homes in a conspicuous manner and making threatening telephone calls. In 1977 more than 100 such cases were reported and for the first five months of 1978 the number is 85. 9/

2. Specific cases of arrest and detention

312. The following cases of arrest and detention have been examined closely by the Group.

(a) Arrest and detention of Rodrigo del Tránsito Muñoz Muñoz

313. During the Group's stay in Chile, Rodrigo del Tránsito Muñoz Muñoz testified before it, submitted a written statement and accompanied the Group on a visit to Villa Grimaldi, where he alleged he had been detained. The Director of CNI submitted to the Group a file containing information on Mr. Muñoz and his arrest and detention, and the Government has submitted newspaper clippings about the movement to which Mr. Muñoz belonged and that movement's activities.

8/ On 17 July 1978 the Director of CNI handed to the Group a list of persons detained and interrogated by CNI between 1 January 1978 and 17 July 1978. The Group was subsequently informed that the list referred to the entire country and that the arrests were made by the different security organs. This list contains a total of 39 names: January, 17; February, 7; April, 1; May, 3; June, 9; July, 2.

9/ On this question see in particular A/32/227, para. 86.

314. Mr. Muffoz stated that he was arrested at about 6.30 p.m. on 16 February 1978 on a public street. He was surrounded by many persons dressed in civilian clothes, who later identified themselves as CNI personnel, arrested and placed in a car. No arrest warrant was shown and Mr. Muffoz describes his arrest as a kidnapping. Blindfolded, he was taken to a place unknown to him, which he later identified as Villa Grimaldi. Mr. Muffoz states he was detained there with several other persons until 23 February 1978, when he was turned over to the military courts. Information on Mr. Muffoz's treatment while detained will be found below in section D.

315. In the various reports submitted to the Group CNI gives two dates for the detention of Mr. Muffoz, 16 and 17 February 1978. It is stated that he was taken to a CNI location, the name of which could not be revealed for security reasons but which was not Villa Grimaldi. He was questioned in relation to bombs which had been placed in different places in late 1977 and early 1978, and concerning his associates. Mr. Muffoz remained in that place until 22 February 1978. On 23 February he and his accomplices were placed at the disposal of the military courts. It was stated that no communication of detention was made to Mr. Muffoz's family since he said he did not have any relatives and the person he was living with was in hiding. The information submitted by the Government in connexion with these matters is reproduced in annex XXXIII.

316. The question of the place at which Mr. Muffoz was detained was examined during a visit made by the Group to Villa Grimaldi, together with Mr. Muffoz and the Director and Deputy-Director of CNI. The Group was informed that Villa Grimaldi had become a recreational centre for CNI and that no one was detained there now. Minutes of that visit are to be found in annex XXXII. The part of those minutes relating to the identification of the place of detention read as follows:

"Asked how he was able to identify the courtyard where he had been tortured if he had been blindfolded, he replied that, while recovering from the effects of the torture, the blindfold had been removed and he had twice been taken to the courtyard to be photographed against a wall, which he showed to the Group. He added that, on the last occasion they had photographed him, they had done so in a room with walls covered with glazed tiles, which he also showed to the Group. (The room was in the low building, to the right of the dormitories, and above the door there was now a sign saying "bodega" ("cellar").) That photograph, showing three other detainees and himself, had been published on 24 February with a caption referring to their detention in the following newspapers: El Mercurio, La Tercera and El Cronista. Although the photograph had been taken against the background of a sheet on the wall, the sheet had not entirely covered some of the blue tiles in the centre of the wall, and a few of the tiles had been visible in the photograph published in one of the newspapers. (There was indeed on the wall which he showed the Group a long patch of blue tiles measuring about 2 metres wide and 1.2 to 1.6 metres high.) 10/ He had first seen the newspapers on 1 March, the last day on which he had been held incommunicado in the penitentiary.

10/ A copy of this photograph is in annex XXXIII.

"While undergoing medical treatment to recover from the effects of the torture, which must have ended on about his third day at Villa Grimaldi, he had remained on a mattress in the corner of the same room with the glazed tiles. In that corner, which he indicated, there had been a nail to hang the bottle containing the serum being given to him. On doctor's orders, he had not been blindfolded and during that period liquids (tea and water) used to be brought to him by someone he had recognized during the current visit on seeing him enter the main building.

"He accompanied the Group towards the main building of Villa Grimaldi and in the kitchen he identified the person in question. The latter said that his name was Alexis Figueroa and that he had never seen the witness. The witness insisted that Mr. Figueroa had brought him something to drink twice a day during his last three days at Villa Grimaldi and had treated him well. He also showed Mr. Figueroa a scar on his own neck to see if Mr. Figueroa recognized the wound. The latter insisted that he did not know the witness; he had been working in the kitchen of Villa Grimaldi since 1 January 1978, before which he had worked in the building industry and had been laid off. Witness B reiterated that he was certain he recognized Mr. Figueroa and said he had also recognized someone else whom he would point out later."

317. During its meetings in Geneva in September 1978, the Group heard testimony from Jorge Martínez Muñoz in which he stated he had been arrested on 20 February 1978 and held in the same "blue-tiled" room in Villa Grimaldi as Rodrigo Muñoz Muñoz. He stated that Mr. Muñoz Muñoz was in a bad physical condition, and was lying on a bed where from time to time water and tea were brought to him. Mr. Martínez reported that he was also photographed at the same time as Mr. Muñoz Muñoz (see annex XXXIII), turned over to the military court, placed in Santiago Prison and expelled from the country. His written statement appears in annex XXXIV.

(b) Arrests and deaths connected with the case of Dr. Haydée Palma Donoso

318. The Group has received information that on 16 and 17 January 1978 at least nine persons 11/ were arrested by government security agents, blindfolded and taken to a place of detention identified subsequently as Villa Grimaldi. During these arrests one person, Gabriel Octavio Riveros Ravelo, died and on 18 January Germán de Jesús Cortés Rodríguez, who had been arrested on 16 January, also died. It is reported that during their detention these persons were subjected to ill-treatment and torture. On 20 January 1978 all the arrested persons, with the exception of Isabel Margarita Wilk Gonzalez and Dr. Haydée del Carmen Palma Donoso, were placed at the disposal of the military courts after four or five days of detention. On 6 February 1978 Isabel Wilk was placed at the disposal of the court, after 21 days' detention. She reports having been forced to make false declarations while detained.

11/ Dr. Haydée Palma Donoso, Guillermina Figueroa Durán, Dinko Giadrosic Figueroa, Aura Elvira Figueroa, Sofía Donoso Quevedo, Sara Palma Donoso, Bernarda Santelices, Isabel Margarita Wilk, Germán de Jesús Cortés Rodríguez.

319. In a report provided to the Group by the Director of CNI the names of six of the nine persons appear as having been detained for questioning on the dates indicated above. Bernarda Santelices Díaz, Germán de Jesús Cortés Rodríguez and Dr. Palma Donoso were not reported by CNI as having been detained. With regard to three persons - Guillermina Figueroa Durán, Aura Elvira Figueroa and Dinko Giadrosic Figueroa, CNI reports that they were detained on 16 January and turned over to the military court on 20 January 1978. However, the Group received a copy of a letter dated 25 January 1978 signed by the Minister of the Interior in which he states to the Court of Appeals concerning the three persons named above:

"2. First of all, I must inform you that this Ministry has no record whatsoever of the persons referred to, nor has any order or resolution concerning them been issued by this Secretariat of State."

The full text of the letter appears in annex XXXV.

320. Concerning Dr. Palma Donoso, the Group has been informed that on 15 February 1978 the Minister of the Interior, in response to a writ of amparo, stated that Dr. Palma Donoso was not detained by order of that Ministry. The Investigation Service also stated she was not being detained by their order but that an arrest warrant existed in her name. Seven of the persons arrested on 16 and 17 January have made sworn statements attesting to having been detained with Dr. Palma Donoso and having both seen her (evidence of torture was noted) and heard her voice until 20 January 1978. Dr. Palma in her own statement reports being arrested on 16 January, taken to a location unknown to her, tortured, taken on 16 February to Arica in the north of Chile and sent across the border into Peru on 20 February. Annex XXXV contains more detailed information on this case.

321. The death of Gabriel Octavio Riveros Ravelo, which occurred on 16 January 1978, was reported in the press as being the result of a one-and-a-half-hour gun battle with security forces. The Group has received information that during a period of three quarters of an hour after the gun battle two persons were taken out of the apartment house where the battle took place. Then seven or eight agents re-entered the apartment, a single shot was heard and the agents came out reporting that a man had committed suicide. The Chilean press reported that the death of Germán de Jesús Cortés Rodríguez was the result of his taking a pistol from under his bed and firing at security agents who had taken him to his room in order to carry out a search. An eye-witness reported to the Group that Germán Jesús Cortés was dragged in bad physical condition into the apartment between security agents and that subsequently a burst of shots was heard. It is also reported that, viewed after his death, Germán Cortés' body showed signs of torture and that the wounds on the body did not correspond to the official version of his death.

322. The basic information received by the Group in this case, including copies of sworn statements of witnesses, was transmitted to the Government of Chile on 3 August 1978 with a request that the Government submit any observations it might wish to make. In particular, the Group requested any reports of medical examinations of the two persons who were killed. On 4 September 1978, the

Government of Chile transmitted information on these cases, including copies of two reports (one by the Investigations Bureau) on Dr. Palma Donoso. This information is reproduced in annex XXXV. The Government stated that the persons arrested were members of MIR and had used firearms to resist their capture, as shown by newspaper and television interviews with the neighbours. The persons arrested had been turned over to the courts within the required time-limit. The Government pointed out that the persons making the declarations received by the Group could not be considered absolutely objective. All the statements had been made on the same day by persons in the same prison who were not in solitary confinement and thus "could perfectly well have agreed on what they were going to say". Inconsistencies were noted between two statements. The Government also pointed out that Miss Wilks stated she had repeated to the military prosecutor false statements made while she was detained; the Government asked if in fact she had not made true statements to the prosecutor and false ones in her sworn statement. The Government also provided information on the arrest and expulsion of Dr. Palma Donoso from Peru and stated its conclusion in the case in the following terms:

"The evidence submitted to the Working Group concerning the arrest, detention incommunicado and illegal expulsion of Haydée Palma Donoso is, in the Government's opinion, unconvincing.

"Its purpose is, in fact, to try to substantiate acts which the Government affirms have not taken place. The records examined subsequently demonstrate that Haydée Palma could have left the country illegally at a time when an order for her detention had been issued and that, after she had illegally entered Peru, she was expelled from that country to Cuba."

The information submitted by the Government did not include copies of the reports of medical examinations of Mr. Gabriel Riveros and Mr. Germán Cortés which the Group had requested.

(c) Arrest and detention of Héctor Riffo Zamorano and Luis Maturana Maturana

323. Hector Riffo Zamorano testified before the Group, submitted a written statement and accompanied the Group on its visit to Villa Grimaldi. His testimony related to his detention in 1975, missing persons he saw in Villa Grimaldi, his detention in May 1978 and ill-treatment and torture. ^{12/} His second arrest, effected by carabineros from the 15th Comisaría, took place on 4 May 1978 as he was entering the school where he taught. He was taken to several places, some police offices of the carabineros and other places of detention unknown to him where he was questioned and tortured. After 12 days of detention, on 16 May 1978 he was turned over to the Court of Appeals. Several other persons were arrested in connexion with his detention, among them Luis Maturana Maturana. Mr. Maturana was held in the same place as Mr. Riffo and during their 14 days of detention the fact that they were being held was not officially recognized. The Group received a report stating that a few days before Mr. Maturana was turned over to the Court of Appeals, the Minister of the Interior responded to a writ of amparo in favour of Mr. Maturana in the following

^{12/} For the testimony of Mr. Riffo Zamorano, see annex XXXVI.

terms: "I can assure you that there is no background whatsoever on the person named in the writ of amparo, that no order or resolution concerning him has been issued by this Secretariat of State, and that there is no record of his arrest by any of the security services.". It is also reported that the Carabineros refused in a telephone conversation to give the Court of Appeals information on Mr. Maturana by reason of "higher orders" and thus the writ of amparo was ineffective in ending his detention.

324. The information supplied by the Director of CNI indicates that the detention of Mr. Rifo and Mr. Maturana began on 5 May 1978 and that they were charged with subversive activities. Information on this case, including a copy of the sworn statement by Mr. Rifo, was transmitted to the Government of Chile for any observations it might wish to submit.

325. On 4 September 1978 the Government of Chile transmitted observations on this case which are reproduced in annex XXXVI. In these observations the Government stated that investigations were being made into certain facts reported in Mr. Rifo Zamorano's sworn statement and that the statements of the latter and Mr. Maturana Maturana would be compared. The Government would inform the Group of the results. In the meantime the Government observed that the accusations made against the carabineros were absolutely improbable, given the nature of the organization and the way it normally functions. Also, the sworn statement could not be given credit since the accusations had not been reported to the Court of Appeals judge, who could not be accused of having brought pressure to bear on Mr. Rifo. Moreover, contradictions were found in the statement; Mr. Rifo attributed his failure to inform the judge of what had occurred to the judge's incredulity, but later Mr. Rifo refers to the judge as being the only person who would listen to him concerning Mr. Maturana's absolute innocence. The Government also points out that Mr. Rifo's fears of what might happen in the future, which he said prevented him from telling the truth to the judge, did not prevent him from refusing to attend alleged meetings with security agents. The Government concludes in relation to this case:

"For the above reasons, the Government considers that this accusation, like so many others, is deliberate, and that until such time as the events referred to therein have been effectively substantiated and further information has been obtained, the accusation cannot, in view of its apparent improbability, be entertained by the Group."

(d) Arrests in the town of Peñaflores

326. On 22 June 1978 seven persons, including two women staff members and a chauffeur of the Vicaría de la Solidaridad, were arrested by carabineros in the town of Peñaflores. They had gone to that town to work on an agricultural technical assistance project. They were taken to Peñaflores police station, questioned about their activities, the Vicaría, the farmers' organizations and the material they had in their possession, including the Universal Declaration of Human Rights. A lawyer for the Vicaría arrived at the police station but was told that the persons apprehended were not under arrest. They nevertheless could not leave the station. After spending from noon to 9.30 p.m. in the police station, they were turned over to CNI. Concerning subsequent events the summary of testimony of one witness reads:

"They had been handcuffed (on 22 June 1978), blindfolded with scotch tape and taken away in a car. During the journey the farmer had been subjected to constant physical harassment. They had spent the entire night handcuffed to a bed without being able to sleep. They had not been allowed to go freely to the bathroom. A man had continually touched the body of the witness under the pretext of searching her. The next day they had been given a general medical examination; they had been blindfolded once again and after a trip of about half an hour by car they had been released. After a short walk they found themselves in the centre of Santiago."

327. Concerning the legality of these arrests, a lawyer for the Vicaría stated to the Group that they had been carried out without a warrant, no reasons were given to those arrested and they had been detained in an unknown place. Newspaper reports stated they had been released because insufficient evidence was found to justify turning them over to the courts.

328. In relation to these arrests, the Ministry of the Interior provided the Group with three documents reproduced in annex XXXVII. One document is a copy of decreto exento No. 94 of 22 June 1978 signed by the President of the Republic and the Minister of the Interior which ordered the arrest and detention in places under the authority of CNI of the seven persons. Other documents provided are a copy of the decree dated 24 June ordering the release of the seven, and the original of a note dated 22 June from Peñaflores Office of the Carabineros turning the seven over to CNI. The Government also indicated that they had been detained because they were "caught carrying out subversive activities".

(e) Arrest and detention of Armando del Carmen Barría Oyarzún

329. The Group received testimony and written information in Chile from Armando del Carmen Barría Oyarzún concerning his arrest, detention and treatment during detention. He stated he was arrested on the street at about 10.30 p.m. on 29 June 1978 and taken to a place unknown to him where he was detained and ill-treated for five days. On 4 July he was taken to the 7th Police Station and then to another place unknown to him. On Wednesday 5 July, he was transferred to the public gaol from which he was released on 15 July. Information on his treatment while detained can be found below in section D.

330. The information provided by the Director of CNI lists Mr. Barría as detained on 4 July 1978 on a charge of having in his possession pamphlets and literature of the socialist, communist and revolutionary communist parties. The information supplied by Mr. Barría was transmitted to the Government of Chile for any observations it might wish to submit.

331. The Government of Chile on 4 September 1978 transmitted information on this case, including copies of official documents concerning Mr. Barría's arrest in flagrante delicto by carabineros on 4 July 1978, the Ministry of the Interior's request to the Court of Appeals that the Security of the State Act be applied in the case, a court request to the Minister of the Interior concerning the detention of Mr. Barría and the copy of an Investigations Bureau report on the case (see annex XXXVIII). The Government commented on this case that there was nothing, other

than Mr. Barría's statement, to accredit the fact of his arrest on 29 June, and that an unquestioned official document showed he was arrested on 4 July 1978. Further, the Ministry of the Interior's document submitted to the Court of Appeals and the actions of the Court of Appeals judge do not show that they had knowledge that Mr. Barría's arrest took place on 29 June. In conclusion that Government stated:

"The accusation made to the Group in this specific case does not involve any of the human rights violations with which the Government is charged and must in all fairness be rejected by the Government, especially since the case has already been resolved by the Santiago Court of Appeals and the person in question was released after the Court had issued an order to this effect."

(f) Other cases

332. While the Group was in Chile detailed information on numerous specific instances of arrest and detention was transmitted to the Group's secretariat. However, because of lack of time, the Group was prevented from requesting the observations of the Government on each case. Moreover, in some of these cases the witnesses requested that their identities be protected, wishes which the Group invariably respected but which also prevented the Group from requesting the Government's observations. The Group, of course, took into consideration, in reaching its conclusions, both the fact that the witnesses did not wish their identities to be revealed and the fact that the Government was not given an opportunity to comment.

333. Annex XXXIX contains reports of some of these cases. Two of them, however, are reproduced here in the body of the report as examples. The persons concerned do not appear on the list of persons detained for questioning submitted to the Group by the Director of CNI.

Statement A

"I was arrested on ... April 1978, at about 9 p.m., while I was having a drink in a bar. The persons in plain clothes who detained me said that they were plain-clothes police and accused me of distributing pamphlets.

"They took me to the ... police station and from there I was transferred to the Street police station.

"There I was interrogated by police and plain-clothes officers dressed as workmen. To obtain the information they wanted they threatened and beat me, kept me handcuffed, with the barrel of one revolver in my mouth and another against my left temple.

"About midnight on the Saturday, I was blindfolded and made to get into the boot of a car. After driving around for some 20 minutes we arrived at a place with a cellar, which I was made to enter. There I was questioned and beaten all over my body. After a time I was taken out and put into the boot of a car. After some 10 minutes we arrived at another place.

"I heard a metal door being opened and we went into a courtyard paved with small stones. Here I got the impression that bricks were being laid and wood was being cut with a saw.

"I was questioned, kicked and punched, and given electric shocks through two terminals fixed behind my ears.

"Not being able to take any more, I gave the name of a building worker who was supposed to have given me the pamphlets. That was how I came to go with my torturers to look for ...

"I had been put in the boot and I heard them making ... get into the vehicle. We travelled for some 20 minutes and arrived at the same place which we had left a short time before. I heard them making ... get out and afterwards I was taken out of the boot. I arrived in the upper part of the house.

"I heard them questioning ... and beating him. Afterwards they hit me.

"I was taken to a nearby room, where ... was. They gave me electric shocks and I gathered that they were doing the same to him. The torturers told me that I was being punished for not having given the name of ... earlier. I heard ... say in his turn that he had nothing to do with me.

"While we appeared to have been left alone, I asked ... to give a name to put an end to the ill-treatment. ... agreed and immediately somebody in the room spoke and said: 'Come on, they are ready now'.

"We were questioned again and I was asked if I could identify my captors. I said that I did not remember their faces. They suggested that I should work for them by supplying them with information. Wishing to see how far they would go with this offer, I asked them to give me some telephone number or addresses where I could contact them. They pretended not to have heard and changed the subject.

"Afterwards they told me that I was free. They took me out of the room to the car, we travelled for some 20 minutes and they released me, after removing the blindfold, at the intersection of ... and ... streets."

Statement B

"On ... May 1978, at about 10.30 p.m., three persons in plain clothes, travelling in a car without a licence plate arrived at my home. They entered the house and without showing any identification or warrant proceeded to search the place and asked me something about pamphlets.

"Afterwards they forced me to accompany them, after getting in touch with someone for instructions about arresting me.

"They made me go outside and get into the car, and then blindfolded and handcuffed me. The vehicle took about half an hour getting to the place where I was interrogated. When we arrived there I heard a metal door being opened and we went into what could have been a courtyard or parking area covered with gravel. I was made to get out of the car and go down about three steps, through a passage and into a room where I sat down.

"The interrogation started immediately, accompanied by blows and electric shocks all over my body. I was made to listen to a recording of the statement which ... had made and in which he accused me of having given him pamphlets. As I denied the accusation, I was told that he had been arrested and would be brought in, to see who was telling the truth.

"They brought someone in, who spoke to me and asked me to tell the truth.

"We were both tortured with electric shocks, kicks and blows and when we could take no more, one of the officers said that it would be better if we came to an agreement between ourselves and that they would leave us alone to talk.

"We did so, and I thought of giving a name which I had heard in the recording, that of ... Accordingly, I told my captors this, and they left me in peace and took ... from the room.

"They let me sleep that night. The following morning they took off my handcuffs and let me clean myself up.

"Then they left me sitting on a chair for some two hours. Then someone questioned me and recorded the interrogation. I was asked why I went to the ... Trade Union and how the magazine Solidaridad got there, where it was printed, etc. I was also asked where ... (President of the Union) could be found.

"After the interrogation, the blindfold was removed and four photographs were taken, two full face and two in profile. I was then blindfolded again.

"Other people came into the room and told me that I would be released. They took me out of the room to a vehicle, where I was put across the back seat and covered with a shawl.

"The vehicle drove around for about two hours, after which, at about 6.30 p.m. on ... May I was left in ... Street, near ...

"Before that they warned me that at any time they might send for me to meet them somewhere in Santiago so that I could give them information. They warned me that if I did not keep those appointments, they would come to find me at my house and take me in again."

D. Ill-treatment and torture 13/

334. The protection of the individual from torture and other cruel, inhuman or degrading treatment has been a very important objective of the international community. The Universal Declaration of Human Rights (article 5), the International Covenant on Civil and Political Rights (article 7) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are important in this regard. Chilean Constitutional Act No. 3 proclaims the right to life and integrity of persons and prohibits unlawful coercion and numerous Chilean legal provisions prohibit and punish ill-treatment of detainees. 13/

335. During its visit to Chile and in meetings in Geneva the Group heard testimony and received written information on the treatment of detainees in Chile during January 1978. The treatment received by detainees varies according to the type of arrest and detention to which the person is subjected. Not all persons testifying before the Group alleged that they had been ill-treated. The two persons who testified to the Group about their detention in the town of Peñaflor did not allege they had been tortured, although they reported that the fact that they were constantly handcuffed, blindfolded and did not know where they were being held, kept them in a constant state of fear. Moreover, in situations of large-scale arrests, while rough treatment and some beatings were reported, 14/ no allegations of actual torture or extreme ill-treatment have been received.

336. However, in most of the individual cases of arrest and detention for political or national security reasons during 1978 which were reported to the Group allegations of torture or ill-treatment were made. For example, in May 1978, 32 arrests were reported in addition to the 780 made on May Day. Of these 32 cases, 25 reported being subjected to alleged physical abuse or torture. With the exception of the Peñaflor case, in each case of arrest dealt with in section A above, allegations of torture were made. Because of lack of time the Group could not investigate all the reported cases.

1. Specific cases of ill-treatment and torture

(a) Rodriguez del Transito Muñoz Muñoz

337. In written and oral testimony Mr. Muñoz reported to the Group that during his detention from 16 to 23 February 1978 he was subjected in Villa Grimaldi to severe torture. The minutes of his testimony read as follows:

13/ See A/C.3/31/6/Add.1, annex 6, and A/33/196.

14/ El Mercurio, 2 May 1978.

"Mr. Muñoz said that on 16 February 1978 he had been arrested by armed civilians without police identification and without an arrest warrant. He had been beaten for half an hour in a vehicle. Then he was blindfolded, handcuffed and taken to a place which subsequently proved to be Villa Grimaldi. The witness went on to describe the methods of torture to which he had been subjected. He was forced to eat garbage, excrement and disgusting animals. Then the asphyxiation procedures began. First there was the 'dry submarine'. A sack was placed over his head, and when he became purple in the face for want of air they would take it off, spray him with water and repeat the process. Next there was the 'wet submarine'. They put his head into a large can of oil and told him to make a sign when he was ready to talk. Then there was the 'silvania'. He was fastened to a chair while electrodes were applied to the soles of his feet, his testicles and the most sensitive parts of his body, and he was beaten while given electric shocks. Then he was hung by the hands between two trees with his legs separated by a stick, and spikes were put on the floor in case he tried to rest. During the hanging he was beaten on the most sensitive parts of his body.

"During the 'pau de arará', he was hung in a twisted position like an octopus from a pole and given electric shocks. Next came the 'parrilla' or 'grill'. He was moved to another room and stretched on a metal grill, stripped and wrapped up in a sailcloth while electric current was applied to all sensitive areas. Meanwhile, an officer with two more electrodes went over the rest of his body. Each of those procedures lasted for about a couple of hours, and between each method there was a respite of 15 to 30 minutes. The procedures were directed by officers, who gave the orders; during the periods of respite they were left alone with the soldiers, who continued to administer the beatings on their own. All those procedures were applied in rotation. After the third cycle he was taken to the blue-tiled room ('pieza de los azulejos') and there, while trying to escape through a window, fell to the ground with a heavy crash. He lost consciousness. He suspected that they had tried to kill him, because he had injuries on his throat. When he came to, he found that he was lying on a mattress and serum was being injected into one arm. He saw that his clothes were drenched in blood. He was pale and his body was covered with bruises and marks from the electric charges. On 23 February he was moved to the Military Prosecutor's Office (Fiscalía Militar), from which he was sent to the Santiago Penitentiary. There he was held incommunicado for five days and a nurse treated his injuries and gave him nine stitches in the neck, six stitches in the right hand and four stitches in the left hand ...

"He could recognize about 15 of the men who had tortured him at Villa Grimaldi, but he did not know their real names. He remembered the nicknames used, such as Captain Juan, Captain Miguel, 'Troglo', (the 'Ogre') 'Coronta', 'Ronco', etc. He also replied that in March he had made an oral statement accompanied by a written one to the inspector of prisons, reporting the tortures."

338. During the Group's meetings in Geneva in September 1978 Mr. Jorge Martínez Muñoz testified that he was detained with Mr. Muñoz Muñoz in Villa Grimaldi, that the latter was lying on a bed and was in a bad physical condition. Mr. Martínez Muñoz also reported being tortured during his stay in Villa Grimaldi. For his written statement see annex XXXIV.

339. The Government of Chile submitted very detailed information on this case, including a dossier which is reproduced in annex XXXIII. The Government stated that Muñoz had been arrested, and imprisoned and interrogated in CNI premises, before being handed over to the military courts. The Government denied that Muñoz had been ill-treated during his detention and, in support of this statement, submitted several certificates and other medical documents. The first certificate, dated 17 February 1978 and signed by Dr. Fernando Briones Becerra on paper bearing the Clínica London letterhead, states that Muñoz Muñoz was "clinically in good health"; the second, dated the following day (18 February) and drawn up by the duty house physician at the Clínica London (illegible signature), states that this doctor sutured incisions in the neck and wrists; the third, drawn up by the same physician and dated three days after the incisions were sutured (21 February), states that Muñoz Muñoz was "clinically in good health". On 28 February - seven days after the date on this certificate, the Prison Hospital logbook states that Muñoz Muñoz was examined and that his neck wound was healing. In this document no mention was made of the wrist wounds and it was recorded that Muñoz Muñoz complained of pain in the iliac fossa. No blows were mentioned. On the next day, on 1 March, the record of case No. 3,544 in the same prison Hospital states that Muñoz Muñoz was polytraumatized: in other words, he had received many blows, and was suffering from possible encephalic-cranial traumatism and a possible subdural haematoma; this means that he had received a heavy blow on the skull and was suffering from possible brain damage. It also notes that he was suffering from an anxiety syndrome and had received blows on the left wrist, without mentioning any scars. He was ordered to be kept under observation for convulsions and violent headache (severe cephalaea).

340. With particular reference to the neck and wrist wounds, the Chilean Government explained that Muñoz Muñoz had agreed, with CNI, to identify his accomplices in exchange for permission to leave the country; however, when he saw that the two persons whom he had denounced were being brought to the place of detention, he tried to commit suicide. In support of this explanation, the Government submitted an undated statement, which had apparently been signed by Muñoz Muñoz and in which he said that he had tried to commit suicide on 18 February, and the above-mentioned medical documents concerning the treatment he had received. On the question of the agreement under which, according to the Chilean Government, Muñoz Muñoz would betray his companions in exchange for permission to leave the country, it is known that he had submitted a writ of amparo in order to avoid being forced to leave the country (see paras. 253-256). In testimony before the Group in September 1978, Jorge Martínez Muñoz (see para. 338) stated that Muñoz Muñoz's companions had been betrayed by a woman, whose name he gave. The same witness stated that when he entered Villa Grimaldi on 20 February - in other words, one day before the Clínica London physician (see above) had found him "clinically in good health", Muñoz Muñoz had already been in a serious medical condition.

341. Mr. Muñoz Muñoz testified once again before the Group during its meetings in Geneva in September 1978. In relation to the information submitted by the Government, Mr. Muñoz Muñoz said he had never made an attempt upon his life and that on 18 February, after the failure of his attempted escape, he lost consciousness and when he awoke he found the cuts on his wrist and neck. Concerning the statement admitting the attempted suicide signed by him, Mr. Muñoz Muñoz testified that it appeared to be a photocopy of his signature but that he did not remember signing the statement. He reported that he does not remember what occurred to him for a period following an injection which he was given while at Villa Grimaldi.

342. The Group made a very thorough examination of the documents provided by the Government in this case and to assist it in its analysis the Group requested the expert advice of two doctors, who both examined Mr. Muñoz Muñoz. The present physical state of Mr. Muñoz Muñoz is reflected in figure I prepared by one examining physician (Dr. Bierens de Haan). This figure shows the various marks on his body which could be attributed to treatment he received in detention. An excerpt from that physician's report dated 10 September 1978 reads as follows:

"The medical examination carried out on Mr. Muñoz Muñoz six and a half months after his arrest and the torture to which he had been subjected reveals, at the physical level, the existence of probable chronic gastritis, a suspicious lesion of the left iliac fossa (retroperitoneal haematoma, lesion of the descending colon, lesion of the left kidney, fractures of lumbar vertebrae?), a lesion of the testicles or seminal ducts, numerous scars, violent headaches, disturbances of sight and hearing."

Concerning the present psychological state of Mr. Muñoz Muñoz, the same examining physician, who is also a practising psychiatrist, reported:

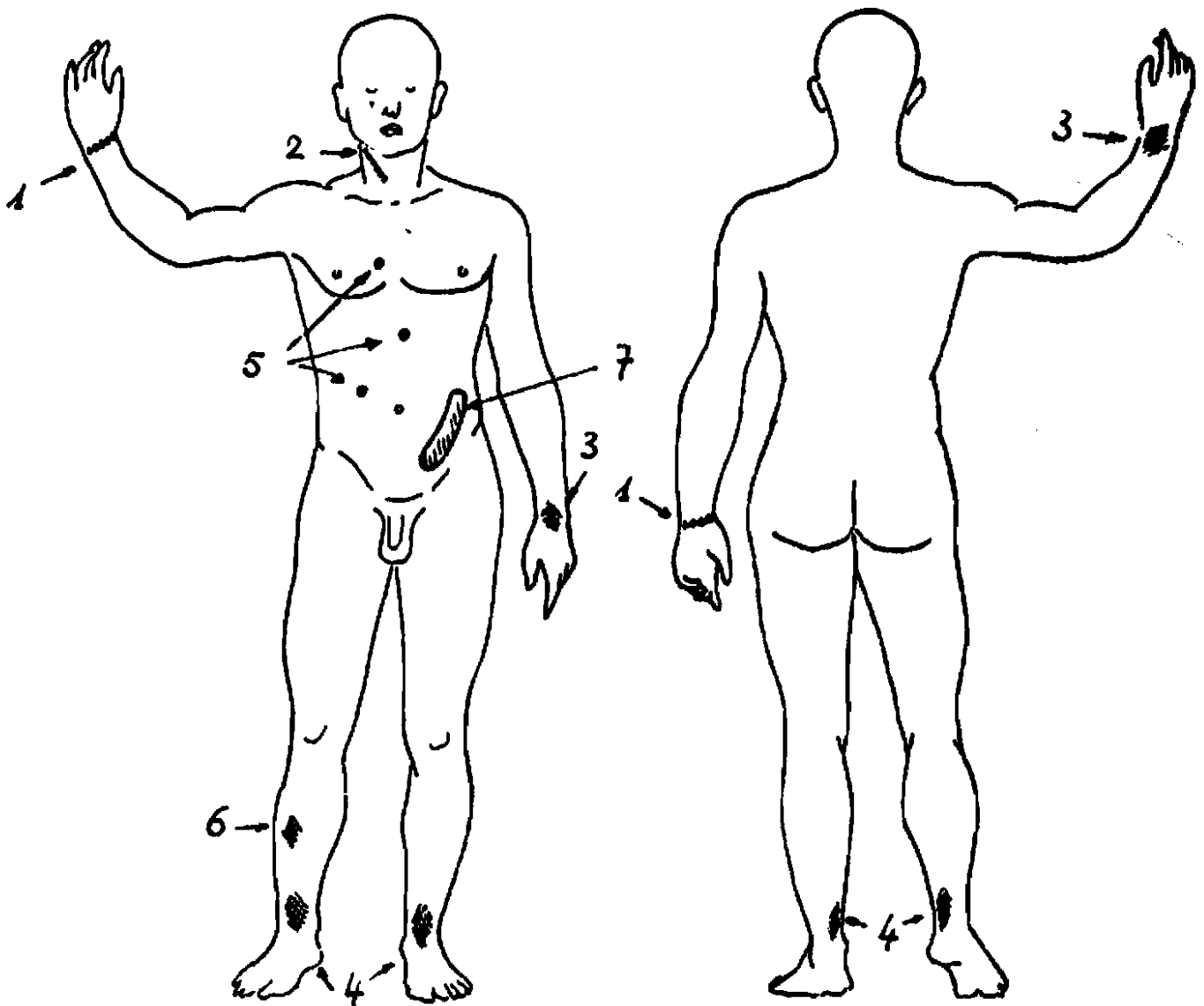
"Mr. Muñoz Muñoz expresses himself calmly, in a level-headed and thoughtful way. He does not at any time get worked up or give way to uncontrolled emotion. He is completely well-balanced and lucid. He gives the impression of being highly intelligent and of a wide culture not in keeping with his social origins. There can be no doubt that he has suffered a great deal. He exhibits no symptoms suggesting a neurosis, much less a psychosis. On the other hand he shows undeniable signs of a depressive state: difficulties of concentration, disturbances of sleep and appetite, modifications of character, variable anxiety, abnormal fatigue ...".

In this connexion the doctor also reported that Mr. Muñoz Muñoz:

"has noticed changes in his character; he is nervous and irritable, and much less patient with the children. He has frequent bouts of anxiety and his sleep is restless. The sexual disturbances are giving rise to conjugal difficulties, and since his arrest his elder son likewise exhibits a chronic anxiety state and sleep disorders."

Figure 1

Examination of Mr. Rodrigo MUNOZ, born 1952. 15/
(7.9.1978)



1. Scars 3 to 5 cm long on front of both wrists
2. Scar 8 cm long on right side of neck
3. Scar lesion on back of both wrists
4. Scar lesion on back of both ankles
5. Punctiform depigmented patches (burn scars?)
6. Scar 2 to 3 cm in diameter
7. Painful oblong-shaped lump in the left iliac fossa

343. In relation to the reported suicide attempt by Mr. Muñoz Muñoz, the same examining physician notes:

"It is stated in the above-mentioned documents that the detainee attempted to kill himself with a piece of an electric light-bulb by cutting the right side of his neck and his two wrists. However, with his swollen fingers he would have been unable to hold any object, let alone a small piece of glass. Moreover, the scars observed on 7 September 1978 are perfectly neat and straight. The scar on the neck is 8 cm long and resembles a surgical incision. It is very unlikely that such wounds could have been caused by a thin piece of glass. Furthermore, Mr. Muñoz Muñoz is right-handed. The scar on his neck is also on the right side and its shape gives reason to doubt whether it could have been caused by his right hand. Lastly, it is quite unusual to find this combination of wrist and neck wounds in a person who has tried to commit suicide. For the same reasons as those mentioned above, it is not clear how Mr. Muñoz Muñoz could have signed the document stating that he had tried to commit suicide - a document which is bizarrely written in the third person and neatly initialled.

...

"In conclusion, the psychiatric examination conducted on 7 September 1978 and Mr. Muñoz Muñoz's account of the events relating to his imprisonment invalidate the hypothesis of a suicide attempt. If Mr. Muñoz Muñoz had wished to commit suicide six months ago, he would describe the events which he has experienced in a very different manner and would now exhibit appreciably more serious psychological sequelae."

Dr. A. Peytermann was the second physician to examine Mr. Muñoz Muñoz. This examination took place on 6 September 1978 and the doctor's report states in relation to his attempted suicide: "In conclusion, it is very unlikely that the remaining scar lesions on the wrists and neck are the result of a suicide attempt".

344. In response to a question by a member of the Group, Dr. Bierens de Haan stated that while the hypothesis of an attempted suicide could not be excluded, the chances of Mr. Muñoz Muñoz having attempted to take his life were, in the doctor's opinion, one in ten.

345. The Group requested Dr. Bierens de Haan and Dr. Peytermann to study the medical documents relating to Mr. Muñoz Muñoz which had been submitted by the Government. Figure II prepared by Dr. Bierens de Haan shows, according to the information submitted by the Government and Mr. Muñoz Muñoz's testimony, the dates and places of his detention, the events occurring to Mr. Muñoz Muñoz and the contents of the various medical documents. It is quite clear from a study of the medical documents that the first four do not reflect the real state of Mr. Muñoz Muñoz. The fifth document, reporting a medical examination made less than a day after the one reported in the fourth document, shows Mr. Muñoz Muñoz to be in a very serious physical condition, similar to someone who has survived a serious automobile accident. The fourth medical document did not report this. The fifth document reports Mr. Muñoz Muñoz's statement that he was beaten a good deal. The Group notes that even if Mr. Muñoz Muñoz did attempt to take his life, the medical records show marks on his body which are unrelated to any attempted suicide. The Group comes to the conclusion that it is beyond any reasonable doubt that during his detention Mr. Muñoz Muñoz was ill-treated and tortured.

FIGURE II 16/

Arrested 16 February

TORTURE:

VILLA GRIMALDI	Blows			
	Forced to consume urine and excrement			
	"Silvania"	17	Clinica London	
	Dry submarine		<u>Medical certificate:</u> "Clinically in good health"	
	Wet submarine			
	Mock execution			
	Grill	18	Clinica London	
	Hung up and beaten		<u>Medical certificate:</u> emergency suturing of surface incisions	
	<u>ATTEMPTED ESCAPE</u>			
	(or suicide?)			
	19			
	20			
	21	Clinica London		
		<u>Medical certificate:</u> "clinically in good health"		
		Surface incisions healing well		
	22			
	23			
	24			
	25			
	26			
	27			
	28	<u>Prison hospital:</u>		
		Pain in healed incisions and left iliac fossa. Anxiety state.		
		Chlorpromazine 25 mg.		
	1 March	<u>Prison hospital:</u>		
		Reaction anxiety state.		
		Polytraumatized with cranio-cerebral traumatism and suspected subdural haematoma. Wound in front right cervical region, not infected.		
		Confusion. Hypo-aesthesia in thumb and forefinger of left hand. Surface wounds on both wrists.		
		<u>Treatment:</u>		
		Valium 10-10-20. Polyvitamins.		

SANTIAGO PRISON

Incommunicado

346. In his oral and written testimony Mr. Muñoz stated that he could identify some of the persons involved in his torture. One of these persons, called "El Troglo" he described in the following terms: "'El Troglo', pale complexion, dark curly hair, Middle-Eastern appearance, approximately 1 m 75 in height, clean-shaven, approximately 33 years of age". After he had given this description, the Group, as mentioned above, visited Villa Grimaldi with Mr. Muñoz, who stated that he had made a 90 per cent certain identification of a person at Villa Grimaldi as being "El Troglo". This person denied the accusations and the Government subsequently submitted information that the person in question, a CNI employee, had been assigned since the end of January 1978 as a driver for a legal adviser to the Ministry of Foreign Affairs (see annex XXXII).

(b) Héctor Riffo Zamorano

347. Héctor Riffo Zamorano testified before the Group and submitted a written statement on the treatment he received while in detention from 4 to 16 May 1978 (see annex XXXVI). In his statement he identified members of the Carabineros (Captain Cubillos, Lieutenant Luis Muñoz Vázquez, Major Cubillos) as being involved in his torture, and Jaime López, a CNI agent, as being one of the persons who questioned him. For the information submitted by the Government in relation to this case, see above section C, subsection 2 (c).

(c) Armando del Carmen Barría Oyarzún

348. Mr. Barría testified to the Group two days after his release from prison that he had been arrested on 29 June 1978 and detained in places unknown to him until 5 July 1978. CNI reported that he was arrested on 4 July 1978. The minutes of Mr. Barría's testimony concerning his treatment while in detention read as follows:

"That night (29 June 1978), electric shocks had been applied to his genitals and anus and he had been struck in the stomach, genitals and anus at three separate sessions. He had later been tied, first with ropes from his feet to his chest, then with cloth and sacking, some of it wet, particularly around the chest. He had subsequently been taken to a dark room where he had been kept for two days without food, handcuffed and tied to the foot of a table so that he could hardly move.

"He had later been taken to a larger room where he had been handcuffed with his hands behind his back and water had kept dripping from a tap. From the outset he had been subjected to intense psychological pressure; he had been told that he would become yet another missing person, that he would not get out alive, that his relatives would be tortured before his eyes, that his teeth and nails would be pulled out one by one, and that he would be pricked with pins. He had in fact been pricked with pins, especially around his shoulders. He had been kept in those two different places within the same premises for five days, from Thursday night to 2.30 a.m. on Tuesday. During the last three days, he had been fed once a day. He had been constantly interrogated and threatened throughout; his hands had always been kept secured behind his back by handcuffs, which were removed from one hand at mealtimes only.

"On Tuesday night, his captors had threatened to kill him and mutilate his body. They had again applied electric shocks, struck him across the ears and the temples and kicked him in the stomach. They had then tied him and handcuffed him to a bed and had made him get undressed in the middle of the night for interrogation. During the interrogations he had been asked to what party he belonged, who the leaders were and where they did their printing. He had stated that he belonged to no political party but used to help the Maoist-oriented Popular Front. They had made him sign a statement blindfolded. They had then read it out to him, and it had contained statements he had not made. They had then prepared another statement, which they had made him sign blindfolded. ...

"He still bore the marks of the blows and electric shocks he had received, and he felt he was having a general mental breakdown."

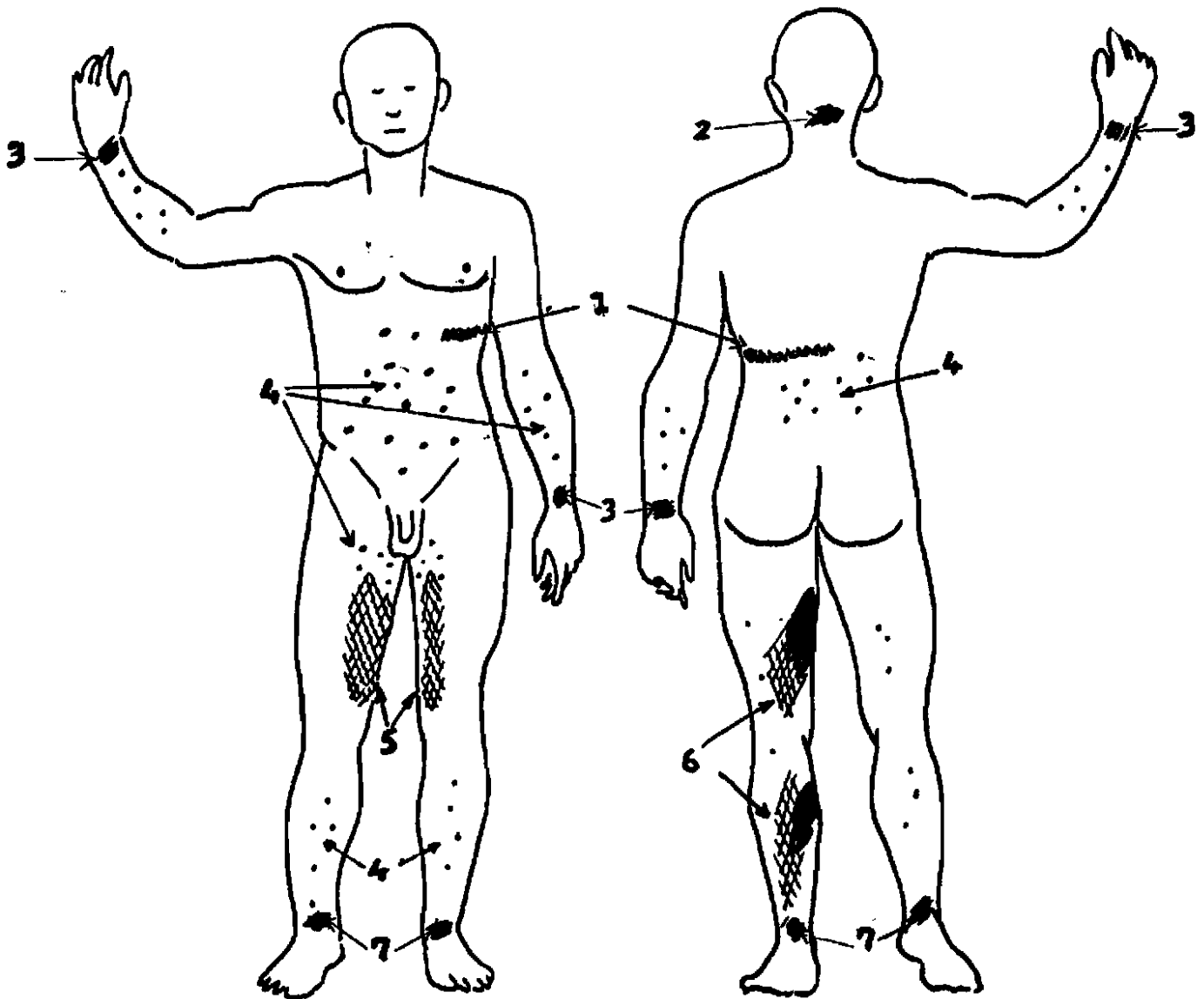
349. The Group requested the Clinic of the Economic Commission for Latin America (ECLA) to arrange for a medical examination of Mr. Barría. This was carried out on 19 July. Two other medical examinations were made of Mr. Barría. On 6 July 1978 a Court of Appeals Judge, having been shown the marks on Mr. Barría's body, requested the Santiago Forensic Institute to examine him. This was done on 11 July 1978. On 17 July a further examination was made by Mr. Barría's doctor. The reports of these medical examinations are reproduced in annex XXXVIII.

350. The Group studied these three medical certificates and in that connexion requested the assistance of two medical doctors. Figure III represents the injuries to Mr. Barría as reported in the three medical certificates. In this connexion the report dated 10 September 1978 by Dr. Bierens de Haan reads:

"In conclusion, the lesions which are exhibited by Mr. Armando Barría Oyarzún and are referred to in the three certificates indicate without any possible doubt that he has been tortured by means of violent blows to particularly sensitive parts of the body, burns by electricity and excessively tight bonds on the wrists and ankles".

Similarly the report, dated 8 September 1978, by Dr. Peytremann, who also examined the certificate, reads:

"In conclusion, the lesions described are very probably the result of the various acts of torture which took place. It is very unlikely that the lesions to the skin on the trunk and extremities are due to scabies. The two medical reports are not contradictory, but the report by the Forensic Institute clearly seems to underestimate the seriousness of the lesions".



1. Linear ecchymosis^{17/} on back of left hemithorax (at the level of the 9th rib)
2. Inflammatory lesion in the occipital region
3. Residual lesions on both wrists (due to crushing by a metal object?)
4. Punctiform lesions on both sides of abdomen and on the inside of both thighs, compatible with first degree burns produced by a pointed object
5. Ecchymoses on the inside of both thighs
6. Extensive ecchymoses and haematomas^{18/} on back of left thigh and calf
7. Painful bruises at the extremity of both legs, with superficial erosion in the process of cicatrization

^{17/} Ecchymosis: a black, brown or yellowish patch caused by extravasation of blood into the sub-cutaneous tissue after a traumatic rupture.

^{18/} Haematoma: accumulation of blood under the skin, indicating a haemorrhage at that level.

351. The information submitted by the Government of Chile in relation to Mr. Barra's arrest and detention is reflected above in section C, subsection 2 (e). Concerning the medical certificates which had been transmitted to the Government, the following observations were made:

"With regard to the substance of the reports on the medical examinations, it should be pointed out that the report referred to in the minutes (which is dated 17 July, but does not indicate the physician who signed it) differs from the report on the examination carried out by the ECLA doctor. Whereas the former inserts the query "erosion due to crushing by a metal object?" in connexion with the erosion on the wrists in the process of cicatrization, the latter in a serious and professional manner clearly makes no statement and raises no question about this point.

"In addition, the first certificate states that the examinee exhibits 'obvious' symptoms of 'hyperexcitability and neurosis, and repressed anxiety', whereas the second, although bearing the date 19 July 1978, i.e. only two days later, says nothing about this and implies that the nervous system appears normal".

(d) Ill-treatment of a 14-year-old boy

352. A 14-year-old boy appeared before the Group and testified concerning the ill-treatment he suffered during his detention on 1 May 1978, but asked that his identity not be revealed.

2. Identification and punishment of persons responsible for torture

353. An essential element in the prevention of torture or acts of cruel, inhuman or degrading treatment is the prompt identification and punishment of those responsible. Articles 9 and 10 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides for the investigation of torture reports and the punishment of those guilty of such acts. Article 11 provides for compensation to the victim when public officials are involved in torture. Chilean law contains provisions allowing for the prosecution and punishment of persons committing acts of torture.

354. The Group from its very first report to the General Assembly has referred to the identities of persons reported to it as having tortured detainees in Chile and the Group has consistently called for the investigation and punishment of torturers. ^{19/} The General Assembly, in resolution 31/124 of 1976, called upon Chilean authorities to prosecute and punish those responsible for torture and other cruel, inhuman or degrading treatment or punishment. In 1977 the General Assembly reiterated this call in resolution 32/118.

^{19/} A/10285, paras. 194-195; E/CN.4/1188, paras. 138-154; A/31/253, paras. 349-372; E/CN.4/1221, paras. 186-192; A/32/227, paras. 159-160; E/CN.4/1266, paras. 78-81.

355. In its report to the thirty-fourth session of the Commission on Human Rights the Group reported on additional cases of torture reported in the Chilean press and for which investigations had reportedly been undertaken. Since that report the Group has learned the names of other persons reported to be involved in torture (see the Héctor Riffo Zamorano and the Rodrigo Muñoz Muñoz cases above), and the Group also received reports confirming the names of alleged torturers mentioned in prior reports. Some of the persons mentioned to the Group as participating in the torture are General Contreras Sepúlveda, Osvaldo Romo and Colonel Jorge Espinosa. Héctor Riffo Zamorano has mentioned carabineros Major Cubillos, Captain Cubillos and Lieutenant Muñoz Vasquez as engaging in torture. In one case, that of Osvaldo Romo, the Group received a copy of a letter from the former President of the Chilean Supreme Court, reporting that Osvaldo Romo had left Chile.

356. The Group believes that a special effort must now be made to identify and prosecute persons responsible for torture. Because of the international dimensions of the problem of torture and the failure of the authorities to initiate and carry out serious investigations, the Group believes that the international community should encourage a full investigation. Moreover, the Group believes that the international community should give careful consideration to the international criminal responsibility of persons engaging in, or responsible for, torture and violations of the right to life.

E. Places of detention 20/

357. The Chilean constitutional and legal provisions limiting the places in which persons may be detained have been referred to above. The information received by the Group indicates that arrests are made and interrogations carried out by the following agencies in Chile: the Carabineros, the Investigations Bureau, the security services of the various branches of the armed forces and CNI. The question of the role of CNI in arresting persons and in their subsequent continuing detention was raised by the Group on several occasions with responsible authorities in Chile. In this regard the summary of the statement of the Director of CNI on this matter reads as follows:

"CNI could arrest people caught in the act of committing a crime, but could only detain them long enough to report the matter to the Ministry of the Interior. When CNI obtained information about a crime, it had to communicate it to the Ministry of the Interior which, by means of a decree, could order the detention of a person for five days or appoint a visiting judge. The legal time-limit for informing the relatives of detainees was two days. CNI therefore had no places of detention because that was not its function. The prison service and judicial services were responsible for detainees.

20/ The Group has dealt with this question in its earlier reports: A/10285, paras. 184-195; E/CN.4/1188, paras. 78-109; A/31/253, paras. 146-158; E/CN.4/1221, paras. 89-200; A/32/227, paras. 154-158; E/CN.4/1266, paras. 48-64.

"A person detained on the orders of the Ministry of the Interior or visiting judge, was taken to a CNI barracks for interrogation to determine his or her involvement. The necessary arrangements for interrogation had to be made immediately. There had been no cases of maltreatment under his authority. He handed over a list of places for which CNI was directly responsible as part of its information-gathering activities, and a list of people interrogated since 1 January 1978."

The Group was requested for reasons of security not to reveal the locations of the 10 places under CNI authority of which it had been informed. It was stated that in those places where persons were questioned by CNI no registry books were maintained. The movement of detainees was recorded in the entry and exit books of the prisons or jails where they were kept and from where they were taken for questioning.

358. Reviewing the list submitted to the Group by the Director of CNI containing the names of arrested persons questioned by CNI during 1978, the Group notes that persons were held by CNI for periods of from four hours to five days. But in two cases the Group found that the period exceeded the five-day maximum for detention by order of the President in places which are not gaols.

359. In almost every case of arrest and detention carried out in 1978 and brought to the Group's attention, the person concerned reports being held at one time or another in a place or places unknown to him at the time: The Group noted that in the Peñaflor case, decreto exento No. 94 ordered the arrested persons to be held in "CNI premises", without specifying which place. One of the places of detention and interrogation reported to the Group was Villa Grimaldi which, as mentioned above, the Group visited in the company of two witnesses who stated they had been detained there, one in 1975 and the other in 1978. The Group was accompanied by the Director and Deputy Director of CNI. The minutes of that visit are to be found in annex XXXII. The very detailed knowledge of the interior and grounds of Villa Grimaldi shown by the two witnesses, the recognition of two persons in Villa Grimaldi by one witness, together with the photo of that witness which was published in the 24 February edition of La Tercera de la Hora and undoubtedly was taken in the room called "Bodega" convinces the Group that Villa Grimaldi was in fact used as a place of detention by CNI in 1978 and by DINA in 1975. (For further details see above, section B.)

360. While in Chile the Group received reports that during 1978 places other than Villa Grimaldi were used as secret places of detention or interrogation. The Chilean authorities systematically denied that such places existed, with of course the exception of the above-mentioned places under CNI authority where interrogations pursuant to Presidential order may be carried out. The Group was asked to keep the location of those places confidential for security reasons, and thus it does not wish to make a public comparison of the list of places under CNI authority with the places reported to it by former detainees. The Chilean authorities offered to accompany the Group to any reported secret places of detention. The Group, in light of the limited time at its disposal to carry out its full programme of work and the fact that secret places of detention could only be recognized as such while persons were actually detained there or if the Group were to be accompanied by witnesses, decided to limit its requests to visit places of detention to Villa Grimaldi and "Colonia Dignidad". As explained above, an official visit by the Group as such to "Colonia Dignidad" was not possible.

F. Conditions in the prisons and the right to a fair trial without undue delay 21/

361. Article 10 of the International Covenant on Civil and Political Rights provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Article 14 of the same Covenant guarantees the right to a fair trial and provides that persons charged with criminal offences shall be entitled to be tried without undue delay. During its stay in Chile the Group received written information on the conditions of detention of persons held in connexion with political or national security matters. The Group also visited Santiago Prison and the Valparaiso Gaol and spoke privately with prisoners and prison officials. It also discussed prison conditions and related issues with the Minister of Justice and other Chilean authorities, including those responsible for prisons.

362. The Group was informed that in Santiago Prison 32 persons were being held at the time of its visit (18 July 1978) allegedly on political grounds and that one woman was being held on such grounds in the women's prison. None of these persons had yet been convicted and 9 of the 33 had been detained awaiting trial since 1971 charged with acts which took place in 1969, 1970 and 1971. The Government of Chile submitted information on the political prisoners held in Santiago Prison (see annex XL).

363. The prisoners in Santiago Prison are kept in a special wing called "calle 5". Some prisoners complained to members of the Group that certain of their cells were in bad shape, that they were detained in conditions similar to those of common criminals, that they had difficulty getting books and that correspondence by mail was hindered. Family members visiting the prisoners were subjected to humiliating searches and the prisoners were constantly punished for disciplinary infractions. They were also regularly interrogated by security agents. They reported that they had not recently suffered beatings but they felt there was no assurance that there would be no return to past practices of ill-treatment.

364. Prison officials informed the Group that these prisoners enjoyed special privileges, such as an area of their own, special visits, food brought in from the outside, and were therefore not popular with other inmates. They received aid from the Vicaría de la Solidaridad and other organizations, and could speak privately with Vicaría and ICEM officials.

365. The prisoners in Santiago Prison raised the problem of their personal security while in prison and the lack of protection they had from being turned over to security forces. They reported that on 12 May 1978 three prisoners Sergio Sepúlveda, Héctor Reyes, Víctor Heressman - who were to benefit from the amnesty, were turned over to CNI agents and taken from the prison to Tres Alamos,

21/ For information on this subject in earlier reports of the Group see: A/10285, paras. 184-195; E/CN.4/1188, paras. 78-109, 127-154; A/31/253, paras. 116-301, 302-372; E/CN.4/1221, paras. 89-200; A/32/227, paras. 83-100, 135-165; E/CN.4/1266, paras. 48-64, 78-85.

where they were held until they were expelled from the country. On 17 May 1978 another detainee, Jorge Martínez Muñoz, was forcefully taken from prison and handed over to CNI agents who took him to Tres Alamos, where he joined the other three. It was said that this was illegal since Mr. Martínez had not gone to court to sign his release. For this reason he resisted being removed from prison. The Group noted that the information provided by CNI does not list these persons as being detained.

366. In relation to this information the prison chaplain stated that investigating agents could enter the prison only with an appropriate judge's order and questioning had to take place in the presence of officials. The three persons mentioned in connexion with the events of 12 May were not handed over to CNI; an expulsion order had been issued for them and they had been set free at the gate. As to Mr. Martínez, he had been shown his release order and had walked out of the prison. The Group received a copy of a writ of amparo filed in these two cases by prison inmates but the results are not yet known to the Group.

367. During the Group's meetings in Geneva in September 1978, Mr. Sergio Sepúlveda and Mr. Martínez Muñoz testified before the Group. They confirmed the substance of the reports received by the Group in Santiago Prison regarding their having been removed from the prison by CNI.

368. The Group visited Valparaíso Gaol on 22 July 1978 and spoke privately with six prisoners accused or convicted of violations of, inter alia, the Security of the State Act and the law on the control of arms. Information submitted by the Government on these cases is found in annex XL. These prisoners complained that they were held together with common criminals and were not accorded the conditions of detention of political prisoners as was the case in Santiago. Also, one or two prisoners stated that the amnesty law was not applied to them in the same way as it was applied to prisoners in similar circumstances in Santiago. Treatment in the prison at this time was "indifferent" and detainees were not subjected to the ill-treatment which had taken place in past years. One prisoner, Mr. Roberto Eduardo Rodríguez Sapiains, who had been charged and convicted of certain criminal offences, has been detained since September 1973 and even though he has been granted visas to live in at least two foreign countries, he has not been allowed to leave Chile. The case of Mr. Juan Enrique de la Parra Urbina was of particular concern to the Group. This young man has been diagnosed as having psychiatric problems including paranoia and has spent some time in psychiatric hospitals. Nevertheless, he was returned to prison, a circumstance which his doctor reportedly stated would not permit improvement in his condition. Efforts were being made to have him transferred to a hospital for appropriate care.

369. The issue of the right to a fair trial was also raised during the Group's meeting with the prisoners. One person reported being tried by a wartime military court in December 1977. He stated he had been unable to afford the cost of a lawyer and thus had had legal advice only one day before the trial. At that trial he was sentenced to 500 days of imprisonment, raised later to 541 days. Although after the end of the state of siege no new wartime military procedures may be initiated, many persons being held in prison are awaiting trial before wartime military courts in cases initiated before the end of the state of siege. The Group in its earlier reports has shown that the wartime military trial fails to

protect even the most elementary human rights of the accused and it has reported such trials where conviction was based on confessions obtained through torture. 22/

370. In meetings with the Minister of Justice and other officials, the Group raised several questions concerning prison conditions and the status of prisoners. The Group noted that political prisoners in Santiago were separated from common criminals and given special treatment and asked why that was not the case in Valparaíso. The Group was informed that according to Chilean law, the persons referred to were not political prisoners but were held in connexion with common crimes. In Valparaíso the physical establishment did not permit separation of prisoners but the Minister of Justice stated that a solution to the problem would be sought. Concerning Mr. de la Parra Urbina, she stated that a decision on mental capacity was in the hands of the courts, which were now awaiting the results of a second psychiatric examination.

371. On the question of the concept of a political crime, the Group, after having heard the competent Chilean authorities, reached the conclusion that these authorities have a very restrictive and in some cases even circumstantial conception of such a crime in so far as the Government and, in particular, the Minister of Justice refuse to consider the motives which may have prompted the person responsible for the crime to act as he did. This criterion is admittedly not sufficient and must not be isolated from its context, but in order to recognize that an offence has the status of a political crime one must be prepared to consider this criterion as necessary. It is nevertheless only fair to point out that those persons who are charged with acts prompted by a political motive are in fact treated differently in Santiago Central Prison, which the Group visited. The Group will follow closely the development of this question.

372. The Group during its visit to Chile urged the appropriate authorities to authorize those political prisoners still detained to leave Chile in cases where other countries were willing to accept them. The Group also drew the authorities' attention to cases of long-term (seven years in some instances) detention without trial. The Group urged that the trials be accelerated and that in appropriate cases these persons be released and permitted to leave the country.

373. The Government of Chile on 31 August 1978 provided the Group with information on certain of these problems. Included in this information were copies of instructions given by the Minister of the Interior for the separation from common criminals of persons awaiting trial or convicted under the law on the control of arms (see annex XLI). Also, the Government informed the Group that Mr. de la Parra Urbina had been released from Valparaíso Gaol. The Group welcomed the steps taken to separate political prisoners from common criminals and the release of Mr. de la Parra Urbina. Concerning the Group's request that in appropriate cases political prisoners be allowed to leave the country, the Government replied that this could be considered only after the conviction and sentencing of those awaiting trial.

G. Long-term effects of violations of the right to
life, liberty and security of person

374. The Group has included in its earlier reports information on the effects on individuals of torture and long-term detention. ^{23/} While the Group was in Chile an extensive report on this subject, based on the very recent examination and analysis of numerous cases, including those of the families of executed persons, missing persons and released detainees, was received. Although the Group was unable to examine thoroughly the contents of the entire report, it deems it appropriate to reproduce certain excerpts which contain very important information. Concerning the consequences of detention on former detainees this report reads in part:

"Physical and/or psychological sequelae of detention

"As is well known, detention has been accompanied by considerable physical pressures, with sequelae of varying seriousness. We call physical damage the consequences deriving from these pressures and from the post-detention period which are manifested in the form of permanent or untreatable lesions, lesions treatable with medical help, and neurological damage which causes progressively disabling disorders, and in the form of loss of mental functions and various illnesses contracted during the detention period.

"These various kinds of consequences include the following, among others: pulmonary tuberculosis, chronic bronchitis, rheumatism, gastritis. Traumatic lesions are also found (self-healing fractures) in the spinal column and extremities. Lesions and fracture of the jaws, nasal partition and teeth, with actual loss of teeth.

"Tubercular sequelae, affecting mental functions. Post-traumatic epilepsy. Permanent lesions of the skin, visible in the form of burns and traumatic lesions. Complete loss of hearing in one or both ears, chronic otitis. Mutilation of part of the extremities (phalanges). Electric shocks applied to the male genitals: extensive study reveals a reduction in the number of live sperm, resulting in prolonged sterility. At the present time there is no proof that this is permanent.

"Psychosomatic disorders and somatic manifestations: tension headaches, migraines, gastric disorders (ulcers), persistent insomnia, allergies, irritable colon, bronchial asthma.

"Psychological damage: Breakdown of mental health as a result of detention and imprisonment, which manifests itself in forms ranging from profound personality changes to various anxiety, depressive and phobic symptoms.

"Psycho-social damage: As a result of a whole period of suffering and difficulties, and although in many cases detention took place some time ago, people show physical and psychological effects which can still be seen;

^{23/} A/32/227, paras. 142-144; E/CN.4/1266, para. 82; E/CN.4/1221, para. 192.

however the impact of this situation has wider psycho-social effects. It can be seen in the fear and dread affecting the individual and his family, the frustration, depression and despair which becomes the predominant attitude.

"The description of this situation among ex-detainees demonstrates infringement of the right to re-organize their lives, considering the fundamental human rights laid down in the United Nations Charter.

"From the study of such situations and the annexed case descriptions the damage is considered to be as follows:

"I. Social damage

"Whether the detention period has been long or short it still carries a social stigma which prevents the individual from:

"(a) Fitting back into his social environment, whether place of residence, trade union, family or work.

"(b) Going back to his job or getting any other kind of job, even one with lower status. This is clear from the fact that having been a political prisoner makes it impossible to find a job; the person is not accepted in any industry (black lists) or job, or if he is, it is not long before his employment is brought to an end through pressure by the police. The person concerned therefore vacillates between hope and despair and becomes chronically unemployed. In some cases, with the help of mutual aid organizations or relatives or friends he might become a small artisan, pedlar or small-scale manufacturer, which, generally speaking, does not mean that he can get an income enabling him to live decently.

"(c) The damage caused by this situation quickly leads to a lack of resources for basic needs, like food for the family, health needs, clothing, accommodation, access to property and the possibility of access to education, both for the ex-student and for parents with respect to their children.

"(d) All this leads to a crisis in which the individual feels fenced in, unable to face the situation, defenceless in the face of the damage, which sooner or later leads to a serious family crisis.

"(e) The only possibility open to anyone blocked in like this, with all doors closed, is to leave the country, against his principles and wishes, and often with the feeling that it affects his right to live in his own country, which is in itself a form of repression and ultimately the last door that shuts in his face ...".

375. The Group is aware that exile often is the only alternative to continued imprisonment or to continued threat of detention. Also, exile may offer some hope of being able to support a family to persons denied employment for political reasons. However, the Group has also received information on the physical and psychological hardships of life for those forced to leave their country. 24/

24/ See "Exile is often worse than going home", New York Times, 30 July 1975.

376. The families, especially the children, of persons who have been executed, missing persons or those subjected to long-term detention suffer lasting consequences. The above-mentioned report, which was received in Chile (see para. 374 above), describes the effects of these occurrences on children in the following terms:

"The psychological care of children who are affected by severe traumatic experiences shows that the most frequent psychological disturbances are: distress and anxiety states: apprehension, multiple fears. Depressive states: apathy, inhibition, misery. Disturbance of sleep: nightmares, insomnia, nocturnal fears. Regressive states: regression in development (both emotional and intellectual). Infantile contrariness, enuresis, inability to remember what has been learnt, appearance of learning difficulties. Language disturbances. Disorderly conduct bordering on delinquency: vagrancy, begging, theft, leaving home for days. Psychopathological phenomena such as auditory pseudo-hallucinations (common in the children of a missing father - they hear his voice).

"In all children whose history has been referred to, it is easy to note the existence of severe emotional damage, visible through a wide range of behavioural symptoms and disturbances.

"In no case has the damage been limited to the initial traumatic experience. In every case, even the oldest, the repression exercised on a member of the family is simply the starting point of a complex situation with increasingly destructive elements. Of these destructive elements, the damage to the mother plays a central role. She has to assume the responsibility for home and work: she has to compensate for the children's affective needs for the absent father, and at the same time has to be able to overcome her own sorrow and fears.

"All this means that the children are deprived of both parents and of a stable home life. Their family group is now a broken group, offering neither order nor warmth, far less security. Previously their homes were normal homes. Now they are broken or traumatized.

"In view of this whole range of deficiencies and damage, the disturbances in children might logically be expected to be far more extensive and far deeper than the symptoms apparent from examination.

"It is considered that this traumatic damage is determining the psychological development of these children and will seriously affect their present and future mental condition if extensive measures are not implemented to restore them to health."

377. In its earlier reports, 25/ the Group has called for appropriate steps to be taken on the international level to enable assistance to be given to those persons directly suffering violations of their human rights in Chile and to the relatives of those persons both inside and outside the country. The information gathered for the present report and, in particular, its visit to Chile strengthen the Group's

conviction that such aid is not only necessary but should be implemented immediately. The Group thus welcomes the recommendation made by the Commission on Human Rights (resolution 13 (XXXIV)) and the Economic and Social Council (resolution 1978/15) to the General Assembly that a trust fund be established for humanitarian, legal and financial aid to persons whose human rights have been violated in Chile, to those forced to leave the country and to their relatives. In particular, this aid should go to the families of missing persons.

H. The situation with respect to liberty and security of person in Chile during the period covered by this report

378. Arrests and detentions for political or national security reasons during the first seven months of 1978 appear to be somewhat more numerous than for the same period in 1977 (even excluding the 780 May Day arrests) but still represent only some 63 per cent of those for 1976. Arrests in 1978 fell generally into the following three categories: large-scale arrests effected in connexion with unauthorized public demonstrations, such as those relating to the national consultation of 4 January 1978; those in connexion with demonstrations in support of the family members of missing detainees; and those in connexion with the unofficial meeting organized on May Day 1978. In these cases the arrested persons were generally taken to police stations, their identity was verified and they were then released within a short period. Physical abuse has been reported in some of these cases ^{26/} but it is less severe and less frequent than in cases of isolated arrest. The second category is composed of the arrest and detention of a limited number of persons carried out by carabineros, agents of the Investigations Bureau or of the armed forces security services. These arrests are often made in conjunction with CNI personnel and reports have been received of CNI agents themselves making arrests, although the Group was informed that this was beyond their powers. In cases in this category the arrested person is often taken to a place of detention unknown to him, interrogated and finally turned over to the military or civil courts. The third type of case reported to the Group is the arrest and detention of individuals by security agents, generally in situations in which few witnesses are likely to be present. These individuals are taken to places unknown to them, interrogated, ill-treated and eventually released on the streets so that, not being brought officially before the courts of the Ministry of the Interior, their detention can be denied.

379. In the cases reported to the Group for 1978 the Chilean legal provisions requiring arrest warrants, notification of the persons concerned and their families, and detention only in specified places were rarely applied. In some cases the limit on detention of five or ten days was not respected. Because the rules concerning written arrest orders, notification of family members and detentions in public places with registry books are not observed, the records of the Ministry of the Interior and other organs did not show that the person was detained.

380. The information received by the Group indicates that during the period covered by this report some persons detained in Chile were subjected to ill-treatment and torture. Some of those detained in mass arrests were subjected to beatings and some persons arrested individually or in small groups by security agents, carabineros or

^{26/} El Mercurio, 2 May 1978.

agents of the Investigations Bureau for political or national security reasons were ill-treated or tortured. However, the current absolute number of reports of torture is well below the number reported during the early years of the present régime. Nevertheless, the techniques of torture reported in the past are still used and include beatings, suffocation, electric shocks, drugs and hypnosis. While in some cases reports indicate cruelty in the treatment given detainees, this does not appear to have reached the extremes of the past and during this year no one has been reported as having died as a result of torture.

381. The focus of the system of arbitrary arrest, detention and ill-treatment or torture of detainees used by Chilean security police today is on those engaged in political, trade union, humanitarian or other activities viewed as not being in full harmony with Government desires. In some cases, the reason behind a person's being subjected to such treatment is mere oral or written expression of dissent; in others, accusations are made of violent activity, carried out or contemplated. The Group wishes to emphasize that whatever may be the accusation made against a person, it cannot justify violations of the right to life and to freedom from ill-treatment and torture. While in Chile the Group found that the poorer sectors of society were the hardest hit by the economic situation but that other sectors were better off. The Group was repeatedly told of a climate of fear and intimidation maintained by illegal searches, opening of mail and selective arrest and ill-treatment. In addition, persons detained in connexion with political or national security measures are in some cases held for unreasonably long periods without being brought to trial and even if they have been released, trial can be unduly postponed. Persons accused prior to 11 March 1978 in criminal cases under war-time military procedures may still be tried according to those procedures and thus be deprived of the basic guarantees of a fair trial.

382. The Group, as in the past, has given careful consideration to the role played by the Chilean judiciary in the protection of the right to life, liberty and security of person. As the Group pointed out in 1976, ^{27/} the writ of amparo as inscribed in the Chilean Constitution could be in theory a very powerful tool for the protection of those rights. It empowers the judge to have the detainee brought before him, thus enabling the judge to check the physical well-being of the detainee, the place where and conditions under which he is detained, the length of detention, whether there is a written detention order and whether the order meets the necessary legal requirements. Should the person be held illegally, the Constitution empowers the judge to order his release.

383. As the Group has pointed out above, the writ of amparo is, in the opinion of the Government of Chile, applicable to ensure respect for the legal rules governing arrest and detention under the state of siege, including the requirement of a written arrest order and limitations on places of detention. However, the President of the Supreme Court and other members of the Chilean judiciary informed the Group that the writ of amparo is not applicable in such situations. Moreover, the Group was told that if the detention is on military premises or is effected by military personnel, which would include CNI, the civilian courts decline jurisdiction. ^{28/} A survey of the cases reported to the Group during its visit to

^{27/} A/31/253, para. 405; E/CN.4/1266, paras. 76-77.

^{28/} See chap. II and annex XXXI.

Chile confirms the information given by members of the judiciary. If the response to a writ of amparo is that the person is being held pursuant to the state of siege, the matter is dropped, without any inquiry into respect for the applicable legal standards or into the physical well-being of the detainee. On the other hand, if the response is that the person is not being held, the matter is likewise dropped, no inquiry being made into whether in fact the person is detained, even when other evidence so indicates. The Group has also noted that in cases where it is subsequently learned that a court has been falsely informed concerning the non-detention of an individual, no steps are taken to defend the dignity of the court or to determine the responsibility for such reports.

384. Under Chilean law the criminal complaint is also a judicial procedure which, if properly employed, could be useful in protecting the rights to life, liberty and security of person through the imposition of penal sanctions for violations. Earlier reports of the Group have included information on publicly known cases of torture and illegal detention and on the information on such cases presented to the courts. ^{29/} Nevertheless, in meetings with members of the Chilean judiciary, if the Group was informed that the judiciary had not held back in protecting the physical integrity of individuals, it was also informed that no or few cases of alleged ill-treatment were known, and it learned of the many reasons why, in the view of the judges, complaints do not lead to convictions. These reasons include the fact that the victim cannot identify his torturers individually and that the person is not freed until the traces of torture disappear. It was also learned that if military personnel were involved, the case would go to the military court. The Group notes that in one case of torture, 18 days after the complaint of ill-treatment and 10 days after the medical report had been presented, no action was taken.

385. The Group is unfortunately forced to draw the conclusion that, by adopting an interpretation of the writ of amparo more restrictive than that of the Government and by failing energetically to pursue criminal complaints of ill-treatment, the Chilean judiciary has refused to take available steps to protect the right to life, liberty and security of person. This the Group can only view as judicial consent to the violations which such a policy permits. The Group concludes that the remedies at the disposal of the Chilean citizen to protect his life, liberty and security of person are not effective remedies within the meaning of general international law. In these circumstances, the Chilean citizen, when his right to life, liberty and security is endangered, must look elsewhere than to the courts for protection. He finds some protection - though much less than the courts could provide - in the publicity given to violations, in particular by the humanitarian organizations in Chile. More importantly, the international community, through regional and universal procedures for the protection of human rights, can and should provide all possible protection.

^{29/} See E/CN.4/1266, para. 63.

V. MISSING PERSONS

386. The disappearance of persons after their detention by Chilean police or security organs has received the close attention of the Group in each of its prior reports 1/ and it also has been the focus of concern of other international organizations. 2/ While the exact number of persons who have disappeared after detention will most likely never be known, the Vicaría de la Solidaridad published in June 1978 a list of 600 strongly documented cases of missing detainees. At that time it was explained that the list did not include many other cases which were not as fully documented but for which the available information led to the strong presumption of detention and disappearance. 3/ The Group's report to the General Assembly at its thirty-second session contained a list of over 1,000 persons reported missing, compiled from the lists of the Vicaría and the International Committee of the Red Cross. 4/ It may also be noted that reports are still being received of cases of missing detainees which occurred in past years but were not previously reported. Almost all the reported cases of missing persons occurred between September 1973 and the end of 1976. In 1977 eight such cases were reported 5/ and for 1978 no cases of missing detainees have yet been established, although the Group was informed that one or two possible cases in 1978 are being studied by humanitarian organizations in Chile.

387. During the Group's visit to Chile a significant amount of its attention was focused on the problem of missing persons. The Group made every effort to obtain as much information as possible and to contribute to a solution of the problem which would be just and which would take fully into account generally accepted human rights standards.

1/ A/10285, paras. 138-151; E/CN.4/1188, paras. 100-109; A/31/253, paras. 230-301; E/CN.4/1221, paras. 130-185; A/32/227, paras. 101-134; E/CN.4/1266, paras. 65-77.

2/ International Labour Organisation, see for example the one hundred and eighty-fifth Report of the Committee on Freedom of Association (GB.206/6/18); Inter-American Commission on Human Rights, see the Commission's First, Second and Third Reports on the Situation of Human Rights in Chile, documents OEA/SER.L/V/II.34; doc. 21, OEA/SER.L/V/II.37, doc. 19, and OEA/SER.L/V/II.40, doc. 10.

3/ Publication of the Vicaría de la Solidaridad entitled "Donde Están?" (Where are they?) of May 1978.

4/ A/32/227, para. 127 and annex LV.

5/ See the Group's reports to the thirty-second session of the General Assembly, A/32/227, paras. 101-103, and to the thirty-third session of the Commission on Human Rights, E/CN.4/1266, para. 165.

388. The Group received voluminous evidence of very high probative value concerning the arrest and detention of persons who are missing, but it was unfortunately beyond its possibilities to deal adequately with each case on an individual basis. Information on the general problem of missing persons was received from representatives of the Association of Relatives of Missing Persons and their lawyers. The Group also heard testimony from relatives, witnesses and lawyers concerning particular cases or groups of cases of missing persons, and it visited Villa Grimaldi accompanied by a witness who stated that he had been detained there in 1975 with persons now missing. The Group also received well over 150 individual communications on specific cases of missing persons from private individuals whom the Group was unable to hear in person owing to lack of time. In addition, the problem of missing persons was discussed with the Ministers of Justice and of the Interior, Judges of the Supreme Court and the Court of Appeals, religious leaders and trade union representatives. The Government of Chile also submitted written information relating to missing persons. In relation to this question the Group tried but was unable to meet with the former head of the DINA, retired General Manuel Contreras (see also chap. I).

A. Information received on specific cases of missing persons

389. During its visit to Chile the Group was able to give particular attention to the following cases to which it had already referred in prior reports.

1. The 119 missing persons ^{6/}

390. Of the persons reported arrested and missing between March 1974 and February 1975 the names of 119 appeared in newspaper or magazine articles as having been killed outside Chile. Most of these persons reportedly belonged to MIR (Movimiento de la Izquierda Revolucionaria). Many attempts have been made to verify these press reports. In this regard the Ministry of Foreign Affairs of Chile informed the Court of Appeals of Santiago on 25 August 1975 that there was no proof that the 119 had left the country nor that they died outside Chile (see annex XLII). The Group notes, however, that subsequently the Government when giving information on the whereabouts of persons on the list referred to the press reports of their death in a context suggesting that such reports might be an explanation for the disappearances (see annex XLII). Concerning specific individuals on the list, the following are examples of the information received by the Group.

(a) Juan Chacón Olivares and others

391. A witness testified to having been arrested on 15 July 1974 at the same time as Juan Chacón Olivares, ^{7/} Martín Elgueta Pinto ^{8/} and María Inés Alvarado ^{9/} and having been taken with them to a detention centre at No. 38 Calle Londres, where they were tortured. During his detention he heard the voices of four other persons on the list of 119. Concerning Chacón Olivares, the Minister of the

^{6/} A/10285, paras. 149-151 and annex XVIII.

^{7/} A/32/227, annex IV, No. 190.

^{8/} Ibid., No. 268.

^{9/} Ibid., No. 24.

Interior on several occasions informed the Court of Appeals that he was not being detained. In January 1975 the Investigations Bureau (Investigaciones) informed the First Criminal Court of San Miguel that Mr. Chacón had been under detention ("se encontraba detenido") in Tres Alamos since 15 July 1974. Recently the Minister stated that he had been released under decreto exento No. 274 of 7 August 1974. 10/ He is still missing.

(b) Arturo Barria Araneda

392. The Group was informed that Arturo Barria Araneda 11/ and three other persons were taken into custody at the Escuela de Suboficiales on Blanco Encalada Avenue on 28 August 1974 in the presence of several professors from the school, where he taught, and family members. The three other persons arrested were subsequently released and have testified in connexion with judicial procedures to the detention of Mr. Barria. The Group has received the following information on this case:

"The Officer in Charge of the Military Institutes Command stated, on 29 August 1974, that this person 'was made available to DINA, in 'SENDET', his active militancy with the former UP having been confirmed'. The communication then gives details of the 'reasons for the detention'.

"On 9 April 1975, the Executive Secretary of the National Executive Secretariat for Detainees (SENDET) informed the Fifth Criminal Court of Santiago that it had no background information concerning this person. On 31 April 1975, Colonel Reyes Farías, of the Institute of Military Commands, informed the same Court that the background information concerning Professor Barria 'who was arrested on 28 August 1974, was made available to SENDET by official communication CIM No. 3550/303'." 12/

Mr. Barria Araneda is still missing.

(c) Muriel Dockendorf Navarrete 13/ and Jackeline Drouilly Yurick 14/

393. The following information was received concerning these two persons, who remain missing:

"Muriel Dockendorf Navarrete, 27 years old, disappeared after her second arrest on 6 August 1974:

In November 1974, the Ministry of the Interior informed the Court of Appeals that this person was at the disposal of the Office of the Air Force Prosecutor.

10/ Solidaridad, No. 45, June 1978, p.17.

11/ A/32/227, annex LV, No. 75.

12/ Solidaridad, No. 45, June 1978, p.15.

13/ A/32/227, annex LV, No. 252.

14/ Ibid., No. 263.

On 15 December 1974, the Office of the Air Force Prosecutor informed the Third Criminal Court of Santiago that she was not being held by order of that Office but had been so held between 7 June and 12 July 1974, when she had been released. On 28 November 1974, however, the Ministry of the Interior reiterated to this Court that she was at the disposal of the Office of the Air Force Prosecutor." 15/

"Jackeline Drouilly Yurick, 25 years old, disappeared after her arrest on 30 October 1974:

The International Red Cross stated, on 3 February 1975, that 'our representatives were able to visit' the person in question 'on 20 November 1974, when she was being held in the Tres Alamos prison'." 16/

2. Arrest and disappearance of Guillermo (William) Beausire Alonso

394. The facts concerning the arrest in November 1974 and subsequent disappearance of Mr. Guillermo Beausire Alonso, who enjoyed British and Chilean nationalities, have been reported by the Group in prior reports. 17/ In 1977 the Government of the United Kingdom officially transmitted to the Group a memorandum dated June 1976, which it had previously sent to the Government of Chile. This memorandum was accompanied by sworn statements of persons who had been detained in Chile with Mr. Beausire. Similarly, while the Group was in Chile the United Kingdom Government transmitted to the Group a second memorandum dated September 1977 on the case together with a number of statements of witnesses (see annex XLIII). In transmitting these documents the British Chargé d'Affaires stated that he would be grateful if the Working Group could give its attention to this case during their visit to Chile. In the second memorandum, which had been transmitted in September 1977 to the Government of Chile, the Embassy states it "is firmly and genuinely convinced that responsibility for the disappearance of Sr. Beausire lies with the Directorate of National Intelligence (DINA)". On 3 August 1978 the Group transmitted to the Government of Chile copies of the memorandum, the statements of witnesses and other information which indicated contradictions in prior explanations given by the Government of Chile.

395. On 4 September 1978 the Government of Chile transmitted its observations on the documents submitted by the Group on this case (see annex XLIII). The Government of Chile maintained that a serious investigation had been carried out and that Mr. Beausire was not detained in Chile. It stated that if the Group had received any evidence of his detention it could have visited the alleged place of detention, in view of the Government's repeated offers to facilitate such visits. The Government also stated:

15/ Solidaridad, No. 45, p. 18.

16/ Ibid., p. 15.

17/ A/32/227, para. 107, annexes XXIII, XXIV, and A/10285, paras. 144-147.

"Consequently, since this is a typical case in which the evidence is contradictory, even though some of the evidence has the merit of originating from official organizations, including organizations in other countries (Argentina), it is essential that in weighing the evidence and reaching conclusions, one should place credence in what has been stated by the Government and not in mere testimony whose origin, intention or objective it would be inappropriate to analyse".

3. Detention and disappearance of eight persons in Valparaíso 18/

396. While the Group was in Chile, the wife of one of the eight missing persons testified before it to having been arrested, detained and tortured with her husband and other missing persons in the Regimiento Maipo barracks in Valparaíso in January 1975. She reported having received threats recently to prevent her from continuing her action to find her husband. Another witness testified before the Group to having been arrested, detained and tortured with the eight at the Regimiento Maipo barracks and then taken in a refrigerator truck to Villa Grimaldi, where he remained with them until 8 February 1975. A great number of persons have testified to having been detained with one or more of the eight. For more details of this case see annex XLIV.

397. The attempts to use the Chilean judicial system to obtain the release or clarify the fate of the eight have been described to the Group. The summary of that testimony is as follows:

"Application for a writ of amparo having been made, the authorities stated that they had no information concerning the arrest and that no order for arrest had been issued. A criminal complaint was submitted, accompanied by 20 sworn statements by arrested persons attesting that they had seen the eight at the Maipo Regiment barracks and at the Villa Grimaldi. When the witnesses were called upon to give oral evidence, they confirmed their statements. Later, an appeal was made to the Supreme Court in September 1976, and an investigating judge was appointed. Another 20 persons told the investigating judge that while they had been in detention at Puchuncaví and Cuatro Alamos they had been with the missing persons. In December 1976, the investigating judge declared himself incompetent, because the offence of abduction had been committed and the presumed authors were agents of DINA who were under military jurisdiction. The case was therefore for the military courts. On a further application being made for amparo, the Minister of the Interior reported that no order for arrest had been issued. The Supreme Court ordered that DINA should report on the matter, whereupon DINA stated that seven of the eight persons arrested had at once been released. The eighth, Horacio Carabantes, had been freed on 18 January 1975 because his life was in danger owing to his having informed against his companions in exchange for medical care provided to his wife, who was to give birth to twins. He was arrested not on 18 but on 21 January, together with his wife. The twins were born on 27 January. In addition to the witnesses' statements there was the written reply of the Commander of the Maipo Regiment, in which the latter had acknowledged that the persons in

18/ See A/31/253, paras. 241-247.

in question were detained. There was a letter from a military chaplain, Carabantes' uncle, confirming that he had seen in the records that Carabantes was detained and was to be tried. The Supreme Court had accepted that the fact of detention was proved but had stated that there was no proof that the persons were still in detention and had rejected the application for amparo and had ordered a further investigation. The Office of the Military Prosecutor had continued the investigation, in the course of which carabinero René Alfaro had acknowledged that he had taken part in the arrest. General Contreras, however, had denied the fact of the arrest. The proceedings were suspended under the Amnesty Law, and the suspension was at present the subject of an appeal before the Military Court of Santiago." 19/

398. Information on this case was transmitted by the Group to the Government of Chile for any observations the Government might wish to make. On 4 September 1978 the Government transmitted its observations (see annex XLIV) in which it stated that an investigation was continuing but that no further information was available. The Group would be informed of any further results of the investigation. Concerning the arrest and detention of Neftalí Carabantes, the Government stated:

"It is confirmed that Neftalí Carabantes Olivares offered to collaborate with security agents on the understanding that Liliana Castillo would receive proper medical care during her imminent confinement.

"It is probable that the arrest of the persons mentioned was the result of Carabantes' collaboration and that those persons were subsequently released.

"The apparent contradiction mentioned concerning the date of Carabantes' release, as stated in a report submitted by the former DINA to the Supreme Court, may stem from the fact that Carabantes' action in collaborating with DINA did not make him appear to be really a detainee, even though for purposes of formal procedure he in fact appeared to be a detainee. A similar explanation might account for his presence in places of detention if this actually occurred.

"The Working Group must realize that denunciation is a form of behaviour which the security services must turn to account and that the circumstances normally surrounding it are inevitably confused and cannot be checked. This is all the more true of the informer's subsequent doings."

4. Investigations into cases of persons who disappeared in 1976

399. The Group received extensive information on certain of the cases included in various reports of the Group, namely: the arrests at Calle Conferencia 1587 in May 1976 20/; the arrest of Carlos Contreras Maluje in November 1976 21/; and the arrest of 13 people in November and December 1976. 22/ The information received

19/ Summary of testimony received by Group in Chile. The Group was requested to keep the identity of the witness confidential.

20/ A/31/253, paras. 170-179, and E/CN.4/1221, para. 170. The missing detainees are Onofre Jorge Muñoz Poutays; Mr. Jaime Patricio Donato Avendaño, Mr. Mario Jaime Zamorano Donoso.

21/ E/CN.4/1266, para. 66.

22/ A/32/227, paras. 118-120 and annex XXXIV.

by the Group in relation to each case provided additional proof of the arrest by security forces of the persons concerned. For example, the sworn statement of another witness to the arrests at Calle Conferencia was presented to the Group. In addition, concerning the declaration of Mr. Luis La Coste stating that he was domiciled at Calle Conferencia 1587 and that while living there no one was detained, which was presented to the General Assembly by the Government of Chile, 23/ the Group was informed that Mr. La Coste took the house after the arrests in May 1976. Also in relation to these cases the Group learned of the difficulties encountered in using the courts to obtain the release of persons or learn of their fate. The Court of Appeals had, for example, twice requested the Supreme Court to officially transmit to the President of the Republic the failure of the Ministry of the Interior to comply with the Court's order to free Contreras Maluje, but the Supreme Court had refused to do so. In the case of the 13 missing persons arrested in November/December 1976, the visiting judge (ministro en visita) who had been appointed in the case closed it in view of the information he had received that the missing persons had left the country. The case was subsequently re-opened and the records of at least one of the border stations through which they had reportedly left the country were found to have been carefully altered to show the departure of the missing persons concerned. Annex XLV contains a copy of one of these records together with the sworn statement of the recording officer that the name of the missing person was not added by him.

400. In relation to the Contreras Maluje case and in response to a request by the Group on 3 August 1978 for information on the case, the Government of Chile on 4 September 1978 transmitted copies of 14 documents concerning the case and stated:

"Similarly the proceedings before the Military Court are still pending since, after the Court Martial judge had ordered the case to be postponed, he revoked that decision and ordered that new proceedings should be instituted in the form of the statement to be made by officials of the Armed Forces. When that statement had been made, the case was again postponed; the inquiry by the Court Martial and the Supreme Court's review of that Court's decision are pending".

401. The Group also received information on cases of missing persons occurring in 1976 which were not included in the Group's prior reports. One of these cases is that of Daniel Palma, who disappeared on 4 August 1976 while driving a car which later was found in the possession of a DINA agent. The judicial inquiry into this case continues. Information on it was given to the Government of Chile for any observations it might wish to submit. On 4 September 1978 the Government of Chile transmitted observations on this case (see annex XLVI), the conclusion of which reads as follows:

"Since this is a matter which is being investigated by the court and this investigation has not been completed, the Government is of the opinion that no decision can be taken, other than to recommend that the inquiry be expedited, particularly since the plaintiffs have a good counsel and have not complained that they have been deprived of their rights to due process in any respect."

402. During its meetings in September 1978 the Group was informed that a public demonstration had been organized on 30 August by the Association of Relatives of Missing Persons, and that carabineros had intervened to end the demonstration and arrested a large number of persons. 24/ In this connexion, the following message from the Association of Relatives was received by the Group in Geneva during September 1978:

"The Association of Relatives of Missing Persons wishes to inform national and international public opinion that at 11 a.m. today (30 August), carabineros brutally attacked hundreds of our members who were holding a peaceful demonstration in the centre of Santiago. They were protesting against the possible promulgation of the decree-law on presumption of death which the military Government is seeking to introduce, in response to our legitimate demand to learn the truth about what has happened to our relatives who have been arrested and have disappeared while in the hands of DINA. The carabineros proceeded to arrest more than 100 relatives of missing persons. We are determined that neither threats nor arbitrary arrests shall prevent us from continuing to demand the truth.

Association of Relatives of Missing Persons

Santiago, 30 August 1978."

On 8 September 1978 the representatives of the Government of Chile in Geneva informed the Group in regard to this demonstration that it had been peacefully brought to an end by carabineros and that the persons arrested had been released after verification of identity. The representatives of the Government stated that the demonstrators had been arrested because they were blocking normal traffic circulation in Santiago.

5. Places of detention and fate of missing persons

403. The Group received information concerning numerous places where missing persons had been detained. The Association of Relatives of Missing Persons presented to the Group a list of places of detention and places where medical attention had been given to detainees who are now missing. One of the reported places of detention is Villa Grimaldi, which the Group visited with Mr. Héctor Eduardo Riffe Zamorano, who stated that he had been held there in June 1975 together with three missing persons, Ricardo Lagos, 25/ Carlos Lorca 26/ and Michele Peña. 27/ Mr. Riffe Zamorano showed in detail where each person was held and he demonstrated a knowledge of the details of the exterior and interior of Villa Grimaldi that added weight to his testimony. 28/ Another place reported as a detention centre for missing persons is Colonia Dignidad, which the Group could not visit. (See also chap. I).

24/ El Mercurio, 31 August 1978.

25/ A/32/227, annex LV, No. 466.

26/ Ibid., No. 509.

27/ Ibid., No. 693.

28/ See annex XXXII.

404. Information and views from persons directly concerned with the fate of missing persons was also received by the Group while it was in Chile. The case of Marta Ugarte was given as one example. As the Group has already reported, 29/ she was detained in August 1976 and, according to a witness, held in a DINA detention centre; subsequently, in September of that year, she was found dead with signs of severe torture. Other persons spoke of the possibility that some missing persons were still being detained. They cited a statement by Mr. Juan Muñoz Alarcón, who claimed to be an ex-DINA agent, that in 1977 about 150 missing persons were alive. 30/ Another view was that the missing persons had all died or been killed. The Minister of the Interior informed the Group that no persons on the lists of missing persons were at that time being detained by the Government. 31/

B. Efforts undertaken on behalf of missing persons

405. The Group received information while in Chile on the efforts undertaken since 1973 to locate and free or to learn the fate of missing persons. These efforts included private searches by family members, appeals to the courts, to the Government, and to the international community as well as two hunger strikes. The Group also learned of the efforts made by the Government of Chile in this direction (for details see sect. C below). In many cases the relatives tried personally to locate missing persons by going to the various detention camps and visiting government officials. Use was also made of the Courts with individual writs of amparo and in March 1974 for the first time a court was asked to act on behalf of a large group of missing persons, 131 in the case. Since then the Courts have repeatedly been presented with appeals on behalf of missing persons; in May and August 1975 on behalf of 163 missing persons; in September 1975 on behalf of 188 missing persons; in August 1976 on behalf of 383 missing persons; in the fall of 1976 on two occasions on behalf of 415 missing persons and in March 1977 for 501 individuals. In all these cases the appeals to the Courts were fruitless. The President of Chile was asked for information on missing persons in February and October 1975 and in August 1976 five volumes containing a list of 383 missing persons and evidence of their detention was sent to him by the Vicaría de la Solidaridad. 32/ Appeals were also made to the international community for help in determining the fate of the missing detainees through trips outside Chile made in late 1977 and early 1978 by representatives of the Association of Relatives of Missing Persons. In 1977, from 14 to 23 July, relatives of missing persons carried out a hunger strike in the headquarters building of the Economic Commission for Latin America, which ended with the

29/ E/CN.4/1221, paras. 147-159.

30/ The Government of Chile disputes the statements made and informed the Group that the person was not a DINA agent. For Mr. Alarcón's statement and information submitted by the Government, see annex XLVII.

31/ Meeting of 20 July 1978.

32/ The Ministry of the Interior stated it had not received that information and that the first information on the facts of missing persons, other than the simple lists, was received by the Minister in June 1978 from Cardinal Silva Henríquez.

Government's agreement to provide information on certain cases of missing persons. 33/ In relation to the information provided to him by the Government on these cases, the Secretary-General expressed his disappointment with the outcome of the Government's investigations. 34/ Information on the efforts on behalf of missing persons and the obstacles encountered, for example, attacks on and expulsions of lawyers working for missing persons, have been reported in the Group's prior reports. 35/

406. On 22 May 1978 members of the Association of Relatives of Missing Persons began a hunger strike in three churches and the Santiago office of UNICEF for the purpose of obtaining from the Government the truth concerning their missing relatives. The declaration made at the beginning of the hunger strike is reproduced in annex XLVIII. The hunger strike, which spread to other churches and to places outside Chile, lasted 17 days and was ended on 6 June 1978 after the Permanent Committee of the Episcopal Conference of Chile in an official declaration called on the hunger strikers to end their fast. In that call the Committee stated "In keeping with its vocation, the Church will continue to do everything in its power to ensure that the legitimate right of family members, and the sacrifices they have made to implement it, elicits an appropriate response". The Permanent Committee also requested the President of the Episcopal Conference and Cardinal Silva Henríquez to speak with the Minister of the Interior. This declaration is reproduced in annex XLIX. Citing the Church's belief that the relatives of the missing persons had the right to an answer in each particular case, Cardinal Silva transmitted to the Minister of the Interior on 5 June 1978 a list of 54 cases of missing persons together with the background information in each case. Since then the Cardinal, and certain Bishops for cases arising in their dioceses, have transmitted to the Minister of the Interior the background information on additional cases of missing persons. The Group was informed that the intention is to present background information on the 600 cases of missing persons included in the list published by the Vicaría de la Solidaridad in June 1978.

33/ See *Solidaridad*, No. 45, pp. 7-18, for a survey of activities on behalf of missing persons.

34/ E/CN.4/1266, paras. 70-74.

35/ A/31/253, paras. 280-301.

C. Information on missing persons supplied by the Government;
official investigations and action taken by the Government

407. The Group, during its visit to Chile, discussed the question of the disappearance of detained persons with the Minister of the Interior, the Minister of Justice and judges of the Chilean Supreme Court and the Court of Appeals of Santiago. The position of the Government of Chile on this question is reflected in the minutes of the Group's meeting with the Minister of the Interior of 20 July 1978, which read as follows:

"In connexion with the missing persons, Mr. Sergio Fernández, Minister of the Interior, said that the Government had stated its final position on missing persons and detainees in its statement of 15 June 1978. 36/ In that statement, it had described the circumstances in which the events in question had presumably taken place. The current situation was completely different. The state of emergency had been superseded by a state of freedom and the problems were gradually disappearing. There had been no missing persons reports the previous year, and he had not received any since becoming Minister. The situation with regard to missing persons could have come about as a result of: dual identity, deaths in confrontations, people fleeing the country, people hiding and persons about whom no information was available.

"Moreover, the term 'detainees' was misleading. Detention was an act which required that certain formalities be completed before it could be considered as such. An abuse of authority did not constitute detention; detention could result only from an order issued by the competent authorities. However, none of the missing persons whose names appeared on the lists was currently being detained. There were no secret places of detention. The Minister was prepared to take the Group to any place it wished to visit in order to verify that fact. It was true that there were cases in respect of which the available information was incomplete and which were being investigated by the National Information Agency, the Investigation Bureau and the courts. Some relatives had objected to the investigation, and the Minister showed the Group a letter which had been signed by the relatives and in which the latter acknowledged that the investigation was taking place and stated that it should be admitted that the missing persons had died and that responsibility for their deaths lay with employees of the former DINA. Faced with the need to conduct an investigation, some relatives had decided that it was too much trouble, while others had co-operated. The Government had approached the problem in three ways: (a) in some cases it had supplied private information about missing persons direct to the relatives; (b) in other cases the investigation was pending but it was difficult to determine the true course of events; (c) in other cases, the relatives had obstructed the investigation. With regard to cases where well-founded background

information in the form of evidence provided by individuals was available, the Government had received only those cases sent by the Cardinal, which numbered just over 100.

"With regard to the practical questions facing relatives of persons presumed missing, the Government would provide facilities for solving legal and inheritance problems. The Government had received and offered to consider specific requests and applications for ex gratia pensions in cases where the missing person had been the family breadwinner. The offer would stand. For the purposes of an investigation, it was necessary to know more than the name and date of disappearance. Background information was required in order to be able to determine the course of events, the names of reliable witnesses, the type of activity in which the person presumed missing had been engaged, the circumstances surrounding the arrest and the identity of those responsible."

408. During this meeting with the Minister of the Interior the Group was shown the Confidential Office of the Ministry of the Interior where the Ministry's files on decrees ordering detention or release issued under the state of siege and on missing persons are maintained. The Group was shown a drawer of index cards on missing persons classified according to name, on which references were entered to the various letters, official notes, investigation reports and other correspondence concerning the missing person. The Group was informed that a file containing copies of the reports and correspondence noted on each index card was also maintained. The Group requested and was permitted to see the index cards and subsequently certain files which contained investigation reports on three specific cases, namely, those of Jorge (George) Klein Pipper, Fernando de la Cruz Olivares Mori and Mario Jaime Zamorano Donoso. The Group subsequently received copies of investigation reports on these three persons.

409. Jorge (George) Klein Pipper. Mr. Pipper appears as No. 36 on the Vicaría's list of 600 missing persons with the information that he disappeared on 11 September 1973. The Ministry's report on the case reflected an interview with Mr. Klein's father in which he stated that his son disappeared on 11 September 1973 and that a photograph showing him in the custody of carabineros had appeared in the magazine Qué Pasa. The same information was received by the Group. The Ministry's report showed that the official files had been checked for information on Mr. Klein's identity and personal status, on any possible police record and on whether he had left the country. The French Embassy had been consulted and had stated that Mr. Klein was the personal physician of former President Allende. Mr. Klein remains missing. For a copy of the Ministry's report see annex LI.

410. Fernando de la Cruz Olivares Mori. Mr. Mori, an employee of the United Nations, appears as No. 56 on the Vicaría's list of 600 missing persons, with 5 October 1973 given as the date of his disappearance. The investigation report in the Ministry's confidential files dated 19 December 1977 contains information on his date of birth, identity card number, residence, marital status, etc. The report reflects interviews with Mr. Mori's mother and with a fellow worker who had witnessed his arrest. They stated that Mr. Mori was arrested by Armed Forces personnel at a United Nations office in Santiago on 5 October 1973 and taken to the Ministry of Defence. Mr. Mori's colleague, who followed him to the Ministry of Defence on the day of arrest, stated that

the following day he returned and was told Mr. Mori had been transferred to the the National Stadium. The colleague then went to the National Stadium, where he was told that Mr. Mori was not on any of their lists of detainees. The Ministry's report indicates that various Government departments had been consulted and that Mr. Mori was not reported as having died or as having left the country. However, the Group noted that the file does not contain any official reference to the fact of the arrest of Mr. Olivares Mori. The Ministry's report concludes:

"RESULTS:

- "1. Various police inquiries, which were carried out in an attempt to locate FERNANDO DE LA CRUZ OLIVARES MORI, proved unsuccessful.
- "2. All the background information available in this establishment concerning OLIVARES MORI FERNANDO has been made available to the Minister.
- "3. In accordance with the statements made by JUANA MORI CHANDIA and JORGE AREVILO MARTINEZ, the alleged missing person was arrested by naval personnel on 5 October 1973 at his place of work, 34 Calle Huelén, and was later transferred to the Ministry of National Defence.

Santiago, 19 December 1977."

The arrest and disappearance of Mr. Mori, which violated the privileges and immunities of United Nations personnel, has been the subject of great concern on the part of United Nations officials. The Government of Chile was repeatedly informed of the facts of Mr. Mori's detention, including the name of the arresting officer, Marine Lieutenant Jorge Osses Novoa, acting on Major Vergara's orders, and the licence number of the car which took him to the Ministry of Defence. Also, the National Office of Detainees (Secretaría Nacional de Detenidos - SENDET) in document 3550-300 of 9 January 1974 acknowledged the arrest of Mr. Mori. The investigation report of the Ministry does not reflect this information, although the case of Mr. Mori was raised with the Minister of the Interior in 1977 by the Legal Counsel of the United Nations during his visit to Chile, 37/ nor does it reflect any effort to inquire into the circumstance of Mr. Mori's arrest. The information received by the Group on this case was transmitted to the Government of Chile on 3 August 1978 for any observations the Government might wish to make. On 4 September the Government transmitted its observations (see annex LII) in which it recalled that the events had taken place in October 1973 and stated that investigations were under way into the existence and location of Mr. Osses Novoa and Major Vergara who, when located, would be questioned about the arrest of Mr. Olivares Mori. The Government also stated that the information from the National Office of Detainees about Mr. Olivares' detention was being investigated. In the opinion of the Working Group, there is no doubt that Mr. Olivares was arrested, although the Government's files do not mention this fact.

411. Mario Jaime Zamorano Donoso. Mr. Zamorano appears as No. 444 on the Vicaría's list of 600 missing persons, with his date of arrest given as 4 May 1976.

37/ See A/C.3/32/7.

The Ministry's report dated 5 July 1978 reflects an interview with Mr. Zamorano's father in which he states that his son was arrested on 4 May 1976 at a house in Conferencia Street. According to the Ministry's report (see annex LIII), Mr. Zamorano was a member of the Communist Party, and he is listed as having left Chile for Argentina from Pudahuel Airport on 13 May 1976. The Group notes that the Ministry's report does not reflect the sworn statements of witnesses to Mr. Zamorano's arrest, which had been included in court cases and in the Group's previous report, 38/ nor does it reflect any investigation into the records of Pudahuel Airport which would be of importance in the light of other cases in which records appear to have been altered to refer to the departure of missing persons (see para.399 above).

Official investigations into the Vicaría's 600 cases of missing persons

412. The Ministry of the Interior informed the Group that an investigation was being conducted into the Vicaría's list of 600 missing persons drawn up in June 1978. The Group was informed that in 293 cases the alleged disappearance was the subject of court proceedings. 39/ It was also informed that up to the date of its visit to Chile information had been obtained clarifying the situation in 12 cases, that is: two persons had been located and interviewed; one person was recorded as having applied for and received a new identity card a year and a half after his reported disappearance; one person was recorded as having submitted a request for his personal history accompanied by fingerprints, after the date of his disappearance; one person was recorded as having left the country; the mother of one person had reported that she had caught sight of her son after his reported disappearance; six persons were shown in official records to have died.

413. In relation to the two cases of persons who had been located, the Ministry's summary of its information reads as follows:

"1. ARAVENA HERNANDEZ, JUAN IGNACIO (Vicaría case No. 4)

"He was located and interviewed by officials of the Investigations Bureau at 2187 Calle Víctor Manuel. He stated, on the subject; 'I never disappeared, nor did I suffer any misfortune. Quite possibly one of my former fellow lodgers gave me out for dead so as to harm me in some way.'

"2. CHACON LEAL, JUAN (Vicaría case No. 609)

"He was located and interviewed by officials of the Investigations Bureau at his home, San José de la Costa, in Osorno. He stated, in this connexion; 'was arrested by police from the Third Osorno Police Station and later released. Did not know why his name appeared on the list of missing persons.'"

38/ E/CN.4/1221, para. 170 and annex XIV.

39/ At the Group's request the Government submitted, on 4 September 1978, information on these cases under the following headings: (1) Proceedings currently in progress; (2) Proceedings temporarily stayed; (3) Cases dismissed; (4) Replies received concerning proceedings being conducted outside Santiago.

In relation to this last case the Vicaría de la Solidaridad has submitted the following information:

"CHACON LEAL, JUAN

"His wife, Mrs. Raquel Maldonado Marquez, reported his disappearance to the Osorno office of the former Comité de la Paz as occurring on 16 August 1975. However, she omitted to report in good time (she reported the fact only on 6 July 1978) that, after a few days' detention for common-law reasons, he was released. He is an agricultural worker who lives in the country and who, because his wife had not informed him of the action she had taken to locate him, did not make his situation clear at the time."

414. In three of the other clarified cases the Group's files contain information concerning the arrest and detention which the Group compared with the information supplied by the Ministry as follows:

- (a) Montecinos Alfaro, Sergio Sebastian (Vicaría case No. 200): 40/
(i) Summary of information from the Ministry of the Interior

"He is listed as allegedly missing as from 1 August 1974. However, on 16 January 1976, he obtained his identity card (No. 29,611) in the Maipú Identification Office, having presented the necessary documentation for the purpose. It has not been possible to determine his present whereabouts."

- (ii) Summary of information in the files of the Group

He was arrested on 1 August 1974 at his home in the presence of his wife Mónica Caltani, and Verónica Netto Morales as recorded in case list No. 1,175 of the Eleventh Criminal Court of Santiago. On 8 August 1974, his house was searched in the presence of his parents-in-law. The sisters, Tamara and Natacha Valdes Valenzuela, state that they were detained with him in a house at 38 Calle Londres.

The full report provided by the Ministry is reproduced in annex LIV. It contains testimony from relatives and descriptions of his arrest provided by persons now living outside Chile. Mr. Montecinos' mother states, according to the Ministry's report, that the detention of her son in Tres Alamos was confirmed to her when she visited the camp after her son's arrest. A person who had reportedly stated that he was detained with Mr. Montecinos was contacted and he denied the statements attributed to him. Unnamed uncles of Mr. Montecino reported that he had been seen alive in Maipú in 1976. Investigators reported contacting numerous government departments but were unable to determine the whereabouts of Mr. Montecinos.

- (b) Villar Quijon, Elias Ricardo (Vicaría case No. 490): 41/
(i) Summary of information from the Ministry of the Interior

"He is listed as allegedly missing as from 27 January 1975. In this connexion, his mother, in an interview with officials of the Investigations Bureau, stated that at the end of December 1977, she had caught sight of her son, ELIAS RICARDO, near the Valparaíso slaughterhouse. 'I have not seen him again since and do not know where he is living at present.'"

- (ii) Summary of information in the files of the Group

Mr. Villar was arrested on 27 January 1975 and taken to the Maipo Regiment barracks, as the military authorities have admitted to the Group. A witness testified to the Group in Chile that he had been arrested and then transferred from Valparaíso to Villa Grimaldi with Mr. Villar and was detained there with him for some time. 42/

- (c) Ojeda Jara, Jorge Luis (Vicaría case No. 55): 43/

- (i) Summary of information from the Ministry of the Interior

"The Investigations Bureau states that, having consulted the Central Identification Office, it obtained the following information: his death occurred between 9 and 15 October 1973, his corpse being found in water. The data concerning his decease were obtained from the Fingerprint Section of the Morgue, the autopsy report being: Morgue List No. 19, year 1973."

- (ii) Summary of information in the files of the Group

He was visited by his mother at Tejas Verdes between 21 September 1973 and 4 October 1973. The International Red Cross later informed his family that its representative, Mr. Tomás Kaiser, had visited him on 12 October 1973 in the office of the Governor of San Antonio Prison. He was detained in San Antonio Prison according to the admission registers of that establishment.

415. Concerning the rest of the cases of missing persons recorded as having died (see para. 412 above), the investigation reports of the Ministry do not deal with the circumstances of their deaths but it would appear from the information available that the deaths took place after the reported date of detention or disappearance.

41/ Ibid., No. 985.

42/ A/31/253, para. 243.

43/ A/32/227, annex IV, No. 641.

416. The Group, as mentioned above, visited the Ministry of the Interior's confidential office, where a drawer of index cards bearing the names of missing persons and the corresponding files are kept. The number of names on these cards is in excess of those of the Vicaría's list. These cards and files, which, the Group was informed, were established in 1977, refer to persons missing in the events of 1973 and afterwards. The files contain information on the steps that had been requested with a view to finding missing persons and on the measures actually carried out and also, in some cases, the testimony of witnesses to the arrest. The Group reviewed the investigation reports of the Ministry of the Interior and found that they did not in every case reflect the full information which was available from existing court files. Moreover, in most of the cases where allegations of arrest by DINA agents or military units were made there was no official report of the arrest in the Ministry's files. In some cases the files contained official statements that DINA had not arrested a person. This information resulted not from an investigation into the facts of the alleged arrest but simply from statements made by DINA itself. When such official DINA denials of arrest were made, no further investigations were undertaken, even though witnesses to the arrest existed. In reality, investigators did not adequately follow up on the information that they actually possessed. For example, no attempt had been made to identify the military personnel involved in the Klein and Olivares arrests nor were efforts made to verify Mr. Montecinos' detention in Tres Alamos by checking the camp's records and speaking with the officers in charge during the days in question.

417. The Group also found while in Chile that the judiciary acted in the same way as the Ministry's investigators in that when DINA denied having detained a person, no further investigation into the facts of the alleged detention was made, even when there were statements by persons who had witnessed the arrest. Furthermore, the courts refused to enforce writs of amparo in cases where DINA denied that it had detained the person in question.

D. The right to know the fate of relatives: the necessity of an exhaustive investigation of the cases of missing persons

418. The Group during its stay in Chile learned first hand of the importance to the relatives of the missing persons and of the growing importance to many sectors of Chilean society of clear and truthful answers in the cases of missing persons. Such answers, as the Catholic Church pointed out in March 1977, 44/ are essential for the tranquillity of the affected families, true peace within Chile and a clean image of Chile outside the country. The right of the relatives of missing persons to ~~ANSWER~~ in each case has been recognized by the Catholic Church in Chile. 45/ This same right - "the right of families to know the fate of their relatives" - is also inscribed in Protocol I to the Geneva Conventions of 1949. 46/

44/ Statement on "Our national coexistence" by the Permanent Committee of the Episcopal Conference of Chile, published in El Mercurio, 26 March 1977. (A/32/227, annex XIII).

45/ Declaration by the Permanent Committee of the Episcopal Conference of Chile, 6 June 1978 (see annex XLIX).

46/ Article 32 et seq.

419. The realization of the right of the family members to know the fate of their relatives requires that a serious investigation be undertaken into the cases of missing persons in Chile. Past investigations, as we have seen above, have been far from adequate and any investigation which is to be undertaken will have to be able to deal with the following difficulties:

(a) The cases of missing persons are very complex and often the facts are interrelated. 47/ (The present methods of investigation have not produced clear information on all the aspects of the cases of missing persons.)

(b) The fact that there are different types of judicial organs dealing with cases of missing persons means that the information is filed in different places - in the military courts, the prosecutors offices, and the civil courts. Furthermore, within the civil courts the information may be divided between courts having jurisdiction over writs of amparo and those having jurisdiction over criminal complaints, and in criminal cases the information remains secret while the investigation is pending. Co-ordination of information in court files is lacking and thus no central source of information is available.

(c) Judicial inquiries are hampered because of the division of jurisdiction between civil and military courts; when military personnel or DINA agents are identified as being involved in the arrest of a missing person, the civil court's investigation is terminated and the case is transferred to the military courts because civil court judges are unwilling to pursue such investigations further.

(d) Civil court judges have not extended their investigations into military or DINA premises or into the actions of military and DINA personnel, nor have they successfully called members of the armed forces or DINA to testify before them.

(e) Reference is made by civilian court judges to the constitutional principle of the separation of powers as a justification for restricting their activities for the protection of human rights. However, in the present circumstances that principle lacks validity since no parliament exists and the executive and constituent powers are concentrated in the same hands.

(f) The view of the Chilean judiciary that to protect their "independence" they must refuse to enter into any subject which touches the state of siege or emergency has paralysed legitimate action to protect the liberty and security of persons during the state of siege or emergency.

420. In relation to the fate of missing persons, it is clear that the executive branch has been unwilling and the judicial branch has felt itself unable to

47/ The Association of Relatives of Missing Persons presented to the Group a memorandum on individuals, places and vehicles related to missing persons from which it appears that some individuals were involved in the arrest and detention of many missing persons. In addition, a limited number of places were indicated as places of detention for many missing persons and in some cases the same motor vehicle was identified as having been used in more than one arrest. Furthermore, the Group's own experience shows that one witness will often testify on events relating to more than one missing person.

undertake thorough investigations of cases of missing persons, and neither branch of government appears to have been prepared to co-ordinate its investigation with that of the other. As a result, the relatives of missing persons and those in Chile who are aware of the situation are in a state of uncertainty about this problem, which has shaken world public opinion. The Group was informed that the media have given limited coverage to the problem of missing persons in Chile. The humanitarian aspects of the problem are so important that an adequate solution must be found, even if accusations are made that the problem of missing persons is being used for political purposes.

421. For these reasons it has become evident to the Group that any serious investigation of the cases of missing persons must be established in such a way as to bring all the available information together in one place at the disposal of the investigators and to assure to the authorities charged with the investigation the stature and powers to overcome the divisions in jurisdiction, the secret character of certain files and the immunities from investigation now preventing a real inquiry. In view of the concern of the international community in clarifying the problem of missing persons 48/ and its importance to many sectors of the Chilean society, and based on the information it received in Chile, the Group in a meeting with the Minister of the Interior on 20 July 1978 proposed the establishment of an independent inquiry commission, as used in other countries to shed light on matters of national importance. This proposal was reiterated in a letter to the Minister of the Interior dated 8 August 1978. This type of approach had earlier been suggested by independent persons of high stature within Chile. 49/ The Group's letter of 8 August 1978, which is reproduced in full in annex LV, reads in part:

"The Group would suggest that a Commission be established by national legislation whose composition would include, from the national level, a representative of the Ministry of the Interior, a representative of the Chilean Judiciary and the Cardinal-Primate of Chile or his representative. The Group also desires to recommend that a member of the Working Group, to be designated for that purpose by the General Assembly or the Commission on Human Rights, be included on the Commission as Chairman and that the International Committee of the Red Cross also be invited to be associated with the Commission's work.

"The investigation to be carried out by this Commission would have for its sole purpose the establishment of the facts in each case and would begin with the collection of all information from the various judicial proceedings. It would also gather, scrutinize and follow up the testimony of all witnesses in each case, whether actual or former members of the military or security services and whether residing in or outside Chile. The records of all government agencies would be opened for scrutiny by the Commission as would the different places allegedly connected with the disappearance of detainees.

48/ See, for example, General Assembly resolutions 31/124 and 32/118.

49/ See Ercilla, 14 June 1978, pp. 11-12.

"The legislation establishing this Commission would, in the Group's view, confer upon it the legal powers necessary to carry out its investigation and, in particular, call upon all departments and branches of Government to co-operate fully in the investigation."

422. In making these proposals the Group has solely in mind the need to respond to the legitimate humanitarian aspects of the problem of the missing persons. The Catholic Church in Chile and the Association of Relatives of Missing Persons have both stated that their aim was also solely to respond to the humanitarian needs of the relatives of missing persons.

423. The Government of Chile replied to the Group's proposals in a letter dated 20 September 1978 (see annex LVI). In relation to the meetings between representatives of the Government of Chile and members of the Group referred to in that letter, the Group wishes to point out that they were of an informal nature and that no agreement was reached with the representative of the Government of Chile.

VI. EXILE AND RETURN

A. Refugees

424. In paragraphs 103 and 104 of its report to the Commission on Human Rights (E/CN.4/1266), the Working Group gave information on the activities of the Intergovernmental Committee for European Migration (ICEM) and of the United Nations High Commissioner for Refugees (UNHCR) and described the generous assistance which they are extending to refugees.

425. As at 30 March 1978, 18,368 Chilean refugees had left Chile and been resettled owing to the efforts of ICEM. Of these, 1,457 left the country between 1 January and 30 June 1978. 1/ This figure represents only part of the total number of Chileans who have had to leave their country, since many have left without resorting to such assistance, or under the auspices of other organizations or with ordinary passports. ICEM informed the Group that, as of 31 March 1978, the total number of resettled Chilean refugees stood at 25,809. This total includes persons who were outside the country and who, being unable or unwilling to return, asked to be resettled in countries which granted them refugee status.

426. Following the expiry of the state of siege and the decision not to renew it, and, in particular, prior to the promulgation of Decree-Law No. 2191 of 18 April 1978 ("amnesty decree"), a large number of Chileans who were living abroad, not always as refugees, decided to return to their country.

427. On the day on which Decree-Law No. 2191 was promulgated, Miss Mónica Madariaga, Minister of Justice, said: "Chile is seeking to devise a new institutional system with the support of all its sons and daughters, who include those whom the Government has pardoned today". 2/ The Minister of Justice also indicated, however, that persons who had been expelled from the country, as well as those whose sentences had been commuted to one of exile and refugees, must follow the procedure provided for in Decree-Law No. 81 of 11 October 1973 (see Annex LVII) - namely, apply to the Ministry of the Interior, through the appropriate Consulate for permission to enter the country. 3/ In chapter III, the Group considers the consequences of the amnesty granted by Decree-Law No. 2191 for persons outside the country, pointing out that the amnesty is considerably restricted in impact by the provisions governing the entry of Chileans into their country and their expulsion from it.

B. Legislation applicable to Chileans residing outside the country

428. According to the information available to the Group, the legislation applying to Chileans residing outside the country, according to their differing status, is as follows.

1/ The data are taken from two ICEM reports received during 1978.

2/ La Tercera de la Hora, 20 April 1978.

3/ El Mercurio, 20 April 1978.

1. Persons who left the country by means of asylum, expelled persons who are serving sentences of exile or persons who left the country without complying with the established rules

429. Under article 3 of Decree-Law No. 81 of 11 October 1973, such persons "may not re-enter the country without the authorization of the Minister of the Interior, which must be applied for through the appropriate consulate".

430. In the majority of cases, the person applying for entry into the country is required to sign a document indicating his personal particulars, the date on which he left the country and the reasons for leaving; ^{4/} this document requires the person concerned to "respect the established régime in Chile, the political recess and the legal rules in force and also to work resolutely and loyally for the greater good of the country."

2. Persons summoned to appear before the authorities while abroad

431. Article 10 of Decree-Law No. 81 provided that the authorities would take administrative action to cancel the passports of those persons who, while abroad, disobeyed a public summons from the Government to appear before the authorities.

432. Decree-Law No. 81 does not indicate how application can be made for the cancellation of a passport to be reversed so as to allow re-entry into the country, as it does in article 3 for persons who have been expelled, who have been granted asylum, etc., which could result in such measures being regarded as a form of suspension of Chilean nationality. Nevertheless, in prescribing penalties in article 4 for persons entering the country secretly, it includes those persons penalized under article 1 by the cancellation of their passports. For these persons there is no alternative other than to apply for the same authorization from the Ministry of the Interior, through the appropriate consulate.

3. Persons covered by the provisions of Decree-Law No. 604 No. 604 of 10 August 1974

433. Decree-Law No. 604 (see annex XXX) provided that the following nationals or aliens would be debarred from entry into the country:

(a) Persons spreading or promoting, by the spoken or written word or by any other means, doctrines calculated to destroy or violently to change the social order of the country or its system of government;

(b) Persons who are suspected or have the reputation of being agitators or active proponents of such doctrines;

^{4/} The text of the document is contained in annex XXIV of the Group's report to the Commission on Human Rights (E/CN.4/1266).

- (c) Persons performing acts which under Chilean law are deemed to be offences against the external security, national sovereignty, internal security or public order of the country;
- (d) Persons performing acts contrary to Chile's interests;
- (e) Persons who, in the opinion of the Government, constitute a danger to the State.

434. A supreme decree must be issued by the Ministry of the Interior to prohibit entry, and the administrative authorities order the passport of the person concerned to be cancelled (article 1). Persons affected by these measures may apply, through the appropriate consulate for authorization to enter the country. The Minister of the Interior may either grant or reject the application, but will be obliged to state the reasons for his decision only in the event that the application is granted (article 2). Decree-Law No. 604 does not provide for any appeal or claim procedure.

435. On 27 April, a few days after the publication of the Decree-Law of amnesty of 18 April 1978, César Godoy Urrutia tried to disembark at Pudahuel airport, but was not allowed to do so and was obliged to continue his journey, by the same flight, to Buenos Aires, Argentina. His passport contained no kind of restriction and he had left the country normally, not under an order of expulsion or as a refugee. He was not convicted or accused of any kind of offence (see chap. III, sect. C.3). In this case, it was not Decree-Law No. 81, expressly referred to in Decree-Law No. 2191, that was applied, but Decree-Law No. 604, the applicability of which is not restricted to emergency situations but is of a permanent nature (see chap. III, sect. C.3).

436. César Godoy Urrutia, a former parliamentary deputy, tried to appeal against the application of this rule to his case, bringing an action for enforcement of rights (amparo) before the Court of Appeals. The Court's decision was as follows:

"Under article 1 of Decree-Law No. 604 the Chilean national César Godoy Urrutia is prohibited from entering the country Article 1 prohibits the entry into the country of nationals or aliens who perform any of the acts listed in the said legal text, a list ending as follows: 'or who, in the opinion of the Government, constitute a danger to the State'. The wording of the last phrase leads naturally to the conclusion that the Executive has thereby been granted by law discretionary powers which it may exercise without being subject to review by any other legal power or body, for the words 'or who, in the opinion of the Government' can mean nothing else." 5/

437. The Minister of the Interior told the Group that in the specific case of Mr. César Godoy Urrutia, the Executive was empowered under Decree-Law No. 604 to prevent his entry and the application for enforcement of rights (amparo) had been rejected because the grounds for his exile were sufficient. Mr. Godoy, as a senior communist leader, should, logically, have checked whether he could return to Chile before attempting to do so. 6/

5/ El Mercurio, 7 June 1978.

6/ Minutes No. 29, 25 July 1978.

438. Decree-Laws Nos. 81 and 604 have now acquired the status of constitutional rules as a result of the provisions of Decree-Law No. 788 of 2 December 1974 (see annex XXI), which conferred constitutional status on all decree-laws issued prior to its promulgation in cases where they are contrary to, conflict with, or differ from the constitutional provisions (see chap. II, sect. A).

4. Effects of the termination of the state of siege on persons affected by Decree-Laws Nos. 81 and 604; effects on the deprivation of nationality

439. When it was issued, Decree-Law No. 81 was intended to apply while the state of siege was in force. By Decree-Law No. 1,877 of 12 August 1977 its application was extended to periods in which a state of emergency has been declared (see chap. II, sect. 2).

440. The final paragraph of article 10, No. 14, of Decree-Law No. 527 of 26 June 1974, reiterating the rule laid down in the final paragraph of article 72, No. 17, of the 1925 Constitution, states that "measures taken by reason of the state of siege shall have no greater duration than the state of siege itself". In accordance with this rule, the expiry of the state of siege should also have meant the de jure expiry of expulsions ordered during the state of siege and all their accompanying effects, including the restriction of entry into the country.

441. However, because of the extension to the state of emergency of the powers granted by Decree-Law No. 81, this has not happened.

442. As for the aforementioned Decree-Law No. 604, the rules which it prescribes are permanently in force and apply not only during emergency régimes but also under normal conditions.

443. With regard to the deprivation of Chilean nationality, a subject on which the Group has already provided information (see E/CN.4/1266, paras. 86 and 87 and A/32/227, paras. 168-172), the Minister of the Interior told the Group during its visit that the loss of nationality was not new in Chile and that the present Government had merely added a further ground for such loss: seriously damaging from abroad the essential interests of the State; the penalty was imposed by decree signed by all the Ministers and was subject to appeal in the Supreme Court. 7/

444. In a note addressed to the Secretary-General of the United Nations, dated 20 April 1978, the Government of Chile states "... the power of the President of the Republic to withdraw the nationality of nationals who seriously damage national interests from abroad has also been suspended".

445. The previous note refers to the suspension of this power with regard to the President of the Republic, a power delegated to him by Constitutional Act No. 4, article 5, during the existence of a state of siege (see A/32/227, para. 169).

446. The Minister of the Interior, for his part, refers to a power of the Government which continues to apply but which currently has to be exercised by a supreme decree accompanied by a statement of reasons and signed by all the Ministers, in accordance with the provisions of Decree-Law No. 175 of 10 December 1973.

447. In fact, the change is probably only apparent. The power granted to the Government by Decree-Law No. 175 - to withdraw Chilean nationality "for seriously damaging from abroad the essential interests of the State in exceptional situations" - is still in force. Whereas the reasons for loss of nationality set forth in article 6 of the 1925 Constitution are precise and based on clearly defined facts - naturalization in a foreign country, cancellation of the letters of naturalization, lending aid during war to the enemies of Chile or their allies, the reason added by Decree-Law No. 175 is not clearly defined and, in any case, it is the executive power which determines when the essential interests of the State have been seriously damaged. 8/

448. Under article 6, paragraph 3, of the 1925 Constitution, persons who have been deprived of their nationality cannot regain it except through a law.

449. The Group was unable to determine whether persons affected by deprivation of nationality during the state of siege by order of the President have any legal recourse for seeking restoration of their nationality now that this exceptional régime has ceased to exist. It may be supposed that they can only regain their Chilean nationality through a law.

450. On the other hand, within 30 days of the publication in the Diario Oficial of a decree withdrawing Chilean nationality, an appeal against the measure may be lodged with the Supreme Court. In such cases, nationality is not lost until there is a decision by the Supreme Court confirming the provisions of the relevant decree-law. If the decision quashes the executive power's action, the person concerned will not have lost his Chilean nationality at any time, since the fact of lodging the appeal suspends the effects of the loss of nationality (Decree-Law No. 335 of 25 February 1974).

451. In handing over to the Group a list of eight persons deprived of Chilean nationality, the Government of Chile pointed out that the measure had been revoked with respect to one of them by means of a decree-law.

C. Expulsions

452. In chapter III, section A, above, the Group has referred to those persons who, benefiting from the amnesty granted under Decree-Law No. 2,191, were expelled from the country at the time of their release.

8/ See the texts of article 6 of the 1925 Constitution and Decree-Law No. 175 in annexes LVIII and LIX respectively.

453. In other cases, a sentence of imprisonment was commuted to one of exile prior to the amnesty law. These cases include those of Carlos Lazo Frias, a former President of the State Bank, who had been imprisoned since mid-1974, and former Major Ernesto Gálvez and former Captain Raúl Vergara, both of whom had been in custody since 12 September 1973.

454. Similarly, other persons who had taken refuge in embassies received guarantees of safe conduct; they include seven persons who had been in the Venezuelan Embassy since 8 December 1977, 9/ another person who had been there for three years 10/ and a former member of the Intelligence Service of the Air Force, Rafael González Verdugo, who had taken refuge in the Italian embassy on 3 September 1973. 11/

455. Seven foreigners were expelled from Chile as a result of the demonstrations of 1 May 1978. Originally, 18 foreigners had been detained, including eight priests and two journalists from Newsweek and the Associated Press. The latter were released. 12/

D. Cases in which persons have been allowed to return to Chile

456. The Government of Chile communicated to the Group a list of 136 persons who had been allowed to return to the country, although articles in the Chilean press give reason to assume that the number is higher.

457. These persons include Jaime Castillo Velasco, former Vice-President of the Christian Democrat Party, former Professor at the University of Chile, former Minister of Justice and former representative of Chile to the United Nations Commission on Human Rights, who returned on 5 April 1978. Mr. Jaime Castillo Velasco had been living in exile in Venezuela and had been expelled from the country on 6 August 1976. 13/

458. The return of former Vice-President of the Republic, Bernardo Leighton Guzmán, accompanied by his wife Anita Fresno, was also authorized. An attempt had been made on their lives in 1975 in Rome, where they had been residing, and both had sustained serious physical injuries as a consequence. They returned on 19 June 1978. 14/

9/ El Cronista, 17 January 1978.

10/ El Mercurio, 30 April 1978.

11/ El Mercurio, 16 May 1978.

12/ El Mercurio, 5 May 1978.

13/ Regarding the expulsion of Jaime Castillo Velasco and Eugenio Velasco Letelier, see paras. 423-432 of the report submitted by the Group to the General Assembly in 1976 (A/31/253).

14/ El Mercurio, 24 April and 13 May 1978.

E. Restrictions on return

459. During its stay in Chile, and also before and after its visit, the Group received letters, telegrams and communications of various kinds from persons who wish to return to their country, but have been unable to obtain the necessary permission from the Ministry of the Interior. The Group also heard testimony from various persons who described the unsuccessful administrative and legal steps taken by them in order to gain admission to the country. Members of the families of exiled persons sent the Group numerous petitions and reports concerning the situation of relatives anxious to return to their native land.

460. The Chilean Government, on its side, transmitted to the Group a list of 246 persons whose applications to enter the country had been submitted to the Ministry of the Interior and rejected by it (the complete list is contained in annex LX). The Group notes that the list does not include many persons who have been refused entry and whose names have appeared in official communications published by the press. 15/

461. Likewise absent from the list are the names of persons who were awaiting a reply from the Ministry of the Interior at the time of the Group's visit to Chile, and whose applications had been submitted several months previously, according to letters received by the Group. 16/

462. Comparing the list supplied by the Chilean Government with official announcements in the Chilean press, and with the letters and testimony received during its visit to Chile, the Group is led to conclude that the number of persons prevented from returning to their native land is greater than that indicated by the Government. 17/

463. A note received by the Group during its stay in Chile states that there is no guarantee that Chileans now outside the country will be allowed to return should they wish to do so, regardless of the type of passport they hold. The same is said to apply to persons who have travelled on a simple Chilean identity card to certain countries with which an agreement exists exempting visitors from presentation of a passport. Persons holding a passport endorsed with the letter "L", whose restrictive meaning as regards entry into Chile was examined by the Group on a previous occasion (see E/CN.4/1266), will definitely be unable to return without first having obtained permission from the Minister of the Interior. However, persons holding a passport bearing no endorsement or restriction of any kind will likewise be unable to do so.

15/ Las Ultimas Noticias, 24 May 1978; El Mercurio, 26 July 1978 and 3 May 1978. These newspapers give lists of persons who have been refused entry; the names of some of them do not appear on the list transmitted to the Group by the Government of Chile.

16/ The Group received these letters during its stay in Chile.

17/ Not all the persons who sent letters to the Group state that they have applied to the appropriate consulate for permission to return.

464. On being asked by the Group about the restriction on entry imposed in passports endorsed with the letter "L", the Minister of the Interior replied that he was unable to give any information on the matter, as it came within the competence of the Ministry of Foreign Affairs. Passports were issued by the Records Branch of the Ministry of Justice. 18/ In any event, this restrictive endorsement seems irrelevant at present, in view of the Government's attitude towards the return of Chileans to their country. In its meeting with the Minister for Foreign Affairs, the Group raised the question of passports endorsed with the letter "L". The Minister gave an assurance that the matter was being considered in his Ministry and that recommendations would be made to the Government on the matter.

465. During its stay in Chile, the Group received communications from members of the families of persons whose applications to enter the country have been rejected. They include communications from aged mothers begging that permission be given for their children to return and from others wishing to be reunited with their relatives.

466. In the light of the jurisprudence mentioned in paragraph 436, the Group concludes that the fate of all Chilean families living in exile - so far as the possibility of reunion with their relatives in Chile is concerned - depends on the decision taken by the Ministry of the Interior. Moreover, administrative delays in replying cause great anxiety to many such families, whose channels of action for achieving reunion within Chile are blocked. In addition, the Minister is not obliged to justify his decision since he enjoys discretionary powers granted under Decree-Law No. 604, which is not subject to the control of the Courts. It is enough for the Ministry's report to state that a particular person is regarded as constituting a danger to national security for the courts to refrain from investigating whether or not such opinion corresponds to the reality.

467. The Group notes that in this matter, as in others connected with human rights, the Government applies a particular concept of "national security" which in itself has formulated and which it itself reserves the right to apply. Consequently, although the Group notes that permission has been given for the return of a number of exiled persons, such permission seems to savour more of an act of grace than of recognition of the right proclaimed by Chilean constitutional rules, and by article 12, paragraph 4, of the International Covenant on Civil and Political Rights.

VII. FREEDOM OF EXPRESSION AND INFORMATION

468. The Universal Declaration of Human Rights in article 19 proclaims the right of everyone to freedom of opinion and expression which includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers. The International Covenant on Civil and Political Rights in its article 19 guarantees the same rights in almost identical terms. In accordance with article 4 of that Covenant, which permits derogations by States parties from certain rights to the extent strictly required by the exigencies of the situation during times of public emergency, the Government of Chile in August 1976 notified the other States parties to the Covenant of restrictions placed on the rights guaranteed by article 19 of the Covenant. 1/

469. Chilean Constitutional Act No. 3 of 11 September 1976 2/ proclaims the right to freedom of expression and dissemination of information. This same Act, however, declares unlawful "any act committed for the purpose of disseminating doctrines detrimental to the family, advocating violence or a concept of society based on class struggle or inimical to the established régime or the integrity of functioning of the State ...". 3/ The same Constitutional Act 4/ established the remedy of protection by which the Court of Appeals was authorized to review and remedy any interference with the exercise of, among others, the right to freedom of expression. However, in January 1977 this remedy was declared inapplicable during a state of emergency by Decree Law No. 1,684. 5/

470. Existing Chilean legislation provides to the military and judicial authorities a wide range of powers to control information and the news media. The Security of the State Act empowers the military commander of a zone declared to be under a state of emergency to take measures to control the press and to prevent the divulging of news which would produce panic in the civilian population or demoralize the armed forces. In 1975, Decree-Law No. 1,281 amended the Security of the State Act to empower the military commander of a zone under a state of emergency to suspend publications for up to six days or close radio or television stations for the same period if they transmitted opinions, news or communications tending to create alarm or disaffection in the population or distort the true dimension of events, if they were obviously false or against the instructions which had been given under the powers conferred by the same article for reasons of internal order. Appeals to military courts against such measures were provided for in the same Decree-Law. Under Decree-Law No. 1,009 the courts were empowered to suspend publications or broadcasting stations for 10 days in cases where they had committed an offence against the security of the State. An appeal to the Court of

1/ See CCPR/C/2 of 14 February 1977, and chap. II, sect. 3 of the present report.

2/ Chap. I, art. 1, para. 12 (see A/C.3/31/6/Add.1 annex 6).

3/ Chap. IV, art. 11 (see A/C.3/31/6/Add.1, annex 6).

4/ Chap II, art. 2 (see A/C.3/31/6/Add.1, annex 6).

5/ For more information see chap. II, sect. B of the present report.

Appeals was provided for in these cases. 6/ In the area of printing and publishing, bando 107 of 31 March 1977 requires the prior authorization of the commander of the military zone for all new publications and for the importation of any publication. 7/

471. In the past, the authority of military commanders to control public information has been exercised through individual proclamations (bandos) dealing with specific subjects. In 1976 the publication or broadcast of news of a presentation on human rights by Chilean lawyers to the Sixth General Assembly of the Organization of American States was prohibited. 8/ Later in the same year the publication or broadcast of news of the expulsion of two lawyers from the country was prohibited, 9/ and in November 1977 reporting of the banishment of Chilean trade union leaders was prohibited. 10/ In 1978 the publication or broadcast of news on the banishment of leaders of the Christian Democratic Party was prohibited by military authorities. In 1977 the military commander of Santiago closed down Radio Presidente Balmaceda. 11/

472. On 31 January 1978 seven radio stations of the Radio Cooperativa network were closed down by order of the Chilean communication authorities. In a statement read on the radio on the final day of operations, a copy of which has been received in Geneva, the Radio Cooperativa network described itself as follows:

"Radio Cooperativa is the only private radio network covering the whole country. For nearly 40 years we have served the Chilean community through 10 integrated and independent broadcasting stations which have great prestige and enjoy the confidence of the listeners and the advertisers. ... Our programmes are serious, responsible, of sound moral tone and high quality. Our company is solvent and well-respected. Our radio stations in the provinces are performing a service to the community which has been publicly recognized by the highest regional authorities."

In relation to the closed stations the statement said that applications for new licences had been made in relation to four of them and that:

"In accordance with the Electrical Services Law, extracts of the applications, prepared by the Superintendency of Electrical Services (Segtel) were published in the Diario Oficial and approved by the National Telecommunications Commission and Segtel itself, which in November 1970 recommended to the President of the Republic, through the Ministry of the Interior, that supreme decrees should be issued granting licences for broadcasting stations at Concepción, Antofagasta and Punta Arenas.

5/ See E/CN.4/1188, paras. 31-39.

7/ See A/32/227, para. 203.

8/ See A/31/253, para. 447.

9/ See E/CN.4/1221, para. 256.

10/ See E/CN.4/1266, para. 113.

11/ See A/32/227, para. 197.

"In 1973, all the relevant documents were lost in the Ministry of the Interior. It was therefore agreed with the senior officials of the Superintendency of Electrical Services that new applications should be filed together with all the necessary legal, technical and administrative particulars. This was done late in 1975, and extracts from the applications were published early in 1976 in the Piario Oficial.

"On 25 November 1977, the Government rejected the applications for new licences and, in the relevant supreme decrees, announced the expiry of the licences under which we had been broadcasting and ordered the stations at Antofagasta, Concepción, Puerto Montt and Punta Arenas to cease all broadcasting as of this date [31 January]. The official communications addressed to us acknowledge the truth of our statements concerning the submission and handling of our licence applications, but point out that the original applications and relevant information had been sent to the Ministry of the Interior and as the relevant decrees were not issued at the time, the applications were not returned to the Office of the Under-Secretary, so their whereabouts are not known and there is a gap in the Segtel files."

Radio Cooperativa argued, with the support of the Chilean Broadcasting Association and the Inter-American Association of Broadcasters, that it should be given preference in the reallocation of the closed frequencies in those towns where it had broadcast in the past, but this was not done.

473. The Group has been informed that several other radio stations were broadcasting without licences and that it was because of their relative independence in sometimes differing from the policies of the Government that some Radio Cooperativa stations had been closed.

474. On 2 August 1978 the Group requested information from the Government of Chile in relation to those stations of Radios Cooperativa which has been closed. The Government, on 31 August 1978, supplied information on this question (see annex IXI). The Government noted the many legal and technical violations of the broadcasting regulations that had been found to exist in 1973 and reported that steps had been taken to normalize the situation. The Government informed the Group that in application of the existing legislation, seven Radio Cooperativa stations which had been broadcasting for years after their licences had expired had been ordered to stop operations. Other irregularities on the part of this network were noted, such as the illegal transfer of a licence. It was also pointed out that their technical equipment was old, especially in the light of the 30-year period of validity of a new licence. Chilean law did not provide for the extension of licences, although it did stipulate that preference should be given to the former holder of a licence when allocating any new licence, provided certain conditions were met. However, the licences in question had expired, the conditions for preference were not fulfilled, and the Government had had no alternative but to end the broadcasting. The supreme decree ending the broadcasts had been approved by the Independent Comptroller General of the Republic. Such approval would not have been given had the measure been illegal. Moreover, the former licence-holder could have appealed to the courts by using the remedy of protection but had not done so. Three of the stations were now being operated by their former employees. In conclusion the Government stated:

"It follows from what has been stated that in this country there is absolutely no discrimination or violation of the right of citizens to apply for telecommunications licences in general and radio broadcasting licences in particular, providing that they meet the legal requirements and qualifications established by law. Applications are granted as far as it is physically possible; it would be impossible to grant a licence in a given city if the radio frequencies are used up.

"It is also clear that the measures adopted by the Supreme Government to restore telecommunications to normal have conformed strictly to the legislation in force, which dates from 1959 and is not the work of this Administration. Their lawful character is proved, inter alia, by the fact that if they had been illegal or unjust, the former licence holder would undoubtedly have appealed to the ordinary courts for a declaration to that effect and for the situation to be remedied. However, nothing of the kind occurred, so that it is reasonable to suppose that the complaint was made to the Commission on Human Rights of the United Nations for political motives.

"Proof of the above is to be found in the large number of private telecommunications and radio broadcasting licences which have been granted in recent times. What is more, Supreme Decree No. 59, on transport and telecommunications, published recently in the Diario Oficial (3 August 1978), increased the number of FM stations throughout the country so as to give all citizens access to this social medium of communication, even in the smallest places in the country."

475. On 23 June 1978 the Santiago daily newspaper La Segunda was suspended from publication, distribution and sale for 48 hours (two editions). This measure was taken by the Chief of the Santiago emergency zone, General Enrique Morel Donoso, who gave an explanation at a press conference on the same day. El Mercurio of 24 June 1978 reported General Donoso's explanations as follows:

"The reasons taken into account were the repeated representations made by the General Secretariat of the Government to the heads of that newspaper concerning the articles considered to be inappropriate. The situation came to a head with the article published on Tuesday on an interview with Mr. Orrego. I do not think that there was malicious intent, but you see, the article omitted two replies which in our view might to some extent have changed the extremely offensive text of the article, and they were not published until the next day.

"On account of this article and of the repeated calls made to Mr. Hermógenes Pérez de Arce, the two days' suspension measure was adopted.

"...

"It is not a question of differences of opinions between different persons; but opinions should not be expressed in offensive and crude terms. We are entitled to have differences of opinion. But that does not justify the way in which the views were published by the Press in this instance."

476. The newspaper affected issued a statement saying it considered the measure a serious attack on the exercise of freedom of expression in Chile. The Journalists'

Association (Colegio de Periodistas) issued a statement saying that the measure was an error which went against the liberty of the press and freedom of expression and requested the immediate ending of the suspension.

477. The legal basis of the suspension, according to a copy of the decree published in El Mercurio, was article 34 m) of the Security of the State Act. This empowers the military commander to "issue any orders or instructions which may be required for the maintenance of order within the zone". The Director of the suspended newspaper appealed against this measure to the military court. The court rejected the appeal on the reported grounds that the legal basis of the measure, article 34 m) of the Security of the State Act, did not provide for any appeal. ^{12/} The Director of La Segunda has appealed to the Supreme Court against the decision of the military court, but the result is not yet known. As the Group has noted above and in prior reports, ^{13/} in 1975 the Security of the State Act was amended by Decree-Law No. 1,281 to add a letter n) to article 34. This amendment authorized the military commander to suspend publications, but it also limited the possible duration of the suspension and provided for appeals to the military court against such measures.

478. On 2 August 1978 the Group requested the Government of Chile to provide any information it might wish on this case. The Government replied on 31 August as follows:

"The newspaper La Segunda of Santiago was not closed down or banned. Its circulation was suspended for two issues for publishing an interview which violated explicit legal provisions and, what is worse, for omitting a portion of that interview which mitigated the views published in the issue which gave rise to the measure.

"The measure in question was applied by the Chief of the zone under a state of emergency, by virtue of the powers vested in him by article 34 of Act No. 12,927 of 1958. The persons concerned entered a complaint, under the same Act. No. 12,927, with the law courts, and it was disallowed at first and second instance. At present, an appeal is awaiting a hearing in the Supreme Court, so that until the latter hands down its decision, the matter is not ended."

479. In relation to this case the Group notes the statement of General Morel that the General Secretariat of the Government (Secretaria General de Gobierno) had repeatedly informed La Segunda of the articles in the newspaper which were considered inappropriate. The Group also notes the Military Commander's assumption under letter n) of article 34 of the Security of the State Act, of what amounts to power over the press in the face of another provision of that same law specifically added to grant powers over the press, but powers limited in time and subject to judicial review.

480. In relation to bando 107, the Group on 2 August 1978 requested information from the Government of Chile on any publications which had been closed, whose distribution

^{12/} Solidaridad, No. 47, pp. 5 and 6.

^{13/} See para. 470 above, and E/CN.4/1188, paras. 34-35.

had been prohibited or which were not authorized since the beginning of 1978. In this respect the Government on 31 August transmitted the following information:

"In the first place it should be made clear that, apart from the La Segunda case ... in which circulation was merely suspended, no publication has been closed down.

"The Chief of the zone under a state of emergency, in virtue of the powers vested in him by the above-mentioned article 34 of Act No. 12,927, issued bando No. 107 in 1977 for the purpose of preventing the moral corruption of young people, the advocacy of violence, and the propagation of anti-social doctrines.

"The powers of this bando have been used on a limited number of occasions only, for the purpose of withholding permission to distribute books or magazines whose very titles indicate that their contents are contrary to its provisions. The titles of such books and magazines are legion."

This list of publications is reproduced in annex LXI. On 31 August 1978 the Government informed the Group that a study was being carried out with a view to abrogating bando 107 and replacing it with standards adequate to the present situation (see annex LXI).

481. The Group on 2 August 1978 also asked the Government if the Office of Social Communications (Dirección de Comunicación Social) (DINACOS) gave instructions to the media in Chile on ways in which news was to be reported. In this regard the Government on 31 August 1978 stated the following:

"The functions and powers of the Office of Social Communications and its Director are embodied in Supreme Decree No. 11 of 1976 establishing the General Secretariat of the Government; they do not include the power to impart instructions, rules, recommendations or suggestions to the communication media. Consequently, the Director of DINACOS has not imparted any such suggestions, instructions or recommendations."

482. While the Group was in Chile, witnesses informed it that historically speaking Chile had enjoyed a tradition of total freedom of expression, unrestricted except as provided for by the Constitution. Since 1973, however, severe restrictions had been placed on the press concerning the discussion of certain topics. These restrictions were generally justified on grounds of national security and the topics affected were those of the greatest importance, such as questions relating to detainees, missing persons and political and labour matters. These witnesses further stated that at present the military authorities enjoyed virtually unlimited discretion to take measures outside the normal course of justice against freedom of thought, expression and information. Some tolerance in the field of information did exist but it was more apparent than real. The Group was also informed that the Government tried to give the impression that there was a broad scope for freedom of information, but that in fact control of major news remained as strict as ever.

483. In relation to the question of missing persons the Group was informed by relatives of missing persons that they had tried to have published in major Santiago newspapers the list of 600 missing persons drawn up by the Vicaría de la Solidaridad but that they had been told that, even if they paid for it, the list could not be published. The Under-Secretary for the Interior was asked if there

was any objection to the publication of the list and he replied that he would have to check with his superiors. 14/ Subsequently, Ambassadors Diez and Schweitzer informed the Group that there was no official objection to the publication of the list.

484. The Group during its visit to Chile noted that relatively wide freedom of expression appeared to be enjoyed in certain areas but that these areas did not seem to be those at the very centre of national life. The Group also noted the wide range of legal powers enjoyed by military authorities to control the media, the occasions on which that power has been exercised and the fact that government authorities communicate their views to newspaper editors and eventually apply sanctions when the views are not respected. According to witnesses who testified before the Group, there exists an informal system of communication of government views on what should and should not be published and on how certain issues should be handled, and a general respect for these views through the self-censorship of those responsible for the communications media, who are well aware of the potential for action against them by the authorities.

14/ Meeting of 20 July 1978.

VIII. RIGHT TO EDUCATION

485. During its visit to Chile, the Group had contacts with students, teachers and professors and with specialists in certain aspects of educational work. In addition, it received from the Government a document outlining the main points of its policy for the development of education. Taking into account these factors, other documents submitted to the Group, and articles and news items in Chilean newspapers and magazines, the present report will concentrate on two aspects which are considered fundamental: (a) access to education or the right to obtain education, and (b) intellectual and academic freedom in the Chilean education system.

A. Access to education

486. In its previous reports, the Group described some of the measures adopted by the Governing Junta in the field of education. It drew attention, inter alia, to the increased cost of education and the decrease in the number of enrolments (E/CN.4/1188, para. 196; A/31/253, para. 458; E/CN.4/1221, para. 250; A/32/227, paras. 215-220).

1. Orientation of the Chilean Government's education policy

487. In a communication sent to the Group on 24 July 1978, the Chilean Government states that its education policy is aimed at developing certain sectors of national education, particularly those that can contribute to social development. Thus, it has taken action to achieve improvements in the following areas:

- (a) Pre-school education, especially in the poorest sectors;
- (b) Differentiated education aimed at solving the problems of early drop-out and repetition of courses;
- (c) School buildings;
- (d) The quality of teaching, through teacher training programmes;
- (e) The education provided in private educational institutions, by improving the system of subsidies to such institutions;
- (f) Distance education programmes, some by means of television and based on programmed instruction methods;
- (g) Cultural activities, in order to bring the theatre, music and painting within the reach of the most varied sectors of the community. It is pointed out that many public libraries have been established;
- (h) The conditions of teaching staff. It is pointed out that teachers have been granted a salary increase higher than that of other public servants and that a system has been established for persons in the teaching profession which improves their situation even further, enabling them to gain promotion on their merits and on the basis of further training.

488. The Government document adds that the Ministry of Education has more resources than in 1975.

489. The document is accompanied by a comparative table showing the expenditure of the Ministry of Education and the universities over the period 1974-1978. The table shows that total expenditure was \$463,536,000 in 1974 and \$606,532,000 in 1978; in other words, over this period this item of the budget increased by 13.1 per cent.

490. If one bears in mind that the 1975 education budget showed a decrease of 21.3 per cent in relation to the 1972 budget, according to the statistics supplied by the Chilean National Planning Office (ODEPLAN) for December 1975, 1/ one sees that the level of the 1972 education budget has not been regained. And if one bears in mind the current population growth rate, which, according to ODEPLAN estimates, was 1.8 per cent a year in the period 1970-1978, 2/ one will also see that, on the basis of the ODEPLAN figures, the recovery noted between 1975 and 1978 is less striking than might appear from the figures taken in isolation. 3/

491. The educational sector which has suffered the most serious decrease in its budget is the university sector. In fact, according to ODEPLAN's social report on the second half of 1977 (p. 61) the universities, which in 1974 were allocated 43.33 per cent of the total education budget, currently receive 35.63 per cent.

492. The Group notes that, in spite of the decrease in the education budget, substantial contributions are being made to the private education sector at the expense of public education, which is still accessible to the lower-income groups at the primary and secondary levels.

493. Subsidies to private educational institutions have in fact increased considerably, having quadrupled between 1974 and 1978. 4/

494. In connexion with the subsidies to private schools, the Government states, in the previously mentioned document dated 24 July 1978:

"This system of subsidies applies to those schools which provide free tuition for children. There are no subsidies for fee-paying institutions: increases in the amount and value of the subsidy have been used as a means of encouraging the private education sector to provide tuition for groups of pupils who for lack of means are unable to pay the fees charged by private institutions."

1/ Quoted in: Center for International Policy, International Policy Report (Washington, D.C.), vol. 2, No. 2, September 1976.

2/ ODEPLAN, Itinerario de la Evolución Económica y Social: 1973-1977 (Trends in Economic and Social Development: 1973-1977). Table showing Government expenditure on social services for 1970-1978.

3/ Raimundo Barros in his article: "¿Crisis educacional superada?" ("Is the Crisis in Education Over?"), published in Mensaje, No. 270, July 1978, says "Government expenditure on education declined from 17.5 per cent of total Government expenditure on social services in 1972 to 15.6 per cent in 1973, 13.8 per cent in 1974 and 13.6 per cent in 1975, and increased to 14.8 per cent in 1976 and 15.8 per cent in 1977". (Data published by the National Budget Office.)

4/ "La escuela particular en Chile" ("The private school in Chile"), June 1978. Annex to the report submitted to the Group by the Government of Chile.

495. But in the report entitled "The private school in Chile" (June 1978), part of which is annexed to the communication of 24 July 1978 from the Government of Chile, it is stated:

"Institutions providing free education may in addition charge parents (according to their means) a tuition fee of up to 15 per cent of the lowest salary on the single scale of taxable income."

Consequently, it would appear that free private schooling is not actually free.

496. This decrease in expenditure on education forms part of the Government's policy of reducing State support to a series of services which were formerly provided for the people, and delegating to private bodies the task of providing such services. The State confines itself to granting subsidies to such bodies, which will provide tuition in accordance with their own requirements and interests.

497. Captain Eduardo Cabezón Contreras, Superintendent of Education, said in the seminar on education organized by the Catholic University:

"The management of educational institutions in this sub-system of general formal education (general primary and secondary education) is to be taken over by intermediate community organizations, evidencing the changeover from the teaching State to the subsidizing State. These organizations will receive and comply with the directives issued by the Ministry of Education, which will play a standard-setting and supervisory role. Only in the absence of private initiative and as a result of special difficulties in a particular community will the State assume responsibility for the administration of education. In view of the professional training of Ministry of Education officials, this Ministry will be responsible for acting as watchdog for the public interest." 5/

498. The transfer of education to private hands is a fundamental aspect of the Government's education policy. A document submitted to the Group in Chile states:

"There is at present taking place an accelerated transfer of the administration of education to private enterprise and its respective social development corporations, with the object of training children, young people and adults for work in accordance with the needs of the enterprises in question. 6/ Well-known recent examples include the transfer of agricultural training begun in 1977 and the transfer of industrial colleges in 1978; the increase in the so-called "fourth function", in other words, the sale of

5/ El Mercurio, 25 August 1978.

6/ ODEPLAN, Informe Social, 1976-1977 (Social Report, 1976-1977) (quoted in the document).

so-called "technical assistance"; 7/ training programmes in the frontier and indigenous colleges; 8/ the apprentice labour contract." 9/

499. The results of this transfer may be appreciated in the case of Channel 9, which was formerly under the responsibility of the University and was used for cultural and educational purposes. In this connexion, El Mercurio of 25 January 1978 states:

"The case of Channel 9 once again illustrates the difficulties involved in the hybrid system of Chilean television, which requires its directors simultaneously to apply a State or university criterion and a commercial criterion, the latter being essential for the financing of its activities. This system originated in the regulation promulgated in the early 1960s, which prohibited advertising, took the form of a tacit agreement with the authorities of that time, who tolerated it, and remained concealed until January 1975 by the contributions which were made by the Treasury, either directly or through the university budgets, and amounted to approximately \$200,000 a month. When the contributions were suddenly suspended at that time, the television channels were faced with the dilemma of financing their activities through the sale of advertising or accumulating debts that would lead them to ruin".

500. It is not necessary to dwell at length on the consequences which this type of financial dependence is having on the quality of broadcasts. What could have been a medium for culture is becoming a mere instrument in the hands of private interests.

501. In March 1978 the Government suspended the system of payment of tuition fees which it had by that time practically put into force for secondary education by announcing the scale of fees in the press. 10/

502. The ODEPLAN report, which has been mentioned above, states in this connexion:

"In 1978 further study will be given to the system of payment of tuition fees, which is aimed at releasing some tax resources for education,

7/ Supreme Decree No. 305 of 27 May 1977, which approves an agreement between the Ministry of Education and the Social Development Corporation, Rural Sector, for the administration and management of the Agricultural College at San Fernando. See also "Tres escuelas industriales pasan al sector privado" ("Three Industrial Colleges Transferred to Private Sector"), El Mercurio, 24 May 1978 and "Encuentro en Concepción entre empresa y universidad" ("Meeting between Enterprise and University Officials at Concepción"), El Mercurio, 3 June 1978 (quoted in the document).

8/ El Mercurio, 27 November 1977 (quoted in the document).

9/ "Aprendicaje por contrato" ("Apprenticeship under Contract"), El Mercurio, 11 June 1978 (quoted in the document).

10/ El Mercurio, 19 February 1978.

through the support of the higher-income sectors. This will in the future make it possible to channel these resources towards children from extremely poor sectors and to improve school equipment and installations."

503. The above statement and the statement by the Superintendent of Education quoted above indicate that education policy is following the trends begun in previous years, since the guidelines laid down for the universities and for education in general are to be applied to secondary and primary education. Thus education will be placed in the hands of private institutions and charges will be made for public education.

504. The Group was informed that the fees for university studies have increased to levels which are beyond the reach of the low-income sectors of the population and of many middle-income sectors.

505. In 1978, these fees were paid in instalments of between 100 and 1,500 pesos a month from March to July, in addition to a fixed matriculation fee of 1,000 pesos. The fees are graded according to family income, evidence of which will have to be provided by the students. 11/ If one bears in mind that the minimum wage at the period when these fees were payable was 481.15 pesos for the Santiago area, 12/ to which must be added various benefits and allowances which brought it up to about 1,300 pesos, and that the wage of a worker under the Minimum Employment Plan (PEM) now amounts to a total of 820 pesos a month, 13/ one realizes that, even if they had to pay only the matriculation fee, most families would be unable to send their children to universities. University education would not be within the reach of the children of a public official, who earns 2,775.54 pesos, including compensatory benefits, at the minimum grade (grade 31) and 4,974.16 pesos at grade 19. 14/ As we shall see below, it would also be beyond the reach of the children of a secondary school teacher, especially when one remembers that to the tuition fees must be added the cost of books, equipment, transport, clothing, etc. Such persons would hardly be able to afford the equipment needed for primary and secondary schools, which, according to a survey by El Mercurio published on 28 February 1978, costs between 3,000 and 5,000 pesos.

506. The Government informed the Group that it was giving priority to certain aspects of education which could contribute to social development, including the construction of school buildings. This approach does not yet seem to have borne fruit, since the condition of school buildings was described in the following manner in El Mercurio of 10 March 1978:

"School No. 24 at 654 Avenida Independencia, with 600 pupils, has been operating in makeshift classrooms for some time, some of the walls being hazardous for the pupils. The toilets are also temporary and are situated next to a wall in a kind of lean-to. In front of them, there are two open-air

11/ El Mercurio, 29 January 1978.

12/ El Mercurio, 7 March 1978.

13/ Information supplied to the Group by PEM workers during the Group's visit to the RENCA Co-ordination Committee.

14/ El Mercurio, 4 March 1978.

wash-basins where the children wash before school lunch. It is hoped that they will be taken into account in the final plans for the construction of a school building.

"School No. 99, situated at 510 San Eugenio in the commune of Nufioa, has been operating in a former Mujica building since 1904. The rooms are narrow, poorly ventilated and virtually without light. There are 300 pupils in the first to eighth primary grades; they attend school in two shifts. It has an earth playground and a kind of shed which serves as an assembly hall but totally lacks the necessary facilities. Two makeshift classrooms have been built in one of the playgrounds to improve conditions for the pupils.

"School No. 326, situated in Los Olmos at a height of 4,000 m, is operating in makeshift classrooms, many of which let in the rain in winter. It has no covered playground, and on rainy days the pupils have to remain in the classrooms during playtime. It has more than 600 pupils and has only two toilets for girls and two for boys. The drinking fountains are defective and the children have to use a hose to drink water from the only tap in the playground.

"According to the information obtained by this newspaper, the great majority of schools have to pay their own running costs, which include office supplies, telephones, etc.

"The school authorities realize that parents lend considerable assistance through the Parents' Centres and constantly help the schools by providing the necessary materials for repairs or painting jobs or by doing work themselves. Even the poorest parents help the schools in which their children are educated, but their efforts are not sufficient."

2. Repercussions of this trend on access to education

507. This education policy has inevitably affected the access of children and young people to education.

508. An ODEPLAN report which was given to the Group 15/ contains a comparative table of enrolment for the different levels and branches of education (see annex LXII).

509. This table indicates that there has been an appreciable increase in pre-primary education, but that it is accessible to a very small proportion of the population at the relevant age. A steady increase in secondary education can also be noted.

510. On the other hand, it is apparent that there has been a decline in enrolment in primary education - the level at which the number of children attending school will obviously be highest.

511. The table does not cover university enrolment, in which the decline is much more pronounced. 16/ In 1977, Eugenio Velasco Letelier, in a report prepared for the School of Law, University of California, made the following statement on the basis of data obtained from the Statistical Section of the Office of the Superintendent of Education:

"In the universities the picture is even more tragic: the actual number of students and the number of vacancies in first-year courses have been declining by about 26.8 per cent a year. What is even worse is that the number of places available for new students fell sharply from 70 per cent to 34.7 per cent in 1976, although, for the first time in 10 years, there were far fewer applications for entry".

512. On 24 April 1978, El Mercurio stated, with respect to the education system as a whole, that "enrolment figures in the last few years have dropped by about 5 per cent".

513. The decrease in the number of children who have access to primary education is all the more serious because of the importance of this period in their lives for their mental development.

514. Enrolment at the secondary-school level has maintained a fairly normal rate of development. The pupils concerned come from the middle-income population groups, who are still able to afford an education for their children at this level as long as they do not have to pay for it. However, of children who have received a primary education - and these include children from the lower-income groups - less than a quarter go on to attend secondary school.

515. The ODEPLAN report 17/ attributes the decline in primary school enrolment to the decrease in the number of children between 5 and 6 years of age as a result of the implementation of birth control programmes.

516. Nevertheless, apart from the decline in the number of children attending school, there are various other problems which are no less serious, such as the high drop-out rate. In an article entitled "Juventud acorralada" ("Youth Penned Up"), dealing with the situation of young people in Chile, the review Ercilla says:

"The mental health of our children and adolescents is conditioned by their economic and socio-cultural surroundings. Nearly one half of all young people suffer from various types of psychic abnormalities which prevent them from continuing their studies beyond the third or fourth year of primary school. According to the Office of the Superintendent of Education, the drop-out rate in Chile is 53 per cent in the primary schools alone. This means that more than one half of the Chilean children who start school leave before reaching the eighth grade." 18/

16/ Reproduced in annex LXII is a table concerning enrolment, based on statistics of the Office of the Superintendent of Education. This table covers university enrolment.

17/ ODEPLAN, Informe Social, second half of 1977, p. 55.

18/ Ercilla, 13 May 1978.

517. The 5 per cent decline in enrolment in recent years in Chile referred to in El Mercurio acquires added importance in the light of the fact that a great many children repeat classes, a circumstance which should have the effect of increasing the number of those attending primary schools. According to the same newspaper:

"In recent years, about 30,000 children are repeating primary classes. This fact is of special importance in the light of what it costs the country in additional expenditure." 19/

518. The Rector of the University of Chile, in his speech at the beginning of the academic year, made the following observation:

"Although statistics show that over 90 per cent of the general school population goes through primary school, for many reasons a considerable number of pupils abandon their studies after a few years; many repeat classes without making progress and go out into the world with an educational standard which can hardly be described as literate. Dropping out is so widespread that, according to current figures on the number of children graduating from primary schools, only about 58 per cent of those enrolled reach the eighth grade."

519. A witness told the Group that education in Chile was technocratic because it subordinated the all-round development of the individual to the requirements of private enterprises which had a direct say in the administration of education and in the type of education offered. She further said that an élitist criterion was applied to mental ability, which meant discrimination against the majority of schoolchildren who dropped out for social and economic reasons.

520. It would seem that access to education is directly related to the cost of tuition and the proportion of family income available to pay for it.

521. A study carried out by two investigators, who, over a seven-year period, followed the development of 2,000 Chilean pupils, reached the following conclusion:

"The most decisive factors which determine whether children continue their education beyond the eighth year of primary education are the marks obtained in that year, the average socio-economic level of the school (when it is high it is more likely that education will continue) and the socio-economic level of the pupil's family." 20/

B. Intellectual and academic freedom in the educational system

522. In previous reports, the Group has referred to:

(a) The dismissal of large numbers of teachers (A/31/253, paras. 253-256; E/CN.4/1221; A/32/227, para. 212), the expulsion of students (A/10285, para. 235) and the persecution of members of the teaching staff (E/CN.4/1188, paras. 193-194; E/CN.4/1221, para. 251);

19/ El Mercurio, 21 March 1978.

20/ El Mercurio, 28 February 1978.

- (b) Military control over the educational system (A/10285, para. 235), which means that universities are headed by military personnel who appoint the deans and even the leaders of student organizations (A/31/253, para. 459);
- (c) The abolition of courses and research programmes (E/CN.4/1221, paras. 247-248) and the lack of academic freedom that is reflected in the control exercised over the opinions expressed by teachers and students and in the selection and elimination of textbooks (A/10285, para. 235; A/31/253, paras. 449-452; A/32/227, paras. 211 and 213).

523. The Group heard testimony concerning intellectual and academic freedom in education. One of the witnesses who spoke on this topic said that the university's function was to transmit culture and serve as a centre of social debate, but the conditions for the exercise of that function no longer existed in the University of Chile, where the freedom of knowledge, tolerance, mutual respect and autonomy necessary for open intellectual debate and free research were lacking. The adoption of decisions was a strictly vertical process; the rectors were appointed by the Government and they in turn appointed the deans. There was no free access to teaching posts, because teachers were no longer appointed by competitive examination; they were appointed by the deans with the approval of the rectors. As a rule, persons who were known to have differing views had no chance of being appointed, although the situation varied from one university to another and within the various faculties of each university. In the large universities, control was practically impossible and some deans had appointed persons who were absolutely opposed to the régime, with no objection from the rectors. It was likely that information was sometimes requested about candidates and that the rectors took account of that information from the intelligence services when they made the appointments. There was no proof of that, but experience of what had happened in the appointment of teachers showed that it was likely.

524. The witness also said that the supervision of teachers and the vertical organization of the University did not allow the latter to fulfil its basic role and to act as a centre of debate. That was a form of cultural censorship, and it was made more effective by encouraging self-censorship. In general, the professors did not propose controversial research topics and subjects of that kind proposed by students were not accepted. The general impression was that research was a waste of time, and that the main concern was not scientific and cultural progress but the training of professionals for the labour market, which was, however, very tight because of the high rate of unemployment caused by the application of the Government's rigid economic model.

525. The witness also told the Group that the censorship imposed on the University seriously affected the training of young people, who were being taught an extremely one-sided approach that served only to confirm the ideas transmitted by the media.

526. She further stated that the interference experienced by the University prevented young people from expressing their concerns, exercising their right of association and engaging in cultural activities, whether at the University or outside. In 1978 there had been cases of requests for expulsion which had been unsuccessful because of intercession by the Church and by the students, who were trying to defend their rights. The organizations which had made Chile a country with very active young people aware of national problems had disappeared. The only organizations that still existed were those set up by the Government, with leaders appointed by the university authorities, and they do not serve the students'

interests. There could be no disagreement in class and the teachers did not go beyond the curricula approved by the Rector. The University had lost talented teachers and the curricula had to be suited to the Government's policies. Cultural activities also had to be based on the Government model and, if they were not, they were forbidden and the persons who engaged in them were intimidated. Twenty days previously, a human rights group had been established in the Department of Sociology and the Director had called in the members and told them that he knew about the group, which was not suited to the university environment. Channel 9, which belonged to the University of Chile, had become a commercial enterprise which afforded no opportunity for university cultural activities.

527. The various aspects of the university and academic situation referred to in the above testimony have been confirmed by other sources.

528. The universities are still governed by representatives of the armed forces, whose authority is felt at all levels. University affairs are regulated by means of military circulars, like the one of 12 August 1974, issued for educational establishments in Greater Santiago, a copy of which was handed to the Group. This circular states, inter alia:

"E. Problems that have to be dealt with by the Heads of Colleges and/or Schools through the Military Institutes chain of command:

Verified complaints that teachers, assistants or their administrative staff engage in any of the following during their classes or in the course of their activities:

Comments on politics;

Spreading malicious rumours about the activities of the Government or extremist groups;

Spreading jokes or tales about the activities of the Junta or its members."

529. Students are not represented at the university decision-making level. On the other hand, there are some student organizations whose leaders try to maintain an appearance of student participation, but their activities are shaped to conform to the principle of authority and the doctrine of "national security".

530. El Mercurio, of 10 March 1978, gave the following report of a statement by one of these leaders at the University of Concepción:

"He said that the leaders of FEUC [Concepción Students' Federation] would shortly submit to the authorities a number of specific proposals concerning the new institutional structure of universities. 'They relate basically to three aspects of this structure' he said; 'The first is aimed at ensuring greater participation by the student body in the process of selecting its leaders because, although we believe that the best proof of the authenticity of such leaders is to be found in what they do rather than where they are from, a selection process in which the student body participates more directly would unquestionably help to ensure more representative leadership. In this connexion, we rule out a return to mass elections, which

inevitably become politicized, and will propose alternative methods of electoral selection in stages based on procedures suited to the structure and purposes of a university student organization'."

531. A few days later, the term of office of the student leaders at the University of Chile was extended by order of its Vice-Rector. 21/

532. In an article published in Chile-America, Eugenio Velasco Letelier recalls the ideas of one of the members of the Junta concerning university autonomy and academic freedom. In that connexion, he quotes from a lecture given by General César Mendoza, the Chief of the Chilean Police and a member of the Governing Junta, to the entire student body of the Law School of the Catholic University, which was published in El Mercurio on 13 June 1977.

"Government-appointed rectors were designated simply in order to prevent the recurrence of situations and conduct which cannot again be tolerated until such time as the universities revert to their true values and reassume their legitimate rights, without outside politicization which blocks the normal channel for the development of their academic activities.' Referring to the question of university autonomy, he said that the Government considers that 'each university must be worthy of its own autonomy' which must not be used 'to protect offenders and leave unpunished the offences they commit', still less 'to nurture in their halls veritable professional demagogues aiming at the internal subversion of the country. The present Government will treat this autonomy with the greatest respect so long as the universities do not deviate in any way from the performance of their specific functions'.

"What General Mendoza did not explain was the kind of autonomy he was talking about, since each and every university has been assigned a Government-appointed rector who acts 'on behalf of the Junta' and upon whom unlimited powers have been conferred.

The result of the 'purge' which is still being carried out by means of budgetary pressures is the almost total extinction of teaching and research activities in the Chilean universities.

Many chairs have remained permanently unfilled for want of specialists, but most of them have been assigned - on a completely non-competitive basis - to young graduates, without any training or experience, whose sole academic merit appears to be their unquestioning submission to the desires of the dictatorship." 22/

21/ El Mercurio, 16 March 1978.

22/ Eugenio Velasco Letelier, "La educación chilena bajo el Gobierno de los militares" ("Chilean Education under the Military Government"), Chile-America, Nos. 35 and 26, September/October 1977.

533. These conditions are contributing to the growing exodus of professional persons, intellectuals and scientists which is being scrutinized and commented upon in Chile. Another contributing factor is the lack of incentive and of prospects for professional development. In her article entitled "Nuevos profesionales...¿Antesala de la fuga?" ("Newly Qualified Professionals. Prelude to Flight?"), Ana María Foxley states:

"... 150 doctors are leaving each year according to the registers of the College of Physicians. At an approximate per capita cost of \$30,000 invested in their training, \$50 million could easily be lost in 10 years.

"...

"A brain drain is also taking place in engineering. Of the 11,000 engineers registered with the College of Engineers, about 1,200 are leaving each year.

"...

"Agronomists are leaving too, for they find greener pastures in Brazil or in the international organizations. CORA, Indap, SAG, and the other agricultural services are no longer employing them in Chile, and all this is on account of the reorganization that is taking place which, in the final analysis, implies a reduction in staff. To date, some 350 of Chile's 3,500 agronomists have gone abroad." 23/

534. The Government itself had expressed alarm at the situation. In opening the academic year, the Rector of the University of Chile, General Augusto Toro Dávila, said:

"We should provide an incentive to return to the University for all the scientists who emigrated to other countries in search of better working conditions and higher salaries." 24/

535. The shortage of university teachers and scientists also affects other levels of education through the lack of economic incentives or social and intellectual motivation:

"A definite lack of interest has been shown by newly-trained teachers straight from the University in employment in rural areas. This is due to the absence of incentives such as housing and higher salaries as well as of opportunities for further training; all these matters are being looked into." 25/

23/ Hoy, 29 March-6 April 1978.

24/ El Mercurio, 15 April 1978.

25/ El Mercurio, 24 April 1978.

536. One witness told the Group that, during the 30 years preceding September 1973, there had been genuine concern for the education of the people in general. The people had also taken an interest in education, and as soon as a new community was formed - for instance, when villages were established on new land - groups immediately sprang up to found a centre for social activities where some kind of education was given if there was not yet a school in the vicinity. The widely felt concern over education had brought about permanent progress. In the rural areas, the situation had always been difficult, with schools few and far between, high illiteracy rates, lack of access to education by indigenous communities and a low level of culture among rural women. Nevertheless, there had always been a school system. Since 1973, however, according to the same witness, the rural population has had no incentive to promote the development of education, because of the difficult economic situation in the rural sector.

537. The salaries of teachers are very low. By way of example, we reproduce part of an article which appeared on this subject in El Mercurio of 1 March 1978:

"A guidance counsellor, with more than 24 years of service, an increase of 90 per cent every three years, university graduate, grade 17, has a base salary of 4,778.52 pesos. As his triennial special post allowance amounts to 4,300.67 pesos, his total taxable income is therefore 9,079.19 pesos. His actual salary, including travel and cost-of-living allowances and other benefits, amounts to 9,217.47 pesos, and as his total legal deductions amount to 1,943.60, he has a net income of 7,273.87 pesos.

"A teacher of plastic arts, with 36 teaching hours, an increment of 70 per cent every three years and more than 18 years of service, has a base salary of 3,868.20 pesos; assuming he has dependents and triennial increments, his take-home pay is 3,563.13 pesos.

"A teacher of physics, with 12 teaching hours, an increment of 30 per cent every three years, having more than 6 years' service, receives a base salary of 1,289.40 pesos; with three-yearly increments of 386.82 pesos, he has a taxable income of 1,676.22 pesos, and his legal deductions of 357.79 pesos leave him with a take-home pay of 1,465.71 pesos."

538. A witness informed the Group that the minimum salary of a primary school teacher is 1,400 pesos.

539. In order to calculate the real value of these salaries, they should be compared with the price of a pair of children's shoes (between 220 and 490 pesos), a pair of boy's trousers (between 495 and 519 pesos) and a 100-page school notebook (between 14 and 15 pesos). 26/

540. The document mentioned in paragraph 498 above states the following with regard to the content of the educational programmes:

"A rigid curriculum at all levels, lacking any form of organization such as differentiated programmes or programme units based on specific topics; prohibited texts and sources of information; programmes from which controversial matter has been removed, especially in the social sciences, which have been condemned as being used for the 'unrestricted introduction of ideology'." 27/

"A series of activities which are mandatory for children and adolescents and which are designed to extol purely military values and symbols, based on martial stories from the national past, and including the holding of anniversaries, weekly civic events, parades and receptions, all conducted with great pomp and military ritual." 28/

"A special system for the political education of young people and the training of leaders, consisting of such bodies as the National Secretariat of Young Persons, the Diego Portales Institute and the Youth Movement for National Unity, which foster both active participation and submissive obedience." 29/

27/ "Revisión de los programas de Ciencias Sociales" ("Revision of the Social Sciences Programmes"), El Mercurio, 2 May 1978 (cited in the document).

28/ Supreme Decree No. 29, Diario Oficial of 22 February 1975. It updates and revises provisions on the exaltation of patriotic values. El Mercurio, 18 March 1978, permanent calendar of anniversaries. (Cited in the document.)

29/ "Ciento treinta jóvenes asistieron al Seminario Nacional sobre Nacionalismo" ("One Hundred and Thirty Young Persons Attended the National Seminar on Nationalism"), El Mercurio, 21 April 1976 (cited in the document).

IX. FREEDOM OF ASSOCIATION AND RIGHT OF ASSEMBLY

541. During its visit to Chile, the Group was informed that political parties are still prohibited or declared to be "in abeyance" and that many other types of associations, particularly student associations, are also prohibited and their property has been either frozen or confiscated. The ban on genuine university student organizations still exists, but the official student organization has been maintained, its representatives being nominated by the Government-appointed rectors themselves. Circular No. 63 of November 1976, issued by the university authorities, remains in force; among other things, it prohibits meetings by students without the express permission of the dean of the faculty or head of the academic unit in question or of the person replacing him (officials who have not been duly elected but appointed by the Government), and specifies that any student who contravenes any of these prohibitions will be severely punished (see chap. VIII).

542. In statements made before the Group, it was affirmed that only trade unions which support the Government's policies are allowed to be formed or to operate under relatively normal conditions, and that other trade unions do so under constant surveillance and the threat of Government reprisals. Chapter X, sections C and D, contain information on the various restrictions imposed on trade union organizations.

543. The Group was also informed that restrictions had been placed on the normal activities of professional associations, such as teachers' and lawyers' associations; for example, the election of members of the Board of Directors of the Santiago Bar Association was prohibited and the officers of the Association were appointed by the Government.

544. Working meetings held between peasant union leaders and peasants on the one hand, and social workers and experts on the other, have also been obstructed. Elsewhere in this report, reference is made to the recent detention of peasant trade unionists and officials of the Vicaría de la Solidaridad. (See the discussion of the Peñaflor case in chap. X, sect. C.)

545. According to information supplied to the Group, neither the meeting of workers to be attended by Government and church authorities and diplomats, nor the talks sponsored by church bodies, which had been arranged for 1 May, i.e. International Labour Day, could be held as planned, because peaceful celebrations by the workers had been broken up and a number of arrests made; those arrested included journalists who had been present in their official capacity. Permission to hold these events had been refused, because it had been decided that an official celebration would be held only at Government headquarters. ^{1/}

546. Freedom of association and the right of assembly have not yet been restored. They are operative only in cases where the Government so decides.

^{1/} El Mercurio, 9 May 1978.

The Chuquicamata conflict

547. In August 1978 a labour situation arose which reveals important aspects of the de jure and de facto limitation and restriction of the rights of association and peaceful and unarmed assembly. It involved wage claims made by the CODELCO workers at Chuquicamata which turned into a labour conflict that led to a declaration of a state of siege. Strictly speaking, some aspects of the situation go beyond the rights of association and assembly, but a brief outline of the main issues, as reflected in the daily press in Santiago, has been considered necessary here because it helps to understand and illustrate the difficulties faced by the workers in exercising their trade union rights and in holding meetings to discuss matters of interest to them and to take decisions freely.

548. The central issue is the failure to meet wage claims that the workers have now been making for two years. On 7 August 1978, the workers submitted a memorandum which once again listed the areas in which they are seeking improvements, such as production bonuses, which have not been updated since 1972, higher wages, more favourable geographical assignment allowances, etc. 2/

549. Spokesmen for the workers point out that the claims are based on the deterioration in wages between 1974 and 1978. It is estimated that the cost of meeting these claims, which involve 28,000 copper workers, would be \$5 million per month. 3/

550. On 31 July 1978, realizing that there was no hope of their claims being met, workers decided on the "lunch-box campaign" which entailed not eating in the canteens at meal times as an expression of solidarity with those whose situation was desperate and in an effort to avoid everybody falling into the same situation. 4/

551. On 17 August the trade union leader Walter Avalos (professional workers' union) informed El Mercurio that only 26 workers had failed to take part in the lunch-box action. There are 286 canteens at the CODELCO complex in Chuquicamata. 5/

552. The Executive President of CODELCO said that the "lunch-box campaign" was "the workers' own affair" and emphasized that "there are no labour problems; everybody is turning up for work in the normal way and, recently, there has even been an increase in output". 6/

2/ El Mercurio, 16 August 1978. As an example, the housing allowance, which the enterprise grants to those it cannot supply with housing, is 157 pesos for married persons and 106 pesos for unmarried persons, but rents of 800 to 2,500 pesos are being paid in Calama. The housing shortage amounts to 2,632 dwellings.

3/ El Mercurio, 30 August 1978.

4/ El Mercurio, 13 August, 1 September and 2 September 1978.

5/ El Mercurio, 17 August 1978.

6/ El Mercurio, 10 August 1978.

553. The enterprise reacted by exerting pressure in various ways. For example:

(a) It summoned the union leaders to reprimand them severely and to warn them that, if the rank and file maintained their attitude, drastic measures would be taken. 7/

(b) Later on it dismissed six workers 8/ without warning, on the pretext that they had shown disrespect to members of the Government and senior officials of the enterprise at the general assembly held on 8 August. 9/ The reason for their dismissal was given out to be "the operational needs of the enterprise", as provided for in article 2, No. 10, of Law No. 16,455, but neither the persons concerned nor the Labour Inspectorate were notified sufficiently in advance as required by the Law. 10/

554. However, CODELCO declared in a communiqué that it was not prepared to bow to pressure or accept lack of discipline which delayed the economic and social recovery of Chile. 11/

555. The Minister of Labour, on his return from a visit to Chuquicamata, communicated the concern of the workers and their leaders to the Government. The leaders were summoned to Santiago for a hearing, and it was agreed between the authorities, the management of the enterprise and the union leaders that a solution could be found provided that the workers ended their "lunch-box campaign". The enterprise would then reinstate the workers who had been dismissed. 12/

556. As the union leaders stated that they had to consult the rank and file, they requested permission to hold a general assembly of members. Permission was granted in Santiago in the first instance, but the assembly was then prohibited by the Governor of El Loa, who was not in favour of the proposal. 13/

7/ El Mercurio, 13 August and 2 September 1978.

8/ The persons dismissed were Fernando Díaz Díaz, Mario José Meyer Maturana, Humberto Rivera Araya, Juan Morales Araya, Rosalino Ahumada Herrera and Juan Vázquez Rojas. The first four spoke at the meeting but the other two did not (El Mercurio, 17 August 1978).

9/ The worker Meyer Maturana stated that, at the meeting on 8 August, he had said: "I know, Mr. Pinochet, that this assembly is being recorded, and it is for this reason that I am asking you to resolve the problems of the workers in Chuquicamata" (El Mercurio, 17 August 1978). It should be noted that Meyer had been reinstated at Chuquicamata on 20 September 1973 under an order signed by the Governing Junta, after having been dismissed by the agents of the former Government (El Mercurio, 17 August 1978).

10/ El Mercurio, 17 August 1978.

11/ Ibid.

12/ El Mercurio, 10 and 17 August and 2 September 1978.

13/ El Mercurio, 27 and 28 August 1978.

557. The Governor of El Loa eventually authorized the assembly "on the instructions of the Ministry of the Interior" the very day on which it was scheduled to be held - 25 August 1978. 14/

558. In these circumstances and because of the confusion created among the workers, who no longer knew what to expect, the union leaders decided not to hold the assembly. 15/

559. On 29 August 1978 it was announced that the hearings in the case of the dismissed workers had been postponed since "there is a chance of arriving at an agreement, which is being discussed at this moment". 16/

560. Also on 29 August, a joint statement was issued announcing that the reinstatement of the six workers who had been dismissed had been agreed upon between representatives of the enterprise and union leaders. It was stated that the enterprise "has decided not to give effect to the dismissal of the six workers and to allow them to resume their normal duties within the next 48 hours". The leaders of the professional and industrial unions and the President of the Chuquicamata Branch undertook to ensure that "within a period of 48 hours all workers will once again use the canteens at mealtimes and will do their work in a completely normal fashion". 17/

561. Later on, an assembly was held at which the union leaders were: (1) instructed not to compromise with the enterprise on the six workers who had been dismissed, and (2) authorized to take other action in support of the wage claims presented. 18/

562. The leaders later explained, in connexion with the first point, that "the workers refused to accept this agreement as a binding instrument because they had no confidence in the results; indeed although we have been drawing exactly the same facts to the enterprise's attention for two years, it was not until the pressure of the recent 'lunch-box campaign' made itself felt that talks were begun". 19/

563. The second point meant that the persons attending the assembly undertook to work during the half-hour allowed them for meals in order to demonstrate their support for their leaders. 20/

14/ El Mercurio, 28 August 1978.

15/ El Mercurio, 27 and 28 August 1978.

16/ El Mercurio, 29 August 1978.

17/ El Mercurio, 30 August and 1 September 1978.

18/ El Mercurio, 31 August and 2 September 1978.

19/ El Mercurio, 2 September 1978.

20/ Ibid.

564. It was later reported in El Mercurio of 1 September 1978 that CODELCO had failed to take any action on the reinstatement of the six workers dismissed on 9 August, and that the decision of the workers to reject the pledge obtained by their leaders in this connexion in return for ending the "lunch-box campaign" took the dispute back to where it had been before. The workers had decided to reject this pledge and to allow the enterprise up to 8 September to consider their claims. 21/

565. It was announced in the same issue of El Mercurio that the Government had received "information about arrangements made by the Communist Party to distribute throughout the mine the day before yesterday a public statement of a page and a half describing the dispute as 'a new phase in the struggle of the people against the dictatorship which was trying to starve them into submission'". 22/

566. On 2 September it was announced that 13 persons, including employees of CODELCO, had been arrested and accused of membership in or connexions with the outlawed Communist Party which, it was said, had taken advantage of the mine dispute for its own political ends. 23/

567. On 1 September, the Government ordered the proclamation of a state of siege in the degree of civil commotion in the province of El Loa. 24/

21/ El Mercurio, 1 September 1978.

22/ Ibid.

23/ El Mercurio, 2 September 1978.

24/ El Mercurio, 1 and 2 September 1978.

X. ECONOMIC AND SOCIAL RIGHTS

A. The problem of unemployment

1. Preliminary remarks

568. The unemployment in Chile and its repercussions have been discussed in earlier reports of the Group which, in considering this question, has invariably made due allowance for the fact that the international situation is particularly difficult and that economic development in Chile has suffered considerably from the increase in world copper production and the consequent drop in the price of copper. It has also been borne in mind that Chile is a developing country.

569. During the Group's visit to Chile, it was informed that unemployment, which, with all its economic and social consequences, has plagued the Chilean economy ever since 1973, continues to be a serious problem.

2. Different aspects of the situation

570. The unemployment figures for 1972 and 1973, as reported in a publication based on data supplied by the University of Chile, were 3.8 per cent and 3.6 per cent respectively, while between December 1973 and June 1977, they fluctuated between 7 per cent and 13 per cent, reaching a high point of 19.8 per cent in March 1976.^{1/}

571. The fluctuations in unemployment in Greater Santiago during the last few quarters can be gathered from the following figures for those periods:^{2/}

July-September 1977	13.2 per cent
October-December 1977	11.5 per cent
January-March 1978	13.5 per cent
April-June 1978	13.2 per cent

572. The Group was told that the statistics for Greater Santiago are representative of the situation in the country as a whole.^{3/}

^{1/} Giorgio Solimano and the American Public Health Association Task Force on Latin American Health Workers, "Health and human rights in Chile", document presented at the Congressional Conference on United States Foreign Policy towards Latin America (Southern Cone) with respect to Human Rights (part II), Washington D.C., 27 September 1977, p.7.

^{2/} El Mercurio, 4 May and 2 August 1978.

^{3/} This is confirmed by information published in the Santiago daily press. "The sample obtained relates to the total population of Santiago, and gives a figure for which the margin of error is approximately 2 per cent. Furthermore, Santiago is a relatively sound indicator of the situation in the rest of Chile, since the survey conducted in provincial urban areas gives higher unemployment rates than those in the capital, but unemployment in the rural areas is virtually non-existent" (El Mercurio, 23 July 1978).

573. A publication issued in March 1978 showed that, up to and including 1977, unemployment was most severe among the working classes.^{4/}

Unemployment by sector of activity in Greater Santiago
(Thousands of persons and percentages in December)

	1975		1976		1977	
	Total	%	Total	%	Total	%
Production of goods	92.1	52.1	68.9	52.4	75.5	55.6
Agriculture	3.8	2.1	2.5	1.9	2.4	1.8
Mining	0.7	0.4	0.5	0.4	1.8	1.3
Industry	54.1	30.6	43.7	33.2	45.7	33.7
Construction	33.5	19.0	22.2	16.9	25.6	18.8
Production of services	70.4	39.8	53.8	40.9	51.5	37.9
Trade	21.0	11.9	14.8	11.3	13.7	10.1
Government and financial	9.9	5.6	9.1	6.9	7.9	5.8
Personal and household	28.6	16.2	22.7	17.3	16.1	11.9
Communal and social	10.9	6.2	7.2	5.4	13.7	10.1
Transport, warehousing, communications and public utilities	12.0	7.2	8.6	6.6	8.7	6.4
Not specified	1.4	0.8	0.2	0.2	-	-
Total	176.6	100.0	131.6	100.0	135.8	100.0

Source: Department of Economics, University of Chile.

574. The special incidence of general unemployment in certain groups should also be noted. The information supplied to the Group during its visit to Chile shows that the agricultural workers outside Greater Santiago are among those hardest hit by unemployment because of the process of "regularization", under which all or part of the land previously expropriated has been returned to the persons who claim to be the former owners. In some agricultural communes, 30 per cent of the economically active labour force is unemployed, and the proportion is even higher among seasonal workers. There is also a high level of unemployment among the workers in the sector affected by the reform (the settlers), since nearly 50,000 of them, together with their families (about 350,000 persons in all), have been left without work as a result of being dispossessed of their land. Their plight has been made even worse by the fact that on being thrown out of work, they automatically lose their homes

^{4/} El Mercurio, Monthly economic report, March 1978.

as well and are forced to move away to neighbouring villages or towns where they lead a poverty-stricken and difficult life. There are no proper safeguards against unemployment in the rural areas. Concealed unemployment is said to exist among the seasonal workers, since the employer can obtain casual labour at cheaper rates by not paying any benefits and sometimes not even social insurance. It is also reported that the Minimum Employment Plan (PEM) is not effectively applied in the agricultural sector, and that in the few places in which the scheme is being applied (Malleco, Osorno), it has been carried out in a distorted way which is detrimental to the workers. Furthermore, the agreements entered into by the Agrarian Reform Corporation (CORA) to authorize the leasing of the plots of land allotted have benefited the owners of medium-sized holdings rather than the unemployed.

575. Written information submitted by a group of professionals to the Ad Hoc Working Group during its visit to Chile indicates that members of the Armed Forces and their families form a new category of workers. Hundreds of uniformed and retired military personnel do work appropriate to civilians, but keep their military rank and receive double pay. The military or former military men and their followers who now perform these duties are numbers by the thousand. In addition, a large number of military and paramilitary bodies and institutions have been set up recently for the same purpose.

576. The problem of unemployment has been rendered more acute by the drop in the real purchasing power of wages and the continuing inflation. As a result, young people and housewives who have never had to work before are now forced to look for a job. Thus, they swell the ranks of those entering the labour market for the first time, 5/ who accounted for 3.3 per cent of the labour force in March 1978 although they would normally have been no more than 1 per cent.

577. The information furnished to the Group during its visit to Chile included information on a number of cases in which people who needed to work were prevented from keeping their jobs or from finding new ones. Unjustified dismissals because of the political sympathies of the workers or because they ask for the legal terms of their contracts to be respected are a frequent occurrence.

578. During the Group's visit to Chile, it was informed by a group of professionals of the existence of what has been called the "national register" (listado nacional), which is a kind of official register formed by all the lists of persons who have been dismissed from their posts since September 1973. No one whose name appears on one of the lists can aspire to any kind of post in the public or private sector, since his application is channelled through a special body responsible for making inquiries about the applicant and answerable to the Ministry of the Interior. The Group was informed that the "national register" had originally included all members and supporters of the Unidad Popular Party. It had subsequently been expanded to include workers belonging to the Christian Democrat Party.

5/ "Los rezagados del Esquema", Economía y sociedad, Hoy, No. 42, 15-21 March 1978, p. 19.

3. Action aimed at coping with the situation

579. Owing to its magnitude and consequences, the employment crisis has elicited a response from the Government, from non-governmental bodies and from the groups and institutions affected by it. The nature of the problem and those affected has given rise to a variety of policies, services, projects and activities aimed at overcoming the problem in itself or at least alleviating its most immediate consequences.

580. In practice, these strategies and responses are worked out in various ways, depending on the situations and available resources.

(a) Government measures and policies

(i) Unemployment benefit

581. The unemployment benefit was established more than 20 years ago, and its distribution was entrusted to the social security institutions. The Director of ODEPLAN informed the Group during its visit to Chile that the unemployment benefit, which formerly covered only clerical workers, had been extended to manual workers. Since the benefit is calculated on the basis of the living wage which, at the present time, is less than one quarter of the minimum wage (in November 1977 it amounted to 604 pesos or 80 per cent of two living wages - less than half the minimum wage, which then stood at 1,412 pesos), it is far from being a genuine subsidy or a substitute for the person's previous livelihood. However, the benefit is in very many cases the only means of subsistence at a time when unemployment is tending to become increasingly lengthy and more widespread.^{6/}

(ii) Minimum Employment Plan (PEM)

582. At the beginning of 1975, the Government made funds available to municipalities to enable them to take on staff who would carry out public works (maintenance of parks and streets) or work as auxiliaries in public services (schools, day nurseries, hospitals) in exchange for a wage. Some private enterprises, particularly in the building trade, agreed to take on workers under this system. A PEM worker is required to work normal hours, receives a wage which was originally close to the minimum wage but was not readjusted later, has no social security benefits and is entitled to receive a regular quantity of food, although this requirement has not, in practice, been met.

583. The Group was informed that, because of the gravity and persistence of the unemployment crisis, employment under PEM, which had originally been regarded as degrading, had come to be in great demand as a means of alleviating the situation. Nevertheless, for slightly more than a year now, the number of PEM workers has been declining, partly in consequence of the sharp fall in earnings and the non-renewal of contracts (each for a three-month period) in the case of women and young people.

^{6/} One United States dollar = 27.92 pesos, according to El Mercurio of 30 December 1977.

584. El Mercurio 7/ reports that there has been a falling-off in applications for employment under PEM, leaving a large number of unfilled vacancies in many municipalities.

585. It has already been seen that PEM is notable for the fact that its rates of pay are lower than the legal norm.^{8/} In addition, according to information provided to the Group, the scheme appears to be detrimental to the interests of workers in private companies in several respects: (a) there are cases in which PEM hires staff for private companies; (b) some employers dismiss their workers and re-hire them through PEM, which is financed in part by contributions from employers by virtue of agreements with the municipal authorities; (c) some companies in the private sector are indirectly benefiting from PEM as far as remuneration and benefits are concerned, due to the great needs of the workers: they offer rates of pay similar to or slightly higher than those paid by PEM, but still below the legal minima, and they do not pay the various benefits, which the workers also fail to receive under the PEM scheme.

586. During its visit to Chile, the Group was informed that, on account of their low pay and lack of benefits, these workers constituted a category which could be called "employed unemployed". Nevertheless, the Group is of the opinion that PEM could be an effective mechanism, provided that it guaranteed a rate of pay similar to the minimum wage, that it operated throughout the period of unemployment and that it included social security and the right to health services.

(iii) Allowance for the hiring of additional workers

587. Under Decree-Law No. 1,030 of 29 May 1975, the State grants to private companies an allowance equivalent to 50 per cent of the applicable minimum wage for each new worker they take on in addition to their existing staff. This allowance, which was originally deducted from taxes, is now paid directly (Decree-Law No. 1,806), and its period of validity has been extended to cover the whole of 1977. In June 1977, 42,083 workers were recorded as having been hired through this mechanism (36,133 manual workers and 5,950 clerical workers).

(iv) National Training and Employment Service

588. The National Employment Service (SENDE), which operated as an employment agency for the labour market, proved unable to cope with the situation. Decree-Law No. 1,446 of 8 May 1976 replaced it by the National Training and Employment Service (SENCE).

7/ El Mercurio, 23 July 1978.

8/ The Group was informed that 826 pesos per month does not constitute a salary as it is not even half the minimum wage. It must also be borne in mind that PEM workers do not receive the minimum economic benefits established by law. They have to work a full day instead of the statutory 19 hours per week. They are engaged for a period of only three months. They are entitled to medical care from the National Health Service for themselves and the members of their families and also to a certain food allowance. It has recently been reported that only 40 per cent of those taken on actually receive this benefit (El Mercurio, 23 July 1978).

589. As its name indicates, SENCE promotes and advises on training activities carried out by companies either directly or by hiring specialized bodies. For that purpose, companies can deduct from their profits 1 per cent of their annual wages and salaries bill.

590. According to the statistics of the SENCE Employment Department, 12,044 job applicants registered during the first half of 1977 with the various municipal employment offices in Greater Santiago. During the same period, the vacancies to be filled amounted to 4,215. Thus, only 34.7 per cent of those seeking work actually found it. Of the total of 12,044, 14.3 per cent were persons looking for work for the first time.

(v) Plan to promote employment and efficiency in social action

591. In order to solve the problem of unemployment the "Plan to promote employment and efficiency in social action" was made public on 19 April 1978. This plan is based on a series of measures intended to solve the unemployment problem. These measures include the following. The State would assume responsibility for the employers' social security contributions. The following measures would apply to personnel engaged after 19 April 1978: (1) they would not be able to retire before reaching the fixed retirement age; (2) the minimum wage would be adjusted in accordance with the consumer price index and there would be no obligation to pay it to persons aged under 23 or over 65 years; (3) the possibility of re-employment for a dismissed worker would be abolished and compensation - albeit reduced - would automatically be applied.^{9/} This plan has been rejected by the representatives of many trade-union organizations on the grounds that it jeopardizes the interests of the workers.^{10/} These organizations include the "Group of Ten", the Federation of Workers in Commerce and Industry, the Confederation of Metallurgical Workers and several trade unions at the national level (copper, State employees, post office).^{11/} In addition, the Permanent Committee of the Episcopal Conference of Chile has stated, in this connexion:

"... we are surprised that the organizations affected were not consulted during the formulation of this plan and that it has been the subject of only technical discussion ...".^{12/}

592. The Director of ODEPLAN informed the Group during its visit to Chile that the purpose of the programme proposed in April 1978 was to achieve a high rate of growth so as to put an end to extreme poverty.

^{9/} Solidaridad, No. 43, second fortnight, May 1978.

^{10/} El Mercurio, 22 April 1978.

^{11/} El Mercurio, 22 April and 5 May 1978; Chili information (Neuchâtel, Switzerland), Bulletin No. 6, May 1978.

^{12/} Solidaridad, No. 43, quoted above.

(b) Action by non-governmental organizations, especially the Christian churches

593. These organizations have contributed or organized human resources and have channelled financial resources, including the substantial funds coming from abroad. Their activities include:

(i) Support to subsistence workshops and worker-managed enterprises

594. Assistance is given in creating new sources of employment and maintaining those already existing. This is exemplified by the subsistence workshops, 29 of which, employing 177 workers, were operating in 1978 with the support of the Economic Solidarity Fund. Financial support has been given to workers so as to enable them to purchase some of the enterprises which were being auctioned off by the State because of their bad financial situation and to convert them into worker-managed enterprises. Both the craft workshops and the worker-managed enterprises endeavoured to ensure that assistance given in solidarity with the people of Chile was directed to a self-sustaining form of assistance.

(ii) Assistance to people's meal centres and health clinics, and legal aid

595. The organizations co-operate with the people's meal centres, which have fed more than 30,000 children, health clinics, which have treated over 100,000 people, mainly in Santiago, and legal bureaux and advisory services which have helped thousands of persons to defend their rights and entitlements. During its visit to Chile, the Group visited a meal centre in a shantytown at lunchtime, and a health clinic. At the meal centre, the Group was informed that many of the persons present were eating their only food of the day. At the clinic, the Group was supplied with facts and figures derived from surveys that had been conducted ^{13/} and informed that, in health matters, the clinic was not intended to replace the National Health Service. While it attended to emergency cases, its basic purpose was to assist the persons who came there to obtain the health services to which they were entitled.

(c) Reactions of the persons actually affected by unemployment

596. The persons affected by unemployment have taken steps to avoid unemployment or to mitigate its consequences. Their action has taken the following forms:

(i) The search for work which, in view of the growing difficulty in finding employment, passes progressively from looking for work of the same kind to accepting any type of work, including odd jobs (pololos), and ends in discouragement and abandonment of the search. It was stated that some employers encouraged or used casual labour because in that way they avoided having to pay the minimum wage and social security contributions, thus reducing the desirability of this kind of labour.

^{13/} These surveys cover nutrition and health questions, and problems connected with school attendance. See the relevant data under "nutrition" in section F.6 below and "Education" in chapter VIII.

(ii) Incorporation of members of the family into the labour force, 14/ particularly wives who have to seek employment in domestic service, PEM, "taking in washing" and street trading, thus lowering the wages for domestic services and laundry work. A large number of children and adolescents have become active in street and market trading and in "running errands". This state of affairs has an unfavourable impact on the family unit.

(iii) Recourse to unemployment benefit or to PEM, although both provide incomes very much lower than the minimum family income. The need to resort to PEM has threatened to diminish its possible effectiveness.

(iv) Reduction of expenditure and sale of possessions, which is typical of situations of extreme poverty: a poor diet and inadequate and worn-out clothing; inability to use public transport or buy consumer goods and forced sale of possessions. In this connexion, it is worth quoting the following statement by unemployed persons, one of the many reproduced in a document submitted to the Group during its visit to Chile:

"First the expensive items were sold (television, refrigerator, heater, gas cooker, etc.), then they got down to selling furniture, clothing and even blankets

...

"Their meals generally consist of soup and on many occasions only of tea and bread. They have gradually been selling off their possessions, which at the moment are reduced to two beds, a paraffin cooker (on loan), a table and two home-made wooden stools".

(v) Family and neighbourhood solidarity, a very important factor which springs from the traditional solidarity of the Chilean people but which has declined as unemployment itself has become widespread;

(vi) Emigration, whether solely on the grounds of the economic crisis or for political reasons as well, has been very marked and although the phenomenon is widely acknowledged, it has not been scientifically quantified. It produces negative effects, particularly the loss of skilled technical and professional workers.

(d) Activities of people's organizations

597. The unemployed workers' centres are to be found in the shantytowns where, as the unemployment problem grows, the centres are set up to claim the right to work and to mitigate the problems of redundancy in association with working-class organizations (trade unions, federations and confederations).

14/ Mothers' Centres have been established at which women receive remuneration for sewing or other activities practised in the Centres. In this connexion, see the section relating to the problem of nutrition (sect. F.6 below).

(i) Subsistence workshops

598. There are 136 subsistence workshops operated by the 56 unemployed workers' centres in Santiago. During its visit to Chile, the Group had the opportunity of visiting some of these workshops and centres, and was informed that the sectors in which they were mainly engaged were food, textiles and clothing, leather and footwear, electrical work and plumbing, building and repairs, handicrafts and sackmaking. The Group was told that the marketing of the products had been the major obstacle to the development of the workshops; for this purpose, the unemployed workers' centres had provided financial assistance amounting to \$US 26,000 between July and December 1976, for example.

(ii) Unemployed workers' centres

599. In quantitative terms, the unemployed workers' centres constitute a limited response to the problem of redundancy.^{15/} Some specific data are available about the centres in one labour sector, which may nevertheless be taken as representative. In that sector, there are 13 centres with a total of 301 redundant workers (i.e. an average of 23 persons per centre). Of the total number of redundant workers, 85.4 per cent have been unemployed for periods ranging between one and four years, and 86.9 per cent have belonged to a centre for periods of between one month and two years.^{16/}

^{15/} The Group visited a centre and leather, footwear and textile workshops in a shantytown. A brief visit was also paid to a sack-making workshop.

^{16/} In 1976, the only year for which figures are available, 2,240 redundant workers, representing under 1 per cent of the total number of unemployed, were registered with the centres.

B. Recent labour legislation: Decree-Law No.2,200
of 15 June 1978

1. Introduction

600. It must be stated at the outset that this part makes no claim whatsoever to be a complete study of the text of Decree-Law No.2,200. It does not deal with all its provisions, nor does it go into any of them in detail. All that it proposes to do is to note the promulgation, implementation and operation of this Decree-Law in so far as it refers to human rights, and to refer to certain concepts put forward by the Government and by labour representatives in respect of a few articles on which a difference of opinion has arisen in the short time which has elapsed since this new legal instrument came into being, according to the present understanding of the Ad Hoc Working Group. 17/

601. Decree-Law No.2,200 entered into force on 15 June 1978, the date of its publication in the Diario Oficial. It contains provisions relating to labour contracts and the protection of workers, which matters were previously regulated in Books I and II of the Labour Code. 18/

602. Decree-Law No.2,200 lays down in general that "labour relations between employers and workers shall be governed by the present Decree and by the Labour Code and its residual legislation (art.1, para.1). Its provisions likewise apply in residual form and in those aspects or matters which are not regulated in the laws of the respective bodies, to the relations of workers with the tax authorities, municipalities and enterprises, entities or institutions whose officials and workers are subject by law to a special statute and to persons whose activities are governed by special laws, as also to workers in State enterprises with an autonomous or independent administration (art.1, paras.2 and 3).

603. Pursuant to transitional article 4, "the duration and termination of work contracts concluded prior to the date on which this Decree enters into force shall be subject to the rules established in Act No.16,455 and its amendments; without prejudice to the provisions of transitional article 7 where applicable".

604. It must be stated, furthermore, that transitional article 7 of Decree-Law No.2,200 establishes that no enterprise may bring its activities to a

17/ This subject has not been dealt with in any of the Group's earlier reports.

18/ Pursuant to articles 166 and 167 of Decree-Law No.2,200, any rule which is contrary or incompatible with its provisions and "in particular, Books I and II of the Labour Code and articles 405-409 and 664 of the same" shall be repealed. The other provisions of the Labour Code, as also those of Act No.7,295 and its amendments which were in force on the date of entry into force of the said Decree-Law (15 June 1978) shall apply to workers without distinction of any kind, whether the legal text refers to non-manual or to manual workers.

standstill or dismiss more than a certain number of workers (to be determined on the basis of their number) within one and the same calendar month without prior authorization from the Ministry of Labour and Social Security and the Ministry of Economics, Development and Reconstruction.

605. Consequently, to determine the situation of a worker vis-à-vis the rules governing the termination of his contract, account must be taken, first, of whether the termination of the contract is individual or collective; and then, in the event of its being individual, of whether the worker took up his employment prior to 15 June 1978 or after that date.

606. The individual termination of a contract is governed by a dual statute, established by Act No.16,455 in the case of services rendered prior to the date indicated, and by Decree-Law No.2,200 in the case of services rendered after that date.

607. The collective termination of a contract is governed by a single statute, established by Decree-Law No.2,200.

608. The Government reports that in virtue of the new regulation of work contracts and the regulations governing the protection of workers:

(a) A single legal régime is established for all workers, no distinction being made between manual and non-manual workers. There is now only one legal statute which establishes the rights and obligations of all workers in the country, without any distinction. This equality has in no way limited the rights of the different sectors of workers, but on the contrary, has served to unite all individual rights in the interests of their general application;

(b) Patently unjust situations are remedied for workers who perform services in enterprises which are excepted from the Sunday rest-day, and who only enjoy one rest-day for every two weeks actually worked. It has now been established that in future these workers shall enjoy one rest-day for every Sunday or holiday actually worked;

(c) An attempt has been made to rationalize, simplify, adapt and modernize labour regulations, by deleting provisions or precepts which have become obsolete, and by standardizing requirements and conditions for the enjoyment of the same rights, with a view to making better use of the country's labour resources.

609. The Government has submitted documentation (see annexes LXIII to LXVI) explaining its attitude towards the main provisions of the new Decree-Law No.2,200 and towards the differences between the present and the former labour legislation in the areas in question. This documentation has been carefully considered by the Group.

610. During its visit to Chile, the Group received information giving the views of labour leaders on a few provisions of Decree-Law No.2,200 which are also reflected in the body of the report.

611. The Group has carefully analysed all the information received and it now puts forward the observations it deems pertinent on the provisions whose effects were described differently by the various informants.

2. Observations on the effects of some provisions of Decree-Law No.2,200

(a) Effects on the rights acquired by specific categories of workers

612. Certain rights acquired by specific categories of workers are curtailed. This applies to workers in shops and offices, agricultural workers and home workers.

(i) Workers in shops and offices

613. Decree-Law No.2,200 lays down in article 34, paragraph 1, that "the duration of the ordinary working week shall not exceed 48 hours". Workers in shops and offices are not among those excluded from the foregoing provision (art.34, para.2). Furthermore, article 36 establishes the following provisions:

"The working day of workers in shops and offices may be extended to a maximum of 10 hours in the periods immediately preceding Christmas, national holidays or other festivals, provided permission is obtained from the appropriate public authority to extend working hours for the benefit of the public. In this case, any hours worked over and above the maximum indicated in article 34, paragraph 1, or the agreed ordinary working day, if shorter, shall be paid as overtime". 19/

614. Under these provisions, the normal hours of work of workers in shops and offices have been extended from 44 hours a week, under the previous legislation, to 48 hours a week.

(ii) Agricultural workers

615. Article 134 of Decree-Law No.2,200 stipulates that:

"The provisions of this paragraph shall apply to workers engaged in cultivating the soil and to all those who perform agricultural activities under the orders of an employer and who do not belong the agriculture-based commercial or industrial enterprises. The regulations shall specify which enterprises present such a character.

"The provisions of this paragraph shall not apply to workers employed on agricultural tasks but not directly engaged in cultivating the soil, e.g. managers, auditors, or in general, persons who perform administrative tasks.

"The provisions of this Decree shall not apply to lease, co-partner, share-cropper or other contracts under which persons exploit agricultural land for their own account and at their own risk.

19/ The scope of the provisions of the above-mentioned articles 34 and 36 is rounded off by the following provision: "Transitional article 5. Workers in shops and offices engaged prior to the date on which the present Decree enters into force shall comply with the general regulations governing hours of work established therein; but any time worked over and above the shorter working day previously established shall be remunerated proportionately at the ordinary rate of pay".

"Persons employed in sawmills and wood-working plant are not agricultural workers, except for those employed in mobile sawmills set up for temporary purposes in the immediate vicinity of the woods exploited.

"In case of doubt, the local labour inspector shall decide how a worker shall be classified. His decision may be appealed against to the Director of labour, but without the right of further appeal".

616. The Group was informed that this new concept has adverse consequences for some workers such as those employed in agriculture-based enterprises (poultry farms, pig farms, dairies, etc.) who wish to conclude an agricultural work contract, in that they and other agricultural workers may not join existing trade unions and those who are now members must withdraw, as in the case of co-partners, workers in the reformed sector (settlers and persons assigned land), smallholders or leaseholders and joint holders of land who do not usually employ outside labour.

617. Furthermore, the new concept annuls the content of Act No.16,625 concerning Agricultural Trade Union Membership and Rule 53 issued thereunder, both promulgated in 1967, which provided for a fairly broad concept of the agricultural worker, incorporating the idea of an agricultural worker which included manual, non-manual and independent workers (smallholders and leaseholders directly engaged in working the land themselves, and settlers).

618. Decree-Law No.2,200 likewise stipulates in respect of agricultural workers:

"Article 138. The remuneration of agricultural workers may not be less than the minimum wage, which shall include the value of perquisites.

"In no case may the agreed value of perquisites exceed 50 per cent of the cash remuneration.

"If the remuneration is partly in cash and partly in perquisites, any variations resulting from legal or contractual readjustments or from different evaluations of the perquisites shall apply separately to the cash and to the perquisites, without the variation in any one of these factors affecting the other, although any change in the percentage indicated in the foregoing paragraph shall be based thereon.

"For the purposes of this article, perquisites shall be understood to mean the fence, the plot of land, pastures, hygienic and adequate dwelling and other payments in kind which the employer undertakes to grant the workers.

"The Ministry of Labour and Social Security shall establish the value of the agricultural perquisites or the standards for their determination, according to the features of the respective zones of the country, and the application of this valuation shall be obligatory. If, however, the value assigned is not realistic, either of the parties may apply to the Labour Judge to determine the value, on the basis of a report by two persons appointed by the judge.

"Article 139. Contracts of permanent workers shall always include the obligation of the employer to provide the worker and his family with a hygienic and adequate dwelling, unless the worker occupies or can occupy a house in a place which is near enough and has sufficient means of transport to enable him to carry out his work."

619. The effects of these provisions are clear. Under legislation prior to 11 September 1973 an agricultural worker had to receive at least 75 per cent of his remuneration in cash. Decree-Law No.275 (1974) had already reduced this percentage to 50 per cent. Now with Decree-Law No.2,200 this new situation is definitively institutionalized. The agricultural entrepreneur, on the other hand, was obliged to provide the worker with a dwelling which was not evaluated for consideration as remuneration in kind. At present, this benefit is not obligatory and, if it is granted, it is considered an integral part of the proportion of the remuneration paid in kind.^{20/}

(iii) Home workers

620. Decree-Law No.2,200 includes, inter alia, the following provision concerning home workers:

"Article 141. The remuneration of these workers shall be freely agreed: and social security charges shall be payable by themselves, except where otherwise stipulated.

"The regulations on compensation in the event of termination of contract provided for in this decree shall not apply to these workers, unless expressly stipulated".

621. Under this provision, home workers in fact lose their full qualification as workers, since it establishes the basis for situations in which a rate of remuneration lower than the legal minimum can be paid and provides that, in the absence of an agreement to the contrary, such workers are not included in the social security system and have no right to compensation for years of service when their work comes to an end. During its visit to Chile in July of this year, the Ad Hoc Working Group was told that contracts for work at home are very prevalent in Chile, especially in the textile, clothing and dressmaking industries. Previously workers of this type, despite the special nature of their work, had the full status of all workers.

(b) Limitation of trade-union privilege and maternity rights

622. On the subject of workers' rights (trade union, maternity etc.), Decree-Law No.2,200 establishes the following provisions:

"Article 22. In the case of workers subject to trade-union law, the employer may not terminate the work contract without previous authorization of the tribunal, which may be given in the cases set forth in article 13 (b) and (c) and article 14 except for its final clause.

...

^{20/} When examining the situation of agricultural workers in its report to the Commission on Human Rights in 1979, the Group will reconsider this question (see sect. D below).

"Article 100; During the period of pregnancy and for one year after the expiry of maternity leave, the woman worker shall be subject to the provisions of article 22."

623. The Government explains:

"... In such cases the situation provided for in Act No.16,455 and the Labour Code is, generally speaking, maintained, so that the worker may not be dismissed without the authorization of the tribunal.

"An amendment has been introduced, however, establishing that the tribunal can only grant the authorization in certain specified cases, including the expiry of the term of the contract and the termination of the work or service that was the subject of the contract.

"This solution was thought to be logical whenever the termination was due to specific reasons not subject to the unilateral wish of the employer, and was anticipated by the parties to the contract at the time it was drawn up.

"Moreover, in the view of the legislator, this measure makes it easier for a woman worker to obtain a contract, for she is at a disadvantage because of the long period of privilege established by the law, which amounts to a probable minimum of two years.

"The law does not operate in the cases set forth in article 15, such as the invalidity of the contract, as in the previous legislation."

624. In this connexion, it has been said that, according to the terms of the previous legislation, the workers protected by the law - trade-union leaders, working mothers and others - could not be separated from their employment without the prior authorization of the Labour Judge, who could grant such authorization only in cases in which the worker himself gave serious cause for it and which would be determined by the judge.

625. Decree-Law No.2,200 has incorporated two new reasons, not attributable to the worker, for which the dismissal of a worker who has rights may be authorized. They are: "expiry of the agreed period" and "conclusion of the work or service that was the subject of the contract". In this way a wide breach has been made in the protection which is due to various workers, and which is universally recognized, because of their condition (maternity) or their duties of representation (leaders).

(c) Adoption of the system of dismissal at will

626. The employer is empowered to dismiss the worker without the need to provide just cause. Decree-Law No.2,200 provides:^{21/}

^{21/} Articles 17 and 18 of Decree-Law No.2,200 contain detailed rules concerning the compensation to be paid in various circumstances according to the type of worker and the length of his employment, as also concerning the incompatibility between the various forms of compensation applicable. It is laid down as a general rule that in cases of incompatibility the worker must be paid the compensation for which he himself opts.

"Article 13. The work contract shall be terminated in the following cases:

...

"(f) Written notice of termination by one of the parties, to be given to the other at least thirty days in advance, with a copy to the appropriate labour inspectorate. This notice, however, will not be required if the employer pays the worker compensation in cash equivalent to the last monthly payment earned by him and ..."

"Article 16. When, in conformity with article 13 (f), the employer terminates a contract that has been in effect for one year or more, he must pay the worker compensation equivalent to the last monthly payment earned by him for each year and fraction of a year exceeding six months that he has worked continuously for the same employer. This compensation is compatible with the compensation due to the worker under the above-mentioned paragraph (f)."

627. The Government makes the following statement regarding the case provided for in article 13 (f) of Decree-Law No.2,200, saying that it:

"Refers to the written notice that one of the parties must give to the other at least 30 days in advance, with a copy to the Labour Office, which notice may be replaced by compensation equivalent to the last monthly payment earned by the worker.

"In the special cases of termination covered by article 17 (managers, agents or attorneys of private firms, with less than one year of service, or who hold a position of trust), it is not essential that the notice shall be given in writing, even if advance notice is required, provided it is replaced by the payment of compensation equivalent to the last monthly salary of the worker.

"It should be pointed out that for the employers this institution is a generalization of the institution of termination which in Act No.16,455 was accepted only in the case of workers covered by article 3 of that Act, i.e. attorneys, domestic workers, who hold a position of trust in the firm and with only a short period of service six months in the previous law, one year in the present law.

"Notice of termination, established as a general institution, nevertheless entails the obligation to pay the compensation indicated, releasing the employer from the obligation to reinstate the worker, and the worker from asking for the compensation to be additional to his reinstatement, which has usually been resisted by both parties.

"Under the law, reasons for notice of termination include cases of termination of the work contract in which the plea of one of the parties that the contract is null and void has not been properly proved before Courts of Justice (art.19)."

628. The Government also submitted a comparative analysis of compensation for termination of contract under Act No.16,445 and under Decree-Law No.2,200, as follows:

"Compensation for termination of contract, calculated on the basis of the worker's period of service, includes the following features, which should be carefully compared with the compensation established under article 8 of Act No.16,455.

"(1) It is a fixed sum, always calculated on the basis of one month's pay for each year of service or fraction of a year exceeding six months.

"In the previous legislation, the Tribunal could regulate the compensation, in relation between time and payment being the legal minimum.

"(2) It earns current rates of interest, contrary to the former payments, which earned only the official rates.

"(3) In determining it, the total remuneration received by the employee is taken into consideration, with very rare exceptions for loans specifically excluded by the law, and in the case of workers whose pay varies the average of the last three months is taken. This last rule is similar to that in the previous legislation (art.5 of Decree-Law No.676 of 1974).

"(4) It is adjustable, as in the previous legislation, by the application of the corresponding monetary correction.

"(5) It can be increased by a fine payable to the Treasury, equivalent to 20 per cent of the total sum, including interest and adjustments, if the Tribunal declares the termination of the contract to have been arbitrary, in the cases indicated by the law. This is a new situation and far more drastic than the former law, in which this additional payment did not exist.

"(6) The compensation is incompatible with any other that the employer has to pay, in total or partially, on account of the termination of the contract, except for the legal compensation paid by welfare bodies (art.18).

"Under the former legislation, there was no such incompatibility. This provision was obviously a disadvantage, since it increased considerably the risk of termination of a contract and discouraged the granting of contracts.

"(7) It is based on the years of uninterrupted employment by the same employer. Under Act No.16,455 it was based on the years of uninterrupted or discontinuous work for the same firm; there is no justification for this, as the previous contract is finished and settled."

629. A comparison of these provisions with those set forth in Act No.16,455 of 1966 in the light of information received by the Group during its visit to Chile leads to the conclusion that:

(a) The system of stability of employment has been abolished. There is a retrogressive trend away from the system of stability of employment embodied in all modern social legislations and in force in Chile since 1966 under Act. No.16,455 towards the system of dismissal at will, under which the employer may dismiss a worker without any need to adduce a good reason; in other words, a mere statement of intent by the employer to terminate the labour contract is sufficient (art.13 (f) and penultimate and final paragraphs).

(b) A somewhat ineffectual right to compensation for years of service has been established. Although the right of the worker to obtain compensation for years of service upon his dismissal is established in certain situations, an over-all study of the various provisions relating to this question indicates that the requirements for the acquisition of this right are must more burdensome than before and, more serious still, there is a series of gaps and "loopholes" which make it possible to disregard the right to obtain this benefit. (Arts.16, 17 and 18).

(d) Possibility for the employer to modify the contract unilaterally

630. The employer is empowered to modify the labour contract unilaterally. Decree-Law No.2,200 states:

"Article 12. The conditions of the labour contract may be modified only with the consent of the parties. Nevertheless, the employer may change, for good and sufficient reasons, the nature of the services or the place or premises in which they are to be performed, provided that similar work is involved, that the new place or premises are in the same locality or city and that the worker suffers no prejudice."

631. It should be noted that the text of the earlier Labour Code and the application of the general rules of law and of the most elementary justice precluded the unilateral amendment of clauses of a labour contract. Decree-Law No.2,200 bestows upon the employer the power to amend unilaterally, for good and sufficient reasons, the nature of the services and the place in which they are to be performed. It can be said that, since the enactment of Decree-Law No.2,200, the worker has been obliged to sign a blank labour contract as far as these clauses are concerned, since they can be amended at the will of the employer.

(e) Return to legal minimum conditions upon the termination of the collective labour contract

632. The validity and sphere of application of the rights derived from the collective labour contract were automatically incorporated into individual contracts. This is not the case under the new legislation, which includes no provisions to that effect. Consequently, when a collective contract expires, workers are left with the minimum conditions guaranteed by the law and are obliged to re-negotiate the rights they had acquired.

633. This state of affairs is particularly serious in view of the current situation in Chile, where, as will be seen (sect. C below), the right of collective bargaining has been suspended.

(f) Cancellation of labour debts, which operates to the detriment of the worker

634. In chapter XIV (relating to "Prescriptions and sanctions") of Decree-Law No.2,200 article 163 specifies, inter alia, that:

"The rights derived from services performed prior to the two years preceding the date of submission of the application may not be claimed, whether or not performance of services has come to an end". (Para.3)

635. A communication handed to the Ad Hoc Working Group during its visit to Chile in July 1978 states that this is tantamount to a "cancellation of labour debts" prejudicial to the interests of the workers, who are the weak party in labour relations, particularly in the conditions now prevailing in labour questions in Chile (no genuine free trade unionism or collective bargaining, widespread unemployment, etc.).

C. Trade union rights 22/

1. Preliminary remarks

636. Trade union rights have already been studied in detail in previous reports of the Group. This section of the present report deals with the subjects on which emphasis was placed by the persons who communicated information to the Group during its visit to Chile, and with the views on those subjects communicated by the Government in documentation which has been carefully considered by the Group. 23/

637. A number of measures restricting trade union activities which were taken in the past and which were to have been of a temporary and purely transitory nature are still in full force and are applied daily more than four years later. Whenever possible, examples will be given to illustrate this point, and the basic information on the subject will be included in the annexes to this section. These examples have been supplemented by brief references to certain recent events - subsequent to the Group's visit - which it has been deemed essential to reflect in this report.

2. Decree-Law No.198 of 29 December 1973

(a) Indefinite suspension of trade union elections

638. Articles 2 and 3 of Decree-Law No.198 provide for the extension of the mandates of the governing bodies of trade unions which had been in force on 11 September 1973.

22/ In connexion with this section, see International Labour Office documents GB 205/11/12 (February-March 1978) and GB 206/6/18 (June 1978).

23/ See annexes LXVII, LXVIII and LXIX, and sections I, II and III of annex LXVI.

639. In cases in which the mandate of the governing body of the trade union had expired before that date or vacancies had, for whatever reason, occurred after that date a new system was established in order to fill the vacant posts, involving the appointment of the most senior worker in the enterprise or federation, as appropriate. Article 9 of Decree-Law No.198 provided that, in those exceptional cases in which the former system was not applicable, it would be the responsibility of the Minister of Labour to lay down supplementary rules. Nevertheless, through improper interpretation of the provisions of article 9, there have been many cases in which the Ministry of Labour has appointed directly those trade union leaders who are to its particular liking. 24/

640. The system in question is aimed at suspending indefinitely the holding of elections for trade union officials, on the excuse that such elections would lead to unrest and upset the political recess. The system thus imposes union leadership on the workers, either by appointing the most senior worker or simply by installing a nominee of the Minister of Labour.

641. It should be pointed out that, throughout the period 1973-1978, the employers' organizations have been free to renew the membership of their governing bodies. Cases in point include the National Agriculture Association, the Manufacturing Development Association and the Metallurgical Industry Employers' Association.

(b) Limitations on the right of assembly

642. The most elementary form of trade union activity is the assembly of the members of the various unions, federations or associations.

643. Decree-Law No.198 imposed serious limitations on this right, limitations which - according to information supplied to the Group - would remain in force for the duration of the state of war or state of siege. Decree-Law No.1,877 of 13 August 1977 extended these limitations to the state of emergency at present in force in Chile.

644. These limitations basically concern the following matters:

(i) Assemblies are held solely for information purposes. The subject-matter of meetings is limited exclusively to questions concerning information or the internal administration of the organization. Therefore, members are forbidden to discuss matters of special concern to them. In contrast, employers' organizations can hold assemblies and meetings during which they take decisions resulting from analysis and discussions.

(ii) Prior notice. Meetings may be held only outside working hours and the nearest police unit must be notified in writing, at least two days ahead of time, of the place where the meeting is to be held and the subjects for discussion.

24/ See in annex LXX an example of how the administrative authority intervenes to dismiss a union leader, without complying with the provisions established by the Military Junta: order No.8 of 13 May 1976, in which Carabineros Major Ramón Torrealba Fuzmán, through the Provincial Governor of Chañaral, called for the resignation of union leader Mr. Gustavo Valdés Aravena, member of the Area Directorate of CODELCO, Chile, El Salvador Division, stating that his replacement would be nominated in due course.

The requirement of prior notice has in practice become a requirement to seek authorization or permission, which the authorities either grant or deny. 25/

(iii) Presence of officials. In order to verify that the limitations imposed on the right of assembly are complied with, the authorities designate a member of the armed forces or other official to be present during the meeting.

(c) Limitation of permission for the exercise of trade union functions

645. Articles 5 and 6 of Decree-Law No.198 limit the time formerly allotted to trade union leaders for the exercise of their functions and provide that remuneration and other labour dues in respect of the official during the period covered by such permission shall be paid by the trade union organization. 26/

646. On this question, the Government states, in its communication of 31 August 1978 (see annex LXVI), that for the first time in Chile, Decree-Law No.198 established on a general and compulsory basis, authorization for union leaders to perform official duties during the working day, adding that "a law that is described as restrictive is in fact one which establishes a right for all trade unions". The Government also states that "the restrictions it

25/ See annex LXXI for an example of how the administrative authorities refuse authorization for the holding of a trade union meeting - Communication No.164 of 7 June 1976 in which the Under-Secretary of the Interior, Major Enrique Montero Marx, informed the President of the Confederation of Copper Workers, Mr. Guillermo Santana, that the trade union meeting which the Confederation had previously requested permission to hold would not be authorized.

26/ See annex LXXII for the complete text of Internal order No.61 of the Manager of the El Salvador Division of CODELCO Chile, dated 21 April 1976, which lays down the rules to be observed by trade union officials in that enterprise and establishes, inter alia, limits in respect of the travel of those officials to Santiago for meetings with higher authorities, for which in any case the authorization of the Board of Administration is required.

(Decree-Law No.198) does establish concerning additional permission are designed to meet the need for rational and general uniformity in the authorizations granted, in the face of a complete breakdown in production activities (as was the case in 1973), whose consequences are still being felt to some extent".

(d) Elimination of the collective bargaining procedure

647. Article 5 (a) of Proclamation No.36 of September 1973 decreed the suspension of the Conciliation Boards, the bodies to which claims made by workers and not accepted by managements had to be submitted; since this body is an obligatory forum for hearings, its suppression necessarily spells the end of the collective bargaining procedure. Article 5 (b) of the Proclamation provisionally suspended and declared to be "in recess" the submission and discussion of claims and collective disputes of any kind.

648. Decree-Law No.275 of 18 January 1974 and Decree-Law No.670 of 2 October 1974 provisionally suspend the operation of the Conciliation Boards and Decree-Law No.1,275 of 2 December 1975 suspends them indefinitely, pending promulgation of the new Labour Code. 27/

649. At present there is still an indefinite suspension of the right of petition, since workers are unable to submit claims, and of the right to collective bargaining - the workers' most effective instrument for the protection of their living conditions. 28/

27/ In this respect it should be recalled that Decree-Law No.2,200 replaces only Books I and II of the Labour Code, in the manner indicated in section B above (q.v.)

28/ Now, when the collective contract expires, the workers' terms of employment revert to the minimum provided for by law, and the process of securing better terms of employment has to be started afresh - this time, under restrictive conditions (see sect.B above).

650. In this connexion the Government stated that:

"... The Supreme Government is in no sense opposed to the system of collective bargaining; on the contrary, it realized that the economy of the country would first have to be placed on a sound footing before discussions began on collective contracts, ... [and that] ... once the foundations of the economy have been strengthened it is essential to institute a system of collective bargaining; and the legal machinery now being worked out will shortly come into being, after consideration by the legislative organs" (annex LXVI, sect. II).

It further explained that:

"The decision of the Supreme Government is that collective bargaining will proceed via direct understandings between the parties in labour relations, for which purpose the State must supply the necessary mediation and arbitration machinery and assign to itself only a subsidiary role in order to safeguard the higher interests of the community" (annex LXVI, sect. II).

651. The Government added that those reasons had led it to establish a selective system of collective bargaining, based on Tripartite Commissions, that had benefited a large number of workers. Also, the Executive had been empowered to extend the benefits and working conditions in certain enterprises or activities to all the workers in the sector to which those enterprises or activities belonged (annex LXVI, sect. II).

(e) Suppression of the right to strike

652. As a result of the suspension of the collective bargaining procedure, the right to strike is likewise suspended, inasmuch as it may be exercised only when all negotiation procedures have been exhausted.

653. Moreover, the right to strike has been permanently abolished through the promulgation of Constitutional Act No. 3, establishing the system of compulsory arbitration. The Constituent Commission and the government authorities have justified this measure by claiming that the institution is obsolete, that the exercise of the right is illegitimate and that it directly harms the interests of workers and management alike. The then Minister of Labour (who is now Minister of the Interior) said in that connexion that "The strike is an instrument of the class struggle which in the end does not solve the collective conflict; and the world's most advanced bodies of legislation, as well as eminent writers, uphold as a principle the illegitimacy of any strike and do not recognize it as a right". ^{29/} It should be noted that, in the preliminary draft of the Labour Code, dated 1 May 1975, exercise of the right to strike was recognized.

654. In the present legal situation, any action by workers which involves a total or partial stoppage of work is deemed illegal and is punishable by immediate dismissal with no right to compensation - apart from the fact that it is classified as an offence under the Internal Security of the State Act.

655. There has thus been a serious violation, embodied in a constitutional instrument, of the provisions of article 23, paragraphs (1) and (3), of the Universal Declaration of Human Rights.

^{29/} El Mercurio, 29 March 1977.

3. Violation of trade union rights through the exercise of administrative powers

(a) Replacement of trade union leaders and trade union parallelism

656. During the Group's visit to Chile, several trade union leaders informed it that the trade union organizations were still losing their officials and that union parallelism still persisted. These practices involve the removal of the duly elected union leaders - by a variety of procedures generally terminating in their dismissal - and their replacement by pro-Government officials, usually through appointment. ^{30/} This leads to what has been described as "internal parallelism". In addition, some of the unions have been deprived of their legal personality and others have been dissolved. Sometimes the organization concerned has been replaced by another organization supported by the Government, or has been encouraged to become affiliated to a pro-Government federation. The latter phenomenon has been termed "external parallelism".

657. The growth of trade unionism is hampered by the fact that the administrative authorities have a number of powers which they can exercise through the different ministries and bodies linked to the Executive. During the present state of emergency in Chile, executive power is exercised by the President of the Republic, but he may delegate the exercise of his authority to Ministers of State, including the Minister of Labour, or to particular public departments and officials.

658. While the Group was in Chile, it was informed by several trade union leaders of many examples of breaches of the current legislation which had the effect of impeding trade union activities, and was told of specific instances of such breaches, some of which are described below.

659. On 7 September 1976, it was reported that the leaders of the Confederation of Copper Workers (CTC) had been dismissed and that new leaders had been appointed in their stead. ^{31/} It was further stated that, according to the ruling of Mr. Valdes, the Director of Labour, the appointment of the CTC leadership "was in violation of the provisions of Proclamation No. 28 ... which prohibited elections of any kind ...", and that, on the basis of that precedent, the Provincial Board of Inspectors had declared, in Order No. 30, that all posts in CTC had become vacant except for that of one official, Armando Garrido, who had been elected before 11 September 1973, since all appointments made prior to that date had been extended by Decree-Law No. 198 (see para. 638 above).

^{30/} Several officials who were elected before 1973 have remained in their posts through the extension of their term of office for an indefinite period, as indicated in para. 638 above.

^{31/} See El Mercurio, 7 September 1976. Other relevant facts are that, when the present Government came to power, the executive committee of the Confederation of Copper Workers had proceeded, in accordance with its statute and in the presence of a Labour Inspector, to appoint officials to fill the posts that had been left vacant for various reasons, such as the death, detention, dismissal or internal exile of the incumbents. The new committee had been officially recognized, having been received by the authorities and by the Minister of Labour himself, Air Force General Nicanor Díaz Estrada. Moreover, in 1974, the President of the Confederation of Copper Workers, Mr. Guillermo Santana, had attended the ILO Assembly in Geneva after his appointment as workers' representative by the Military Government itself. These are the facts which lay behind the actions referred to in paragraph 659.

660. During the Group's visit to Chile, it was told by reliable sources that, at a meeting held on 10 May 1977 by organizations which, for the most part, were not affiliated to the Chilean Shipping Confederation (COMACH), a new executive committee of COMACH had been appointed. In addition, Mr. Martín Bustos had been appointed President of COMACH, the former President, Mr. Eduardo Ríos, who had held office since the last national congress in 1972, having thus been removed from his post in an irregular fashion. 32/

661. Andrés del Campo and Arturo Moreno, who had been respectively President and Vice-President of the National Confederation of Employees of the Banco del Estado de Chile (CONEBECH), 33/ were dismissed from their posts by Decree No. 648 issued by the Office of the Intendant of the Metropolitan Area on 15 December 1977, and five new officials who were members of the Labour Front (a pro-Government organization) were appointed. Four members of the previous executive committee were allowed to remain in their posts.

32/ The information given on this matter may be summarized as follows: on 9 May 1977, Mr. Eduardo Ríos, President of COMACH, was invited by 13 organizations to attend a meeting the following day at which the National Governing Body of COMACH was to be restructured. Only two of the 13 organizations issuing the invitation were affiliated to COMACH. Three other organizations were indirectly connected with it, since they were members of affiliated federations, but the remaining 8 organizations were in no way related to it. The President of COMACH, in replying to their letter, expressed surprise at having been invited to consider a hypothetical restructuring of COMACH by organizations which, for the most part, were not related to it. He added that he had no objection to discussing questions connected with the organization or leadership of COMACH with any bodies that actually belonged to it, but that only those bodies which formed the foundation of COMACH (national federations and unions) were entitled to express an opinion on its leadership. The meeting to which President Ríos had been invited nevertheless took place on 10 May. On that occasion, 90 per cent of the participants rejected his report (in his absence) and proceeded to appoint a new executive committee headed by Mr. Martín Bustos.

33/ See the following texts in annex LXXIII: Decrees Nos. 646 and 648 of the Office of the Intendant of Santiago, both dated 15 December 1977, under which, respectively, three vacancies in the CONEBECH executive committee were filled and union leaders del Campo and Moreno were ordered to resign from their posts ... within 24 hours; a reply by CONEBECH dated 19 December 1977 challenging the bases of Decree No. 648; Decree No. 657 of 19 December 1977, by which the Office of the Intendant of Santiago removed del Campo and Moreno from their posts on expiry of the time-limit stated, and appointed other people "to replace" them; and circulars dated 16 and 21 December 1977 in which the CONEBECH executive committee informed the rank-and-file members of the new developments.

662. The Office of the Intendant of the Metropolitan Area issued Decree No. 150 of 4 April 1978 calling for the resignation of the executive committee of the National Association of Sanitation Department Workers (ANODOS), 34/ including Mr. Hernán Mery Toro, President of ANODOS, for having infringed the party political recess in violation of article 3 of Decree-Law No. 349, as amended by Decree-Laws Nos. 911 and 1,623, which declared the political parties to be in recess and later dissolved them. The committee and Mr. Mery Toro were given 24 hours in which to resign. As Mr. Mery Toro did not submit his resignation, the Office of the Intendant of Santiago issued Decree No. 174 of April 1978, dismissing him from his post as President of ANODOS. 35/

(b) Annulment of the legal personality of the Association of Pensioners formed under Act No. 10,383 (Social security service)

663. Supreme Decree No. 2,342 of the Ministry of Justice, dated 18 June 1941, granted legal personality to the Association of Pensioners (retired persons) formed under Act No. 10,383 (Social security service).

664. Nevertheless, without any warning or communication, the Ministry of Justice issued Decree No. 436 of 12 May 1977, which abolished the legal personality of the Association and transferred its property to the Office of the Intendant of the Metropolitan Area and to the corresponding Intendants' offices in the areas where affiliated Provincial Associations existed.

(c) Suppression and prevention of the nation-wide trade union organization

665. By Decree-Law No. 12 of 17 September 1973 and Decree-Law No. 133 of 13 November 1973, the authorities dissolved the Central Chilean Workers' Organization (CUTCH), thereby putting an end to the representative unitary body to which the immense majority of unionized workers were affiliated. It has been pointed out that the promulgation and implementation of a measure of this kind violates the right to peaceful association and the right of everyone to form and to join trade unions for the protection of his interests.

666. The Group was informed that when CUTCH, the body representing trade union activity at the national level, had been dissolved, the trade union movement had lost all importance as a factor influencing general labour policy. The trade union movement has been virtually paralysed and has become gradually weaker; and its organization has disintegrated, the latter process being aggravated by government measures which promote trade union parallelism in all its forms.

34/ See in annex LXXIV a photocopy of Decree No. 150 of the Office of the Intendant of Santiago, dated 4 April 1978, dismissing the ANODOS executive committee.

35/ As stated below (see para. 678), in January 1978 steps had been taken to banish a group of persons, including several trade union leaders. Among them was Hernán Mery Toro, who was banished to a bleak place in the altiplano near the city of Arica. His banishment continued until 4 March 1978. When Hernán Mery returned to the capital, he went to his place of work and requested leave. This request was not granted by any authority of the organization for which he works and his position has still not been clarified.

667. In many enterprises the loss of trade union power has been followed by abuses and by infringements of the labour legislation, including the legislation of the present Government, to the clear detriment of the rights and welfare of the workers.

668. Various attempts have been made to fill the vacuum left and to form an organ which would bring together trade unions and organizations, federations and confederations in a national body which, having the necessary numerical strength, experience and knowledge in the different branches of trade union activity, could adequately represent the country's labour force in dealings with the public authorities and provide the necessary participation in labour and trade union matters.

669. One result of these attempts is the Committee for the Defence of Trade Union Rights, which was set up by three former trade unionists - Clotario Blest, Eduardo Long Alessandri and Santiago Pereira - in mid-November 1977, and whose establishment was made public in March 1978. The Committee is a body which "has no party or political aims" and "does not depend on, or receive financial support from, any institution or person; it has connexions only with organizations interested in the unity, solidarity and co-operation of workers who see their rights threatened". 36/

670. Another example is the National Trade Union Co-ordinating Body (for Chilean confederations, federations and trade unions), whose foundation was announced on 3 June 1978 by trade union leaders of the so-called "Group of Ten" and of nine federations of workers. The leaders who founded this body stated that it "seeks to achieve legitimate representation for the workers". They argued that it was becoming necessary to establish institutions like the Co-ordinating Body because the government measures in the labour field had disrupted worker activity for the purpose of "implementing an economic policy devoid of social meaning". 37/

671. These and other similar bodies have been subjected to intimidation and to measures to neutralize their attempts to recruit members. In this connexion, it should be mentioned that the trade union leaders Manuel Sepúlveda and Hernán Mery were expelled from the Group of Ten on 8 June 1978 "after they unexpectedly appeared last Friday as members of the Co-ordinating Body". According to El Mercurio, the notice of expulsion was signed by the top leaders of the Group: Tucapel Jiménez (President of ANEF), Eduardo Ríos Arias (President of COMACH) and Ernesto Vogel Rodríguez (President of the Railway Industry Federation). It was stated that the real reason for the expulsion was that the Co-ordinating Body "consisted mostly of leaders with Marxist connexions". The formal declaration contains the following statements:

"3. In view of the events of the last few months, we have decided to persevere in the foundation of a new Confederation of Workers based on the principles of liberty and democracy which we uphold and which are supported by the immense majority of the workers.

36/ El Mercurio, 29 March 1978; Solidaridad, No. 36, p. 6.

37/ El Mercurio, 3 June 1978.

"4. We reiterate our absolute rejection of any form of political coercion or usurpation, whatever its origin or whatever the form in which it may occur. Our sole commitment is to the workers of Chile." 38/

(d) Lack of participation

672. In addition to these aspects, it was pointed out in the information supplied to the Group that the trade unions have been excluded from the policy-making and decision-taking processes concerning matters in their field. In this respect, it was emphasized that the unions and workers' organizations have declared their readiness to participate in all matters relating to trade union and labour rights in general, particularly in the formulation of texts and policies. They insist on such participation in matters which affect them directly. In May 1978 the Labour Council was established as a consultative entity of the Government for labour and trade union affairs. Many of the persons who provided information to the Group have expressed doubts about the representativity of this entity, stating that only government supporters would serve on it and that, moreover, not even the Council would be accorded adequate participation in many matters. In this connexion, it should be mentioned that, according to a member of another body, the Council of State, the Labour Council has taken cognizance of, and expressed its views on, the draft texts relating to matters dealt with in Books III and IV of the Labour Code, but was not consulted at all concerning the content of Decree-Law No. 2,200 of 15 June 1978, which covers matters dealt with in Books I and II of the Labour Code.

4. Actions by the government authorities which restrict and impede the activities of trade union leaders

673. During its visit to Chile the Group was informed that the trade union leaders, as individuals, had suffered repression as a result of their activities, and that many of them were now missing. These measures have had the effect of intimidating the rest of the workers and paralysing the activities of trade unions and federations.

(a) Missing trade union leaders

674. The problem of persons who have been arrested and have disappeared also affects the Chilean trade union movement. A large number of union leaders appear in lists published in earlier reports of the Group and in documents of the International Labour Organisation. 39/ While the Group was in Chile, it was handed a list of trade union leaders who had been arrested and had disappeared (see annex LXXV). The fate of these missing persons is causing grave concern even to pro-Government trade unionists.

(b) Banishment of trade union leaders 40/

675. The Group received oral and written evidence to the effect that on 23 November 1977 General Augusto Pinochet had ordered seven trade union leaders to

38/ El Mercurio, 9 June 1978

39/ ILO document GB.206/6/18.

40/ See in annex LXXVI a letter dated December 1977 from banished leaders or their representatives to the Minister of the Interior, in which they describe their situation and request that the order should be annulled.

be banished to the northern part of the country, because "they had repeatedly carried out political agitation in the trade union field, fomenting and organizing acts of indiscipline among the workers which were entirely contrary to the interests of national security".

676. In an official communication from the Ministry of the Interior, these banished leaders were identified as: Juan Bernardino Fincheira Cortés, official of the Bancagua Professional Union of Caletones; Ramón Arturo Latuz Fariñas, official of the same union; Carlos Manuel Arellano and Milton César Puga, officials of the Bancagua Association of Employees in the Private Sector; Héctor Cuevas Salvador, President of the Builders' Federation; 41/ Carlos Frez Rójo, President of the Port Workers' Federation; and Juan Sepúlveda Malbrán, Vice-President of the National Federation of Metallurgical Unions (FENSIMET). 42/

677. Following innumerable representations to the courts and ILO, the union leaders and the other banished persons were sent to Arica, by a decision of the Santiago Court of Appeals, a ruling which was respected by the Government. On 2 March 1978 the Military Junta issued a decree ending the banishment. Of all those persons who had been banished, only one was reinstated in his job.

(c) Banishment of other persons

678. The Group was also informed that on 13 January 1978, 13 persons had been arrested and banished. They included several trade union leaders: Juan Sepúlveda Malbrán, of Fensa Mademsa and FENSIMET (who was thus banished for the second time); Hernán Mery Toro, President of ANODOS; and Georgina Aceituno Saavedra, consultant to CUTCH until 11 September 1973.

(d) Intimidation of trade union leaders

679. According to information received by the Group during its visit to Chile, the security agencies employ methods of intimidation against trade union leaders, persons working in administrative posts in trade union organizations and members of Church bodies which have links with the workers' movement.

680. This harassment consists chiefly of anonymous telephone calls threatening the union leader and his family; the following of such leaders, without any attempt at concealment; detentions for short periods of less than 24 hours, during which the person concerned is asked for his collaboration and is offered money to engage in intelligence activities and to act as an informer; and the surveillance of trade union offices and union leaders' homes. In addition, it is reported that during the periods of detention such persons are subjected to all kinds of threats, ill-treatment and torture (blows which leave no mark on the body, application of electric shocks to different parts of the body, hanging by the thumbs, etc.). 43/

41/ See in annex LXXVII a sworn statement by union leader Héctor Cuevas Salvador, in which he describes his arrest and subsequent banishment.

42/ See in annex LXXVIII a sworn statement by union leader Juan Manuel Sepúlveda Malbrán, in which he describes his arrest and subsequent banishment.

43/ See in annex LXXIX a sworn statement by Mr. Juan Montecinos M., a FENSIMET official.

D. Situation of agricultural workers

681. During its visit to Chile, the Group was informed that the situation of agricultural workers had been affected by a series of measures adopted by the present Government which contrast with the policy followed by previous Governments, particularly in respect of agrarian reform and matters of such basic importance as the employment of agricultural workers, their remuneration and their trade union organization, as well as on the pauperization of agricultural workers.

682. It should be noted that, in Chile, agrarian reform has remote and indirect antecedents dating back virtually to the birth of the Republic, as well as more direct antecedents in provisions adopted towards the end of the 1920s and by the liberal-conservative coalition Governments.

683. After 1973, a change occurred in the field of agrarian reform. Next came the undermining, both de facto and through legal provisions, of Law No. 16,640, the basic instrument of the agrarian reform initiated in 1967.

684. The Group decided to discuss this matter in January 1979, as it did not have adequate time to discuss it fully at its meetings in 1978.

E. The situation of the indigenous populations 44/

685. In Chile there are several indigenous population groups, namely: the Quechuas and Aymaras of the north; the Pascuences of Easter Island; the Alacalufes, Yaghan and Ona peoples of the Magalania region in the south and the Araucanians or Mapuche people, in the central and centre-south regions. 45/ It has been stated:

"In Chile, every time the need has arisen to debate the Indian question, the basic model considered has been the Mapuche population. The reason resides in the fact that the Mapuche are the most numerous existent native population in the country. In parliamentary debates to modify indigenous legislation, ministers of state and public officials as well as members of the National Congress formulate their positions in terms of the difficulties faced by Araucanians." 46/

44/ This subject has not been dealt with in previous reports by the Ad Hoc Working Group. This part is based on oral and written information furnished to the Working Group during its visit to Chile in July 1978 and documentary information subsequently obtained by it.

45/ Inés Gómez, "Mapuche Indians of Chile: the culture of resistance", Indígena (Berkeley, California), Fall 1974, vol. 1, No. 2, p. 9.

46/ Antonio Millape Canuiqueo, Background to the Mapuche Question, Special Report to Nueva Tierra. The author is President of the National Confederation of Mapuches.

686. This part of the report will concentrate on the Mapuches, 47/ since the bulk of the information received by the Ad Hoc Working Group concerns them, they are the largest indigenous ethnic minority in the country and they seem to have been particularly affected under the present régime. The Group is aware that, at the thirty-fourth session of the Commission on Human Rights, the International Indian Treaty Council suggested that the Commission should give special consideration to the situation of the Mapuche Indians in Chile. 48/

687. The Mapuches have been estimated at a total of 1 million people, most of whom live in the rural areas in more than 3,000 communities. 49/ In this connexion, in 1956 the Department of Indian Affairs issued information, in which the rural Mapuche population of Chile was estimated at 322,916 persons living in 3,048 reserves located in the provinces of Cautín, Malleco, Bío-Bío, Arauco, Valdivia, Osorno and Llanquihue. 50/

688. Partly on this basis, an estimate of the present rural Mapuche population was prepared in 1972 by the National Mapuche Confederation, showing a total population of 403,536 persons. 51/ 52/

689. To this total figure should be added those Mapuches who live in urban centres. These have been estimated to be about 400,000 persons, making the total Araucanian population, including mestizos, about 1 million people, in other words, nearly 10 per cent of the population of the country.

47/ The word "Mapuche" means "people of the land" ("Mapu" - land, "Che" - people) and is the name by which the Araucanian people refer to themselves. Julian H. Steward and Louis C. Faron, Native Peoples of South America (New York, McGraw-Hill, 1959), p. 274; and written statement submitted to the Commission on Human Rights by the International Indian Treaty Council on 20 February 1978 (E/CN.4/NGO/223), p. 2.

48/ See E/CN.4/NGO/223. The International Indian Treaty Council is a non-governmental organization in consultative status with the Economic and Social Council (category II) and a member of the NGO Committee on Human Rights.

49/ "The Mapuches are a racial minority in Chile. Of the one million Mapuches, 600,000 live in 3,024 indigenous communities in rural areas from Bío-Bío to Llanquihue. They speak the Mapuche language ...": "Chile. The Mapuches under Military Government", Indígena (Berkeley, California), Winter 1974-1975, vol. 1, No. 3, p. 7.

50/ Millape Canuiqueo, op. cit., p. 1; see also Institut universitaire d'études du développement, Geneva, Los Mapuches, seminar by Mr. L. Necker, academic year 1978/79, presented by Mario Ibarra, et al. (Geneva, June 1978), p. 17.

51/ See sources mentioned in note 7 above, pp. 2 and 17, respectively.

52/ The National Mapuche Confederation is the most important among nearly 160 rural workers' organizations formed in 1970, which have more than 100,000 members: Inés Gómez, loc. cit.

690. The Mapuche population and territory are much smaller today than in precolonial and colonial times, but the Mapuche language is still widely spoken, especially among the older people, who rarely speak Spanish. 53/ Educational programmes and materials used for indigenous communities and groups are the same as those prepared in the capital and designed for urban schoolchildren. The linguistic difficulties and cultural differences of the Mapuches have never been taken into account in the administration of justice. These communities have not been allowed any real participation in shaping the Government policies affecting them. 54/

691. Indeed, after many decades of inaction in the presence of increasing encroachment upon Mapuche lands and absence of programmes for Mapuche economic, social and cultural development, towards the end of the 1960s the Agrarian Reform Act and the Rural Workers' Trade Unionism Act were passed, and this helped to reinforce the Mapuches' old aspirations to recover the lands that they had been allotted at the time of the "pacification" of the Araucanía, many of which had later been usurped by neighbouring Chilean and immigrant colonizers. However, procedures in the courts specially created for Indians moved very slowly and were still pending after many years. The agrarian reform made very little headway in their area until 1970. 55/

692. The new policies adopted by the Unidad Popular Government meant, among other things: (1) an effective acceleration of the real enforcement of the Agrarian Reform Act - in 1971 alone 70,000 hectares were recovered by Mapuches in legal proceedings; (2) stimulation of the Ministries of Health and Education, among others, to take the necessary action to ameliorate the social and cultural situation of the Mapuches; and (3) the adoption, with the effective participation of the representatives of the Mapuche communities, of a new Indigenous Peoples Act to develop institutions and actions intended to improve the general conditions of life and work of the Mapuches. This Act was passed on 15 September 1972. 56/

53/ Stuart and Faron, *op. cit.*, p. 274. It should be noted that up to the 1880s the Mapuches possessed more than 10 million hectares. They were, however, reduced to little more than 500,000 hectares during the colonization of Mapuche territory (1883-1895) that followed their military defeat and their "reduction" on "reserves". Since the Mapuche population amounted to 80,000 at the time, this meant an average of 6 hectares for every individual Mapuche. At the same time, more than 9 million hectares were distributed by the Chilean State to the new colonizers of those lands (including Chileans and also some 30,000 immigrants from Spain, France, Italy, Germany, England and Switzerland), in lots of 500 hectares and more. With the population growth, in 1960 the authorities estimated that an average of 2 hectares were available at that time per individual Mapuche: Jacques Chonchol, "Quatre siècles de résistance. Les Mapuches, la terre volée et la persécution", *Le Monde Diplomatique*, June 1978.

54/ Information received in Santiago during the Group's visit to Chile in July this year.

55/ For a much more detailed account of these events, see Chonchol, *loc. cit.*; Gómez, *loc. cit.*

56/ *Ibid.*

693. Contrasting the conditions under which the Mapuches lived just before September 1973 and those under which they have to live now, it has been stated that while under the previous Government "the Mapuches gained back a great part of their land and were able to express freely their habits and traditions ... On the day of the coup, the big landowners, the land barons, the military and the carabineros started a great manhunt against the Mapuches who had struggled and gained their land back: we should mention the massacres of Lautaro, Cunco, Meli-Peuco, Nehuentué in the province of Cautín; Lonquimay in the province of Malleco; and Panguipulli in the province of Valdivia." 57/

694. Information received in Santiago during the Group's visit to Chile points to other killings in the province of Paine, soon after September 1973; more than 1,100 persons were killed, including a great number of Mapuches. 58/

57/ International Indian Treaty Council, written communication submitted to the Commission on Human Rights on 20 February 1978, contained in document E/CN.4/NGO/223, p. 2.

58/ Under the heading "The brutality of the counter-revolution", a writer has described some aspects of what happened to the Mapuches immediately after September 1973 in the following terms:

"The counter-revolution of September 1973 hit the Mapuche populations even harder than most other sectors of the Chilean proletariat. The land-owning oligarchy and the local bourgeoisie, assisted by the military and the carabineros, gave vent to the hatred built up as a result of the Unidad Popular's assaults on their traditional power and accentuated by the racial contempt which they had always felt for the Indians. At the London meeting, Mapuche leaders gave hundreds of items of testimony on this subject. Below are a few examples:

"At the end of September and the start of October 1973, Chilean Air Force personnel installed themselves in the indigenous communities close to Llaima. They tortured entire communities, allowing neither women nor children to escape. Some Mapuches were tied to flying helicopters in the presence of their families. The community that was the most brutally tortured was the Allondo community.

"On 25 September 1973, Antonio Aninao, the Mapuche leader, was apprehended by the carabineros. He was savagely tortured and later released. On the same evening he was taken from his home by carabineros from Malipeuco. His body, together with those of two other Mapuche leaders, was found two days later by members of his community.

"In the months immediately following the putsch, according to the Mapuche leaders attending the London conference (who had spent several years in the Temuco prison), 80 per cent of their fellow prisoners were Mapuches. In the case of some communities, all the leaders were in prison and many of them were constantly tortured and maltreated. The prison was frequently visited by civilians from the Fascist movement 'Patria y Libertad', who took away with them certain leaders who have never been found again.

"It would be possible to cite hundreds of examples of the cruelty displayed by white people in the region, both great and small, and by the

695. It has been reported to the Group that all efforts to investigate and clarify these killings and other repressive measures mentioned above have been harshly quelled.

696. Thus, many persons who had been charged by the Mapuches with the task of investigating acts committed against them have either disappeared, or been murdered or arrested and prevented from carrying out their work. All such persons are reportedly subjected to constant surveillance, harassment and persecution.

697. To mention but a few examples based on oral and written information received by the Group during its visit to Chile, Esther Valdebenito, a Mapuche woman leader who had been sent to the province of Cautín to investigate possible disappearances and murders, was arrested in August 1976. During her detention she was tortured. She went abroad as a result of the first amnesty granted by the Government. She now lives in the Federal Republic of Germany. Eusebio Painimal, who has also been investigating cases of murder and disappearances, is periodically arrested and detained for questioning on his activities. He is a former leader of the first Indigenous Federation of Chile. A leftist activist whose family name is Chavón has been missing since the end of 1976. On 4 June 1978, Juan Antonio Colihuinca Reilaf was found dead on the rails between the cities of Victoria and Pua, the victim of what was described as "a railroad accident". On 8 June, his home was searched. The suspicious circumstances of this alleged railroad accident have never been investigated; the searching of his home gives rise to questions as to why this is so if he was not under investigation or suspected of anything prior to his "accident", as has been alleged by the authorities. Colihuinca had reportedly been investigating several cases of murder of Mapuches, including the murder of Darma Lizama, who was a known leftist leader, and that of a Mapuche man who had been killed by a landowner on his property in December 1977 when the Mapuche failed to produce the necessary identification papers.

698. Very important among the complaints that have been raised by all Mapuche entities, including the Ranquil Confederation, are the taking of Mapuche land which is being "recovered" through various means by non-indigenous persons and the persistent talk about dividing the Mapuche reserves (reducciones) and communities and attributing individual property rights to their members.

699. With regard to this "recovery" of land, the Group has received the following communication: 59/

military in an effort to preserve their privileges and their domination. All this, of course, was done in the name of the loftiest ideals of Christian civilization.

"Under the Pinochet régime, land allotted to thousands of Mapuche families under the Agrarian Reform Act has been recovered by its former usurpers, and the Mapuches have once again been reduced to poverty: the normal order - domination and exploitation - has been restored."
(Chonchol, loc. cit.)

59/ Written communication received in Santiago during the Group's visit to Chile. This information is quoted verbatim.

"Merely to take the case of the province of Malleco, and in particular the municipality of Victoria, in whose vicinity there are a number of reserves, the situation was the following as at June 1978:

"Huenchulao reserve. In 1971, the Huenchulao Agriculture Co-operative, grouping together 300 families, was set up. After 11 September 1973, credits were withheld from them and their personal possessions were seized. The Co-operative is paralysed and 80 per cent of its members are unemployed.

"Chequimil reserve. Situated in Selva Oscura. The Mapuches had set aside part of their land for collective stock-raising. After 11 September 1973, all technical assistance and credits were cut off. All members of the reserve are unemployed.

"Valle El Toro Association. This Association had been allocated land and was affiliated to the Galvarino Peasant and Indian Union, which supplied it with credit. The Association comprised 150 families engaged in agricultural work. It had 18 oxen and breeding heifers. The Association had also succeeded in recovering land which had been usurped fraudulently. After 1973, credit was cut off, the families were obliged to sell their livestock to pay off certain loans and, even more serious, the land recovered was returned to the big landowners.

"Chavol reserve. Organized into a land-donation co-operative. It had also recovered 40 hectares of land. After 11 September 1973, the land was returned to the usurpers.

"Toquihue settlement. Had recovered 300 hectares of land, which was being put to excellent use. After 11 September 1973, this land was returned to its former owners.

"Las Cardas reserve. Was on the point of recovering 700 hectares of land, but this also remained in the possession of the big landowners.

"Pailahueque and Calguin reserves. In these reserves there was no general co-operative, and it was only through the union that their members secured credit and seed to enable them to work the land. Some of their land had been usurped and they failed to recover it. The reserves contain 770 families. A group of families formed a small pig-farming co-operative. Since 1973, they have been denied credit, and today they have only 15 head of breeding stock and 60 pigs.

"Trangol reserve. Was in the process of recovering land. Comprises 800 families.

"Traro Sanchez reserve. The reserve had a pig-farming co-operative, with 130 pigs. It had succeeded in recovering 150 hectares of land, for the support of 200 families. After 11 September 1973 the inhabitants were obliged to return 75 hectares of land, they lost their pig-farming business because credits were withheld, and all they have left is a tractor.

"Queipul reserve. Composed of 700 families. They were members of the Union and all of their land was under seed. After 11 September 1973, they received neither credits nor seed. Today not more than 10 per cent of their land is under seed.

"Heculhueque and Railao Tori reserve. This reserve possessed a co-operative and its land, 180 hectares in area, was being used for experiments in seed reproduction. Following 11 September 1973, everything came to an end. The machinery is in the hands of the No. 4 Transport Battalion, Victoria. Nothing can be sown in this reserve, which has 600 families.

"SITUATION OF SOME MAPUCHE SETTLEMENTS

"Santa María settlement. Dissolved and divided into plots. The holders of the plots receive no assistance of any kind, whether in credits or in seed. Should a holder succeed in obtaining such assistance, through the Farming Development Institute (INDAP), officials of the Institute come along and draw up an inventory of the holder's possessions and brand his animals with the stamp of the Institute, which is also applied to any machinery or tools which he may possess, for possible distraint if the holder is unable, because of a bad harvest or for some other reason, to repay his loans.

"The picture is similar in the case of other settlements which have been divided up.

"Cullinco settlement. Dissolved and divided into plots.

"Aurora de Chile settlement. Dissolved and divided into plots.

"El Dumo settlement. Dissolved and divided into plots.

"El Colo settlement. The situation of this settlement is special. The settlement was 3,000 hectares in area. Although it had been divided up, the military appropriated 2,000 hectares of land and parcelled out only 1,000 hectares of land. Very few Mapuches succeeded in obtaining a plot.

"California settlement. Dissolved and divided into plots.

"Siembra y Cosecha settlement. Dissolved and divided into plots.

"It should also be borne in mind that many peasants were excluded from the parcelling-out process, since the authorities denied peasants who had been sympathetic towards the Unidad Popular Government the possibility of acquiring land. The Mapuches whose land had not been divided up and the reserves which are systematically refused credits are living in the most inhuman poverty."

700. According to information provided to the Group during its visit to Chile, an overwhelmingly large proportion of the land occupied by the Mapuches was acquired through legal procedures, and by virtue of documents drawn up in accordance with the legal provisions regulating agrarian reform, although there were some cases, never regularized, in which Mapuche groups seized land before the legal formalities which would have granted them formal title to it had been completed. There are many instances in which, although the legitimate possession of land by the Mapuches had been affirmed by unobjectionable legal means long before 1970, the former owners requested and obtained, after September 1973, the return of the land and the expulsion of the Mapuche communities settled on it. The following case may be mentioned by way of illustration.

701. On 22 March 1966, Expropriation Decree No. 359 was issued, recognizing the members of the indigenous community of Catrihuala as the lawful occupiers of the Cordillera Inestroza and Fundo Huellelhue estates, which they had occupied since 1934.

702. At the beginning of 1974, representatives of the "Cameros" company, which was the former owner of the property, initiated action to dislodge the Mapuches from the land, pleading that it had been seized unlawfully. On the basis of false reports by officials of the Indigenous Development Institute (IDI), affirming that the Catrihuala community consisted of only 12 persons, none of whom were of Mapuche descent, a further decree, repealing Expropriation Decree No. 359, was issued.

703. The members of the indigenous community were then obliged, under duress, to sign an act of actual delivery of the property. The Catrihuala community now consists of 56 families, or slightly more than 300 persons, most of them of Mapuche descent, who are in a very worrying and uncertain situation, since they stand to be ejected from their land at any time, lose all their possessions and find themselves with nowhere to live.

704. In addition, for more than two years now there has been a total ban, imposed by the National Forestry Corporation (CONAF), on the exploitation of any kind of timber, a prohibition which deprives the indigenous population of its sole source of work and condemns it to virtually complete unemployment.

705. Furthermore, the Huellelhue sector in which the community is situated does not have any access roads at present; the roads are impassable during rainy weather and the only access bridge collapsed one year ago when the river was in spate.

706. The division of land and, hence, of the Mapuche communities has recently been the subject of public statements by the Government, Mapuche organizations and the Catholic Church.

707. In April 1978, the National Planning Office outlined an "Emergency plan to combat unemployment" in the issue of El Mercurio dated 19 April 1978. The plan announced the ending of the basic 80 hectare irrigation limit and full ownership rights for the indigenous population. The plan states:

"In order to obtain credits and make fully productive use of the land, it is essential to have an effective title to the land. For this reason, it is proposed to grant an effective title, eliminating the State's custody of the land of indigenous populations." (El Mercurio, 19 April 1978)

708. The Standing Committee of Bishops issued a statement regarding this plan, in which it had the following to say concerning the agricultural question:

"5. The possibility of establishing agricultural joint-stock companies with participants other than peasants and the elimination of the 80-hectare limit would involve the virtual repeal of the Agrarian Reform Act.

"6. Full ownership of their plots would be granted to the indigenous populations, without it being established whether they would receive sufficient assistance to be able to farm their land and not be obliged to sell it." (El Mercurio, 20 May 1978)

709. At a meeting held on 28 June 1978 in Temuco, the Council of Mapuche Peasants decided to send to President Pinochet a communication signed by the representatives of six Mapuche communities (three in Region IX and three in Region X). The representatives refer to the existence of the draft plan "which involves an attempt to divide up the indigenous reserves and to collect taxes", and express their concern and anxiety over the fact that to divide up the indigenous reserves would mean: (1) the disappearance of the Mapuche people; (2) the loss of Mapuche lands; (3) the loss of Mapuche customs and traditions; and (4) the loss of Mapuche lands which have been usurped. They go on to state that the division of the communities would lead to an even more serious lack of education and would increase emigration and poverty, and that it is inadmissible for the Mapuches to have to pay taxes in respect of their own land. The document concludes with a statement demanding respect for their land, customs, culture and religion. 60/

710. The idea of dividing the land and the communities has been systematically and explicitly rejected by the Mapuches. One illustration can be seen in the text of the resolutions adopted by the Mapuche National Congress in 1972 (Ercilla, province of Malleco), in which the following are included among the objectives to

60/ In connexion with matters of religion, the International Indian Treaty Council has submitted document E/CN.4/NGO/223, cited above, containing the following statement: "The instalment of the 'state of siege' and of night hours of 'curfew', under which meetings of four or more people are strictly forbidden, has now been in effect for more than four years, thus impeding the celebration of the religious Indian feast 'NGILLATUN' during which the Mapuche have traditionally thanked their gods for good harvests or asked for improvement of production. This is a violation of the human right of a people to live according to its habits and traditions" (p. 3).

be attained: 3. "Recovery of unlawfully usurped land" and 4. "An end to the subdivision of communities". 61/ At an international conference held in Geneva in September 1977, 62/ a Mapuche representative, mentioning that "in 1968-1969 an Agrarian Reform Act was introduced", said that "this Act failed to take account of the rights of the Mapuche people and encouraged private land ownership, which runs counter to the cultural community-oriented principles of my people ..." (our underlining).

711. At a recent seminar held at Geneva, Switzerland, in June 1978, the consequences of the division of the indigenous communities were described graphically in the following comparison between the characteristics of divided and undivided reserves: 63/

"Characteristics of divided reserves. These reserves are characterized by constant disagreements and difficulties as far as the delimitation of the properties is concerned; there is no possibility of carrying out any collective work to improve roads, fences and bridges. Right from the start of the division, problems appeared, because the division is a swindle ... [for the Mapuches], based on the illusion that the fact of being owners (of ultra-small plots) will enable them to progress and to put an end to their economic problems. The result of the division of the community is utter destruction, since each member of the community receives no more than five hectares, in the best of cases, and in some areas as little as half a hectare. In this manner, an owner's prospects of making this so-called progress are completely eliminated, since the smallness of his plot makes it impossible for him to obtain a loan and he is left with no other solution but to sell his land - not to relatives or members of his family but to someone outside the community, because his relatives are in the same position; he thus swells the ranks of the agricultural or urban proletariat or simply stays on in ... the reserve, as an occasional or underemployed worker. A great deal of land which a few years ago formed part of the reserves has now been incorporated into the big estates. From the political point of view, these communities did not play a leading role during the [previous] Government, although they had extremely serious problems.

"Characteristics of undivided reserves. These reserves are those which have lost the least since receiving title to the land; there the community retains its cohesion and there is a possibility of undertaking

61/ Resolutions of the Mapuche National Congress (Ercilla, province of Malleco) in Institut universitaire d'études du développement, Geneva, Los Mapuches, pp. 23-24.

62/ Statement by the Mapuche representative to the International NGO Conference on Discrimination against Indigenous Populations - 1977 - in the Americas, in Institut universitaire d'études du développement, Geneva, Los Mapuches, op. cit., annex I.

63/ Institut universitaire d'études du développement, Geneva, Los Mapuches, op. cit., p. 16.

collective projects - sowing, harvesting, constructing fences and bridges, etc. These communities are those where the Mapuche culture is most intact, and they have the capacity to react to acts of aggression and attempts to steal their land. These communities played a leading role during the [previous] Government, and their defence organization was ready to go over to the attack; the land of these communities was the first to be recovered."

712. This statement fully corroborates the remarks made on the subject by the President of the Mapuche Confederation in an article written for Nueva Tierra, in which he also sets down the following conclusion: 64/

"The aims and objectives of the division are extremely clear. Far from providing the necessary means which might enable the small landowner to progress, the division has led to the formation of ultra-small land-holdings and created conditions which force the great majority of Mapuches to leave their plots permanently unworked."

713. Despite this clear rejection of the division of the Mapuche reserves and communities, plans to divide up land into individually-owned plots have proceeded. In August 1978, the Vice-President of the Farming Development Institute (INDAP) and Government delegate to the Indigenous Development Institute (IDI) stated in Temuco that "within the next five years we hope to normalize the land-holding situation of more than 2,000 Mapuche communities occupying 234,000 hectares of land in Regions VIII, IX and X". This official noted that, between 1931 and 1978, only 816 communities had been divided up (El Mercurio, 6 August 1978).

714. During its visit to Chile, the Ad Hoc Working Group was informed by a representative of the Government that consideration is being given to the preparation of a new land-holding scheme under which land would be negotiable. Other sources of work have been promoted, such as handicrafts production, fostered by the Mothers' Centre (CEMA). The private sector has established "Sideres" corporations with the object of making use of natural products which previously, owing to ignorance, it had not been possible to exploit. These products include musk roses, mushrooms, special oils and blackberries.

715. One of the main problems is that of technical and financial assistance. Many Mapuches are behind in their debt payments, which prevents them from having access to such assistance. It has been recognized that slowness in repaying debts prevents further loans from being extended to the persons concerned and an assurance has been given that each case would be studied on an individual basis and that solutions would be sought. It is said that 6,000 cases have been regularized, while a further 6,000 are still pending (El Mercurio, 6 August 1978).

716. According to information supplied to the Group during its visit to Chile, unemployment in rural areas has reached extremely high levels; during its visit to Chile in July 1978, the Group was informed that the unemployment rate among the

Mapuches stood at 80 per cent. Many Mapuches are not wage-earners, possess only tiny plots of land and are currently going through a period of severe financial hardship. The Group therefore wonders on what basis they can contribute to this normalization of titles and debts.

717. According to information received by the Group during its visit to Chile, in the field of education, the Mapuches have been adversely affected by the economic policies and the privatization of education promoted by the present Government, which result in limitations on access to education as well as on the types of education available. Agricultural schools, which were basically for children of rural workers, have now been placed under the National Agriculture Society (Sociedad Nacional de Agricultura), an entity comprising big landowners who promote their own interests, which do not always coincide with Mapuche interests. There is a project similarly to transfer industrial schools. The scholarship programme has been drastically reduced. The Group was also informed that young Mapuche girls who had hoped for education and related work, now see their future confined to working in the homes of the well-to-do as domestic servants.

718. Mapuche students have been excluded from State educational institutions and from dormitory facilities. Thus, in the State Technical University in Temuco, the 300 students who were expelled included 90 per cent of the Mapuche student population. Many of these were students about to graduate. 65/

719. It is clear that there is an increasing presence of INDAP within IDI. It has already been noted that the Vice-President of INDAP is also the Government delegate to IDI. 66/ It was recently announced that an INDAP official had been appointed Deputy Executive Director of IDI, following the resignation of the former holder of that post. The new Director of IDI has emphasized the importance of co-ordinating efforts with INDAP in order to achieve "greater efficiency and harmonization of activities designed to benefit small landowners, especially Mapuches". 67/

720. It can thus be seen that there is a growing link between IDI and INDAP. IDI can be presumed to serve the special interests of the Mapuches, whereas INDAP serves the interests of many persons who have no respect for the culture or ethnic specificity of the indigenous populations and strip the Mapuches of their land and other possessions. These persons reject the Mapuche tradition of retaining community ownership of the land, while granting rights of usufruct to family plots. The Group wonders whether this development will not serve to foster still more the process of allocating plots of land on the basis of individual ownership, which has been rejected by the indigenous populations in their statements.

65/ "Chile: The Mapuches under Military Government", Indígena, vol. 1, No. 3 p. 7.

66/ El Mercurio, 6 August 1978.

67/ Ibid.

721. According to information submitted to the Group during its visit to Chile:

(a) Mapuche ethnic specificity has not been granted any degree of official recognition. Mapuche children have to learn Spanish, the only language used in school. They therefore face language difficulties and the Mapuche language is in danger of extinction as a result of these deliberate policies of the public authorities.

(b) Malnutrition is inordinately high among Mapuche children (80 per cent). Lunch facilities at school have been hampered, with results such as those prevailing in the province of Malleco (by no means exceptional): Araucanía school: 40 children, 12 have lunch; Cullin school: 200 children, 30 have lunch; Trangol school: 80 children, 20 have lunch; Manzanaco, 60 children, 18 have lunch; Toquihue school: 90 children, 20 have lunch. In May 1978, the public authorities excluded persons handling school lunch arrangements from all schools.

(c) Now the Mapuches have to pay for health services which used to be given free of charge by the State. The Mapuches are not wage-earners and have no possibility of paying. Here again the economic privatization policies pursued by the present Government have had a much more serious effect on the Mapuches than on other Chileans.

722. The present economic policy of the Chilean Government has had particularly adverse effects on the Mapuche people. It has been stated in this connexion, that:

"We should say that ... now it is a whole people [the Mapuches] who have been condemned to hunger, misery, unemployment, death; a whole culture and tradition condemned to disappear." 68/

723. According to a written communication received by the Group during its visit to Chile, an indication of the harsh economic conditions under which Mapuche families are living today can be found in the fact that in some communities, Mapuche parents have again started the practice - not engaged in during the last 15 years - by which they "rent" their children to well-to-do-families in the guise of helpers in domestic or agricultural chores. The children get no wages but their family receives food in compensation for the children's services.

724. In its communication of 31 August 1978, the Government transmitted to the Group valuable information concerning the indigenous populations of Chile (see annex LXXX).

725. The Group also received a letter from the Permanent Representative of Chile to the United Nations dated 20 September 1978. To this letter he appended a photocopy of a cutting from El Mercurio of 12 September 1978, which relates to the statement made by General Pinochet on 11 September 1978 and to an Indigenous Peoples Act whose promulgation is envisaged in the near future (see annex LXXXI).

726. El Mercurio of 12 September 1978 also reproduces General Pinochet's statement, including the following excerpt on page 11:

"INDIGENOUS PEOPLES ACT

"This morning I also wish to announce the promulgation in the near future of an act relating to indigenous property. This act, respecting the cultural values of the descendants of the Mapuche race, will enable those descendants voluntarily and freely to opt for private land ownership in those cases where they prefer this formula to the present system of community ownership."

727. In view of the importance of the subject of the indigenous populations of Chile, the Group has decided to examine it in greater detail in the report which it is to submit to the Commission on Human Rights in February 1979.

F. The right to health

1. Preliminary remarks

728. The Group has, in its previous reports, mentioned the principal events that have occurred since 11 September 1973 in connexion with health services and effective enjoyment of the right to health.

729. One of the fundamental differences between health policies before and after September 1973 is the marked intervention of private initiative in the provision of health services under the present Government.

730. In this respect, it is appropriate to mention the basic provisions governing activities in this field. Article 10, section 14, of the 1925 Constitution provides that:

"It is the duty of the State to keep watch over public health and hygiene. Each year a sufficient amount of money shall be allocated for the maintenance of a National Health Service."

731. Constitutional Act No. 3, of 11 September 1976, lays down that:

"Art. 19. The State shall assume responsibility for guaranteeing free and equal access to measures for the promotion, protection and recovery of health and rehabilitation of the individual. It shall also be responsible for the co-ordination and control of integrated health measures. It is a priority duty of the State to implement health measures without prejudice to free private initiative in such forms and subject to such conditions as may be determined by law."

732. During the Group's visit to Chile and in the light of information provided there, it was confirmed that, in the development and application of these principles, there has since 1973 been an increasing tendency for health services to be taken over by the private sector, with a consequent decline in the effective enjoyment of the right to health by large sections of the Chilean population, and particularly the poorest sections.

2. Health policy

733. In its communication of 31 August 1978, the Government states that: 69/

"In keeping with the Government's policies and the characteristics of the health sector, an opportunity is given for participation in the public health system by private entities which, through explicit agreements relating to Government objectives and plans, act as administrators of units responsible for providing public health services.

69/ With this communication, the Government transmitted a memorandum accompanied by numerous reference materials. The memorandum contains information to which the Group paid the greatest attention and which is reflected under the relevant subheadings in this section.

"The aim is to bring new administrative capacities to the health services - capacities which may prove more flexible because they are not tied by the hindrances that necessarily arise in State administration." 70/

734. With regard to Government health policy, however, the Group was informed during its visit to Chile that the market economy policy and the consequent subordinate position of the State are key elements in the efforts being made to eliminate public health institutions and, at the same time, to promote private activities. Two high-ranking members of the Government had made statements to this effect. The Minister of the Economy had said that: "The Government wants to do away with the National Health Service in three years at the most, because it is not profitable and it is a burden on the State." 71/ Again, General Gustavo Leigh, then a member of the Government Junta, had stated that: "The National Health Service will give way to efficient private entities: health care co-operatives, mutual societies, private clinics, diagnosis centres, private medical practice, etc." 72/

735. The Government Delegate to the National Health Service - virtually the Director-General of the Service - reiterated this idea in 1977: "The whole pattern of ministerial policies is designed to achieve this objective: to open the way for properly controlled private initiative, when conditions are favourable, to assume the important role it must play in the vital matter of the physical and mental well-being of the people of Chile". 73/

736. Previous studies, as that of the President of the Medical Association of Chile, Mr. Ernesto Medina, have indicated that the annual cost of the minimum health care needed by an average Chilean family of two adults and three children can be estimated at about \$433. 74/ Since the current wage of a skilled worker is approximately \$100 a month or \$1,200 a year, the cost of health care would represent virtually one third of his earnings.

70/ With regard to the transfer of the administration of certain Health service establishments to private entities, see also the additional statements by the Government under item 4 of this Section.

71/ El Mercurio, 12 May 1974.

72/ Vida Médica, vol. XXVI, 18 May-June 1974.

73/ El Mercurio, Informe Económico Mensual, No. 24 (August 1977) p. 16.

74/ Ernesto Medina, "La salud: una necesidad social del mundo actual", Revista Médica de Chile, July 1975; Jorge Jiménez de la Jara, "Relación entre economía y salud" in Jorge Jiménez (ed.), Medicina Social en Chile (Ediciones Aconcagua, Colección Lautaro, December 1977).

737. It was also stated by a medical expert that there are no data which would show directly the influence of the Government's health policy. He also stated that the Government cites in its own favour the decline in infant mortality but the present figures can be attributed to the accumulation of pre-existing factors. It was also asserted that the vast majority of doctors previously combined public health work with a private practice. At the present time, however, for lack of facilities in the National Health Service and for financial reasons, many doctors work only in private practice.

738. It is difficult to determine the average salary of a doctor. A doctor working an eight-hour day in the National Health Service can earn 15,000 to 20,000 pesos a month, depending on his seniority. In private practice he can earn 80,000 to 100,000 pesos. With regard to access by the lower income groups to private medicine, it was said that an unskilled worker receives a monthly wage of approximately 2,200 pesos (\$80 was the figure given). However, a private consultation may cost 1,000 to 2,200 pesos. Add to this the cost of tests and medicaments, and the total cost of curing an acute infection, for example, can amount to about 2,500 pesos, which is roughly equal to the minimum monthly wage.

739. It was also said that medical care is badly distributed not only in terms of social class but also in terms of geography. For example, in Santiago there is one doctor for every 500 persons, whereas in the south of Chile there is one doctor for every 5,000 persons.

3. Health budget and expenditure

740. In this matter, the Group received what must be described as completely contradictory and irreconcilable information.

741. On the one hand, in its communication of 31 August 1978, the Government states that the public budget and expenditure for health have risen appreciably in recent years and states that:

" The statistics for public health expenditure for the 10-year period 1969-1978 show, for 1978, that:

" (a) Public expenditure on health is \$422 million, the highest figure for the period;

" (b) The per capita figure of \$38.93 is also the highest for the period;

" (c) Expressed as a percentage of the geographical product, it amounts to 3.84 per cent, which is also the highest for the period in question."

742. On the other hand, other reliable sources outside the Government provided information pointing to a significant reduction in the public health budget. During its visit to Chile, the Group was informed that the public health sector, and consequently its institutions, have been subjected by the present régime to a systematic, progressive and sharp cut in their budget. The budgetary cut seems to be of such a magnitude that it has affected greater efficiency and the better use of resources. This would tend to lead to a qualitative and quantitative decline in the services provided.

743. According to the Budget Directorate of the Ministry of Finance, 75/ fiscal expenditure on health has been steadily cut back since 1974. Expressed in dollars, fiscal expenditure on health in 1972 was \$253 million, but was later reduced so that it stood at only \$133 million by 1976. It rose in 1977 to \$145 million.

744. If this expenditure is expressed as an annual per capita figure, it will be seen that the \$26 per person per annum spent in 1972 declined to \$12.80 and to \$13.70 in 1976 and 1977 respectively. In other words, the fiscal contribution has been cut by more than half. 76/

745. Moreover, if one looks not at fiscal expenditure but at total public expenditure on health, the reduction is seen to have been even greater. Public expenditure is the sum of fiscal expenditure (which constitutes 42 per cent of public expenditure) plus contributions channelled directly and compulsorily to the health sector, e.g. social security payments. Public expenditure had in fact gradually risen to \$46.40 per capita per annum in 1972 but later began to drop off sharply until it was only \$17.50 in 1976. 77/ The reduction was of the order of 62.3 per cent.

746. In this connexion, reference may be made to the comments made by Dr. Ernesto Medina, President of the Medical College, in his address to the opening meeting of the session of the Regional Boards and the General Council of the Chilean Medical College, held on 15-16 April 1977. Dr. Medina said: "If we look at the serious economic outbacks affecting the health services and the staff working in them, we can only assume that this is part of a policy designed to force the health sector to enter into the compass of a market economy". 78/ Later on he reached the conclusion that "the fact is that, in our country, recent economic decisions regarding resources for the health sector indicate the existence of a deliberate policy of indifference to the development of the sector". 79/

747. In addition to what has already been said, it should be mentioned that experts from the Pan-American Sanitary Bureau who analysed the health situation in Chile expressed concern at the "freezing of fiscal resources for the sector". 80/

75/ Ernesto Medina L., "Presente y futuro de la medicina social chilena", in Jorge Jiménez (ed.), Medicina Social en Chile (Ediciones Aconcagua, Colección Lautaro, December 1977).

76/ Ministry of Finance, Budget Directorate.

77/ "El gasto en salud", El Mercurio, Informe Económico Mensual, No. 24 (August 1977).

78/ Ernesto Medina L., "Discurso pronunciado en la reunión de Mesas Directivas de Consejos Regionales del Colegio Médico en el Consejo General", Vida Médica, vol. XXVI, March-April 1977, p. 12.

79/ Ibid.

80/ Centro de Investigaciones Socioeconómicas (CISEC), Sector Salud, Segundo Semestre de 1976, p. 18.

4. Transfer of the administration of Health Service establishments to private entities

748. In its communication of 31 August 1978, the Government states:

"It is necessary to explain that, on the basis of this policy, 81/ no public health service has been handed over to private institutions. On a trial basis only, it has been agreed with private non-profit-making entities that they should administer some out-patient establishments. Under the agreement, the activities of the private entities in question conform strictly to the programmes and policies of the Ministry of Health. Treatment continues to be absolutely free for the legal beneficiaries of the National Health Service, including all workers, whether skilled or not, and members of their families."

749. During its visit to Chile, the Group was informed that there is another means used by the Government to develop its health policy; it consists, in actual fact, of transferring the premises, equipment and funds of National Health Service establishments into private hands. By resolution Nr. 8480 of the Directorate General of Health, dated 31 October 1975, an agreement was reached between the National Health Service and the National Private Corporation for Social Development (Corporación Nacional Privada de Desarrollo Social), whereby the out-patient dispensaries of the Commune of Maipú were handed over to be administered by this private institution.

750. It was added that the agreement consisted in essence of handing over to this private institution the physical premises and equipment of three out-patient dispensaries of the National Health Service located in the Commune of Maipú (a Commune in the western sector of the city of Santiago). The proportion of the budget corresponding to the proportion of beneficiaries in that Commune, by comparison with the relevant Health Area as a whole, was also handed over. In other words, 38.7 per cent of the budget for the Central Health Area of the Metropolitan Region was transferred to this private corporation. For its part, the Corporation undertook to provide services, in keeping with the obligations of the National Health Service, to beneficiaries resident in that Commune.

751. The daily press has reflected this by reporting that the dispensaries around the Central Area have also been transferred to the private sector. They used to provide free medical attention for NHS beneficiaries (including, in particular, workers covered by the Social Insurance Service, persons injured at work, schoolchildren, workers and pensioners in the NHS, firemen and indigent persons), but now come under the National Private Corporation for Social Development. 82/

81/ The health policy (see this heading, above).

82/ El Mercurio, 27 February 1978.

752. One newspaper mentions, in addition, the existence of other agreements with organizations in San Bernardo and hospitals at Pucón and Puerto Vargas. 83/

753. At the beginning of March 1978, according to Hoy, 84/ this National Private Corporation for Social Development (which consists of representatives of the seven areas of the Production and Trade Confederation) took over another four dispensaries, this time in the central area (Nos. 1 and 5, Los Nogales and Lo Valledor Norte). The Minister, General Mathei, has stated that this does not mean that the Service is being sold: "the responsibility for ensuring that effective treatment is given is still ours". Moreover, he stated, matters are given careful consideration before each step is taken. He added: "The transfer of dispensaries is not a fundamental aspect of our health policy. As a minister, I do not promote this private initiative. It is a consequence of a readiness on the part of private entities to collaborate with the Government". With regard to the reasons which induced the public health authorities to take another step in the transfer of dispensaries into private hands, the Minister of Health, General Fernando Mathei, stated: "so far we agree with these experiments." 85/

754. The executive director of a number of dispensaries has stated that "the system adopted by the Corporation hinges on the application of business standards to the management of the dispensaries". In answer to complaints made by patients that they had to pay 15 pesos for each consultation and 40 pesos for an injection when, as NHS beneficiaries, they should be given free care, he replied that the true cost of an injection was 27 pesos; the dispensaries made money by establishing a special tariff for private patients for whom the cost of a consultation was 250 pesos. "A beneficiary", he said, "should receive medical care free of charge but, as this leads to abuses, we have instituted a system of voluntary donations. We also have a team of social workers who investigate the circumstances of persons who state they are unable to pay, to see whether they are indigent ..." 86/

755. The "voluntary donation" of 15 pesos has caused controversies, since this fee both frightens off users and gives rise to claims. Accordingly, the Regional Ministerial Secretariat has given strict instructions to the Central Health Area that no money may be taken on any pretext from NHS beneficiaries. 87/

83/ Hoy, 1-7 March 1978.

84/ Ibid.

85/ Ibid.

86/ El Mercurio, 23 February 1978.

87/ Hoy, 1-7 March 1978.

756. During its visit to Chile, the Group was informed that in 1977, when the above-mentioned Agreement had been in operation for two years, students of the Department of Public Health and Social Medicine of the University of Chile carried out an appraisal of its operation. 88/

757. The method used for the appraisal was administrative verification by means of a sample survey of the patients. In this way, the students were able to form a picture of the operation of the dispensaries, together with an idea of the problems arising in the community served. The survey in question was a repetition of another carried out in 1973, with which it was compared.

758. The general conclusion of this appraisal carried out by the team mentioned in para. 756 above, was a negative one. Management is defective: there are no organizational standards or procedures; the handling of inputs creates problems of obsolescence, wastage and depreciation; internal co-ordination is defective; and budget contributions are not distinguished from those of the Health Area, a circumstance which prevented the group from evaluating the manner in which the latter sums are used. The situation is no better as regards the treatment given. It was observed that the coverage, the average number of consultations and the prevalence of various diseases remained at levels similar to or worse than those encountered in other Health Areas, or than those recorded in earlier years. On the other hand, difficulties in arranging consultations had increased. Treatment was charged for, including treatment of NHS beneficiaries; excessive proof of beneficiary status was required; consulting hours were inadequate, etc. It was further observed, for example, that treatment of beneficiaries was charged for in a high proportion of cases amounting, in cases of treatment for child illnesses, to nearly 60 per cent. Even more serious was the fact that a high percentage of the mothers questioned stated that they had to pay to receive health care.

759. In its communication of 31 August 1978, the Government states that the appraisal made in 1977:

"Constituted practice for a group of students of the Department of Public Health and Social Medicine of the University of Chile, which was in the nature of an instructional experiment with methodologies used in the field. It is regarded as a partial piece of work which lacks validity as an established appraisal system".

760. The Government adds that:

"The Agreement with the Private Corporation for Social Development in the Santiago Health Sub-Area has gradually been applied since 1975 and is being constantly evaluated".

88/ Alumnos de licenciatura en Salud Pública, "Diagnóstico de Salud, Acreditación y Diagnóstico Administrativo de la Sub-Area de Salud de Maipú (Convenio de Administración; Servicio Nacional de Salud y Corporación Nacional Privada de Desarrollo Social)". Department of Public Health and Social Medicine, University of Chile, 1977. Mimeograph.

5. Limits on access to medical treatment

761. In this area, too, the Group was confronted with completely contradictory information. In its communication of 31 August 1978, the Government stated the following:

"... Curative treatment has been maintained at the same per capita level and health development and protection activities have expanded considerably. The number of consultations per capita in 1977 (not counting emergencies) remained at the level for the 10-year period. The figures ... [for] 1971 are distorted by the fact that care administered by medical students was reckoned as medical treatment.

"...[In addition] the following information may be given:

"Access by legitimate beneficiaries to the public health service has been simplified and safeguarded by the attached official communication and regulations.

"...

"... There has been a substantial increase in the numbers of participating professional medical staff with university qualifications. At the same time, there has been a reduction in the numbers of administrative staff who were bureaucratizing the system and a slight decline in the numbers of unqualified auxiliary staff.

"...

"The services of the public health system are non-profit-making. Consequently, all the changes which have been made are motivated solely by technical considerations, with exclusive emphasis on administrative efficiency as a means of enabling the available resources to be used for a greater number of health activities".

762. During its visit to Chile, the Group was informed that, although budgetary restrictions were the principal element, there were a number of other measures and attitudes which were causing a deterioration in medical treatment. Among these, mention may be made of: (a) measures which impede, render more difficult or discourage access to medical treatment (payment, even for emergency treatment, the need for very complete documentation, etc.); (b) measures which, in practice, minimize State treatment for groups or sections of the Chilean population, such as the unemployed, certain age groups and even those legal beneficiaries whose documentation is not up to date; (c) measures tending to discredit work in State institutions and thus to encourage migration, especially of skilled professionals, to the private sector; and (d) measures to achieve greater "economic efficiency" of the work. This last factor has caused various services to be eliminated on the grounds that they are not economically viable, in accordance with market criteria.

763. The Group was told that current policy has the effect of reducing the amount of public medical treatment. Between 1971 and 1976, the number of cases of medical treatment by the National Health Service fell by some 24 per cent. Apart from

general economic policy, there are various specific measures which have combined to produce this result. Emergency medical services stand reduced in their staff, since they are forbidden to recruit new personnel to fill vacancies which arise. Institutions such as hospitals and dispensaries which belonged to the public sector have been transferred to the private sector.

764. It is the Group's understanding that, in practice, the right to health is expressed and is measured in terms of the degree of satisfaction of needs. In a country in which State health services had always been progressive in their coverage and quality, reductions as sharp as those mentioned above constitute an element which effectively tends to diminish the genuine enjoyment of a right that had already been acquired by the economically most underprivileged groups in Chilean society. The adoption of business standards for social services may solve financial and administrative problems, but it is not compatible with the nature of such services and deprives the less privileged sectors of protection of their right to health.

6. Certain aspects of the problem of malnutrition

765. In its communication of 31 August 1978, the Government, referring to the supplementary food programme, said that the programme "provides whole milk and protein foods to all children of up to six years of age, pregnant women and wet-nurses [and that it] has shown a pronounced and sustained increase, as the supply of milk rose from 13,586,000 kg in 1968 to 19,286,000 in 1972, reaching its peak at 28,651,000 kg in 1977 ...

"The cost of the programme is now over \$US 50 million a year. The system of distribution, which is linked to children's health check-ups conducted in units of the National Health Service, makes it easier for the milk to reach the most needy groups and ensures that it is put to better use.

"A comprehensive and direct evaluation of the programme is being carried out but, in the meantime, the general indices, and the infant mortality rate in particular, show that there has been a steady and marked improvement (which would not have come about if the nutritional situation in the country had remained constant or had deteriorated).

"In 1972, there were 9,000 unweaned infants (under two years of age) suffering from serious malnutrition, and the rate of hospital mortality deriving from inter-current infections caught in the unhygienic conditions of the hospitals was 35 per cent. To provide an alternative method of restoring these children to health, the National Health Service, in agreement with the Child Nutrition Corporation, established a system under which the patients were interned in specialized centres where, in addition to receiving a correct diet, they were given the psychomotor and affective stimulation with which their homes and the normal hospital facilities were unable to provide them.

"This system, which is based on the integration of the family group into the life of the Recovery Centre as well as voluntary assistance by members of the community, has produced extremely promising results, and the mortality rate has dropped to only 2.5 per cent."

766. With regard to the supplementary food programme for children of under six years of age, the Group was informed by reliable non-governmental sources that the programme appears to have been maintained and improved, and that intelligent use has

been made of the lessons and extensive experience of earlier years. On the other hand, the programme for schoolchildren has been eliminated, although it has been announced that it will be gradually reintroduced in an improved form. 89/

767. During the Group's visit to the offices of ODEPLAN in Santiago, it interviewed Dr. Fernando Monckeberg Barros, Director of the Institute of Nutrition and Food Technology of the University of Chile, who stated that Chile had major problems of nutrition, mainly affecting infants, pregnant women and wet-nurses. The Institute was trying to eliminate malnutrition in the most vulnerable groups, and had an annual budget of \$US 110 million for that purpose.

768. The most important of the Institute's programmes was designed to ensure adequate nourishment for infants during the first two years of life. Babies of under six months were allotted 3 kg of powdered milk per month, and from then up to two years of age the quota was 2 kg. That milk was sufficient in itself to ensure normal growth. Currently, the quantities distributed exceeded requirements, since mothers were taking their babies to a number of different centres in order to obtain more milk. Milk was also distributed to pregnant women and wet-nurses.

769. There was a hospitalization programme enabling persons suffering from severe malnutrition to recover. A network of nutrition centres, which were really small hospitals, had been established to restore those children to health. There were now 26 centres with 60 beds each, and it was hoped to bring that number up to 38 centres providing nation-wide coverage in the course of 1978. The programme was run by the community in agreement with the National Health Service. The total recovery cost per child was \$US 500.

770. In order to eradicate malnutrition it was not enough to distribute food. Consequently, a day-care centre programme had been established to provide pre-school education for children and there was also a school rations programme through which food was made available in the schools. The results of those programmes were reflected in the statistics: in 1968, mortality among infants of up to 1 year of age had been 83 per 1,000 whereas, in 1977, it had stood at 47 per 1,000 - one of the lowest rates in the Americas, except for Cuba and Puerto Rico. If the trend was maintained over the next five years, malnutrition could be eradicated.

771. While in Santiago, the Group also had occasion to visit, in Renca, the Centro Paula Jara Quemada, one of the day-care centres established and managed by an organization known as the National Co-ordinating Committee (Comité Coordinador Nacional). There are 12 such centres in Santiago, and 100 in all Chile. Children, grouped into ages 2-6 years and 6-8 years, arrive early in the morning and spend the day at the centre, where they play, have lunch, rest and engage in other suitable activities. Only children of low-income families or of the unemployed are admitted, after a thorough check of their economic situation. The day-care centres are staffed by PEM workers and function in contact with the Mothers' Centres (Centros de Madres, CEMA), which are subsidized by the State and receive donations, as well as contributions from the participating families.

89/ It should be noted that, according to information received by the Group, malnutrition is exceptionally high among Mapuche children (80 per cent) and the school canteens are facing serious problems since the staff which used to service them were dismissed in 1978 (see sect.E above).

772. The Group also visited one of the nutritional recovery centres (centros de recuperación nutricional) under the direction of Dr. Monckeberg and learned that this particular centre had been in existence since November 1977. Children in this centre are exclusively under two years of age and have been selected because of the degree of malnutrition they show. The recuperation period is five months and subsequent contacts stretch through the following two years. The Group was informed that not all needs were being covered; more centres of this kind were needed. While children are in the centre, a diagnosis of the family situation is made and a plan is set up for needed treatment of that situation during the following years also. Efforts are made to have the child continue to be brought to a day-care centre afterwards. This has been the case of 22 children released from this nutritional recovery centre, who continue to be at a good nutritional level. They eat at the day-care centre five days a week. The staff of the centre visited included two physicians, two nutritionists, one nurse, one social worker, one grammar-school teacher, one psychologist, one gynaecologist, 30 nurses' aides and six auxiliary staff of the Milk Diet Service (Servicio Dietético de Leche, SEDILE).

773. During its visit to Chile, the Group had occasion to visit a people's meal centre (comedor popular) and a health clinic in the western sector of Santiago. It was able to speak to the mothers and children in the meal centre and to some of the persons in charge, who stated that many of those present had only one meal a day - lunch at the meal centre. In the health clinic, data were furnished about some aspects of the incidence of malnutrition in the western sector of Santiago. The relevant data are as follows: 90/

"Information obtained from the evaluation of health activities in 1977:

"Number of meal centres: 60

"Number of children: 4,800

"Number of medical examinations: 124 (frequency: twice yearly; weight, height, symptoms)

"Total number of persons examined: 6,109

"Attendance of children at examinations: 81 per cent

"Medical and social problems: a comparison between 1976 and 1977

<u>Problem</u>	<u>1976</u>	<u>1977</u>
Malnutrition	61%	54%
Pediculosis	32%	38%
Caries	28%	39%
School absenteeism	11%	16%

90/ It should be added that malnutrition also exists among adults, for 349 of the 1,038 persons examined, or 34 per cent, are listed as "undernourished adults" in the health clinic's records.

"Comments:

"1. The meal-centre population has stabilized. The turnover among children is only one third.

"2. The nutritional level of the children has improved by 7 per cent, the severity of malnutrition having decreased (70 per cent of the children suffer from only minor malnutrition). The nutritional level of new children has improved (the proportion of undernourished is 11 per cent less than in 1976). The older unweaned babies are the most seriously affected ...

"7. The average number of children from one family in each meal centre is three (the average number of children per family in the population is five).

"8. Coverage: the figure of 4,800 children given care means that only 2.1 per cent of the child population in the western sector is receiving attention.

"9. There has also been an increase in the calorific value of the food provided at the meal centres, but it still covers less than 50 per cent of requirements as defined by FAO and WHO. The increase is 13 per cent for pre-school children and 8 per cent for schoolchildren."

774. According to information received by the Group from a reliable non-governmental source, child malnutrition is still a cause for official concern but is said to have decreased dramatically. Unfortunately, the only valid comparison so far published is between two surveys carried out in the province of Curicó in 1968 and 1975; the percentage of children suffering from malnutrition was 64 per cent and 21 per cent, respectively. It is clearly not possible to assert that this reduction is attributable to developments between September 1973 and the date of the second survey, particularly since the 1968-1973 period saw the implementation of an agrarian reform scheme and a supplementary food programme which must both have had a considerable impact in an agrarian province with large estates, like Curicó. Official documents spuriously inject into this comparison the figure of 17 per cent of malnourished children for Chile as a whole. This percentage has been worked out by methods completely different to those used in the Curicó survey. To this lack of valid data may be added the fact that the most recent figures issued on the availability of food and consumption of food according to social group date from 1972.

775. In this connexion, it should be mentioned that studies carried out in 1968 and 1969 showed that the poorest families spent 54 per cent of their income on food. ^{91/} In June 1975, a statement by the Ministry of Health, published in the newspaper El Mercurio, said that low-income families spent over 70 per cent of their income on food. In August 1975, it was estimated that persons earning 300 pesos a month (employees with a family of four) spent 87 per cent of their income on food. Their diet provided approximately 1,200 calories and 40 grams of protein per person per day ^{92/} (the FAO/WHO recommendations call for 2,362 calories and 42 grams of

^{91/} National Institute of Statistics (INE), Survey of Family Consumption in Greater Santiago.

^{92/} "Cuánto gastamos en comer?", Ercilla, August 1975.

protein). ^{93/} No mention was made of the workers in the "minimum wage" category, who receive only 60 to 70 per cent of the wages of employees, still less of the unemployed, whose situation is undoubtedly much worse. The monthly cost of the basket of basic goods in July 1976 was two and a half times higher than the monthly revenue of the low-income group. ^{94/} In view of the enormous disparities between incomes, the nutritional level of the poor must be appallingly low.

776. It would seem that, although good work has been done with some degree of success in certain aspects relating to the matter of nutrition, there is still much to do. In this respect the following statements concerning Chile, taken from the Proposed Programme Budget for the Financial Years 1978 and 1979 of the World Health Organization, are to be noted here:

"As a result of a poor distribution of food supplies there is a disturbing incidence of nutritional diseases, particularly among the low-income groups. Among infants under one year of age, protein-energy malnutrition affects 13.77 per cent; in the 12-23 months age-group (the most seriously affected), 18 per cent; and in children two to five years of age, 13.37 per cent... With the assistance of PAHO/WHO, UNICEF and the Ford Foundation, a continuing survey of the nutritional status of the population has been organized to measure the progress of programmes and direct them where they are most needed. A ministerial commission has been established for planning, programming and implementing nutrition policy. Among the most important measures now being enforced are promotion of breast-feeding, feeding of children under two years of age with whole powdered milk and children of two to five years of age with high-protein foods, compulsory enrichment of the protein content of baby foods sold in stores, feeding of protein mixtures to pregnant and nursing women, and development of industrial plant to produce protein foods. PAHO/WHO is co-operating in these activities." ^{95/}

7. Projects affecting seriously undernourished
unweaned infants

777. The Group was informed that a group of doctors in Santiago is submitting a group of unweaned infants to an experiment in "sensory, psychic and motor deprivation" which will produce irreparable damage to their central nervous systems.

778. This question will be dealt with by the Group in its next report to the Commission on Human Rights. In the meantime, the Group will try to ascertain the opinions of the Government of Chile and of the relevant scientific bodies.

^{93/} F. Monckeberg and S. Valiente, COMPAN, 1976.

^{94/} José Aldunate, "El hambre en Chile", Mensaje, October 1976.

^{95/} WHO, Official Records, No. 236.

XI. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

779. The Ad Hoc Working Group has reviewed carefully the information which it has received concerning the present situation of human rights in Chile and which is reflected in the various chapters of this report. In this regard the Group makes the following observations and recommendations:

(1) The present situation of human rights in Chile has improved from that reported by the Group in the years immediately following the change of government on 11 September 1973. Large numbers of political prisoners are no longer held in Chile; no cases of persons disappearing during 1970 have been confirmed and the expression in the press of a wider range of opinion appears to be permitted. Nevertheless, the Group's inquiry has led it to the conclusion that, in the areas indicated in the following paragraphs, violations of human rights, often of a serious nature, continue to take place and that this situation should continue to be a matter of concern to the international community. In this regard the Group is convinced that the improvement that has come about in the situation of human rights in Chile is largely due to the international concern expressed inter alia through resolutions of the General Assembly and the Commission on Human Rights. For this reason, the United Nations should continue to keep the situation in Chile under consideration until respect for human rights meets international standards.

(2) With respect to the reports which the Group has previously submitted to the General Assembly and to the Commission on Human Rights, the information received by the Group while in Chile does not contradict the substance and conclusions of those reports. Furthermore, persons of stature within Chile have told the Group that the information in its earlier reports was accurate.

(3) In Chile today the constitutional, legislative and executive powers are concentrated in the hands of the President and the Government Junta. There is no longer a separation of powers and the Government Junta has the authority to modify the Constitution, including the structure, functions and powers of the judiciary and of the Office of the Comptroller-General of the Republic (Contraloría General de la República).

(4) Since 11 March 1978 Chile has been under a state of emergency that legally differs very little from the state of siege, which was in force from September 1973 until March 1978. The state of emergency severely limits the realization of certain basic human rights, and it can be said that human rights, in so far as they are enjoyed, are only tolerated and are not effectively guaranteed by the Constitution or laws of Chile. Certain of the violations of human rights and the restrictions on their enjoyment are the direct result of the present system of government in Chile. The Government and the military authorities are given special powers which are free from any form of control by other authorities, in particular the judiciary. During its visit to Chile the Group found no public disaster, armed uprising or other similar situation which in the opinion of the Group would justify the continuation of the state of emergency and its restrictions on human rights. The Group recommends that the General Assembly call upon Chile to end the state of emergency in order that all human rights may be fully enjoyed.

(5) International instruments in the field of human rights proclaim and guarantee the right of everyone to take part in government and state that the basis of governmental authority shall be the will of the people expressed in periodic and genuine elections. The people of Chile have not enjoyed the right to take part in government since September 1973. During this period, and without the participation of the people, basic changes in policy have been imposed on the people in the areas of economic policy, education, health and labour legislation, to mention only a few. Attempts by the people to organize expressions of disagreement with these policies are sometimes met with repression.

(6) Security agencies with wide powers continue to operate in Chile. Most of the powers of the dissolved DINA (which was replaced by CNI) are being exercised by separate agencies today, but in a co-ordinated manner. The Ministry of the Interior now has a certain control over most of the activities of CNI, but the judiciary continues to be excluded from any control over the activities of the security agencies. The Group wishes to state that it was not able while it was in Chile to obtain adequate information on the activities of the former DINA. The consequences of the activities of DINA continue to affect the lives of many people and they relate, in particular, to the responsibility for and fate of missing persons.

(7) The Office of the Comptroller-General of the Republic is an institution which according to Chilean law has the independence and power which would enable it to contribute to the protection of human rights. However, the limits imposed on the Office of the Comptroller-General and self-imposed restrictions on its activities prevent it from fully carrying out the functions it performed during periods of constitutional government in safeguarding the rule of law and in protecting human rights.

(8) The two existing remedies in Chilean law for the protection of human rights, the writ of amparo and the remedy of protection, have been applied restrictively by the Chilean judiciary to such an extent that they can not be said to protect the right to life, liberty and security of person in situations in which the Government states that national security or the state of emergency are involved. In cases where arrest has taken the form of kidnapping or where the person concerned has disappeared, the remedy of amparo is not applied. The judiciary has also refused to review the decisions of military courts and it has refused to effectively investigate violations of human rights when the Government states that national security matters are involved. For the protection of the right to life, liberty and security of person, the Chilean people cannot be said to have an effective remedy, as is provided for under international law.

(9) The amnesty of 13 April 1978 permitted the release from prison of a large number of individuals - which the Group welcomes. It does not however appear to have affected the right of many Chileans living abroad to return to their country, nor has it prevented Chilean citizens from being expelled. One of the principal negative effects of the amnesty appears to be the removal of the criminal responsibility of those who have committed violations of human rights, such as ill-treatment and torture and acts resulting in the death or disappearance of detainees. The Group is firmly of the opinion that an amnesty for those who were engaged in systematic and gross violations of human rights granted by a Government which tolerated the existence of such violations is legally ineffective

as contrary to the generally accepted principles of law. On the international level, the persons participating in and responsible for those violations continue to be criminally liable. The Working Group thus recommends that the General Assembly take the necessary steps to establish as early as possible an effective international penal jurisdiction to judge persons alleged by the international community to be responsible for torture. The Group is convinced that this would serve as a deterrent to torture all over the world.

(10) Arrests for political reasons or for reasons of national security continue to take place in Chile. A large number of persons have been arrested during public meetings held for the purpose of calling attention to problems which need solutions, such as that of missing persons, or to celebrate May Day. Excluding these large-scale arrests, the arrest of persons individually or in small groups by security agents, carabineros or the Investigations Bureau continued to occur on a considerable scale during the first half of 1978. In these cases the laws requiring written arrest warrants, notification to family members and detention in specified places are rarely applied. In some cases the legal limitations on the length of detention are not respected. Usually individuals or small groups of persons arrested for political or national security reasons are taken for questioning to unknown places of detention.

(11) Ill-treatment and torture continue to be reported as part of the process of interrogation of persons arrested individually or in small groups for political or national security reasons. With one exception (see para. 326), in all the cases examined by the Group in chapter III, section C, allegations of torture and ill-treatment were made. In two of these cases evidence of torture was corroborated by medical doctors. Of 32 persons reported to have been arrested in May 1978, 25 have stated that they were subjected to torture and ill-treatment. Torture and ill-treatment, although to a lesser degree than in the past, are reported to be carried out during the period prior to the handing over of the person concerned to the courts. At the same time, the Group notes that the number of arrests has declined.

(12) The judiciary, as stated above, has adopted restrictive interpretations of its powers in the application of the writ of amparo and it has refused to investigate energetically and to punish violations of the right to liberty and security of person. These violations, in the Group's view, could be prevented by the elimination of the opportunity for the security services to exercise arbitrary power over detainees, by the full restoration of the effective authority of the courts and by the identification and punishment of those responsible for past abuses. The Group recommends in particular that arrested persons be brought immediately before a judge, that they be questioned only in the presence of a judge or their lawyer and that the court exercise full supervisory powers over the legality of arrest and detention - as provided for in the Chilean Constitution and in international instruments which Chile has ratified - irrespective of whether the person was arrested by military or security agents.

(13) The Group has concluded that the remedies at the disposal of the Chilean citizen to protect his life, liberty and personal security are inoperative to such an extent that the Chilean citizen cannot be said to enjoy the right to an effective remedy as required by international law. Many people in Chile, including persons prominent in the national life of the country, have spoken to the Group of the necessity of continued international efforts for the protection

of human rights in Chile. Many have spoken of the important contribution made in the past by the Working Group and have urged its continuation. Another idea has been the nomination of one of the members of the Working Group to continue to study the situation of human rights in Chile and to report to the Commission on Human Rights. In this connexion the Group wishes to urge strongly that until the national means of protecting human rights are operating adequately, the international community, especially the United Nations, should continue to be vigilant in the promotion and the protection of the human rights of the Chilean people. In particular the Group recommends to the General Assembly that a special rapporteur on Chile be appointed, from among the members of the Working Group as presently constituted, by the Commission on Human Rights in consultation with the Chairman of the Working Group.

(14) The information received by the Group in Chile strengthens its conviction that steps must be taken immediately on the international level to provide aid to those persons suffering directly from violations of their human rights in Chile and to their relatives, both inside and outside Chile. In particular, this aid should include financial assistance to the relatives of the missing persons. The Group wishes to urge that the General Assembly establish the United Nations Trust Fund for Chile recommended by the Economic and Social Council in resolution 1978/15.

(15) The Group during its visit to Chile was deeply struck by the tragic humanitarian problem of the missing persons. Much information has been gathered from reliable sources on the arrest and detention of about 600 missing persons, most of whom, according to eye-witnesses, were arrested by government security agents. But the investigations undertaken by the courts and by the Government have been far from adequate, for the reasons described in this report. The Group has consequently recommended to the Government of Chile that an independent international inquiry committee be established to clarify the whereabouts and fate of missing persons. This committee would report to the Commission on Human Rights. One of the elements of this proposal is the presence on the committee as chairman-rapporteur of a member of the Working Group, to be designated by the Commission on Human Rights in consultation with the Chairman of the Working Group. The Chairman of the Group in his letter of 8 August 1978 outlined this proposal to the Chilean Government. Contacts on various aspects of this important problem are continuing between the Working Group and the Government of Chile. The Working Group will make a final recommendation on this matter in its report to the Commission on Human Rights. The Group recommends that the General Assembly should invite the Commission on Human Rights, after it has received the final recommendation of the Group, to set up such a committee.

(16) Although the expression of a wider range of opinions in the Chilean press appears to be permitted today, the legal powers of censorship and control, the system of informal government directives and the self-censorship of the media continue to operate. The Group recommends to the General Assembly that it call upon the Chilean Government to end both the legal and the informal systems of government censorship.

(17) In the field of education, the growing cost of education, together with the difficult economic situation of the lower income groups in Chile, has severely limited the real chances of many children and young people to achieve a full education. The completion by many of even the primary educational cycle is endangered. Universities and some schools remain under the direction of military

officers. Freedom of expression in educational institutions is subject to extensive limitation through the application of the doctrine of "national security" which regards the expression in the schools of any views opposed to the Government's policies as a threat to the nation.

(18) The enjoyment of the basic human right of freedom of association as guaranteed in various international human rights instruments is seriously limited in Chile today. Political parties continue to be prohibited and all political activities are outlawed. Similarly, the enjoyment of trade union rights is severely curtailed. The free election of trade union leaders, the right of collective bargaining and the right to strike are all denied the Chilean workers. The right to hold meetings of trade unions not under government control is subject to serious restrictions. The Group recommends that the General Assembly call upon the Chilean Government to remove restrictions on political and trade union activities and to rapidly re-establish the full enjoyment of the right of association.

(19) The problem of unemployment continues to be serious in Chile, partly as a result of government economic policy. The Government's Minimum Employment Plan (PEM) and the Plan to Promote Employment and Efficiency in Social Action have been unable to overcome unemployment in a significant way up to the date of this report, and existing programmes to offset the effects of unemployment on the worker and his family are not producing appreciable results. The Group recommends that the General Assembly call upon the Chilean Government to take adequate and effective measures in this regard.

(20) Chilean labour legislation was substantially modified by Decree-Law No. 2200 of 15 June 1978, which was elaborated in its final form and promulgated without the participation or consultation of trade union leaders or labour representatives. Instead of the safeguards for security of employment previously in force, this decree-law provides employers with significantly greater powers to dismiss workers. It also empowers employers to modify work contracts unilaterally and allows them to modify conditions of work on grounds previously excluded. Further, this decree-law also makes unfavourable changes in previously established rights of several categories of workers. The Group recommends that the General Assembly call upon the Chilean Government to restore to the workers their acquired labour rights and to guarantee the standards of protection called for by international instruments in the field.

(21) The situation of the largest indigenous ethnic group in Chile, the Mapuches, is of deep concern to the Group. Procedures which the present Government has established concerning the acquisition of title to land by Mapuches fail to take into account their institutions, customs and traditions. This, combined with a lack of effective technical and financial assistance, creates conditions for the Mapuches to be progressively dispossessed of their lands by socially and economically more powerful groups, thus endangering the existence of the Mapuches as an ethnic group. The Group recommends to the General Assembly that it call upon the Chilean Government to take the particular cultural characteristics of the Mapuches effectively into account in any measures that affect them, and to adopt the necessary special provisions to guarantee to the Mapuches their right to own land in accordance with their customs and traditions and the right to preserve their cultural identity. The Group will make further detailed recommendations on this subject to the Commission on Human Rights at its next session.

(22) The question of the right to health in Chile is of special concern to the Group. As a result of the turning over of the health services to private enterprises and the constant rise in the cost of medicines and medical care, the access to public health services by the poor and unemployed sectors of Chilean society has been reduced. Due in part to the difficult economic situation, spreading unemployment and the high cost and unsatisfactory distribution of food, malnutrition remains a serious problem in Chile, affecting especially the children of the lower income groups. The Group notes that the Government of Chile has done some good work in the field of combating malnutrition, but it feels that much remains to be done.

(23) During its visits to the poorer sections of Santiago the Group was informed by many persons that people were living in economic and social conditions that were lower than those they had previously enjoyed. The Group feels that more determined policies must be adopted by the Government of Chile in order to raise the standard of living of the poorer sectors of society so that they are enabled to enjoy their full social, economic and cultural rights.

(24) While in Chile the Group received information about and was able to observe the important humanitarian activities aimed at lessening the impact of the present situation in Chile being carried out by organizations such as the Office of the United Nations High Commissioner for Refugees, the Intergovernmental Committee for European Migration, the International Red Cross, the Catholic Church in Chile through the Vicaría de la Solidaridad and similar organs and the Foundation of Social Assistance of the Christian Church in Chile (FASIC).

(25) Finally, the Group concludes that its visit to Chile has proved to be useful and that it is a precedent in carrying out successfully on-the-spot inquiries by working groups in situations where human rights are seriously at stake. It has shown the capacity of the United Nations Secretariat to provide support for this type of activity. The Group wishes to state that the Government of Chile co-operated with the Working Group during its visit to Chile and that the people of Chile gave the Group a warm welcome.

XII. ADOPTION OF THE REPORT

780. At the meeting held on 22 September 1978 the present report was unanimously adopted and signed by the members of the Ad Hoc Working Group.

Ghulam Ali Allana (Pakistan)
Chairman/Rapporteur

Leopoldo Benites (Ecuador)

Abdoulaye Dieye (Senegal)

Felix Ermacora (Austria)

Marian J.T. Kamara (Sierra Leone)

ANNEXES */

Annex I

COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXXI) OF 27 FEBRUARY 1975

Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Keeping in mind the Charter of the United Nations and the Universal Declaration of Human Rights,

Recalling its telegram dated 1 March 1974 to the Chilean authorities, taking into account the appeal made to the Chilean authorities by the Economic and Social Council in its resolution 1873 (LVI) of 17 May 1974, noting resolution 8 (XXVII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, aware of the appeals made to the Chilean authorities by the International Labour Conference at its fifty-ninth session and by the General Conference of United Nations Educational, Scientific and Cultural Organization at its eighteenth session and recalling General Assembly resolution 3219 (XXIX), in which an urgent appeal was made to Chile to restore basic human rights and fundamental freedom,

Noting with serious concern the continuing reports of violations of human rights in Chile,

Noting further the statements made on item 7 of the agenda of the thirty-first session of the Commission on Human Rights,

1. Decides that an Ad Hoc Working Group of five members of the Commission, to be appointed in their personal capacity by the Chairman of the Commission on Human Rights and to operate under his chairmanship, shall inquire into the present situation of human rights in Chile on the basis of the above-mentioned resolutions and of a visit to Chile and of oral and written evidence to be gathered from all relevant sources;
2. Appeals to the Government of Chile to extend its full co-operation to the Working Group in fulfilling its task, including the granting of all necessary facilities and complete freedom of movement in the country for this purpose;
3. Requires the Ad Hoc Working Group to report the results of its inquiries to the Commission on Human Rights at its thirty-second session and to submit a progress report on its findings to the Secretary-General for inclusion in his report to the General Assembly at its thirtieth session under General Assembly resolution 3219 (XXIX); thereafter the Ad Hoc Working Group shall cease to exist;

*/ Annexes III to LXXXII are original Spanish unless otherwise indicated.

4. Requests the Secretary-General to render to the Ad Hoc Working Group all the assistance which it might require in its work;

5. Recommends to the Economic and Social Council to make arrangements for the provision of adequate financial resources and staff for the implementation of the present resolution;

6. Decides to consider at its thirty-second session as a matter of high priority the question of the violations of human rights in Chile.

Annex II

COMMISSION ON HUMAN RIGHTS RESOLUTION 12 (XXXIV) OF 6 MARCH 1978

Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all,

Recalling that the Universal Declaration of Human Rights solemnly declares that everyone has the right to life, liberty and security of person and the right not to be subjected to arbitrary arrest, detention or exile, or to torture or cruel, inhuman or degrading treatment or punishment,

Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, unanimously adopted by the General Assembly in its resolution 3452 (XXX),

Further recalling General Assembly resolutions 3219 (XXIX), 3448 (XXX), 31/124 and 32/118 concerning the protection of human rights in Chile,

Considering its resolutions 8 (XXXI), by which an Ad Hoc Working Group to inquire into the situation of human rights in Chile was established, and 9 (XXXIII), by which the mandate of the Ad Hoc Working Group was extended,

Having considered the report of the Ad Hoc Working Group (E/CN.4/1266), the observations and documents submitted by the Chilean authorities (E/CN.4/1290 and E/CN.4/L.1377 and Add.1), the report of the Secretary-General (E/CN.4/1268 and Add.1) and the progress report prepared by the Rapporteur of the Sub-Commission on the consequences for human rights in Chile of the various forms of aid extended to the Chilean authorities (E/CN.4/1267),

Taking note of the "Third Report on the Situation of Human Rights in Chile" of the Inter-American Commission on Human Rights,

Acknowledging recent developments which, according to the report of the Ad Hoc Working Group, indicate a decrease in the number of political prisoners, of reported cases of torture and of detainees under the state of siege and which are mainly attributable to the efforts of the Chilean people and of the international community,

Concluding that flagrant violations of human rights nevertheless continue to take place in Chile, in some cases systematic and institutionalized, and noting in particular the absence of constitutional safeguards for human rights and the continuation of the state of siege with its limitations of fundamental freedoms,

1. Shares the profound indignation expressed by the General Assembly in its resolution 32/118 that the Chilean people continue to be subjected to constant and flagrant violations of human rights and fundamental freedoms, to lack adequate constitutional and judicial safeguards of their rights and liberties and to suffer assaults on the freedom and integrity of their persons, in particular by methods of intimidation, including torture, disappearance of persons for political reasons and the refusal to adequately account for about one thousand missing detainees, limitations on freedom of expression, the suspension of political activity, the systematic campaign against suspected opponents of the régime, against trade unionists and against the humanitarian activities of the Roman Catholic Church, infringement of the right to a nationality and the right to return to one's country, arbitrary arrest, detention and exile;
2. Views with particular concern and indignation the continued refusal of the Chilean authorities to accept responsibility or account for the large number of persons who have disappeared and whose disappearance is shown by the available evidence to be attributable to political reasons;
3. Demands that the Chilean authorities clarify forthwith the fate of the numerous persons who have thus disappeared in Chile;
4. Expresses its grave concern at the new measures taken recently by the Government of Chile in order to suppress any political opposition in the country;
5. Deeply deplores the destruction of democratic institutions and of constitutional safeguards formerly enjoyed by the Chilean people;
6. Calls once again upon the Chilean authorities to restore and safeguard, without delay, basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile is a party;
7. Considers that the plebiscite recently arranged by the Chilean authorities, following the adoption of General Assembly resolution 32/118, was an exercise lacking relevance as a reliable guide to the state of human rights in Chile and to the views of the Chilean people in this respect;
8. Expresses its appreciation to international organizations, Governments, non-governmental organizations, private individuals and all those members of national and international society who work for the restoration of human rights in Chile and who, both from within and from outside Chile, provide humanitarian assistance and relief to victims of violations of human rights in that country;
9. Commends once again the Chairman and the members of the Ad Hoc Working Group for the objective and impartial manner in which they have fulfilled their mandate and for the thorough and accurate reports they have prepared, despite the persistent refusal of the Chilean authorities to permit the Group to visit the country in accordance with the prior international commitment given by Chile;

10. Extends for one year the mandate of the present Ad Hoc Working Group, made up of the following members, to work as experts in their personal capacity: Mr. Ghulam Ali Allana (Pakistan), Chairman-Rapporteur, Mr. Leopoldo Benites (Ecuador), Mr. Felix Ermacora (Austria), Mr. Abdoulaye Diéye (Senegal) and Mrs. M.J.T. Kamara (Sierra Leone), and requests it to report to the General Assembly at its thirty-third session and to the Commission on Human Rights at its thirty-fifth session with such additional information as may be necessary;
11. Calls once again upon the Chilean authorities to admit the Ad Hoc Working Group into Chile, thereby contributing to an impartial examination of the human rights situation in the country;
12. Requests the Secretary-General to render to the Ad Hoc Working Group all the assistance which it may require in its work;
13. Welcomes the decision by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 11 (XXX) to undertake a study on the consequences of the various forms of aid extended to the Chilean authorities and the subsequent initiation of the study by a specially appointed Rapporteur and invites the Rapporteur to present his report to the Sub-Commission at its thirty-first session, and further instructs the Sub-Commission to transmit this report to the General Assembly at its thirty-third session;
14. Recommends to the Economic and Social Council that it make arrangements for the provision of adequate financial resources and staff for the implementation of the present resolution;
15. Decides to consider at its thirty-fifth session as a matter of high priority the question of the violation of human rights in Chile.

Annex III

LETTER DATED 21 MARCH 1978 FROM THE DIRECTOR OF THE
DIVISION OF HUMAN RIGHTS ADDRESSED TO THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA

[Original: English]

I have the honour to refer to resolution 12 (XXXIV) adopted by the
... Commission on Human Rights on 6 March 1977, a copy of which is attached hereto.

In paragraph 10 of its resolution, the Commission extends for one year the
mandate of the Ad Hoc Working Group on Chile and requests it to report to the
General Assembly at its thirty-third session and to the Commission on Human
Rights at its thirty-fifth session with such additional information as may be
necessary. In paragraph 11, the Commission calls once again upon the Chilean
authorities to admit the Ad Hoc Working Group into Chile, thereby contributing
to an impartial investigation of the human rights situation in that country.

Mr. Ghulam Ali Allana, Chairman of the Ad Hoc Working Group, who is at this
time in Karachi, requested me to inform Your Excellency's Government that the
Group plans to meet for a period of one to two weeks during the second half of
May 1978 to decide on its programme of work in implementation of its mandate.

In this perspective, Mr. Allana has asked me to enquire as to whether
Your Excellency's Government would wish to send representatives to confer and
discuss relevant matters with the Group during its meetings in May. In this
connexion I would like to refer to the statement made by Mr. Allana at the
1458th meeting of the Commission on Human Rights, in particular the part
reflected in paragraphs 46 and 47 of the summary record of that meeting. An
early reply of Your Excellency's Government would be most appreciated.

Accept, Sir, etc.

(Signed) Theo C. VAN BOVEN
Director
Division of Human Rights

Annex IV

LETTER DATED 17 APRIL 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO
THE DIRECTOR OF THE DIVISION OF HUMAN RIGHTS

In reply to your letter of 21 March 1978, I am pleased to inform you that the Government of Chile will be sending representatives to the meeting of the Ad Hoc Working Group.

On that occasion we hope to discuss all the outstanding matters with the Working Group.

Accept, Sir, etc.

(Signed) Mamei TRUCCO
Ambassador
Permanent Representative

Annex V

LETTER DATED 26 MAY 1978 FROM THE CHAIRMAN OF THE
AD HOC WORKING GROUP ADDRESSED TO THE
PERMANENT REPRESENTATIVE OF CHILE TO THE UNITED NATIONS

[Original: English]

On behalf of the Ad Hoc Working Group established under resolution 8 (XXX) of the Commission on Human Rights to inquire into the situation of human rights ... in Chile, I have the honour to transmit to Your Excellency the attached memorandum which, on the basis of the mandate of the Group, constitutes the agreement between the Group and the Representatives of the Government of Chile regarding the visit of the Group to Chile for a period of two weeks for an on the spot enquiry.

I would appreciate receiving the communication from Your Excellency's Government acknowledging this letter and the attached memorandum. This letter, together with the communication from Your Excellency's Government will constitute an agreement regarding the visit of the Group to Chile.

Accept, Sir, etc.

(Signed) Ghulam Ali ALLANA
Chairman

Ad Hoc Working Group to inquire
into the situation of human rights in Chile

Annex VI

LETTER DATED 30 JUNE 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE
CHAIRMAN OF THE AD HOC WORKING GROUP

I have the honour to acknowledge receipt of your letter of 26 May 1978, conveyed to me on 8 June 1978 by Mr. William B. Buffum, Under-Secretary-General for Political and General Assembly Affairs.

It is my Government's understanding that your letter, the annexed memorandum and the present letter constitute the agreement concerning the Group's visit to Chile.

Accept, Sir, etc.

(Signed) Sergio DIEZ URZUA
Ambassador
Permanent Representative

Annex VII

MEMORANDUM DATED 26 MAY 1978

[Original: English]

1. This memorandum reflects the exchanges between the Ad Hoc Working Group and representatives of the Government of Chile at the meetings held in New York from 22 to 26 May 1978.

A. Visit of the Ad Hoc Working Group to Chile

2. The representatives of the Government of Chile informed the Group that conditions now existed which enabled the Government to agree to a visit by the Group to Chile in fulfilment of the Group's mandate. The Group recognized the unprecedented nature of the visit it would undertake to Chile and the Group expressed its determination to fulfil its mandate in an objective and impartial manner and, within the terms of its mandate, to take steps to that end in co-operation with the Government of Chile. Taking into consideration the Government's wish that the visit take place in the near future and the need for adequate preparation it was agreed that the visit would begin on or about 12 July 1978 for an effective duration of two weeks, which the Group determined to be the minimum time necessary to carrying out adequately the visit as part of its mandate.

B. Facilities to be enjoyed by the Group during the visit

3. It was agreed that the Group would enjoy the following facilities during the visit which are necessary to the carrying out of its mandate:

(a) Freedom of movement

The members of the Group and the accompanying Secretariat staff will enjoy freedom of movement throughout the country.

(b) Freedom of investigation

The Group, its members and the accompanying Secretariat staff will have access to prisons, places of detention and interrogation centres, will be able to interview freely and privately persons, groups and representatives of entities and institutions and will have access to pertinent files and other documents or materials which it considers necessary to its inquiry. The Government will provide members of the Group and the Secretariat staff with official identity documents stipulating the above. The representatives of the Government of Chile noted that access to places, persons and files, documents or other materials under the jurisdiction of the judicial authorities is subject to the authorization of the competent officials and that access to places connected with national security is similarly subject to the authorization of the competent officials. The representatives of the Government of Chile undertook to make the necessary arrangements with the appropriate authorities prior to and during the visit to ensure the Group's freedom of investigation. Visits or interviews with private persons or institutions would take place with due respect for the normal rights of said persons or institutions.

C. Assurances given by the Government of Chile in connexion with the visit

4. The representatives of the Government of Chile assured the Group that no person who had been in contact with the Group would for that reason be subjected to coercion, sanctions, punishment or judicial proceedings. The Group attaches particular importance to these guarantees.

5. The representatives of the Government of Chile assured the Group that the required measures will be taken to ensure the privacy and unimpaired conduct of the activities of the Group and the security of the members of the Group, the Secretariat staff and the Group's records and documents while in Chile.

6. The freedoms and assurances mentioned in paragraphs 3, 4 and 5 would be officially communicated to the Group in writing by the Government of Chile.

D. Basic rules of procedure

7. The Group reiterated that it could not diminish or depart from its terms of reference as determined by the Commission on Human Rights and the General Assembly nor could it delegate or renounce its sole responsibility for the interpretation of its mandate. Paragraphs 8 through 14 reflect the Group's understanding of certain aspects of its mandate.

8. The Group was of the opinion that its future reports to the Commission on Human Rights and the General Assembly should cover the situation of human rights in Chile from the most recent extension of its mandate, it being understood that the substance and conclusions of prior reports would in no way be affected, in part or in whole. Cases and situations already mentioned in previous reports which continued to exist could be studied and reported on by the Group in fulfilment of its mandate.

9. Meetings and hearings of witnesses would, as provided for in rules 5 and 16 of the Group's rules of procedure, be held in camera.

E. Exchange of information between the Group and the Government

10. In order to facilitate collaboration between the Group and the Government of Chile the Group would communicate to the representatives of the Government of Chile in the measure possible the Group's views on areas of its concern relating to the situation of human rights in that country. The Group would also communicate to the Government of Chile information on testimonies, individual cases or events of concern to the Group relating to the situation of human rights in Chile insofar as such transmission of information is consistent with the Group's mandate and the Group's obligations to persons supplying information or mentioned therein. This would be done with a view to enabling the Government to submit information and views on these matters.

11. These exchanges would take place during and after the Group's visit and for this purpose a special meeting for two days between the Group and the Government would take place after the end of the visit. During the visit contacts with the liaison officer(s) in this regard would be maintained as appropriate. Information or views from the Government of Chile will be taken into consideration by the Group in the preparation of its report and included therein as appropriate.

12. In connexion with the contents of the substantive areas of the Group's report on which the Government of Chile had not previously had the occasion to submit its information or its views, the Group would make known to the Government the substantive contents of such areas before the final adoption of its report. Information and views of the Government in this regard would be taken into consideration by the Group and, as appropriate, included in its report. The Group agreed that it would annex to its report the observations of the Government, provided they were received prior to the end of the Group's meetings at which it adopts its report. Should they be received after such meetings they would be brought out in an addendum to the document containing the Group's report.

F. Information and evidence

13. The Group will continue to carefully weigh the evidentiary value of all the information it receives taking into consideration, inter alia, the character of the source of the information, its direct and reliable nature, the potential motivations of the source and the concordant nature of other information. The Group is aware that in taking these factors into consideration certain information or evidence, in some cases that from official sources, both national and international, may, in given circumstances, have greater probative value than other information or evidence and that such be reflected in the findings of the Group. The Group is also aware that in relation to certain matters, for example economic, social and cultural rights, official documents, reports and studies may, if on the point, be relevant but not to the exclusion of other evidence. The Group will take into consideration the relevant information and conclusions arrived at by the specialized agencies and other international bodies on matters within their respective competence.

14. The Group wishes to point out that the nature of its mandate and the task it is required to perform requires that it be responsible for the final decisions of the probative value of information and evidence in light of all the relevant circumstances.

15. In connexion with its visit to Chile the Group will transmit to the Government of Chile an indicative but not exhaustive list of persons and representatives of institutions the Group may wish to interview and the places and institutions it may wish to visit to enable the Government to take those steps necessary to facilitate the visit. In the exercise of its freedom of movement and investigation the Group will itself definitively decide on its programme and the persons it will interview and the places it will visit.

G. Liaison with the Group

16. The Government of Chile undertakes to appoint one or more liaison officers for the preparation of the Group's visit and for assisting and facilitating the visit of the Group.

H. Privileges and immunities of the members of the Group and Secretariat staff

17. The Government of Chile agreed that the members of the Group and the Secretariat staff would enjoy, in addition to the privileges and immunities to which they are entitled by virtue of the Convention on the Privileges and Immunities of the United Nations, full diplomatic privileges and immunities. This will be confirmed in writing by the Government of Chile.

I. Announcement of the results of the present meetings

18. The Group would make a public announcement of the results of the present meetings when agreement is reached on a visit to Chile. The representatives of the Government would be consulted on the press release.

Annex VIII

PRESS STATEMENT BY THE CHAIRMAN OF THE
AD HOC WORKING GROUP DATED 9 JUNE 1978

Press Release HR/613 of 9 June 1978

[Original: English]

The following statement was released today by the Chairman of the Ad Hoc Working Group established by the Commission on Human Rights to enquire into the situation of human rights in Chile:

"The Ad Hoc Working Group on Chile met in New York from 18 to 26 May 1978. On the invitation of the Group, representatives of the Government of Chile, Ambassador S. Diez, Ambassador M. Schweitzer and Mr. O. Errazuriz had several meetings with the Group. The Group stated that in fulfilment of its mandate it desired to visit Chile during the course of this year. Representatives of the Government of Chile expressed that their Government welcomes such a visit and would do everything possible to enable the Working Group to carry out a study of the situation of human rights in Chile. The date of the visit of the Working Group would be fixed by mutual consultation and consensus among the Group and the Government of Chile.

"The Ad Hoc Working Group consists of five members acting in their personal capacity as experts. They are Ghulam Ali Allana (Pakistan), Chairman/Rapporteur (former Chairman of the Commission on Human Rights); Ambassador Leopoldo Benites (Ecuador), former President of the General Assembly; Abdoulaye Dieye, a justice of the Supreme Court of Senegal; Professor Felix Ermacora, former Chairman of the Commission on Human Rights and a member of the Austrian Parliament; and Mrs. M.J.T. Kamara, a social worker from Sierra Leone."

Annex IX

PRESS STATEMENT BY THE CHAIRMAN OF THE
AD HOC WORKING GROUP DATED 3 AUGUST 1978

Press Release HR/1662 of 3 August 1978

[Original: English]

Following is the text of a press statement issued today at Headquarters by Ghulam Ali Allana (Pakistan), Chairman of the United Nations Ad Hoc Working Group to inquire into the situation of human rights in Chile:

It will be recalled that the President of Chile postponed the visit of the Working Group to Chile in July 1975, while the members of the Group were already in Lima on their way to Santiago, saying that it would have to take place at a more propitious time.

The General Assembly and the Commission on Human Rights have on all occasions stressed in their resolutions that the Working Group should continue to investigate the situation of human rights in Chile, in particular through a visit to that country. Since then, the visit of the Group to Chile has been a matter of discussion between the Working Group and the representatives of the Government of Chile.

The Government of Chile were firm in their stand that they would not accept the visit of the Group as a whole, but only of some members of the Group, to be selected jointly by the Group and the Government of Chile. The Group on its part could not accept this position, as it would have been contrary to the terms of its mandate received from the General Assembly and the Commission on Human Rights.

In the meantime, the Group had submitted three reports to the General Assembly and three to the Commission on Human Rights, which had been adopted by both by overwhelming majorities. But the question of the visit of the Group to Chile had reached an impasse, which defied being resolved.

In view of this, when the Commission on Human Rights met in February this year in Geneva, and I had introduced the report of the Group, I found that the Government of Chile was in no mood to abide by its previous solemn commitment to allow the Group to visit Chile to carry on its on-the-spot investigation. I was anxious that this part of our mandate should be fulfilled, so that the moral prestige of the United Nations could be firmly established in carrying on investigations of this nature.

I therefore evolved a plan in my mind to resolve this difficult deadlock. The essence of this plan was that the Government of Chile should reiterate that it would allow the Group as a whole to visit Chile, without putting any conditions of restrictions. If this were to be done, the Government of Chile would be informed that I would voluntarily abstain from accompanying the Group on its visit to Chile. The formula was subsequently pursued with the Government of Chile, who ultimately agreed to it.

Therefore, when the Working Group met in New York in May 1978, I formally informed the whole Group about the voluntary offer that I had made, which had made it possible for the Government of Chile to accept my proposal. I also said that if the Group was of the view that my proposal was not worth abiding by, I would withdraw it and we would then return to the status quo ante. I am glad that all the members of the Group not only appreciated the merits of my proposal, but also the spirit in which I had made it. This is reflected in the press statements made by the Working Group in Chile.

As a result of this, when the representatives of the Government of Chile attended the meetings of the Working Group, we exchanged views on the duration, the timing and the modalities of work by the Group in Chile. The two sides came to mutually agreed decisions.

In one of the closed meetings of the Group, I expressed my complete confidence in my four colleagues, who, I said, were persons of great stature, who could be depended upon to carry out their task objectively and impartially. I wished them the fullest measure of success in our objective, which is speedy restoration of human rights in Chile.

I have now joined them in New York, after their return from Chile, in order to evaluate the work done by the Group in Chile and to draw up our conclusions, which would be incorporated in our next report to be submitted for consideration by the General Assembly towards the end of this year.

Annex X

PRESS STATEMENT BY THE AD HOC WORKING GROUP
DATED 12 JULY 1978

Press Release HR/1633 of 12 July 1978

[Original: English]

The following statement by the Ad Hoc Working Group established by the Commission on Human Rights to inquire into the situation of human rights in Chile was made on the Group's arrival in Santiago today:

During meetings between the Ad Hoc Working Group on Chile and representatives of the Government of Chile held in New York in May of this year an agreement was reached between the Group and the representatives of the Government of Chile concerning a visit by the Group to Chile. This is reflected in the Group's statement issued by its Chairman, Ghulam Ali Allana, dated 9 June 1978. The dates of the Group's visit, as fixed by mutual consultation and consensus among the Group and the Government, are 12 to 26 July 1978.

The Ad Hoc Working Group was established by the Commission on Human Rights in resolution 8 (XXXI) of 27 February 1975 to inquire into the present situation of human rights in Chile on the basis of resolutions of United Nations bodies and of a visit to Chile and of oral and written evidence to be gathered from all relevant sources. The Group has always indicated its readiness to visit Chile to undertake a study of the human rights situation in that country and it welcomes the agreement of the Government to the visit. The Group recognizes the important nature of its visit and it will carry out its mandate, as before, in an objective and impartial manner. During its visit to Chile the Group will be gathering information for the report to be submitted to the next session of the General Assembly.

The Government of Chile has given the Group assurances concerning the Group's full freedom of movement and freedom of investigation while in Chile and the Government has stated that "no person who has been in contact with the Group would for that reason be subjected to coercion, sanctions, punishment or judicial proceedings".

The offices of the Group have been established at the Latin American Demographic Centre, Calle Alonso de Cordova 3107, Vitacura, Santiago, where the Group will hold meetings. The Group also plans to visit other cities and places in Chile.

The Ad Hoc Working Group consists of five members acting in their personal capacity as experts. They are Ghulam Ali Allana (Pakistan), Chairman/Rapporteur (former Chairman of the Commission on Human Rights); Ambassador Leopoldo Benites (Ecuador), former President of the General Assembly; Abdoulaye Dieye, a justice of the Supreme Court of Senegal; Professor Felix Ermacora, former Chairman of the Commission on Human Rights and a member of the Austrian Parliament; and Mrs. M.J.T. Kamara, a social worker from Sierra Leone. Mr. Allana will not participate in the visit to Chile for personal reasons which the Group shares. Mr. Benites is unable to participate for health reasons.

Annex XI

PRESS STATEMENT BY THE AD HOC WORKING GROUP
DATED 27 JULY 1978

[Original: English]

The following statement by the Ad Hoc Working Group established by the Commission on Human Rights to inquire into the situation of human rights in Chile was made on the Group's departure from Santiago today:

"The Ad Hoc Working Group on Chile completed today the visit to Chile which it had begun on 12 July 1978. The purpose of this visit was to gather oral and written evidence from all relevant sources on the present situation of human rights in Chile with a view to the report to be submitted by the Group to the next session of the General Assembly. The members of the Group participating in this visit were Abdoulaye Dieye, Felix Ermacora and Mrs. M.J.T. Kamara.

"During its stay in Chile and in carrying out its mandate, the Group met with the President of the Republic, members of the Government Junta, officials of the Government, members of the Judiciary, with representatives of institutions and religious organizations in Chile and with persons important in Chilean national life. The Group also heard testimony from private individuals and received numerous written communications including petitions and letters coming from many sectors of the Chilean population and from many parts of the country. As part of its activities in Chile the Group travelled to Valparaíso, visited communities in the suburbs of Santiago and prisons in Valparaíso and Santiago.

"The Group's visit to Chile was most informative and it has collected important elements for its report to the General Assembly. The Group wishes to thank the Government of Chile for its co-operation and for the freedom of movement and freedom of investigation it enjoyed during its visit. The Group also wishes to thank those institutions and individuals whose co-operation contributed to the visit.

"The Group officially informed those persons contacting the Group of the assurances of the Government of Chile that 'no person who has been in contact with the Group would for that reason be subjected to coercion, sanctions, punishment or judicial proceedings'.

"The Group will now travel to New York where it will hold a one-week series of meetings. It will then meet in Geneva during the month of September to draft its report to the Assembly.

"The Ad Hoc Working Group consists of five members serving in their personal capacity as experts. They are Ghulam Ali Allana (Pakistan), Chairman/Rapporteur (former Chairman of the Commission on Human Rights); Ambassador Leopoldo Benites (Ecuador), former President of the General Assembly; Abdoulaye Dieye, a justice of the Supreme Court of Senegal; Professor Felix Ermacora, former Chairman of the Commission on Human Rights and a member of the Austrian Parliament; and Mrs. M.J.T. Kamara, a social worker from Sierra Leone. Mr. Allana did not participate in the visit to Chile for personal reasons which the Group shares. Mr. Benites was unable to participate for health reasons."

Annex XII

PROGRAMME OF THE GROUP'S VISIT TO CHILE
12 to 27 July 1978

Wednesday, 12 July 1978

- Morning - Arrival of Group in Santiago. Welcomed by Ambassadors S. Díez and M. Schweitzer. Airport press conference by acting Chairman.
- Afternoon - Meeting of Group at Latin American Demographic Center (CELADE) to discuss programme of work.
- Meeting with representatives of the Government of Chile, Ambassadors S. Díez and M. Schweitzer to discuss certain of the official aspects of the programme of work.

Thursday, 13 July 1978

- Morning - Protocol visit by Group to the Minister of Foreign Affairs, Mr. H. Cubillos and to the Minister of the Interior, Mr. S. Fernández.
- Afternoon - Protocol visit by Group to the President of the Republic, H.E. Augusto Pinochet Ugarte and to members of the Government Junta, Admiral J. Toribio Merino; and Carabineros General C. Mendoza Durán. Air Force General G. Leigh Guzmán being absent from Santiago, the Group met with his representative Air Force General Martini Lema.
- Meeting of Group to discuss programme of activities.

Friday, 14 July 1978

- Morning - Protocol visit by Group to the President of the Supreme Court, Mr. Israel Bórquez and the former Presidents of the Supreme Court and actual judges of the Supreme Court Mr. José M. Eyzaguirre and Mr. Enrique Urrutia.
- Meeting of Group with Mr. Osvaldo Iturriaga, Comptroller-General of the Republic and Mr. Miguel Solar, Assistant Comptroller-General.
- Meeting of Group at CELADE. Representatives of the Association of Family Members of Missing Detainees and a witness in an individual case provided information to the Group.
- Evening - Visit by the Group to His Eminence Cardinal Raúl Silva Henríquez.

Saturday, 15 July 1978

- Morning - Visit by the Group to the Vicaría de la Solidaridad during which information was provided on the Vicaría's programmes.
- Afternoon -

Sunday, 16 July 1978

- Morning - Members of the Group attended religious services in churches in a poor suburb of Santiago. Afterwards they met with persons wishing to provide information and visited a workshop for the unemployed.
- Afternoon - Meeting of Group at CELADE. Group heard testimony from individuals on recent cases of arrest and detention and on the case of a missing person.

Monday, 17 July 1978

- Morning - Meeting of Group with Director of the National Information Agency (CNI) General Odlanier Mena at the Headquarters of the CNI.
- Afternoon - Visit by the Group to the Vicaría de la Solidaridad for further information on the Vicaría's programmes.
- Meeting of the Group during which it heard testimony on a recent case of arrest and detention.
- Evening - Meeting of the Group to discuss its programme of work.
- Meeting of the Group with Ambassadors Díez and Schweitzer concerning the Group's programme of work.

Tuesday, 18 July 1978

- Morning - Visit of the Group to "Villa Grimaldi".
- Afternoon - Visit of the Group to Santiago Penitentiary: Meetings with political prisoners and the authorities of the penitentiary.
- Evening - Meeting of the Group at CELADE. Testimony concerning recent cases of arrest and detention and cases of missing persons.

Wednesday, 19 July 1978

- Morning - Meeting of the Group at CELADE. Testimony concerning cases of missing persons.
- Visit of the Group to former President of Chile, Mr. Jorge Alessandri.
-

Afternoon - Visit of the Group to the National Planning Office (ODEPLAN). Meeting with the Director and Minister of National Planning, Mr. Roberto Kelly. Meeting with Professor F. Monckeberg, Director of the Nutrition Institute.

Evening - Meeting of Group at CELADE. Testimony concerning missing persons and cases of executions.

Thursday, 20 July 1978

Morning - Meeting of Group at CELADE to discuss programme of work and prepare meetings.

- Visit by the Group to former President of Chile, Mr. Eduardo Frei.

Afternoon - Meeting of the Group with the Minister of the Interior, Mr. Sergio Fernandez and the Vice-Minister, Mr. Enrique Montero.

Friday, 21 July 1978

Morning - Visit of the Group to the Vicaría de la Pastoral Obrera. Information on the trade union situation.

- Visit of the Group to former President of Chile, Mr. Gabriel González Videla.

Afternoon - Visit of the Group to a "Comedor" (peoples' meals centre), a Medical Centre for the Poor and a workshop for the unemployed.

Afternoon - Meeting of the Group at CELADE. Testimony from trade
Evening union leaders on the trade union situation in Chile.

Saturday, 22 July 1978

Visit by the Group to Valparaíso

Morning - Visit of the Group to the Bishop of Valparaíso, Monsignor Emilio Tagle.

Afternoon - Meeting of the Group at the Parish of Viña del Mar.
Evening Testimony concerning cases of missing persons and the employment and trade union situation.

- Visit of the Group to the Jail of Valparaíso. Meeting with political prisoners.

- Visit by the acting Chairman of the Group and the Director of the Division of Human Rights to the Prefect of the Region [Intendente] Admiral Troncoso Daroch.

Sunday, 23 July 1978

- Afternoon - Meeting of the Group at CELADE. Testimony on the Amnesty
Evening of 19 April 1978; exile; the return of persons to Chile;
education; recent cases of arrest and detention.

Monday, 24 July 1978

- Morning - Visit of the Group to the President of the Supreme Court,
Mr. Israel Bórquez.
- Visit of the Group to the President of the Santiago Court
of Appeals, Mr. Aldo Guastavino and Court of Appeals Judges
Hernan Cerceda, Sergio Dunlop and Maria O'Neill Gómez.
Afternoon - Visit of the Group to the Minister of Justice,
Miss Mónica Madariaga.
Evening - Meeting of the Group at CELADE to prepare future meetings.

Tuesday, 25 July 1978

- Morning - Visit of the Group to the Minister of the Interior,
Mr. Sergio Fernández.
Afternoon - Meeting of Acting Chairman with the Association of Relatives
Evening of Missing Detainees. Testimony on cases of missing persons.
- Meeting of Group at CELADE. Testimony on the health
situation and information on the activities of the
Intergovernmental Committee for European Migration.

Wednesday, 26 July 1978

- Morning - Meeting of Group at CELADE with Ambassadors Díez and
Schweitzer concerning certain aspects of the Group's
programme of work and the co-operation between the Group
and the Government.
- Meeting of Group at CELADE. Information on situation in
Concepción, on economic issues and on freedom of information.
Afternoon - Meeting of Group at CELADE. Testimony on various legal
questions.
Evening - Meeting of the Group at CELADE. Information from members of
the Council of Pastors of the Protestant Churches in Chile.

Thursday, 27 July 1978

- Morning - Visit of the Group to the Paula Jaraquemada Centre for Children (Centro para Niños Paula Jaraquemada), a Work Centre for workers under the Minimum Employment Programme (PEM), an establishment of the Mothers Centres (Casa de Centros de Madres) and a child nutrition centre of the Corporation for Child Nutrition (CONIN) (Corporación para la Nutrición Infantil) in the Santiago suburb of Renca.
- Afternoon - Visit of the Group to the Minister for Foreign Affairs, Mr. Cubillos.
- Evening - Departure of the Group for New York.

Annex XIII

LETTER DATED 28 JULY 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF
THE AD HOC WORKING GROUP

In view of the Working Group's interest in visiting the institution known as Colonia Dignidad, as suggested by the Government of Chile, a request to that effect was made to the representatives of the institution.

The following reply was received:

1. The Board of Directors of the institution convened the Assembly to discuss the matter.
2. The Assembly, after discussing the matter at two meetings, agreed, with only six abstentions and no negative votes, to invite Mr. Abdulaye Dicye, Mr. Felix Ermacora, Mrs. Marianne Kamara and their escorts, as well as Ambassadors Sergio Diez and Miguel Schweitzer Walters, to visit the premises of the corporation, which are located in Parral.
3. The Assembly stated that the above-mentioned persons would be invited in their personal capacity to pay a private visit outside the hours in which they normally conducted their mission.
4. The Assembly was opposed to the idea that a human rights commission should undertake an investigation on the premises of the institution, since an act of that kind would place all its members in a humiliating position vis-à-vis the international organizations.
5. The communication from Colonia Dignidad concluded with a statement to the effect that, if the visit could not take place in the manner suggested, the Board of Directors of the Colonia would be pleased to invite the members of the Working Group to dine in Santiago, together with Ambassadors Diez and Schweitzer, in order to provide them with all the information required, which might to some extent serve as a replacement for the visit if the members of the Working Group found themselves unable to undertake it.

This is the decision taken by Colonia Dignidad with regard to the request addressed to it by the Government through the Intendant of Parral with a view to obtaining permission for the Commission of the Ad Hoc Working Group to visit the premises of Colonia Dignidad in the town of Parral.

We bring these facts to your attention for whatever purpose you may deem necessary and so that the appropriate decisions may be taken on the matter.

Accept, Sir, etc.

(Signed) Sergio DIEZ URZUA
Ambassador
Permanent Representative of Chile
to the United Nations

Annex XIV

QUESTIONS SENT BY THE AD HOC WORKING GROUP
TO GENERAL CONTRERAS ON 19 SEPTEMBER 1978

1. Length of time the General was the Chief of the DINA? Dates?
2. Was he the head of the DINA until its dissolution?
3. Why was he removed from active service as General?
4. From whom did he receive orders directly in connexion with his work as the Chief of the DINA?
5. Can he name some important persons who were working under him and who were responsible for carrying out his orders?
6. Can he provide a list of persons previously working for DINA?
7. Manner in which DINA personnel was recruited?
8. What was the legal status of the persons working for the DINA?
9. Did they enjoy legal immunities?
10. Were they obliged to follow the orders given by judicial authorities?
11. System used by DINA in (a) obtaining authorization for arrests?
(b) recording the actual arrests?
(c) recording the entry and exit of places of detention?
12. When he left the DINA did those files still exist and what was done with them? Is it true that these files were destroyed by DINA?
13. What were the places used by DINA to question persons and/or detain them for questioning?
14. Did the DINA report all cases of arrest and detention to the Ministry of the Interior?
15. Which members of the Junta and which members of the Government were informed regularly of the activities of the DINA, including arrest, detention and the methods of work?
16. Can he tell what he knows about the plot to get Mr. Orlando Letelier murdered?

Annex XV

MEMORANDUM DATED 2 AUGUST 1978 REQUESTING
INFORMATION FROM THE GOVERNMENT OF CHILE

[Original: English]

1. Colonia Dignidad

Ambassador Díez promised a written response to Group's request to visit.

2. Missing Persons

Group awaits letter promised by Government on actions to locate missing persons.

Request copy of most recent decree-law on missing persons (27 July 1978).

The Group asked the Ministry of the Interior if there was any objection to the publication in the Chilean press of the list of missing persons of the Vicaría.

3. Detention during 1978

The director of the CNI transmitted to the Group a list of persons detained since January 1978.

- Does this list cover detentions by the CNI in Santiago only or throughout the country?
- Does this list cover detentions relating to state security by agencies other than the CNI, for example, Investigaciones or Carabineros?
- Could the Group be supplied periodically with information updating the list, for example on 1 September and 31 December 1978?

4. Juan René Muñoz Alarcon

The Sub-Secretary Montero of the Ministry of the Interior promised the Group a file on Juan René Muñoz Alarcon which the Group would like to receive: (Mr. Muñoz Alarcon alleges having been a DINA agent).

5. Question of political prisoners, conditions in prisons and exile of persons imprisoned in Chile

The Group noted the special conditions of detention for political prisoners in Santiago which were not afforded to persons detained in the Valparaíso Jail accused or condemned in relation to the same offences.

- What definition does the Government use to determine who are political prisoners in the Santiago prison who may thus benefit from the special conditions?

- What steps has the Minister of Justice taken to ameliorate the conditions of detention of political prisoners in Valparaiso?
- What steps have been taken to remove from prison the young mentally disturbed person in the Valparaiso Jail?
- What steps have been taken to allow political prisoners in Santiago and Valparaiso, both those accused and those sentenced, to leave the country?

6. Restrictive passports, exile and the right to return

What steps will be taken subsequent to the Group's meeting with the Minister of Foreign Affairs to eliminate passports with the mention "L" in them?

The Group requested a list of those persons who would be refused re-entry into the country.

The Group requested the number of persons currently exiled.

The Group requested a list of persons deprived of their nationality.

7. Constitutional and legal developments

The Group would appreciate receiving copies of important texts in the constitutional and legal fields. For example, the text of the proposed Constitution, and the procedure envisaged for the adoption of the Constitution.

8. Requests for further information or views

The Group will transmit to the representatives of the Government tomorrow requests for information concerning specific cases and requests for views on information of a general nature received by the Group.

9. Future activities of the Group

The Group envisages holding hearings for one or two days in Geneva at the beginning of September and could wish to invite the representative of the Government to take part.

Annex XVI

LETTER DATED 3 AUGUST 1978 FROM THE CHAIRMAN OF THE
AD HOC WORKING GROUP ADDRESSED TO THE PERMANENT
REPRESENTATIVE OF CHILE TO THE UNITED NATIONS

[Original: English]

At the request of the Ad Hoc Working Group on Chile I wish to transmit to you the notes listed below with the Group's request for additional information or the views of the Government of Chile as may be appropriate.

1. Specific cases for transmission to the Government of Chile for observations. (A number of files containing information received by the Group are attached to this note.)
2. Notes on information and views submitted to the Group and on which the Group would wish to receive the views of the Government.
 - (a) Current labour situation
 - (b) Current legal provisions and their effects on rural workers
 - (c) Right to health
 - (d) Freedom of expression
 - (e) Rural populations and the Indigenous Ethnic Minority (Mapuches)

I also wish to transmit to you a list of persons reported to the Group as being political prisoners in Chile. In relation to the questions raised under point 5 of the note of 2 August 1978 concerning items for discussion with representatives of the Government of Chile, the Group would wish to receive information on the charges made against these persons both in law and in fact, information on the conditions under which they are being held, whether they may benefit from the Amnesty of 19 April 1978 and what is being done with a view to offering to these persons the possibility to leave Chile and establish themselves in another country.

The Group would appreciate receiving any information or views the Government might wish to submit to it as soon as possible and preferably before 31 August 1978.

Accept, Sir, etc.

(signed)

Mr. G.A. ALLANA
Chairman

Ad Hoc Working Group on Chile

Annex XVII

LETTER DATED 3 AUGUST 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE
CHAIRMAN OF THE AD HOC WORKING GROUP

Please find enclosed herewith the information requested from the Government of Chile by the Ad Hoc Working Group during its visit to Chile from 12 to 27 July 1978.

The Government of Chile also takes this opportunity to send herewith to the Working Group some additional information material which will, it is believed, help to clarify some of the matters brought to its attention.

The following items are enclosed:

1. A file containing information relating to the Catholic University of Chile;
2. Newspaper reports concerning the extremist movement, "People's Organized Vanguard" (VOP);
3. A list of dead and wounded persons belonging to various branches of the Armed Forces and the Police;
4. Information concerning persons detained in the Santiago Penitentiary, on Calle No. 5, including a list of the names of persons detained in that penal institution, prepared by the Warden of the Penitentiary and containing particulars of the offences for which the persons listed are being tried and the number of the relevant trial and the trial court, as well as a detailed and up-to-date report on each case;
5. A report, requested by the Working Group, on the status of proceedings against the following three persons detained in the Santiago Penitentiary, on Calle No. 5:

Ricardo Alarcón Alarcón
Nelson Aramburu Soto
Daniel Vergara Ruffat;

6. Reports on persons detained in the Public Goal of Valparaíso;
7. Report on the status of proceedings against:

Juan Nicanor Jofré Zamorano
Manuel Adolfo Morales Guardia

who are both detained in the Public Gaol of Valparaíso;

8. Information on the case of Juan René Muñoz Alarcón;

9. Information which has been compiled on a case of the substitution of persons given asylum (the Dunic brothers);
10. Medical records of Rodrigo del Tránsito Muñoz Muñoz;
11. Information on the international campaign by the Soviet Union against Chile, with an example of the way it has been conducted in Western Europe (Sweden);
12. List of names of individuals deprived of Chilean nationality, with an indication of the relevant Decree and its date;
13. List of names of persons who have been authorized to enter the country;
14. Answers to some questions asked by the Ad Hoc Working Group during the meeting held at the Office of National Planning.

Accept, Sir, etc.

(signed) Sergio DIEZ URZUA
Ambassador
Permanent Representative

Annex XVIII

LETTER DATED 31 AUGUST 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE
CHAIRMAN OF THE AD HOC WORKING GROUP

[Original (sh)]

I have the pleasure to refer to the memorandum dated 2 August 1978 and entitled "Items for discussion with representatives of the Chilean Government", which served as a basis for our meetings at the beginning of this month. In this connexion, I should like to confirm to you what the delegation of Chile stated on that occasion and to elaborate on matters that were left pending.

1. Colonia Dignidad.

During the course of our meetings at the beginning of this month, I duly transmitted the relevant information on this subject to the Ad hoc Working Group by note dated 28 July 1978.

2. Persons presumed missing.

The Government of Chile is making a detailed analysis and study of the communication which the Chairman of the Ad hoc Working Group addressed on 8 August 1978 to Mr. Sergio Fernández, Minister of the Interior of Chile, in reply to his letter of 28 July 1978 on this question.

3. Persons detained during 1978.

I can confirm to you what I stated during our meetings at the beginning of August at Headquarters, namely that the list of persons detained since January 1978 which was transmitted by the Director of CNI covers the entire country and that the detentions were carried out by the different security agencies. I am also pleased to confirm that the Ad hoc Working Group will be supplied with updated lists on 1 September and 31 December 1978.

4. Juan René Muñoz Alarcón.

As far as this case is concerned, I would refer you to the written information which was imparted to the Working Group during the meetings at the beginning of August 1978 in New York and which, consequently, is in your possession in accordance with the note dated 3 August 1978 (point H).

5. Question of political prisoners, conditions in prisons and exile of persons imprisoned in Chile.

Besides referring you and the members of the Ad hoc Working Group to the detailed explanations which the Chilean representatives had the opportunity of furnishing during the August meetings at Headquarters, I have pleasure in informing you that in communication C No. 884/126, which I am sending you today, the information in question is supplemented, the definition of political offence is reiterated and made more explicit and the steps taken by the Minister of Justice, as outlined in the relevant memorandum, are set forth in an annex to the communication concerned.

6. Restrictive passports, exile and the right to return.

The Government of Chile is making a careful study of the question of passports stamped with the letter "L" and has not yet taken a decision. As soon as the matter has been settled, the decision will be communicated to the Group. The list of persons who are forbidden to return to Chile and the list of persons currently exiled are attached as annexes. The Working Group has in its possession the list of persons who have been deprived of Chilean nationality. It was transmitted at the beginning of this month during the meetings held at Headquarters in New York by note dated 3 August 1978 (No. 12).

7. Constitutional and legal developments.

In this regard, I must reiterate that the Government of Chile considers that the Working Group is competent to concern itself with these matters only so far as strictly relates to human rights and fundamental freedoms. I refer to the explanations which I had the opportunity of offering during our recent working meetings in New York (1 August).

Finally, I would venture to remind you that, on 3 August 1978, I transmitted to the Working Group a certain amount of information which will supplement the present communication.

I take this opportunity etc.

(signed)

Sergio DIEZ URZUA
Ambassador and Permanent Representative

Annex XIX

LETTER DATED 31 AUGUST 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF
THE AD HOC WORKING GROUP

[Original: Spanish]

I have the pleasure to reply to your letter of 3 August 1978, in which you request additional information concerning the views of the Government of Chile on the various situations to which it draws attention. In that regard, I am able to inform you of the following:

1. Specific cases

Information is attached on the following specific cases taken up by the Working Group:

- (a) Arrests and detentions in the case of Haydde Palma Donoso.
- (b) Arrest and detention of Héctor Riffo Zamorano.
- (c) Arrest and detention of Armando del Carmen Barria Oyarzún.
- (d) Arrest and disappearance of Daniel R. Palma.
- (e) Arrest and disappearance of Fernando de la Cruz Mori.
- (f) Arrest and disappearance of William Beausire Alonso.
- (g) Arrest and disappearance of Carlos Contreras Maluje.
- (h) Arrest and disappearance of eight persons in Valparaíso.

2. Information on particular subjects.

A number of files are attached in answer to the information supplied to the Group in respect of:

- (a) The Chilean labour situation.

Information is provided on the points raised in document 78-17560 concerning Decree-Law No. 198; the prohibition of collective bargaining; the right to strike; Decree-Law No. 2,200; acts organized by trade union bodies; and the provisions of Decree-Law No. 1,773, on priority status of sums owed for wages and salaries.

- (b) Certain legal provisions and their effects on rural workers.

This section refers to the legal entities cited by the Working Group in document 78-17558: Decree-Law No. 993 (1975); Decree-Law No. 2,200 (1978), Article 138; Decree-Law No. 2,201 (1978); and Decree-Law No. 2,247 (1978). It also deals with the establishment of the National Committee for Technical Assistance (1978), clearing up all the points raised by the Working Group.

(c) The right to health

The information received by the Group and reflected in document 78-17561 is clarified in respect of health policy; health expenditure; eligibility for treatment under the national health service; agreements with private bodies; and nutritional activities.

(d) Freedom of expression

Explanations are provided on the questionnaire related to Proclamation No. 107 and contained in document 78-1756.

(e) Rural populations and the indigenous ethnic minority (Mapuches)

The information which is given answers the views collected by the Group and which appear in document 78-7559. The attached document refers to the rural population and ethnic minority, and to the background information on the ethnic minorities of Chile.

3. With respect to the question of "political prisoners", conditions in prisons and exile of persons imprisoned in Chile to which your letter refers, raised under point 5 of the memorandum dated 2 August 1978, a comprehensive memorandum on the following questions is attached to this communication:

(a) Definition of political offence;

(b) Additional information on persons detained in Chilean prison establishments, details of the offences for which they are being tried, number of the trial and the court in which the case is being tried.

By note datelined New York, 3 August 1978 (No. 4), I transmitted to you the names of the persons detained in Santiago prison, block No. 5, with the same details as the information enclosed with this communication.

(c) Steps taken by the Ministry of Justice. This section applies to the last part of the relevant paragraph of your letter. In this manner, the Government of Chile is transmitting to the Working Group its views on the situations and cases which were referred to it and is also furnishing information which will enable the members of the Ad Hoc Working Group to form a more accurate opinion of the true situation in Chile.

The Government of Chile considers that it is thus duly carrying out its pledge to co-operate with the Ad Hoc Working Group, as agreed in the memorandum dated 26 May 1978 and in subsequent meetings in New York at the beginning of August. I take this opportunity etc.

(signed)

Sergio DIEZ URZUA
Ambassador and Permanent Representative

Annex XX

NOTE VERBALE DATED 4 SEPTEMBER 1978 FROM THE PERMANENT MISSION
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO
THE CHAIRMAN OF THE AD HOC WORKING GROUP

The Permanent Mission of Chile to the United Nations Office and other international organizations at Geneva presents its compliments to the Ad Hoc Working Group of the Commission on Human Rights to inquire into "the present situation of human rights in Chile", and transmits herewith the additional information requested by the Group during its visit to Chile concerning the status of proceedings in the cases of persons listed by the Vicaría de la Solidaridad as having disappeared, whenever such proceedings have been instituted. It must be emphasized that all the information furnished had to be compiled during the month of August 1978.

Annex XXI

DECREE-LAW No. 788 OF 2 DECEMBER 1974

Ministry of the Interior

Publication of regulations concerning the exercise of the Constituent Power

Santiago, 2 December 1974. - The Government Junta of the Republic of Chile today decreed as follows:

No. 788. - Bearing in mind the provisions of Decree-Laws nos. 1 and 128 of 1973, and no. 527 of 1974,

Considering:

(a) That the Government Junta has assumed the exercise of the Constituent, Legislative and Executive Powers since 11 September 1973;

(b) That the Constituent and Legislative Powers are exercised by the enactment of decree-laws bearing the signature of all members of the Government Junta and - when they consider it appropriate - the signature of the Minister or Ministers concerned;

(c) That no formal difference has hitherto been established to distinguish between cases in which the Government Junta has acted in exercise of the Constituent Power or the Legislative Power, so that the only way of ascertaining which power has been exercised is to examine the content or legal substance of the provisions adopted by the Government Junta;

(d) That, in practice and up to the present date, the Government Junta has only in a few cases deemed it appropriate to indicate the category of constitutional status of the regulations it has enacted amending the Political Constitution of the State, but that this circumstance cannot lead to the conclusion that the Constituent Power has not been exercised in the case of decree-laws which, without specifically saying so, have in fact established peremptory rules incompatible with the text of the Constitution;

(e) That it should therefore be considered that whenever the Government Junta has enacted a decree-law whose terms differ from a particular provision of the Political Constitution of the State, it has exercised the Constituent Power by amending either expressly or tacitly, wholly or partially, the constitutional provision in question;

(f) That it may have been understood, by an interpretation of article 3, paragraph 2, of Decree-Law no. 128 of 1973 which states that "the provisions of decree-laws amending the Political Constitution of the State shall form part of its text and shall be deemed to be incorporated in it", that the exercise of the Constituent Power is restricted solely to cases in which the Constitution is amended expressly by replacing one of its rules by a different one;

(g) That such an interpretation of that provision must be rejected, since it is obvious that its meaning and purpose was to incorporate into the Constitution the amendments referred to in the preceding considerandum, since they are the only ones in which it is pertinent and logically possible to incorporate the new mandate in the contents of the Fundamental Charter; however, that can in no way exclude the possibility that the Constitution may be amended tacitly, by the enactment of decree-laws whose content differs from that of constitutional provisions. This is so obvious that a contrary conclusion would be admissible only if it were agreed that the Junta has itself restricted the exercise of the Constituent Power assumed by it, without even the possibility of derogating from this alleged self-imposed restriction, assumptions which are unacceptable for the re-establishment of the normal institutional development of the country;

(h) That, theoretically, it has been argued that the Fundamental Charter cannot be amended tacitly but only by an express rule which replaces a constitutional provision or is inserted in it. However, this affirmation does not apply in times of emergency and much less in cases in which, by the force of historical circumstances, the exercise of the Constituent Power and the Legislative Power is vested in the same organ without differentiating formalities or requirements. In such circumstances, it is obvious that the will of such an organ will always be expressed in the form of a peremptory rule of conduct which, if it differs from the Constitution in force, unquestionably has the effect of amending it;

(i) That, notwithstanding the validity of the above-mentioned principles, and because of the need which arises to clarify beyond doubt the hierarchical status of the legal provisions and not to leave any uncertainty with regard to the content of the rights and obligations of individuals, it is appropriate to specify the legal status, vis-à-vis the text of constitutional rules, of the various decree-laws which the Government Junta has enacted or may enact;

(j) That the institutional situation now attained in Chile makes it desirable that the Government Junta should for the future remove any possible doubt regarding the cases in which it decides to exercise the Constituent Power, so that, in respect of decree-laws in which this power is not exercised the remedy of non-applicability, as provided for in article 86 of the Political Constitution of the State, will still be valid.

The Government Junta, acting in exercise of the Constituent Power, agrees to promulgate the following decree-law:

Article 1. It is hereby declared that decree-laws hitherto enacted by the Government Junta which are contrary or opposed to or differ from any provision of the Political Constitution of the State have had and still have the status of rules amending explicitly or tacitly, partially or wholly, the corresponding provision of the Constitution.

Article 2. The scope of article 3, paragraph 2, of Decree-Law no. 128 of 1973 is clarified in the sense that the amendments to the Political Constitution of the State which are to form part of its text, and are to be regarded as incorporated in it, are amendments of a specific nature.

Article 3. Decree-laws enacted in future which are contrary or opposed to or differ from any provision in the Political Constitution of the State, either explicitly or tacitly, partially or wholly, shall have the effect of amending that provision in the Constitution only if it is expressly stated that the Government Junta is enacting the decree-law in the exercise of its Constituent Power.

Article 4. The provisions of this decree-law shall not apply in respect of final judgements rendered prior to its publication in the Diario Oficial.

To be registered in the Office of the Comptroller-General of the Republic, to be published in the Diario Oficial and to be inserted in the official Digest of the said Office.- AUGUSTO PINOCHET UGARTE, General of the Army, Supreme Chief of the Nation. - Admiral JOSÉ T. MERINO CASTRO, Commander-in-Chief of the Navy. - General GUSTAVO LEIGH GUZMÁN, Commander-in-Chief of the Air Force. - EDUARDO GORDON CAÑAS, Inspector General and Acting Director-General, for General CESAR MENDOZA DURÁN, Director-General of the Carabineros and Member of the Junta.

Annex XXII

DECREE-LAW No. 1775 OF 11 MAY 1977

Ministry of Justice

Amendment of Code of Penal Procedure

No. 1775. Santiago, 11 May 1977.

Bearing in mind the provisions of Decree-Laws nos. 1 and 128 of 1973, no. 527 of 1974, and no. 991 of 1976,

The Government Junta of the Republic of Chile has agreed to enact the following decree-law:

Article 1. The following new paragraphs shall be inserted in article 6 of the Code of Penal Procedure:

"However, the preliminary inquiries which the courts referred to in the preceding paragraph are required to undertake in military or police precincts must be conducted through the Military Tribunals of the jurisdiction concerned.

"The term 'military or police precinct' shall be understood to mean any duly delimited space, vehicles, vessels or aircraft in which a military authority or police authority of the Carabineros of Chile exercises its specific functions."

Article 2. Article 158 of the same Code shall be amended as follows:

(a) The phrase "military barracks or premises or State vessels" shall be deleted, and

(b) the following new paragraph shall be inserted:

"In the case of military or police precincts, the inquiries referred to in the preceding paragraph must be conducted through the Military Tribunals of the jurisdiction concerned."

To be registered in the Office of the Comptroller-General of the Republic, to be published in the Diario Oficial and to be inserted in the Official Digest of the said Office and in the Official Bulletins of the Army, Navy, Air Force, Carabineros and Investigaciones of Chile. - AUGUSTO PINOCHET UGARTE, General of the Army, President of the Republic. - Admiral JOSÉ T. MERINO CASTRO, Commander-in-Chief of the Navy. - General GUSTAVO LEIGH GUZMÁN, Commander-in-Chief of the Air Force. - General CESAR MENDOZA DURÁN, Director-General of the Carabineros. - MONICA MADARIAGA GUTIÉRREZ, Minister of Justice.

Annex XXIII

CHILEAN CODE OF CRIMINAL PROCEDURE, ARTICLES 6 AND 158

Article 6 (26). Irrespective of the court that is called upon to hear a criminal case, judges with criminal jurisdiction in chief towns of departments, civil court judges who exercise criminal jurisdiction in their respective jurisdictional territories and judges of lower courts in rural sub-districts shall be required to undertake preliminary inquiries concerning the charge if it relates to an offence committed within the territory of their jurisdiction, but shall immediately notify the court which, under the law, is responsible for trying the case.

Article 158 (179). In order to conduct inquiries and searches in religious establishments, buildings occupied by a public authority, military barracks or premises or State vessels, the judge shall notify the authority or person in charge, so that he may be present during the operation or appoint another person to be present.

Annex XXIV

EXCERPTS FROM THE ANNEXES TO THE SUBMISSION MADE BY THE
VICARIA DE LA SOLIDARIDAD ON THE OCCASION OF THE
COMMENCEMENT OF THE JUDICIAL YEAR (MARCH 1978)

A. Selection of cases summarized in annex I pertaining to action taken by courts of justice in dealing with applications for enforcement of rights (amparo)

Application for amparo, No. 164-77, on behalf of Juan Eduardo Berríos Morales

14 April: The subject of the action for enforcement of rights, a national trade union leader, made application on his own behalf, further to the application made by the Vicaría de la Solidaridad of the Archbishopric of Santiago. He stated that he had been arrested on a public thoroughfare, without any formalities whatever, and taken blindfold and in handcuffs to a place he could not identify, where he had been interrogated under intensive physical pressure. He added that he had been released subject to an obligation to report daily to the arresting officials for the purpose of answering questions concerning trade union and church activities, etc. He complained that his relatives had been threatened with reprisals should he fail to comply with the demands of those who had arrested him, and that the acts of intimidation had not yet ceased. He petitioned the court for preventive amparo for himself and his relatives, under the terms of Constitutional Act No. 3.

15 April: The court ordered that an official communication be sent to the Ministry of the Interior, requesting it to state whether it had issued a warrant for the arrest of the applicant.

6 May: The Minister of the Interior reported that there was no record of the alleged detention and that no warrant had been issued for the arrest of the applicant. Nevertheless, a report had been requested from the security services, whose replies would be transmitted to the court in due course.

24 May: In the light of the report from the Ministry of the Interior, the court dismissed the application for amparo.

Application for amparo, No. 188-77, on behalf of Raúl Hidalgo Canessa

25 April: The applicant submitted her application, complaining in it of the disappearance of the above-mentioned person and referring to various matters of a political nature which led her to assume that he had been arrested by the Government security services.

The applicant asked that official requests for information should be sent to the Ministry of the Interior, the Investigations Service, the Public Prison and the Institute of Forensic Medicine.

On the same day, the court ruled against the requests, agreeing only to contact the Ministry of the Interior and the Investigations Service, without prejudice to any action which might be taken on the other requests by the court that was to consider the application.

Also on the same day, the Investigations Service stated in a telephone report that the name of the subject of the action did not appear on the list of persons arrested by the Service and that there was no record of any arrest warrant having been issued by any Santiago court.

27 April: The subject stated that he had been released the previous day after having been held blindfold and incomunicado for almost a week in a place which he could not identify.

The subject offered to appear in court to confirm his statement.

29 April: "In the light of the pleas and proceedings, and particularly of the statement made by the subject himself, the application for amparo is dismissed".

Application for amparo, No. 200-77, on behalf of Víctor Condori Valencia

3 May: An application was submitted in which it was stated that the arrest had been made on 1 May by civilians who had orally identified themselves as officials of the Investigations Service. It was also stated that the arrest had been forcible and that the persons making it had threatened the subject of the application with reprisals, should she denounce them.

It was stated that the subject of the application had been removed to an unidentified place and that a permanent watch had been maintained on his residence. In addition to the release of the subject, the applicant called for transmittal of the documents relating to the case to a criminal court judge and the sending of official requests for information to the Ministry of the Interior, the Investigations Service and the Military Court.

4 May: The court agreed to send an official request for information to the Ministry of the Interior, but took no action on the other requests, stating that they would have to be dealt with by the court that considered the application.

13 May: The applicant stated that the subject of the application had been released on 3 May, only to be rearrested on 4 May and set at liberty once again after being held incomunicado for 12 hours. She stated that the last arrest had also concerned herself, and that she had been threatened in an attempt to force her to withdraw the application for amparo. She described other threats and acts of persecution that had been directed against her family. She requested the court to take steps to prevent the continuation of such incidents.

16 May: The court's decision regarding that request was: "Noted".

27 May: The clerk of the court testified that the Ministry of the Interior had reported two days earlier that it had consulted the security services, but had been unable to find any records concerning the subject of the application.

30 May: The applicant appealed to the Supreme Court.

7 June: Decision: in view of the evidence, the decision appealed against was confirmed. One judge was in favour of transmitting the documents relating to the case to the Court of Appeal to enable it to rule on the petition of 13 May.

Application for amparo, No. 205-77, on behalf of Carlos Veloso Reindenbach

4 May: Amparo proceedings were initiated. The facts complained of were the following: the minor who was the subject of the application had been detained by unidentified civilians, who had forced him into a car and then driven him to a place he could not identify, where he had been interrogated for six hours, under intensive physical pressure, concerning alleged political activity by his father. He had subsequently been released.

In the applicant's opinion, the case involved a very serious threat to the liberty and security of person of the subject of the application and his parent, who was also covered by the application. The court was requested to take immediately such measures as it deemed necessary to restore the rule of law and give the subjects of the application due protection. It was also asked to address official requests for information to the Ministry of the Interior and DINA and to make arrangements for the subjects of the application to appear in person before the court.

The same day, the court ordered that the Ministry of the Interior should be officially requested to state whether any arrest warrant had been issued by it or by any of the security agencies under its jurisdiction, and, if so, the reason therefor. Without prejudice to any decision which might be taken by the court that was to consider the application, it did not grant the other requests.

20 May: The action for enforcement of rights was supplemented by a further application made by the Auxiliary Bishop of Santiago, Monsignor Enrique Alvear (No. 262-77). The Auxiliary Bishop stated that, since 12 May, persons describing themselves as members of the security services had been occupying the house of the subjects of the action, allegedly in order to protect them, and that the subjects had been unable to leave their residence. He observed that that constituted a restriction on freedom which had been applied without any order from the competent authority, and he requested that orders should be issued for the immediate cessation of those restrictive measures, that arrangements should be made for him to appear before the court, and that an official request for information should be sent to the Ministry of the Interior.

23 May: The court decided to send a further request for information to the Ministry of the Interior, together with a copy of the last-mentioned application. It rejected the other requests, without prejudice to any decision which might be taken by the court that was to consider the applications.

30 May: Almost a month after the initiation of the action, the clerk of the court testified that the Ministry of the Interior had reported, in response to the court's first request for information, that no arrest warrant had been issued by the Ministry or was in force.

3 June: The applicant stated that the acts which had prompted the application had been committed publicly, in an attempt to present the occupation of the subject's house as a protective measure taken following the abduction of the Veloso child. The applicant pointed out that the minor's abductors were officially

reported to be in detention, so that the immediate reason for the presence of security agents in his residence was unexplained. He stated that the information from the Ministry of the Interior did not suffice to establish the legitimacy of such a measure. He petitioned the court to make a further official approach to the Ministry of the Interior and to ask it: whether there were still any security officers in the subjects' residence; if there were, whether their presence was the result of an order from a competent authority, on what provision of the law that presence was based and what were the current reasons for it.

Decision of the court: the petition was rejected. In addition, the application for amparo was dismissed, in the light of the information provided by the Ministry of the Interior.

4 June: The applicant appealed against that decision to the Supreme Court.

9 June: This appeal having been lodged, the Supreme Court, in order better to be able to reach a decision, ordered that an official communication should be sent to the Ministry of the Interior, asking it to state whether it was responsible for the restrictions of freedom complained of. In addition, the file was transmitted to the Court of Appeal for the purposes of the inquiries requested by Monsignor Alvear. The Court of Appeal was asked to take statements and then to transmit the file immediately to the Supreme Court.

17 June: The applicant submitted sworn statements by the two subjects of the application for amparo. These clearly indicate: that the minor was indeed arrested; that he had been subjected to intensive pressure, including attempts at hypnosis; that he had been interrogated concerning alleged political activities of his father; that the security services had subsequently remained in his house on the pretext that they were investigating his abduction; that, during the same period, the father, who was also a subject of the application for amparo, had been taken by security agents to an unidentified place where he had been interrogated concerning his activities by persons whom, although blindfold, he had been able to identify as DINA officials; that the minor had been taken again to an unidentified place, where he had been forced at pistol point to sign a statement against friends of his father, as a result of which they were now in detention; that the minor had also been obliged to sign a statement maintaining that he had been tortured by the said friends of his father; that the father, who had also been tortured, had signed a similar statement; that both had subsequently been arrested together, on which occasion an attempt had been made to hypnotize the minor so that he would relive the version of the abduction; that both had been warned not to say what had happened; that the minor had been confronted with one of his father's friends, who had been forced to state that he had taken part in the abductions; that the minor had been sexually assaulted and forced to declare that the perpetrator of the act had been that same friend of his father; and that the affidavit had been drawn up in order to establish the truth and to prevent the punishment of innocent persons.

The applicant requested that a judge of the court should be appointed to take statements from both the subjects and to make such other inquiries as he might consider appropriate.

17 June: A judge was appointed to obtain personal confirmation of the subjects' statements.

18 June: The judge certified that the subjects had confirmed the entire contents of their affidavit and that the Veloso child was being held by the Military Prosecutor's Office.

29 June: The Ministry of the Interior responded by stating that the Veloso child had been abducted and ill-treated by subversive elements and that "there does not exist any decision of this Ministry providing for his imprisonment or house arrest".

30 June: In order better to judge the matter, the court officially requested the Military Prosecutor's Office to inform it of any legal action in progress against the subjects.

4 July: The Military Prosecutor's Office reported that both the subjects had been placed at its disposal by the Investigations Service and that both had been freed unconditionally.

Subsequent to that report, the decision appealed against was confirmed, and the application for amparo was definitively dismissed.

Application for amparo, No. 206-77, on behalf of Francisco Troncoso Valdés

5 May: The application was lodged. It was stated that the subject of the application had disappeared following a raid on his residence by armed civilians travelling in a car with North American licence plates. It was also stated that, the same day, there had been other raids of homes of relatives of the subject.

In her submission, the applicant requested not only that the subject should be released, but also that he should be brought before a court, and that official requests for information should be addressed to the Ministry of the Interior, the Investigations Service, and, if necessary, DINA.

6 May: The court agreed only to send an official request for information to the Ministry of the Interior. It took no decision on the other requests, which it said would have to be studied by the court that considered the application for amparo.

12 May: The applicant stated that she had still not received any news of the subject, who was disabled in both legs. She asked that the Ministry of Justice should be officially requested to supply copies of the reports on the medical examinations that, under the provisions of Supreme Decree No. 187 of the said Ministry, should have been carried out on the detainee if he was being held under the powers conferred in connexion with the state of siege.

13 May: The court had still not reached a decision. The applicant submitted to the court a photocopy of the subject's disability certificate and asked it to repeat its official request for information to the Ministry of the Interior, from which no reply had yet been received. She also asked that official requests for information similar to those for which she had already petitioned should be sent to the Ministry of Justice, the Investigations Service and the Director of DINA.

25 May: The applicant stated that the subject had been released and confirmed that he had been under arrest in an unknown place.

26 May: The Ministry of the Interior replied that it had absolutely no record of the subject's detention in its files, nor "has it any record of having received the application for amparo in question". It also stated that no warrant for the arrest of the subject had ever been issued.

27 May: The applicant stated that the subject had been made out in the press to be the perpetrator of an ordinary offence, but one which had political connotations, and suggested that that implied a threat to the subject's freedom and gave reason to think that he had been rearrested. The applicant asked the court to address official requests for information to the criminal court judge appointed to investigate the acts attributed to the subject by the press, and to the security services and the Investigations Service. She attached to her petition photocopies of the press articles in question.

31 May: The court ruled on the petitions submitted on 13 and 27 May, by denying the former, in the light of the pleas and proceedings in the case, and by taking note of the latter.

2 June: Decision of the court: "In the light of the evidence pertaining to the case, particularly the information provided by the Ministry of the Interior in fascicule 12, the application for amparo made on behalf of Mr. Carlos Troncoso Zúñiga is dismissed".

On the same day, the applicant appealed to the Supreme Court. She submitted with the appeal numerous press cuttings in which the subject was alleged to be an extremist, to have taken part in a kidnapping, and to be the leader of a band of subversives. She claimed that those allegations constituted a threat which justified the making of a precautionary application for amparo. She requested the court to send an official communication to the editor of the newspaper La Segunda, asking him to confirm whether the person mentioned in the articles was the subject of the application and to hand over to the court the documents in his possession, and to send a communication to the same effect to the editor of the newspaper El Cronista.

Decision of the Supreme Court: "Noted. The decision appealed against is confirmed, and two judges shall be appointed to grant the requests [for the sending of official communications] that have been made. For file."

Application for amparo, No. 242-77, on behalf of Juan Carlos Villar Ehiño

14 May: The applicant stated that the subject had been arrested at his home, in the presence of witnesses, although those making the arrest had been looking for someone else and had not served the subject with any warrant. In addition, those making the arrest had removed cash and various articles to a value of 8,000 pesos. The applicant petitioned for the release of the detainee and his appearance before the court. He also asked that official requests for information should be sent to the Ministry of the Interior and the Investigations Service.

16 May: The court ordered that an official request for information should be addressed to the Ministry of the Interior, but left the other petitions for decision by the court which was to consider the application for amparo.

26 May: The clerk of the court testified that the Minister of the Interior had reported that there was no arrest warrant nor any record in the Ministry concerning any Juan Carlos Villar "Armijo".

6 June: The court contacted the Ministry in order to elucidate the error of identification.

15 June: The applicant stated that the subject of the application had been released on the public thoroughfare after having been held incomunicado in an unidentified place in the custody of government security services.

21 June: The court decided to take note of the written evidence and, in the light thereof, to take no action on the petition for a further report by the Ministry of the Interior and to have the file on the application prepared for the hearing.

22 June: The application for amparo was dismissed.

Application for amparo, No. 246-77, on behalf of Williams Zuleta Mora

13 May: The application was lodged. The applicant stated that the subject of the application had been forcibly arrested by unidentified civilians who had taken him to a secret place - which the applicant was nevertheless able to identify - where he had been interrogated under physical pressure concerning political activities. She had learned all that from the subject himself, who, although injured, had succeeded in escaping to his home. On 11 May, however, three individuals who had passed themselves off as officials of the Workers' Hospital had carried the subject into an ambulance and driven him off to an unidentified place, after having ejected from the moving vehicle a sister of the subject, who was accompanying him. The applicant stated that she presumed the subject was in his initial place of detention, situated at the intersection of Los Plátanos and Irán. The applicant petitioned the court for the subject's release or for him to be placed at the disposal of a competent judge; she requested that one of the members of the court should be appointed to visit the above-mentioned illegal place of detention, and that an official request for information should be addressed to the Minister of the Interior, in case he had issued an arrest warrant.

16 May: The court gave its first decision, to the effect that an official request for information should be sent to the Ministry of the Interior, and that the request for an on-the-spot investigation by a judge should be dealt with by the court which would consider the application for amparo.

19 May: The applicant drew attention to the following facts: her residence had recently been forcibly entered by persons who had been duly identified as agents of the DINA and who had taken away her copy of the application for amparo; the same agents had confirmed that the subject of the application was in detention, stating that he could be visited at the Cuatro Alamos camp and that his wife must sign a notice to that effect; all those events had been witnessed by a

Bishop of the Catholic Church who had been present; on the day indicated by the agents as that on which the subject could be visited, she had gone to Cuatro Alamos, but the subject's presence there had been denied. The applicant requested that a member of the court should be appointed to conduct an investigation at the Camp, that the Camp commander should be officially requested to disclose the results of the medical examinations of the detainee that should have been carried out, and that SENDET should be officially requested to confirm the address of the place where the subject was being held.

22 May: Decision: the requests were denied, without prejudice to any decision which might be taken by the court that considered the application for amparo.

26 May: The applicant submitted press reports, in which it was stated that the Government considered the detainee to have participated in the abduction of a minor in circumstances which justified the fact that the Minister of the Interior had not yet replied to the court's official request for information. The applicant asserted that the kidnapping attributed to the subject of the application had in fact been the work of DINA agents, and petitioned for the sending of another official request for information to the Minister of the Interior, in order that a reply might be obtained that same day.

The decision of the court was that its previous decision should stand.

27 May: The clerk of the court testified that the Minister of the Interior had reported, in an official communication dated 25 May, that the subject of the application was being held in Cuatro Alamos Camp pursuant to the supreme decree of 13 May which had been issued under the powers conferred by the state of siege.

On the day on which this report from the Ministry of the Interior was received, and following a petition by the applicant on the basis of the above-mentioned press reports, it was certified that no order had yet been given for the institution of proceedings against the subject for the alleged abduction of the minor Carlos Veloso.

28 May: The court decided, in the light of the report from the Ministry of the Interior, "and in the absence of sufficient evidence to conclude that the subject's detention is linked solely with the commission of ordinary offences", that the application for amparo should be dismissed. That verdict was reached with the dissenting vote of one judge who was of the opinion that "from the evidence submitted, it would seem that the issue of the arrest warrant was due to the attribution to the subject of the application for amparo of the commission of the offence of abduction". The judge was of the opinion that "it would be appropriate to order that the detainee should be placed immediately at the disposal of the said criminal court, since the powers conferred by the state of siege do not permit the detention incommunicado of a person whose arrest has been ordered".

The same day, the applicant lodged an appeal. The Supreme Court sent official communications to the Seventh Criminal Court, requesting it to hand over the record of the trial for assault on the person of the minor Veloso, and to the Minister of the Interior, requesting him to state whether it was the Government which had sent the telegram reporting that the detention of the subject of the application for amparo was attributable to his participation in the abduction of the said minor, and whether the subject was being held incommunicado in Cuatro Alamos.

6 June: It was recorded that, after completing its examination of the application for amparo, the court decided to approach the President of the Supreme Court directly and request him, should he see fit, to visit Cuatro Alamos in order to verify whether the subject of the application was still there and, if so, how long his detention had lasted.

7 June: The President of the Supreme Court stated that, on 2 June, he had visited Cuatro Alamos officially and had been able to verify that the subject was being held there incommunicado. The subject had confirmed to him that he had been in the Camp for some 20 or 21 days.

9 June: The Minister of the Interior reported that the subject was indeed being held in the above-mentioned place, "together with the other persons involved in the affair in question", namely the abduction of the minor Veloso, and that "neither he nor any of the persons mentioned is the subject of the measure in question (detention incommunicado), and that it has simply been decided, solely as a security measure, to suspend visits" to Cuatro Alamos.

15 June: The earlier official communication to the Minister of the Interior requesting him to indicate whether the press report referring to involvement of the subject in the abduction of the minor Veloso had emanated from the Government was repeated.

29 June: The Minister of the Interior stated that "the telex" had not come from the Government's Directorate of Information, but confirmed that the subject was "implicated in the offence of abduction of and causing injury to a minor".

For its part, the Second Military Prosecutor's Office stated that the subject was being detained, with visiting rights, in the Public Prison and had been charged under the procedure applicable in time of war.

30 June: In view of the fact that the subject was in the hands of the Military Prosecutor's Office, the decision dismissing the application for amparo was confirmed.

Application for amparo, No. 249-77, on behalf of Raúl Moisés Díaz Mora

16 May: When the application was submitted, it was stated that the subject had been forcibly detained by civilians, in the presence of other residents of his neighbourhood. The applicant indicated the registration number and the type of the car which the persons making the arrest had used. After requesting that the subject should be released and that the wrongs should be redressed, he called for the sending of official communications to the following authorities: the Ministry of the Interior, the Director of DINA, and the Investigations Service and CIAT, asking them who owned the vehicle that had been used by the persons making the arrest.

On the same day, the court agreed to send such a request to the Ministry of the Interior, but took no action on the other petitions, considering them to be matters for the court which considered the application for amparo.

17 May: The applicant stated that, subsequent to the lodging of the application, the subject had been released on the public thoroughfare after having spent a period in an unknown place where he had been interrogated under physical pressure. The applicant sought action by the court, stating that "this application is all the more valid in that it is based on the testimony of the person to whom it relates".

30 May: The clerk of the court testified that the report from the Ministry of the Interior indicated that there was no arrest warrant or record of any kind relating to the subject in that Ministry.

1 June: In order to facilitate its decision, the court addressed an official request for information to the Director of the Investigations Service.

6 June: The Investigations Service stated that it had no record of the subject in its files and that it was not the owner of the vehicle referred to in the application.

Application for amparo, No. 618-77, on behalf of Raúl Espinoza Muñoz and María Isabel Cárcamo Pavéz

21 November: In submitting his application, the applicant stated that both the subjects were being detained irregularly after having been arrested by security agents in their residence, which the arresting officials had entered by force. All those incidents had occurred in the presence of witnesses. The detainees were being held in an unidentified place. The applicant petitioned the court to rule on the application within the period fixed by law, after obtaining reports from the Minister of the Interior and the Prefect of the Investigations Service, to whom official requests should be sent to that end.

On the same day, the court agreed to issue both the official requests in question. The report from the Prefect of the Investigations Service, which was received by telephone, confirmed that the subjects were not being detained by that Service.

22 November: The applicant reported that the subjects had been released on the public thoroughfare and that they did not know the whereabouts of the place in which they had been held for more than two days.

29 November: The Minister of the Interior reported that neither of the subjects had been arrested on orders from his Ministry.

9 December: In view of the fact that the subjects "are at liberty", the application for amparo was dismissed.

Application for amparo, No. 555-77, on behalf of José Miguel Tobar Quezada

18 October: In lodging her application, the applicant stated that the subject had been missing for three days, leading her to think that he had been arrested, because he had been under constant surveillance for some time and had been receiving strange telephone calls. She requested that information should be sought from the Minister of the Interior and the Investigations Service, to which the court agreed the same day.

20 October: The Prefect of the Investigations Service stated that the subject had not been arrested by any of the units under his jurisdiction.

25 October: The Minister of the Interior reported that the subject was not under detention, and added that, if he had been arrested by the security services, "the arresting authority would immediately have notified this Ministry of that fact, in accordance with the strict instructions issued by the Government pursuant to the provisions of Decree Law 1.009".

25 October: The applicant stated that she had been able to establish that, on the day he had disappeared, the subject had had a meeting with a friend to whom he had expressed his concern at the fact that he was being followed. She also provided the registration numbers of the vehicles that had been on guard in the vicinity of his residence. She requested that information concerning those vehicles should be sought from the Municipalities of Renca and La Cisterna.

The court's decision concerning that petition was that it should be borne in mind in the hearing of the case.

28 October: In the light of the documents in the case, the application for amparo was dismissed, without prejudice, however, to the transmittal of the documents to the criminal court judge for investigation of the subject's disappearance. On the same day, the applicant appealed to the Supreme Court.

2 November: The applicant stated the grounds for her appeal, alleging that the court had reached its verdict without taking into account or ruling on her latest requests.

3 November: The Supreme Court confirmed the decision appealed against.

Application for amparo, No. 578-77, on behalf of Hernán Santos Pérez Alvarez

26 October: In lodging the application, the applicant stated that the subject had been in detention in an unidentified place for seven days since his arrest on the public thoroughfare by individuals who had put him in a car of which she gave particulars. She requested the court to deal with the matter briefly and expeditiously by giving its ruling within the legal time limit and to seek information from the Prefect of the Investigations Service and the Minister of the Interior. The court agreed to make those requests for information.

4 November: The Ministry replied that the subject was not in detention. Similar information was received from the Prefect of the Investigations Service.

10 November: The applicant reported the registration number of the car in which the subject had been placed and gave the identity of a former member of the carabineros who had witnessed the event. She asked that the testimony of this witness should be made available and that inquiries should be instituted concerning the vehicle. The court's decision concerning those requests was that they should be borne in mind in the hearing of the case.

15 November: In the light of the official information available, the application for amparo was rejected, without prejudice to the transmittal of the documents in the case to the Criminal Court for the investigation of the subject's disappearance.

On the same day, the applicant appealed to the Supreme Court. As ground for that appeal, she stated that the lower court had ruled on the application without dealing with the requests she had made in the light of the official reports.

17 November: The Supreme Court confirmed the decision appealed against.

Application for amparo, No. 612-77, on behalf of Rosa Ester Cornejo Lara

16 November: In lodging the application, the applicant stated that the subject had been arrested the previous day, in the presence of witnesses, by civilians who had taken her to an unidentified place. She requested that information should be sought from the Ministry of the Interior and the Investigations Service. The court granted that request.

17 November: The applicant supplied further information, from which she had inferred that the subject was detained by CNI, and she petitioned the court to seek information from the Director of that agency.

18 November: The court's decision on that request was that it should be borne in mind in the hearing of the case.

18 November: The applicant reported that the subject had been released on the public thoroughfare and had been warned by those who had arrested her that she should remain at her home and that they would come for her again. She added that the subject had been held in an unidentified place and had been interrogated, under unlawful pressure and various threats, concerning an explosion in San Miguel. The applicant requested the court to take that information into account and to take such measures as it deemed fit in order to ensure the security of the subject's person.

19 November: The applicant stated that, in the period since her release, the subject had continued to be the target of investigations of one form or another and the press had published her photograph and described her as a member of an extremist group. The applicant claimed that that further increased the danger to the subject's personal freedom and security. She requested that information should be sought from the Military Judge in order to make it clear that the subject had no connection with the above-mentioned explosion at San Miguel or with the activities of any extremist group.

The court decided that those requests should be borne in mind in the hearing of the case.

21 November: The report from the Investigations Service was received. It stated that that service had no record of any arrest warrant relating to the subject and that she had not been arrested by any of its staff.

24 November: The applicant stated that the subject had been obliged to go off the previous day with a person who had identified himself as belonging to the Investigations Service and who had called for her at her place of work in order to take photographs of her. The applicant petitioned the court to request information on that incident from the Prefect of the Investigations Service. The court decided that that request should also be taken into account in the consideration of the application for amparo.

24 November: The Minister of the Interior stated that the subject was not being held in detention by order of his Ministry.

26 November: Hearing of the case: in the light of the documents available, the application was dismissed, and no other action was taken. On the same day, the applicant appealed to the Supreme Court.

28 November: On the same day that the Supreme Court added consideration of the application to its schedule for the following day, the applicant reported that persons claiming to belong to the Investigations Service had recently been to see the subject again, with a view to having her identify another person, and that they had announced that they would return for her on 28 November and take her away to give oral descriptions of other persons.

29 November: The decision dismissing the application for amparo was confirmed.

B. Selection of cases summarized in annex 2 which illustrate various obstacles encountered in proceedings to determine criminal responsibility for acts violating the rights to life, liberty and the security of person

1. Stay of proceedings while there are matters still pending and without completion of the investigation

Orlando Patricio Guarategua Quintero, Santiago Criminal Court No. 3, Case No. 121.850.

On 16 November 1976, the court decided, on the petition of the plaintiff, to send official communications to DINA, DIFA, SICAR and the International Police, requesting information concerning the arrest of Orlando Guarategua. On 23 December, the court received an official reply from the Minister of the Interior on behalf of DINA; on 31 December the court stayed the proceedings temporarily, when the reports requested from DIFA, SICAR and the International Police had not yet been received. On appeal, the appeal court confirmed the earlier decision.

Carlos Enrique Lorca Tobar, Santiago Criminal Court No. 4, Case No. 107.782.

When the application for enforcement of rights was dismissed, the documents in the case were handed over to the court. In the proceedings concerning the alleged incident no inquiries were ordered and only three of the five witnesses whose sworn statements had accompanied the application were called upon to testify. No official communication was sent to the Minister of the Interior or to DINA, DIFA, SICAR, the Area Chief for the State of Siege, SENDET, etc. The inspector appointed to proceed with inquiries interviewed only the plaintiff (brother of the injured party) and one of the five witnesses of the arrest.

Humberto Fuentes Rodriguez, Santiago Criminal Court No. 10, Case No. 2.096.

Proceedings stayed temporarily in July 1976 after inadequate investigation and despite the evidence of a witness to the arrest. On 23 January 1978, the re-opening of the case was disallowed despite the submission of a sworn statement by another witness that he had seen the injured party at the Villa Grimaldi.

2. Stay of proceedings after proof of the offence

Luis Nelson Cádiz Molina. Letras de Buin Court, Case No. 24.766. Complaint of abduction.

This person was arrested on 14 September 1973 at his home by "a resident in the area, named Jorge Verdugo Rojas", whose address is 114, Camino Longitudinal, Paine. On folio 5 verso of Verdugo's statement he says that he personally took the victim of the offence in his own vehicle "to the entrance to the Paine Sub-Commissariat". "I saw Cádiz go in." There were "many witnesses" to this (folio 6). On 17 December 1976 the court sent an official communication to the Paine Sub-Commissariat requesting information concerning the arrest of Cádiz. There was no reply to this request of the court. When the request was repeated on 7 May 1977 a reply dated 8 June 1977 was received (folio 21). This stated that "the prison admission records for 1973 were destroyed on 4 March 1977, the period for which they are required to be held having elapsed, and for this reason the report requested by the court cannot be furnished".

On the basis of this evidence, the Court ordered a temporary stay of proceedings on 29 July 1977. The Prosecutor of Rancagua Appeal Court (folio 28) endorsed the decision as "in accordance with the law and consistent with the pleas and proceedings". The Appeal Court confirmed on 18 August 1977 the decision against which appeal had been made.

Luis Guajardo Zamorano, Santiago Criminal Court No. 2, Case No. 83.413-5.
Complaint of homicide.

On 2 August 1977 the Second Chamber of the Court of Appeal ordered a temporary stay of proceedings despite proof of the offence. There were two witnesses to the arrest of the victim of the offence and to his having remained on the premises at No. 38 Calle Londres (Santiago). There were also witnesses who had seen Guajardo, suffering from injuries, three days after his arrest. Luis Guajardo was taken to the Clinic and removed from there by DINA personnel, despite the objections of the doctor who was treating him. In his report, the Prosecutor signified his approval of the stay of proceedings but amended the record since in fact "not one, but several offences had been committed against the person concerned".

Roberto Ernesto Guajardo Gutiérrez. Santiago Criminal Court No. 11, Case No. 2.680-8.
Complaint of abduction with resulting serious injury.

The proceedings were stayed under article 409, paragraph 2, of the Code of Criminal Procedure. The Appeal Court confirmed the decision appealed against, with the dissenting vote of one of the judges, who would have referred the case back to the examining magistrate for him to summon the former Chief of DINA to testify and to obtain from him particulars of the persons concerned in the matter investigated (decision of 17 August 1977). The injured party had been abducted, together with three other persons, on 24 November 1974, by individuals in plain clothes and taken to secret premises (Villa Grimaldi), receiving a bullet wound while in the vehicle in which he was being transported. He was taken from those premises to the Military Hospital and transferred the same night to the El Salvador Hospital, where he was held as a prisoner and later discharged, after having undergone an operation. All these facts were clearly proved during the proceedings by witnesses' statements, reports from the two hospital establishments referred to, a statement by the doctor who operated, a statement by the Carabineros officer who took him into custody at the El Salvador Hospital, etc.

3. Denial of request that official communications be sent to DINA, CNI and other security services

María Galindo Ramírez, Santiago Criminal Court No. 10, Case No. 4.201-8.
Complaint of abduction.

In this complaint, lodged on 22 March 1977, petition was made for the sending of an official communication to DINA requesting information concerning the arrest of the victim of the offence. The court denied this request for particulars in the case. On 21 April 1977 a further similar petition was made which was also denied. On 17 May this petition was again made in writing, but met with the same fate as the two previous attempts. These petitions, together with a request that the court should make an official visit of inquiry to the Villa Grimaldi were again submitted in the written comments on the stay of proceedings when that decision was appealed to the Court of Appeal, where it was upheld. On 4 August 1977 application was made

for the reopening of the preliminary proceedings, which was not granted although some particular measures were approved. On 15 September and 26 December, petitions for the sending of official requests for information to the National Information Agency (CNI) and other security services were denied. An appeal against this decision was lodged; the Appeal Court's decision is pending.

Oscar Ramos Garrido, Santiago Criminal Court No. 6, Case No. 94.579.

By a decision of 23 August 1977 a petition for the sending of official requests for information to the security services of the Armed Forces was denied.

Sergio Montecines Alfaro, Santiago Criminal Court No. 8, Case No. 14.602.

On 16 September 1977 the judge denied a petition for the sending of an official request for information to the security services of the Armed Forces.

Edgardo Morales Chaparro, Santiago Criminal Court No. 8, Case No. 11.579.

By a decision of 3 November 1977 the court denied a petition for the sending of an official request for information to CNI.

5. Non-appearance of members of DINA and other security services at proceedings where they had been summoned to appear

Roberto Ernesto Gajardo Gutiérrez, Santiago Criminal Court No. 11, Case No. 2.680-8. Complaint of abduction with resulting serious injury.

On 25 September 1975, the court decided to send an official communication to the Minister of the Interior requesting him to "identify and have appear before the court" the officials of DINA who had arrested Roberto Ernesto Gajardo Gutiérrez. In reply, by Decision F/364 dated 5 November 1975, the Under-Secretary informed the judge:

"... (2) Concerning this matter, I have to state that the Directorate of National Intelligence is not a subsidiary body of this Ministry and, since the security services work in conditions of absolute secrecy, it is not possible to allow those persons to appear before the court."

In those circumstances, the judge decided to transmit the records of the case to the President of the Court of Appeal in order that the latter might take such measures as he deemed fit to continue or stay the proceedings. By decision of the full membership of the Court, the records of the case were transmitted to the Supreme Court for its ruling. The Supreme Court ruled as follows: "Case referred back to the Court of Appeal to decide what action is appropriate and to advise the Court on the measures to be taken." Finally, the Court of Appeal handed down the following unanimous decision: "The case in question, No. 2.680, shall be returned to the judge of Court No. 11 in order that he may proceed with the inquiry, considering also the possibility of the case being one which he is not competent to hear and making such declaration as may be appropriate if that should be the case.

2. The judge should then advise the Supreme Court of his decision, referring to the fact that the criminal courts cannot communicate directly with the Directorate of National Intelligence and to the contention that, since the members of the Directorate work in conditions of absolute secrecy, any co-operation in the

investigation of criminal offences must be refused; with a view to that Court making representations to the President of the Republic, if it sees fit, or adopting such measures as it may deem appropriate." Pursuing the preliminary examination of the case, the judge ordered further measures, including the sending of a further official communication to DINA, to which there was no response. The proceedings were then stayed temporarily under article 409, paragraph 2. This stay was upheld by the Court of Appeal on 17 August 1977, with the dissenting vote of one judge who considered that the case should be referred back for further examination so that the judge might subpoena the Director of DINA to give evidence and insist on obtaining from him particulars of the persons who had been involved in the case under investigation.

Jaime Ignacio Ossa Galdámez, San Miguel Court No. 4, Case No. 10.262.

The court requested the Ministry of the Interior to furnish the names of the DINA officials by whom Professor Ossa Galdámez was being escorted at the time of his death. Some months later the Ministry replied that it was not possible to identify those agents because they belonged to the security services.

6. Excessive delay in complying with or implementing court orders

Claudio Enrique Contreras Hernández, Santiago Criminal Court No. 6, Case No. 91.841.

On 10 November 1976 the Court issued a subpoena calling on Colonel Manuel Contreras Supúlveda, Director of DINA, to give evidence. The order was repeated on 14 December the same year. Later, the court cancelled a decision to sit at the headquarters of DINA for the purpose of interrogating Contreras. In June 1977 the court reversed itself and decided to sit at the headquarters of DINA.

In October that decision had still not been carried out and the court declared itself incompetent, handing over the records of the case to the Second Military Prosecutor's Office, where the matter is being dealt with as case No. 891-77 on the "peace-time" list. There has still been no compliance with the court's subpoena.

Ricardo Lagos Salinas, Santiago Criminal Court No. 7, Case No. 77.933.

When proceedings in this case began in May 1977, official communications were sent to the Tres and Cuatro Alamos detention camps inquiring whether the subject was under detention there on 30 January 1976. These communications were repeated on 2 August 1976 and 9 June 1977. To this day, there has been no reply. Upon the petition of the applicant this situation was reported to the Court of Appeal in an official communication dated 20 January 1978.

Angel Guerrero Carrillo, Santiago Criminal Court No. 6, Case No. 94-218.

On 18 April 1977 the court was petitioned to take a number of measures. These were agreed to, but the relevant communications were not sent until 15 October 1977. So far there have been replies to only two of the nine official communications sent.

Edgardo Morales Chaparro, Santiago Criminal Court No. 8, Case No. 14.602.

Official communications sent on 4 August 1977 to the criminal courts and to SENDET have not yet been answered.

Official communications sent on 26 October 1977 to the Minister for Foreign Affairs and on 10 November 1977 to the Institute of Forensic Medicine have not yet been answered.

Eduardo Enrique Hernández Concha, San Bernardo Court, Case No. 45.281.

CNI, DINA and the Infantry School have declined to respond to repeated official communications sent to them by the Court.

Oswaldo Figueroa Figueroa Figueroa, Santiago Criminal Court No. 7, Case No. 79.600-2.

On 9 September 1977, shortly before leaving Chile, this person laid a criminal complaint for trespass, abduction, illegal arrest and unlawful constraint. The plaintiff petitioned for a number of measures to be taken by the court, all of which were granted. He asked that an official communication be sent to the Minister of the Interior requesting him to indicate names, official positions, addresses and all other particulars which might help in the identification of the persons who deprived the injured party of his liberty (from his home, on 9 May 1977) and to state whether the persons referred to were civil servants attached to the Ministry of the Interior or to another department. He asked likewise that the Ministry of Justice should be officially requested to transmit to the Court a copy of the report on the medical examination which should have been made of the victim upon entering and leaving the Cuatro Alamos camp, in accordance with the provisions of article 1 of D.S. 187, issued by the Ministry.

It was asked that an official communication should be sent to the President of the Supreme Court requesting him to provide a record of the conversation he had had with the plaintiff at the Cuatro Alamos camp during the latter's imprisonment there. The furnishing of the following particulars was requested: confirmation that the President had, at the end of May or the beginning of June 1977, officially visited the above-named Camp and talked with the plaintiff, confirmation that the plaintiff had been examined by a doctor accompanying the President, the name of the said doctor and the results of the examination carried out.

All these official requests for information were despatched on 9 September 1977. They have not so far been answered, although they were repeated on 30 December 1977.

Carlos Alberto Nieto Duarte, Buin Court, Case No. 24.765.

After having ordered a temporary stay of proceedings on 2 August 1977, the court transmitted a record of the pleas and proceedings for "advice" to the First Court of Appeal of Rancagua, which, following the suggestion of its District Prosecutor, ordered that an official communication should be sent to the San Bernardo Infantry School requesting it to furnish the names of the Unit Commander, the Second-in-Command and the senior officers of the Groups and Companies on duty on 16 October 1973 (date of the arrest of Nieto Duarte). The court of first instance complied with the order of the court of appeal and despatched the relevant official communications on 14 September 1977. The reply from the San Bernardo Infantry School was received by the court on 29 December 1977 and stated that "it is not possible for the undersigned to furnish the names of military personnel who may have taken part in operations in the Paine and district sector ... as he does not have this information".

7. Cases in which court orders for measures to be taken by the military courts have not been implemented

Alejandro Avalos Davidson, Santiago Criminal Court No. 2, Case No. 84.315-5.

On 9 August 1977, the applicant made written petition for the court to ascertain whether the victim was or had been in the Villa Grimaldi, as would appear from the records in the case.

The court transmitted a written request for information in the following terms: "Under the provisions of Decree-Law 1.775, article 2 (b), the First Military Court is officially requested to visit the Villa Grimaldi and verify whether Avalos Davidson is detained there. If he is not, it is requested to ascertain whether he was detained there and the name of the place to which he has now been taken." Since the Military Court paid no heed to this request during the month of October, the court, on its own initiative, repeated the request: in November, on the petition of the applicant, information was again requested. In the same month (November), the Military Court asked for the file on the case to be sent to it, with which request the court complied. The request of the court has not yet been acted upon.

José Ramón Ascencio Subiabre, Santiago Criminal Court No. 3, Case No. 120.533.

On 23 August the court was petitioned to transmit to the Military Court the request that it visit the Villa Grimaldi. This petition was denied. On appeal, the Appeal Court ordered that the action requested should be taken. In October 1977 the Third Military Prosecutor asked for the records of the case to be transmitted for the purpose of compliance with the request. On 30 October the file was sent "for not more than five days". Since that date, the action requested has not been taken nor has the file been returned. On 30 January 1978 petition was made for the return of the file, which Court No. 3 granted.

Oscar Ramos Garrido, Santiago Criminal Court No. 6, Case No. 94.579.

In November 1977 the file on the case was sent to the Third Military Prosecutor's Office at the latter's request for the purpose of taking action requested by Court No. 6. The file has still not been returned to the court hearing the case and the action requested is still pending.

8. Restrictions on judicial action imposed by administrative authorities.

Luis Nelson Cádiz Molina, Buin Court, Case No. 24.766.

On 17 December 1976 the court sent to the Paine Sub-Commissariat an official request for information concerning the arrest of this person. This request was repeated on 27 May 1977 and a reply was finally received on 8 June 1977 to the effect that "the register of prisoner admissions for 1973 was destroyed on 4 March 1977, the period of time for which the records are required to be kept having elapsed, and for this reason the report requested by the Court cannot be furnished". It appears, therefore, that the register had not been destroyed when the request was first made on 17 December 1976.

Mario Zamorano and others, Santiago Criminal Court No. 11, Case No. 6.799.

In this case the judge ordered that the Court should hold a sitting at the headquarters of DINA. As a result, DINA made representations to the Supreme Court, accusing the judge of "arrogance" and "insolence". The Supreme Court rejected these accusations against the judge but, on 14 September 1976, ordered that the record of the proceedings on folio 32 should "limit the said decision and the measures called for to the investigation of the concrete facts which are material to the case; by which it is understood that the order referred to should be considered as referring only to information, to be furnished by the national intelligence service to the judge conducting the preliminary proceedings, concerning all matters relating to the possible detention of the three persons alleged to be missing, and any particulars the said service may possess regarding the disappearance under investigation. In order to facilitate the task of the intelligence service, the judge shall send to it individual photographs of the persons alleged to be missing, after he has obtained these photographs from the parties concerned.

9. Refusal to send to the President of the Republic or the Office of the Minister Secretary General of the Government an official request for information concerning inquiries made in connexion with missing persons

Claudio Enrique Contreras Hernández, Santiago Criminal Court No. 6, Case No. 91.841.

On 11 May 1977 the court decided not to act on a decision calling for an official communication to be sent to the President of the Republic requesting that the court be informed of the findings of an inquiry which the President had announced in San Bernardo on 20 August 1975.

Edgardo Morales Chaparro, Santiago Criminal Court No. 8, Case No. 11.576.

On 30 December 1977 the court denied a petition that an official communication should be sent to the Minister Secretary General of the Government requesting information concerning the inquiry ordered by the Government in connexion with the disappearance of 119 persons whose cases had been referred to in the press in July 1975.

Annex XXV

EXCERPTS FROM A SPEECH MADE BY THE PRESIDENT OF
THE REPUBLIC OF CHILE ON 5 APRIL 1978 a/

The following is the text of the address to the nation delivered last night by the President of the Republic, General Augusto Pinochet Ugarte:

Chileans, men and women:

I have thought it advisable to address the nation tonight because, as in previous years, I feel that the full recommitment of all Chileans to the tasks facing us in a new year offers an ideal opportunity to assess the general state of the country and tell you of the basic goals that the Government has set itself for the near future in its various areas of activity.

.....

Massive national support and normalization

In the political-institutional field, this year began with the historic "National Consultation" in which an overwhelming majority of Chileans supported the President now speaking to you, in the face of the international aggression launched against our country, and reaffirmed the legitimacy of the Government of the Republic to conduct the process of creating new national institutions, in exercise of a sovereignty that Chile will not permit to be compromised, or relinquish under foreign pressure.

It will be for history to confer its full splendour and significance on that memorable 4 January 1978 when the Chilean people emerged in all the vigour of its most glorious deeds, to announce to the whole world that, if there was an 11 September 1973 in Chile, it was because we are a proud people who will never accept slavery and will always find in our deep moral fibre the strength needed to overthrow anyone who tries to subjugate us.

Although it was not the direct object of the Consultation to produce internal political effects, it cannot be doubted that the massive support for the Government expressed in its results was a decisive factor in the decision to discontinue the state of siege on 11 March last and to maintain only the state of emergency.

Despite what persons with vested interests or superfluous views have tried to insinuate, it is evident that this step constitutes a very important milestone in our normalization process in that, apart from other legal consequences, the

a/ Text published in El Mercurio on 6 April 1978.

raising of the state of siege substantially restores the legal safeguards of personal freedom that belong to a regime of normality, while completely eliminating the operations of the War-time Military Courts, with the result that the Supreme Court now exercises supervision over the Military Courts in precisely the same way as it supervises the rest of the nation's courts.

Pardons and commutations of penalties

With the same desire for normality and national concord, I hereby announce that I have decided to grant pardon or commutation of the penalty of imprisonment to that of banishment, that is, expulsion from the country, to all persons at present under sentence by Military Courts for offences against the security of the State, whether committed before or after 11 September 1973.

Despite the fact that the status of political prisoners is entirely inappropriate in referring to persons judicially sentenced for offences, this measure, motivated by humanitarian considerations, also means that from now on nobody will be able to say that there are persons in Chile deprived of freedom for political acts that occurred in the past.

I hope that this decision by the Government over which I preside will be understood as a pacific gesture and not as a sign of weakness, because anyone who makes such a mistake is liable to incur henceforward the full rigour of the law.

The key to the Chacarillas plan: gradual progress

As for the institutional process, I must recall that last year, on the occasion of "Youth Day", I gave a public account at Chacarillas of the Government's thinking regarding the features of the new democracy we are building, and I sketched out a detailed itinerary of our scheme for achieving it.

Later, in the Presidential Message I delivered on 11 September last, I developed its philosophical outlines and repeated that, as I had stated at Chacarillas, both the time-schedule and the specific formulas for each stage were subject to adjustment according to the circumstances, but that the basic contents of that statement corresponded to the thinking of the Government as it had matured over a long period, and that, consequently, it was not subject to changes made lightly.

The key to the Chacarillas Plan was the gradual advance to a system of definitive national institutions through a transitional phase which will succeed the present recovery stage.

As I underlined on that occasion, our purpose is to steer clear of two opposite but equally pernicious extremes: that of immobilism, which would cause explosive pressures to build up, and that of over-hasty action, which would bring about upheavals worse than those which the country experienced under the Marxist Government.

Basic features of the transition

The keynote of the transitional period consists of two basic characteristic features.

First, the essence of political power will continue to be vested in the Armed Forces and the Forces of Order, but its more immediate exercise will be fully shared with the civil population, who will thus move from collaboration to participation;

Second, all the organs of the State which are to be established on a permanent footing, in accordance with the norms, structures and relationships bringing them as close as possible to the role devolving upon them in this last phase, will be brought into operation; however in the transitional stage there will be no elections for the organs which will exercise power.

The absolute need for this transitional period arises out of the evolutionary nature which all political processes aspiring to be peaceful and enduring must possess. In order to accustom a country to a new institutional system when the preceding system has collapsed in anarchy, throughout history a running-in period has invariably been required for the new institutions, in a climate which allows new and healthy civic habits to be acquired. This would be impossible if such a period coincided with the beginning of a power struggle through political elections.

To disregard this obvious fact would simply mean a return to an electoral contest between men and parties whose thinking was formed in an outworn political régime which collapsed before our eyes, and it would destroy any hope of a new, stable and efficient institutional system for Chile.

Establishment of a Parliament

The step towards the transitional period must involve the establishment of a Parliament, which will consist of either one Chamber or two Chambers, depending on the decision taken on the basis of the studies in progress, but the substantial majority of Congress members who, under the institutional system in its final form, will be elected directly by the people by universal suffrage, will be appointed by the Government during the transitional phase, which will coincide with the first session of the Congress.

Similarly, the Constitutional Tribunal, the body entrusted with the task of exercising the Security Power, and any others which it may ultimately be agreed to provide for, will begin to function.

Definitive Constitution to be submitted to a plebiscite

It was originally thought that the transitional phase would be governed by a series of Constitutional Acts which would cover the entire constitutional spectrum, since those instruments proved suitable for working towards the new Constitution proceeding from provisional texts dealing with the various relevant matters and promulgated as the circumstances warranted.

However, the political significance of the national consultation, the clarification of ideas which we have achieved and the progress made by the Commission entrusted with the task of carrying out the relevant studies have led the Government to move towards the completion and entry into force of the new comprehensive and definitive Constitution at the earliest possible date.

It should be perfectly clear that, in accordance with the basic guidelines given at Chacarillas and summarized earlier, the new Fundamental Charter will have to take into account both the variants appropriate to the transitional period and the actual duration of the period, by means of transitional articles which will be incorporated in the text.

Accordingly, I have requested the Commission on Constitutional Reform to forward to me not later than 21 May 1978 its specific proposals, based on the guidelines transmitted to it last November by presidential communication, for the complete text of the future Constitution, which I shall submit for consideration to the Council of State. Once in possession of these valuable background data the Government Junta will have to take a decision on the subsequent refining of the text by the Constitutional Commission.

The time-limit for the completion of this work has been set at 31 December of this year, so that as soon as the final text has been approved by the Government Junta, it can be submitted to a plebiscite, and the transitional phase can be initiated.

Decisions in intermediate organizations

The above clearly shows that the Government is combining perseverance in its basic policies with flexibility in adapting them in practice to changing circumstances.

In refusing to yield to those who show impatience, I am sure that I interpret the wishes of the great majority of the Chilean people who wish to move towards a new, democratic institutional system, but most emphatically do not wish to be ensnared by those who, while appearing to be the standard-bearers of democracy, subscribe to demagogic policies which would take us back to a state of chaos worse than that we overcame on 11 September 1973.

At the same time, starting this year, the Government will give increased importance to greater autonomy and participation in the organizations which stand half way between the citizen and the State, paying particular attention to municipal, university and labour organizations.

In this last sector, the forthcoming establishment of the National Council of Labour will make for the earliest possible establishment of a new system of collective bargaining which will bring the legitimate interests of the parties into line with those of the community in general.

Chile regrets its difficulties with two brother countries

I cannot conclude this statement without a brief reference to our international situation, since it is a matter of immediate concern to very large sectors of public opinion.

The Government is aware that the false picture of our situation, patiently disseminated by international communism and its fellow-travellers entrenched in the free world, has succeeded in placing Chile in an extremely difficult international situation, and we must react against it with a foreign policy which is particularly clear in its objectives and dynamic in its execution. The restructuring of our Foreign Service in the direction of greater professionalism, efficiency and mobility is geared to that end.

Of late, difficulties very diverse in nature and origin have arisen with two neighbouring countries. Chile sincerely regrets these situations, for which it is in no way responsible, and is confident that they will be settled amicably, without detriment to our fraternal links and common destiny as countries of the Americas which make it incumbent upon us to unite to face a future which in many respects calls for a close association among us.

As a peace-loving nation, Chile believes in the law as the only road to civilized coexistence and considers that scrupulous respect for international treaties is an essential part of any legal concept. This criterion is of particular importance in our continent, where almost all territorial boundaries have been established precisely by treaties.

On the basis of law, our country values reciprocal good will as a fundamental instrument in international relations. For that reason the protection of our legitimate legal rights is not and will not be an obstacle to the redoubling of our efforts in search of an amicable solution of the present difficulties with our neighbours.

In the same way, the defence of our dignity and sovereignty against the unjust attacks to which we have been subjected by the international organizations will be continued without any diminution of our spirit of loyal co-operation towards their genuine and noble objectives.

The Letelier case

However, this evening I feel compelled to denounce and refute a campaign orchestrated from abroad, in complicity with our political adversaries at home, who without recoiling from the use of the most despicable methods to promote their ignoble ends, seek to bracket together international situations which are completely different, deliberately magnify our problems and cunningly play on a variety of issues, with the object of creating a false and artificial impression of instability in regard to the Government over which I preside.

It has gone so far in its infamy as to try to implicate the Government in the indefensible murder of Mr. Orlando Letelier.

Chile has witnessed the unchecked reporting in our country on this case, which has included open sensationalism such as very few Governments in the world would have accepted in similar circumstances.

International and national public opinion has also been able to ascertain how this Government has collaborated fully in the investigation of events, and, I repeat, we shall continue to do this in order to contribute towards the

complete revelation of the truth and the consequent punishment which those who are guilty deserve, irrespective of their situation or nationality.

A leader may proceed in this way when his conscience is clear and when his conduct is guided by solid Christian moral principles whose recognized objective and permanent value transcends any merely circumstantial or utilitarian considerations.

Since the name and the honour of Chile and of its leaders cannot be sullied by any shadow of doubt, I publicly and solemnly call upon those who today prejudice us to acknowledge the verdict which justice demands and to announce to the world our complete innocence which that verdict will reflect, with the same passion they deploy today in their speculations and slander.

Call for calm and inflexible unity

Fellow Chileans:

Our country is today the victim of a plot which is being intensified parallel to our achievement of success in all fields.

While Chile is progressing towards normalization in law, in a climate of order, peace and respect which contrasts with a world torn by terrorist violence and totalitarian oppression; while Chile is making a very rapid economic recovery, advancing towards a society where there is greater justice and well-being, when so many nations are struggling in the chaos of demagogy and backwardness; while Chile is moving towards a new institutional system which will allow this progress to be projected in a stable manner on to a régime of liberty in conformity with a clear Declaration of Principles, at a time when uncertainty, confusion or tyranny prevail in the world, it is understandable that our adversaries, in secret and unavowed despair and envy, feel that the time for their destructive purposes is running out.

This is why, as the President of Chile, I urge all my compatriots to be calm in the face of false alarms raised by biased persons, in the certainty that the Government of the armed forces and police have adopted measures to guarantee our external and internal security.

Above all, I call on them for an inflexible unity, the key to the strength which throughout our history has always enabled us to change adverse situations into triumphs for our country, with the protection and help of Almighty God, to whose infinite goodness and wisdom I fervently appeal this evening, that He may guide the destiny of this Republic of Chile, its leaders and all its sons; and as I gaze on our unvanquished flag, the symbol of this land, I raise with the emotion of an old soldier the heartfelt cry of

LONG LIVE CHILE!

Annex XXVI

DECREE-LAW NO. 2191 of 18 APRIL 1978

The following is the text of Decree-Law No. 2191 which grants amnesty to the persons indicated for the crimes specified:

No. 2191. Santiago 18 April 1978.

Bearing in mind the provisions of Decree-Laws Nos. 1 and 128 of 1973 and No. 527 of 1974, and

Considering:

1. The general calm, peace and order now being enjoyed throughout the country, with the result that internal unrest has ended and it is now possible to lift the state of siege and the curfew throughout Chilean territory;
2. The ethical obligation which requires that every effort be made to strengthen the bonds uniting the Chilean nation, to cast aside hatreds which are today meaningless, and to encourage all attempts to consolidate the reunification of the Chilean people;
3. The need for inflexible national unity to underpin the progress made towards the new institutional system which is to govern the future of Chile;

The Government Junta has resolved to enact the following Decree-Law:

Article 1. Amnesty is hereby granted to all persons who, as principals or accessories, committed criminal offences during the period of the state of siege between 11 September 1973 and 10 March 1978, unless at the present time they are in the process of being tried or have been convicted.

Article 2. Amnesty shall likewise be granted to persons who, at the date of entry into force of this Decree-Law, have been convicted by military courts since 11 September 1973.

Article 3. Amnesty as referred to in article 1 shall not apply to persons in respect of whom proceedings are pending for the offences of parricide, infanticide, robbery with force against property or with bodily violence or intimidation, processing or trafficking in narcotic drugs, abduction of minors, corruption of minors, arson and other criminal damage, assault, rape, incest, drunken driving, misappropriation of public funds, fraud or extortion, false pretences, indecent assault, offences covered by Decree-Law No. 280 of 1974 and subsequent amendments thereto, bribery, evasion of Customs duties and smuggling, and offences specified in the Code of Taxation.

Article 4. Similarly, the terms of article 1 shall not apply to the persons shown to be responsible, either as principals or accessories, for the acts being investigated in indictment No. 192-78 of the Santiago Military Court, ad hoc prosecutor's office.

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Article 5. Persons benefiting from this Decree-Law who are outside the territory of the Republic shall comply with the terms of article 3 of Decree-Law No. 81, of 1973, for the purpose of re-entering Chile.

To be registered in the Office of the Comptroller-General of the Republic, to be published in the Diario Oficial and to be inserted in the Official Digest of the said Office. - AUGUSTO PINOCHET UGARTE, General of the Army, President of the Republic. - Admiral JOSE T. MERINO CASTRO, Commander-in-Chief of the Navy. - General GUSTAVO LEIGH GUZMAN, Commander-in-Chief of the Air Force. - General CESAR MENDOZA DURAN, Director-General of the Carabineros. - Sergio Fernandez Fernandez, Minister of the Interior - Monica Madariaga Gutierrez, Minister of Justice.

I am sending you the above for your information. Respectfully,
Enrique Montero Marx, Under-Secretary of the Interior.

Annex XXVII

RESOLUTION ORDERING EXPULSIONS: DECREE NO. 0062 OF THE MINISTRY OF THE INTERIOR

REPUBLIC OF CHILE
MINISTRY OF THE INTERIOR
CONFIDENTIAL OFFICE

Expulsion from the country of the persons indicated

DECRETO EXTENTO No. 0062
Santiago, 12 May 1978

His Excellency the President of the Republic has today decreed as follows:

Bearing in mind communication No. 155 dated 10 May inst. of the Second Military Court of Santiago, and

Considering:

That the Chilean nationals, REYES NUÑEZ HECTOR ARMANDO, SEPULVEDA COLOMA SERGIO ENRIQUE, HERESMAN SEPULVEDA VICTOR HUGO and MARTINEZ MUÑOZ JORGE ARTURO, according to information in the possession of this Ministry, constitute a danger to the internal security of the State, and

The power conferred upon the Ministry of the Interior by article 2 of Decree-Law No. 81 of 1973 as amended by Decree-Law No. 684 of 1974,

I HEREBY DECREE:

That the Investigaciones de Chile shall expel from the national territory the Chilean nationals REYES NUNEZ HECTOR ARMANDO, SEPULVEDA COLOMA SERGIO ENRIQUE, HERESMAN SEPULVEDA VICTOR HUGO and MARTINEZ MUÑOZ JORGE ARTURO.

For noting and transmittal,

SERGIO FERNANDEZ FERNANDEZ
MINISTER OF THE INTERIOR

RAUL BENAVIDES ESCOBAR
MAJOR-GENERAL
MINISTER OF NATIONAL DEFENCE

For your information,

ENRIQUE MONTERO MARX
UNDER-SECRETARY OF THE INTERIOR

Annex XXVIII

SUBMISSION BY LAWYERS CONTAINING COMMENTS ON THE APPLICATION
OF DECREE-LAW NO. 2191 OF 18 APRIL 1978

Comments on the application of Decree-Law No. 2191 of 18 April 1978
and proposals for appropriate measures.

TO THE PRESIDENT OF THE SUPREME COURT

The lawyers signatories to this document, whose names and particulars of registration and licences are shown at the end of the text, all domiciled for the present purposes in the Law Courts, Office of the Association of Lawyers of Chile; in the exercise of the right of petition conferred by article 10, paragraph 6 of the Political Constitution of the State and article 1, paragraph 8 of Constitutional Act No. 3; respectfully state as follows:

In the Diario Oficial of 19 April 1978 there was published Decree-Law No. 2191 which grants amnesty, for various offences, to persons finding themselves in the legal circumstances described in its provisions. Because we tend to specialize in criminal law matters and because this exceptional enactment has to be fitted, with logical consistency, into the context of the criminal law in force, as regards both procedure and substance, we have had to study the provisions of the Decree-Law with care, to note the scope of these provisions and to determine the practical implications of their application.

In the light of the conclusions of our study, we consider it our professional duty to draw your attention to the gravity of the effects which Decree-Law No. 2191, as published, may produce on the principles of equity, reasonableness, objectivity and validity which constitute the ethical content of the positive law of the State and the foundations of the majesty of the law. Our comments do not, of course, challenge the validity of an amnesty law, or the authority's wish to legislate on the subject. On the contrary; we consider that such an enactment was an urgent necessity, not only for the political or social reasons which motivated the Government to promulgate it, but also on account of the irregular, very harsh and sometimes precipitate way in which certain rules of criminal law have been applied in recent years. Our comments are directed solely to the text of the said Decree-Law, to its discriminatory extension to certain offences under the ordinary law, to the vagueness of the requirements governing eligibility to the benefit of amnesty, to the conflicting procedural circumstances on which the grant of this benefit depends, to the exhaustive but incomprehensible catalogue of the offences which are excluded and, in a word, to the interpretative anarchy that will be the consequence of its obscure wording.

The criticisms of the amnesty legislation which we bring to your attention are the following:

1. The benefit of the amnesty is applicable in respect of numerous offences under the ordinary law that are wholly unrelated to the political and social situation which is to be brought to an end

Article 1 of the Decree-Law under consideration lays down the general rule that the amnesty is granted in respect of all criminal offences committed between

11 September 1973 and 10 March 1978. Article 3 enumerates exhaustively the offences which are excluded. It follows that all unlawful actions not expressly excepted are covered by this form of penal whitewash which relates to a period of four and a half years. Consequently, not only typically political offences or offences that may have a political connotation but also the following acts that are unlawful under the ordinary law are amnestied:

- All offences which affect the rights guaranteed by the Constitution - Title III, book II of the Penal Code; ...

- All offences against public good faith, forgeries, false witness and perjury - Title IV, book II of the Penal Code;

- Offences committed by public employees in the course of their duties, with the sole exceptions of misappropriation, fraud and extortion - Title V, book II of the Penal Code;

- Offences against the family and public decency, other than abduction, corruption of minors, indecent assault, rape and incest - Title VII, book II of the Penal Code;

- The offences of homicide, grievous bodily harm, duelling, defamation and insult - Title VIII, book II of the Penal Code;

- The offences of larceny, illegal seizure, fraud and wilful damage - Title IX, book II of the Penal Code.

In addition to the offences mentioned above, all of which are defined and declared punishable by the Penal Code, the amnesty also covers offences referred to in special legislation, with the exception of those covered by Decree-Law No. 280 of 1974, the General Customs Ordinance and the Code of Taxation. Accordingly, the following offences (among others) are amnestied:

Offences punishable under the General Railways Act;
Offences mentioned in the General Electrical Supplies Act;
Offences referred to in the Alcoholic Liquors Act;
Offences punishable under the Current Bank Accounts and Cheques Act; and
Offences punishable under the General Traffic Ordinance.

Lastly, the expression "criminal offences", by which article 1 of the Decree-Law in question characterizes the conduct deemed to be pardoned, might with some plausibility be construed as including quasi-delicts and minor offences committed during the period covered by the amnesty.

It is hardly necessary to emphasize the serious effect that such a penal cleansing may have on the legal order of the Republic. Illicit acts have not only principals and accessories but also victims, and the latter's right to obtain justice cannot be sacrificed on the altars of a peace which has nothing to do with common delinquency.

2. The selection of the criminal offences amnestied is discriminatory, without any apparent justification

From the mere reading of Decree-Law No. 2191 it is obvious that there is an incomprehensible discrimination between the offences that are pardoned and those that are not. For example:

The amnesty is granted in respect of all forms of forgery and issue of cheques without provision, but false pretences and other forms of swindling are punishable;

Homicide and grievous bodily harm are pardoned, but robbery with violence and intimidation are not;

The offence of wilful damage is included in the amnesty, but arson and other criminal damage are excluded;

Abortion, abandonment of children and bigamy are pardoned, but the corruption of minors, rape and incest are not.

The comparison could continue but would not lead to any rational, logical or legal conclusion regarding the criterion which inspired so capricious a selection.

3. The amnesty benefits persons who have committed offences and accused persons who are as yet untried, but persons under trial and convicted persons are excluded, with the consequence that situations of manifest injustice may occur

The arbitrary way in which this strange amnesty operates becomes fully apparent if we consider the actual cases that may occur, depending on the stage reached in criminal proceedings by 19 April 1978, the date of publication of Decree-Law No. 2191. Since article 1 excludes from the benefit of the amnesty persons who are being tried or have been convicted, such absurd cases as the following will occur: if, of two persons jointly parties to a homicide, one was apprehended and charged before 19 April and the other succeeded in escaping and hence was thus not put on trial by that date, what will happen is that the former may be convicted and may even be sentenced to death, whereas the latter will not even suffer the moral penalty of having an entry made in his record.

Situations like that may arise so frequently that the rule of law, the prestige of the courts, the evenhandedness of judges, the honesty of lawyers and the basic reasonableness of the law will be called into question by a society which, for the most part and for most of the time, has believed in the justice of our legal order and respected its rules and decisions.

Much the same comments as the foregoing apply to the cases covered by article 2 of Decree-Law No. 2191, under which the amnesty is granted also to persons convicted by the military courts since 11 September 1973. Under this article, it is true that the pardon is denied only to those who are actually on trial, but between these and the persons who may claim the benefit of the amnesty - i.e. persons who were parties to offences, persons accused and persons convicted - there is a subtle difference as regards the stage of proceedings which is totally irrelevant to the conduct or judicial situation of the persons concerned.

What is more, this article produces further discrimination in that it extends the amnesty to many offences committed before 11 September 1973, the sole proviso being that the decision in proceedings relating to such offences must have been given by the military courts since that date. In this way, the treacherous crime committed against General René Schneider Chereau in October 1970 is amnestied, among others.

4. In practice, the penal cleansing also entails the civil impunity of those responsible, and this gravely distorts the legal nature of the amnesty

Since, on the one hand, Decree-Law No. 2191 is in the nature of a general amnesty covering virtually all unlawful acts and gives identical treatment to offences which harm the interests of the State and to those which cause prejudice to private citizens, and, on the other hand, follows the perilous path of extinguishing the criminal proceedings and not the penalty, as required by article 93, paragraph 3, of the Penal Code, the result is that victims will be debarred by a procedural rule from claiming the performance of the civil obligations which flow from the unlawful acts.

A person who has been the victim of a theft committed during the period of the amnesty and covered by it will be unable even to obtain judicial recognition of the unlawful act which deprived him of his property and, consequently, will be unable to institute civil proceedings in respect of the offence.

We have no doubt that you are aware of the complex and dangerous consequences of Decree-Law No. 2191 as published. Its texts ignores the most elementary legal principles which have governed this subject in the Western world and breaks with the historical tradition of amnesty laws that have been enacted in Chile. The substantive reason for this abnormality is that certain fundamental principles of our penal law have not been respected, principles consistently endorsed by learned authors and reflected in article 92, No. 3 of our Penal Code, the sole positive rule on the subject.

In brief, these legal principles are as follows:

- (a) An amnesty is a means of extinguishing, in objective and general terms, the penalty and its effects, but in respect of precisely and restrictively specified offences. It is not, therefore, a general whitewash of all, or nearly all, breaches of the law.
- (b) An amnesty may be extended to include even the actual criminal proceedings; but, in such a case, the delimitation of the unlawful acts covered by the amnesty must be even stricter and may not extend to offences that give rise to, or may give rise to, civil actions on behalf of the aggrieved persons. Infringement of this principle means, in effect, rewarding the offenders and punishing their victims.
- (c) The promulgation of an amnesty which extinguishes the latent criminal proceedings should not exclude from the scope of its benefit criminal proceedings that have already been instituted, or a fortiori the penalty. To provide otherwise is, inter alia, to make the criminal law a lottery, to grant immunity to fugitives from justice and to penalize persons who in any way have co-operated with the law.

- (d) Whatever the amnesty system applied, it may not frustrate the civil actions arising from the offences, since this would imply an arbitrary punishment of the victims of the unlawful actions pardoned.

The truth is that these four principles are missing from the text of Decree-Law No. 2191 as published, hence the gravity of its effects in the practical application of its provisions.

CONSEQUENTLY,

We request you to be good enough to take note of the above comments, to bring them to the attention of the full membership of the Supreme Court and to propose any of the following measures designed to remedy or correct the pernicious effects that are bound to result if Decree-Law No. 2191, in its existing text, remains in force:

Impressing upon the legislative powers the need to amend the amnesty law in a manner which will not affect the country's penal legal order;

Handing down of a decision in plenary which, through the due process of the law, will serve to correct contradictory interpretations and mitigate the flagrant injustices which would be brought about by a literal interpretation of this Decree-Law.

Annex XXIX

STATEMENT BY THE VICARS-GENERAL OF THE ARCHBISHOPRIC
OF SANTIAGO DATED 8 MAY 1978 a/

In the absence of the Archbishop of Santiago, Cardinal Raúl Silva Henríquez, who is making a tour abroad, the eight Episcopal Vicars-General yesterday issued a statement entitled "Pastoral exhortation", the text of which is reproduced below:

"In a recent statement, the Archbishop of Santiago expressed his pleasure at the amnesty measure adopted by the Supreme Government, which spells freedom for persons who have long been imprisoned and also enables those condemned to exile to return home. The reintegration of both these categories of persons in the national community should have beneficial consequences for the country.

"We have expressed our appreciation of the spirit of concord and national reconciliation underlying the adoption of this measure of fraternal reunion. We trust that those benefiting from the measure will receive an open-hearted and cordial welcome from the rest of their brothers, and an offer of genuine possibilities for their complete reintegration in society as useful members with equal rights.

"We have also called for prayers for the elimination, in a spirit of truth and compassion, of all the obstacles which are still standing in the way of complete reconciliation.

"Summoned as we are to collaborate in the pastoral mission of our Cardinal, the Archbishop of Santiago, we should like today to echo the sorrow of some hundreds of persons who were hoping - in accordance with the promise made on various occasions by the Supreme Government - to receive word about the situation of their loved ones. We refer to the families of persons of whom nothing more has been heard since their detention.

"For years, in some cases, we have witnessed in our respective pastoral districts the vicissitudes of their grief, anguish and humiliation. We have stood beside them in their numerous legal efforts and in their silence. We cannot refrain from loving them and weeping with them because, in our view, the amnesty decree to all intents and purposes puts an end to any hope of their learning what happened to their husbands, fathers, sons or brothers. With the compassionate spirit of Christ, we feel sympathy for them because they are sheep without a shepherd (cf. Mark 6:34). We offer to intercede for them as fathers and pastors, whose only wish is to help to create public awareness of this new situation and to beseech the authorities once again to give this matter their attention.

a/ Text published in El Mercurio on 9 May 1978.

"We believe that due clarification concerning the whereabouts of these missing persons would be an important step towards the unification of all Chileans, and towards peace, for Chile and its sons, which we all so ardently desire. Evasion of this issue, its debasement by superficial treatment or the denial of its existence - which has been so abundantly proved - would not only violate a fundamental right of the families of the persons concerned, but would also leave in suspense a matter which unfortunately would inevitably emerge in the future as an obstacle to that peace.

"Finally, we would endorse the following words of Pope Paul VI:

"How can one fail to be perturbed when one knows that many anguished families plead in vain for their dear ones, and that even their requests for information are left unanswered?' (Address to the Diplomatic Corps accredited to the Holy See, 14 January 1978). 'The Church and the faithful', the Pope went on to say, 'cannot remain insensitive and inactive in the face of situations like these. It feels itself committed to teach respect for life at all its stages. Nor can it be otherwise, for the promotion of human rights is required by the Gospel and is the central theme of the Church's ministry'. (ibid.)

"We are keenly alive to His Holiness's call and to his insistence that these situations should arouse our Christian conscience ... 'which cannot remain inactive, but must stir us to endeavour, as far as possible, to promote the adoption of adequate and effective remedies' (ibid.)."

Santiago, 8 May 1978.

Mgr. Jorge Hourton, Assistant Bishop, Vicar-General of the Northern District;
Mgr. Ignacio Ortúzar, Vicar-General of the Archbishopric of Santiago;
Mgr. Enrique Alvear, Assistant Bishop, Vicar-General of the Western District;
Mgr. Gustavo Ferraris, Vicar-General of the Southern District;
Mgr. Juan de Castro, Vicar-General of the Eastern District; Mgr. Repé Vio,
Vicar-General of the Rural Coastal District; Mgr. Mauricio Veilleto,
Vicar-General of the Avda Matta District; and Mgr. Sergio Uribe,
Vicar-General of the Central District.

Annex XXX

DECREE-LAW NO. 604 OF 9 AUGUST 1974

Ministry of the Interior

Prohibition of persons from entering the national territory in the cases indicated

No. 604. Santiago, 9 August 1974

Considering:

1. That one of the essential requirements for the task of rehabilitation assumed by the Government Junta is the preservation and accentuation of Chileanism, and devotion to the Fatherland and its sacred emblems and historic traditions;
2. That any person, alien or Chilean, who from abroad shamefully dishonours, defames or discredits the country, its Government and its people is seriously prejudicing the essential interests of the State and, if he is Chilean, is disowning his Fatherland;
3. That this cowardly attitude also creates an international atmosphere that is hostile to the Government and people of Chile, and encourages acts of aggression by fanatical and extremist elements against senior representatives of the country abroad;
4. That in view of such events, and in order to safeguard and protect the inviolability of the supreme and lasting values of the Chilean community and the national honour thus assailed, it is imperative that such persons be debarred entry into the country, and

Bearing in mind the provisions of Decree-Laws Nos. 1 and 128 of 1973, and No. 527 of 1974,

the Government Junta has resolved to enact the following Decree-Law:

Article 1. The following persons, nationals or aliens, shall be debarred from entering the national territory: persons spreading or promoting, by word of mouth or in writing or by any other means, doctrines aimed at destroying or undermining the social order of the country or its system of Government through the use of violence; persons who are suspected or have the reputation of being agitators or active proponents of such doctrines and, in general, persons performing acts which, under Chilean Law, are deemed to be offences against external security, national sovereignty, internal security or the public order of the country, persons performing acts contrary to Chile's interests, or persons who, in the opinion of the Government, present a danger to the State.

In the case of Chileans, the Ministry of the Interior shall issue a supreme decree prohibiting their entry into the country, and the appropriate administrative authority shall order the cancellation of their passports, where applicable.

Article 2. Chileans who have been prohibited under this Decree-Law from entering the country may request the Minister of the Interior, through the appropriate consulate, to authorize them to enter the national territory. If the Minister considers the request justified, he shall grant it by issuing a supreme decree giving reasons for his decision.

Article 3. Persons affected by the aforementioned prohibition who enter the country clandestinely, by circumventing the immigration control, shall be punished by imprisonment in the maximum degree.

Accomplices and those who harbour, hide or assist the escape of a person guilty of the aforementioned offence shall be subject to the corresponding penalty, increased by one degree.

Cases concerning such offences shall be tried by the military courts, whose judgements shall be based on the provisions of the Code of Military Justice.

To be registered in the Office of the Comptroller-General of the Republic, to be published in the Diario Oficial and to be inserted in the Official Digest of the said Office. - AUGUSTO PINOCHET UGARTE, General of the Army, President of the Government Junta. - Admiral JOSE T. MERINO CASTRO, Commander-in-Chief of the Navy. - General GUSTAVO LEIGH GUZMAN, Commander-in-Chief of the Air Force. - General CESAR MENDOZA DURAN, Director-General of the Carabineros.

Annex XXXI

INFORMATION CONCERNING CHILEAN CONSTITUTIONAL AND LEGAL
PROVISIONS RELATING TO ARREST AND DETENTION

A. Provisions proclaiming the right to liberty and security of persons

1. Political Constitution of the Republic of Chile (1925)

Chapter III. Constitutional Guarantees.

"Article 13. No one may be detained except by order of a public officer expressly empowered thereto by law and after the person concerned has been notified of such order in due legal form. However, a person taken in flagrante delicto may be detained solely for the purpose of placing him at the disposal of the competent judge.

"Article 14. No one may be arrested, subjected to preventive detention or held in custody except in his home or in public places intended for this purpose.

...

"Article 15. If the authorities order a person to be arrested, they must, within the next 48 hours, notify the competent judge and place the detained person at his disposal.

"Article 16. Any person who has been arrested, charged or held in custody in violation of the provisions of the foregoing articles may himself or through a third party apply to the judicial authority designated by law and request that the legal formalities be complied with. The judicial authority in question shall order the person to be brought before him and his orders shall be scrupulously obeyed by all those who are in charge of prisons or places of detention. Having ascertained the facts, the judicial authority shall order his immediate release or arrange for any legal omissions to be rectified, or place the person at the disposal of the competent judge, proceeding throughout in a brief and summary manner, rectifying omissions himself or referring them for rectification to the appropriate persons."

2. Constitutional Act No. 3

"Chapter I. Constitutional Rights and their Guarantees.

"Article 1. Men are born free and equal in dignity. This Constitutional Act ensures for all individuals:

"6. The right to personal liberty and security of person and, consequently, the right to reside and remain at any place in the Republic, the right of movement from place to place and the right to enter and leave the territory of the Republic, subject to observance of the norms established by law and saving any prejudice to other persons.

(a) No one shall be deprived of or restricted in his personal liberty, except in the cases and in the manner laid down by the Constitutional Act, the Constitution and the laws.

(b) No one shall be arrested or detained except by order of a public officer expressly empowered thereto by law and after the person concerned has been notified of such order in due legal form. However, a person taken in flagrante delicto may be detained solely for the purpose of placing him at the disposal of the competent judge within the following 24 hours.

If the authorities cause any person to be arrested or detained, they shall, within the following 48 hours, notify the competent judge and place the person concerned at his disposal. The judge may, by an order stating the reasons, extend that time-limit to not more than five days.

(c) No one shall be arrested or detained, or held in custody or committed to prison pending trial, except in his home or in public places intended for that purpose. ..."

[Constitutional Act No. 4

"Article 13. While the emergency regulations are in force, the period of 48 hours referred to in paragraph 6 (b) of article 1 of Constitutional Act No. 3 shall be extended to 10 days in the case of actions which affect the security of the State"]

B. Provisions relating to the special powers of arrest and detention under states of siege or emergency

1. Political Constitution of the Republic of Chile (1925)

"Chapter V. President of the Republic.

"Article 72. The President has the following special powers:

...

17a. ...

"Under the declaration of the state of siege, the President of the Republic alone shall be empowered to transfer persons from one department to another or to confine them in their homes or in places other than gaols or establishments intended for the confinement or imprisonment of ordinary criminals." a/

a/ Decree-Law No. 527 of 17 June 1974 entitled "Statute of the Government Junta" [Estatuto de la Junta de Gobierno] confers the same powers on the President of the Government Junta.

2. Decree-Law No. 1877 of 12 August 1977

"Article 1. Under the declaration of the state of emergency regulated by the Law on the Security of the State, the President of the Republic shall be empowered to hold persons under arrest for a period not exceeding five days in their own homes or in places that are not prisons.

"Article 2. The references to the state of siege contained in Decree-Laws Nos. 81 and 198 of 1973 and No. 1009 (article 1) are hereby declared also to be applicable to the state of emergency regulated by Act No. 12927 of 1958."

3. Decree-Law No. 1009 of 5 May 1975

"Article 1. During the existence of a state of siege, the specialized agencies responsible for ensuring the normal discharge of national activities and the maintenance of constituted institutionality shall, when proceeding - in exercise of the powers vested in them - to detain pending investigation persons reasonably presumed to be guilty of endangering State security, be obliged to give notice of such detention, within a period of 48 hours, to the immediate members of the family of the person detained.

"Detention by the agencies referred to in the preceding paragraph shall not continue for more than five days, and within that time-limit the person detained shall be either released or placed at the disposal of the competent court or, in cases involving the use of special powers or powers under the state of siege, to the Ministry of the Interior, with a written report on the background information obtained.

"The application of unlawful constraints to detained persons shall be punishable in accordance with article 150 of the Penal Code or article 330 of the Code of Military Justice, as the case may be."

4. Supreme Decree No. 187 of 28 January 1976

"Article 1. Every person detained by the organs and in the situations referred to in article 1 of Decree-Law No. 1009 of 1975 shall be examined by a physician and surgeon before entering the offices, establishments or places of detention under their authority.

"The detained person shall also undergo such an examination on leaving the said offices, establishments or places.

"The Department of Forensic Medicine and the National Health Service shall jointly assign a doctor to the aforesaid offices, establishments or places, who shall be responsible for carrying out the examinations referred to in this article.

"The said doctors shall in each case prepare a written report on the condition of the person examined and send it immediately to the Ministry of Justice.

"Article 2. If it appears from the certificates referred to in the last subparagraph of the preceding article that the detained person has been subjected to ill-treatment or undue coercion, the Ministry of Justice shall report that fact to the competent administrative, institutional or judicial authority.

"Article 3. Detention under the state of siege referred to in article 1 of Decree-Law No. 1009 of 1975 may only be carried out on a written order from the head of the competent specialized security organ. This order shall contain the following particulars:

- "(a) Name of the person detained;
- "(b) Name of the person making the arrest;
- "(c) Place to which the person detained is to be taken;
- "(d) Date, time and place of arrest;
- "(e) Name and signature of the person who ordered the action and the post he holds; and
- "(f) Stamp or seal authenticating the order.

"A copy of the detention order shall be given to the closest relative of the detained person designated by him and residing in the place in which the detention takes place within 48 hours, as prescribed in article 1 of Decree-Law No. 1009 of 1975.

"Article 4. If for the execution of a detention order referred to in the foregoing paragraph or as a consequence thereof it becomes necessary to carry out a search of a dwelling or of any building or enclosed place, whether public or private, a written order authorizing the responsible official to carry out the search must be issued by the head of the competent specialized security organ. The order must first be produced to the owner or occupant of the house or to the person in charge of the building or enclosed place, as the case may be, to whom a copy must be given when the action has been carried out.

"Article 5. If on the occasion of an arrest or search referred to in this Supreme Decree an alien is deprived of his liberty, the Ministry of the Interior shall take action, within its legal powers, to expel him from the country.

"Article 6. The President of the Republic, by a Supreme Decree signed by the Ministers of the Interior and of National Defence, shall designate the places and establishments of detention referred to in articles 1 and 3 (c) of this Decree, at which a duly paginated register shall be kept recording the arrival and departure of the persons detained, with particulars of the date and time and of the detention order.

"Article 7. The President of the Supreme Court and the Minister of Justice shall have equal powers to carry out inspections without prior notice of any place of detention in connexion with the state of siege, to ascertain whether the statutory provisions in force concerning the rights of the persons detained are being strictly observed and to report any irregularities they may find to the competent authorities by means of a confidential communication. Independently of this, they may also order the immediate medical examination of any detained person who during the inspection claims to have been ill-treated or subjected to undue coercion during his stay in the place inspected.

"Article 8. In places outside the Metropolitan Region, the Minister of Justice, in agreement with the President of the Supreme Court, shall appoint an official to carry out all or part of the functions and procedures referred to in article 7 of this Supreme Decree.

"Article 9. The competent authority in the cases referred to in articles 2, 7 and 8 above shall, within 48 hours, order a judicial inquiry in which the proceedings shall be based on the charge made by the President of the Supreme Court, the Minister of Justice or the official appointed by the latter, with a view to determining responsibility and applying the appropriate penalties.

"In the proceedings particular care shall be taken to investigate and establish facts indicating possible infringement of articles 150, 253 and 255 of the Penal Code and articles 328 and 330 of the Code of Military Justice.

"Article 10. The Ministry of the Interior or the Ministry of National Defence in the Metropolitan Region, and Intendants, Governors of Provinces or regional commanders in the areas concerned, shall arrange for the necessary measures to be taken to provide the President of the Supreme Court, the Minister of Justice or the official appointed by him for the purpose, as the case may be, with assistance to enable them to carry out their task in a proper manner.

"Any official who refuses to take the measures referred to above or obstructs them shall be held answerable for a very serious dereliction of duty."

5. Supreme Decree No. 146 of 25 February 1978

"Article 1. The places and establishments of detention to which persons in the situation referred to in article 1 of Decree-Law No. 1009 of 1975 shall be taken and in which they shall stay shall be the following:

Puchuncaví, in the commune of the same name, province of Valparaíso, Region V;

Tres Alamos, in the town of Santiago, Metropolitan Region; and

Cuatro Alamos, in the town of Santiago, Metropolitan Region.

"Article 2. Without prejudice to the foregoing, such persons may be temporarily detained in Chilean police stations and in premises of the Department of Investigation for as long as is strictly necessary for sending them to the places referred to in the preceding article."

C. Explanatory memorandum relating to Supreme Decree No. 187 containing regulations for the protection of persons detained as a result of the state of siege

1. Since the enactment of this Decree, it is the duty of the President of the Republic to determine, by the promulgation of a Supreme Decree, the sole places of detention to which persons who have been arrested by the security forces, and to whom the provisions of the state of siege apply, may be taken.

2. The highest authorities responsible for the administration of justice in the country, that is, the President of the Supreme Court and the Minister of Justice, are empowered to inspect any place of detention without prior notification in order to verify that the statutory provisions and requirements concerning the rights of detained persons are being complied with. They may also order the immediate medical examination of any detained person.

When these functions have to be discharged outside the metropolitan area, these authorities alone, acting jointly, may instruct an official to carry them out.

Any irregularity they may find will entail the institution of a judicial inquiry within 48 hours after the facts have been reported. The basis for the inquiry will be the charge made by the authorities in question.

3. Furthermore every detained person is required to undergo a medical examination before entering and before leaving the offices, establishments and places of detention, in order to prevent any recourse to coercion or illegal treatment.

The examinations will be made by medical practitioners of the Department of Forensic Medicine in conjunction with medical practitioners of the National Health Service. This also affords a guarantee, since the Department is an old-established and widely known technical and forensic body with great prestige in the country and has the status of an ancillary body attached to the Chilean Administration of Justice. The assistance from the National Health Service is due solely to the limited staff of the Department of Forensic Medicine at the present time, since the doctors in question will be assigned to each of the establishments, offices and places of detention, where they will be required to spend some hours every day, as it is their duty to keep a constant check on the detainees and to examine them.

4. Another effective guarantee embodied in the Decree is the requirement that both orders for detention and orders for search to be carried out by the security forces must comply with the conditions laid down in all the codes of criminal procedures in force in the free world (orders must be issued in writing, the detainee and the person arresting him must be identified by name, particulars of place and date must be given, etc.).

As a further guarantee for the person concerned, provision has also been made for a copy of the order to be given to any person he may designate so that the identity of the authority which issued the warrant and the name of the official who carried out the orders will remain on record as an indication of their respective responsibilities.

5. It follows from this that failure to comply with the above requirements will mean that the detention is arbitrary and that habeus corpus (amparo) is then applicable, and this, in the last instance, requires a ruling from the Supreme Court.

6. Lastly, foreigners resident in the country who appear to be implicated in acts regarded as being a threat to internal or external security will be expelled forthwith from the national territory in accordance with the legal provisions in force.

Annex XXXII

VISIT BY THE AD HOC WORKING GROUP TO VILLA GRIMALDI

Minutes of the visit made by the Ad Hoc Working Group to Villa
Grimaldi on 18 July 1978 at 11.00 a.m.

The Group was accompanied on its visit by General Odalier Mena, Director of CNI, his deputy, Colonel Pantoja, Mr. Miguel Schweitzer, and two witnesses, hereinafter referred to as witness A and witness B, a/ who claimed that they had been detained and interrogated at Villa Grimaldi.

Witness A began by pointing out that he had been detained and tortured not in the main building at Villa Grimaldi, but in some other outbuildings around the estate. He had been taken without force to the basement of the main building only to make a standard statement. Five or six steps had led down to the basement, which had then housed several offices with filing cabinets containing the records of the detainees.

He then led the Group to a long low building ahead of and to the left of the main building. He noted, in passing, that the last time he had been at Villa Grimaldi, in 1975, access to the main building had been through a metal door, which was no longer there.

When he arrived in front of the long low building, he pointed to the room where he had been interrogated and tortured, which now had a sign on the door saying "Dormitory 2". At the time there used to be a bunk bed in the room. The mattress would be removed from the lower bed and the detainees would be subjected to electric shock torture. He said that Ricardo Lagos had been tortured in the adjacent room, now known as "Dormitory 1". He knew that because he had heard him screaming at around 6 or 7 p.m. on 24 June. They had been interrogated in turn so that their respective statements could be compared and checked.

He pointed to another room which, he said, had been his cell during his seven-day detention in the building, and to yet another room where Cosme Noriega and Carlos Lorca had been detained. He also indicated the location of a bathroom, which was still there. He added that a wooden extension to the building no longer existed.

He then stated that during the rest of his stay at Villa Grimaldi, for 20 days, he had been locked up in a tower within the compound. On his way towards the tower, he indicated the location of a wooden cabin, which no longer existed, where Michele Peña and a certain Gina had been detained at the time. He knew that because while locked up in the tower he used to hear them begging the guards to let them go to the bathroom. He added that, while tied to a tree, he had been able to see below him the edge of an empty swimming pool some 50 metres from the cabin. After a brief search, the pool was found.

a/ Witness A is Mr. Hector Riffo Zamorano. Witness B is Mr. Rodrigo Muñoz Muñoz.

When he arrived in front of the tower, before entering, he said that at the time it had contained nothing but a bunk bed on the ground floor; Cosme Noriega and himself had slept on that bed. On the right there must also have been a staircase leading to the top of the tower, since, although they had been unable to see it, they used to feel the cold draught from it. When the Group entered the tower, the staircase did turn out to be in the place indicated.

He said he had been held in the tower for eight or nine days and had been taken out only to make a statement and on the final day for hypnosis. He had then been taken to Cuatro Alamos.

During his stay at Villa Grimaldi there had been some 8 to 10 people held separately in various parts of the compound. At Cuatro Alamos, the permanent detention centre, there had been about 40 people. But it was always at Villa Grimaldi that they had been interrogated and tortured.

Witness B began by saying that he remembered the place and could find his way around. On his arrival, blindfolded, he had alighted from the vehicle into a courtyard whose tiles he now recognized, since he had been able to see a bit of the ground. He had been greeted with blows by a so-called "reception committee", which, after securing his hands behind him with handcuffs and chaining his feet together, had made him sit on a bench, to which he now pointed, and had tried to feed him urine and excrement. He had realized what it was because of the smell and because of the comments of his captors. That had taken place on 16 February 1978 around 7.15 or 7.30 p.m. (since he had been arrested at 6.30 p.m.).

Then, blindfolded and with his arms secured, he had been taken through an iron gate to another courtyard (situated in front of the low building identified by witness A). There they had made him sit on a sort of wooden armchair, secured him to the chair by his arms, legs and waist and begun to apply electric shocks according to a system referred to by his torturers as "Sylvania", applying shocks to the soles of his feet, his ankles, his penis, his testicles, his arms and his neck. They had then used on him a method of torture to which they had referred as "submarino seco" ("dry submarine"), putting his head in a plastic hood secured at the neck, thus limiting the air he could breathe to what had already been inside the plastic bag. They had then used the "submarino en agua" ("water submarine") method of torture, submerging his head in water. He estimated that those methods of torture had each lasted about two hours; they had been applied one after the other at intervals of 15 to 30 minutes. He had also been tied to a tree before a mock firing squad, with all the sounds of rifles being loaded and orders being given, including the order to fire. They had then gone a long distance towards another area, where he had been taken into a small room, apparently with wooden walls. On the way he had been told that he would be subjected to the "parrilla". His first night at Villa Grimaldi had been entirely taken up with such treatment, and the first phase of torture had not ended until noon the following day. He had imagined that was the time because, at the end, he had been seated on a chair and the sun was then directly above. During the first three days, he had not gone into any of the rooms of the low building, except the bathroom.

Asked how he was able to identify the courtyard where he had been tortured if he had been blindfolded, he replied that, while recovering from the effects of the torture, the blindfold had been removed and he had twice been taken to the courtyard to be photographed against a wall, which he showed to the Group. He added that, on the last occasion they had photographed him, they had done so in a room with walls covered with glazed tiles, which he also showed to the Group. (The room was in the low building, to the right of the dormitories, and above the door there was now a sign saying "bodega" ("cellar").) That photograph, showing three other detainees and himself, had been published on 24 February with a caption referring to their detention in the following newspapers: El Mercurio, La Tercera and El Cronista. Although the photograph had been taken against the background of a sheet on the wall, the sheet had not entirely covered some of the blue tiles in the centre of the wall, and a few of the tiles had been visible in the photograph published in one of the newspapers. (There was indeed on the wall which he showed the Group a long patch of blue tiles measuring about 2 metres wide and 1.2 to 1.6 metres high.) He had first seen the newspapers on 1 March, the last day on which he had been held incommunicado in the penitentiary.

While undergoing medical treatment to recover from the effects of the torture, which must have ended on about his third day at Villa Grimaldi, he had remained on a mattress in the corner of the same room with the glazed tiles. In that corner, which he indicated, there had been a nail to hang the bottle containing the serum being given to him. On doctor's orders, he had not been blindfolded and during that period liquids (tea and water) used to be brought to him by someone he had recognized during the current visit on seeing him enter the main building.

He accompanied the Group towards the main building of Villa Grimaldi and in the kitchen he identified the person in question. The latter said that his name was Alexis Figueroa and that he had never seen the witness. The witness insisted that Mr. Figueroa had brought him something to drink twice a day during his last three days at Villa Grimaldi and had treated him well. He also showed Mr. Figueroa a scar on his own neck to see if Mr. Figueroa recognized the wound. The latter insisted that he did not know the witness; he had been working in the kitchen of Villa Grimaldi since 1 January 1978, before which he had worked in the building industry and had been laid off. Witness B reiterated that he was certain he recognized Mr. Figueroa and said he had also recognized someone else whom he would point out later.

Witness B stated that, while at Villa Grimaldi from 16 to 23 February, he had entered the main building only three times, twice to go to one room and once to go to another room. He knew that because he used to be told that they were going there and they used to climb five or six steps. On those occasions he had been interrogated without being beaten.

On his arrival at Villa Grimaldi, two other detainees were already being held: a man he had known as Guillermo but whose real name he did not know, who had, he believed, been freed; and a woman, Elizabeth Olivares Font, with whom he had been confronted. She had later gone to the Prosecutor's office.

Subsequently, on 20 February, three other men had arrived, the same men with whom he had been photographed in the room with the glazed tiles: Angel Moya Romero, Ricardo Reyes Becerra and Jorge Martínez Muñoz. They had all told him they had been ill-treated, but he did not think they had been treated as badly as himself.

Asked whether he had complained about the torture immediately upon being taken to the Military Prosecutor's office, he replied that he had not, because he had still not recovered from the psychological shock and had not been in a fit state to comprehend what was going to happen to him. He had complained subsequently, the first occasion being in the first fortnight of March, during the semi-annual visit to the prisons; two days later he had complained to the Prosecutor, who had also come on the visit. But even before that, from 24 to 29 February, he had been treated at the prison hospital, where he had asked to be given something to relieve the swelling of his testicles. There should be a record of his medical treatment in the register of the Santiago penitentiary indicating his condition, wounds and scars. During the first days of March, he had also been seen by the Red Cross doctor in Chile.

Witness B then said that he had managed to see and would be able to identify some of the individuals who had conducted his interrogation with the use of torture. He had already given a written description to the Group. The man apparently in charge had been referred to as Captain or Major Juan and was the same man who had arrested him and conducted the interrogation in the main building. Another man had been referred to as Captain Miguel and a third man as "El Troglo". He had seen the latter at Villa Grimaldi during the current visit.

In reply to questions, he said he had managed to see "El Troglo" because the blows and contortions had sometimes caused the blindfold to shift. "El Troglo" was about 1.75 metres tall, with a pale complexion, a face described by the witness as "Turkish" (with a characteristic nose), black semi-curly hair and a thin moustache. The rest of his face appeared hairless. He seemed to be about 33 years old. The witness had had a good look at him on one occasion when, on being taken out of the bathroom by "El Troglo", his blindfold had slipped. He said that "El Troglo" had maltreated him, or rather that he used to direct and give orders to the others.

Later, accompanied by the Group, he identified as "El Troglo" a man with a blue jacket near some cars in the courtyard.

The man identified said he had never seen the witness. Under questioning, the witness said he was only 90 per cent sure of his identification, whereas in the other case he was 100 per cent sure.

At that moment, Mr. Miguel Schweitzer said that he wanted the record to reflect his statement that the man identified as "El Troglo" was a driver who had been assigned to him in the Letelier case and who had been working in that capacity since 28 January 1978. If the man was now at Villa Grimaldi it was because he had been transferred to the office of the Director of CNI.

The man allegedly identified, when questioned by the Group, said he was employed by CNI as a driver, that he had no police training, that he had formerly worked as a driver in the public transport system and that he was laying eyes on the witness for the first time.

Questioned again by the Group, witness B replied that he had been an industrial worker and that he had never been a driver or held an important job. He added that his case had not been taken to court, inasmuch as he had been dismissed.

After the visit to Villa Grimaldi, the Group went to the CNI building and met briefly with General Mena, Mr. Schweitzer and Colonel Pantoja. During the meeting, General Mena showed the Group the military record of the second man identified by witness B, and provided a photocopy.

In reply to questions from the Group, General Mena said it was not normal for cars to be without licence plates. There were only two such cars in CNI, his own and his escort's car - and that was for obvious reasons. He added that CNI had been given responsibility for looking after the Group and had orders to guarantee the safety of all important persons.

Mr. Schweitzer had learnt that a dark brown Fiat 125, not belonging to CNI, was following the Group everywhere. According to information he had received, it was an MIR vehicle.

Annex XXXIII

MATERIALS RELATING TO THE CASE OF
RODRIGO DEL TRÁNSITO MUÑOZ MUÑOZ

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 2. Official communication (S) No. 9 dated 20 July 1978 from the Acting Director-General of the Gendarmeria.
 3. Certificate of admission of Rodrigo del T. Muñoz M. to the Santiago Penitentiary, dated 20 July 1978.
 4. Certificate of medical treatment dated 28 February 1978.
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 9. Statement by Rodrigo del T. Muñoz Muñoz (undated).
 10. Medical certificate dated 21 February 1978.
 11. Official communication No. 100081 from National Information Agency to Office of competent Military Prosecutor.
 12. List of objects found in the possession of R. Muñoz Muñoz.
 13. Curriculum vitae of R. Muñoz Muñoz.
 14. Statement by R. Muñoz Muñoz.
- D. Photograph of Mr. Rodrigo Muñoz Muñoz, Mr. Jorge Martinez Muñoz and two other persons which appeared in the 24 February 1978 edition of La Tercera de la Hora
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A. Minutes of the testimony of Mr. Rodrigo Muñoz Muñoz before the Group on 16 July 1978

Mr. Muñoz said that on 16 February 1978 he had been arrested by armed civilians without police identification and without an arrest warrant. He had been beaten for half an hour in a vehicle. Then he was blindfolded, handcuffed and taken to a place which subsequently proved to be Villa Grimaldi. The witness went on to describe the methods of torture to which he had been subjected. He was forced to eat garbage, excrement and disgusting animals. Then the asphyxiation procedures began. First there was the "dry submarine". A sack was placed over his head, and when he became purple in the face for want of air they would take off the sack, spray him with water and repeat the process. Next there was the "wet submarine". They put his head into a large can of oil and told him to make a sign when he was ready to talk. Then there was the "Silvania". He was fastened to a chair while electrodes were applied to the soles of his feet, his testicles and the most sensitive parts of his body, and he was beaten while given electric shocks. Then he was hung by the hands between two trees with his legs separated by a stick, and spikes were put on the floor in case he tried to rest. During the hanging he was beaten on the most sensitive parts of his body.

During the "Pau de Arará", he was hung in a twisted position like an octopus from a pole and given electric shocks. Next came the "parrilla" or "grill". He was moved to another room and stretched on a metal grill, stripped and wrapped up in a sailcloth while electric current was applied to all sensitive areas. Meanwhile, an officer with two more electrodes went over the rest of his body. Each of those procedures lasted for about a couple of hours, and between each method there was a respite of 15 to 30 minutes. The procedures were directed by officers, who gave the orders; during the periods of respite they were left alone with the soldiers, who continued to administer the beatings on their own. All those procedures were applied in rotation. After the third cycle he was taken to the blue-tiled room ("pieza de los azulejos") and there, while trying to escape through a window, fell to the ground with a heavy crash. He lost consciousness. He suspected that they had tried to kill him, because he had injuries on his throat. When he came to, he found that he was lying on a mattress and serum was being injected into one arm. He saw that his clothes were drenched in blood. He was pale and his body was covered with bruises and marks from the electric charges. On 23 February he was moved to the Military Prosecutor's Office (Fiscalía Militar), from which he was sent to the Santiago Penitentiary. There he was held incommunicado for five days and a nurse treated his injuries and gave him nine stitches in the neck, six stitches in the right hand and four stitches in the left hand. Then he was put in the political prisoners' section and allowed to have outside visitors. A Red Cross physician who was there told him that he was beginning to suffer from head trauma. On 6 May he was released under a stay of proceedings based on the amnesty decreed on 6 April. Upon his release he joined the Group of former political prisoners and attempted to seek international assistance to enable him to live in Chile. On 10 May Decree No. 60 of the Ministry of the Interior was issued, ordering his expulsion from the country. His recurso de amparo preventivo, submitted to the Supreme Court, was rejected.

The Court held that the Government was within its rights, since the decree had been issued in accordance with the rules of the state of emergency. The witness hoped to be able to leave the country of his own free will, and not be forcibly expelled. In reply to a question, Mr. Muñoz stated that in 1973 he had not belonged to any political party, although he had engaged in the regular trade union activities of the FTR organization. After the military coup, to avoid arrest he had moved from the provinces to Santiago, and done occasional work. He had thus met friends with political concerns, and that had led to his capture. He could recognize about 15 of the men who had tortured him at Villa Grimaldi, but he did not know their real names. He remembered the nicknames used, such as Captain Juan, Captain Miguel, "Troglo" (the "Ogre"), "Coronta", "Ronco", etc. He also replied that in March he had made an oral statement accompanied by a written one to the inspector of prisons, reporting the tortures. He had also reported to the legal department of the Vicaría de Solidaridad, and a document had been drawn up for the submission of a complaint, but the matter had stopped there. The witness offered to submit a written report giving further details concerning the question.

B. Excerpts from document entitled "List of persons detained from January 1978 to the present date and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency on 17 July 1978

<u>Serial No.</u>	<u>Last and first name(s)</u>	<u>Date of arrest</u>	<u>Charge</u>	<u>Date of referral</u>	<u>Referred to</u>
.....					
2.	OLIVARES FONT, Elizabeth del R.	14.2.78.	Deputy Chief, 8 October unit, responsible for preparing explosives for MIR	20.2.78.	Office of Military Prosecutor
3.	MUÑOZ MUÑOZ, Rodrigo del Tránsito	16.2.78.	Committee Chairman, <u>Local de Países vascos</u> , South Santiago Regional Branch of MIR	23.2.78.	Office of Military Prosecutor, later freed under 1978 Amnesty Decree-Law
.....					
6.	MUÑOZ MARTINEZ, Jorge Arturo (alias Fabian (?)), Vania.	20.2.78.	Chief, 8 October Unit, <u>Local de Países vascos</u> , South Santiago Regional Branch of MIR, involved in murder of an official of the Investigaciones, 1975.		Office of Military Prosecutor.

C. Information submitted by the Government of Chile

1. Memorandum containing particulars on the case of Rodrigo del Tránsito Muñoz Muñoz

The following particulars are given concerning the case of Rodrigo del Tránsito Muñoz Muñoz (alias Dionisio):

Rodrigo del Tránsito Muñoz Muñoz was in fact arrested on 17 February 1978, but was taken to Barracks No. 101 of the National Information Agency (the name of the unit is not given for reasons of security), not to the Villa Grimaldi.

The ground for his arrest was his participation in the placing of bombs in Santiago (UNICOOP in Avenue Irarrázabal and the Bank of Chile in Maipú Street), which is an offence under Act No. 12,927.

He was held in the Barracks in question from 17 February to 22 February 1978.

While in custody there, he was interrogated for the purpose of obtaining information on offences committed between the end of 1977 and the first few days of 1978 in connexion with the placement of explosive devices in various parts of the city, and with a view to discovering the identities of his accomplices and other accessories after the fact who belonged to the subversive terrorist group known as the MIR.

An offer was made to R. Muñoz "that if he co-operated and gave the necessary information he would be allowed to leave the country". The 'Subject' agreed to this and gave the names and addresses of his accomplices.

As stated in the attached documents Muñoz tried to commit suicide when he saw two of the people he had informed on brought to the place where he was being held.

In attempting suicide, he cut his neck and both wrists with fragments of glass from a light bulb in the room where he was confined.

Attached is a signed statement by Muñoz in which he acknowledges, freely and spontaneously, that he tried to commit suicide on the occasion indicated.

No Notification of Arrest for Family Members is attached, since the 'Subject' lived with someone who is now a fugitive from the law, and stated that he had no relatives.

In the light of the findings of the investigation, Muñoz and his accomplices were placed at the disposal of the competent Prosecutor, so that preparations could be made for their trial. He was charged and taken to prison (as recorded in the attached document) on 23 February 1978, on the grounds of having violated Act No. 12,927. The number of his case was 153/78.

He was subsequently released on 6 May 1978 under the Amnesty Decree Law No. 2191.

While in prison, he underwent treatment in the Penitentiary Hospital on 1 March 1978 (case history No. 3544), as indicated in the attached document.

One of the entries in case history No. 3544 states that he had sustained a serious head injury two months (or two years) earlier when he fell from a great height. This means that in either case the head injury in question occurred before the 'Subject' Muñoz was arrested by the National Information Agency.

Santiago, 24 July 1978.

2. Official communication (S) No. 9 dated 20 July 1978 from the Acting Director-General of the Gendarmería

From: Acting Director-General, Gendarmería de Chile

To: Colonel Hernán Brantes Martínez, Director, National Information Agency

1. As requested by telephone, I am sending you herewith the following papers:
 - (a) Certificate of admission to the Santiago Penitentiary.
 - (b) Transcript of an entry in the logbook kept by the House Surgeons in the Penitentiary Hospital.
 - (c) Photocopy of the record of medical treatment in the Penitentiary Hospital (Case History No. 3544).
2. For your information.

I have the honour to be, etc.

(Signed) Sergio GAETE Y BUSTAMANTE
Acting Director-General

3. Certificate of admission of Rodrigo del Tránsito Muñoz Muñoz to the Santiago Penitentiary, dated 20 July 1978

GENDARMERIA DE CHILE
SANTIAGO PENITENTIARY
Governor

RODRIGO DEL TRANSITO MUÑOZ MUÑOZ

He was admitted on 23 February 1978 with the status of an accused person at the disposal of the Office of the First Military Prosecutor, Santiago (case No. 153-78), for violation of Act No. 12,927. He was released on 6 May 1978 under the Amnesty Decree-Law No. 2191.

He was treated in the Penitentiary Hospital on 1 March 1978 (case history No. 3544).

Santiago, 20 July 1978

(Signed) Alfredo CASTRO RICHARDS
Governor

4. Certificate of medical treatment dated 28 February 1978

GENDARMERIA DE CHILE
PENITENTIARY HOSPITAL

Extract from the Penitentiary Hospital House Surgeons' Logbook

Page No. 048

Date: 28 February 1978

Time: 10.30 p.m.

"Clinic. Saw prisoner RODRIGO MUÑOZ MUÑOZ, from corridor 5. He complained of discomfort from healed incision in neck, distress and pain in left iliac fossa. Examination showed: pulse 96x' and arterial pressure 120/70 mm Hg. Cranium normal, isocoria, scleroticæ clear, mucous membranes pink. Neck: pain when moves, otherwise negative. Cardiopulmonary negative. Abdomen soft, yielding and sensitive in the left iliac fossa, where an increase in volume can be felt, apparently from distended descending colon. Prescribed 25 mg of chlorpromazine."

This is a faithful copy of the entry in the House Surgeons' Logbook on the date in question.

Maria Eugenia TORRES

Nurse

(Stamp)

5. Transcript of entry dated 1 March 1978 in the logbook of the Penitentiary Hospital

Case No. 3544. PENITENTIARY HOSPITAL

RODRIGO MUÑOZ MUÑOZ

1 March 1978

Political prisoner. Strikes one as being dysarthric due to a deep wound in the front right cervical region, which is not infected, but which causes him discomfort (average). Able to stand, no nausea, "dizzy spells" (as if stunned). He says that they beat him a good deal, particularly in the region of the left wrist. As a result, he suffers from superficial hypoesthesia in the thumb and forefinger of the left hand (probably due to radial neuritis). He had serious TEC two weeks a/ ago, when he fell from a great height. He was hurt in both wrists (as in attempted suicide): the wounds have healed. Suffers from an anxiety syndrome.

a/ See No. 1 above. The Government would read this word as "years" or months.

(DIAGNOSIS)

1. Situation anxiety state
2. Polytraumatized. TEC. Subdural haematoma?

(TREATMENT)

1. Diasepan (Valium)
10 - 10 - 20 (oral)
2. Vit. B1 and B12 and C, 1 amp. of each about every 12 hours for 7 days.
3. Treatment of wounds
4. Rest in bed
5. Observation of convulsions,
violent headache
6. Check-up in 7 days.

6. Note on the attempted suicide of
Rodrigo del Transito Muñoz Muñoz
(undated)

To: The Chief of Staff

1. This is to inform you that, today, 18 February 1978, at approximately 7.30 a.m. citizen RODRIGO DEL TRANSITO MUÑOZ MUÑOZ, alias "DIONISIO", identity card No. 7.020.595-5 (Santiago), tried to take his life by making incisions in both wrists and in the region of his neck; the incisions were sutured by a doctor who treated him.

In his suicide attempt Rodrigo Muñoz used pieces of a light bulb which he smashed for that express purpose. He stated that he had tried to commit suicide because he had accepted an offer he had been made, as a result of which he had denounced the members of the terrorist cell, one of whom he had seen arriving at the barracks as a prisoner.

2. It may also be noted that the above-mentioned citizen has been detained on the basis of an order issued by the Second Military Court of Santiago on 20 January 1978. Moreover, RODRIGO DEL TRANSITO MUÑOZ MUÑOZ has confessed that he ordered the members of the terrorist cell to place explosive devices in the Maipú branch of the Banco de Chile in November 1977 and in the UNICOOP situated on the corner of Irarrázabal and General Gorostiaga Streets in January 1978.

3. This is all I can tell you.

I have the honour, etc.

7. Medical certificate dated 17 February 1978

Republic of Chile
London Clinic

Certificate

The undersigned physician hereby certifies that he has examined RODRIGO DEL TRANSITO MUÑOZ MUÑOZ, who is clinically in good health.

(Signed) Fernando BRIONES BECERRA
Medical Association No. 7971

17 February 1978

(Stamp of the National Information
Centre of Chile)

8. Certificate of medical treatment dated 18 February 1978

London Medical Centre

Certificate

The undersigned House Surgeon of this Medical Centre certifies that when he was on duty he gave emergency treatment to Mr. RODRIGO DEL TRANSITO MUÑOZ MUÑOZ, cleaning and suturing surface incisions in both wrists and the right cervical region under local anaesthetic.

The diagnosis is that the injuries are light.

The patient was also treated with antibiotics and analgesics.

(Signed) [Illegible]
Duty House Surgeon

(Stamp of National Information
Centre of Chile)

18 February 1978

9. Statement by Rodrigo del T. Muñoz Muñoz (undated)

Statement

RODRIGO DEL TRANSITO MUÑOZ MUÑOZ, identity card No. 7.020.595-5 issued by the Santiago Registry Office, hereby freely and spontaneously declares that at 7.30 a.m. on Saturday, 18 February 1978, he made an attempt on his life by making incisions in both wrists and in the region of the neck; these incisions were sutured by a doctor who came to his assistance.

This statement is made for submission to the Office of the Military Prosecutor.

(Signed) RODRIGO DEL TRANSITO MUÑOZ MUÑOZ
Identity Card No. 7.020.595-5 (Santiago)

10. Medical certificate dated 21 February 1978

Republic of Chile
London Clinic

Certificate

The undersigned Duty House Surgeon hereby certifies that he has examined Mr. RODRIGO DEL TRANSITO MUÑOZ MUÑOZ, who is clinically in good health.

The injuries caused by his suicide attempt are healing well.

(Signed) [Illegible]
(Duty House Surgeon)

21 February 1978

(Stamp)

11. Official communication No. 100081 from National
Information Agency to Office of competent
Military Prosecutor

From: National Information Agency

To: Office of competent Military Prosecutor,
Santiago

In compliance with the Investigation Order referred to, the following persons are hereby committed to the Court with the status of detainees:

RODRIGO DEL TRANSITO MUÑOZ MUÑOZ

The individuals in question are charged with offences against the Arms Act and the Internal Security of the State Act. Extra-judicial statements by each one of them are attached, together with papers found in their possession which make specific reference to the said offences.

You are informed that a warrant for arrest for homicide was issued by the Office of the Second Military Prosecutor, with respect to the detainee, JORGE ARTURO MARTINEZ MUÑOZ (alias RAMIRO), in Case No. 272-75 of 17 July 1975.

(Signed)
NATIONAL INFORMATION AGENCY

12. List of objects found in the possession of
Rodrigo del Transito Muñoz Muñoz (political
alias Dionisio, Ramón, Octavio, Gabriel and Roberto)

- Letter from Octavio to activists in the Zones.
- Letter from Manuel to Octavio requesting reincorporation.
- Letter from Octavio to Rodion (head of the Regional Branch) reporting on activities undertaken.
- Letter from Daroch to Rodion reporting on events after the death of the priest 'Luis'.
- Letter from Daroch to the Central Committee requesting reincorporation.
- Letter from Manuel to Armande concerning blank charges bombas de ruido.
- Point of contact with Party members.
- List of issues of "El Rebelde" distributed among the rank-and-file.
- Letter from Octavio to Rodion.

13. Curriculum Vitae

Name(s): RODRIGO DEL TRANSITO
Family names: MUÑOZ MUÑOZ
Aliases: Gabriel, Roberto, Dionisio, Octavio and Ramón
Place and date of birth: 28 August 1952, Vichuquén, Curicó
Identity card: 7,020,595-5 Issued at: Santiago
Profession or trade: Worker (fourth year Industrial School studies)
Civil status: Married (now separated) Adriana Raquel Carvajal Anaya
Residence: Población Sargento Aldea, Pasaje No. 17 Oriente, Casa No. 6430,
San Miguel
Travel abroad:
Names of parents: Luis Octavio (deceased) and Guicela de las Mercedes
Other relatives: Francisco Octavio, Tito Osvaldo, Bella Aurora, Marta Eliana,
Isabel Leontina, Ruth Inés, Jorge Marcial, Miguel Luis and
Soledad del Tránsito (brothers and sisters)
Physical features: Weight: 56 Eyes: Brown Hair: Dark brown
Height: 1.65 m Clothing: Sports
Other particulars: Moustache

Record

1969: Active member of League of Communist Youth.
1975: Active member of MIR. Chief of San Gregorio sector.
1976: Chief of the Zona de los Países Vascos
1978: Chief of a Local Committee of MIR.

14. Statement by Rodrigo del Tránsito Muñoz Muñoz
(political alias: Gabriel, Roberto, Dionisio,
Octavio and Ramón)

At Santiago, on the twenty-first day of the month of February in the year one thousand nine hundred and seventy-eight, the following statement was made voluntarily by Rodrigo del Tránsito Muñoz Muñoz, Chilean, born at Vichuquén, Curicó, on 28 August 1952, Identity Card No. 7,020,595-5 issued

by the Santiago Office; worker; completed fourth year of studies, Industrial School; civil status married (separated) to Adriana Raquel Carvajal Anaya; one son Pablo, 6 years of age; resident at Población Sargento Aldea, Pasaje No. 17 Oriente, Casa No. 6430, Commune of San Miguel.

Son of Luis Octavio (deceased) and Guicela de las Mercedes. Brothers and sisters: Francisco Octavio, 33, married, worker; Tito Osvaldo, 31, married, agricultural worker; Bella Aurora, 30, married, housewife; Marta Eliana, 27, married, housewife; Isabel Leontina, 23, spinster, employed in the Office of Public Works; Ruth Inés, 21, spinster, student in basic cycle; Miguel Luis, 15, secondary school student and Soledad del Tránsito, 14, student in basic cycle. The declarant states, freely and spontaneously, that:

"In 1969, having completed my studies on the arts side in the Industrial School of Curicó, I joined the League of Communist Youth at the instigation of Alfonso Albornos, a classmate. My main task was to recruit and train people for the Party and to mount a publicity campaign for the elections in 1970 in support of the Unidad Popular campaign.

When Dr. Allende was the President-elect of Chile, I devoted my time to finding a job, and in December 1970 was hired by IANSA in Curicó as a workhand. I joined the IANSA union and took part in normal union activities, such as strikes and the presentation of petitions.

In May 1974 I moved to Santiago to look for work and found a job with the REXA company. I did not become involved in political activities until December 1975.

In that month, I came into contact with Carlos Gonzalez Vargas of the Movimiento de Izquierda Revolucionario (MIR). At the end of May, after I had been given political training, Gonzalez Vargas left the country (for Norway), handing over to me all the documents and other objects in the Party's possession. I then became Chief of the San Gregorio Sector. As my first task, I devoted myself to organizing the activities of the members of the rank-and-file, which consisted of a Resistance Committee and the rank-and-file proper. The Committee was concerned with subversive propaganda against the Government and the organization of new resistance committees.

In June 1976, Héctor (political alias) transferred me to Soledad (political alias) whose real name was Elizabeth del Rosario Olivares Fontt, who was working as a full-time member of a rank-and-file unit. Elizabeth, who was studying at the Teacher Training College of the University of Chile, and I recruited Jorge Badiola Rivera.

In December 1976, I made contact with the leaders, and specifically with Guatón (Rodion), who instructed me to work in the Zona de los Paisos Vascos, covering Talagante and Melipilla. In order to carry out the work, I was told to contact with Claudio or Salomón, and after doing so, to begin to prepare anti-Government propaganda, to write and distribute leaflets, to put up posters and to seek out new members for the Party.

In May 1977, together with Soledad, I organized a new base unit called Sergio Pérez, which recruited Raniro (political alias), whose real name was Angel Moraga Somero, and Mariano (political alias), whose real name was Ricardo Reyes Becerra. The unit was concerned with subversion and the recruitment of new Party members.

In March of that year, Soledad (Elizabeth del Rosario Olivares Fontt) and I asked Jorge Badiola to copy some microfilms in his own home. After this had been done, we went together with Jorge Badiola to Peñaflor, in his car (AX-330), where we distributed leaflets commemorating the foundation of MIR, some of these bearing the legend "Down with Pinochet and his thugs". Jorge Badiola allowed me to stay in his home, and I spent about a month there. Explosives and propaganda material were stored in his home, and we took whatever was needed for the manufacture of bombs.

In September and October 1977 I began to teach the members of the Sergio Pérez unit how to manufacture bombs and prepare explosives. The training was given in the home of Mariano (political alias), whose real name is Ricardo Reyes, and who lives at Quinchanalí No. 1123, La Reina.

Early in November I ordered the Sergio Pérez unit to place a bomb in the Maipú branch of the Bank of Chile. This was done towards the middle of the month.

At the end of December I ordered the 15 October unit, consisting of Raniro (political alias), whose real name is Angel Erasmo Moya Romero, Mariano (political alias) whose real name is Ricardo Francisco Reyes Becerra and Salomón (political alias) (all that is known of his real name is that he is called Juan Carlos) to put a bomb in UNICOOP at the intersection of Irarrázabal and General Gorostiaga Streets. This was done early in January 1978.

Owing to the death of Augusto Carnona, whose political alias was Oslo, in December 1977, Guatón Rodion sent me a Mauser rifle and 500 rounds of ammunition to be used in the area of activity.

Following the death of the priest 'Luis' - German de Jesús Cortés Rodríguez - the leaders ordered me to return the rifle and the 500 rounds of ammunition, and I did so personally in the last week of January.

At the present time I am the head of a Local Committee of the MIR and in charge of three units, which are responsible for subversive activities against the Government.

I declare that I have read this statement and confirm it to be true in every respect. In witness whereof, I hereby sign.

(Signed)
DECLARANT"

- D. Photograph of Mr. Rodrigo Muñoz Muñoz, Mr. Jorge Martínez Muñoz and two other persons which appeared in the 24 February 1978 edition of La Tercera de la Hora 1/



CUATRO DE LOS CINCO integrantes del Grupo Político Militar del MIR fueron fotografiados antes de ser puestos a disposición de la Primera Fiscalía Militar, que sustanciará el proceso correspondiente.

1/ The person on the left is Mr. Muñoz Muñoz. The third person from the left is Mr. Jorge Martínez Muñoz.

Annex XXXIV

WRITTEN STATEMENT OF MR. JORGE MARTÍNEZ MUÑOZ

TESTIMONY

I, Jorge Martínez Muñoz, of Chilean nationality, aged 23, student, having already taken an oath before this committee, make the following statement:

I was arrested at 9 a.m. on 20 February 1978 in a street in Santiago (close to Exposición) by persons in plain clothes who did not identify themselves; I discovered that a friend, ELIZABET OLIVARES, was responsible for setting me up.

I was put into a car, my hands were tied and I was blindfolded with adhesive tape. They immediately started to interrogate and beat me.

I was driven to a place which at first I was unable to identify, but subsequently, from the sounds of aeroplanes and water - apparently from a swimming-pool - I began to think that it must be the VILLA GRIMALDI, which is one of the Government's main centres for torture and from which many political prisoners have gone missing.

I was taken out of the car and bound hand and foot; I was interrogated twice there while being punched in the stomach and on the head. I was then taken to another building (which we entered after a metal door was opened). Once there, I heard RODRIGO MUÑOZ, who was apparently in the next room, complaining and asking for water. I also heard ELIZABET OLIVARES, who was with him.

I was taken to a room where I was interrogated, beaten and hypnotized (or, rather, an attempt was made to hypnotize me) and the palms of my hands and my knuckles were burnt with lighted cigarettes. Then I was placed on a concrete seat in a courtyard with dogs prowling around and they threatened to set the dogs on me. I was then taken into a room where I could hear that there were other people present; two of them were CNI guards and the others were Rodrigo Muñoz, Angel Moya and Ricardo Reyes (I heard the guards saying the names of the latter). In the course of the conversation, the guards mentioned that Rodrigo had tried to commit suicide, and they later "advised" me against doing the same thing.

On the following day the interrogations continued, as did the beatings and threats (some of the torturers kept saying to us: "We're going to pile you all up together and send you flying with a grenade like the Argentine military do with all the extremists".)

During this period I noticed that Rodrigo Muñoz remained lying down most of the time on a metal cot, where they took him water or tea. The cot was in the same room that we all used for sleeping. I heard that he hardly ate, because when he had tried "to commit suicide", as the CNI agents put it, he had cut his throat.

On the following day the interrogations continued, and this time they administered electric shocks to my legs and feet, beat me on the head and also made me run (or, rather, hop) from one side of the courtyard to the other with my hands and feet tied. Then the adhesive tape was removed and a group of about five agents and officials began to interrogate me again. Then the four of us were brought together in a room, where we were photographed with our eyes uncovered, and it was then that I identified the place as the "pieza de los azulejos" (the tiled room) (then I had no doubt that I was in the Villa Grimaldi). That night I was told that on the following day we would be taken to the Office of the First Military Prosecutor. I did not believe it and fully expected to be done away with. On the following day, 23 February, we were taken to the Office of the Military Prosecutor and, after being interrogated and threatened there, I was transferred to the Santiago penitentiary and placed in solitary confinement. On 25 February the solitary confinement was lifted and I was transferred to row No.2 of the prison, together with Angel Moya and Ricardo Reyes. Two weeks later I was transferred to row No.5, which is reserved for political prisoners. I remained there until 6 May 1978, when Rodrigo Muñoz, Angel Moya and Ricardo Reyes and myself were summoned to the Office of the First Military Prosecutor to sign our decree of amnesty. My colleagues were released, but I remained in custody because further proceedings had been instituted against me by the Office of the Second Military Prosecutor.

On 12 May, when my three colleagues who had been amnestied were about to leave the penitentiary, they were abducted by CNI with the connivance of police officials and prison warders. The purpose of this abduction (in which I would have been included - the CNI agents asked the colleagues concerned about me - had it not been for the fact that I was unable to leave the prison since I was awaiting a summons from the Office of the Second Military Prosecutor) was to force us to accept an "arrangement" with the Government. The Government did not wish to be seen to be expelling people who, as a result of the amnesty, were not legally offenders and it therefore wanted us to leave "on our own initiative" so that it could avoid the possible international consequences of an expulsion order. I refused, and subsequently I found out that my colleagues Hector Reyes, Victor Heresman and Sergio Sepulveda, who were still being held, also refused this arrangement; we insisted on our right to remain in the country, since there were no charges pending against us.

On 12 May, at a time when all the political prisoners were locked up in their cells, a police officer told me that I should get my things together because I was to be released. I explained to him that that was impossible since, before being released I had to appear at the Office of the Military Prosecutor in order to sign my amnesty document. It seemed to me that in fact they were trying to get me out in order to have me abducted by CNI in an attempt to force me into exile. I therefore refused to leave unless my lawyer, Roberto Kozac of ICEM, and my family were present. The official withdrew and some 30 policemen led by a lieutenant named Parra arrived; when I refused to leave they beat me brutally with their truncheons and dragged me to the warder's offices where I repeated my request, and demanded that the warder allow me to telephone so that I could at least inform my family. He refused, and I was once again beaten and dragged to the outer barrier of the penitentiary, where plain-clothes officials who identified themselves as International Police handcuffed me and led me to a

Civil Police car. I was taken to the International Police offices, where I met Victor H. Heresman and Hector Reyes, and the three of us were taken to the cells in the detention block of the Civil Police Investigation Bureau. On 19 May, Roberto Kozac informed us that the Government had issued an expulsion order and that we would be made to leave the country on the following day. Also on 19 May, ICEM and the international police completed the formalities while our families rushed about trying to block the expulsion by submitting a writ of amparo.

At 5.30 a.m. on Saturday, 20 May 1978, we were removed from the cells and taken to the airport, where we were allowed to spend a few minutes with our families, and at 7.45 a.m. we were leaving the country.

(Signed)

Annex XXXV

MATERIALS RELATING TO THE ARRESTS AND DEATHS CONNECTED WITH
DR. HAYDÉE PALMA DONOSO

Contents

- A. Statements received by the Group
1. Excerpts from a signed statement concerning the arrest and detention of Haydée del Carmen Palma Donoso, a 32-year-old single paediatrician
 2. Sworn statement of Sara Eliana Palma Donoso
 3. Sworn statement of Guillermina Gumercinda Figueroa Durán
 4. Sworn statement of Aura Elvira Giadrosic Figueroa
 5. Sworn statement of Bernarda Santelices Diaz
 6. Sworn statement of Isabel Margarita Wilk Gonzalez
- B. Excerpts from a document entitled "List of persons detained from January 1978 to the present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978
- C. Letter from the Minister of the Interior dated 25 January 1978 addressed to the President of the Court of Appeals of Santiago
- D. Information submitted by the Government of Chile on the arrests and detentions in the Dr. Haydée Palma Donoso case

A. Statements received by the Group

1. Excerpts from a signed statement concerning the arrest and detention of Haydée del Carmen Palma Donoso, a 32-year-old single paediatrician

She was arrested on 16 January 1978 at San Isidro 1414, Santiago, where she had rented a room from the mistress of the house, Guillermina Figueroa Durán. The latter was also arrested, as were her children Aura Elvira and Dinko Giadrosic Figueroa. The arrests, which were made by Government security agents, occurred in the following chronological order: at 12 noon, Mrs. Guillermina was arrested and removed from the premises; at 2 p.m., Dinko arrived for lunch and was immediately arrested; at 3 p.m., Aura Elvira arrived and suffered the same fate as her brother; and, at 3.30 p.m., Haydée Palma (known as Cecilia by the owners of the house) came in and was also arrested. Aura and Dinko Giadrosic were eyewitnesses of her arrest.

Also on 16 January, between 4 p.m. and 5 p.m., her mother - Sofía Donoso Quevedo - and her sister - Sara Palma Donoso - were arrested at their residence, Calle Pablo Goyenechea 010, Apt. F (3rd floor), La Cisterna (Santiago) by several armed security agents. On that occasion, Gabriel Octavio Riveros Ravelo, a leading member of MIR, who was a boarder in the household and occupied a room in the apartment, was killed. The security agents came in shooting; Gabriel Riveros tried to bar the door to his room with a piece of furniture. Later, when Sofía Donoso and Sara Palma had already gone down, as prisoners, they heard a single shot. In the following hours, the news media announced the death of Gabriel Riveros, describing it as the result of a confrontation and his subsequent suicide.

Haydée Palma, Aura Elvira and Dinko Giadrosic were taken away from San Isidro 1414, Haydée Palma in one vehicle and the brother and sister in another. Descriptions of the place to which they were taken tally: it was a large, colonial-type house, with a swimming pool and many rooms. Sofía Donoso and Sara Palma were taken to the same place, in charge of Government security agents.

During that period another death and other arrests also occurred. On the morning of 16 January, Germán de Jesús Cortés Rodríguez, also a leading member of MIR, was arrested near his residence in Calle Estados Unidos, in the commune of La Florida (Santiago), together with Bernarda Santelices, who lived in the same place. The latter says that at about midday she was taken to "Calle San Isidro, No. 1400" where she witnessed the arrest of an elderly lady (Guillermina Figueroa), and they were both taken to the place described above. In the early hours of Wednesday, 18 January, Bernarda Santelices was taken from that place to her residence. Upon arrival there the security agents removed the bandage from her eyes and she saw that Germán Cortés was being dragged with his head down into the house between approximately five agents. They then handed her her daughter, who was only a few months old, whom she had left at the home of some neighbours on the Monday, before her arrest. Later she heard some shots, a burst of shots, and later still she was taken back to the isolation centre, this time with her daughter. On Thursday, 19 January, the news media reported the death of Germán Cortés "which occurred on Wednesday, the 18th, at his residence" (it should be noted that he had been arrested on the Monday), as a result of a "shooting incident" or "confrontation" that occurred when he - Cortés - "drew a pistol from under his bed and tried to shoot the agents". Such is the text of the report, the discrepancies of which are inexplicable and serious when it is considered that the person concerned was taken - or rather dragged - unconscious into his house.

Another person arrested at that time was Isabel Margarita Wilk González (17 January 1978).

With respect to Haydée Palma Donoso, it is important to emphasize that all the persons arrested who are referred to above (Sofía Donoso, Sara Palma Guillermina Figueroa, Aura Elvira and Dinko Giadrosic, Bernarda Santelices and Isabel Wilk) saw her and, in some cases, heard her in the above-mentioned detention and isolation centre, where she was held by security agents, until the morning of Friday, 20 January, when with the exception of Isabel Wilk, they were brought before the military court; Isabel Wilk was brought before the court on 6 February (in any case, she also saw Haydée only until 20 January, although she states that she heard her later, until 4 February).

However, Haydée was not brought before the military court or any court. She did not appear and there were grave fears for her life. It is important at this point to consider the statements Isabel Wilks was forced to make to, and at the request of, those who arrested her (see her sworn statement attached).

On 6 February, an application for a writ of amparo on her behalf - signed by her mother in the Women's Correctional Establishment (Prison) - was submitted to the Court of Appeals of Santiago (copy attached). Amparo proceedings having been initiated, the Investigation Service reported that Haydée Palma had not been arrested by its staff but that an arrest warrant of the Office of the Second Military Prosecutor, case No. 1090-77, had been issued on 27 January 1978 (it does not specify the offence) and was outstanding. The Office of the Second Military Prosecutor said that "the warrant for arrest exists, but the subject of the amparo proceedings has not yet been brought before it" and the Ministry of the Interior, in official letter No. 459 of 15 February 1978, indicated that "the subject of the amparo proceedings has not been arrested on its orders but, notwithstanding the foregoing and on the supposition that she might have been arrested and detained under ordinary police procedures, it has requested a report on the subject from the National Information Agency (CNI), which report will be forwarded in due course" (the unusual linking of CNI with ordinary police procedures should be noted, as, in theory, it is not empowered to make arrests even in cases that are "out of the ordinary" or of "a political character").

On 9 March a Peruvian periodical (Marka) reported that Haydée Palma Donoso, 32 years of age, a militant member of the Chilean MIR and a paediatrician, had on that date "been arrested in Lima, by the State Security Police Force". She had, the report added, been deported from her country after several weeks in prison and detention in Peru, at the frontier, for lack of documents. The periodical also explained that Haydée had been arrested on 16 January by CNI, formerly DINA.

On 13 March, in view of the amparo application, these reports were brought to the notice of the Court, which confined itself to requesting the International Police Service to supply a report.

Then, through UNHCR, it was confirmed that Haydée Palma had in fact been in detention at Lima and had been interviewed by UNHCR officials. Haydée herself, in a letter sent to a relative in Santiago (received on 13 March) states that she arrived in Peru on 20 February and was taken to a place called the "PIP (Peruvian Investigatory Police) Temporary Detention Centre for Women".

In conclusion, Haydée Palma was arbitrarily arrested in Chile, in violation of legal rules and formalities, and, having been held for a long time incommunicado, during which time she was subjected to physical pressure, was illegally expelled from the country, the Government security agents (CNI) being responsible for all those acts.

In conclusion, in view of the foregoing, the mother of the person concerned requests the United Nations Commission on Human Rights to request the official in charge of UNHCR at Lima, Peru, to furnish all possible information concerning Haydée's entry into and stay in that country and arrange for her to present a full and formal statement, including the necessary background material (photograph, medical examination, etc., if possible) to that official.

(Signed)

2. Sworn statement of Sara Eliana Palma Donoso

I, Sara Eliana Palma Donoso, Chilean citizen, single, aged 29, domestic worker, identity card No. 282326, issued at Concepción, at present detained in the Correctional Establishment for Women, hereby make the following statement under oath:

1. I was arrested on Monday, 16 January 1978, between 4 and 5 p.m., together with my mother, Sofía Donoso Quevedo, at our home at Pablo Goyenechea 010, Apartment F, 3rd floor, La Cisterna, by several armed persons in plain clothes. On that occasion, Gabriel Octavio Riveros Ravelo, a lodger occupying a room in the building, was killed. My mother and I were each forced to get into a car, one white and the other blue; both seemed to be Fiat 125s. We were driven off and, just before reaching the intersection of Santa Rosa and Américo Vespucio, I was transferred to the car containing my mother, and both of us were blindfolded with adhesive tape. We then continued along the ring road and we seemed to turn off on to Tobalaba. Roughly half an hour after our departure, we reached our destination, a place where people were held incommunicado. This was a large house with many rooms and a swimming pool. Before reaching it, we had to cover a few metres of unpaved ground. The house has a façade coloured orange or red, with white, and an iron gateway, beyond which is a large park or estate.

2. I stayed at that place, which was most probably the Villa Grimaldi, until the morning of Friday, 20 January, when, together with my mother and other detained persons, I was handed over to the Military Prosecutor and placed in the Correctional Establishment for Women.

3. On Tuesday, 17 January, I became certain that my sister Haydée Palma Donoso was also being held there. On the afternoon of that same day - I cannot be sure of the exact time - I heard her voice, coming from the room adjacent to mine. She was being interrogated and talking to her captors. This was not merely an impression, but a certainty, because I heard her voice more than once. On the following days, Wednesday and Thursday, I heard her again at different times of day. On one of those days - Thursday, if I remember rightly - I saw her in the afternoon, in a large room where a number of us detainees had been brought. We were all made to sit down, some distance apart from each other. Haydée began to speak, saying that she was unwell and asking whether she could stretch out on the floor. The guards handed her a bedroll. At that stage, I lifted the bandage from my eyes and was able to see her; she was wearing a turquoise skirt, a dark blue sweater and

brown hand-made sandals. I did not see her again after that and have heard no more about her. When the guards questioned me, I always said she was a friend whom I had known for years and who went by the name of "La Matea". Recently, on 31 January, I stated at the Office of the Military Prosecutor that she was my sister; moreover, the court had already discovered that fact. During the interrogations, the security agents kept on asking me about "Cecilia", saying that the latter was my friend "La Matea" or the person I called by that name. When I heard her voice and saw her, I had no doubts as to her identity.

(Signed)

3. Sworn statement of Guillermina Gumercinda Figueroa Durán

I, Guillermina Gumercinda Figueroa Durán, widow, domestic worker, identity card No. 823955 issued at Santiago, at present detained in the Correctional Establishment for Women, hereby make the following statement under oath:

1. On 16 January 1978, at approximately 12 noon, I was alone in my house at San Isidro 1414, when I heard someone knocking at the door; on opening it I was threatened with a machine-gun by a group of about four persons, who proceeded to force their way into my home. They mentioned the name of a man whom I neither know nor remember. I said that I lived with my daughter, Aura Elvira Giadrosic Figueroa, and that I let one room to a young girl (Cecilia Azócar). They then searched this room in my presence and took away some papers. All this lasted about 20 minutes. They then dragged me out of the house and shoved me into a car containing a young woman of short stature who had been arrested (some days later, at the Correctional Establishment for Women, I learned that she was Bernarda Santelices). I was then driven, blindfolded, to an unknown place or premises. The security agents who shortly before had searched my lodger's room remained in the house. The car took at least half an hour to reach the place where I was held in custody until being brought before the Military Prosecutor on Friday, 20 January.

2. As soon as I reached the place where people were held incommunicado, guarded by security agents, I was made to sit, with my hands tied, in a courtyard. At night they untied my hands and made me sit with some other people. On raising the bandage a little from my eyes, I was able to see that my children Aura and Dinko Giadrosic Figueroa were also there. We spent all that night in the open. I was only questioned about Cecilia Azócar and the man to whom my captors had referred at the time of my arrest. The following day, Tuesday, 17 January, they woke me up at about 8 a.m. and gave me breakfast, leaving me in the same place. All that morning I remained there, together with my children and some other people. They gave me lunch in the same place and I remained there in the afternoon without being questioned. At about 4 p.m. - although considering our conditions it is quite possible I may be slightly mistaken about the time - I saw Cecilia, as my blindfold had slipped. She was sitting, tied up, opposite me, about eight metres away; I was able to see that she was wearing a turquoise skirt and some hand-made sandals. She was also wearing a blue sleeveless blouse. She was blindfolded and had a blanket round her shoulders. At one point she asked to be taken to the toilet, after which she was brought back to the same place. At dusk, we were given something to eat and taken to a room or shed to sleep. On Wednesday, 18 January, I was taken out to the same courtyard, where I again spent the whole day. Once again I was able to get a glimpse of Cecilia, more or less as on the previous day, but it was only a fleeting one, as she was taken away, apparently for

interrogation. She was wearing the same clothes as on the Tuesday. On that Wednesday I saw her only in the morning. At night I was taken to the same shed or room. On Thursday, 19 January, the same procedure was repeated. At dusk I saw Cecilia when we had been made to enter the room where we slept. I saw her this time at closer quarters, when the bandage fell from my eyes; I saw her make a sign, and she said something to me which I could not understand. Her face was swollen and bruised. There was no doubt whatsoever that she was feeling far from well. She asked the guards for a bottle of water, which they brought to her. Shortly afterwards, I was taken from this room and brought to another place in the same compound, where I was photographed; when I returned, perhaps half an hour later, Cecilia was no longer in the room or at any rate I did not see her. After that, I heard nothing further about her situation or her whereabouts.

3. On the morning of Friday, 20 January, I was taken to the Office of the Military Prosecutor. After having made a statement, I was held incommunicado in the Correctional Establishment. Later, I learned in this prison compound that Cecilia Azócar's real name was Haydée Palma Donoso, which information I received from her mother, Sofía Donoso, who had also been held - since 16 January - and who was a witness to the presence of her daughter at the above-mentioned detention centre, guarded by security agents. I also wish to place on record that I saw in that place a tall stoutish woman whom "Cecilia" or Haydée Palma called "la gorda"; she is now in the Correctional Establishment, but not incommunicado, and her name is Isabel Wilk.

(Signed)

4. Sworn statement of Aura Elvira Giadrosic Figueroa

I, Aura Elvira Giadrosic Figueroa, Chilean citizen, single, graduate in Fine Arts, identity card No. 3921286-2 issued at Santiago, at present detained in the Correctional Establishment for Women, hereby make the following statement under oath:

1. I was arrested on 16 January 1978. My mother, Guillermina Figueroa Durán, my brother Dinko Giadrosic, and Cecilia Azócar, who rents a room in our house at San Isidro 1414, were also arrested on the same day.

2. When I arrived home that day at about 3 p.m., the security agents were already there - five of them, if I remember rightly. My brother Dinko does not live at home but had come there that day to have lunch with my mother. We were both arrested. The agents continued to wait with us for the return of Cecilia Azócar, who arrived at about 3.30 p.m., whereupon she, too, was arrested. My mother had been arrested earlier, as soon as the agents arrived at the house at noon, and had been taken away; she was therefore not present when Cecilia was arrested.

3. I was taken in a large modern car, with my brother Dinko, to what seemed to me to be the Peñalolén district. We were in the custody of four security agents (three men and one woman). After a 45-minute drive, we reached a large, colonial-style house (I believe it was the Villa Grimaldi), where there were other detainees. I was kept there until Friday, 20 January, when I was brought before the Military Prosecutor, together with other detainees - my mother, my brother, Mrs. Sofía Donoso Quevedo, Sara Palma Donoso and Bernarda Santelices - all of whom are now in the Correctional Establishment for Women.

4. On Tuesday, 17 January, at approximately 10 p.m., or at least some time in the evening, when, together with other detainees, and guarded by security personnel I was in a room with a tiled floor on the premises to which I had been brought. I was able to talk with Cecilia Azócar, who was also there. She said that neither I nor my mother and brother were to worry, because we were in no way involved and she had said so. She was taken from the room several times in the course of the night, returning 30 minutes to one hour later; this happened three or four times. On the morning of Wednesday, 18 January, I saw her go out into the courtyard and heard her calling some of the guards. The guards approached and Cecilia told them she was feeling ill, that she was bleeding from the electric shocks, and that they should allow her to lie down and bring her some cotton wool. I must record that her face was swollen, she was weak, had difficulty in walking and complained of a severe headache. She was dressed in a turquoise skirt, a blue sweater and brown hand-made sandals. I did not see her again after that. During those days I also saw a stout woman about 1.70 m tall whom Cecilia called "la gorda".

5. Cecilia Azócar had been renting a room from us since March 1977. We always knew her by that name and knew nothing about her activities. After being handed over to the Military Prosecutor - together with the other detainees mentioned at the end of paragraph 3 - I learnt from Sofia Donoso that the person we knew as Cecilia Azócar was her daughter, Haydée Palma Donoso. In my statements at the Villa Grimaldi and before the Military Prosecutor, I invariably referred to her as Cecilia, because that was the name by which I knew her. As for the tall, stout woman whom I had seen at the detention centre in the custody of security agents, she, too, was later brought before the court and is now also in the Correctional Establishment for Women. Her name, which we now know, is Isabel Wilk.

(Signed)

5. Sworn statement of Bernarda Santelices Diaz

I, Bernarda Santelices Diaz, Chilean citizen, single, housewife, identity card number 6371127-6 issued at Santiago, at present detained in the Correctional Establishment for Women, hereby make the following statement under oath:

1. I was arrested at 11 a.m. or 11.30 a.m. on 16 January 1978 at Calle Estados Unidos, near number 9000, as I was travelling in a Fiat 125 car in the company of Germán Cortés Rodríguez to do some shopping. I had left my small daughter Alejandra Santelices, aged seven months, in the house of a neighbour. On reaching the point in the street mentioned above, we were intercepted by two cars, one blue and the other white - a Peugeot - carrying some 15 security agents, men and women. I was immediately dragged out of the car and taken to my home at 9,192 Estados Unidos, to look for my daughter. They left me in the blue car and entered the house, breaking the glass panes. When they failed to find the baby - I refused to say where she was - I was taken to No. 1,400 San Isidro, where I witnessed the arrest of an elderly woman whom I did not know. Together, after being blindfolded, we were transferred to a special place that I presume to have been the Villa Grimaldi, which we must have reached at about 1.30 p.m. This was an old house, situated on a hill or height, with a large gateway and a swimming pool; I heard the sound of helicopters and church bells and noises from a nearby bus stop.

2. On arrival, I was made to sit in a courtyard, on a rock, and was handcuffed. I remained there for about an hour, and was then taken to a kind of cell where I was interrogated. At dusk, I was taken to another place on the same premises. During all this time I was alone. Close on midnight, I was taken out for further questioning. I then lost all sense of time. I was transferred to an adjoining room, where I was left alone until the next day, with my hands and feet tied. On the morning of Tuesday, 17 January, I was escorted by a woman to another place in the detention centre, where I was interrogated by three women for about an hour. The rest of the day I stayed in that place alone. At midnight I was again taken out for questioning and subsequently taken to a courtyard where I noticed a movement of persons and vehicles. There I was told that they had found my daughter. They ordered me to get ready and took me away in a vehicle at, I think, about 1 a.m. on Wednesday, 18 January, supposedly to fetch my daughter. When we reached my home, the agents stopped the vehicle and removed the adhesive tape from my eyes. I was then able to see Germán Cortés being dragged, with his head down, into the house between about five agents. They made me get out of the car and left me in the middle of the road. I then had to get into the car again after two agents had come out of the house of some neighbours with the baby, my daughter, whom they handed over to me. The neighbours went back into their house. Subsequently, I heard some shots, a burst of firing. Later, at 3 a.m., I was taken back to the detention centre, where they brought me my daughter and left us alone. On the morning of Wednesday, 18 January, I was again questioned, for about an hour and a half. At about 7 a.m. I managed to see, through the door of my cell, a woman about 30 years old, dark-haired, slin, dressed in a turquoise skirt and blue blouse; she was being taken to the toilet, which was opposite my cell. I noticed that her nose was bleeding. Later the same day, I saw her again when she was taken to the toilet, at about 8 p.m. I saw that her face was bruised. I did not see her again.

3. On the morning of Friday, 20 January, I was brought before the Military Prosecutor. Later, when I was at the Correctional Establishment, I learned that the woman whom I had seen and whom I have described was Haydée Palma Donoso. Her mother, Sofia Donoso, and her sister, Sara Palma, are in this same Establishment and they, too, saw Haydée at the detention centre in the custody of security agents.

(Signed)

6. Sworn statement of Isabel Margarita Wilk Gonzalez

I, Isabel Margarita Wilk Gonzalez, Chilean citizen, single, aged 22, student, identity card No. 5127517-9, issued at Santiago, at present detained in the Correctional Establishment for Women, hereby make the following statement under oath:

1. I was arrested at about 7 a.m. on Tuesday, 17 January 1978, at my home at No. 433 Calle Merced, by a group of persons in plain clothes; there were more than 10 of them, they were armed and they were using at least two cars. On arrival, they said to me: "We have been sent by Cecilia Azócar". I said that I did not know the person they had mentioned. They made me get dressed and led me to one of the vehicles, throwing me on to the floor in the back and covering me with a sheet. Some of the agents stayed behind in the house. The car moved off quickly. After about 40 minutes, we reached the place where I was to be held in

custody, incommunicado. The nature of those premises became clear to me with the passage of time. It was a fairly large house with a swimming pool and a number of rooms, approached through an ironwork door or gate, and then through extensive grounds.

2. I was held incommunicado and interrogated in this place until Monday, 6 February, when I was brought before the Military Prosecutor. There were other detainees in the place, whom I did not know, except for one of them, whom the agents called "Cecilia" and whom I knew as "Patricia" or "Jenny". I saw her in that place. Already, on the morning of Tuesday, 17 January, I heard her voice when I was being questioned. On that occasion, I repeated part of my statements, and on leaving heard "Cecilia" speaking; she was saying "I could have made a mistake" or something like that. For me her voice is unmistakable. Furthermore, during the same interrogation, the agents told me that she was there and that they had questioned her throughout the night. They also told me that they had followed her to my house. They also said that she had talked. When I said I did not believe them, they challenged me to ask them whatever I liked about her. I therefore asked for her physical description and what they said only confirmed what was already evident. At any rate, this is what they said: pale complexion, brown hair, light-coloured eyes. They then described her clothing: turquoise skirt, blue jumper and hand-made sandals. On the afternoon of that same Tuesday, or more likely Wednesday - I do not remember the exact day - when a number of us detainees were in the courtyard, at a discreet distance from each other, I saw her when I lifted the bandage from my eyes a little. She was dressed just as my interrogators had said, and as I had seen her on other occasions, before our arrest. She signalled or waved to me. She looked ill. Later, we were brought, with other detainees, to a large room where some bedrolls were put down and we were allowed to rest. I was beside "Cecilia" (or Jenny or Patricia, as I know her) and again I saw her. She told me not to worry. The next day I saw her again in the courtyard. I also heard her speaking and being asked questions, but after Friday, 20 January, I did not see her again. I only heard her on various subsequent occasions, during the following week. Between 31 January and 5 February, some time in the middle of the week, I heard her voice when she was being subjected to a lengthy interrogation. At about 6 p.m. on Saturday, 4 February, I heard her for the last time when I was visiting the toilet. She was saying goodbye to one of the security agents.

3. At the Office of the Second Military Prosecutor, I repeated what my interrogators had forced me to say when I was in the place described in paragraph 1, namely that I had not been arrested on 17 January, but on 2 February, when I had returned from saying goodbye to "Cecilia" at Pudahuel Airport; that between 17 January and 2 February I had been staying at Viña del Mar, "having been frightened by the incident at La Cisterna"; that "Cecilia" had telephoned me at my flat on 2 February to say that I should drop her at the Airport; that she had then come for me at about 1 p.m. and that we had gone out to Pudahuel. They made me add that I could not know to where she was travelling, on what flight or by what airline. They also made me say that "Cecilia" was the head of MIR intelligence. All these statements are completely false, since they were obtained by force or methods of intimidation applied by security agents. I hereby declare once again that I was

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arrested, as already stated, on 17 January and from that day I was absolutely certain that "Cecilia" had also been arrested. At the Correctional Establishment, I learned that her real name is "Haydée Palma Donoso", which information I received from her mother - Sofia Donoso Quevedo - and her sister - Sara Palma Donoso - both of whom were also held in the same place of detention. They too, saw her in that place, where we were held incommunicado in the custody of security personnel.

(Signed)

B. Excerpts from a document entitled "List of persons detained from January 1978 to the present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978

JANUARY 1978

Serial No.	Full name	Date of arrest	Charges	Date of referral	Referred to
1.	FIGUEROA DURAN GUILLERMINA GUMERCINDA	16.1.1978	MIR collaborator. Knew of the existence of stashes of firearms and "Cura Luis" meetings at San Isidro 1414	20.1.1978	Office of the Military Prosecutor
...					
3.	DONOSO QUEVEDO SOFIA HAYDEE	16.1.1978	MIR collaborator. Holding a false identity card, withholding information about and concealing GABRIEL RIVEROS RONELLO, a senior member of MIR	20.1.1978	Office of the Military Prosecutor
4.	GIADROSIC FIGUEROA AURA ELVIRA	16.1.1978	MIR collaborator. Knew of the existence of stashes of firearms and "Cura Luis" meetings at San Isidro 1414	20.1.1978	Office of the Military Prosecutor
5.	GIADROSIC FIGUEROA DINKO VLADIMIRO	16.1.1978	MIR collaborator. Knew of the existence of stashes of firearms and "Cura Luis" meetings at San Isidro 1414	20.1.1978	Office of the Military Prosecutor
...					
9.	PALMA DONOSO SARA ELIANA	16.1.1978	Active member of MIR, carried false papers, knew the whereabouts of MIR member RIVEROS RONELLO, alleged to be an operative at the Universidad Técnica del Estado (State Technical University) at Concepción	20.1.1978	Office of the Military Prosecutor
...					
13.	WILK GONZALEZ ISABEL MARGARITA	16.1.1978	Suspected of subversive activity		Released, Amnesty Act, April 1978. Office of the Military Prosecutor
...					

C. Letter from the Minister of the Interior dated 25 January 1978 addressed to the President of the Court of Appeals of Santiago

From: Minister of the Interior

To: President of the Court of Appeals of Santiago

1. I acknowledge receipt of your above-mentioned note requesting information in connexion with the writ of amparo indicated in the reference and drawn up in favour of Guillermina Figueroa Duran, Aura Elvira and Dinko Giadrosic Figueroa.
2. First of all, I must inform you that this Ministry has no record whatsoever of the persons referred to, nor has any order or resolution concerning them been issued by this Secretariat of State.
3. Since reference is made in the text of the writ of amparo to the arrest of the subjects of the writ and security agencies are stated to be presumed responsible for such arrests, the undersigned has today made application for a statement from those agencies, in order to substantiate or refute the facts reported.
4. When this information is received it will be forwarded immediately to the Court.

Yours faithfully,

(Signed) RAÚL BENAVIDES ESCOBAR
Division General
Minister of the Interior

D. Information submitted by the Government of Chile on the arrests and detentions in the Dr. Haydée Palma Donoso case

The following documentation is attached for information regarding this case:

- (a) A photocopy of confidential communication No. 1916 of 17 May 1978 from the Director-General of Investigations to the Under-Secretary of the Ministry of the Interior;
- (b) A photocopy of the report on Haydée Palma Donoso.

The conclusions drawn after requesting information on this case are a matter for the Government's attention and concern.

The Working Group apparently stated that "in conclusion, Haydée Palma was arbitrarily arrested in Chile, in violation of legal rules and formalities, and, having been held for a long time incommunicado, during which time she was subjected to physical pressure, was illegally expelled from the country, the Government security agents (CNI) being responsible for all of those acts". (SIC)

With regard to the above, the following considerations are relevant:

1. The persons arrested were placed at the disposal of the appropriate judicial authorities within the legal time limit.
-

2. A search was being carried out for members of recognized terrorist organizations such as the Movimiento de Izquierda Revolucionario (MIR), whose terrorist character was demonstrated by the armed resistance to arrest. All this was reported by the media (newspapers and television), which carried interviews with testimony from the neighbours.

3. With regard to the supporting evidence evaluated by the Group, it should be borne in mind that, for reasons which need no explanation, the testimony given by the mother and the sister cannot be absolutely objective. It is a curious coincidence that all the testimony was given on the same date and in the Correctional Establishment where the persons who made the statements are detained. This would suggest that, since those persons were not incommunicado, they could perfectly well have agreed on what they would say.

Even so, there are some discrepancies; for example, Bernarda Santelices states that she witnessed the arrest of "an elderly woman whom I did not know", whereas Sara Eliana Palma Donoso maintains that she was arrested with her mother and that they were put into a car together.

Wilk's statement is also questionable if carefully analysed: she admits not having told the truth to the Prosecutor, to whom she made the same statements that she had been forced to make to her interrogators under pressure. One could then ask whether the Prosecutor also brought pressure to bear on her so that she would repeat the same thing. If that was not so, why did she conceal the truth at that time, and then claim to be telling the truth in the attached notarized statement?

4. A writ of amparo was submitted on 6 February 1978 despite the fact that a warrant for her arrest had been issued by the Office of the Military Prosecutor on 27 January 1978.

5. With regard to the fact that the Ministry of the Interior stated that it would apply to the National Information Agency for information on this matter, it should be pointed out that that is the precise function of that department, namely to inform the Government of the situation of persons concerning whom information or particulars are requested.

To conclude from the above that "the unusual linking of CNI with ordinary police procedures, should be noted, as, in theory, it is not empowered to make arrests, even in cases that are 'out of the ordinary' or of a political character" shows that there has been a considerable misunderstanding.

In fact - not in theory - the National Information Agency (CNI) has no power of arrest, as the Group was able to verify in Chile. It is competent only to question persons and hold them in custody when instructed to do so by the Ministry of the Interior.

6. Lastly, citing the Peruvian periodical Marka, which stated that Haydée Palma was deported to Peru after being detained for a long period, is not a sufficient basis for the conclusion, given the nature of that publication: it is a politically slanted periodical, as is evident from its use of the term "comrade".

7. Lastly, it must be stated that Haydée Palma was arrested in Lima, Peru, according to an Interpol card index requesting information; she is residing in Lima and is under investigation. Furthermore, according to a report sent to Chile in Brief Postal Message No. IP 508/78 of 3 May 1978, Haydée Palma Donoso was expelled from Peru and sent to Cuba on 18 April 1978 on a Cuban airlines flight.

Conclusion:

The evidence submitted to the Working Group concerning the arrest, detention incommunicado and illegal expulsion of Haydée Palma Donoso is not convincing in the Government's view.

The evidence seems to be deliberately calculated to prove actions which the Government affirms did not take place. The information gathered in subsequent inquiries shows that Haydée Palma could have left the country illegally when a warrant for her arrest existed, and that, having entered Peru illegally, she was expelled from that country to Cuba.

Annex XXXVI

MATERIALS RELATING TO THE ARREST AND DETENTION OF HECTOR RIFFO ZAMORANO
AND LUIS MATURANA MATURANA

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- B. Excerpt from a document entitled "List of persons detained from January 1978 to the present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978
- C. Letter dated 9 May 1978 from the Minister of the Interior addressed to the President of the Court of Appeals of Santiago
- D. Information submitted by the Government of Chile

A. Information received from Hector Riffo Zamorano

1. Minutes of the testimony of Mr. Riffo Zamorano before the Group on 16 July 1978

Mr. Héctor Eduardo Riffo Zamorano said that he had been arrested twice. He had first been arrested on 24 June 1975 in his apartment, where he had been stripped and his clothes searched. Later, he had been put blindfolded into a car and taken to a guard house where he was bound hand and foot, gagged and thrown on a mattress. For 15 minutes he had been given electric shocks and told that, if he wished to reply, he should make a sign. Two days later he had been taken to Villa Grimaldi. There he was beaten and interrogated about the contradictions found in his statement, and made to sign a five to six page document, which he was not allowed to read. On Thursday, 26 June, he had been interrogated again, about various persons and places, while subjected to continual beatings. Since the information he gave turned out to be false, he was made to hang by the arms for two hours. His shoulder had felt dislocated from the ordeal. He had then been taken down and put on the "grill", which is a metal bedstand, where he was given electric shocks. On Wednesday of the following week he had been allowed to clean up and shave, and then there had been an inspection. Half an hour later a person had arrived, who was given his name and particulars.

The second time he had been arrested by civilian personnel, on 4 May 1978 at the entrance to the school where he taught, and taken to Conchaví. When he asked the reason for his arrest he was told that Marxist literature had been found at his home. He was beaten and interrogated by Captain Cubillos, Adjutant at the North Police Headquarters, who threatened to kill him unless he said who had printed and distributed the pamphlets. He was asked for information about a person whose name had been found in his jacket, Mr. Maturana. They went to the latter's place of residence and took away his son, and later also took away the father. There both father and son were tortured with electric shocks and the father was strung up for admitting that he had been active in the socialist party. Then Mr. Héctor Eduardo Riffo was taken into the interrogation room and was tied to the legs of a table. He was given electric shocks and asked about the participation of foreigners in the demonstration held on 21 May. When he was seen to resist, he was subjected to a more intensive interrogation with simultaneous beatings and electric shocks. He was then kept without food for several days and left to sleep on the floor. Mr. Maturana's son was released, but he and Mr. Maturana were kept under arrest. Later he was taken to the North Police Headquarters, where he was interrogated by Captain Cubillos. He was asked about the militant activities of the Vicaría de la Solidaridad, and about the Cardinal. Later he was taken to Malloco to a cellar, where he was stripped, tied to a cot and submitted to an interrogation conducted with electric shocks in an attempt to implicate the Vicaría in political movements. He was kept without food for three or four days. He identified that place as the Santa Engracia hacienda. There he was subjected to an interrogation with hypnosis. He was given a tranquillizer, and then a psychologist interrogated him and tried to convince him to work for them; he resisted the administration of the pill, believing that it was poison. During the interrogation he was told that if he collaborated he would be ensured safety for himself and his family, otherwise action would be taken against them. Later he was taken to the provincial court, and then to the Court of Appeals, and was finally released for want of grounds. He suggested that hypnosis was going to be used to obtain unwitting collaboration from people.

2. Note supplied by Mr. Riffo Zamorano summarizing the information presented to the Group

The person in question, a teacher at the Conchalí Industrial School, Santiago, Chile, was twice arrested by security agents.

The first arrest, after which he was detained for 11 months, took place on 24 June 1975 at a friend's house where he had gone to meet Ricardo Lagos Salinas, a Socialist Party leader, missing since that date.

That arrest was carried out by agents of the Directorate of National Intelligence (DINA) who had already apprehended Ricardo Lagos Salinas at the time when they arrested Riffo.

Both were taken to the detention and torture compound known as "Villa Grimaldi", where they were interrogated and tortured so that they would give information on party activities. There their statements were compared in an effort to find some contradiction which might make them distrust each other.

Riffo was taken out on several occasions and taken to suspected "contact" places so that other members of the Socialist Party might be arrested.

During his detention he was able to establish that Carlos Lorca Tobar, a former member of parliament and leader of the Socialist Party, who is currently missing, was also being held in the same place and was kept handcuffed to a cot.

After being in "Villa Grimaldi" he was taken to the Cuatro Alamos detention compound, where he was held incommunicado, and was later transferred to Tres Alamos and Puchuncaví, from which he was released on 28 or 29 May 1976.

Subsequently, on 4 May 1978, he was again arrested near his place of work by carabineros accompanied by persons in plain clothes.

He was moved among various carabineros stations and secret compounds where he was tortured and interrogated about alleged political activities. As a result of his situation, some members of his family and a neighbour and his son were also arrested.

During one of his moves he was taken to the offices of the north and south Vicarías where the agents took photographs.

Many of the interrogations to which he was subjected were aimed at determining his possible connexions with officials of the Vicaría de la Solidaridad on which he was interrogated exhaustively.

They showed him various publications and pressed him to admit that they had been prepared by that Church body.

He was also threatened with death and shown a file of photographs in which he managed to distinguish a photo of Carlos Lorca. The security agents said that they had been authorized to cremate 200 of the people on that file, and added that the number might increase by 100 or 200 more with those persons who were currently joining clandestine party political organizations.

He was forced to write from dictation on various subjects, and also had to note down the names of persons who, according to what was dictated to him, held responsibilities of political leadership within the parties.

Furthermore, in addition to physical and psychological ill-treatment, he was subjected to a session of hypnosis, after being forced to take some pills, presumably drugs. They then interrogated him and subjected him to various tests, and even made him hold a firearm.

He was given instructions to make contact with political organizations once he was released in order to obtain information, which he was to pass on to security agents at a place to be specified by them.

On 16 May, 12 days after his arrest, he was placed at the disposal of the Santiago Court of Appeals, where he made a statement. He was then sent to the public jail as a prisoner. Two days later he was transferred from there to the Santiago penitentiary and was released from there on 20 May, after making a further statement to the judge of the Court of Appeals.

Since his release he has had to take many precautions, as both he and his family are afraid that he will be arrested again.

B. Excerpt from a document entitled "List of persons detained from January 1978 to the present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978

MAY 1978

Serial No.	Full name	Date of arrest	Charges	Date of referral	Referred to
1.
2.	RIFFO ZAMORANO VICTOR EDUARDO	5 May 1978	Caught engaging in subversive activities	--	Office of the Second Military Prosecutor
3.	MATURANA MATURANA LUIS CLAUDIO	5 May 1978	Caught engaging in subversive activities	--	Office of the Second Military Prosecutor

C. Letter dated 9 May 1978 from the Minister of the Interior addressed to the President of the Court of Appeals of Santiago

From: Minister of the Interior

To: President of the Court of Appeals of Santiago

1. I refer to the Court's note mentioned in the reference, in which I am requested to report on whether this Secretariat of State has ordered the arrest of Luis Claudio Maturana Maturana and Luis Claudio Maturana Barrios, regarding whom writ of amparo No. 213-78 has been drawn up.

2. In that connexion, the relevant card indexes of this Ministry having been checked, I can assure you that there is no record of the persons named in the writ of amparo; that no order or resolution concerning them has been issued by this Secretariat of State; and that there is no record of their having been arrested by any of the Security Services.

Yours faithfully,

(Signed) SERGIO FERNANDEZ FERNANDEZ
Minister of the Interior

D. Information submitted by the Government of Chile

In connexion with this case, the carabineros are looking into the charges made by Riffo Zamorano, particularly the one concerning the alleged arrest of José Olguín Contreras and Luis Gutiérrez, both of whom are also carabineros and, according to Mr. Riffo Zamorano, his son-in-law and neighbour respectively.

Before any conclusions are reached in this case Mr. Riffo Zamorano's statements will have to be compared with those of Luis Maturana Maturana.

The Working Group will be informed of the results of this process in due course.

However, the Government wishes to make the following statement concerning this case.

1. The report forwarded by the Working Group in this case is based solely on a notarized statement by the person in question which has no other information to substantiate it.

2. The accusation made by the witness regarding the conduct of the carabineros is absolutely implausible in view of the nature of that institution and the way in which it normally operates.

3. This is borne out by an analysis of the content of the witness's statement; it is impossible to believe that the witness made no mention of the alleged facts to a Judge of the Court of Appeals when he made a statement of particulars.

Moreover, he stated that he limited himself to upholding the statements made to his captors, which he says were obtained under pressure, although he does not venture to say that pressure was also brought to bear on him by the Judge of the Court, Mr. Valenzuela.

Furthermore, he contradicts himself when he maintains that he did not tell the Judge anything about what had happened "because of the Judge's incredulity" and so agreed to certain charges. However, in the next line he states, in connexion with Maturana's release, "since the only person who was willing to listen to me on the subject of my total innocence was in fact the Judge, Mr. Valenzuela Erazo".

It should also be pointed out that the witness, who was so terrified of what might happen to him in the future (see the last part of his statement), did not mind failing to meet security personnel to report to them as he had previously agreed he would, but he was afraid of stating the truth to a Judge of the Court of Appeals.

4. For the above reasons the Government feels that this accusation, like so many others, is deliberate, and that until such time as the events referred to therein have been effectively substantiated and further information has been obtained, the accusation cannot, in view of its apparent improbability, be entertained by the Group.

Annex XXXVII

INFORMATION SUBMITTED BY THE GOVERNMENT OF CHILE IN RELATION
TO THE ARRESTS IN THE TOWN OF PEÑAFLOR

A. Carabineros communication No. 35, 22 June 1978

CARABINEROS DE CHILE
Third Company Talagante
Peñaflor Sub-station

No. 35

PEÑAFLOR, 22 June 1978

To the National Information
Agency, Santiago
Santiago.

The detainees listed below are being handed over to the National Information Agency, Santiago:

1. MARTA BETZABE VEGA PATRI, 33, married, Chilean, agronomist, university studies, identity card No. 5,203,856-1 issued at Santiago, resident at Calle Baquedano No. 677, Santiago.
2. PAULINA LEONIDES SILVA DONOSO, 29, single, Chilean, rural extension worker, university studies, identity card No. 5,208,125-K issued at Santiago, resident at Calle Jorge Luco No. 779, La Cisterna.
3. RIGOBERTO BELISARIO ORELLANA AVILA, 40, married, Chilean, agricultural worker, elementary studies, identity card No. 4,205,067 issued at Santiago, resident at Estación de Colina, Población San Ramón s/n. de Colina.
4. MANUEL ANTONIO DIAZ SILVA, 37, married, Chilean, agricultural worker, elementary studies, identity card No. 87,999 issued at Puente Alto, resident at Población El Tranque, Calle Nicanor, Plaza No. 947, Puente Alto.
5. JOSE CRUZ TORRES JARA, 58, married, Chilean, chauffeur, elementary studies, identity card No. 1,183,248-2 issued at Santiago, resident at Calle Los Sauces No. 12379, paradero 36 1/2 Villa El Esfuerzo, San Bernardo.
6. JOSE MANUEL ALMARZA BASTIAS, 39, married, Chilean, agricultural worker, elementary studies, identity card No. 32,942 issued at Peñaflor, resident at Parcela No. 5, Asentamiento La Herradura, Peñaflor.
7. ORDANDO DEL CARMEN CUEVAS BASTIAS, 36, married, Chilean, agricultural worker, primary studies, identity card No. 40,009 issued at Peñaflor, resident at Parcela No. 10, Asentamiento La Herradura, Peñaflor.

None of the above-mentioned persons has visible injuries or bruises, and none of them has any complaints against the Carabineros at the time of being handed over to the above Agency.

(Signed)

Seen and Approved

PEDRO BREVIS MARDONES
Senior Corporal of Carabineros
Non-Commissioned Officer on Duty

(Signed) GUILLERMO ARTURO COFRE SILVA
Captain of Carabineros
DEPUTY SUPERINTENDENT

B. Arrest order No. 94

REPUBLIC OF CHILE
MINISTRY OF THE INTERIOR
CONFIDENTIAL OFFICE

Arrest of the persons indicated
DECRETO EXENTO No. 94
SANTIAGO, 22 June 1978

H.E. the President of the Republic has today decreed the following:

CONSIDERING:

The provisions of article 1 of Decree-Law No. 1877 of 1977, and bearing in mind the provisions of article 1, paragraph 6(b) of Constitutional Act No. 3 together with article 13 of Constitutional Act No. 4,

I HEREBY DECREE:

Article 1 The following persons shall be arrested and detained in premises of the National Information Agency:

- MARTA BETZABE VEGA PATRI
- PAULINA LEONIDES SILVA DONOSO
- RIGOBERTO BELISARIO ORELLANA
- MANUEL ANTONIO DIAZ SILVA
- JOSE CRUZ TORRES JARA
- JOSE MANUEL ALMARZA BASTIAS
- ORLANDO DEL CARMEN CUEVAS TAPIA.

Article 2 The above-mentioned persons shall be subject to the supervision and control of the Military Garrison of Santiago or the authority of the Armed Forces or Carabineros in which these powers are vested.

For noting and transmittal,

(Signed) AUGUSTO PINOCHET UGARTE
GENERAL OF THE ARMY
PRESIDENT OF THE REPUBLIC

(Signed) SERGIO FERNANDEZ FERNANDEZ
MINISTER OF THE INTERIOR

C. Release order No. 99

REPUBLIC OF CHILE
MINISTRY OF THE INTERIOR
CONFIDENTIAL OFFICE

Release of the persons indicated
DECRETO EXENTO No. 99
SANTIAGO, 24 June 1978

H.E. the President of the Republic has today decreed the following:

CONSIDERING:

The provisions of article 1 of Decree-Law No. 1877 of 1977, and bearing in mind the provisions of article 1, paragraph 6 (b) of Constitutional Act No. 4.

I HEREBY DECREE:

Sole article. - Decreto exento No. 94 of 22 June 1978 ordering the arrest of the persons listed below is cancelled and the persons concerned are to be released:

MARTA BETZABE VEGA PATRI
PAULINA LEONIDES SILVA DONOSO
RIGOBERTO BELISARIO ORELLANA AVILA
MANUEL ANTONIO DIAZ SILVA
JOSE CRUZ TORRES JARA
JOSE MANUEL ALMARZA BASTIAS
ORLANDO DEL CARMEN CUEVAS TAPIA

For noting and transmittal,

(Signed) AUGUSTO PINOCHET UGARTE
GENERAL OF THE ARMY
PRESIDENT OF THE REPUBLIC

(Signed) SERGIO FERNANDEZ FERNANDEZ
MINISTRY OF THE INTERIOR

Annex XXXVIII

MATERIAL RELATING TO THE ARREST AND DETENTION OF
ARMANDO DEL CARMEN BARRIA OYARZÚN

Contents

- A. Minutes of the testimony of Mr. Barria Oyarzún before the Group on 17 July 1978
- B. Reports of medical examinations of Mr. Barria Oyarzún
 - 1. Report on medical examination made by the Institute of Forensic Medicine of Santiago on 11 July 1978
 - 2. Report on medical examination made on 17 July 1978
 - 3. Report on medical examination made at the Clinic of the Economic Commission for Latin America on 19 July 1978
- C. Excerpts from document entitled "List of persons detained from January 1978 to the present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978
- D. Information supplied by the Government of Chile

A. Minutes of the testimony of Mr. Barria Oyarzún before the Group on
17 July 1978

Testimony by Mr. Armando del Carmen Barria Oyarzún

Mr. Barria said that at about 10.30 p.m. on 29 June 1978 he had been arrested on the street by plainclothes security men. He had been handcuffed and taken in a locked vehicle to a place which he assumed to be in Santiago but which he had not recognized. That night, electric shocks had been applied to his genitals and anus and he had been struck in the stomach, genitals and anus at three separate sessions. He had later been tied, first with ropes from his feet to his chest, then with cloth and sacking, some of it wet, particularly around the chest. He had subsequently been taken to a dark room where he had been kept for two days without food, handcuffed and tied to the foot of a table so that he could hardly move.

He had later been taken to a larger room where he had been handcuffed with his hands behind his back and water had kept dripping from a tap. From the outset he had been subjected to intense psychological pressure; he had been told that he would become yet another missing person, that he would not get out alive, that his relatives would be tortured before his eyes, that his teeth and nails would be pulled out one by one, and that he would be pricked with pins. He had in fact been pricked with pins, especially around his shoulders. He had been kept in those two different places within the same premises for five days, from Thursday night to 2.30 a.m. on Tuesday. During the last three days, he had been fed once a day. He had been constantly interrogated and threatened throughout; his hands had always been kept secured behind his back by handcuffs, which were removed from one hand at mealtimes only.

On Tuesday, he had been taken to the Seventh Precinct police station, where he had been left tied in the sun for a few hours with the other person who had been arrested with him. They had then been taken to the back of Government House, possibly the Ministry of the Interior, led from the military vehicle to a smaller vehicle, blindfolded with adhesive tape and taken to a location which had to be outside Santiago, since it had been a very long journey undertaken at high speed; he believed it was the Santa Eugenia de Malloco plot.

On Tuesday night, his captors had threatened to kill him and mutilate his body. They had again applied electric shocks, struck him across the ears and the temples and kicked him in the stomach. They had then tied him and handcuffed him to a bed and had made him get undressed in the middle of the night for interrogation. During the interrogations he had been asked to what party he belonged, who the leaders were and where they did their printing. He had stated that he belonged to no political party but used to help the Maoist-oriented Popular Front. They had made him sign a statement blindfolded. They had then read it out to him, and it had contained statements he had not made. They had then prepared another statement, which they had made him sign blindfolded.

The following afternoon he had been taken to the state prison, where he had been held incommunicado. On Thursday he had been taken to the Court of Appeals, where he had been questioned by the Minister, Mr. Hernán Cereceda, to whom he had shown his entire body, indicating the haematomas and electric shock burns. The magistrate had allowed him to talk freely and had ordered that he should be examined at the Institute of Forensic Medicine; that had been done only on the Tuesday. He did not know the contents of the Institute's report.

On Friday he had been taken to the penitentiary, and during his stay there he had been questioned twice. On Saturday he had been released on bail of 100 pesos, paid by the lawyer from the Vicariate of Solidarity, but so far he did not know the nature of the charges against him. For an indeterminate period of time he would have to appear at the Court of Appeals every two weeks, and, given the situation in Chile, he feared for his safety and felt he should leave the country. He still bore the marks of the blows and electric shocks he had received, and he felt he was having a general mental breakdown.

B. Reports of medical examinations of Mr. Barria Oyarzún

1. Report on medical examination made by the Institute of Forensic Medicine of Santiago on 11 July 1978

Institute of Forensic Medicine

Case No. 19-78

Dr. CARLOS YBAR

REPORT No. 8-555/78 OF INJURIES TO:

Telephone 370389

ARMANDO BARRIA OYARZUN

Santiago - Chile

Sir,

In accordance with the request in your letter of 6 July 1978, I examined in this Institute, on 11 July 1978, ARMANDO DEL CARMEN BARRIA OYARZUN, 29, single, unemployed, domiciled at Almirante Montt No. 845, Apartment 14, who reported that he had been assaulted on 29 June 1978.

Examination:

Linear ecchymotic shadow on back of left hemithorax, at the level of the ninth left rib.

Ecchymosis on the inside of both thighs, on the back of left thigh and left leg.

Maculo-papules on the trunk (ventral and dorsal) and on the limbs (scabies).

CONCLUSIONS:

Lesions can be explained by the action of a blunt instrument; clinically slight.

He will recover, if there are no complications, in ten to twelve days, and will be incapacitated for six to eight days.

Yours truly,

(signed) Dr. Renato Gutiérrez Acuña

THE JUDGE OF THE COURT OF APPEAL

SANTIAGO

2. Report on medical examination made on 17 July 1978

On 17 July, when examined by a doctor, he showed the following symptoms:

"Vital signs normal: Extensive haematoma on the inside of the right thigh at the rear and on the right calf. Residual lesions on both wrists. Erosions due to crushing by a metallic object? Bruise and tenderness ends of both tibiae with superficial erosion in the process of cicatrization. Old punctiform lesions caused by a pointed object on both sides of abdomen and on the inside of both thighs compatible with first-degree burns in process of cicatrization. Obvious signs of hyperexcitability, neurosis, and anxiety. Santiago, 17 July 1978".

3. Report on medical examination made at the Clinic of the Economic Commission for Latin America on 19 July 1978

Santiago, 19 July 1978

Mr. Theo C. van Boven
Director
Division of Human Rights

Sir,

At the request of Mr. Joseph F. El Haj, Director of the Division of Administration of ECLA, I have given Mr. Armando del Carmen BARRIA Oyarzún a general medical examination, with the following results:

Male, 29 years of age, height 1.66 m, weight 76.100 kg. General condition good, lucid, well oriented in time and space. Blood pressure: 122/78 mm/Hg; pulse 78 per minute, regular, range and form normal. Respiration: 24 per minute. Adolescent acne of the trunk, especially on the back.

Head. Discrete scurfy inflammatory lesion in the occipital region.
Eyes: colour vision normal; vision: right eye 20/25, left eye 20/30; pupils equal, react to light and accommodation. Fundus oculi: normal.
Ears: hearing normal for a low voice with good lateral discrimination. Ear-drums intact. Nose: normal. Mouth: some teeth missing. Two third-degree caries. Tongue: moist and clean. Large tonsils.

Neck. Thyroid normal, mobile.

Thorax. Ribs normal. Good respiratory mobility. No additional bronchopulmonary sounds. Vesicular murmur maintained.

Heart. Cardiac tones normal. Systolic murmur grade II in the endoapex.

Abdomen. Depressable, no lumps could be felt. Liver within normal limits. Spleen could not be felt. No hernial orifices. On both sides, iliac fossae and epigastrium punctiform lesions may be observed, some surrounded by a small erythematous halo: most are in process of cicatrization.

Genitals. Normal. Bilateral intertrigo in the scrotal-perineal folds.

Limbs. Upper: residual lesions of an erosive nature on the front and back of both wrists (in process of cicatrization). Lower: erosive residual lesions in process of cicatrization on the front and lower third of both legs. Extensive ecchymosis and haematoma of the back of the lower third of the left thigh and upper third of the same leg.

Nervous system. Muscle tones, motor and sensorial functions in order. Rotular ankle and plantar reflexes normal. Romberg's sign normal.

Lymphatic system. Slight micropolyadenia in the left groin.

Spinal column. Mobility preserved. No painful places.

Conclusion and diagnosis:

Adolescent acne

Gonitoperineal intertrigo

Haematomas and ecchymosis in evolution on left thigh and leg

Multiple punctiform erosions on skin of abdomen

Erosions of both wrists and lower third of both legs in process of cicatrization.

(signed) Dr. Fernando Gofí Luque
No. Medical College 2806, Santiago
Chief
ECLA Clinic

C. Excerpts from document entitled "List of persons arrested since January 1978 to present date, and particulars of proceedings relating to them", presented to the Group by the Director of the National Information Agency (CNI) on 17 July 1978

COPY No. ___/ SHEET No. ___/

July 1978

Serial No.	Last and first name(s)	Date of arrest	Charge	Date of referral	Referred to
1.	BARRIA OYARZUN ARMANDO DEL C.	4 July 1978	Having in his possession pamphlets and literature of the Socialist Party, the Communist Party and PCR	-	Office of Second Military Prosecutor

D. Information supplied by the Government of Chile

The following documentation is attached for information in connexion with this case:

- (a) Photostat copy of the report of the Carabineros dated 4 July 1978 according to which the person in question was detained in a case of flagrante delicto, as indicated in the official report.
- (b) Photostat copy of the request dated 6 July 1978, and submitted to the Court of Appeal of Santiago by the Ministry of the Interior, for the application of the provisions of Act No. 12,927 concerning the Security of the State.
- (c) Photostat copy of Official Document No. 1641 dated 7 July 1978 transmitted to the Ministry of the Interior by the Judge of the First Criminal Court of Santiago, enquiring whether Armando de Carmen Barría Oyanzún is or is not being held on the instructions of that Ministry.
- (d) Photostat copy of the report dated 11 August 1978 on the situation of Armando de Carmen Barría Oyanzún.

From the information furnished by the Working Group on this case, it is possible - in the light of the additional information - to draw the following conclusions which should be taken into consideration:

1. Apart from the statement of the claimant, there is no evidence to confirm that he was arrested on 29 June 1978. On the contrary, the communication from the Carabineros, a document which no one has ever contested and which also constitutes an official document, states that the arrest took place on 4 July 1978.
2. This is confirmed by the fact that on 6 July 1978 the Ministry of the Interior filed the appropriate request in the Santiago Court of Appeals in conformity with the usual procedure established under Act No. 12,927 concerning the Security of the State.
3. The proceedings conducted by the Judge of the Court of Appeals do not indicate that the Court had information that the arrest had taken place on the date alleged by the claimant.
4. With regard to the content of the medical reports, it should be noted that the report cited in the minute dated 17 July - which does not give the name of the practitioner who signed it - differs from that produced by the ECLA physician. With regard to erosions on the wrists in the process of cicatrization, the first of the two reports includes the words "Erosions due to pressure with a metallic object"; followed by a question mark, whereas the second in a serious and professional manner makes no affirmation or speculation in that regard.

Furthermore, the first certificate states that the person examined showed "obvious signs of hyper-excitability, neurosis and anxiety", whereas the second, despite the fact that it is dated 19 July 1978, only two days after, says nothing in that respect and indicates that the nervous system was normal.

Conclusion

"The accusation made to the Group in this specific case does not involve any of the human rights violations with which the Government is charged and must in all fairness be rejected by the Government, especially since the case has already been resolved by the Santiago Court of Appeals and the person in question was released after the Court had issued an order to this effect."

Annex XXXIX

REPORTS OF CASES OF ARREST AND DETENTION

Statement One a/

"I was arrested on ... January 1978 at ..., by plain-clothes policemen who came to [place of work ...]. The plain-clothes policemen showed me credentials from the Department of Investigations. They did not show me a warrant for my arrest or for a search, which they proceeded to carry out in my presence.

"After a few minutes, other policemen in plain clothes arrived, 5 men who had arrested ..., who showed signs of ill-treatment since his face was swollen and bruised and he had black eyes.

"Later on I recognized one of the plain-clothes policemen; when his photograph appeared in the press. He is Captain Amando Fernández Larios who was implicated in the murder of Orlando Letelier.

"These policemen made me get into a light blue private motor-car and during the journey they covered my eyes with scotch tape.

"The journey lasted over half an hour, and I had the impression that we were taking the main road through the suburbs of Santiago.

"Before we reached our destination I felt that the motor-car was going downhill. When we reached the compound, I was handcuffed and made to go down some stairs.

"When we reached a room, I was thrown to the ground and left there. From time to time I heard loud noises like metal objects falling or being used to strike blows.

"On the following day, I was taken to another room, my eyes were uncovered. I was shown photographs and was ordered to identify some of them. As I did not co-operate, they started to punch me in the face and in the stomach and to kick me. After that, they took me back to the room and left me handcuffed to an iron bedstead. I was allowed to sleep. I was not given any food.

"On ... I was again taken to a room and was undressed completely. They made me open my legs and, when I was in this position, they pulled down sharply on my genitals.

"Before interrogating me they administered a pill which had a soporific effect after a time.

"As well as beating me, they threatened to insert objects in my anus and pretended to do so with an object which they brought near me.

a/ In keeping with the Group's undertaking concerning confidentiality, the declarant's name and identifying details have been eliminated.

"While they were interrogating me, they brought in ... who, when he saw how I was suffering, told me that I should talk, that I should give information about a person called ... whom my captors were interested in locating.

"After this, they again took me to the room. At this time I was trying to identify the place to which I had been taken and I noted that it was a large country house. I heard a train go by, children's voices and people passing nearby.

"On Monday I was interrogated once again, and beforehand I was made to take the pill. I was taken to some kind of sitting-room and placed on a sofa wearing only my underwear.

"I heard soft music and a man's voice started to talk to me also softly. Then I was laid on the ground and cushions were placed under my legs. My legs were kept up and my head was kept down. I was aware that they were striking my legs with a wooden object, without causing me pain.

"The voice which spoke to me told me that there was a 50kg weight on my legs and then on my arms. I realized that they were trying to hypnotize me but I did not feel strange in any way. They made me conduct an imaginary orchestra.

"The hypnotism session ended when they burned my leg with a cigarette lighter and I jumped up. They threatened to arrest my wife and children and assault them in front of me. While they were telling me this, I could hear the piercing screams of a woman (afterwards I realized that it was a record).

"Subsequently I was interrogated and I admitted my political activities. After that I lost track of time somewhat, but around the fifteenth day they tidied me up and forced me to sign a statement to the effect that I had not been subjected to ill-treatment. They told me that I would be taken to the Office of the Military Prosecutor and they took me from the compound with my eyes blindfolded.

...

"Since my release and up to the present time I have noticed that there is surveillance at the printing works in which I am still employed."

Statement Two a/

Appeared on ... and stated that: He was arrested on ... May (1978) at his house by four plain-clothes policemen; taken to a Carabineros post at ... and transferred immediately to the police station at ... where, after identification, he was locked in a cell. Round about ... that night they began to question him and asked him where he had kept the propaganda material and who had given it to him. They were talking about a manifesto or declaration of principles which they had found in the possession of his brother-in-law ... and which was alleged to have been slipped under the door of his house.

a/ In keeping with the Group's undertaking concerning confidentiality, the declarant's name and identifying details have been eliminated.

On ... at 12 p.m. they took him with his brother-in-law, blindfolded them and took them to an unknown place, presumably near ... which they approached by a paved road. It could have been a depot for materials since there was a strong smell of benzine. They were left in a small room, still blindfolded and they heard a train and vehicles passing by.

At first, the police were courteous and tried to talk with them. After the first day, they applied electricity, first on the legs then, since the treatment did not work, they applied it on other parts of the body. They fixed a cable to the big toe of the right foot and wound another cable round various parts of the body. They asked me repeatedly about the distribution of pamphlets, whether I knew the people who were working in the organization of the Communist Party; they also questioned me about a certain ..., a communist ex-mayor of ..., and about ... As I answered that I knew nothing, they told me that they would continue the interrogation with my wife and that they would also bring all my children and I would see what they would do with her and one of the interrogators told me that I could be sure that he would be the first.^{a/}

They left me alone all one night. On ... they told my brother-in-law ... that we should say goodbye to each other since they were going to give us 320 volts. They tied us to an iron post with electric cables. Then they made a door bang or creak, and I heard screams which did not come from my brother-in-law. When they realized that I was not impressed, they maltreated me. They asked me who had given me the pamphlets, that I should tell them the name of the person. I told them that I could not name anyone and that it might have been ... I should say that they also applied the current to my genital organs.

Afterwards the treatment was not as bad. They told me that they wanted to be friends and in proof of this they gave me beefsteak, rice, coffee, etc. four times during the day.

Finally, on Friday, 2 June at 8.40 p.m. we were taken, still blindfolded, to a Citroen AK-6. We arrived at 10 p.m. They found the doctor from the Department of Investigations, who asked them how we were and whether we had been beaten. We told him that we were well and that we had not been beaten. They left us at the bus-stop at the station.

At present I have a poor colour and pains in the area of the right lung, and all down the right side. It is difficult to breathe since it hurts me. At first my feet hurt because of the cables, but now they don't.

Statement Three a/

... is 23 years old, married, and was arrested on ... February 1978 on the street.

He gives the following information concerning his arrest: on .. February 1978 he was arrested in ... at ... a.m. when returning by car after leaving ... at his house.

a/ In keeping with the Group's undertaking concerning confidentiality, the declarant's name and identifying details have been eliminated.

"I was stopped by some men in a yellow Chevy Nova. The men identified themselves as officials of the Investigaciones and told me that they had a warrant for my arrest. They made me get into the car and took me to a place which I did not recognize. I imagine it must have been a CNI interrogation centre, where other arrested persons were taken. They put me in a damp underground cell, covered my eyes, sat me on a chair and bound my feet and hands. Since the interrogation began at dawn, they put some questions to me first and I sent them to my house for a mimeographed manual, so that my family would learn about my arrest since they had no idea about my political activities. When the mimeographed document had been brought and after an extensive search had been carried out in the house, the interrogation began and lasted approximately three whole days in that same place. I was prevented from sleeping for the whole of that period. They took it in turns to come in and hit me, without respite. They struck me on the head and all over my body. I lost consciousness for periods whose length I cannot specify. They applied electric current to all parts of my body and on a metal bed. Afterwards they made me get into a van, and near a river they put me into a Peugeot and took me to ... I can say that the telephone number of the place was ... and that a certain ... was in charge of the house. I have the idea that the person in charge of the interrogation and the torture in the first detention centre was Lieutenant Colonel Moren, who was nicknamed "el ronco". In ... on the last day they applied the current to my ankles, wrists and other parts of my body. They began to question me about my military relations. They took photos of me with objects which did not belong to me, papers, etc. The person who took the photos was a tall fair man, with long moustaches. I was seen by a dark-haired doctor, somewhat bald, about 45 years old who made me sign a statement that I had not been ill-treated. They took a statement from me in which I do not know what they wrote and which served as the basis for my questioning in the Office of the Military Prosecutor. They then took me to another Peugeot and drove me to Villa Granaldi where, it seemed, they received different instructions and they took me to my home.

Early in March I was again arrested for questioning, by order of the Office of the Military Prosecutor, and then transferred to the Penitentiary where I was kept in solitary confinement for ... days and then moved to Row 5. I was finally released under the amnesty law on ... May of this year.

I have the impression that I have been constantly followed and watched, by more than one person. I am unable to continue my studies and work in a regular way".

Annex XL

INFORMATION SUBMITTED BY THE GOVERNMENT OF CHILE ON CERTAIN
PRISONERS IN THE SANTIAGO PENITENTIARY AND THE VALPARAISO JAIL

A. List of prisoners in Santiago Penitentiary, Row 5, with particulars of offences and courts

1. ALBALLAY GONZALEZ, ELISEO. Charged with robbery with manslaughter, Ninth Criminal Court, Santiago, case No. 18,009-7.
2. AGUILERA PAVEZ, JOSE GREGORIO. Charged under Act No. 12,927, and also with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Case No. 1,986-70, Office of the Second Military Prosecutor, Santiago.
3. AGUAYO IBACETA, JORGE. Charged with the offences listed in article 4 (a) and (f) of Act No. 12,927, Santiago Court of Appeals. On 21 July 1978 the Examining Judge released him on bail, case No. 19-78.
4. ALARCON ALARCON, RICARDO. Charged with robbery with intimidation and robbery with violence, Fourth Criminal Court, San Miguel. Case No. 11,517.F.A.
5. ALVAREZ TAPIA, JAIME ABDON. Charged with the offences listed in article 6 (a) and (g) of Act No. 12,927, Santiago Court of Appeals. Case No. 11-78. Placed bombs in various parts of the city, and two army officers were injured whilst defusing one of them. The defendant is a member of the Movement of the Revolutionary Left (M.I.R.). Has been in custody since 10 May 1978.
6. AMIGO LATORRE, JUAN ESTEBAN. Charged with robbery with intimidation and robbery with violence, Fourth Criminal Court, San Miguel, Case No. 11-517-F.A.
7. ARAMBURU SOTO, NELSON. Charged with robbery with intimidation, Ninth Criminal Court, of Santiago. Case No. 13,235.
8. ARAVENA DIAZ, NOLBERTO ALEJO. Charged with robbery with intimidation, Fourth Criminal Court. Case No. 45,933/1.
9. BIZAMA CASTILLO, EUGENIO. Charged with robbery with intimidation, Ninth Criminal Court, Santiago. Case No. 18,009-7.
10. CARTER URRUTIA, JORGE. Charged by the Eighth Criminal Court, Santiago, with violation of Act No. 12,927 and also with robbery with intimidation and robbery with violence. Case No. 14,029.
11. CARVAJAL ROJAS, ALEJANDRO. Charged with robbery with intimidation and robbery with violence, Eighth Criminal Court, Santiago. Case No. 14,029.
12. CARAJAL GARCIA, ARNALDO. Charged with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (Vanguardia Organizadora del Pueblo).

13. CANCINO PADILLA, PEDRO. Charged with robbery by force, Third Criminal Court, Santiago. Case No. 119,630. The defendant has been sentenced to 7 years imprisonment and a further term of 1 year, 8 months and 12 days.
14. CARRASCO VALDIVIA, MARCEL PIERCE. Charged with robbery with intimidation in Branch Office No. 2 of the Postal and Telegraph Service, Seventh Criminal Court, Santiago. Case No. 77,839.
15. ESPINOZA ESPINOZA, FERNANDO. Charged with robbery with intimidation and manslaughter, Ninth Criminal Court, Santiago. Case No. 18,009-7.
16. GALLARDO ACEVEDO, ULISES. Charged with robbery with intimidation, Ninth Criminal Court, Santiago. Case No. 18,009-7.
17. GODOY ORTIZ, SAMUEL ERASMO. Charged with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).
18. IBARRA ROCCO, RICARDO. Charged with trafficking in narcotics drugs, Ninth Criminal Court, Santiago. Case No. 22,998-9. The defendant has been sentenced to 5 years and 1 day's imprisonment.
19. JORQUERA GALAZ, GALVARINO. Charged with offences against Act No. 12,927, and also with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).
20. LARROCHA CEJAS, JORGE. Charged with offences against Act No. 12,927 and with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).
21. LEIVA CASTRO, MARIO. Charged with robbery with intimidation, Ninth Criminal Court, Santiago. Case No. 18,009-7.
22. MADARIAGA CONTRERAS, WALDO. Charged with robbery with violence, Fourth Criminal Court, Santiago. Case No. 107,988.
23. MORENO FLORES, LUIS O. Charged with offences against Act No. 12,927, and with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter. Case No. 1,986-70. (V.O.P.).
24. MUNOZ URRUTIA, VICTOR. Charged with robbery with intimidation, Ninth Criminal Court, Santiago. Case No. 13,235.
25. PINTO BUSTOS, JUAN G. Charged with robbery with intimidation, Eighth Criminal Court, Santiago. Case No. 14,028-9.
26. QUILLODRAN MUNOZ, LUIS E. Charged with robbery with intimidation, Ninth Criminal Court, Santiago, Case No. 18,009-7.
27. ROJAS BUSTAMANTE, CARLOS. Charged with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).

28. ROJAS NUNEZ, IVAN. Charged with the offences listed in article 4 (a) and (f) of Act No. 12,927, Santiago Court of Appeals. Case No. 17-78. Has been detained since 23 June 1978.

29. VASQUEZ PARRA, LUCIANO. Charged with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).

30. VASQUEZ DIAZ, ROBERTO R. Charged with robbery with intimidation and manslaughter, Ninth Criminal Court, Santiago. Case No. 18,009-7.

31. VERGARA RUFFAT, DANIEL. Charged with offences against Act No. 12,927 and with robbery by force, robbery with violence, assault and battery against carabineros on duty and manslaughter, Office of the Second Military Prosecutor, Santiago. Case No. 1,986-70 (V.O.P.).

32. VIAL ARANDA, JULIO EUGENIO. Charged with robbery with intimidation, Ninth Criminal Court of Santiago. Case No. 13-235.

Santiago, 24 July 1978

B. Records of persons detained in Valparaiso Jail

1. ROBERTO SAPIANS RODRIGUEZ

(a) Case No. A-17 opened on 25 September 1973.

Offence: Offence under article 3 of Act No. 17,798.

Sentence: On 15 October 1973, he was sentenced to five years' imprisonment in the maximum degree.

Facts: In the course of a search carried out at the residence of R. Sapians R. on 12 September 1973, a 9 mm calibre machine-gun of unknown make was found. Information laid against him on 11 September 1973.

(b) Case No. A-137 opened on 8 January 1974.

Offence: Offence under article 10 of Act No. 17,798.

Sentence: On 15 March 1974, he was sentenced to three years' imprisonment in the middle degree.

Facts: Transportation of arms. He handed over a sub-machine-gun and a Colt revolver, both with ammunition, to Carlos Muñoz Sanches to keep for him. Information laid against him on 12 October 1973.

He was not freed under the amnesty because he had also been tried and convicted for ordinary offences, the details of which are given below:

Case No. 91,239 of the Third Criminal Court of Valparaiso, opened on 28 September 1973.

Offences: Smuggling and embezzlement of public funds.

Sentences: In the Court of Second Instance, on 20 January 1978, he was sentenced to 61 days' imprisonment in the minimum degree for smuggling and to a fine of 585.95 pesos (readjustable); and also to imprisonment for five years and one day in the minimum degree for the offence of embezzlement of public funds, as referred to in article 233 (3) of the Penal Code. Further, he was sentenced to the accessory penalty of permanent disqualification from holding public office and exercising political rights. He filed an appeal in the Supreme Court of Justice, which confirmed the above-mentioned sentence and ruled that the fine imposed for the offence of smuggling should be increased to 2,929.75 pesos and should not be readjustable. Decision dated 13 February 1978.

On 3 May 1978, he was notified of the final judgement.

On 24 May 1978, he paid the fine.

He has been held at the disposal of the above-mentioned Criminal Court since 28 September 1973.

2. NIBALDO HERNAN SALDIVAR TORRES

Case No. A/841. opened on 21 April 1977.

Offence: Offence under article 6 (c) of Act No. 12,927.

Sentence: On 26 April 1978, he was sentenced to 541 days imprisonment in the middle degree for the offence.

Facts: On 31 March 1977, he made an anonymous telephone call to Valparaiso Central Post Office, stating that there was a bomb on the premises and causing alarm among the public. Information laid against him on 5 April 1977.

3. JOSE FERNANDO SAAVEDRA ROMERO

(a) Case No. A-28. opened on 5 October 1973.

Offence: Offence under article 3, together with article 13, of Act No. 17,798.

Sentence: On 29 June 1978, he was sentenced to imprisonment for three years and one day in the maximum degree.

Facts: In September 1973 he had in his possession a "Walther" machine-gun, 9 mm calibre, with three clips of ammunition; a "Llama" 38 calibre revolver with two clips of ammunition and a handle, which he gave to Luis Soto Perez, in the street, to keep for him. Information laid against him on 4 October 1973.

(b) Case No. A-792 opened on 31 August 1975.

Offences: Offences under article 4 of Act No. 12,927, article 11 of Act No. 17,798, article 9 of Act No. 17,798 and article 274 of the Code of Military Justice. On 28 July 1978, the investigation was completed. The report requests that Jose Fernando Saavedra Romero should be sentenced for

various offences as follows: three years of exile in the middle degree, for the offence under article 4 (d) and (f) of Act No. 12,927; six years of imprisonment in the minimum degree, for the offence under article 11 of Act No. 17,798; five years and one day of imprisonment in the minimum degree for the offence under article 9 of Act No. 17,798 and seven years of imprisonment in the minimum degree for the offence of inciting armed forces to insubordination, as described in article 274 of the Code of Military Justice.

Report: dated 24 July 1978.

Facts: He engaged in political and subversive activities, belonged to paramilitary militias or combat groups, which were in possession of various firearms, participated in the preparation and distribution of the newspaper El Rebelde and was also involved in infiltration activities in the Army. Information laid against him on 7 April 1975.

4. JUAN ENRIQUE DE LA PARRA URBINA

Case No. A-834 opened on 13 June 1977.

Offence: Offences under article 4 of Act No. 12,927 and articles 4, 5 and 11 of Act No. 17,798.

Facts: He belonged to a group of persons who were engaged in clandestine political activities, holding meetings, distributing pamphlets attacking the Government and maintaining a safe house. He also carried a firearm at all times. Further, he tried to obtain information on the activities of the Chilean Army and was partly successful. Information laid against him on 10 June 1977. In this case, No. A-843, the formalities and investigation are being held up and it has not been possible to conclude the investigatory stage because the lawyer Mr. Raúl Burraza submitted a petition on 13 July 1978 requesting permission for Wenceslao Barrios Barrios and Lucía Tolosa Gajardo to leave the country. This request, together with the case, has been brought to the attention of the Commander-in-Chief of the First Naval Zone and the Chief of the Emergency Zone for a decision.

The inquiry will be concluded during the present week and a report will be issued.

LEGAL SITUATION CONCERNING JUAN NICARNOR JOFRE ZAMORANO AND
MANUEL ADOLFO MORALES GUARDIA, HELD IN VALPARAISO JAIL

1. The Office of the Prosecutor of the Army and the carabineros at Valparaiso is at present preparing case No. 237-78 against Juan Jofre Zamorano and another person for offences against Act No. 17,798 on the Control of Firearms and Explosives, following the discovery of munitions, arms and explosive materials reported in Communication No. 3 dated 21 March 1978 by the Third (North) Station of the Carabineros in Valparaiso;

2. On 23 March 1978 Juan Nicarnor Jofre Zamorano was arrested for his participation in, and responsibility for, the activities described. The accused was placed at the disposal of the Military Court on 27 March 1978;

3. On 25 March 1978 Manuel Adolfo MORALES GUARDIA was arrested for his participation in and responsibility for the same activities. The accused was placed at the disposal of the Military Court on 30 March 1978;
4. On 31 March 1978, the two accused, Juan Nicarnor JOFRE ZAMORANO and Manuel Adolfo MORALES GUARDIA, were charged and committed for trial for the offence of participating in, instructing and operating a combat group or militarily organized party using prohibited elements, explosives and weapons, as described in and punishable under article 8 of Act No. 17,798 on the Control of Firearms and Explosives together with article 3 of the same Act;
5. The defendants JOFRE and MORALES are now deprived of liberty and in preventive detention, with visiting rights, in Valparaiso Jail and are at the disposal of the Office of the Prosecutor of the Army and the Carabineros;
6. The defendants JOFRE and MORALES have confessed their participation and have made no charge or complaint of ill-treatment, oppression or violence against the prison establishment in which they are deprived of their liberty or against the Military Court;
7. Case No. 237-78 falls within the scope of the military penal procedure in times of peace and is now under investigation.

Annex XLI

INFORMATION SUPPLIED BY THE GOVERNMENT OF CHILE CONCERNING
ACTION TAKEN BY THE MINISTER OF JUSTICE TO SEPARATE PERSONS
ACCUSED OF CERTAIN CRIMES FROM COMMON CRIMINALS

"(A) COMMUNICATION NO. 1954 DATED 21 AUGUST 1978 FROM THE MINISTER OF JUSTICE TO THE MINISTER OF FOREIGN AFFAIRS

"In accordance with the undertaking which I gave to the United Nations Ad Hoc Working Group on Human Rights on 24 July last, I immediately issued instructions for the physical segregation, in all gaols and prisons throughout the country, of persons indicted or convicted by Military Courts and/or for offences against the Control of Firearms Act, of whom there are very few.

"The Gendarmería of Chile gave immediate effect to this Ministerial instruction, as can be seen from the documents attached."

"(B) COMMUNICATION NO. 52 DATED 21 AUGUST 1978 FROM THE DIRECTOR-GENERAL OF THE GENDARMERIA OF CHILE TO THE MINISTER OF JUSTICE

"1. In accordance with your instructions that persons detained, indicted or convicted by Military Courts and for offences against the Control of Firearms Act should be appropriately segregated, I wish to inform you that, on 28 July last, by Confidential Circular Letter No. 43, the Regional Directors of the Gendarmería were issued with instructions to take measures with a view to the execution and supervision of this order. A copy of this Circular Letter is attached.

"2. For your further information, the following are some of the establishments where the prisoners in question are being held:

(a) Santiago Penitentiary: In this establishment, 31 persons are being held under the conditions indicated. They are accommodated solely and exclusively in Row 5, which has been especially adapted for the purpose.

(b) In the Juvenile Detention Centre, Santiago Public Prison and the Centre for the Rehabilitation of Women at Talagante, one person is being held under the conditions indicated in each establishment, and in each case they are segregated from the other detainees.

(c) In La Serena Penitentiary, de Talca Penitentiary, Valparaíso Prison, Rancagua Prison and Concepción Prison, persons detained, indicted or convicted by Military Courts are suitably segregated from the other inmates.

(d) In the other penal establishments, there are very few persons in this category, or none at all; and, so far as the physical arrangements of each establishment allows, they have been segregated."

"(C) CONFIDENTIAL CIRCULAR LETTER NO. 43 DATED 28/7/78 FROM THE DIRECTOR-GENERAL OF THE GENDARMERIA OF CHILE TO REGIONAL DIRECTORS OF THE GENDARMERIA

"1. For reasons of good order, the undersigned Director-General directs that, upon receipt of this document, persons detained, indicted or convicted by Military Courts and/or for offences against Act. No. 17.798 on the Control of Arms and who are being held in establishments falling within his jurisdiction, must be segregated from other criminals and detained persons.

"2. You are required to take measures for the execution and supervision of this order".

Annex XLIII

LETTERS RELATING TO THE CASE OF 119 MISSING PERSONS

A. Letter dated 25 August 1975 from the Minister of Foreign Affairs addressed to the President of the Court of Appeals of Santiago

In an official communication from the Illustrious Court of Appeals of Santiago, you requested from the Ministry of Foreign Affairs information on various matters relating to articles published in the Buenos Aires periodical Lea and the Curitiba newspaper O Dia on extremists who have been killed or wounded or have escaped abroad.

In this connexion, the Ministry is able to give you the following information.

1. On completion of the appropriate inquiries, it has been established that the Buenos Aires periodical Lea, in the only edition which has appeared to date, published a list of 60 Chilean extremists reported to have been killed by their comrades-in-arms in various American and European countries. Our Embassy in Buenos Aires reported that the Lea news item originated in Mexico via FONEL (Fondo Editorial Latinoamericano), a news agency for articles and reports specializing in Marxist activities. In these circumstances it has not been possible to pursue the inquiry.

With regard to the Curitiba newspaper O Dia, the Chilean Embassy in Brasilia at first reported that the competent authorities in Brazil had said there was no such newspaper. Subsequently, however, it was ascertained in Curitiba that the publication in question is actually Novo Dia, the name under which the former newspaper O Dia reappeared seven months ago after a long interval.

Since its reappearance, Novo Dia has published only two issues, one of which, dated 25 June last, published another list of 59 Chilean extremists reported to have been killed or wounded or to have escaped in clashes with Argentine security forces.

According to the proprietor of Novo Dia, this report originated from comments made by some Argentine tourists whom he interviewed and information which was sent to him by letter from Mexico.

2. The Ministry of Foreign Affairs has no record whatsoever to the effect that the persons named in these articles have left the country. If they have left the country, they must have done so clandestinely.

3. There is no evidence that they have died in a foreign country.

4. The Ministry has received no official information from foreign authorities or persons regarding the authenticity of these reports.

Yours faithfully,

(Signed) Patricio CARVAJAL PRADO
Minister of Foreign Affairs

B. Letter dated 14 December 1976 from the Chief of the Confidential Department of the Ministry of the Interior to Mrs. Angeles Alvarez C.

This Secretariat of State has received your communication dated 7 December 1976 in which you request information concerning Mr. Patricio Urbina Chamorro, on whose behalf you are acting and who is presumed to have been arrested by security agents on 6 January 1975, since when his relatives have been unable to obtain news of his whereabouts.

In this connexion, it is my duty to inform you that no information about this person is contained in the Ministry of the Interior's confidential records, and that he has never been arrested by order of this Secretariat of State.

I would further call to your attention the fact that in a report published on the periodical Lea, year I, No. 1, dated 15 July 1975 (calle Brandsen 1,845, Buenos Aires), Mr. Urbina Chamorro's name appears under No. 55 in a list of 119 persons allegedly killed in guerilla clashes with the police, mostly in Argentine territory, or in fights or clashes among themselves. All these persons had left the national territory clandestinely.

Yours sincerely,

(Signed) Jaime LOPEZ ABARCA
Chief, Confidential Department

Annex XLIII

MATERIALS RELATING TO THE ARREST AND DISAPPEARANCE OF
GUILLERMO (WILLIAM) BEAUSIRE ALONSO

- A. Memorandum dated 15 September 1977 from the Government of the United Kingdom and one of the statements on the disappearance of Mr. Beausire transmitted to the Group by the Government of the United Kingdom

Her Britannic Majesty's Embassy have repeatedly made representations to the Ministry of Foreign Affairs of Chile with reference to the Anglo-Chilean citizen William Beausire Alonso, who disappeared in Buenos Aires on 2 November 1974. On 15 June 1976 the Rt. Hon. Anthony Crosland MP, then Secretary of State for Foreign and Commonwealth Affairs of Her Britannic Majesty's Government, sent a personal message to the Chilean Minister of Foreign Relations, Admiral Patricio Carvajal Prado, enclosing a memorandum summarizing declarations made by five unidentified persons who testified to having seen William Beausire in detention in Chile between November 1974 and July 1975, and asked the Minister for an exhaustive investigation into the matter. Admiral Carvajal's reply was given to the Foreign and Commonwealth Office in London on 10 November 1976.

Her Britannic Majesty's Government considered that the reply by the Chilean authorities to the request for a detailed examination was unsatisfactory. Consequently instructions were given to the United Kingdom Permanent Representative to International Organizations in Geneva to give a copy of the above-mentioned memorandum to the Ad Hoc Working Group on the situation of human rights in Chile, explaining the measures already taken. He therefore addressed himself to the Director of the Human Rights Division of the United Nations on 1 February 1977. Thereafter the United Kingdom Permanent Representative made representations to the Ad Hoc Working Group stressing the importance which Her Britannic Majesty's Government attaches to the Beausire case, providing copies of the declarations of the five witnesses and, at the same time, offering additional help in investigating the matter. The Working Group stated that the ideal thing would be to obtain the authorization of the witnesses for their declarations to be made public. British Government officials have obtained the said authorization from four of the five witnesses to hand over to the Chilean authorities their complete declarations duly signed. They are attached to this memorandum.

In order to avoid confusion it should be mentioned that, although the original memorandum was largely based on the witnesses' statements, the summary of Sra Borquez' evidence was made from the reliable record of a personal interview with her in Chile shortly after she was freed, and not from her written declaration which was not made until May this year. In addition, an explanation should be given of the difference in appearance between the first and second pages of Diana Beausire's declaration, which is due to the fact that it was necessary to retype the first because it was impossible to make legible copies of the original.

The enclosed statements, whose authenticity has been duly proved, are provided for the help of the Chilean authorities in order to allow them to make an effort to establish the real facts which surround this difficult case, in the hope that, now that fully signed declarations have been given to the Chilean Ministry of Foreign Relations, the relevant authorities will be able to carry out further investigations and provide a satisfactory reply.

The Embassy is firmly and genuinely convinced that responsibility for the disappearance of Sr Beausire lies with the Directorate of National Intelligence (DINA). The Embassy has noted the reference made by His Excellency the President of the Republic in his message of 11 September 1977 to the dissolution of the DINA, when he recognized that that body could have made unavoidable mistakes in carrying out its tasks of restoring peace and tranquility in Chile. The Embassy hopes that due attention will be given to the possibility that Sr Beausire may have been the victim of an error of this type.

British Embassy
SANTIAGO

15 September 1977

Statement

At around 6 p.m. on 13 November 1974, I was taken from Cuatro Alamos to the Interrogation Centre in the street José Domingo Canas, together with my mother Inés Beausire and other people.

At 11 p.m. more or less I was taken for interrogation and brought back around an hour later to the cell where we had all been left. Some minutes after I came back somebody was taken out of the cell next to ours. The guard told him: "You Bill, the fat one, get up, we have your brother-in-law." The person answered: "Is he here?" At once, I recognized my brother's voice and my mother, sitting beside me, wrung my hand so hard it hurt. We could say nothing. ("Bill" is what we all call my brother, William Beausire, the family as well as friends. It is not a common name in Chile). About an hour later somebody was taken to the room next door and five minutes after that a guard again went into that room and called again my brother by his name, insulting him, and said: "Are you so tired that you are here again?" The voice of my brother clearly answered again: "I was brought back." Once again he was taken outside. I did not hear anything else that night.

On the following day at around 8 a.m. a guard came into our room to make the roll call. He named me. I answered present and he then said: "Guillermo Beausire." No answer came and he asked who was Guillermo Beausire. I replied: "He is my brother." Somebody then said that he was in the room next door. The same guard then went to that room and passed the roll call as well. He named my brother "Guillermo Beausire" again and my brother answered: "Present." He was taken outside and told to clean the bathroom. After a while we again heard my brother's voice asking the guard where he should throw away the waste.

That is all I heard of my brother on that occasion. My mother, who, as I have already said, was with me also heard everything, as well as Luis Opportot Trucco who also knew and knows my brother. We were all taken back to Cuatro Alamos that day at about 1 p.m.

Some weeks after this, on 5 December 1974, at around 12.30 p.m. Marianne Pascal Allende and I were taken from Cuatro Alamos to Villa Grimaldi. Towards the end of our visit there which lasted for about four hours, while we were waiting with Marianne Pascal to be taken back to Cuatro Alamos, I saw my brother William Beausire. I did not see his face. I only saw his body from his chest downwards but I am sure it was him. I was blindfolded naturally. He was

being taken away by guards and was grumbling some answers to their insults. It was his voice, his figure. Marianne Pascal did manage to see him on this occasion, his face and all. She was also blindfolded but could see downwards.

I can only say I am completely sure that it was my brother William Beausire whom I heard and saw on all these occasions.

(Signed) Diana BEAUSIRE

Göppingen-Bartenbach, 6 January 1976
Germany.

B. Information submitted by the Government of Chile

In this case, the Government endorses its earlier statement on the question.

It is regrettable that the United Kingdom Government should consider a responsible and detailed inquiry carried out by a Secretary of State to be unsatisfactory.

The Chilean Government naturally disagrees with this view and maintains that its statements are based on official documents whose content is not invalidated by the mere statements of witnesses.

There is, moreover, one specific fact which the Working Group cannot overlook. William Beausire is not being detained in Chile since, if the Working Group had had any information to that effect, it could have availed itself of the permission granted by the Government for its members to go wherever they wished, without prior notice, in order to ascertain whether or not a particular place was a clandestine place of detention and whether or not anyone was detained there. In addition, the Working Group heard from the Minister of the Interior himself that no person was being detained under the powers vested in the Executive.

Consequently, since this is a typical case in which the evidence is contradictory, even though some of the evidence has the merit of originating from official organizations, including organizations in other countries (Argentina), it is essential that in weighing the evidence and reaching conclusions, one should place credence in what has been stated by the Government and not in mere testimony whose origin, intention or objective it would be inappropriate to analyse.

Annex XLIV

MATERIALS RELATING TO THE DETENTION AND DISAPPEARANCE OF
EIGHT PERSONS IN VALPARAÍSO

A. Information received by the Group in Chile

1. The following persons were arrested by DINA agents at Valparaíso on the dates indicated in the second half of January 1975:

María Isabel Gutiérrez Martínez (24 January)

Sonia Ríos Pacheco (17 January)

Horacio Neftalí Carabantes Olivares (21 January)

Fabián Ibarra Córdova (17 January)

Carlos Ramón Rioseco Espinoza (18 January)

Alfredo Gabriel García Vega (18 January)

Abel Vilches Figueroa (27 January)

Elías Ricardo Villar Quijón (21 January).

2. The Commanding Officer of the Maipo Regiment of Valparaíso acknowledged in an official report to the Valparaíso Court of Appeals that the persons in question had been held in the regimental barracks up to 28 January 1975.

3. On that day they were taken, as detainees, to Villa Grimaldi in Santiago. Some of them also spent a short time at the Cuatro Alamos camp and at Tejas Verdes.

4. In the course of the investigation of the abduction of these persons, Hernán Brain Pizarro, Carlos Díaz Cáceres, Sergio Vásquez Malebrán, Sergio Veselly Fernández and Erick Zott Chuecas have stated that they were with Rioseco, Fabián Ibarra, Abel Vilches, Ricardo Villar and Sonia Ríos in Villa Grimaldi; Hernán Brain Pizarro, Jorge Donoso Astudillo, Sergio Vásquez Malebrán, Sergio Veselly Fernández and Erick Zott Chuecas have stated that they were with María Isabel Gutiérrez in Villa Grimaldi; Julio Torres Villegas and Carlos Díaz Cáceres have stated that they were with her in Villa Grimaldi and Cuatro Alamos; Miguel Montecinos Jeffs, Carlos Díaz Cáceres, Francisco Plaza, Jorge Donoso Astudillo, Osvaldo Torres Gutiérrez, Sergio Veselly Fernández and Erick Zott Chuecas have stated that they were with Alfredo García in Villa Grimaldi; Julio Torres Villegas and Hernán Brain Pizarro have stated that they were with him in Villa Grimaldi and Cuatro Alamos; Sergio Vásquez Malebrán has stated that he was with García in Villa Grimaldi and Tejas Verdes; Hernán Brain Pizarro, Sergio Veselly Fernández and Erick Zott have stated that they were with Horacio Carabantes in Villa Grimaldi; Carlos Díaz has stated that he was with Carabantes in Villa Grimaldi and Cuatro Alamos; and Sergio Vásquez M. has stated that he was with Carabantes in Villa Grimaldi and Tejas Verdes.

5. Also in the course of the investigation of the abduction of these eight persons, the following persons have stated that they were with some or all of the eight in Villa Grimaldi: José Carrasco Tapia, Mirtha Compagnet Godoy, Mónica Medina Bravo, Rubén Aguilar Cortés, Ricardo Frodden Armstrong, Reinaldo Meza Pasmino, Javier Aroe Sagres, Jorge Wail Parodi, Alicia Hinojosa, Claudio Zaror Zaror, Walquiria Jorquera Iturriaga, Ingrid Zucarrat, Teresa Veloso Bermedo, Carlos Bruit González, Fernando Iribarra Cortés, Gastón Muñoz Gómez, Abelardo Clariaga Puga, Ariel Sanzana Reyes, Luis Muñoz Astengo and María Teresa Villalobos.
 6. On 20 February 1975 the newspaper La Tercera reported a statement by a government spokesman that Fabián Ibarra was being held in custody.
 7. In June 1975, Chaplain Bernardo Boening, in a letter addressed to Lilibiana Castillo de Carabantes, said that he had gone to the National Executive Secretariat for Detainees (SENDET) where he had been told by an army officer that Carabantes was being held in custody and was in good health, and that his relatives would soon be allowed to see him. The Chaplain added that he had seen with his own eyes the register of detainees with Carabantes' name in it.
 8. DINA agents told some of the witnesses named above that on 20 February 1975 the eight persons in question had been taken from Villa Grimaldi to special detention camps. Since then nothing has been heard of them.
 9. On innumerable occasions between the date of these persons' arrest and 14 July 1978, the government authorities informed the Judiciary and the detainees' relatives that there was no record of their arrest and that they had not been arrested on government orders.
 10. The judge specially appointed by the Supreme Court to investigate their disappearance stated in January 1978 that he was not competent to pursue the inquiries any further, as the offence had been classified as one of abduction and had been committed by DINA officials; further proceedings were therefore the responsibility of the military courts.
 11. On 14 July 1978, at the request of the Supreme Court, DINA, through its Director, Colonel Manuel Contreras Sepúlveda, informed the court that seven of the eight persons in question (all except Carabantes) had in fact been arrested but had been "released in Valparaíso immediately afterwards, because their activities had been of minor importance and they were not considered dangerous", thereby implying that they had never been in Villa Grimaldi.
 12. In the same report it was stated that, at Horacio Carabantes' own request, "because his former companions in the group had accused him of informing on them and threatened to kill him, he feared for his life and was transferred on 18 January 1975 to Santiago, where he was released". It was added that Carabantes had collaborated with DINA and betrayed his former companions "in gratitude for the medical treatment and other attention given to his companion, Lilibiana Castillo, who at about that time had given birth to a child in the regimental barracks".
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13. The following points should be taken into consideration with respect to Carabantes:

(a) It is stated that he was released in Santiago on 18 January 1975 after collaborating in gratitude for the medical treatment given to his wife (not his "companion", as stated in the report) at the time of the birth. However, the child was born on 22 January 1975.

(b) It is stated that he was released on 18 January 1975, but the date of his arrest was 21 January 1975. This has been confirmed by the witnesses named above and by his own wife, who was arrested on the same day in her home, where Carabantes had been taken by DINA agents to look for her shortly after being arrested.

(c) It is stated that he was released on 18 January 1975. However, Chaplain Boening was told by SENDET in June 1975 that Carabantes was being held in custody and that visitors would shortly be allowed to see him. The Chaplain also found his name in the SENDET register of detainees.

(d) It is stated that Carabantes was released on 18 January 1975. However, when his wife was released on 27 January 1975, he accompanied the DINA agents who escorted her and her three children to the home of his uncle - José Carabantes Bastidas - and left Marta Aguilar Duarte at her home. The latter woman had also been released and confirmed in court that he had been present at that time. According to the agents in question he was subsequently taken into custody in the Maipo Regiment barracks.

(e) It is stated that he was released on 18 January 1975 but he was seen in Villa Grimaldi, Tejas Verdes and Cuatro Alamos by numerous witnesses.

14. The immediate relatives of the missing persons have made a sworn statement before a notary public that since the dates when these persons were arrested neither they nor other relatives or friends have heard, directly or indirectly, that the missing persons have been released.

15. In view of all these facts, the report made by DINA to the Supreme Court is completely implausible.

16. Two relatives of the detainees have recently heard that two of them are in a camp in the foothills of the Andes in the Santiago region where conditions are very bad. This information, which was similar in the two cases, was given by a DINA official and an army officer.

Valparaíso, June 1978

B. Information submitted by the Government of Chile

In this case, it has not been possible to obtain further specific information which would clarify the information already given to the Working Group.

On the basis of the initial inquiries made after the Working Group pressed for an investigation of the case, it is confirmed that Neftalí Carabantes Olivares offered to collaborate with security agents on the understanding that Liliana Castillo would receive proper medical care during her imminent confinement.

It is probable that the arrest of the persons mentioned was the result of Carabantes' collaboration, and that those persons were subsequently released.

The apparent contradiction mentioned concerning the date of Carabantes' release, as stated in a report submitted by the former DINA to the Supreme Court, may stem from the fact that Carabantes' action in collaborating with DINA did not make him appear to be really a detainee even though for purposes of formal procedure he in fact appeared to be a detainee. A similar explanation might account for his presence in places of detention if this actually occurred.

The Working Group must realize that denunciation is a form of behaviour which the security services must turn to account and that the circumstances normally surrounding it are inevitably confused and cannot be checked. This is all the more true of the informer's subsequent doings.

The Ministry of the Interior is nevertheless continuing to investigate this case and is endeavouring to obtain further information. Any such information will be brought to the attention of the Working Group.

Annex XLV

INFORMATION RELATING TO PERSONS WHO DISAPPEARED IN 1976 RECEIVED BY THE GROUP IN CHILE

A. A copy of the record of the border station La Avanzada de Caracoles showing the departure of Mr. Armando Portilla Portilla

AVANZADA DE (illegible)

Date 11.1.77

REPUBLIC OF CHILE

GENERAL DIRECTORATE OF INVESTIGATIONS

ALIENS DEPARTMENT AND INTERNATIONAL POLICE

No.	Family name and first names	Condition of entry	Type of document	Number of document	Issued at	Nationality	Marital status	Sex	Year of birth	Occupation	Remarks
	Vehicle: Passenger car	Year: 1970	Registration number: X06002	Customs pass number: X	Destination: Mendoza						
1	BARBERA GOMEZ, Amado	0	7	77563	Concepción	111	2	1	1946	74	Official use
2	COBOS MENDEZ, Jaime	0	7	380590	Concepción	111	1	1	1957	08	
3	PORTILLA PORTILLA, Armando	0	7	Z 758775	Santiago	111	2	1	1953 or 1933 (not clear)	78	
4											
5											
6											
7											
8											
9											
10											

Note: Entries on this form should be made by typewriter or in capital letters

ENTRY OR EXIT CONTROL POINT
STAMP
NAME AND SIGNATURE OF OFFICIAL

B. Excerpt from sworn statement of official responsible for that record

"In answer to your question I wish to state that I was on duty at La Avanzada de Caracoles from 1 January 1978 until noon on 16 January. My duties were to check the persons crossing the border and to do certain administrative work.

There were six officials at La Avanzada: three were checking persons leaving the country and the other three were checking persons entering it. During the 15 days I was there I performed both duties. In checking a person entering or leaving Chile, the official asks him for his identity card and ascertains whether the particulars contained in the card correspond to the person presenting it. The card is then taken to the records office to ascertain whether the bearer is involved in any case pending in a Chilean court. If he is not, the card is returned to him and he is allowed to leave.

With regard to the photocopies of the page of the record which you have shown me and on which the departure of Armando Portilla Portilla is entered, I wish to state that the names of the persons listed on that page are in my handwriting except for the name of Mr. Portilla. The page on which the departure of Edrás Pinto Arroyo is recorded was also filled in by me except for the names of three persons including the name of Mr. Edrás Pinto. The page on which the departure of Lisandro Cruz Díaz is recorded was not filled in by me. The page on which the departure of Horacio Cepeda Marinkovic is recorded was filled in by me except for the name of this person. Lastly, the page on which the departure of Luis Lazo Santander is recorded was not filled in by me. This is all I am able to say."

Having read this, I hereby confirm and sign it.

Annex XLVI

INFORMATION SUBMITTED BY THE GOVERNMENT OF CHILE
RELATING TO THE DANIEL PALMA CASE

We hereby append the following documents concerning this case:

- (a) Photocopy of a confidential memorandum on the case of Daniel Palma Robledo;
- (b) Photocopy of official communication No. 253 dated 7 August 1978 from the Second Military Court of Santiago addressed to the Ministry of the Interior;
- (c) Photocopy of a report on the case of Daniel Palma Robledo.

The Government considers that the following conclusions may be drawn from the information appended:

1. The denunciation in question concerns a case which has been brought before the courts and in which investigation proceedings are pending. Moreover, a person has been indicted in this case (this person is a former DINA official, but he will be tried on a charge not related to the disappearance of Daniel Palma, which is under investigation).
2. The action brought by relatives of Daniel Palma is in the hands of an eminent lawyer, Juan Agustín Figueroa, who will undoubtedly take all the steps he considers to be necessary to prove the charge.
3. No complaint has been made either to the State Counsel or to the Group that rights to due process have been abused or that the proceedings have been conducted in an arbitrary manner.
4. The case is intrinsically complex since it must be proved that the vehicle discovered, which is alleged to be Palma's, was actually owned by him and not someone else. Only when this has been proved will it be possible to pursue the inquiries in order to ascertain how the vehicle arrived at the spot where it was found.

Conclusion: Since this is a matter which is being investigated by the court and this investigation has not been completed, the Government is of the opinion that no decision can be taken, other than to recommend that the inquiry be expedited, particularly since the plaintiffs have a good counsel and have not complained that they have been deprived of their rights to due process in any respect.

Annex XLVII

MATERIALS RELATING TO JUAN MUÑOZ ALARCÓN

A. Statement of Juan Muñoz Alarcón

My name is Juan René Muñoz Alarcón, identity card 4.824 S5 7-9 Santiago. I am 32 years of age, married and live at Sargento Menadier 331, Puente Alta, Maipo.

At the time of the military revolt, I was taken to the National Stadium in order to identify people. I did this voluntarily at the time, because I was filled with a spirit of revenge. I am the hooded man of the National Stadium. The security services hooded me and took me through the various sections in which the detainees were being kept. I identified a fair number of people. Many of these died and I am responsible for their deaths merely because I identified them.

Later I was asked to go out into the street with some groups of soldiers to identify people.

I was then released on condition that I would co-operate. I was taken to Colonia Dignidad, in Parral, about 40 kilometres away, to a National Intelligence training centre run by Germans who are naturalized Chileans. These former Germans were rescued from the war. They arrived in Chile when they were very young, and are of Jewish origin. There is a veritable regiment at Colonia Dignidad, and a hospital with equipment that any of the Santiago hospitals might envy. They have ambulance planes, mail planes and underground prison cells. There I was trained in interrogation and counter-intelligence work.

I was then given the job of hunting people down and interrogating, torturing and killing them. My immediate superior was Alvaro Puga Cox, the present Director of Civilian Affairs in the Government Junta, along with Jorge Schilling Rojas, co-ordinator of TV Channel 9 of the University of Chile and a student of law at the university, and a certain Zalaquett, chief of personnel at the newspaper El Cronista. Aníbal Maturana Contreras, national co-ordinator of internal revenue and a relative of General Contreras of DINA, is the area chief.

It is generally believed that DINA is the only agency responsible for the disappearance of prisoners. This is not so. There are seven intelligence services operating in the country. The largest of them is undoubtedly DINA, with 70 per cent of the intelligence personnel, most of them soldiers and carabineros - the other 20 per cent being civilians, naval and air force personnel. The navy and the air force play a very small part, because their own intelligence services are more important to them. There are also five counter-intelligence services with clandestine machinery, i.e. SIFA, SICAR (Carabineros Intelligence Service), DINE (Army Intelligence Service), DIGET and the Information Department of the Political Police. I have worked with all of them. Subsequently, because of the situation in which I was living and what I had to do, I reacted and tried repeatedly to leave, but this was impossible, because once you are in you cannot get out.

The purpose of this statement is not to seek pardon or reconciliation with myself. What I have done is truly unspeakable; I do not recognize myself and cannot understand how I have been able to do such unbelievable things. In my defence, however, I would say that it is very difficult when you have no support and, when the intelligence services grab you, to escape from them.

I have been involved in the disappearance of some persons who were at Colonia Dignidad. At present there are 112 persons at Colonia Dignidad, some former leaders of the various People's Unity parties, in Santiago, here in Peñalolén and the remainder in Colina. There are about 345 of them. The rest are all dead. They were eliminated in Pudahuel by the DINA execution squads, commanded by Fernando Cruzat. He has his headquarters at Ahumada 312, sixth floor. This is a place where gold is bought and sold. Ninety per cent of the gold trade in the centre of Santiago is handled by DINA.

The die-sinking and key-cutting establishments belong to DINA. I can give some examples: Moneda 1061 */; Bandera 121. Others need not be mentioned, because these are the most important ones. That is where people are detained in the centre of the city. They are placed in preventive detention and then taken away in an ambulance to Tobalaba, to camp 4, not to Cuatro Alamos, because everyone knows about Tres Alamos and Cuatro Alamos. There are six places of detention and I shall name some of them; the other very important point is that false names are used. When a man is detained, - if I am taken, for example, I give my name, Juan Muñoz Alarcón, and they use a false name, Francisco López Aguirre; therefore, if an action is brought for enforcement of rights, the name is never traced but the man is in fact a detainee. All his real papers are burnt and the false name is used. In some cases people are listed as having left the country. Of course they have left the country; they have been taken to Argentina and brought back by plane. At other times, when a man does not wish to collaborate - I want to make this very clear, because those of us who are inside all collaborate of course. A DINA agent is given the man's name and leaves with his official papers. The man is officially recorded as having left the country and is then executed.

I had really prepared myself for this statement but I am rather nervous because I know what it means for me. I shall be killed by one side or the other. That is quite clear. It is for this reason that I am not asking for help or protection from anyone. When someone is no use, it is better to silence witnesses than to let them talk. It is much safer.

This is how the system operates. People are caught in Santiago. They are taken to Tobalaba, near Villa Grimaldi, to a large building where they are detained. This building is called Dignidad. In it there is a radio and communications can be established in a matter of seconds with any part of the world; this is the centre for receiving all information from DINA agents abroad. At this time, 50 per cent of DINA personnel are operating in Venezuela, Colombia, France, Sweden and Italy. I am speaking of regular officers, not of civilians. Civilians replace those people in Chile. And who is in charge of all these groups? It was Cruzat who attacked the Confederation of Civil Servants (ANEF), with group 1 from Bandera 121. I wish to say something about Fernando Cruzat: he is the stepbrother of Captain Jorge Luchino, who is the chief of the labour section of the Tacna Regiment, second department, and is responsible for all the industries in Greater Santiago and its environs. This organization exists to persecute, remove, dismiss and terrorize all workers in general. It is helped by Ivonne Ríos Talledo, a social worker and chief of personnel of the ASA iron and steel industry and by Carmen Smith, personnel manager of CINTAC - these two run the system. This labour apparatus comprises a veritable army of informers who enable the intelligence services to detain, interrogate, torture and, as I have already said several times, kill people for showing dissatisfaction or acting against the Government. It is enough to say one word against the Government for a man to lose his job. What is most important in all this, if justice is to return to this country, is to say clearly that this Government has exceeded all possible limits of legality, that it is an illegal Government.

*/ The digit before 061 may not be 1.

There exists in this country a death squad commanded by Captain Rolando Larenas (an officer in the artillery, so that he can be traced later). This man has contacts with the Brazilian, Argentine and Uruguayan intelligence services, which operate indiscriminately in this country. Fifty per cent of the vehicles coming over the passes with an Argentine licence plate enter as tourist vehicles, but in reality they belong to Argentine Intelligence, which co-operates with our intelligence services. Their job is to hunt people down abroad and bring them here, where things end. Prisoners are exchanged; everything is permitted and endorsed by the President of the Republic, who is in charge of all this, because the Chief of DINA is directly responsible to him. The Minister of Justice and the Minister of the Interior have no authority over these services.

Another man I had forgotten about, although he is very important, is Daniel Galleguillos, the husband of Silvia Pinto, both of them the chief CIA agents in this country. They are under the orders of James John Blayton, of the United States Embassy, and of Sheila Fortnocon, the Chilean secretary of the Ambassador.

This is my statement in broad outline. I authorize it to be used in any way thought fit, regardless of the consequences, and so I am prepared, as I have said, for whatever may happen to me, because I am threatened with death and I know that I am going to die sooner or later. I shall not be killed by a bullet, because they are not so stupid, but I shall have a heart attack or I shall slip while I am waiting for a bus or fall from somewhere - a bullet is not the only way to die. In the interests of security, I repeat, so that this document may be used for the benefit of so many people who are suffering and for whose sufferings I am responsible, not perhaps directly, but basically, and I am doing this to clear up the truth. I am prepared to go before the courts or wherever necessary in order to denounce all these things and testify to them.

All the above I state in full use of my faculties, because I have never been ill except for a few colds, and I am not acting under pressure of any kind, but voluntarily, because I believe it is necessary at this point. I believe that the time is right to face up to the DINA monster. I also wish to place on record, and to swear if necessary, that some of the prisoners are alive, in poor physical condition, but many of them on the border of insanity because of the very harsh treatment they have suffered. I refer especially to Carlos Lorca, to Ponce, the Chief of the Home Front of the Socialist Party and the Socialistas de Garretón at the time he was detained. They are at Colonia Dignidad, Block 2. I also wish to mention Tolosa of the Communist Youth and the Central Committee, who has informed against many people but I must also say in his defence that he was terribly and barbarously tortured.

There is a yellow magazine on which I wrote down some numbers and names; I wrote down those who are alive and those who are dead; there are no more than 150 alive - I gave the correct number earlier - a hundred and forty odd people. These people are listed in the official records with these names, but in the records kept by DINA in Calle Vicuña Mackena and those kept by the headquarters of the armed forces they are entered under false names. At the place of detention, they are given with their own and a false name. If it is considered useful, there is here a witness who interrogated them and saw them and there is a witness to their stay at Colonia Dignidad. I do not wish to name the witness now, but when

the time comes I will do so if it is of any use to me. So far these people have no guarantee that they will come out alive; if their detention has not been acknowledged, it is because they were important men in the underground movement and are now being kept alive because they are to be used to catch the rest.

The places where the evil should be attacked are, I repeat, Colonia Dignidad, Colina and Peñalolén. Detainees who are missing will not be found anywhere else. Other detainees will be found in many places, but those who are missing are at those three particular places. The women are at San José de Maipo, which is for people suffering from lung trouble, unbelievable though it may seem, but it is an excellent place for interrogating people. In recent days or months, more people have undoubtedly been caught, but some of them are alive, as is the case with Contreras Maluje. The Supreme Court ordered his immediate release. Lieutenant Fuentes of the Air Force counter-intelligence service should be denounced, because he did not carry out the order of the Court and did not release the man; They are still keeping him. The only agency which can interrogate prisoners and remove them from the custody of DINA is the Air Force counter-intelligence service, with the support of the famous Major Raúl, whose name is Raúl Romo.

This is practically all I have to say and I confirm that I am prepared to do so in legal form, before a notary or before the courts for the general good, so that injustice will end in this country and a citizen can go out into the street in peace and quiet as in a free country, without fear or terror that they are lying in wait for him at the corner because his neighbour has accused him of being a communist or a socialist. I am at your disposal whenever you wish and whatever the situation, and if I can be useful to you later, you may count on me absolutely. I am not asking for anything or for anyone to stand up for me, because we must be responsible for what we do and bear the consequences when the time comes. If there is any pressure on me, it is from the Government. I have done all this voluntarily, without pressure and my conscience is perfectly clear, because I am telling the truth.

NOTE

This statement was made in about June 1977. In August of that year, Mr. Muñoz was murdered. The press widely reported the case as an ordinary crime, despite the obvious traces of torture found on his body. This statement was submitted to the judge who investigated the case. It was never published, although its existence was known, if only because the press also referred to it.

B. Information submitted by the Government of Chile

According to the information provided, the statement by JUAN RENE MUÑOZ ALARCÓN was recorded on tape; it was then transcribed and signed by him.

The Ministry of the Interior has ascertained that the statement begins with the admission that its author was a militant in the Socialist Party until 1973 and agreed to become an informer out of a desire for revenge. He points out that in that capacity he denounced Party comrades, both in the National Stadium and in the street; subsequently, he alleges, he received intelligence training at Colonia Dignidad, affirming that he was then given "the job of hunting people down and interrogating, torturing and killing them". He also affirms that there are 112 persons detained at Colonia Dignidad and that the remainder, as many as 145 persons, are at Peñalolén and Colina.

He affirms that 90 per cent of all gold buying and selling in the centre of Santiago is a DINA operation and that the die-sinking and key-cutting establishment all belong to DINA, giving two addresses, Moneda 1061 and Bandera 121, as an example.

He further affirms that there are six secret places of detention.

He also gives a number of names and even mentions Silvia Pinto, Director of the newspaper El Cronista and her husband, Daniel Galleguillos, formerly Director of Television Channel 9 of the University of Chile, as representatives of the CIA in Chile.

He concludes by authorizing the Vicaría to use the statement "in any way thought fit, regardless of the consequences". He adds that it does not matter to him, since he is threatened with death, that sooner or later he will die and "I shall not be killed by a bullet, because they are not so stupid". He ends up by stating that he is prepared to go before the court or wherever necessary in order to denounce and testify to what he has said.

On 15 December 1977, the Ministry of the Interior ordered an investigation into the facts alleged. The conclusions are as follows:

(a) Mr. JUAN RENE MUÑOZ ALARCÓN has never been a member of DINA, since there are no records of any kind which give ground for supposing or presuming that Muñoz Alarcón has belonged to the permanent staff of that organization or acted as an informer for it.

(b) In connexion with Mr. Muñoz Alarcón's claim that he was trained at Colonia Dignidad and that there were political prisoners there, a visit was made to the premises of that institution in the presence of the Notary Public of Parral and it was found that there were no political detainees, no specialized training camps and no signs or traces that any had existed there previously.

(c) As regards the Peñalolén Camp, not only has it never held detainees, but it is impossible for the place to be used or ever have been used for that purpose because Army gunpowder and explosives are stored there in special areas.

(d) As for the women detained in the El Peral Sanatorium, a centre for the treatment of women suffering from lung disease, it was ascertained by the Notary Public of Puente Alto that it is exclusively a hospital area and that there have never been any detainees there.

(e) As for the allegation that the names of detainees have been changed and that the buying and selling of gold and the manufacture of keys were in the hands of DINA, it has been reliably established that no falsification of the identity of detainees could be found; after all, detainees have always been brought before the authorities, with their true names or the names under which they have been detained and if those names were false, the detainees themselves are responsible.

(f) As regards the ownership of the commercial establishments for the purchase and sale of gold and the manufacture of keys, it is sufficient to ascertain who the owners are. It will be found that they are private persons who have been engaged in the business in question for some time and there is no reason to infer that the security organizations interfere with them.

(g) In addition to the foregoing, it should be pointed out that the statement has certain defects of form which give rise to the suspicion that it has been made with a specific purpose in mind:

- (g.1) Muñoz Alarcón asserts that while he was hooded he took part in the identification of persons in the National Stadium, on the instructions of DINA, at a time when that organization did not exist.
- (g.2) The references to Colonia Dignidad, Colina and Peñalolén are false, and the detail about a radio transmitter at Villa Grimaldi is also untrue, as Arturo Carvajal, the Notary Public, was able to confirm when he attended the inspection.
- (g.3) The statement, when analysed in its context, is suspect, since it appears to be a compilation of information from various sources, put together by one person. The details and operations described are so diverse that it is not possible for a single person to have been involved, as alleged by the informant.
- (g.4) Lastly, the forgery is obvious from the fact that the signature stamped on the statement is not that of Juan Muñoz Alarcón, according to an expert examination of the handwriting by the Criminal Laboratory of the Directorate General of Investigations.

In December 1977, Mr. Precht, the head of the Vicaría de la Solidaridad, had an interview with Mr. Enrique Montero, the Under-Secretary of the Interior, to inform him of the statement he is understood to have received from Muñoz Alarcón and of the fact that on 17 November he had communicated the matter to the President of the Supreme Court.

At that time, the Under-Secretary of the Interior ordered the investigation whose results are summarized above and also told Mr. Precht that the moral responsibility for the death of Mr. Alarcón, whatever the cause, lay very largely with him, since he had not communicated the statement to the relevant authorities, which, if they had been informed, would have been able to adopt appropriate safety measures. If only the Government had been notified of the facts in good time, a complaint could have been lodged in the way it had been by Mr. Precht, but failing that, the Government could do hardly anything.

Nevertheless, the Under-Secretary informed Mr. Precht that he would order the necessary investigation and communicate the facts to the authorities, which he did on 15 December 1977.

The President of the Supreme Court, José María Eyzaguirre, with the statement communicated to him by Cristián Precht, the head of the Vicaría de la Solidaridad, placed the relevant information before the plenary of the Supreme Court.

The Court, assembled in plenary session, decided, in conformity with the provisions of the Courts Organization Code, to order the Court of Appeals at Santiago to designate an extraordinary investigating judge to start the necessary investigation.

Oswaldo Fañdez, a judge of the Court, was appointed to undertake that task. He immediately began the investigation, which is still in progress.

Annex XLVIII

DECLARATION BY RELATIVES OF MISSING DETAINEES AT THE BEGINNING OF THE
HUNGER STRIKE OF MAY-JUNE 1978

ONCE AGAIN: OUR LIVES FOR THE TRUTH

It is now nearly a year since we staged our first hunger strike in an effort to clear up the cases of our relatives who have been detained and are missing. They were all detained, mostly by the sinister DINA, now the CNI - of that we have abundant proof, witnesses and evidence - and their subsequent disappearance has been systematically denied through blatant or hypocritical lies, evasiveness, pressure on the courts of justice and personal or collective intimidation.

This has been another year of anguished waiting and unremitting struggle. The first strike ended with General Pinochet's undertaking at the urging of the Secretary-General of the United Nations and international public opinion, to clear up at least some of those cases. But like so many others, this undertaking, which was the pledge of the Military Government and involved the prestige of our country, has not been honoured.

We have again called on all the authorities.

We have knocked at every door, requested every kind of interview, sent hundreds of letters and petitions. We have drawn attention to our tragic situation by peaceful public demonstrations and for that we have been arrested and have a police record. We have been cold-shouldered by some of the media, which the Government, through DINACOS, has apparently forbidden to report on missing detainees, in an attempt to immure us in a wall of silence. But the problem remains, and new circumstances are making it even more serious.

The recent amnesty decree - which brought freedom to a number of political prisoners, for whose sake we sincerely rejoice - includes an unacceptable legal and moral monstrosity: it opens up the way for DINA agents or their superiors, guilty of crimes such as kidnapping, ill-treatment or torture, and even murder, to evade their responsibilities. The amnesty is for the crimes committed by DINA. Some judges, interpreting this decree as they like, have even begun to dismiss the cases brought by us concerning missing persons or kidnappings. The crime has been wiped out, they say, so there can be no guilty persons or missing persons. Since it has been impossible to prove, even in a single case, that the arrest and the disappearance are untrue, the proof is afforded by the decree.

We cannot accept more of these aberrations, nor can we wait any longer. In declaring this new hunger strike, we are convinced that gambling with our lives is the extreme method which demonstrates our wholehearted love for our relatives and will enable us to arrive at the truth.

We call upon national and international public opinion to support us. We call upon those who have always stood by us; upon the Church, the workers, and those who feel close to us in our suffering; upon the women, men and young people of our nation who, with the evidence of our attitude, can understand us; we call upon the majority of the Armed Forces who honestly believe in the necessity of dignity and respect for Chile and its citizens; upon organizations; upon those with moral or social influence, so that understanding of our problem is translated into strong and vigorous public action vis-à-vis the ruling authorities aimed at exacting a genuine, credible, and responsible reply.

Our relatives, men and women of our people, of different social classes and status, jobs and professions, had in common their ideology and political militancy in parties that have now been banned. They also had in common their love for their families and their adherence to the noblest causes of the working class, wherever they were called upon to work. They have the same rights as all Chileans!

Our struggle is for those rights, for the prestige of our motherland, for human dignity.

For peace, freedom and life!

WE SHALL FIND THEM!

RELATIVES OF MISSING DETAINEES

Santiago, May 1978.

Annex XLIX

DECLARATION OF THE PERMANENT COMMITTEE OF THE EPISCOPAL
CONFERENCE OF CHILE OF 6 JUNE 1978

1. We, the Bishops of Chile, have long concerned ourselves, on numerous occasions, with the grievous situation of missing Chilean detainees, but their relatives have not obtained any information on their whereabouts or existence.

We have raised this matter in inquiries and documents, both public and private. In particular, in our Message entitled "Our National Co-existence" (March 1977), we requested a full explanation of the fate of each missing person, failing which - we said - "there will be no peace of mind for their relatives, no real peace in the country, and no unstained image of Chile abroad".

The demonstrations which, in the past two weeks, have been stirring national and world public opinion, show that such an explanation continues to be a moral necessity.

2. We have always sought to assuage, with the greatest respect and understanding, the grief of the relatives of missing persons. We have likewise considered it our duty to reaffirm their right to request from the competent authorities all possible information on the fate of their loved ones. The possibility that our action might be interpreted or used for ends alien to the Church's mission cannot make us desist from such action, until this legitimate demand evokes a satisfactory response.

3. We also appreciate and respect the sacrifice made by the relatives of missing persons in order to alert public opinion - by non-violent means - to the justic and urgency of their petition.

For the sake of the respect we all owe to God, the sole Creator and Lord of human life, and considering that public opinion has been won over to their just aspirations, we call for an end to the now more than two-week-old hunger strike by the relatives of missing detainees.

In keeping with its vocation, the Church will continue to do everything in its power to ensure that the legitimate right of the relatives and the sacrifice they have made to implement it, elicits an appropriate response.

4. The Permanent Committee requested Cardinal Raúl Silva Henríquez, and its President, Mons. Francisco de Borja Valenzuela R., to speak with the Minister of the Interior, Mr. Sergio Fernández. The Minister stated that the Supreme Government intends to shed light in the near future on the fate of each person whose disappearance has been attested before the competent bodies, when the relatives so request. The Minister also wishes to resolve, by means of a legal instrument, the legal problems inherent in this situation.

We appeal to the understanding and generosity of all Chileans, and particularly to the prayers and penitence of our brothers in the faith, so that, with the grace of God, we may all overcome this and other obstacles which still delay our longed-for national reconciliation.

Annex L

STATEMENT MADE BY THE MINISTER OF THE INTERIOR OF CHILE
ON 15 JUNE 1978

I address myself this evening to the people of Chile to set forth the Government's definitive position on the problem of the persons said to have disappeared during the state of seige in Chile following the military uprising of 11 September 1973.

To put the problem in its proper context, however, the over-all situation as regards human rights during that period and its development under the present administration must be analysed. Only then can the specific problem of those alleged to be missing be judged seriously and calmly.

No Chilean can forget that on 10 September 1973 the country had reached a de facto state of civil war, the general outbreak of which was becoming more imminent every day. That was no coincidence, but the result of a coldly contrived plan systematically implemented by the Marxist Government of the period as the only possible way to impose communist totalitarianism in our country.

Our memories tend to be short. Every one should therefore try to recall those dramatic days before the national liberation.

It was a time when, with our economy being plunged into the chaos of unchecked inflation and widespread shortages, more than 13,000 foreign extremists who had entered the national territory illegally were devoting themselves to the training of avowedly paramilitary groups supporting the Marxist Government. Using a well-equipped arsenal, likewise brought into the country illegally, mainly from countries within the Soviet orbit, they set up guerrilla training centres whose first open activity was already in evidence in the south of Chile.

The phrases "industrial cordons", "armed power of the people" and many others were part and parcel of the defiant official lexicon with which the final grab for total power was being prepared.

In the meantime, the national consciousness was being assaulted by a relentless propaganda barrage warning that any attempt to reverse Chile's course towards socialism would inevitably involve more than 100,000 dead. Although that did not frighten the vast majority of our fellow citizens in their struggle for freedom, a struggle in which women, young people and the unions participated so decisively, it cannot be denied, on the other hand, that it inhibited or intimidated certain high-level officials, some of whom now, ironically, grossly exaggerate the cost of Chile's liberation, which although certainly unfortunate, was far less than proclaimed and alleged.

It was in this threatening and anxiety-ridden climate that the first clashes took place between the armed forces and the illegal extremists supported by the Marxist régime, a circumstance which led the latter to engage in direct infiltration of the institutions of national defence in an attempt to plunge them into civil war. The brazen public confession of the socialist leader Carlos Altamirano,

acknowledging that such a plan existed and would continue in operation, sounded the final alarm for necessitating the intermediate intervention of the armed forces and the forces of law and order, which, responding to the view already expressed by the democratic institutions and the overwhelming majority of the people, took the reins of government of the Republic on 11 September 1973.

Perhaps these facts are clearly etched in the minds and hearts of nearly all Chileans. I have only chosen to recall them today because it is sometimes not remembered with sufficient force and clarity that those facts determined decisively what occurred in the years immediately following.

It would, in fact, be an extremely grave error to think that this situation of latent civil war ended immediately after the military uprising. The resistance, open at first, subsequently continued in the form of an underground and clandestine struggle, preparing the way for political and terrorist subversion. The international campaign unleashed against our country from the very first day of the national liberation fostered and acknowledged every day the existence of this reality, as is evident mainly from the broadcasts of Radio Moscow. It also remains internally in evidence from the periodic armed confrontations between the extremists and the security forces, of which the public has often been aware, as well as from the publications which the Marxists disseminate in secret.

The country must understand that to counter violent and organized subversion while sparing the people its consequences, and, what is more, ensuring for Chilean homes peace and security which are a conspicuous exception in the midst of the disorder and terrorist violence pervading the world, is a challenge which required unrelenting and selfless preventive action on the part of the security organs. In such circumstances, they cannot be judged by trying to apply criteria appropriate to a period of normality.

In spite of this, the higher authorities of the present régime have spared no effort to prevent excesses and to punish those responsible in the cases where it has been possible to prove their guilt through the trials initiated for that purpose.

It must be remembered that peace and order were not finally secured at the end of 1973 and that a hard struggle had to be fought in the following years. To have tried to fight that battle with the methods appropriate to normal times would have meant bowing before subversion and letting Chile become steeped in the blood of fratricidal struggle or terrorist chaos.

No one can be mistaken as to the identity of the real culprits responsible for the suffering and restrictions we have had to endure. The guilty ones are those who created the objective conditions for civil war, and not those who, at the nation's call, assumed responsibility for preventing it and for guiding the country back to unity, peace and progress. The cause of pain in an illness is the illness itself, and not the action of the doctor who tries to cure it.

On the other hand, the need for an objective analysis of the subject of human rights, as His Excellency, the President of the Republic, has pointed out in his various presidential messages, requires a comprehensive rather than a segmented approach, one which is dynamic rather than static.

It is the gradual return to normality and the trend towards guaranteeing human rights in increasingly extensive form which best reflect the spirit which motivates the present Government in that connexion. While totalitarian régimes are distinguished by mounting repression, Governments with a commitment to freedom are marked by their tendency gradually to relax the restrictions appropriate to an emergency, to the extent that conditions make that possible. It would take a long time to retrace our development toward normality. Suffice it to recall that the legal state of internal war was ended in 1974, and that the state of seige was later attenuated. Subsequently norms were established providing fuller guarantees for those arrested under that state of emergency, and sometime thereafter all of those arrested were released. Finally, during the current year, the state of seige was lifted and the curfew ended. In recent years permission has even been given for the re-entry into the country of persons who had been expelled or who had left illegally, provided their return would not be dangerous or counter-productive for the security of the State.

There is also the recent general amnesty, which applies not only to crimes committed during the state of seige - save in those cases specified by the Act itself - but also to those which might have merited sentencing, during the same period, by the military tribunals. This decision bears eloquent testimony to the Government's spirit of national reconciliation and to the fact that the process of normalization is so firmly rooted that the worst phase of the internal emergency we have been experiencing can, fortunately, be considered over.

The amnesty has met with broad support among our country's spiritual and civic leaders. Only a few fanatics have tried to impugn it, criticizing it on the grounds that it extends to security officials who may have engaged in some excesses during the period in question.

Armed with the moral strength that stems from always facing the truth head on, I will counter this bold accusation with a single question: what did those critics want? Did they feel that the Government should pardon those who, entrenched in the extremes of marxism, had stirred up civil war, while continuing to punish those who might have fought over-zealously? Only someone with a very sick mind could maintain such a ridiculous, unjust and totally unrealistic thesis.

It is against this background that one must view the recent public outcry concerning the problem of the persons who are supposed to have disappeared since the military uprising.

First of all, I must state that it is completely untrue to say that the Government would have remained impassive or would have failed to take action on this matter, which has been raised repeatedly in recent years and therefore is not new and comes as no surprise.

Quite the contrary, all this time, the government authorities have provided specific and convincing replies in respect of many cases and have demonstrated on countless occasions that the alleged disappearance was a myth. This is best proved by the fact that, whereas people abroad continue to cite absurd figures for the alleged disappearances - in the region of 2,500 - in Chile, we are reproached with less than one quarter of that number for, despite the complexity of the problem, a satisfactory explanation has been provided for all the other cases referred to in other lists circulated among international agencies.

Although as humanists and Christians we hold all human life very precious, it must be recognized that in this respect, actual figures - whether greater or smaller - are unquestionably important when it comes to judging the problem from the social angle.

With respect to the list of persons alleged to have disappeared to which the problem has now been reduced, I state categorically that the Government has no information which would confirm that any of these persons have been detained and, consequently, it emphatically rejects the suggestion that the authorities might be holding such persons secretly under arrest.

Aside from those exceptional cases in which the disappearance might have been due to non-political causes, it must be remembered that long before 11 September 1973, following a justifiable accusation of widespread electoral fraud engineered by the Marxist régime, the existence of hundreds of thousands of false or doctored identity cards came to light. Those for whom these multiple identities were intended were, obviously, the most active communist, socialist and MIR militants, and will be readily understood.

In view of the situation and considering that a vast majority of the persons alleged to have disappeared are precisely activists of such leanings, it is quite possible not only that such persons may have gone underground but even that they may have died in confrontations with the security forces and that their true identity could not be determined at that time because they were going under a false name.

Whatever the real truth in each particular situation, it can be investigated by the courts of justice; the Government, for its part, will explore any serious means that may be suggested to it in respect of any particular case.

Likewise, the Government will determine the appropriate legal rules for solving the problems or relating to matters of law or inheritance of the relatives of the persons alleged to have disappeared, provided that such relatives so request and really so require.

We realize that nothing can make up for the absence of a loved one and we understand that nothing can lessen the sorrow of those who truly feel that loss, but we believe that the position we have adopted makes it possible, at least, to attenuate some of the effects which, in many cases, intensify the relatives' grief.

The Government hopes that its action will be seen as the only viable course in the face of a tragedy for which it cannot rightly be held responsible; it believes that constructive action on the part of all Chileans - particularly those in positions of authority in all areas of national life - is needed in order to surmount that tragedy.

With this in mind, we express our appreciation for all attitudes based on truly humanitarian feelings, but we categorically reject any attempt to utilize the problem for political or selfish ends.

In stating its final position in this regard, the Government is serving notice on those who stand among the shadows pulling strings with the evil intention of stirring up trouble, that it will not tolerate any attack, regardless of motive, on the stability which it has been at such pains to achieve.

To permit all that has been gained to be destroyed through hatred or political ambition would be to allow Chile to revert to a climate of chaos, violence and revenge even worse than that which we experienced prior to 11 September 1973 and would doom us to suffer, once again, sorrow similar to or even greater than that which we are experiencing today as a legacy of that dark period in our history.

As a civilian minister in this Government I cannot but pay a sincere tribute to the men at arms who have sacrificed their lives or their physical integrity once and for all in order to fulfil their duty to defend Chile's sovereignty and guarantee tranquillity for our fellow countrymen. These men - there are more than 500 casualties - are not mentioned in the lists of any humanitarian campaign or international organization, but their names are engraved forever in the heart and in the history of our country.

Convinced that every Chilean will support the Government against anyone who attempts artificially to revive conditions that are past and that plunged us sometime ago into a state of virtual civil war, I appeal to all our fellow countrymen to understand that Chile's very survival as a sovereign nation today depends on unflinching national unity in support of His Excellency the President of the Republic and the Government of our country. The people of Chile understood this on 4 January and they must reaffirm this once again now, with patriotic faith and determination.

Annex LI

INVESTIGATION REPORT RECEIVED FROM THE MINISTRY OF THE
INTERIOR OF CHILE ON GEORGES KLEIN PIPPER

KLEIN PIPPER, GEORGES

Inquiries at the Central Identification Office show that the subject's records state: Identity Card No. 4.812.198 Santiago, born in France on 29 August 1952, single, student, domiciled at Eduardo Marquina No. 3969; the latest document issued to him was a Civil Records Certificate on 2 February 1972.

At the subject's domicile, RODOLFO KLEIN THEIMER said in an interview: "I am the father of GEORGES KLEIN PIPPER, who has been missing since 11 September 1973, since when nothing further has been heard of him. Later on, I saw in a copy of the magazine "Que Pasa" a photograph showing my son with his hands held above his head and in the custody of carabineros in front of La Moneda, I even applied to the Vicaría de Solidaridad for help in discovering the whereabouts of my son, but I did not denounce the matter to the courts because I understood that it was being taken care of by the French Embassy, as my son has French nationality".

Inquiries at the Confidential Archives of the National Information and Investigation Department show: Identity Card No. 4.812.198 Santiago, born in France on 29 August 1952, single, student, domiciled at Eduardo Marquina No. 3969. They contain the following additional entry: On 16 August 1963, at the opening ceremony of the series of lectures marking the 150th anniversary of the founding of the National Institute, he was awarded the "Manuel Aguilera" prize.

Inquiries at the Police Information Section of the Technical Department and the Frontier Control Section do not reveal any police record or evidence that he has left national territory.

At the French Embassy, Mr. LE-ROY of the Civil Registry Section said, when interviewed, that Mr. GEORGES KLEIN PIPPER was a personal physician of ex-President ALLENDE, and that the Embassy had not lodged any complaint concerning his disappearance, as that was a matter for the relatives of the missing person.

Annex LIII

INFORMATION SUBMITTED BY THE GOVERNMENT OF CHILE RELATING TO
THE CASE OF FERNANDO DE LA CRUZ OLIVARES MORI

With respect to the present case, which is of great concern to the United Nations, in addition to the information furnished to the Group during its visit to Chile and to what may be ascertained from inquiries in Santiago, the following is submitted:

- (a) The Working Group must take into consideration the fact that the event concerned occurred in October 1973, more specifically on the 5th of that month.
- (b) On the basis of the information supplied, the existence and whereabouts of the Marine Officer Jorge Osses Novoa is being investigated and an attempt is being made to find out who the person named Major Vergara is and to which branch of the armed forces he belongs.
- (c) Once these checks have been carried out and if the inquiries are successful, statements will be taken from the persons concerned regarding the alleged arrest of Fernando de la Cruz Olivares Mori.
- (d) In addition, efforts are being made to ascertain why such statements were not taken previously or, if they were, where the documents containing them are to be found.
- (e) Finally, an investigation is being conducted into the information regarding the arrest of Fernando de la Cruz said to have been furnished by the National Office of Detainees (Servicio Nacional de Detenidos - SENDET).

Annex LIII

INVESTIGATION REPORT RECEIVED FROM THE MINISTRY OF THE INTERIOR
OF CHILE ON MARIO JAIME ZAMORANO DONOSO

No. 444.

ZAMORANO DONOSO MARIO JAIME

The records of the Central Identification Office contain the following particulars concerning Zamorano Donoso:

Civil identity card No. 2,596,100-5, Santiago.

Born on 5 May 1931.

Married to ISOLINA LUCIA RAMIREZ RAMIREZ.

Resident at Estrella Solitaria No. 4245, Ñuñoa.

When his father, Mr. PEDRO NOLASCO ZAMORANO ALVAREZ, Chilean, aged 73 years, widower, retired, civil identity card No. 37,574 of Ñuñoa, was interviewed, he stated that his son, MARIO ZAMORANO, had been arrested on 4 May 1976 at the house of some friends in Calle Conferencia, Santiago - he did not know the exact address; he added that, since that date, he has had no further news of his son.

In the Confidential Records Section of the Information Department of the Chilean Investigation Service, he is registered as being a Communist and a member of the Central Committee of the Communist Party for 1968.

The records of the Frontier Control Section of the Aliens and International Police Department show him as having left the country for Argentina via Pudahuel airport on 13 May 1976. There is no record of his entry.

He has no police record at the Technical Support Department of the Investigation Service.

The Santiago Institute of Forensic Medicine has no record of his having died.

In addition, inquiries have been made with assistance institutions, prison establishments, police units, etc., but have met with no success.

La Cisterna, 5 July 1978.

Annex LIV

INVESTIGATION REPORT RECEIVED FROM THE MINISTRY OF THE INTERIOR
OF CHILE ON SERGIO SEBASTIAN MONTECINOS ALFARO

Addition to the report on Sergio Sebastian Montecinos Alfaro, presumed missing

In connexion with the request made by the Confidential Records Office of the Ministry of the Interior that it should be determined whether in fact Sergio Sebastian Montecinos Alfaro personally received an identity card on 16 January 1976, the following can be stated: the most recent entry on his record, revealed by a check carried out at the Identification Office of Santiago, shows him as having received civil identity card No. 29,611 at Maipú, but no date was shown, as the information arrived through the exchange system.

Inquiries were made through the Investigation Office of Maipú, and the following information was received: the records of the Identification Office of Maipú show that on 16 January 1976 Sergio Sebastian Montecinos Alfaro obtained his identity card No. 29,611, having presented the requisite documentation.

200. MONTECINOS ALFARO, SERGIO SEBASTIAN. Identity card No. 29,611, Maipú.
Went missing on 1 August 1974.

Inquiries made

1. On the basis of the information supplied, a search was conducted at the IDENTIFICATION OFFICE OF MAIPU and the following personal particulars were obtained concerning SERGIO SEBASTIAN MONTECINOS ALFARO: Chilean, born in Santiago on 23 May 1946, son of Cristóbal and Ubaldina, able to read and write, married to MONICA MARIA LIDIA CATTANI ORTEGA, industrial worker, resident at Calle Santa Amanda No. 14 "A", Maipú.

THE RECORDS SHOW THAT HE COLLECTED HIS LAST CIVIL IDENTITY CARD PERSONALLY on 16 January 1976.

2. At the CENTRAL IDENTIFICATION OFFICE, the following personal particulars for SERGIO SEBASTIAN MONTECINOS ALFARO were obtained: Chilean, born in Santiago on 23 May 1946, son of Cristóbal and Ubaldina, able to read and write, bachelor, employee, Santiago identity card No. 5,028,560, criminal record No. 712,883, charged with homicide in case No. 7,053 of the Eighth Criminal Court of Santiago, granted release on bail. Resident at Calle Armando Mook No. 3,623, Nuiña.

3. At the NATIONAL OFFICE OF DETAINEES (SENDET), the National List, the confidential SSMA card index and the CAJSIS and IBM card indexes were consulted and showed that there was no record of his having been detained up to the date on which this report was prepared.

4. At the LEGAL INSTITUTE OF FORENSIC MEDICINE, the Death Registers for the period from August 1974 to the present date were checked and were found not to contain the name of the missing person.

5. At the POLICE RECORDS SECTION, a subsidiary organ of the Technical Support Department of our Organization, it was found that SERGIO SEBASTIAN MONTECINOS ALFARO was the subject of an order of arrest for homicide, dated 7 January 1975 and issued by the Eighth Criminal Court of Santiago, (case No. 7,053, plenary).

6. At the INTERNATIONAL FRONTIER CONTROL SECTION, a subsidiary organ of the Aliens and International Police Department, a check covering the period August 1974-May 1978 was carried out but failed to turn up any record of the missing person's departure from the country. It was not possible to consult the records for June and July 1978 as the information was being processed in the IBM system.

7. In an interview, the mother of the missing person, MRS. UBALDINA ALFARO CASTILLO, Chilean, born in Longaví on 21 August 1916, able to read and write, Maipú identity card No. 34,325, housewife, married, resident at Población Buera, Calle Santa Amanda No. 14 "A", Maipú, made the following statement:

"My son, SERGIO SEBASTIAN MONTECINOS ALFARO, was an active member of the Socialist Party and was a supervisor at the "Franklin" Steel Factory. He was married to MONICA MARIA LIDIA CATTANI ORTEGO and had a son called SERGIO ANDRES MONTECINO CATTANI, born in 1972.

"On 4 August 1974, my son's mother-in-law LIDIA ORTEGA MUNOZ informed me that on 1 August 1974, when my son was in the house which we was renting at Calle Egaña No. 1,528, two persons dressed in plain clothes but looking like soldiers came to his house and took him away under arrest. She also told me that in the afternoon of 3 August 1974, two men who said that they were officials of the Investigation Service came to my son's house in an old, dark grey car, and proceeded to search the house.

"Some days later I spoke to my daughter-in-law, who told me that my son had been arrested by two men dressed in plain clothes and that she had seen one of the men carrying an identity card with the heading "Army of Chile".

"On another occasion, my daughter-in-law and her servant, VERONICA NETTO MORALES, told me that after my son was arrested, he was taken away in a black car bearing the Investigation Service crest on one door.

"At present, my daughter-in-law and my grandson are in the Federal Republic of Germany. I have no information which could be of use in locating the servant Veronica Netto in order to interview her.

"In January 1975, my son's mother-in-law told me that on the 19th of that month a person who gave his name as JUAN DARIO VILLAGRA GONZALES, resident at Población A. Pinto, Pasaje Cuatro, house No. 3,275, San Miguel, came to her home and told her that he had been held with my son at a detention centre situated at Calle Londres No. 38. Two months later I managed to locate this person and he confirmed that he had been held with my son at the place concerned.

"Immediately after learning from my son's mother-in-law that my son was under detention I went to the "Tres Alamos" camp and was informed that my son was being held there incommunicado. I therefore began to go

every week to this place to see if I could visit my son. However, I never managed to see him and always received the same reply, that I could not do so because he was still being held incommunicado.

"On 8 March 1975, I took him a parcel with some clothes. A carabinero who saw to me and whose name I do not know gave the parcel back to me, saying that because my son was being held incommunicado, he could not receive packages of any kind.

"In July 1975, the daily newspaper La Tercera de la Hora carried a list, taken from the Argentine review Lea, of the names of 60 persons who were reported as having died in clashes with the Argentine police; the list included the name of my son. Later, I was informed by the Vicaría de la Solidaridad that a person called ERIKA DE CHANFREAU, resident in France, had submitted a statement on seeing this list published in the press and that in her statement she had said that it was not possible for my son to have died in clashes with the police in another country since she had been detained in Santiago, Chile, with all those named in the list.

"In 1977, I brought a charge of presumed misadventure in the case of my son before the Eighth Criminal Court of Santiago, case No. 14,602-77; This VILLAGRA was summoned to make a statement to the Court but denied knowing my son or having at any time been detained with him."

8. The records of the INFORMATION DEPARTMENT of our institution show UBALDINA ALFARO CASTILLO, the mother of the missing person, as having been arrested by carabineros of the Third Carabineros Station (report No. 5,332, dated 17 November 1977) for creating a public disturbance opposite the Palacio de la Moneda on the arrival of the United States Ambassador.

9. In an interview, Mrs. LIDIA ELENA ORTEGO MUÑOZ, mother-in-law of the missing person, Chilean, born in Santiago on 29 November 1921, able to read and write, Santiago identity card No. 985,463-0, housewife, married, resident at Calle Armando Mook No. 3,623, Nuñoa, Santiago, made the following statement:

"On the evening of 1 August 1974, my daughter, MONICA MARIA LIDIA CATTANI ORTEGA, came to my house and told me that at about 4.30 p.m. on the same day her husband, SERGIO SEBASTIAN MONTECINOS ALFARO, had been arrested at his own home by two persons in plain clothes who said that they were officials of the Intelligence Service and who showed a yellow identity card on which she had been able to read only the heading, which said "Army of Chile". She said that the two persons had arrived at her house in a black car followed by another car of the same colour in which there were two other men who did not get out. She stated that the two men who came into the house took her husband away in their car to a destination unknown to her. On the following day, she filed a writ of amparo.

"At about 1.30 p.m. on Saturday, 3 August 1974, I received a telephone call at my home from a man who said that he was a detective and asked me to go and open up the house of my son-in-law since it had to be searched.

"I went to my son-in-law's house and opened it; about 15 minutes later an old, dark grey car arrived and two men got out who refused to show me their credentials and told me to trust them. They went into the

house, searched it thoroughly and confiscated, as they put it, a number of books, some papers whose content I do not know, some clothes which, at my request, they were to give to my son-in-law and a "Browning" gun, duly registered, which belonged to my husband. They told me that my son-in-law was involved in a plot to manufacture explosives with a certain FERNANDEZ or FERNANDO, as I was able to see from a paper which they said was a statement by him, but which I could tell was not in his handwriting.

"My daughter and my grandson, SERGIO ANDRES, went to the Federal Republic of Germany on 31 July 1976 and are at present living in Frankfurt."

10. In the records of the INTERNATIONAL FRONTIER CONTROL SECTION of the Aliens and International Police Department, MONICA MARIA LIDIA CATTANI ORTEGA and her son, SERGIO ANDRES MONTECINOS CATTANI, are shown as having left for the Federal Republic of Germany from Pudahuel airport on 31 July 1976 under family passport No. 248.

11. An interview was held with JUAN DARIO VILLAGRA GONZALES who, according to the mother of the missing person, had told her that he had been detained with her son and whose personal particulars are as follows: Chilean, born in Chuquicamata on 10 October 1943, able to read and write, Santiago identity card No. 4,552,913-4, hairdresser, married, resident at Población A. Pinto, Pasaje Cuatro, house No. 3,275. He made the following statement:

"I do not know any SERGIO SEBASTIAN MONTECINOS ALFARO. I have never been detained with him in any place. I have only been arrested twice in my life and both times it was for breaking the curfew. I was summoned by the Eighth Criminal Court of Santiago to make a statement on this very matter and I told the Court the same thing that I am telling you now. I do not know why I was asked to make a statement, since I do not even know any members of Montecinos' family and I do not know where they got my name and address to ask me to give what would be completely false testimony."

12. Efforts were made to trace the whereabouts of VERONICA DE LAS MERCEDES NETTO MORALES who appears in the records of the Central Identification Office with the following personal particulars: Chilean, born on 3 July 1957, able to read and write, Santiago identity card No. 7,542,074-4, spinster, domestic worker, residing at Calle Eganã No. 1521, Nuñoa.

The inquiries established that No. 1521 of Calle Eganã does not exist, since the numbering on that road jumps from No. 1519 to 1523, and that no Veronica de las Mercedes Netto Morales was known in that area.

13. In the CONFIDENTIAL RECORDS SECTION OF THE INFORMATION DEPARTMENT, SERGIO SEBASTIAN MONTECINOS ALFARO is recorded on 22 July 1975 in a list published in the Argentine review "Lea" as one of 60 Chileans said to have belonged to MIR and to have died in Argentina, Colombia, Venezuela, Panama, Mexico and France; according to this information, the alleged assassinations were carried out by colleagues of the persons concerned.

In 1973, this person was charged with the murder, on 13 April 1972, of VICTOR RIOS ABURTO (case No. 7,053 at the Eighth Criminal Court of Santiago) and was released on bail.

On 17 January 1975, the Eighth Criminal Court of Santiago, meeting in full session, ordered him to be arrested for the crime of homicide in case No. 7,053.

In February 1977, his name was included in a list of persons allegedly missing which was transmitted by the International Committee of the Red Cross.

14. According to the uncle and aunt of the missing person, who refused to give their personal particulars for fear of reprisals by the family and parents of the missing person, and who are residing at Poblaci6n Santiago Bueras, Calle Santa Amanda No. 14 "B" behind the house of the missing person's parents, their nephew was an active member not of the Socialist Party but of MIR and had been seen right in the centre of Maipú at the beginning of 1976 (this information tallies with the date on which the individual in question appeared at the Maipú Identification Office to receive his identity card one year and four months after his parents had reported that he had gone missing).

The same relatives stated that, since the date on which the wife of the missing person left for Germany, the parents of SERGIO SEBASTIAN MONTECINOS ALFARO have been receiving various kinds of correspondence from France, Italy, Norway, Sweden, Holland, England, the United States and Stockholm.

15. A visit was made to the Central Offices of the Social Security Service in order to ascertain whether the missing person had been or was a contributor to that Service or was receiving any type of benefits; however, his name was not recorded on the lists of contributors.

16. The same kind of inquiries were made at the PRIVATE EMPLOYEES FUND but his name was not recorded there either.

17. The Maipú office of the Directorate of Public Health (DCS) was visited to see whether there was any note of his having used the office's services, but this effort was unsuccessful since his name did not appear in the records.

18. Owing to pressure of time, it was not possible to visit the DOS offices in other communes to carry out the same type of inquiries.

19. The Central Offices of ENDESA were visited to see whether the missing person was listed in their records; it was found that his name did not appear on their registers.

20. Inquiries were made at the Licence Plate Offices of the Municipalities of La Reina, Nuñoa, Santiago and Maipú to see whether there was any record of his name and indication of his occupation, but these efforts were unsuccessful.

21. Owing to pressure of time, the other Municipalities were not approached.

22. Inquiries were made at the Statistical Offices of the "Calvo Mackenna" and neurosurgery hospitals to see whether there was any record of his having received treatment there, in which case his personal particulars and address should have been recorded. However, these inquiries were unsuccessful.

23. Because of pressure of time, it was not possible to visit the other hospitals and first-aid centres to conduct similar inquiries.

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24. The missing person is not recorded as a customer by the Telephone Company of Chile, nor does he appear in the list of private subscribers.

25. The Internal Taxes and Treasury Department was visited in an attempt to obtain further information on the missing person, but these efforts were unsuccessful; the information was refused because of the lack of an appropriate order and it was stated that such an order could be requested by headquarters through official channels.

Annex LV

LETTER DATED 8 AUGUST 1978 FROM THE CHAIRMAN OF
THE AD HOC WORKING GROUP ADDRESSED TO THE
MINISTER OF THE INTERIOR OF CHILE

Sir,

At the request of the Ad Hoc Working Group on Chile I wish to thank you for your letter of 28 July 1978 concerning the problem of missing persons in Chile. Your letter has been examined carefully by the Group which gave particular attention to the discussions during the Group's last meeting with you in Chile and to the suggestions relating to the problem of missing persons made by the Group at that time.

As the Group informed Ambassador Sergio Diez during the meeting of Friday, 4 August 1978 in New York, the Group regrettably has been constrained to conclude that the response of the Government of Chile to the problem of missing persons, as reflected in your letter, is not positive and that the Group must view your Government's approach as not corresponding to the type of action warranted by the situation.

Both during its visit to Chile and at the meetings held in New York with representatives of your Government in the week 31 July to 4 August 1978, the Group drew your Government's attention to the great importance attached by the international community and the Group to achieving a clear and definite solution and a final conclusion to the problem of missing persons. The relatives of the missing persons have emphasized the strictly humanitarian nature of their concern and the Working Group itself is interested in responding to the legitimate humanitarian aspects of the situation. While the Group is aware of the many other important problems faced by the Government of Chile, it nevertheless hopes that the Government of Chile will give to the humanitarian and human problem of missing persons the serious attention that it deserves.

The Group has carefully reviewed the information obtained in Chile on missing persons and on the Government's efforts to locate missing persons and this review has led the Group to hold the firm opinion that the Government of Chile must undertake new and innovative measures, in collaboration with the Group and other competent international organizations, to arrive at an authoritative answer to the problem of missing persons. The key to this answer, in the Group's view, is a full and detailed investigation of each case carried out by an independent, impartial and objective body.

Given the special nature of the investigation, the deep interest of the international community and important sectors of the Chilean population in a clear, definite and objective appraisal of the facts and the unsatisfactory nature of past investigations, the Group believes that an independent inquiry Commission, as used in certain countries to shed light on national matters of importance, should be established in Chile. The Group would suggest that a Commission be established by national legislation whose composition would include,

from the national level, a representative of the Ministry of the Interior, a representative of the Chilean Judiciary and the Cardinal-Primate of Chile or his representative. The Group also desires to recommend that a member of the Working Group, to be designated for that purpose by the General Assembly or the Commission on Human Rights, be included on the Commission as Chairman and that the International Committee of the Red Cross also be invited to be associated with the Commission's work.

The investigation to be carried out by this Commission would have for its sole purpose the establishment of the facts in each case and would begin with the collection of all information from the various judicial proceedings. It would also gather, scrutinize and follow up the testimony of all witnesses in each case, whether actual or former members of the military or security services and whether residing in or outside Chile. The records of all Government agencies would be opened for scrutiny by the Commission as would the different places allegedly connected with the disappearance of detainees.

The legislation establishing this Commission would, in the Group's view, confer upon it the legal powers necessary to carry out its investigation and, in particular, call upon all departments and branches of Government to co-operate fully in the investigation.

The Group would, of course, be most willing to discuss any details of this proposal with the representatives of the Government of Chile during the meetings scheduled for September 1978. It is the Group's hope that the Government of Chile will respond to these suggestions in such a way as to enable the Group to report positively about the agreement of the Government of Chile on this matter to the next General Assembly, and that the results or interim results of the activities of the proposed inquiry commission would be known in time for the Group to inform the Commission on Human Rights at its next session.

Accept, Sir, the assurances of my highest consideration.

(Signed) Mr. Ghulam Ali Allana
Chairman
Ad Hoc Working Group on Chile

Annex LVI

LETTER DATED 20 SEPTEMBER 1978 FROM THE PERMANENT REPRESENTATIVE
OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF THE
AD HOC WORKING GROUP

At the meeting of 7 September with the Ad Hoc Working Group of which you are Chairman, I indicated the wish of the Chilean Government to discuss with the Working Group the suggestions in its letter dated 8 August 1978 as to how to deal with the problem of persons alleged to have gone missing.

In this connexion, I wish to inform you that both the discussions with the Group itself and those with Mr. Benites and Mr. Ermacora, who were entrusted by the Group with the task of analysing the subject with us in greater detail, hold out prospects of an agreement being reached on the basis of the spirit of co-operation which has prevailed at our meetings and of respect for the principle of non-discriminatory application of United Nations standards.

The Government has the subject under review and hopes to continue to discuss it with the Group during its next session.

I should like you to inform the Group and, through it, the General Assembly that the Government is continuing to make every effort to clear up the outstanding cases, in particular the cases which have been submitted by the authorities of the Catholic Church through the various bishops and which number 269 at the present date.

I am sending you as an annex to this letter the results of the investigations which clear up the cases of Juan Ignacio Aravena Hernández, Juan Zenon Chacon Leal, Luis González Manriquez and Rafael Olmo Calvo, the first two appearing in the most recent lists published by the Vicaría de la Solidaridad and the other two included in the list presented to the Government of Chile by the International Red Cross. All this information came to hand after the Group's visit.

Accept, Sir, etc.

(Signed) Sergio DIEZ
Ambassador
Permanent Representative

Annex LVII

DECREE-LAW No. 81 OF 11 OCTOBER 1973

Ministry of National Defence

Office of the Under-Secretary for War

For reasons of State security, establishment of penalties for persons who disobey the public summons from the Government

Decree-Law No. 81. Santiago. 11 October 1973

Bearing in mind the provisions of Decree-Laws Nos. 1 and 5 of 11 September 1973, and

Considering:

1. The necessity, for reasons of State security, that persons summoned by the authorities should obey that summons;
2. The desirability of establishing criminal penalties for failure to obey such a summons, in accordance with the interests of State security;
3. The need to take measures to ensure the security of the State, internal order and the normality of national activities in keeping with the situation prevailing in the country, as evidenced by the facts which have come to light;

The Government Junta has agreed upon, and hereby enacts, the following Decree-Law:

Article 1. Anyone who disobeys a public summons from the Government, made for reasons of State security, to appear before the authorities shall be liable to the penalty of medium-term imprisonment in the maximum degree or to that of long-term exile in the intermediate degree.

Without prejudice to criminal responsibility, the authorities shall take administrative action, the commission of the offence having first been established, to cancel the offender's passport, if he is abroad.

Notice of the summons shall be given by means of its publication in the Diario Oficial, on which date it shall be presumed to be legally known, and commission of the offence shall be deemed to have been established five days after such publication, if the person summoned is in the national territory, and 40 days after such publication, if he is abroad.

The offence shall be dealt with by the Military courts, which shall render judgement in accordance with the provisions of the Code of Military Justice.

The fact that, by obeying the summons, the offender might lay himself open to prosecution for other offences shall not confer exemption from, or reduction of, the penalty.

If the person summoned by the Government has committed offences, the fact of complying with the summons shall be regarded as a special extenuating circumstance in respect of these offences; the Court shall be required to impose a penalty one degree lower than that which would otherwise be applicable and may, depending on the circumstances, reduce the penalty by two or three degrees.

In such a case, the Court may also impose, in lieu of the appropriate penalty or penalties involving deprivation of liberty, a sentence of exile for a period twice the length of the former penalty or penalties.

Article 2. In the cases provided for in article 418 of the Code of Military Justice, such as in a time or state of war, and when the higher interests of State security so require, the Government may order the expulsion or banishment from the country of particular individuals, whether aliens or nationals, by means of a decree stating the reasons for its action and signed by the Minister of the Interior and the Minister of National Defence. Persons who are the subject of expulsion or banishment measures shall be free to choose their place of destination.

Article 3. Those who left the country to seek asylum, those who abandoned the country without complying with the procedure laid down or who were expelled or forced to leave the country or were sentenced to exile, may not re-enter the country without the authorization of the Minister of the Interior; such authorization must be sought through the appropriate consulate.

The Minister of the Interior, basing himself on considerations of State security, may decline to grant the authorization applied for.

Article 4. Anyone who clandestinely enters the country or in any way fails to comply with the procedures governing such entry shall be liable to a penalty ranging from long-term imprisonment in the maximum degree to death, provided that the circumstances or particulars are such as to justify a presumption by the court that his object in so doing is to engage in activities directed against the security of the State.

The aforementioned object shall be presumed in the case of a person who has left the country by means of asylum, has left it without complying with the established rules, has been expelled from or obliged to leave the country, has committed the offence referred to in article 1 or re-enters the country in violation of a sentence of exile imposed on him.

Article 5. Accomplices and individuals who harbour, conceal or assist the escape of persons guilty of the offences envisaged in this Decree-Law shall be liable to the appropriate penalty, increased by one degree.

The offence shall be dealt with by the military courts, which shall render judgement in accordance with the provisions of the Code of Military Justice.

To be registered at the Office of the Comptroller-General of the Republic, published in the Diario Oficial, and inserted in the Official Bulletins of the Army, the Navy and the Air Force and in the Compilation of Laws and Decrees of the Office of the Comptroller-General of the Republic. - AUGUSTO PINOCHET UGARTE,

Army General, President of the Government Junta. JOSE T. MERINO CASTRO, Admiral, Commander-in-Chief of the Navy. GUSTAVO LEIGH GUZMAN, Air Force General, Commander-in-Chief of the Air Force. CESAR MENDOZA DURAN, General, Director-General of the Carabineros, Patricio Carvajal Prado, Vice-Admiral, Minister of National Defence. Oscar Bonilla Bradanovic, Division General, Minister of the Interior. Gonzalo Prieto Gándara, Minister of Justice.

Annex LVIII

ARTICLE 6 OF THE 1925 POLITICAL CONSTITUTION
OF THE REPUBLIC OF CHILE

Article 6. Chilean nationality shall be lost:

1. By naturalization in a foreign country, except in the case of Chileans covered by paragraphs 1 and 2 of the preceding article, who have acquired Spanish nationality without renouncing their Chilean nationality;
2. By cancellation of naturalization papers, a measure against which an appeal may be addressed within a period of ten days to the Supreme Court, which shall sit as a panel to hear the case. If an appeal is lodged, the effects of the cancellation of the naturalization papers shall be suspended;

Naturalization papers issued to persons holding offices to which they have been elected by popular vote may not be cancelled; and

3. For providing assistance to the enemies of Chile or to their allies in time of war.

Persons who have lost their Chilean nationality on any of the grounds set forth in this article may not have it restored except by law.

The reason for loss of Chilean nationality referred to in paragraph 1 of this article shall not apply in cases where, by virtue of legal or constitutional provisions of other countries, Chileans residing in those countries are required to adopt the nationality of the country in which they are residing as a condition for their continued stay there.

Annex LIX

DECRETE-LAW No. 175 of 3 DECEMBER 1973

Ministry of the Interior

Amendment of article 6 of the Political Constitution of the State

Decree-Law No. 175. Santiago, 3 December 1973

Considering:

Decree-Laws Nos. 1 and 128 of 1973, and bearing in mind the need to legislate on the situation of nationals residing abroad who promote or perform acts which are seriously prejudicial to the essential interests of the State, the Government Junta has resolved to enact the following Decree-Law:

Article 1. A new paragraph 4, as follows, shall be inserted before the last two paragraphs of article 6 of the Political Constitution of the State:

"4. For seriously damaging the essential interests of the State from abroad in the exceptional situations provided for in article 72, paragraph 17, of this Political Constitution".

Article 2. For the purposes of deprivation of nationality in accordance with article 6, paragraph 4, of the Political Constitution of the State, a supreme decree with a statement of grounds shall be required, following agreement by the Council of Ministers which shall in any case consider the written report of the Chilean diplomatic or consular authority concerned.

To be registered in the Office of the Comptroller-General of the Republic, to be communicated and published in the Diario Oficial and to be inserted in the Official Bulletins of the Army, Navy, Air Force and Carabineros of Chile, and in the Official Digest of the said Office. - AUGUSTO PINOCHET UGARTE, General of the Army, Commander-in-Chief of the Army. - Admiral JOSE T. MERINO CASTRO, Commander-in-Chief of the Navy. - General GUSTAVO LEIGH GUZMAN, Commander-in-Chief of the Chilean Air Force. - General CESAR MENDOZA DURAN, Director-General of the Carabineros.

Annex LX

LIST,

PROVIDED TO THE GROUP BY THE GOVERNMENT OF CHILE, OF PERSONS WHOSE
APPLICATION TO ENTER THE COUNTRY HAS BEEN REFUSED

1. ABUJATUM PALMA, VICTOR
2. ACEVEDO ACEVEDO, VIOLETA
3. ALEGRIA HERRERA, LUIS HERNAN
4. ALLENDE GOSSEN, LAURA
5. ALMEYDA MEDINA, CLODOMIRO
6. ALTAMIRANO CORNEJO, RENE ENRIQUE
7. ALVARADO GONZALEZ, ELIANA
8. ALVARADO INOSTROZA, MONICA EMILIA
9. ALVAREZ GONZALEZ, LUIS LEONCIO
10. AGUIERRE BAEZA, LUZ MARIA
11. ALVAREZ ROJAS, GRACIELA REGINA
12. ANDRADE VERA, CARLOS
13. ARANCIBIA GUTIERREZ, GRACIELA
14. ARANCIBIA FINCHETRA, ESMERALDO DEL CARMEN
15. ARANCIBIA VALENZUELA, SANDOR
16. ARANCIBIA VALENZUELA, SERGIO GALVARINO
17. ARAVENA VALENZUELA, ADRIANA
18. ARELLANO MATURANA, BORIS ARTURO
19. AREVALO SAGREDO, ANTONIO
20. ARIAS DIAZ, PILAR CECILIA
21. ARRATE MC NIVEN, JORGE FELIX
22. BALPRA MORENO, MIREYA
23. BANDERAS HERRERA, WLADIMIR
24. BARBERIS CASTEX, FRANCO ANDRES
25. BARBERIS CASTEX, VICTOR
26. BARNES RIOS, HUGO ORLANDO
27. BARRALES LEAL, JOSE DARIO
28. BARRENECHEA GRUNWALD, ANA MARIA
29. BASTIAN VELASCO, MARIA YOLANDA
30. BASTIDAS GONZALEZ, JORGE
31. BECERRA MADRID, HERNAN
32. BEHM ROZAS, HUGO
33. BENITEZ GONZALEZ, ALEJANDRA LIGIA
34. BERRU CARRION, MAX
35. BOBILLIER CAMUS, SERGIO ENRIQUE
36. BONSCHEM WYSS, CARLOS
37. BRAVO IBARRA, DAVID HUMBERTO
38. BRICENO BRICENO, BLANCA NIEVES
39. BRONPIS SCHLICK, BORIS NICOLAS
40. BUGUENO BARRAZA, HECTOR OSVALDO
41. BUGUENO CORTES, PEDRO
42. BULNES CALDERON, PILAR DEL CARMEN
43. BUSTAMANTE CAROCA, ZITA ELODIA
44. BUSTAMANTE GONZALEZ, RODEMIL RUBEN

45. BUSTOS SORIANO, JUAN ERNESTO
46. CABALLERO SANTA CRUZ, MARTA ISABEL
47. CABEZAS RAMIREZ, VICTORIA
48. CACERES CASTRO, LEONARDO RENE
49. CAMUS VARGAS, JOSE MIGUEL
50. CARDENAS AGUIRRE, JAIME RAMON
51. CARRERA VILLAVICENCIO, MARIA ELENA
52. CARVAJAL GALLARDO, VIRGILIO NOLEBERTO
53. CASTEX DIAZ, VIOLETA ELIANA
54. CASTILLO VILCHES, JAIME RENE
55. CATALAN ARAVENA, LEONCIO
56. CARVALLO MUZZIO, VICTOR HORACIO
57. CEFECEDA PARRA, VIOLETA ISABEL
58. CISTERNAS CISTERNAS, LUIS ALBERTO
59. CLEARY ZAMBON, JUAN PATRICIO
60. COLL PRADO, GABRIEL
61. CONCHA GUTIERREZ, JUAN CARLOS
62. CONCHA MONARDES, RAUL JOSE LUIS
63. CONTRERAS TAPIA, VICTOR BENITO
64. CORONEL ARANEDA, ALCALUS
65. CORTINEZ TORRES, ELOY
66. COULON LARRANAGA, JORGE TEOFILO
67. COX MENDEZ, JORGE HILLS
68. CUADRO VALDES, ISABEL EIENA
69. CUBILLOS CARVAJAL, PEDRO
70. CHAIGNEAU VALDES, RAIMUNDO
71. DAVED SUMAR, JORGE
72. DE LA PAZ DE LA PAZ, PEDRO RENE
73. DEL CAMPO LIRA, JAIME
74. DE LOS REYES HERRERA, SERGIO
75. DE PAULA PIRES, NIELSON
76. DE VER BERTI, ELSA CRISTINA
77. DIAZ CORVALAN, RODRIGO
78. DIAZ LETELIER, JULIO CESAR
79. DIAZ PEREZ, ALVARO
80. DIEGUEZ REBOLLEDO, JOSE
81. DONOSO SALINAS, ROBERTO
82. DUARTE CASTRO, ALBERTO MIGUEL
83. DURAN DE LA FUENTE, PEDRO
84. DURAN DURAN, JORGE
85. ELGUETA GUERIN, HUMBERTO
86. DURAN VIDAL, HORACIO
87. ESCRIBAR LAGOS, ELSA LIDIA
88. ESPARZA CARVAJAL, LUIS ERNESTO
89. ESPINOZA CERON, OSCAR
90. ESPINOZA LEON, RAUL ALONSO
91. ESTEVEZ VALENCIA, JAIME LUIS
92. FAZZIO RIGASSI, HUGO
93. FERNANDEZ PALAU, JAIME
94. FLORES LEAL, SERGIO ROLANDO

95. FONSECA PEDRAZA, CLAUDIO LEONARDO
96. FUENTES BUSTAMANTE, HERNAN
97. FUENTES ELDAN, MONICA
98. FUENZALIDA OYARCE, RODOLFO
99. GAJARDO AHUMADA, ERNO
100. GAJARDO WOLF, MONICA
101. GARCIA BERNALES, MARIA E.
102. GARFIAS BENITO, NILDA ERIKA
103. GODOY URRUTIA, CESAR
104. GOMEZ GOMEZ, CARLOS RUBEN
105. GONZALEZ VALIENTE, ELBA
106. GRAF ACUNA, PATRICIA MERCEDES
107. GUASTAVINO, LUIS
108. GUERRERO SEPULVEDA, CARLOS RAMIRO
109. GUILLEN CABREJOS, RAMON ENRIQUE
110. GUINART MORAL, FRANCISCO
111. GUTIERREZ GUTIERREZ, NIVIO HECTOR
112. GUZMAN SANDOVAL, JUAN CAMILO
113. HENNINGSS CEPEDA, ERIKA
114. HERNANDEZ RAMIREZ, VALENTIN
115. HERNANDEZ VIDAL, MANUEL
116. HERRERA HERRERA, FIDELIA
117. HOCES SALAS, SANDRA DEL CARMEN
118. INOSTROZA BEJARES, JORGE
119. INZUNZA BECKER, SERGIO HERNAN
120. INZUNZA BARRIOS, SERGIO
121. JANA JIRON, EFRAIN MIGUEL
122. JANA MARCOLETA, MANUEL
123. JARA ZAMBRANO, JOSE ROSALINO
124. JEREZ BURGOS, ELIANA DEL CARMEN
125. JORQUERA PASTEN, ELIAS ARMANDO
126. KIESSLIN DAVINDSON, LUCETTE VIVIANNE MARCELLE
127. KORTESCHINER KLEMMAN, EVELYN RUTH
128. LAWNER STEIMANN, MIGUEL
129. LAZO SALINAS, JAIME MARIO
130. LAZO VARGAS, SERGIO ROSENDO AVELINO
131. LEAL LABRIN, JOSE ANTONIO
132. LEIVA MERCADO, PABLO GUILLERMO
133. LETELIER BUZETA, OSCAR
134. LEYTON SANCHEZ, ENRIQUE
135. LIENLAF GOMEZ, SILVIA DEL C.
136. LIRA MOSCOSO, CARLOS MARIO
137. LOPEZ FUENTES, CARLOS
138. LOPEZ MERANDA, MARIA VERONICA
139. LOPEZ PAPAGALLO, ROSA DANIZA DEL PILAR
140. LORCA PENA, ALTAMIRA
141. MANCILLA CACERES, OSCAR
142. MANZANO ISLA, RAUL TOMAS ADOLFO
143. MARTICORENA GELVEZ, MIRIAM ANGELICA
144. MARIN MILLIE, GLADYS

145. MARTINEZ MALDONADO, JOSE JACINTO
146. MAULEN A., MARIA ANGELICA D.
147. MAULEN CASTILLO, MANUEL
148. MEDRANO ZAVALA, GUSTAVO RAIMUNDO
149. MELLADO DIEZ, HECTOR
150. MELLAFE CAMPOS, RAFAEL ENRIQUE
151. MEZA GUTIERREZ, HERNAN
152. MICHELI SAAVEDRA, HUMBERTO
153. MONTES LARRAIN, ARTURO
154. MORALES ZAMBRANO, JUAN DE LA CRUZ
155. MUNOZ DE LA PAZ, ARISMANDO BERNARDO
156. MUNOZ ORELLANA, LUIS
157. MUNOZ VERGARA, AGUSTIN
158. NAHUEL JEDES, NELSON PIERRI
159. NILO FARIAS, CARLOS
160. NISTAL NISTAL, OFELIA
161. NOVOA MONREAL, EDUARDO
162. OLIVARES CAMUS, SERGIO
163. OLIVARES OLIVARES, RICARDO
164. ORTEGA PARRAGUEZ, MARIA ISABEL
165. OSSA LAGARRIGUE, LUZ MARIA
166. OSTORNOL FERNANDEZ, MANUEL
167. OYARZO AGUILAR, RUBEN ENRIQUE
168. PALMA FOURCADE, ANIBAL
169. PARRAU TEJOS, SERGIO EDGARDO
170. PAVEZ PHILLIPS, GUILLERMO FELIPE
171. PENALOZA ROJAS, JUANA DEL CARMEN
172. PERALTA PIZARRO, ELIA
173. PEREIRA ITURRIAGA, HUMBERTO
174. PEREZ SANTIBANEZ, RAMON
175. PHILLIPS ARAYA, RUSSELA
176. PINTO SALAZAR, CESAR ENRIQUE
177. POBLETE MARTINEZ, MARTITZA ANABETH
178. FUELLER BRAVO, JOSE HUGO
179. QUINTANA MIRANDA, IVAN ELISEA
180. QUINTEROS GONZALEZ, EMILIO ASCENCIO
181. QUIROGA ARAVENA, MARIA SOLEDAD
182. RAVANAL DEPASSIER, SERGIO EDUARDO
183. REBOLLEDO GONZALEZ, MIGUEL ANGEL
184. REBOLLEDO VERA, WILLIAMS
185. REYES NORIEGA, MARIA NELLY
186. REYES USCHINSKY, MARIA CARLA
187. RIVERA GELDRES, MARIA TERESA
188. RIVEROS LEPEE, ANA MARGARITA
189. ROCHA TRIGO, FERNANDO
190. RODRIGUEZ ARENAS, ANICETO
191. ROMANO LORCA, PATRICIO
192. ROMERO MAYER, ELISABETH
193. RUIZ FERNANDEZ, GONZALO
194. SALINAS ALVAREZ, GLORIA
195. SALINAS ALVAREZ, HORACTIO
196. SAMANIEGO MESIAS, SEVERO AUGUSTO

197. SAN MARTIN ESPINOZA, JOSE ADOLFO
198. SCHNAKE SILVA ERICK A.
199. SEPULVEDA IBANEZ, LENIN GUILLERMO
200. SEPULVEDA TORO, ANIBAL ANGEL BENITO
201. SEPULVEDA VARGAS, LUIS ALBERTO
202. SEVES SEPULVEDA, JOSE LUIS
203. SILVA AGUILERA, MARIA ANGELICA
204. SILVA DIAZ, JUAN FRANCISCO
205. SILVA FUENTES, MARIA ELENA
206. SILVA RIFFO, CARLOS ALEJANDRO
207. SOLAR SILVA, MIGUEL ANGEL
208. SOLER RIOSECO, HORACIO
209. SOTA AGUAYO, MARIA ELENA
210. SOTO BOLTELLLO, ERWIN
211. SQUADRITO MOGGIA, RAUL
212. STHANDIER-SOTO, OLGA ELENA
213. SUAREZ BASTIDAS, JAIME
214. TAPIA CADIZ, MARTHA ALEJANDRINA
215. TEJEDA GALLEGOS, SERGIO E. MANOUEL
216. TEPLIZKY LIJAVETZKY, BENJAMIN
217. TIZNADO ROSAS, VICTOR JAVIER
218. TORRES CARTES, DANIEL
219. TORRES GAHONA, GUILLERMO
220. TORRES GONZALEZ, SERGIO
- 1/
222. TRUJILLO CUITINO, ANTONIO SEGUNDO
223. UNAMUNO RUDCKOLDT, VLADIMIR MAURICIO
224. BADELL AMION, JUAN ALVARO
225. VALDES BASTIDAS, CARLOS ENRIQUE
226. VALDIVIESO ABRAHAM, GUILLERMO TELMAN
227. VALENTE ROSSI, LUIS
228. VALENZUELA ESPINOZA, LEANDRO IVAN
229. VALENZUELA VUILLE, JUAN CARLOS
230. VARGAS GONZALEZ, SEGUNDO EFRAIN
231. VASQUEZ GOMEZ, MARIA ANGELICA
232. VASQUEZ MEZA, LUIS ALBERTO
233. VASSALLO ROJAS, CARLOS
234. VELASCO MARTNER, EUGENIA
235. VELASCO VILLAFANA, ELENCA
236. VELASQUEZ ROJAS, JUAN DE DIOS
237. VEGA MORALES, PEDRO MARCIAL
238. VICENCIO GUZMAN, PAULINA ANA
239. VILLANUEVA ORMENO, SILVIA
240. VOGUEL LOPEZ, PATRICIO
241. WEISNER HOROWITZ, GERARDO
242. ZALAQUET DAHER, JOSE FERNANDO
243. ZAMUDIO RAMIREZ, ALFREDO

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- 244. ZAVALA SAN MARTIN, XIMENA ADRIANA
- 245. ZEPEDA VARAS, LINCOYAN EDUARDO
- 246. ZORRILLA ROJAS, AMELICO

SANTIAGO, 9 August 1978

Certified true copy

ENRIQUE ROSSI MEJIAS
Captain of Carabineros
Secretary

Annex LXI

MEMORANDUM ENTITLED "FREEDOM OF EXPRESSION" SUBMITTED BY THE
GOVERNMENT OF CHILE ON 31 AUGUST 1978

This part of the questionnaire, under the heading "Freedom of Expression", contains a number of "queries in connexion with Bando 107".

It should be pointed out first that, of the six questions, only one - no. 4 - relates specifically to Bando 107. The other five questions are indeed related to freedom of expression, but not to Bando 107.

This point having been clarified the answers to the questions are as follows:

1. "Closing down of La Segunda. Legal grounds and factual background."

REPLY

The newspaper La Segunda of Santiago was not closed down or banned. Its circulation was suspended for two issues on the ground that it had published an interview which violated explicit legal provisions and, what is worse, had omitted a portion of that interview which mitigated the views published in the issue which gave rise to the measure.

The measure in question was applied by the Commander-in-Chief of the Emergency Zone, by virtue of the powers vested in him under article 34 of Act No. 12,927 of 1958. The persons concerned lodged a complaint with the law courts under the same Act No. 12,927; and the claim was disallowed in the first and second instances. At present an appeal is awaiting a hearing in the Supreme Court, so that until the latter hands down its decision, the matter is not ended.

2. "Publications that have been closed or the distribution of which has been prohibited and those that have not been authorized since the beginning of this year. Legal basis, factual background."

REPLY

In the first place it should be made clear that, apart from La Segunda which has been discussed in the previous paragraph, and whose circulation was merely suspended, no publication has been closed down.

The Commander-in-Chief of the Emergency Zone, by virtue of the powers vested in him under the above-mentioned article 34 of Act No. 12,927, issued Bando 107 in 1977 for the purpose of preventing the moral corruption of young people, the advocacy of violence and the propagation of anti-social doctrines.

Powers under this Bando have been used on a limited number of occasions, for the purpose of withholding permission to distribute books or magazines whose titles alone indicate that their contents are contrary to its provisions. By way of illustration, the titles of these books and magazines are given below.

Books of a pornographic nature or of a clearly immoral content:

"The Buenos Aires Affair",	Manuel Puig
"The Kiss of the Spider Woman",	"
"The Painted Bird",	Jerzy Kosinsky
"Obsession for a Woman",	Carlos de Santander
"A Lesson in Happiness",	"
"Hot Siesta",	"
"The Wings of Desire",	"
"White Slaves",	Henry D'Oray
"Unbridled Passion",	"
"A Gentle Dark-Haired Venus",	"
"The Last Man",	"
"The Hites Report" (study on female sexuality),	Shere Hites
"Sexual Perversion and Sexual Imprisonment",	B. Karpman

Books propagating anti-social doctrines:

"Carlos, Portrait of a terrorist",	Colin Smith
"Marx is dead",	"
"What, how, when and why" (4 volumes),	Molino Publishing House

3. "Does the Government, in particular through the Director of Social Communications, give suggestions, instructions or recommendations or make its views known to the mass media in Chile relating to the way in which certain news stories should be treated?"

REPLY

The functions and powers of the National Directorate of Social Communications (DINACOS) and its Director are set-forth in Supreme Decree No. 11 of 1976 establishing the General Secretariat of the Government; they do not include the power to impart instructions, rules, recommendations or suggestions to the communication media. Consequently, the Director of DINACOS has not imparted any such suggestions, instructions or recommendations.

4. "It was announced that a study on Bando 107 was being undertaken. Has this been done and, if so, with what results?"

REPLY

At the request of various communications media, a study of Bando 107 is in fact being carried out, with a view to its possible abrogation and replacement by regulations appropriate to the present situation. At the present time the observations presented by the Chilean Book Chamber are being considered: this is an organization of booksellers and distributors which has stated that it is anxious not

to serve as a vehicle for promoting and marketing pornography. Since this approach, if accepted, would necessarily call for the enactment of rules of a legal nature and not merely temporary regulations such as those contained in a Bando, it is necessary to study carefully the system to be applied. This explains the delay in adopting a final solution.

5. "Specific grounds for the arrest of journalists while carrying out their professional duties, case of 1 May 1978, including Mariana Ventura".

REPLY

There is no record of journalists being arrested while carrying out their duties. On 1 May 1978, a number of persons were arrested for disturbing the peace and disobeying the orders of the carabineros - conduct constituting a simple misdemeanour - which, under legislation in force since 1941, comes under the jurisdiction of the local police magistrates (persons somewhat akin to justices of the peace).

The persons arrested were taken to the appropriate carabineros stations. As soon as their addresses had been verified, a procedure required by the law, they were released and told to appear the following day before the local police magistrates. Thus no one was arrested for exercising any profession but for disturbing the peace and disobeying orders of the carabineros which were intended to restore the order that had been disrupted by the action of the aforesaid persons.

6. "The Group has been informed that the request of Radio Cooperativa's nine stations for a renewal of their permit to operate was published in the Diario Oficial. On what grounds was this request refused?"

REPLY

1. State of broadcasting in Chile in 1973

When the present Under-Secretary for Telecommunications took office as Government representative in the former Telecommunications Division of the Superintendency of Electrical Services, Gas and Telecommunications which, in accordance with the provisions of article 3 of the relevant Decree-Law was transferred to the Ministry of Defence, he gave detailed information to the Government concerning the abnormal situation which existed in the country's telecommunications sector. In particular, he drew attention to the urgent need to normalize the broadcasting situation, since 105 stations out of a total of 200 appeared to be violating in various ways the technical and legal provisions of the Electrical Services Law. The commonest irregularities were, briefly, as follows:

Transfer of licences without the prior authorization of the President of the Republic, contrary to the provisions of article 72 and 79 of Legislative Decree No. 4 of 1959;

Time-expired licences that had not been renewed in accordance with provisions of article 80 of Legislative Decree No. 4 of 1959;

Technical operating conditions, unsatisfactory, both from the strictly technical viewpoint and as regards safety of staff and property;

Stations whose staff had not obtained the professional licences required by law;

Delay in paying taxes to the exchequer, in accordance with the special regulations.

On the basis of the power vested in him by the laws mentioned above and by the regulations in force for some time, the Under-Secretary, acting originally as Government representative and now in his capacity of Under-Secretary for Telecommunications, a department established on the basis of the former Telecommunications Division, began the work of legal and technical normalization throughout the telecommunications sector and particularly in broadcasting. This complex and detailed task takes a great deal of time and it is still being completed.

In order to restore normal conditions, it was and is necessary to implement the various provisions of the Electrical Services Law and its regulations and also Decree-Law No. 1762 of 1977. On the basis of this legislation, a request was made that the broadcasting licences held by the Chilean Communications Company S.A. (Radio Co-operativa Vitalicia) should be cancelled on the grounds that their period of validity had long since expired. It should be pointed out that operation with a time-expired licence was not the only irregularity of which this licence holder was guilty; the company was also using defective technical equipment and had illegally transferred the Valdivia broadcasting station, not to mention irregularities in the conditions of employment of its staff.

The stations of Radio Co-operativa Vitalicia had been broadcasting with time-expired licences for the periods indicated below, which will show that the normalization measure adopted by the Supreme Government was well-justified.

Antofagasta (long wave) licence decree No. 1573 issued on 31.3.36, expired 31.3.66 (11 years).

Antofagasta (short wave) licence decree No. 754 issued on 5.2.43, expired 5.2.73 (four years).

Santiago (short wave) licence decree No. 1988, issued on 30.5.38, expired 30.5.68 (nineteen years).

Concepción (long wave) licence decree No. 2254 issued on 2.6.33, expired 2.6.63 (14 years).

Valdivia (long wave) licence decree No. 5523 issued on 31.12.36, expired 31.12.66 (11 years).

Puerto Montt (long wave) licence decree No. 4674 issued on 23.11.38, expired 23.11.68 (nine years).

Punta Arenas (long wave) licence decree No. 3135 issued on 29.6.40, expired 29.6.70 (seven years).

2. Applicable legislation

The legislation governing telecommunications in Chile is largely contained in the Electrical Services Law. The text of this Law was approved by Legislative Decree No. 4 of 1959, and its amended text was established by Supreme Decree of the Ministry of the Interior No. 2,060 of 13 November 1962 and its supplementary regulations. The Office of the Under-Secretary for Telecommunications has been and still is obliged to act in conformity with this legislation; and it is clear from the date of the texts cited that the present Government did not enact them itself with a view to taking advantage of them. The Government authorities have merely complied with the provisions of the law in the work which they are required to perform.

The Electrical Services Law which had to be complied with and implemented does not make provision for the prolongation of broadcasting licences, so that licences whose validity had expired had to be cancelled for that reason in order to maintain an orderly legal situation and to enable other citizens to make use of the radio wave band which, according to the law, is public property to be administered by the President of the Republic through the Office of the Under-Secretary. Article 55 of the Law states that: "The period of validity of the licence shall be specified in the decree whereby the licence is granted, and it shall not be prolonged". Previous administrations did not give effect to this provision, and responsibility for complying with it therefore fell to the present Government.

Article 80 of the above-mentioned Law also establishes a preferential right for former licence-holders provided that its provisions are duly complied with. These state that:

"When the period of the licence has expired, a new licence may be granted in conformity with the provisions of the present Law for successive periods of 30 years on conditions to be established prior to the four years preceding the final year of the licence or of each one of the subsequent periods, as the case may be".

In the light of the information available to the Office of the Under-Secretary, which indicated that the licences had expired and that the Chilean Communications Company S.A. had not complied with the provisions of article 80, as quoted above, there was no alternative but to request the Government to declare that the licences in the situation described were cancelled. This was done in a number of supreme decrees.

These supreme decrees were forwarded, in conformity with the law, to the Office of the Comptroller-General of the Republic, an autonomous agency of a constitutional nature, completely independent of the Executive Power, for the "registering" procedure which consists of checking their legality. This agency processed the decrees without raising objections of any kind; and this vouches for the legality of the measure adopted.

The former licence holder has alleged that it submitted applications for licences for its stations at Concepcion on 1 July 1964, at Antofagasta on 15 February 1967, at Punta Arenas on 2 February 1970, at Puerto Montt on 1 November 1970 and at Santiago (short wave) on 15 October 1970, and that these applications were published in the Diario Oficial and the journals of the respective

provinces. In addition, it has stated that in respect of the applications relating to Concepción, Antofagasta and Punta Arenas, official communications were sent by the Superintendency of Electrical Services (SEGTEL) (the competent authority at the time), requesting the issuance of decrees granting the licences concerned.

In reply to these statements, it was pointed out at the time that in fact the communications mentioned by the company are not to be found in the archives of the Office of the Under-Secretary and were not in the former Telecommunications Division of SEGTEL when the latter was taken over by the Under-Secretary in his capacity as Government representative. It would therefore be unjust to impute responsibility for the situation to the present-day authorities. Furthermore, the administration can not accept as proved or certify the existence of facts or documents that are not in its possession and of which the only evidence is provided by the statements of the company concerned.

The authorities do not know why the previous administrations of Mr. Frei and Mr. Allende did not deal at the appropriate time with the relevant applications which, the company asserts, were submitted between 1964 and 1970.

All that the Office of the Under-Secretary can confirm - because it has the relevant documents in its possession - is that applications were submitted for the following broadcasting stations on the dates indicated: Santiago (short wave) 24 December 1977; Concepción (long wave) 13 January 1976; Puerto Montt (long wave) 29 December 1975 and Punta Arenas (long wave) 19 December 1975. These applications were accepted for processing in conformity with the relevant legal provisions and in accordance with the principle that any citizen in the country is entitled to apply for a licence, subject to the preferential right recognized in article 80 of Legislative Decree No. 4 of 1959. No applications were submitted in respect of the broadcasting stations at Antofagasta (long wave), Antofagasta (short wave) and Valdivia (long wave), the last-mentioned having been illegally transferred as mentioned earlier. It is striking that even though applications were never submitted for licences for the above-mentioned stations, they are now being mentioned in support of the company's case - which proves that a political complexion is being given to a purely legal matter.

When the applications mentioned above were accepted for processing, the applicant company was advised that the mere application did not constitute a presumption that the licence would be granted; and it was also told that the Office of the Under-Secretary was legally required to inform the Supreme Government of all aspects of the company's record in the matter, so that they could be taken into consideration when the Government reached its decision. Thus the higher authorities were informed that the former licence holder had not complied with the provisions of article 80 of the aforementioned Legislative Decree No. 4 and that its applications had not been submitted within the time specified in the rules applicable to the matter. They were also informed of the unsatisfactory state of the technical equipment and other material used by the stations - equipment which had already been in service for over 20 years and which, with a new 30-year licence, would be used for over 50 years, a situation that would be technically unacceptable in any country which aspired to have broadcasting services of at least average quality. It was also pointed out that the former licence holder's record included the illegal transfer of the licence of Radio Valdivia, which was being operated,

managed etc. by a company called Sociedad Radiodifusora Cooperativa de Valdivia Limitada (Valdivia Co-operative Broadcasting Company Limited), a legal entity separate and distinct from the company holding the licence. This transfer was evident from various official documents sent by the management of this broadcasting station to the Office of the Under-Secretary.

For the foregoing reasons, the Supreme Government, by virtue of the powers vested in it by law and on the basis of the record and accompanying reports, decided that it would not be appropriate to grant new licences to the Chilean Communications Company S.A. It may also be stated that the former licence holder was not complying with labour legislation in respect of its employees who went to the Office of the Under-Secretary for Telecommunications to report the matter. They were advised that they should apply to the courts to claim their rights, which they did, as is clear from the records of the labour courts in the various districts where the broadcasting stations are located.

3. Present position of the broadcasting stations whose licences were cancelled

Of the broadcasting stations whose licences were cancelled in accordance with the provisions of the Electrical Services Law, three - Radio Polar at Punta Arenas, Radio Cooperativa at Puerto Montt and at Concepción are now being operated by the staff who, at the Government's suggestion, have concluded contracts for the purchase of equipment from the former licence holder and have acquired legal personality in order to apply for licences. These applications are now being processed.

In order to regularize its illegal position, the Sociedad Radiodifusora Cooperativa de Valdivia Limitada (the Valdivia Co-operative Broadcasting Company Limited) has also submitted an application which is likewise being processed.

No application has been made in respect of the other broadcasting stations.

4. Legal recourse by the former licence-holder

Finally, proof of the legitimacy of the methods adopted is provided by the fact that the former licence-holder did not apply to the ordinary law courts for enforcement of its rights on the basis inter alia of the provisions of Constitutional Act No. 3 of 1976 which establishes a special form of recourse described as "the recourse for protection".

To sum up, if the measure adopted by the authorities had been illegal or unjust, the Supreme Decrees giving effect to it would not have been approved by the Office of the Comptroller-General of the Republic, as stated earlier; and there would also have been grounds for the former licence-holder to plead the legality of the measure before the ordinary courts - organs which are independent of the Executive Power - in an ordinary law suit or through the special form of recourse already mentioned.

5. Conclusions

It follows from what has been stated that in this country there is absolutely no discrimination or violation of the right of citizens to apply for telecommunications licences in general and radio broadcasting licences in particular, providing that they meet the legal requirements and qualifications established by law. Applications are granted as far as it is physically possible; it would be impossible to grant a licence in a given city if the radio frequencies are used up.

It is also clear that the measures adopted by the Supreme Government to restore telecommunications to normal have conformed strictly to the legislation in force, which dates from 1959 and is not the work of this Administration. Their lawful character is proved, inter alia, by the fact that if they had been illegal or unjust, the former licence holder would undoubtedly have appealed to the ordinary courts for a declaration to that effect and for the situation to be remedied. However, nothing of the kind occurred, so that it is reasonable to suppose that the complaint was made to the United Nations Commission on Human Rights for political motives.

Proof of the above is to be found in the large number of private telecommunications and radio broadcasting licences which have been granted in recent times. What is more, Supreme Decree No. 59 on Transport and Telecommunications published recently in the Diario Oficial (3 August 1978), increased the number of FM stations throughout the country in order to give all citizens access to this social medium of communication, even in the smallest villages in the country.

Annex LXII

STATISTICS ON ENROLMENT IN EDUCATIONAL ESTABLISHMENTS IN CHILE, 1973-1977

A. Enrolment of children and adults by educational level

(Thousands of students)

	1973	1974	1975	1976	1977
Pre-primary	89.5	109.6	124.7	133.8	150.2
Ministry of Education	(79.4)	(93.4)	(93.0)	(100.8)	(110.4)
JNJI	(10.1)	(16.2)	(31.7)	(33.0)	(39.8)
Special	8.5	13.7	15.4	17.0	23.1
Primary	2,372.6	2,403.3	2,389.3	2,353.4	2,348.1
Secondary	506.6	532.2	535.4	557.9	586.3
Sciences and Arts	(406.5)	(346.8)	(344.9)	(370.2)	(384.1)
Vocational and Professional	(100.1)	(185.4)	(190.5)	(187.7)	(202.2)

Source: ODEPLAN, Social report, second half of 1977, p. 53, based on figures published by the Office of the Superintendent of Education and the National Kindergarten Board (Junta Nacional de Jardines Infantiles - JNJI).

B. Enrolments in 1977 as compared with 1973

Educational Level	Enrolment 1977	Difference 1977/1973
Pre-primary	148,181	(+ 86.71%)
Special	23,125	(+ 173.77%)
Primary (children)	2,242,111	(- 3.12%)
Secondary (children):		
Sciences and arts; vocational and professional	487,264	(+ 9.29%)
Adults (primary and secondary)	205,208	(+ 83.10%)
University (data for 1976)	134,149	(- 7.90%)
Total enrolment	3,240,038	(+ 4.30%)

Source: Raimundo Barros, "Crisis educacional superado? (Has the educational crisis been overcome?)", Mensaje, No. 270, July 1978, based on figures published by the Office of the Superintendent of Education.

Annex LXIII

NOTE ENTITLED "REGULATIONS GOVERNING THE CONTRACT OF EMPLOYMENT AND THE PROTECTION OF WORKERS", TRANSMITTED BY THE GOVERNMENT WITH ITS COMMUNICATION OF 24 JULY 1978

Decree-Law No. 2,200 (Diario Oficial, 15 June 1978). Under-Secretariat for Labour. The provisions of this Decree-Law govern worker-employer relationships in the private sector, and do not apply to: (a) workers in the employ of the Government; (b) workers in the employ of the municipalities; (c) workers in enterprises, concerns or institutions, whose staff is subject by law to a special statute; and (d) workers engaged in activities subject to special laws.

Attention is drawn to the following aspects of this Decree-Law:

1. Its provisions supplement those of special laws governing the labour relations of workers in the employ of the Government, municipalities, institutions or concerns with special statutes, and autonomous or independent enterprises.
2. A single legal regime is established for all workers, irrespective of whether they are manual or non-manual workers.
3. The definition of an individual contract of employment incorporates the element of subordination or dependence, which is considered in legal doctrine as being of the essence of this kind of contract.
4. Express reference is made to the consensual nature of the individual contract, for which no formalities are required.
5. The requirement that the age and civil status of the parties must be stated in the contract has been abolished.
6. It is no longer necessary to amend the contract to take into account increases in remuneration deriving from legal adjustments. The updated level of remuneration must nevertheless be indicated at least once a year.
7. It is specified that a fixed-term contract may have a maximum duration of two years. The requirement that a worker must be notified of the termination of his contract upon the expiry of this period has been abolished.
8. When notice is given to workers with more than one year of service, such workers are entitled to compensation equivalent to one month's pay, at the final rate of remuneration, for each year (or fraction thereof exceeding six months) of service with the same employer.
9. Compensation for years of service is established also for workers empowered to represent their employers or holding a position of trust if they have previously been in the service of the same employer although in positions of a different nature.
10. The compensation which may be due in the event of termination of a contract of employment is incompatible with any other compensation payable in part or in full by the employer, with the exception of compensation paid by the social security institutions concerned.

11. Rules are established for the adjustment of compensation.
12. Claims on the grounds of unjustified dismissal can be made only with the object of obtaining payment of compensation, since the obligation to re-instate a worker who is found to have been unjustifiably dismissed has been abolished.
13. With regard to contracts of employment for minors, guardians and Labour Inspectors are now included among the persons who are entitled to give the requisite authorization.
14. Capacity of minors to enter into a contract:
 - (a) Persons of 18 years of age or over are free to enter into a contract;
 - (b) Minors more than 15 but less than 18 years of age may enter into a contract with the express permission of the father or mother or, in default of them, of the paternal or maternal grandfather or, in default of them, of the guardian or, in default of all these, of the Labour Inspector concerned.
 - (c) Persons over 14 but less than 15 years of age may enter into a contract with the permission of the persons listed in (b) above, provided that they have complied with the requirements of school attendance and that they perform light work that will not be prejudicial to their health and development, and will not prevent them from attending school or participating in educational and training programmes.
15. The period during which night work is forbidden for minors has been reduced to the hours from 10 p.m. to 7 a.m., and further exceptions have been added.
16. Restrictions on enterprises with regard to the recruitment of aliens have been increased, and the requirement that 85 per cent of the workers must be Chilean nationals is now considered as applying to the total work force of the enterprise. Formerly, it was considered as applying to the non-manual workers only.
17. The legal bonuses for workers have been equalized and their amount increased from 20 per cent to 30 per cent of the profits or surplus.
18. With the disappearance of the distinction between manual labour and non-manual labour, and the replacement of those terms by the term "worker", workers engaged in manual labour may now also elect a staff representative; and
20. The regulations governing special contracts of employment now cover apprenticeship contracts.

Lastly, it should be pointed out that the provisions of this Decree-Law incorporate many concepts which are not to be found in Book I of the old Labour Code, and which, for lack of sufficient time, it has not been possible to analyse in detail. A much fuller and more detailed analysis of this Decree-Law has been made by the Department of Labour and could be added as an annex to the information given above.

Annex LXIV

NOTE ENTITLED "LABOUR CODE. INFORMATIVE REVIEW" TRANSMITTED BY
THE GOVERNMENT WITH ITS COMMUNICATION OF 24 JULY 1978

On 15 June 1978, Decree-Law No. 2,200 containing regulations on the engagement and protection of workers, matters which had formerly been governed by Books I and II of the Labour Code, was published in the Diario Oficial.

The guidelines followed by the legislator in preparing the new regulations were essentially the following:

1. From the very beginning of its administration, the Supreme Government has endeavoured, through the medium of various juridical instruments, to place the treatment of labour rights on an equitable and unified basis.

Proof of this intention is to be found in the publication of regulations equalizing the amount of the family allowance payable to workers. Previously, the amount of the family allowance differed depending on whether physical or intellectual effort predominated in the work of the persons concerned.

It is precisely this principle of equality that has been clearly established in the Decree-Law under consideration, which finally abolishes the traditional and invidious distinction between manual and non-manual workers. Accordingly, there is now only one legal regime which establishes the rights and duties of all workers in the country without any distinction whatsoever.

The effect of the application of this principle will be that the rights which were formerly reserved for the non-manual groups will be enjoyed in full by workers in what used to be termed the non-manual sector and vice versa.

The equality thus established has in no way limited the rights of the different groups of workers but, on the contrary, has united all individual rights with a view to their general application.

2. The rectification of situations that were patently unjust but had long been tolerated was another of the fundamental aims of the legislator in preparing the legislation in question.

This is clearly demonstrated by the annulment and replacement of rules such as the requirement that workers employed in enterprises which did not recognize Sunday as a day of rest should have only one day off in every fortnight actually worked. As a result of this rule, which dated back to 1931, the workers in question only had two days off a month.

This rule has been radically modified, and it has been established that workers in the situation described above will in future have one day off for every Sunday or public holiday actually worked.

Thirdly, it should be pointed out that the aim of the legislator, in drafting the new regulations now in force, was to rationalize them by omitting a number of provisions and precepts which had become obsolete with the passage of time, and also to standardize requirements and conditions for exercising the rights in question.

Simplification of the labour regulations should help to promote a better use of the country's labour resources.

As a result of the adaptation and modernization of labour regulations, it will now be possible to impose severe sanctions on employers who violate labour laws, since the fines established by the previous Act were so small that they had lost the deterrent character which all sanctions should possess.

This review will indicate the main institutions governed by the new Decree-Law and will draw attention, as appropriate, to the differences between the new Decree-Law and the previous labour regulations.

I. GENERAL REGULATIONS

Scope of application. The provisions of this Decree-Law regulate worker-employer relations in the private sector (article 1).

They do not cover workers in the employ of municipalities or of bodies subject to a special statute. Nevertheless, they are applied to such workers as supplementary provisions if problems or aspects arise which are not regulated by the special provisions to which they are subject.

Fundamental legal principles. The following basic principles may be noted (article 2):

1. Work fulfils a social function;
2. Work is a duty for each person;
3. Work is also a right. This right is further protected by the constitutional guarantee in article 1, no. 20, of Constitutional Act No. 3, 1976;
4. Discrimination in employment on grounds of race, sex, colour, religion or any other factor extraneous to the work itself is prohibited. The law may nevertheless specify the requirement of Chilean nationality in the cases determined by it, in accordance with the constitutional provision referred to above.
5. The right to free choice of employment must be safeguarded by the State, as must the protection of employment, in accordance with the regulations governing the matter.
6. Labour rights are irrenunciabile (article 5).

Definitions. Individual contract of employment: contract whereby a worker commits himself to perform services for an employer or an association of employers, in a subordinate or dependent role, and in exchange for a specific remuneration (article 7).

The Decree-Law also establishes that any performance of services on the conditions indicated above presupposes the existence of a contract of employment (article 8). This presumption is an important advance in determining whether or not a contract of employment exists (article 7 (a)).

Employer: an individual or body corporate who makes use of the intellectual or physical services of one or more workers under the terms of a contract of employment.

Article 4 establishes a legal presumption that the manager, administrator, master of a vessel and, in general, any person who habitually performs managerial or administrative functions on behalf or representing an individual or body corporate represents the employer and, in that capacity, accepts obligations to the workers in his name.

From the definition of "contract of employment" and of "employer", and from the abovementioned presumption, there emerges a greatly improved system of labour relations, since the status of the employer and of his representatives have been clearly defined; and this should settle the many uncertainties left unresolved by the previous legislation.

Worker: any individual who performs services of an intellectual or physical nature, in a dependent or subordinate role, under the terms of a contract of employment (article 7 (b)).

The designation of "worker" supersedes the former categories of non-manual and manual labour, which are retained (transitional article 1) only in two specific contexts:

Trade union regime and

Social security system.

The categories referred to above will be retained only temporarily, until the promulgation of statutes finally regulating these matters, which are now in an advanced stage of study.

II. THE INDIVIDUAL CONTRACT OF EMPLOYMENT

The individual contract of employment, as defined above, is governed by the following rules established in the Decree-Law:

1. Contractual clauses and requirements

All the rights which are established by law, and are therefore irrenunciabile, constitute the essential clauses of the contract. Clarification has however been given on one question that constantly arises in law, in that agreements which have been freely entered into by the parties are recognized as open to amendment (article 5).

Contractual requirements, and any changes therein, must be recorded in writing (article 9).

Article 10 indicates, in terms similar to those established in the previous legislation, the requirements that must be included in the contract.

The same provision nevertheless states that the contract is consensual, and that formalities are therefore required only for administrative purposes or for purposes of proof.

The rights of the parties in cases where a contract of employment is not concluded in writing within 30 days of the engagement of the person concerned are restated.

2. Classification

Individual contracts may be divided, basically, into fixed-term and indefinite contracts (article 13 (b)).

A fixed-term contract may be concluded for a period not exceeding two years.

This extends the period permitted under the earlier legislation, which was not more than six months.

A contract is indefinite if, at the expiry of a given period, the worker continues to perform services with the knowledge of the employer.

3. Unilateral amendment of the contract

The employer may unilaterally change the nature of the services or the place or premises in which they are to be performed (article 12).

However, the employer may exercise this power only on the following conditions:

- (a) That there is just cause for the change;
- (b) That the new duties of the worker are similar to his former duties and the new work place or premises are in the same locality or town;
- (c) That no material or moral harm results for the worker.

III. TERMINATION OF THE LABOUR CONTRACT

This question is so important that it will be dealt with separately at the end of the present review.

IV. CAPACITY TO ENTER INTO A CONTRACT AND NATIONALITY OF WORKERS

Title II of the Decree-Law under consideration relates to capacity to enter into a contract and contains special regulations concerning the employment of women and minors.

Most of these regulations are designed to ensure implementation of international agreements on the subject.

As specified in previous legislation on the subject, full capacity to enter into a contract of employment is acquired at the age of 18 (article 23). Minors more than 15 but less than 18 years of age require permission from their parents or from the persons, institutions or authorities indicated in the article.

The new legal instrument empowers the Juvenile Courts to stop minors working if the kind of work involved is thought to be unsuitable for the person concerned. This possibility was not allowed for in the past.

A further condition has been laid down for minors over 14 but under 15 years of age - namely, that they must have fulfilled the requirements of school attendance.

A number of prohibitions existing in the former legislation have been maintained for certain types of work that are dangerous or unsuitable for minors or women.

Under Title III, 85 per cent of the persons working for one and the same employer must be Chilean nationals (article 30).

This provision, which is a repetition of earlier provisions, does not discriminate against particular occupations or persons but ensures that the staff of an employer will include a minimum number of Chilean nationals. The persons regarded as such are not only native or naturalized Chileans but also persons who have been resident in the country for a specific period or who have close family ties with Chileans.

This provision does not apply to specialized technical personnel who are not replaceable by nationals.

V. WORKING HOURS

The regulations in Title IV of the Decree-Law under consideration define working hours as the time during which a worker is effectively providing his services in accordance with the terms of his contract.

The Law also considers as working hours the time during which a worker is at his employer's disposal but, for reasons beyond his control, is not working (article 33).

Thus, within the limits indicated, the new law protects the worker against the risk arising from involuntary failure to perform services. This is a question of great importance for the contract of employment.

Article 34 fixes the normal hours of work at 48 hours per week, without prejudice to the various exceptions that are dealt with in the following articles. All these exceptions originated in earlier legislation and are now applied without distinction to all workers in the situation in question.

Articles 41 et seq. contain regulations regarding overtime. The rules on this matter are similar to those established in the past.

Article 45 governs the question of rest periods during working hours.

In both cases, the labour courts are empowered to hear and rule on appeals which the parties concerned may bring against decisions of the Labour Inspectorates or the Department of Labour on any of these matters. This possibility was not provided for in the previous legislation.

Articles 46 et seq. deal with weekly rest periods, and establish regulations similar to those in the previous legislation.

However, one very important innovation has been made with regard to workers who are not free on Sundays and public holidays. These workers are entitled to have one day off for every Sunday on which they have to work, and one more day for every public holiday they work.

It should be pointed out that under the previous legislation, only one day off was allowed every two weeks irrespective of the number of Sundays and public holidays that fell during the period in question.

Transitional article 5 provides that workers in business and commerce who were engaged prior to the date on which the Decree-Law entered into force, and who are affected by the increase in working hours, will have their working week of 44 hours increased to 48 hours but will be entitled to additional payment for the time worked over and above their previous working hours.

VI. REMUNERATION

This is dealt with in Title V, which establishes regulations that are of great importance for the reasons explained below.

1. Definition. Article 50 gives a general definition of the concept of remuneration, which is taken to mean the monetary recompense and any additional recompense in kind measurable in monetary terms which the worker is entitled to receive from the employer in return for his services.

Remuneration does not cover allowances for transport, cash losses, wear-and-tear of tools, meals or travel; family allowances granted in accordance with the law, or any other benefits which may be given for reasons unconnected with the work.

Thus, a concept that has given rise to great controversy in the courts and administrative bodies has thus been clarified to the obvious advantage of future labour relations. The definition covers most of the payments which are normally the subject of agreement in labour-employer relations; and the only benefits which it omits are those granted for reasons unrelated to the work.

Article 51 defines the various types of remuneration, and article 52 recognizes the right of workers to a minimum income, as fixed by law.

2. Full working week. Article 52 recognizes the right of all workers who are paid by the day, and have worked during the full working week, to be paid for Sundays and other holidays.

The regulations concerning their payment include a provision that is highly favourable to workers who are paid on the basis of tasks. In such cases the remuneration must be the average of the payments received during the weekly period concerned. Under the previous legislation, a basic sum could be agreed upon as payment for Sundays and other days of rest; and that basic sum might be much less than the real average of the payments received.

Furthermore, the concept of remuneration that is payable for each day in a full working week has been amplified, in the case of all the workers to whom it is applicable, by abolishing the notion of the basic wage which existed in the previous legislation.

3. Bonuses and other gratuities. The Decree-Law in question introduces some important changes in this respect:

(a) Under article 55, the proportion of the profits or net surplus which the employer is required to distribute to his workers is raised to 30 per cent. It had formerly been 20 per cent.

(b) This amount is not subject to a ceiling related to the worker's remuneration, though the employer may opt for a system of payment that is related to ceilings for the remuneration of each beneficiary (25 per cent of the annual remuneration up to a limit of 4.75 minimum wages).

(c) Following the abolition of the distinction between non-manual and manual labour, bonuses are payable to all workers in the enterprise. Under the previous legislation this benefit was reserved for non-manual workers; manual workers were entitled to a share in the profits, up to various ceilings, provided that there was a union in the enterprise in question, and that the proportion distributed was never more than 5 per cent of the profits.

(d) Further, with regard to enterprises that are required to pay such bonuses, the amount of the bonus in cases where the employer opts for an alternative system of payment based on the worker's remuneration, and also the amount of special guaranteed bonuses, are governed by the same regulations as before, with certain changes that benefit the workers. For example, in calculating the ceiling for the remuneration, the basis taken must be the remuneration after re-adjustment. Moreover, whatever system is adopted, the payment of bonuses must be based on the worker's remuneration, irrespective of his length of service in the enterprise.

4. Periodic increases established by Act No. 7295. Under article 167, the provisions of this Act, which were formerly confined to non-manual workers, are now applicable to all workers alike. This means that the group hitherto classified as manual workers will be entitled to the periodic readjustments established by article 20 of that Act (3 per cent annually for workers whose remuneration is less than one and a half minimum wages, and 10 per cent every three years for persons earning more than this amount, up to a ceiling of 40 per cent of the minimum wage).

5. Protection of remuneration. In general, the previous regulations which protected remuneration by establishing its exemption from attachment and the obligation to make payment in full have been maintained with the exceptions allowed by the legislation itself.

The deductions authorized by law are limited to 15 per cent of the total amount of remuneration, except for deductions for taxes, social security, laws, mortgage dividends payable to certain institutions and the obligations of members of co-operatives (article 66).

These provisions are without prejudice to the temporary regulations established by transitional article 14.

The privileges enjoyed by workers' remuneration and compensation under the regulations laid down in the Civil Code have been confirmed (article 69).

VII. HOLIDAYS

The Decree-Law contains in its Title VII some important rules based on criteria of equity. These rules are outlined below:

1. General provision. The previous regulations on holidays have been confirmed and the length of holidays fixed at fifteen working days (article 72).

In the 1st, 2nd, 3rd, 11th and 12th Regions of the country and in the Province of Chiloé, the length of holidays is fixed at 25 working days. This rule also applies to workers in mines and processing plants.

The only requirement for entitlement to this benefit is the completion of one full year of service in the enterprise. The additional requirement for persons formerly described as manual workers - that they should actually have worked a minimum number of days - has now been abolished.

2. Progressive extension of holidays. One single rule has been established increasing the length of the holidays by one day for every three years worked by a person over the first ten in his working life. Holidays may not, however, exceed 35 consecutive days (articles 73-75).

Workers who are now entitled to more days will nevertheless retain their entitlement.

The intention in this case was to eliminate flagrant abuses under which the holidays of up to two months or more were permitted. There were no physical grounds for this, and it had a highly adverse effect on the recruitment of workers with some years of service. It thus became necessary to eliminate the regulations in question, which were usually more prejudicial than beneficial to the workers concerned.

In any case, the rights of persons already engaged who would have been entitled to a longer holiday under the old regulations will be respected.

3. Proportional holidays. This benefit, which was formerly reserved for manual workers, now applies to all workers in the enterprise whose employment comes to an end for some reason before the completion of the period which would entitle them to a full holiday (article 79). Such workers will now be entitled to appropriate compensation.

4. Collective holidays. This institution, which had become an established practice, has now been sanctioned by law, and workers who take a collective holiday are entitled to be paid in full by their employer even though as individuals they may not meet the conditions necessary for the exercise of this right (article 81).

5. The former regulations remain in force with regard to the calculation of the holiday entitlement; the nature of this benefit, which is irrenunciabile; the right to full remuneration and to its re-adjustment; and continuity of the right to holidays, save for the exception established.

VIII. INTERNAL REGULATIONS

In the spirit of rationalization which is characteristic of this Decree-Law, the former provisions concerning order, health and safety have been merged into one. The minimum number of permanent workers who must be employed by an industrial or commercial undertaking before it is required to have regulations on these matters has been fixed at 25.

Under the former legislation, five workers were sufficient, but that number did not justify the existence of this type of regulation, which is designed for undertakings of some size.

The provisions for giving effect to these regulations are similar to those prescribed in the previous legislation.

IX. PROTECTION OF WORKERS

It should be noted that the previous regulations on this matter have been retained virtually without change - both the general regulations and the specific regulations set forth in Title IX.

Special mention should be made of the regulations laid down in paragraph 2 on the protection of maternity.

These maintain all the rights granted under the previous Labour Code, which mainly concern pre-natal and post-natal maternity leave; leave of absence if the mother or child falls ill; medical subsidies calculated on the basis of the full remuneration; immunity from dismissal from the first day of pregnancy to one year after the completion of post-natal maternity leave; exemption from harmful work and, on a related subject, the rules concerning crèches.

Special attention is drawn to the immunity from dismissal, which resembles the trade-union privilege established by article 22 of the Decree-Law (article 100).

By virtue of this, the contract of employment of the woman concerned may not be terminated during the period of immunity except by authorization of the courts, which can be given only on legal grounds.

These grounds now include two that were not provided for in earlier legislation - namely, the conclusion of the work or services for which the woman concerned was originally engaged (article 13 (c)) and the expiry of the term of the contract (article 13 (b)).

This is thought to be a logical solution, since termination will occur for a specific reason unrelated to the wishes of the employer and duly envisaged by the parties to the contract when the woman was engaged.

From the viewpoint of the legislator, this measure facilitates the engagement of a woman worker who may be adversely affected by the long period of exemption established by law, which is likely to be at least two years.

X. WORKERS' REPRESENTATION

Title XI deals with the question of the workers' representation. The regulations that have now been established are different from the previous ones and are intended to emphasize the representative's status as the legal spokesman for the workers. They are as follows:

(a) In the first place, when 15 or more workers are permanently employed in an industrial or commercial establishment, they are entitled to elect a delegate (delegado) to represent them (article 123). The same right extends automatically to the former category of manual workers, who were not previously entitled to participate in the designation of the representative.

(b) The workers in question must not be members of a union. This change from the previous system was adopted for the logical reason that it is undesirable to have several representatives from one and the same group of persons, particularly if the functions they have to perform are the same or similar.

(c) The minimum number of workers necessary for the designation of a representative has been increased from five to 15, which is fully justified in view of the change in the electorate, which was formerly confined to non-manual workers who usually constituted a relatively small proportion of the work force of the enterprise.

(d) The regulations concerning requirements to be met by the representative have been retained - with the additional requirement of two years' service in the enterprise - as have the rules concerning his immunity from dismissal since he enjoys the same privilege as union officials under article 22 of the Labour Code (article 124).

XI. COMPULSORY MILITARY SERVICE

Title XII retains the guarantees which were provided under a number of laws to persons doing their military service or belonging to national reserves which are mobilized or called up for training.

The guarantees consist essentially of the preservation of the job or post during military service, and payment of remuneration in certain specific cases.

XII. SPECIAL CONTRACTS

Title XIII establishes regulations concerning various special contracts which it maintains, amends or introduces. These regulations contain important provisions, as is indicated below.

1. Workers in private homes. Article 127 states that individuals are considered to be workers in private homes if they are employed continuously on a full-time or part-time basis, in the service of one or more persons or of a family, for cleaning and other household tasks, proper to or inherent in the conduct of a household.

After formulating this definition on similar lines to the definition given in the previous legislation, the Decree-Law states that workers who perform the same or similar tasks as those indicated above, in welfare institutions which care for people in special need of protection or assistance by giving them the comforts associated with a home, shall be deemed to be in the same category.

The regulations governing this type of contract are in general a repetition of the earlier regulations. Two important innovations should, however, be noted:

(a) Workers of this kind are entitled to one day of rest per week, as compared with one day per month under the previous legislation (article 131);

(b) It is expressly stated that the privileges of maternity apply to women workers in this category as well. This used to be a matter for controversy since no specific mention was made of their immunity in the regulations on the subject.

2. Agricultural workers. Paragraph 2 groups together and systematizes a number of regulations on agricultural workers that were contained in the previous Labour Code, in the laws on re-adjustment and in special regulations; and it confirms their rights and working procedures, without prejudice to the general regulations referred to above.

3. Homeworkers. These workers are covered by article 140, which defines homework as work that is habitually performed in the worker's own home or in a place freely chosen by him, without supervision, or immediate control by the person for whom the work is being undertaken or by his agent. Article 141 states that an agreement under which the employer, whether or not he provides tools or implements, undertakes to sell or make available to the worker raw materials or articles for processing, preparation or transformation in his own home for subsequent sale or delivery to the employer, and also any other agreement, arrangement or transaction of a similar nature, constitutes a contract of employment of this kind.

This type of contractual arrangement has thus been defined in comprehensive terms.

The parties may determine the amount of remuneration freely, Social Security contributions are payable by the worker.

The law also clears up the uncertainties that have arisen with regard to the application of the regulations concerning compensation for termination of contract; it states that the matter is to be settled by agreement between the parties (article 144).

4. Contracts for entertainers. Paragraph 4 deals with this category of workers in very great detail (article 145).

Article 146 states that contracts may be concluded for a fixed period, for seasons or for one or more events, performances or appearances.

It introduces one very important innovation by comparison with the previous regulations on the subject, under which workers of this kind might be placed in one of two legal categories depending on whether or not they were subject to the provisions of the Labour Code.

In the former case, they were regarded as dependent workers, but in the latter they were entitled only to certain social security benefits, in accordance with Act No. 15,478.

Under article 149, approximately 85 per cent of the entertainers employed must be Chilean nationals.

5. Apprenticeship contracts. Paragraph 5 is concerned with this important institution, which assists workers to obtain technical qualifications and is related to the training plans of the Supreme Government.

Article 150 defines the apprenticeship contract as an agreement whereby an employer undertakes to impart to an apprentice, in a specific period of time and on specific conditions, the knowledge and practice of a skilled trade on the basis of a predetermined programme, and the apprentice undertakes to comply with the programme and to work for an agreed remuneration.

Consequently, this type of contract not only embodies the main commitments to be found in all contracts of employment but also those relating to the teaching of a skilled trade by the employer, and the execution of the training programme by the worker.

The following features are peculiar to contracts of this kind:

- (a) They are in general confined to workers over 14 but under 21 years of age who have completed their primary schooling, though certain persons in this age group may be exempted by the National Training and Employment Service from complying with the latter requirement (article 151);
- (b) The Service in question is responsible for approving the training programme and for ensuring that it is complied with (articles 155, 158 and 159);
- (c) The remuneration of an apprentice may not be less than 60 per cent of the minimum monthly wage of a worker (article 153), and this without prejudice to the full payment of all forms of monetary recompense which do not come under the heading of remuneration, and also of social security benefits;
- (d) The remuneration of apprentices may not be the subject of collective bargaining (article 154);
- (e) The training programme may not exceed two years, and the contract must remain in force until the expiry of that period, even though the worker may by then have attained the age of 21 years, in which case the employer is obliged at least to maintain the contractual conditions originally established (articles 156 and 155, no. 4);

- (f) The number of apprentices may not exceed 10 per cent of the total work force of the enterprise, taking into account only full-time workers (article 157);
- (g) The employer must ensure that the apprentices are assigned to work that forms part of the apprenticeship programme, and must appoint a worker to teach and help each apprentice (article 155, nos. 1 and 3);
- (h) Contracts of this kind may not be concluded for trades other than those previously designated by the National Training and Employment Service.

6. Maritime workers. Under paragraph 6 (article 162), maritime workers are to be the subject of special legislation which is now under consideration. In the meantime, they are subject to the former regulations on the subject, as laid down in the Labour Code (transitional article 2).

XIII. PRESCRIPTION AND SANCTIONS

Title XIV, which deals with this subject, establishes a general limitation of six months for bringing actions under this Decree-Law, subject to certain special provisions (article 163).

It also establishes an important nullity rule to the effect that claims may not be lodged in connexion with rights deriving from services rendered more than two years before the date on which the claim is submitted, whether or not the performance of services has been terminated.

Articles 164 and 165 prescribe a number of fines for breaches of labour regulations. The second of these articles also establishes the penalties applicable in cases of falsification or misuse of medical certificates, sick leave or health reports.

XIV. ENTRY INTO FORCE

Decree-Law No. 2,200 entered into force, for general application, on its date of publication, i.e. 15 June 1978, without prejudice to certain special situations, most of which have been explained in this note.

The final Title revokes all regulations that run counter to this Decree-Law, and in particular Titles I and II of the Labour Code.

Annex LXV

NOTE ENTITLED "TERMINATION OF THE CONTRACT OF EMPLOYMENT"
TRANSMITTED BY THE GOVERNMENT WITH ITS
COMMUNICATION OF 24 JULY 1978

Transitional article 4 of Decree-Law No. 2,200 establishes that: The duration and termination of contracts of employment concluded prior to the date on which this Decree-Law enters into force (15 June 1978) shall be subject to the rules established in Act No. 16,455 and its amendments, without prejudice to the provisions of transitional article 7 where applicable".

Transitional article 7 refers to collective dismissals or action bringing the activities of enterprises to a standstill.

Consequently, in order to determine the situation of workers with respect to the rules governing the termination of their contracts, the following two points must be considered:

Is the termination of the contract individual or collective?

If it is individual, did the worker take up his employment prior to 15 June 1978, or on or after that date?

The individual termination of a contract is governed by a dual statute, established by Act No. 16,455 in the case of services rendered prior to the date indicated, and otherwise by Decree-Law No. 2,200.

The collective termination of a contract is governed by a single statute, established by Decree-Law No. 2,200.

Each of these cases will be discussed in turn.

INDIVIDUAL TERMINATION OF THE CONTRACT OF EMPLOYMENT

(a) WORKERS HIRED PRIOR TO THE ENTRY INTO FORCE OF DECREE-LAW No. 2,200
(15 JUNE 1978)

The situation of these workers is governed by the rules established in Act No. 16,455, as indicated above.

The system established by that Act, known as the stability of employment system, may be summarized as follows:

I. The employer may not terminate the contract of employment except on valid grounds.

II. Valid grounds for termination are listed in articles 2 and 2 bis of the Act. The difference between the grounds listed respectively in the first and second of these articles is that, where grounds listed in the second article are invoked, trade-union privilege does not apply.

III. When a contract is terminated, any worker who regards the employer's decision as unjustified may appeal to the appropriate court to have the termination declared unjustified.

The procedure does not take the form of a trial, and the claim must be brought before the competent court within the 30 working days next following the date of the worker's dismissal. The judgement rendered is final.

IV. If the dismissal is found to be unjustified, the worker must be reinstated in his usual work by the employer, with the right to remuneration for the period of his separation, and he is, for all legal purposes, considered to have worked during that period.

If the employer refuses to reinstate a worker who has won his case, the judge will, automatically or at the request of the party, fix the appropriate compensation which may not be less than one month's pay for each year (or fraction of a year exceeding six months) of continuous or discontinuous service with the same firm. This compensation is without prejudice to any other benefits or compensation payable to the worker under laws or contracts.

V. The worker is free to relinquish his contract, giving at least 30 days' notice in advance. Both the notice of relinquishment and the notice of settlement must be signed by the person concerned and also by the Chairman of the Trade Union or by the Staff Representative, or ratified by the former at the Labour Inspectorate, so that they may be invoked by the employer.

VI. The worker may denounce the contract where the person giving grounds for termination is the employer, if such circumstances should arise, in which case the workers may claim the appropriate compensation on the bases indicated in subparagraph IV.

VII. In the case of trade union officials and other workers enjoying trade union privilege or special irremovability, dismissal must be authorized by the judge in advance. The Court can accept only the legal grounds listed in article 2, with the exception of: conclusion of the work or service that was the subject of the contract, the needs of the enterprise, establishment or service, and expiry of the term of the contract (nos. 1, 10 and 12, respectively).

VIII. The general rules relating to the irremovability of workers are not applicable to persons subject to the special régime prescribed in article 3 of the Act (managers, agents or attorneys or, in general, persons empowered to represent the employer, persons with less than six months' service, workers in private firms and workers holding positions of trust).

Such workers may, unless they enjoy any special privilege, be dismissed on receipt of 30 days' notice in advance or on payment of compensation equivalent to 10 days' remuneration.

IX. In general, compensation is calculated on the basis of the last monthly remuneration received by the worker, including the components that are legally part thereof.

(b) WORKERS HIRED SINCE THE ENTRY INTO FORCE OF DECREE-LAW No. 2,200
(SINCE 15 JUNE 1978)

The rules can be summarized as follows:

I. GROUND FOR TERMINATION

Article 13 of Decree-Law No. 2,200 establishes that the contract of employment may be terminated in the following cases:

- (a) Mutual agreement of the parties;
- (b) Expiry of the agreed period, which may not exceed two years. (In Act No. 16,455 the period was six months);
- (c) Conclusion of the work or service that was the subject of the contract (grounds listed in article 2 of Act No. 16,455);
- (d) Death of the worker;
- (e) Act of God or force majeure (referred to in article 2 of Act No. 16,455);
- (f) Written notice of termination by one of the parties, to be given to the other party at least 30 days in advance with a copy to the Labour Inspectorate. This notice may be replaced by compensation equivalent to the last monthly remuneration earned by the worker.

In special cases of termination covered by article 17 (managers, agents or attorneys of private firms, with less than one year of service, or who hold a position of trust), it is not essential that the notice shall be given in writing, even if advance notice is required, provided it is replaced by the payment of compensation equivalent to the last monthly salary of the worker.

It should be pointed out that for the employers this institution is a generalization of the institution of termination which in Act No. 16,455 was accepted only in the case of workers covered by article 3 of that Act, i.e. attorneys, domestic workers, who hold a position of trust in the firm and with only a short period of service (six months in the previous law, one year in the present law).

Notice of termination, established as a general institution, nevertheless entails the obligation to pay the compensation indicated, releasing the employer from the obligation to reinstate the worker, and the worker from asking for the compensation to be additional to his reinstatement, which has usually been resisted by both parties.

Under the law, reasons for notice of termination include cases of termination of the work contract in which the plea of one of the parties that the contract is null and void has not been properly proved before Courts of Justice (art. 19).

For workers, the system of freedom to give notice of termination of contract, as established in Act No. 16,455, has been maintained.

The Decree-Law reproduces the rule established in the previous Act to the effect that neither the notice given by the worker (formerly voluntary relinquishment) nor a notice of settlement that has not been signed by the officials mentioned in the comments on Act No. 16,455, or that has not been ratified at the Labour Inspectorate, can be invoked by the worker;

(g) Denunciation of the contract. Article 14 lists six of the grounds referred to in article 2 of Act No. 16,455; and article 15 lists the six reasons referred to in article 2 bis of that legal instrument, and repeats the rule to the effect that, when these grounds are invoked, trade-union privilege does not apply.

Grounds nos. 3, 4, 5, 9 and 13 referred to in the former Act have, for various reasons, been omitted.

II. COMPENSATION FOR TERMINATION OF CONTRACT

The system differs depending on whether termination is the result of a mutual agreement between the parties, whether it is attributable to reasons beyond their control, whether it is initiated at the wish of the employer, or whether it is initiated by the worker himself.

1. Mutual agreement of the parties

This does not create an entitlement to legal compensation for termination of contract.

To this situation which is covered by subparagraph (a) of article 13, it is possible also to assimilate the situation arising on the expiry of the agreed period (subparagraph (b)), since the period was agreed to by both parties, and the situation arising on conclusion of the work or studies that were the subject of the contract (subparagraph (c)), since the latter situation was foreseen by the parties.

In any case, this last-mentioned situation may be open to dispute because of the different interpretations the parties may place on the facts.

2. Reasons beyond the control of the parties

The death of the worker (subparagraph (d)) and an act of God or force majeure (subparagraph (e)) must be taken into account.

These situations do not create an entitlement to compensation, either; and the second of them may be open to dispute, again because of the different interpretation that may be placed on the facts.

3. Termination of contract on the initiative of the employer

A distinction must be made between the following situations:

- (1) Situations in which prior notice of termination has been given;

(2) Situations in which one of the grounds for denouncing the contract has been invoked.

(1) Where prior notice of termination is given

As a general rule, and without prejudice to the special cases that will be mentioned, compensation as follows is payable when prior notice of termination has been given:

(a) Compensation equivalent to the last monthly remuneration of the worker, in cases where notice has not been given 30 days in advance;

(b) In the case of workers with more than one year's service under the contract, compensation equivalent to one month's pay, at the final rate of remuneration, for each year (or fraction of a year exceeding six months) of continuous service with the same employer.

(c) In the special cases of notice of termination referred to in article 17 (managers, agents or attorneys of the employer, workers in private firms, with less than one year of service, or workers who hold a position of trust), compensation equivalent only to one month's salary at the final rate of remuneration, in cases where notice of termination has not been given, 30 days in advance, and without prejudice to the provisions of the following paragraph.

(d) It is established that workers in these categories, except for workers in private firms, will be entitled to compensation equal to one month's pay at the final rate of remuneration earned in posts for which there is no provision in the general rules, for each year of service rendered in such posts, such compensation to be adjusted to an amount of equivalent value at the time of payment.

This represents an important innovation for such workers, since previously they were not entitled to any compensation except the one month's termination pay in cases where notice of termination of the contract had not been given sufficiently long in advance.

(2) Where grounds for denunciation are invoked

The invoking of a legal ground for denunciation may be opposed by the worker who, within the specified period and in accordance with the procedure and manner indicated in rules which are similar in all respects to those established in Act No. 16,455, may appeal to the appropriate court for a ruling that the termination is unjustified and, accordingly, for an order that he be paid the same compensation as is due in the case of prior notice of termination by the employer, to which reference has been made above.

Accordingly, both compensation based on length of service in this case, and compensation in cases where prior notice of termination has been given, have assumed the priority accorded in Act No. 16,455 to the right to security of tenure and reinstatement in the event of unjustified dismissal.

The right to compensation now becomes automatic, confirming a situation which exists de facto in enterprises, and of which the courts are well aware, since most disputes are settled by the payment of compensation agreed to by the parties.

In fact, the right to reinstatement had no practical effect and Act No. 16,455 could never prevent the termination of contracts since they necessarily originated with the enterprises; and it was therefore considered better to opt for effective protection of the rights of the worker by fixing the appropriate compensation.

4. Termination of contract on the initiative of the worker

Here again, a distinction must be made between the following situations:

- (1) Situations where notice of termination of the contract has been given;
- (2) Situations where one of the grounds for denouncing the contract has been invoked.

(1) Where prior notice of termination is given

Where the worker gives notice of termination, this action does not entitle him to any kind of compensation, and does not create any advantage for the employer either.

(2) Where grounds for denunciation are invoked

The worker may terminate the contract where the person giving grounds for termination is the employer, if such circumstances should arise (article 19). In this case, he must inform the Labour Inspectorate of his intention, in writing or orally, within 5 working days and submit a written statement of the ground invoked and of the facts.

The employer must be notified, in accordance with an established procedure, of this decision by the work. He may lodge a counter-claim against the worker with the appropriate court within a period of 15 days.

If the employer's counter-claim is rejected, or if the employer does not enter a counter-claim within the period specified, the worker is entitled to the compensation to which he would have been entitled if he had been given notice of termination by the employer, in accordance with the various conditions indicated above.

Thus, the new system radically alters the rules established by Act No. 16,455 which stipulated that, in similar cases, it was for the worker to terminate the contract and lodge a claim with the Court for the appropriate compensation.

Furthermore, the new Decree-Law confers executive force on documents established in due and good form and testifying to the worker's decision to terminate the contract in cases where the employer does not enter a counter-claim.

III. FEATURES OF COMPENSATION FOR TERMINATION OF CONTRACT - COMPARISON WITH
THE COMPENSATION PROVIDED FOR IN ACT No. 16,455

Compensation for termination of contract, calculated on the basis of the worker's period of service, includes the following features, which should be carefully compared with the compensation established under article 8 of Act No. 16,455.

(1) It is a fixed sum, always calculated on the basis of one month's pay for each year of service or fraction of a year exceeding six months.

In the previous legislation, the Tribunal could regulate the compensation, in relation between time and payment being the legal minimum.

(2) It earns current rates of interest, contrary to the former payments, which earned only the official rates.

(3) In determining it, the total remuneration received by the employee is taken into consideration, with very rare exceptions for loans specifically excluded by the law, and in the case of workers whose pay varies the average of the last three months is taken. This last rule is similar to that in the previous legislation (art. 5 of Decree-Law No. 676 of 1974).

(4) It is adjustable, as in the previous legislation, by the application of the corresponding monetary correction.

(5) It can be increased by a fine payable to the Treasury, equivalent to 20 per cent of the total sum, including interest and adjustments, if the Tribunal declares the termination of the contract to have been arbitrary, in the cases indicated by the law. This is a new situation and far more drastic than the former law, in which this additional payment did not exist.

(6) The compensation is incompatible with any other that the employer has to pay, in total or partially, on account of the termination of the contract, except for the legal compensation paid by welfare bodies (art. 18).

Under the former legislation, there was no such incompatibility. This provision was obviously a disadvantage, since it increased considerably the risk of termination of a contract and discouraged the granting of contracts.

(7) It is based on the years of uninterrupted employment by the same employer. Under Act No. 16,455 it was based on the years of uninterrupted or discontinuous work for the same firm; there is no justification for this, as the previous contract is finished and settled.

IV. RULES RELATING TO TRADE-UNION PRIVILEGE

These are established in article 22, the provisions of which are also applicable to other cases of workers' privileges. In such cases the situation provided for in Act No. 16,455 and the Labour Code is, generally speaking, maintained, so that the worker may not be dismissed without the authorization of the Court.

One change has been introduced, however, to the effect that the Court can grant the authorization only in certain specified cases, including the expiry of the term of the contract and the conclusion of the work or service which was the subject of the contract.

As under the previous legislation, the privilege does not apply in the cases set forth in article 15, such as denunciation of the contract.

V. NOTIFICATION AND PROCEDURE

The system of notification has been considerably simplified; as a general rule, the Labour Inspectorate has to be notified only in cases where notice of termination is given or where grounds are invoked for denunciation, without prejudice to the special cases of notice of termination.

As a general rule, the person concerned has to notify the inspectorate only in cases where notice of termination is given, without prejudice to the above-mentioned comments concerning denunciation of the contract on grounds attributable to the employer.

The judicial procedure is governed throughout by rules similar to those laid down in Act No. 16,455 and its supplementary legislation.

COLLECTIVE TERMINATION OF THE CONTRACT OF EMPLOYMENT AND ACTION BRINGING ENTERPRISES TO A STANDSTILL

Transitional article 7 establishes the rules applicable to this subject, which are practically the same as those established by articles 88-I et seq. of the Labour Code. They can be summarized as follows:

1. Scope of application. These rules are applicable in the case of action bringing enterprises to a standstill, or of collective dismissal, i.e. when the employer terminates the contracts of, and dismisses more than ten workers per calendar month, which figure is increased by 10 per cent for workers over and above the first 100.

In the previous legislation, the figure of 10 workers for the dismissal to be regarded as collective was fixed.

2. Authorization. No collective dismissal is permitted and no enterprise can bring its activities to a standstill without the prior and joint authorization of the Ministry of Labour and Social Security and the Ministry of the Economy, Development and Reconstruction. These ministries must take their decision in full knowledge of the facts.

3. Effects of the authorization. In such a case, workers may be dismissed without payment of the legal compensation.

4. Indemnities and penalties in the case of violation

The following are the principle indemnities and penalties payable in cases of action bringing an enterprise to a standstill, or of collective dismissal, without ministerial authorization:

(a) Extraordinary compensation equivalent to the last monthly remuneration for each year (or fraction of a year exceeding six months) of service, such compensation being compatible with any other compensation that may be payable to the worker;

(b) The offender is liable to a fine of a specified amount;

(c) If the offence is repeated within a period of 12 months, the fines are doubled and the offender is liable to penal sanctions; and,

(d) In specific cases, a Government representative may be appointed to take-over the administration of the enterprise for the purposes indicated in the Law.

Annex LXVI

NOTE ENTITLED "INFORMATION AND OPINIONS PRESENTED TO THE GROUP
IN CONNEXION WITH THE LABOUR SITUATION IN CHILE", TRANSMITTED
BY THE GOVERNMENT WITH ITS COMMUNICATION OF 31 AUGUST 1978

I. DECREE-LAW No.198

A. BAN ON TRADE UNION ELECTIONS

In this connexion, it should be noted that:

(1) The suspension of trade union elections is purely of an interim nature and is based chiefly on the need to depoliticize the trade unions, which were being run by the political parties until 1973. Nevertheless, it is the intention of the Supreme Government that, after the requisite legislation has been enacted, the membership of the governing bodies of trade unions will in future be determined by decisions of the trade union rank and file.

(2) There is an obvious mistake in the assertion by the Group that vacant posts on the governing bodies of trade unions are filled under systems controlled by the labour authorities and that officials are appointed by ministerial decree. Briefly, the system established by Decree-Law No.198 is as follows:

(a) Recognition and renewal of all mandates in force on 11 September 1973, regardless of the political opinions of the office holders, with all the rights vested in trade union officials.

(b) In the case of vacant posts, selection of new officials by seniority in order to make up the legal minimum necessary for the governing body to operate. This arrangement creates a right that the persons concerned can invoke at any time, and they can request recognition on the grounds of highest seniority; for that reason alone, they receive the privileges accorded under the Labour Code to candidates for official posts in trade union organizations.

Thus, the fact that the authorities must abide precisely by the seniority as specified in the law prevents them from arbitrarily choosing the workers ultimately empowered to represent their trade union. The authorities cannot make such a choice nor even confine it to workers with slightly lower seniority; therefore, it is not true that recognition of status as a trade union official is dependent on the wishes and the approval of the security services.

(c) Only where it is impossible to apply the seniority rule described in the preceding paragraph can the Ministry of Labour and Social Security lay down special rules for making up the membership of a trade union governing body - a power that has been exercised very moderately by the relevant authorities and generally at the request of the rank and file of the union concerned.

B. RESTRICTIONS ON TRADE UNION MEETINGS

The restrictions temporarily imposed on trade union meetings in accordance with Decree-Law No.198, and the scope of these restrictions, can be described as follows:

(a) Meetings of the governing bodies of trade union organizations are not subject to any restrictions under the labour laws and the restrictions that did exist as a result of the state of siege no longer apply because that exceptional state has not been in force since 11 March 1978.

(b) Governing bodies can deal with all matters concerning the organizations that they administer, in accordance with the law and with their statutes.

(c) Assemblies may be held solely for information purposes, as stated by the Group. However, the Group fails to point out that the assembly can, if it wishes, censure the governing body, so that it has effective control over the governing body and, consequently, over the administration of the trade union. In any event, it should be noted that the authorities have to respect the censure and take administrative steps, in accordance with the rules of seniority, to replace the trade union officials who have been censured.

(d) In accordance with transitional article 4 of Decree-Law No.198, assemblies held for information purposes do not require permission from the military or the police authorities but simply prior notification of the police authorities; and the Group's assertion on this point is therefore incorrect.

(e) In no case do the provisions of Decree-Law No.198 or any other provision specify that a member of the armed forces must be present at trade union meetings, and the Group's statement in this connexion is therefore inaccurate. The workers have complete freedom to make any comments, in keeping with the meeting's purpose of supplying information.

C. PERMISSION TO ENGAGE IN TRADE UNION ACTIVITIES

The observations made before the Group are incorrect, as can be seen from the following considerations:

(a) For the first time in Chile, Decree-Law No.198 established, on a general and compulsory basis, that trade union leaders were authorized to perform official duties during the working day. Previously, this right had been enjoyed only by those who had secured it through collective bargaining. Hence this legal provision establishes a trade union benefit that cannot be ignored.

Consequently, the provision is not restrictive - on the contrary, it makes for wider rights for all trade union officials;

(b) Also, Decree-Law No.198 specifically recognizes the existence of other systems that may be more favourable and such systems are governed by their own rules, e.g. those for seamen, peasants, etc.;

(c) In addition, for the purposes of calculating the time authorized under Decree-Law No.198, no account is taken of the time spent on official duties.

Accordingly, a law that is described as restrictive is in fact one which establishes a right for all trade unions. In any case, it should be noted that the restrictions it does establish concerning additional permission are designed to meet the need for rational and general uniformity in the authorizations granted, in the face of a complete breakdown in production activities (as was the case in 1973) whose consequences are still being felt to some extent.

Lastly, it should be pointed out that Decree-Law No.198 covers the activities both of workers' and of employers' associations.

II. BAN ON COLLECTIVE BARGAINING

The assertions made to the Group on connexion with the ban on collective bargaining call for the following comments:

(1) First, the various laws enacted in this respect have successively renewed the collective contracts that were in force in 1973. Collectively-negotiated rights and privileges have thus been maintained in virtually all cases, despite the well-known fact that illegal methods of coercion were frequently used in order to obtain them.

(2) This fact shows that the Supreme Government is in no sense opposed to the system of collective bargaining; on the contrary, it realized that the economy of the country would first have to be placed on a sound footing before discussions began on collective contracts, which would simply have aggravated the chaotic situation through which Chilean society was passing. It cannot be forgotten, as has been pointed out so many times, that the rate of inflation in 1973 stood at approximately 1,000 per cent, whereas it had been of the order of 164 per cent in 1972 and about 22 per cent the year before. The cause of this irrational phenomenon was to a large extent the abuse of collective bargaining, together with the complete distortion of the other factors that were affecting the economic process. As the Minister of Labour and Social Security pointed out in his statement on 1 May of this year, once the foundations of the economy have been strengthened it is essential to institute a system of collective bargaining; and the legal machinery now being worked out will shortly come into being, after consideration by the legislative organs. The decision of the Supreme Government is that collective bargaining will proceed via direct understandings between the parties in labour relations, for which purpose the State must supply the necessary mediation and arbitration machinery and assign to itself only a subsidiary role in order to safeguard the higher interests of the community.

(3) The above reasons led the Supreme Government to establish a selective system of collective bargaining, based on Tripartite Commissions, that has benefited a large number of workers; the machinery and scope of the system, together with a brief description of its functioning, were communicated to the Group at the time. Also, the Executive was empowered to extend the benefits and working conditions in certain enterprises or activities to all the workers in the sector to which those enterprises or activities belong, a step that was also made known to the Group.

III. RIGHT TO STRIKE

It is true that the right to strike has been suspended, since strikes constitute one of the stages in collective bargaining.

Nevertheless, just as machinery must be set up for collective bargaining, so also is it necessary to define the measures which the parties in labour relations can take in exercise of their rights - measures which can supplement strikes as one of the courses open to the workers - if the legislator deems it appropriate.

In any event, the Group should not forget that the suspension of strikes is accompanied also by the suspension of the counterpart legal means of pressure that were available to employers, e.g. lock-outs.

IV. DECREE-LAW No.2200

The assertion by the Group that Decree-Law No.2200 breaks the Government's promise to respect the rights of the workers and that it puts an end to the protective nature of labour legislation is incorrect and must be rejected vigorously.

The protective nature of the new Decree-Law, and the maintenance and improvement of the rights of workers, can be seen from reading and examining its main provisions. For example, the Decree-Law abolishes the unwarranted distinction between manual and non-manual workers and establishes a single category of "workers"; it recognizes the right to a minimum wage for all workers who perform services on a full-time basis; it establishes a general system of automatic adjustment of wages according to length of service, a system which previously applied only to particular types of workers; it makes for easier labour relations because it specifically identifies the person or entity having legal status as the employer and contains a legal presumption that the latter is represented by the administrators of labour establishments; it prescribes heavy fines for failure to set out contracts of employment in writing; it standardizes the requirements demanded of workers for the enjoyment of rights such as annual holidays, the seven-day week (payment of rest-days and holidays), etc.; it provides for compulsory compensation for any Sunday or holiday worked, etc., in addition to many other provisions that would take too long to enumerate.

Nevertheless, the specific objections made by the Group must be answered as follows:

1. PROTECTION OF STABILITY OF EMPLOYMENT

In this connexion, note should be taken of the following:

- (a) First of all, Act No.16,455, on termination of the contract of employment, has been retained in full for all workers engaged prior to 15 June 1978. Consequently, their stability of employment is in no way affected.
- (b) The new rules set out in Decree-Law No.2200 relate to workers whose contract commences from or after 15 June 1978. Hence it mainly affects unemployed persons or persons seeking work for the first time.
- (c) In any event, these new rules have simply affirmed those which were applied in practice, as the Group can verify.

For example, under the system established by Act No.16,455, the worker's right to keep his job, unless there are justified grounds for termination of his contract or unless he relinquishes his employment, means that if he has been dismissed, he has the right to submit a claim to the courts of justice for reinstatement. When the proceedings have been completed and the verdict is in favour of the worker, the employer may, at his own discretion, agree to reinstatement or pay compensation which is established by the court and is based on one month's pay for each year (or fraction of a year exceeding six months) of uninterrupted or discontinuous service in the enterprise in question.

The experience of the courts has amply demonstrated that reinstatement is opposed both by the employers and by the workers, so that the number of reinstatements since the entry into force of Act No.16,455 has been very small, because the parties preferred compensation. Consequently, the Act was not effective with regard to the principal right which it affirmed.

For this reason, the new system recognizes, as the principal right, the worker's right to compensation; and it thus eliminates the roundabout procedure of first submitting a claim to the courts for reinstatement. The compensation established is substantially the same, since the courts have in almost all cases specified one month's pay for each year of service or fraction of a year exceeding six months. Moreover, the amount of the compensation, in conformity with the new Decree-Law, earns interest at current rates, which are sizable and are not prescribed in Act No.16,455.

Again, a court dealing with a case of termination of contract may, if the dismissal is deemed arbitrary, sentence the employer to pay a fine amounting to 20 per cent of the compensation, including interest and readjustments - another procedure for which there is no provision in Act.No.16,455.

These facts disprove the assertion made to the Group.

2. MATERNITY RIGHTS

The Group has been told that, in practice, maternity rights have been abolished.

An examination of the existing law proves the contrary.

(a) Firstly, it is true, as pointed out above, that the changes introduced under Decree-Law No.2200 apply only in respect of workers engaged as from 15 June 1978.

(b) Secondly, it must be emphasized that the new legislation fully affirms the immunity from dismissal, i.e. the right of the working woman to remain in her employment from the start of pregnancy up to one year after completion of the post-natal recuperation, unless the labour court authorizes dismissal on valid grounds.

(c) The immunity has been changed only inasmuch as the following may constitute valid grounds for termination of the contract:

(i) Conclusion of the work or service which was the subject of the contract; or

(ii) Expiry of the term of the contract.

It will be seen that both these grounds are logical and their object is to avoid the natural caution of employers in engaging women when they are required only for specific or short-term tasks but the possibility of pregnancy leads to uncertainty about dismissal, and male workers are accordingly preferred. In fact, an effort has been made to overcome what is in practice a source of discrimination.

(c) In any case, it cannot be argued that the immunity has been abolished in such cases, since expiry of the term of the contract or conclusion of the work envisaged are simply grounds on which the employer can submit a request for dismissal to the court, which must verify the alleged facts and pronounce judgement. Thus, the employer cannot terminate the contract in an arbitrary manner.

3. ABOLITION OF ACQUIRED RIGHTS: WORKING HOURS OF SHOP AND OFFICE WORKERS

It has been asserted that an acquired right has been violated by increasing the working week of shop and office workers from 44 to 48 hours.

In this connexion, it should be emphasized that:

(a) First, all special working hours established in previous legislation have been maintained, with the sole exception of the working week in shops and offices.

(b) This is without prejudice to the rules affording protection for workers in enterprises or activities for which Sundays and holidays are not rest-days - rules which are in fact more favourable to such workers.

(c) The working hours for shop and office workers have been increased for the following reasons:

There is no scientific or technical precedent for keeping them, nor was any such precedent adduced in Act No.17,365, which established the shorter working week;

The lack of precedents obliged the Government at that time, headed by Mr. Eduardo Frei, to veto the relevant provision in that Act. The veto was rejected by the legislative chambers and the matter passed into law;

The reasons adduced, chiefly the fact that the work has to be performed standing up, were not sufficient to grant the benefit in question and still less to extend it to all workers in shops and offices. Indeed, even those doing administrative work, and they are many in number, benefited unduly from the Act.

(d) Decree-Law No.2,200 has, however, made it compulsory for employers who increase the working week to supplement the worker's pay proportionately, on the basis of the regular rate. This obligation applies in respect of all workers engaged as from the date of entry into force of the Decree-Law and, consequently, no harm has been done to them.

4. ABOLITION OF ACQUIRED RIGHTS: RIGHT OF AGRICULTURAL WORKERS TO A DWELLING

The assertions made in this connexion call for the following comments:

(a) The obligation to provide a hygienic and adequate dwelling was established by the Labour Code, enacted in 1931, at a time when transport was difficult, especially in the rural areas. Later, with greater possibilities of movement, the obligation for the employer frequently fell into disuse, especially if the agricultural worker also had his own dwelling and was thus a small land owner.

(b) The new legislation has merely recognized this situation since it restates, as an essential feature, the obligation of the employer to provide the worker and his family with a hygienic and adequate dwelling. This may be deemed unnecessary only in exceptional cases, when the worker occupies or is able to occupy a dwelling at a place from which, taking into account the distance and the means of transport available, he will be able to travel to his work.

In any event, this provision may not be included as a new clause in contracts at present in force. It should also be noted that the employer's compliance with his obligations is monitored by the labour departments and he must therefore prove to them that a dwelling exists for a given worker.

(c) In this connexion it must be remembered that Decree-Law No.97 of 1973 and the amendments thereto establish an obligation for the employer to pay a special travel allowance to workers who have to use public transport in order to travel to work.

5. ABOLITION OF ACQUIRED RIGHTS: CHANGE IN THE STATUS OF HOME WORKERS

In connexion with this point, the following must be borne in mind:

(a) The nature of the contract has been maintained as a basis for labour relations. What is more, the definition of the contract has been improved and broadened.

(b) It was thought appropriate to include the option for the worker to pay the social security charges himself, since these workers frequently work for more than one employer. In that case, they may avail themselves of the social security system established for self-employed workers, at much lower cost to them. If they work for only one employer, payment of charges by the latter may be arranged.

(c) Basically, this decision was taken in order to promote employment for persons who can do their work at home.

(d) The above reasons also led to the provision that the rules governing the work contract may be freely agreed upon. As pointed out, there is great flexibility with regard to workers at home and in a large number of cases the contract expires simply because the work has been completed.

(e) In any event, these measures are experimental and a change in them is considered possible.

6. POSSIBILITY FOR THE EMPLOYER TO AMEND THE CONTRACT OF EMPLOYMENT UNILATERALLY

In virtually all cases, the conditions of the contract of employment may be amended only with the consent of the parties, in conformity with article 12 of Decree-Law No.2,200.

Two exceptions, however, have been established:

The employer may change the nature of the services, replacing them by work of a similar kind; and

The employer may also change the place or premises in which the services are to be performed, provided that the new place or premises are in the same locality or city.

Nevertheless, such changes are subject to the following related conditions:

- (a) They must be made on justifiable grounds; and
- (b) The change may not result in harm to the worker.

The labour departments are responsible for checking that these conditions are strictly observed.

The basic reason for establishing these powers is that some flexibility is needed in the contract of employment, so that it becomes an instrument for activating the economy and enables the enterprise to confront various new situations which may arise and could not be foreseen at the time the contract was concluded. Previously, the only way to meet these new situations was to terminate the contract of the worker concerned.

There is no possibility of abuse by the employer, since no harm can come to the worker and the change in the contract must be objectively justified.

V. EVENTS ORGANIZED BY TRADE UNION ORGANIZATIONS

The comments submitted to the Group in this connexion call for the following remarks:

- (a) Firstly, events have been disallowed if the arrangements for them infringed the regulations on the state of siege or state of emergency in force in Chile at the time when it was intended to hold such events.
- (b) Moreover, events have also been disallowed when they were arranged for political reasons, which were clear from the publicity given to them by the organizers.
- (c) With regard to activities to celebrate 1 May, the events organized by the Supreme Government met with co-operation from all those trade union bodies which freely agreed to participate, after an invitation was extended by the Minister of the Interior to all labour sectors without any exception whatsoever.

The decision not to allow other events is not based on discrimination but, quite the contrary, on observance of the interim regulations in force in connexion with the state of emergency.

VI. PROVISIONS OF DECREE-LAW No.1,773. ON THE PRIORITY STATUS OF SUMS OWED FOR SALARIES AND WAGES

The assertion to the effect that the provisions of Decree-Law No.1,773 on the priority status of sums owed for salaries and wages have been maintained, and that they are prejudicial to workers, calls for the following comments:

- (1) During the period in which the Civil Code alone was applicable, article 2472 provided that the following were privileged debts of the first category:

"No.4: The remuneration of manual and non-manual workers, in conformity with the special laws".

(2) Later, Decree-Law No.1,509 of 1976 provided special protection for workers in cases in which enterprises went bankrupt. It established the following rights, among others, relating to the payment of sums owed for salaries and wages:

(a) The Receiver may take the necessary steps to ensure that, with the first funds of the bankrupt that become available to him, outstanding wages and salaries are paid, and the creditors concerned shall not be required to provide proof of such debts in the bankruptcy proceedings;

(b) The Receiver shall also pay sums owed for compensation and on other grounds, without need for prior proof but merely on the basis of a final judgement or in accordance with a substantiated report by the Labour Department which, in exercise of its legal powers, shall specify the exact meaning and scope of the contractual clauses or the legal provisions which are the origin of such debts.

Payment of these debts or compensation may not, in respect of each beneficiary, exceed ten months' minimum pay and, if there is any outstanding balance, the general rules concerning proof of debt shall apply in accordance with the general procedure of the Bankruptcy Act.

(c) Payments confirmed in accordance with these provisions cannot be invalidated because of the claims of principal creditors.

Very special rules were thus established on precedence and procedure for the settlement of sums due for salaries and wages and, within the limits mentioned, such debts were not required to be included in the general bankruptcy proceedings.

(3) Subsequently, Decree-Law No.1,773 of 1977 replaced article 2472 of the Civil Code and made notable improvements in the system for payment of debts of this kind.

In respect of first-class privileged debts, it established the following scale relating to labour or social security debts:

"No.4: The remuneration of manual and non-manual workers and family allowances".

"No.5: Social security charges and contributions payable to social welfare bodies and taxes on deductions and surcharges".

"No.7: Legal and contractual compensation for manual and non-manual workers".

The same Decree-Law established that privileged debts included interest, readjustments and penalties thereon.

In addition, this legislation replaced article 664 of the Labour Code and established a very broad definition of remuneration for the purposes of article 2472 of the Civil Code; and, in harmony with the provisions of Decree-Law No.1,509, it specified that No.7 on the scale of privileged debts was, for each beneficiary, to be an amount equivalent to ten months' minimum pay and that the balance was to be regarded as an ordinary debt.

Therefore, Decree-Law No.1,773, which has been criticized by the Group, establishes privileged status for sums owed for salaries and wages - a status that is very favourable to the workers; the Decree-Law also gives a broad definition of remuneration, assimilates family allowances thereto for the purposes of such debts, and includes not only interest, readjustments and penalties, etc., but also labour compensation, which was not the case previously.

- (4) Lastly, Decree-Law No.2,200 was issued; and, in the relevant part, it cancels article 664 of the Labour Code, replacing it with provisions which are in keeping with article 2472 of the Civil Code. Nevertheless, it considerably broadens the priority status of sums due for legal or contractual compensation, since the limit is extended to 15 months' minimum pay for each beneficiary.

Annex LXVII

NOTE ENTITLED "TRADE-UNION FREEDOM AND APPOINTMENT OF
TRADE UNION LEADERS" TRANSMITTED BY THE GOVERNMENT
WITH ITS COMMUNICATION OF 24 JULY 1978

The Chilean trade union system is based mainly on the following legal texts.

(a) Constitutional Act No. 3

"Art. 1. Men are born free and equal in dignity. This Constitutional Act ensures for all individuals:

...

"22. The right to form trade unions in fields of activities involving production or services or in a particular industry or occupation, in the cases and in the manner prescribed by law.

"Trade union organizations shall have juridical personality simply by registering their statutes and constituent acts with an autonomous body, in the manner prescribed by law.

"The law shall provide for machinery ensuring the independence of trade union organizations and their financing".

This Constitutional Act, which was promulgated on 18 September 1976, recognizes the freedom and independence of legally-established trade union organizations.

(b) The following are the principal laws governing trade union organizations:

Title III of the Labour Code, promulgated as Decree-Law No. 178 of 1931, which establishes regulations concerning the formation of trade unions and other industrial and vocational trade union organizations, for employers and workers, in occupations, establishments, enterprises and professions of an industrial, commercial, mining or services nature and, in general, in all activities not expressly excepted by some other legal provision; and

Act No. 16,625 of 29 April 1967 relating to agricultural trade unions, which establishes regulations concerning the formation of trade unions and other trade union organizations, for employers and workers, in the agricultural sector.

(c) Both Title III of the Labour Code and Act No. 16,625 are regulated in such a way as to ensure the full exercise of trade union rights. The former is regulated by Supreme Decree No. 323 of 1964, and the latter by Decree No. 453 of 1967.

The above-mentioned texts, all of which, with the exception of Constitutional Act No. 3, were promulgated prior to 11 September 1973, have continued in full force under the Military Government. It has thus not been necessary to adapt the other texts to make them conform to the Constitutional Act since all are founded on the same principle of trade-union freedom, which will likewise have to be guaranteed by any new legislation promulgated in this area for the purpose of updating the provisions governing trade-union activity.

The juridical situation described above is in practice reflected in the legal establishment of numerous organizations of a trade union nature, both trade unions as such and trade union federations. Between 11 September 1973 and 27 June 1978, these organizations numbered 711 in the workers' sector, with a total membership of 31,288, and 9 in the employers' sector, with a total membership of 411. These figures include federations and are based on official Labour Department statistics.

(d) Despite the above-mentioned situation, it proved necessary to curb the exercise of certain rights relating to the organization of trade unions and, in particular, the appointment of trade union leaders.

Decree-Law No. 198 of 1973 established the following system for the appointment of trade-union leaders:

1. In the case of basic trade unions, the mandates in force on 11 September 1973 were extended indefinitely.

2. If on the above-mentioned date these trade unions did not have sufficient leaders to be able to function or hold meetings, their number had to be made up wholly or in part by those trade-union members who were the most senior workers in the industry, occupation or basic activity of the trade union concerned.

3. This regulation was also to apply to mandates which expired during the period when the Decree-Law in question remained in effect.

4. The above regulations were also to apply to associations, federations and confederations of trade unions, with the specific requirement that vacant executive posts should be filled by the leaders of the base organizations with the longest service as workers in their sector.

5. Lastly, it was established that in cases where the above regulations could not be applied, the Ministry of Labour and Social Security would issue the necessary regulations by means of an appropriate decision.

Attention is drawn to a special feature of these provisions, namely that, although they do not authorize the election of leaders, they establish regulations for the extension of mandates or selection of leaders which are related to purely labour factors, such as seniority or the requirement that a post should have been held prior to 1973. Consequently, any action that might have to be taken by the Ministry of Labour in the exercise of its discretionary powers is reduced to a minimum, in other words, to cases in which the above-mentioned regulations cannot be applied.

In any event, Decree-Law No. 198 has established regulations of a purely transitional nature which will have to be replaced by permanent legislation in respect of trade union organizations when the general conditions in Chile are such as to ensure the effectiveness of these organizations as functional and depoliticized entities. These regulations are justified by the anarchy which existed in this area in 1973, by the complete politicization of the trade-union system, which prevented it from functioning normally, and by reasons of State security.

It should be emphasized that as long as Decree-Law No. 198 remains in effect and as long as the exceptional situations provided for in Decree No. 1,877 (war, siege or emergency) continue in Chile, trade-union meetings will be restricted to meetings of an information nature. It should nevertheless be pointed out that trade union activity continues in full force since the leaders enjoy the powers conferred on them by the laws and there are no regulations to prevent the exercise of these powers.

As regards the development of trade union activities during the period under consideration, periodic and detailed reports have been submitted to ILO (quod vide).

Annex LXVII I

NOTE ENTITLED "COLLECTIVE BARGAINING AND THE RIGHT
TO STRIKE" TRANSMITTED BY THE GOVERNMENT WITH ITS
COMMUNICATION OF 24 JULY 1978

1. Situation with regard to collective bargaining up to 1973

Up to 1973, collective bargaining was governed by the provisions embodied in Book IV of the Labour Code concerning commercial, industrial and mining activities and, in general, all activities not expressly excepted (agriculture, copper mining industry, etc.).

In addition, Act No. 16,625 established collective bargaining procedures in the agricultural sector, while other legal provisions governed bargaining in other areas.

In most of these areas, the procedure established comprised a system of petitions which had to be submitted collectively by the workers. If the petitions were not accepted by the employer, conciliation boards were required to intervene in order to mediate in the dispute and to propose a solution. If this failed, the parties could accept arbitration by common consent. If one party objected, however, arbitration could not take place, and the only course left to the parties was to strike or to close down the enterprise concerned, depending on whether the measure was agreed on by the workers or decided on by the employer in the cases provided for in the Labour Code. Any agreement between the parties was embodied in a memorandum of agreement.

In specific cases, the Act enabled an enterprise to issue a declaration of intervention in a collective dispute. In these cases a public official, with varying powers, would take over the administration of the enterprise - a right he could exercise even in the event of the illegal paralyzation of activities.

These procedures were carried to inordinate lengths, to the serious detriment of enterprises, consumers and even the workers themselves, as a result of the politicization of the trade-union leaders who normally played a major part in the collective disputes, the abuses of, and delays in the system, and the improper intervention of the State in private matters. Thus the administrative authorities themselves would often precipitate a dispute, even an illegal one, in order to be able to intervene legally, as has been demonstrated before the General Inspectorate of the Republic and the courts of justice.

There was also a collective bargaining procedure based on tripartite commissions, established by Act No. 17,074 of 31 December 1968, under which commissions representing employers, workers and the Government could be established by supreme decree for specific sectors, areas or branches of production. These commissions could, by a unanimous vote of their members, establish compulsory rates of pay and working conditions in their respective sphere of competence.

There were several commissions of this nature (mention may be made of those which existed in the sectors of commerce, textiles, the graphic arts and the construction industry) which issued a number of decisions of a tripartite character.

The activities of these commissions automatically excluded the legal existence of collective disputes in the areas concerned, since their decisions constituted a collective agreement among the parties. This fact should be borne in mind in evaluating the points outlined below.

It is apparent from the situation described above that the workers had a legal right to strike, which could be exercised when all mediation or arbitration efforts in a legal collective dispute had proved ineffective. However, strike action was resorted to on innumerable occasions as a coercive weapon in illegal disputes, which were sometimes provoked by the administrative authorities themselves, and the situation was aggravated by the illegal occupation of the premises of enterprises.

Without prejudice to the foregoing, it should be noted that strike action was - at least theoretically - excluded as an element of collective bargaining in those areas reserved for the tripartite commissions, since negotiations were conducted within the commissions on the basis of direct discussions between the parties and the authorities.

2. Situation with regard to collective bargaining since 11 September 1973

After the Military Government had assumed power, Proclamation No. 36 of 18 September 1973 extended all collective agreements, decisions of tripartite commissions, memorandums of agreement and rulings of arbitration tribunals, and suspended proceedings in any collective disputes that were pending.

The subsequent legislation readjusting rates of pay and other special provisions combined to produce a collective bargaining situation which may be summarized as follows.

I. Article 9 of Decree-Law No. 275 of 1974 extended the validity of the above-mentioned collective instruments until 1 March 1979, in accordance with successive amendments to those instruments, except in respect of the amount of remuneration, and benefits and bonuses payable in cash, which are governed by the subsequent legislation introducing readjustments.

II. Article 27 of Decree-Law No. 670 of 1974 suspended the operation of the conciliation boards until the promulgation of the new Labour Code regulating this question, in accordance with the successive amendments thereto.

Accordingly, collective bargaining is in general suspended, and the various pre-existing collective instruments will remain in force until 1 March 1979.

The suspension of collective bargaining also entails suspension of the right to strike as a legal element in the bargaining process.

It should be emphasized that the Supreme Government has announced, on several occasions and in particular on 1 May 1978, that in the near future collective bargaining will be resumed and the appropriate legal bodies will be established to regulate such bargaining in its initial stages, before promulgation of the Labour Code, which will establish definitive regulations on this question. It will be necessary to guarantee the parties' freedom of discussion, the serious nature of the system, the rationality of the basic premises and the interests of consumers, and for this purpose the relevant preliminary texts have been prepared in the Ministry of Labour.

The Supreme Government takes the view that the collective bargaining procedure should provide for a system of compulsory and strictly professional arbitration, unaffected by pressure from the parties concerned or by the action of the State; for this purpose the parties themselves should be able to select those arbitrators who will give them guarantees.

On the basis of these principles, it is hoped to eliminate from the collective bargaining system any possibility of repetition of the extremely serious abuses which occurred in its operation. It was, in fact, these abuses, in conjunction with factors originating from the Government's general economic policy and, in particular, the need to overcome inflation, that made it necessary to suspend the system.

III. Title VI of Decree-Law No. 670 of 1974 established a system of collective bargaining through tripartite commissions which represented a considerable improvement on the previous system. The new system was introduced in two stages.

(a) Initially, the tripartite commissions had a purely consultative function, with authority to propose to the Ministry of Labour and Social Security and the Ministry of Economy, Development and Reconstruction minimum and maximum rates of pay, benefits and working conditions for the sector, enterprise, area or region for which they were established. The Ministries concerned would then reach a joint decision on the advisability of the proposals submitted.

(b) Subsequently, through the reforms introduced under Decree-Law No. 1,765 of 1977, the commissions acquired decision-making powers, with authority to conclude, by unanimous vote of their members, agreements of a binding nature and, in the event of failure to reach an agreement, to submit proposals concerning rates of pay, benefits and working conditions to the Ministries concerned for a decision.

The Ministries have 30 days in which to raise an objection to an agreement; if no objection is raised within this time-limit, the agreement acquires complete validity. If the commission does not unanimously approve any objection raised, the Ministries reach a final decision.

In all cases, the decisions issued or agreements concluded under this system have been binding on the parties. They may not be extended for more than two years or for less than one.

As shown in the annexed list, there are at present 23 legally-established tripartite commissions. Of these, 14 are actually functioning and 11 have already issued decisions or concluded agreements.

IV. Article 3 of Decree-Law No. 851 of 1975 authorizes the Ministry of Labour to extend, by supreme decree, ex officio or at the request of a party, the application of memorandums of agreement or other collective instruments relating to majority groups of workers from the same branch of economic activity, whether at the departmental, provincial, regional or national level, to groups of workers not covered by these memorandums or instruments.

The foregoing provision is applicable for as long as collective bargaining is suspended.

The Supreme Government has exercised this power mainly in connexion with the national plastics industry, in which rates of pay, benefits and working conditions have been standardized.

Other labour rights

The Supreme Government has endeavoured to facilitate the work of trade-union leaders in the performance of their duties.

Decree-Law No. 198 of 1973 thus established, on a non-discriminatory basis, permission to engage in trade-union activities, in other words, the right of trade-union leaders to discharge the duties inherent in their office even during the working day, within the periods prescribed by this Decree-Law.

It should be noted that previously only a few trade unions enjoyed this right, which they had acquired through collective bargaining.

The time spent in the performance of trade-union duties is regarded as time actually worked for all legal and contractual purposes, and the corresponding remuneration and social-security contributions are payable by the trade-union organizations concerned.

In addition, in connexion with the tripartite commissions, Decree-Law No. 198 has conferred on the workers' representatives and their alternates legal rights in the labour sector similar to the rights of trade unions.

Annex LXIX

"LIST OF TRIPARTITE COMMISSIONS AND THEIR CONSTITUENT ACTS"
TRANSMITTED BY THE GOVERNMENT WITH
ITS COMMUNICATION OF 24 JULY 1978

(In Spanish alphabetical order of activity)

1. Agricultural activities

Decree No. 486 (Diario Oficial of 12 November 1975), issued by the Under-Secretary for Labour, establishing a tripartite commission for agricultural activities in the private sector.

2. Banking activities

Decree No. 115 (Diario Oficial of 12 April 1975), issued by the Under-Secretary for Labour.

Decree No. 287 (Diario Oficial of 31 July 1975), issued by the Under-Secretary for Labour (supplementary), establishing a tripartite commission for banking activities in the private sector.

Decision No. 631 (Diario Oficial of 3 September 1975), issued by the Under-Secretary for Labour, and

Decision No. 261 (Diario Oficial of 6 May 1977), issued by the Under-Secretary for Labour, establishing a percentage readjustment of remuneration of personnel employed in the Bank Pension Fund in the private banking sector.

Agreement No. 3 (Diario Oficial of 6 December 1977), issued by the Under-Secretary for Labour, (Extract). On 2 December 1977 the agreement concerning the remuneration of personnel employed in the Bank Pension Fund was ratified after having been approved by the tripartite commission for banking activities in the private sector.

3. Activities relating to urban and inter-city lorry transport

Decree No. 28 (Diario Oficial of 30 January 1976), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to urban and inter-city lorry transport in the private sector.

Agreement (Diario Oficial of 4 November 1977), issued by the Under-Secretary for Labour, (Extract). On 7 October 1977 the agreement establishing the remuneration, benefits and working conditions of personnel engaged in urban and inter-city lorry transport activities in the private sector, for a period of two years from the date of publication of this extract, was ratified after having been approved by the tripartite commission for such activities.

4. Activities relating to the construction industry

Decree No. 893 (Diario Oficial of 19 December 1974), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to the construction industry in the private sector.

Decision No. 17 (Diario Oficial of 27 February 1974), in effect from 1 June 1976 to 31 May 1977.

Decision No. 501 (Diario Oficial of 5 July 1975), in effect from 1 June 1975 to 31 May 1976.

Decision No. 670 (Diario Oficial of 27 September 1975), in effect from 1 June 1975 to 31 May 1976. Public employees.

Decision No. 356 (Diario Oficial of 10 July 1976), in effect from 1 June 1976 to 31 May 1977.

Decision No. 337 (Diario Oficial of 30 June 1976), in effect from 1 June 1976 to 31 May 1977. Public employees.

These decisions establish the remuneration, benefits and working conditions of personnel engaged in activities relating to the construction industry in the private sector.

Travel allowances:

Decision No. 297 (Diario Oficial of 18 December 1974). As from 21 August 1974.

Decision No. 91 (Diario Oficial of 31 January 1975). As from 4 January 1975.

Decision No. 263 (Diario Oficial of 10 April 1975). As from 30 March 1975.

Decision No. 446 (Diario Oficial of 12 June 1975). As from 16 May 1975.

Decision No. 39 (Diario Oficial of 26 January 1976). As from 1 August 1976.

Decision No. 117 (Diario Oficial of 17 February 1976). As from 7 February 1976.

5. Commercial activities

Decree No. 487 (Diario Oficial of 24 October 1975), issued by the Under-Secretary for Labour, establishing a tripartite commission for commercial activities in the private sector.

Decision No. 16 (Diario Oficial of 16 February 1974), in effect from 1 January 1974 to 31 December 1974, establishing the remuneration, benefits and working conditions of personnel engaged in commercial activities in the private sector.

6. Activities relating to the glass industry

Decree No. 135 (Diario Oficial of 10 March 1976), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to the glass industry in the private sector.

7. Activities relating to the pasta-making industry

Decree No. 895 (Diario Oficial of 19 December 1974), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to the pasta-making industry in the private sector.

Decree No. 222 (Diario Oficial of 6 June 1975) (establishing competence).

Decision No. 72 (Diario Oficial of 26 June 1976) (Carozzi y Luchetti S.A.).

Decision No. 516 (Diario Oficial of 25 November 1976).

Decision No. 673 (Diario Oficial of 22 December 1976) (Carozzi y Luchetti S.A.).

Decision No. 730 (Diario Oficial of 26 June 1976).

These decisions establish the working conditions, remuneration and benefits of personnel engaged in pasta-making activities in the private sector.

Decision No. 199 (Diario Oficial of 15 April 1978), extending the validity of of Decisions Nos. 516 and 673 of 1976, which established the working conditions of personnel engaged in these activities.

8. Activities relating to the graphic arts industry

Decree No. 889 (Diario Oficial of 19 December 1974), establishing a tripartite commission for activities relating to the graphic arts industry in the private sector.

Decision No. 18 (Diario Oficial of 28 February 1974).

Decision No. 630 (Diario Oficial of 16 September 1975).

Decision No. 11 (Diario Oficial of 14 January 1977), amended by Decision No. 281 (Diario Oficial of 11 May 1977), establishing remuneration and working conditions.

9. Activities relating to laboratories and pharmacies

Decree No. 115 (Diario Oficial of 4 March 1976), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to laboratories and pharmacies in the private sector.

10. Foreign airlines (personnel)

Decree No. 172 (Diario Oficial of 24 March 1976), issued by the Under-Secretary for Labour, establishing a tripartite commission for foreign airline personnel working in Chile.

11. Cleaning and dyeing

Decree No. 116 (Diario Oficial of 14 March 1975), issued by the Under-Secretary for Labour, establishing a tripartite commission for cleaning and dyeing activities in the private sector.

Decision No. 4 (Diario Oficial of 12 January 1976).

Decision No. 34 (Diario Oficial of 28 March 1977) (Amendment), establishing the remuneration, benefits and working conditions of personnel employed in laundries and cleaning and dyeing establishments in the private sector.

Agreement No. 5 (Diario Oficial of 16 February 1978) (Extract)

On 28 January 1978, the Minister of Labour and Social Security and the Minister of Economy, Development and Reconstruction ratified the agreement approved by the tripartite commission for cleaning and dyeing activities establishing the remuneration, benefits and working conditions of personnel engaged in these activities.

12. Lubricants and fuels

Decree No. 891 (Diario Oficial of 19 December 1974), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to lubricants and fuels in the private sector.

Decree No. 200 (Diario Oficial of 19 May 1975) (establishing competence).

Decision No. 19 (Diario Oficial of 2 March 1974).

Decision No. 354 (Diario Oficial of 20 June 1977), amended by Decision No. 406 (Diario Oficial of 8 July 1977).

Decree No. 897 (Diario Oficial of 20 June 1978).

Decree No. 196 (Diario Oficial of 3 April 1976).

These texts establish the remuneration, benefits and working conditions of personnel engaged in activities relating to lubricants and fuels in the private sector.

13. Shipping activities

Decree No. 397 (Diario Oficial of 28 August 1975), issued by the Under-Secretary for Labour, 1/ establishing a tripartite commission for shipping activities.

Decision No. 1001 (Diario Oficial of 31 December 1976) establishing the remuneration, benefits and working conditions of personnel engaged in shipping activities.

14. Assembly industry

Decree No. 242 (Diario Oficial of 25 May 1975), issued by the Under-Secretary for Labour, establishing a tripartite commission for the assembly industry.

Decision 634 (Diario Oficial of 14 January 1977) establishing the remuneration, benefits and working conditions of personnel employed in this industry in the private sector.

1/ Decree No. 297 (Diario Oficial of 7 December 1977), issued by the Under-Secretary for Labour, repealed Decree No. 397 of 28 May 1975 and established tripartite commissions for port workers (No. 1), and for officers and seamen of the national merchant navy (No. 2).

Agreement No. 4 (Diario Oficial of 6 January 1977) (Extract)

Agreement No. 4, establishes the remuneration and working conditions of personnel employed in this industry for a period of one year, was ratified on 5 December 1977 after having been approved by the competent tripartite commission.

15. Lift assembly and maintenance

Decree No. 894 (Diario Oficial of 19 December 1974), issued by the Under-Secretary for Labour, establishing a tripartite commission for activities relating to the assembly and maintenance of lifts in the private sector.

Agreement No. 2 (Diario Oficial of 25 November 1977) (Extract)

Agreement No. 2, which establishes the remuneration and working conditions of personnel engaged in these activities for a period of one year, was ratified on 25 October 1977 after having been approved by the competent tripartite commission.

16. Activities relating to the milling industry

Decree No. 136 (Diario Oficial of 10 March 1976), issued by the Under-Secretary for Labour, establishing a tripartite commission for milling activities in the private sector.

Agreement No. 7 (Diario Oficial of 20 April 1978) (Extract)

Agreement No. 7, which establishes the remuneration and working conditions of personnel engaged in these activities for a period of one year was ratified on 4 April 1978 after having been approved by the competent tripartite commission.

17. Activities relating to the paper industry

Decree No. 890 (Diario Oficial of 19 December 1974), issued by the Under-Secretary for Labour, establishing a Tripartite Committee for activities relating to the paper industry in the private sector.

Decision No. 272 (Diario Oficial of 18 June 1976)

Decision No. 445 (Diario Oficial of 13 September 1977)

These decisions establish the remuneration, benefits and working conditions of personnel employed in the industry in the private sector.

Agreement No. 6 (Diario Oficial of 20 February 1978) (Extract)

The agreement approved by the competent tripartite commission was ratified for a period of one year.

18. Clothing industry

Decree No. 126 (Diario Oficial of 14 March 1975) establishing a tripartite Commission for the activities of clothing factories in the private sector.

19. Textile industry

Decree No. 892 (Diario Oficial of 12 February 1974), issued by the Under-Secretary for Labour, establishing a tripartite commission for textile activities in the private sector.

Decision No. 15 (Diario Oficial of 16 February 1974).

Decision No. 211 (Diario Oficial of 23 April 1977).

Regular public transport (special case, established by law)

Decree-Law No. 552 (Diario Oficial of 29 June 1974), issued by the Under-Secretary for Labour, establishing the remuneration, tax liability and working conditions of personnel engaged in privately-owned urban, suburban, rural and inter-city public transport activities. Under the provisions of this Decree-Law, the Minister of Labour and Social Security is required to establish by means of a supreme decree, within a period of 30 days from the date of publication of this Decree-Law, a standing tripartite commission for privately-owned public transport activities.

Amendments

Decree-Law No. 605 (Diario Oficial of 10 August 1974).

Decree-Law No. 1206 (Diario Oficial of 24 October 1975).

Decree-Law No. 2178 (Diario Oficial of 22 April 1978).

Supreme Decree No. 155 (Diario Oficial of 6 August 1974) establishing a standing tripartite commission for privately-owned public transport activities.

Supreme Decree No. 214 (Diario Oficial of 18 March 1975) (establishing competence).

Annex LXX

GOVERNMENT REQUEST FOR THE RESIGNATION OF A TRADE UNION LEADER

Republic of Chile
Department of the Interior
Office of the Governor of Chañaral

Communication No. ... [illegible]
Refers to: Decision No. 65 of
28 April 1976
Intendants Office, Region III
SUBJECT: Request for resignation from
regional directorate of
former COBRESAL

From: Provincial Governor of Chañaral

To: Mr. Gustavo Valdes Aravena, Andes 1319, El Salvador

1. In pursuance of the provisions established by the Office of the Regional Intendant at Atacama in its Decision No. 65 dated 28 April last, and in accordance with the powers conferred upon me by the law, I hereby request that you resign from membership of the Regional Directorate of CODELCO CHILE, El Salvador Division (former Salvador Copper Company). Your replacement will be nominated in due course.
2. Having taken note of this communication, return it without delay.
3. If a reply has not been received within three days, you will automatically be considered to have resigned your post.

Yours faithfully

Ramón A. Torrealba Fuzman
Police Chief
Governor

Annex LXXI

ADMINISTRATIVE REFUSAL OF PERMISSION TO HOLD A TRADE UNION MEETING

Republic of Chile
Department of the Interior
Legal Advice Section
1-0165-D-20

Refers to: Official Communication No. 164
Request by the Confederation of
Copper Workers, received by
this Ministry on 2 June 1976.
SUBJECT: ... [illegible] permission as
indicated.

Santiago, 7 June 1976

From: Under-Secretary of the Interior

To: President of the Confederation

1. In reply to your request for permission to hold a trade union training programme for workers in the copper mining industry between 7 June and 3 July of this year, it is my duty to inform you that this Secretariat of State is unable to authorize this activity, since it does not fall within the scope of transitional Decree-Law No. 193/73, article 4.
2. As the training programme does not conform to the legislation in force regarding trade union activity, refusal to authorize it has in this case, been supported by the competent authority for such matters, namely, the Ministry of Labour and Social Security.

Yours faithfully,

... [illegible]
Major Enrique Monetero Marx
Ministry of the Interior

Annex LXXII

RESTRICTIONS ON TRAVEL BY TRADE UNION OFFICIALS IN THE EXERCISE
OF THEIR DUTIES

EXACT COPY OF A PUBLIC ANNOUNCEMENT IN THE
SEMANARIO ANDINO, POTRERILLOS, DATED 1 MAY 1976

TRAVEL BY TRADE UNION OFFICIALS

National Copper Corporation of Chile
Salvador Division

El Salvador, 21 April 1976

HAVING REGARD TO:

Supreme Decree No. 75 of 1975 of the Ministry of Mines, Decree-Laws Nos. 21 and 94 of 1973 and Internal Order No. 2 of 1 October 1975, and

CONSIDERING:

That many trade union officials from this Division frequently travel to Santiago and request interviews with the authorities of CODELCO-CHILE and Government authorities at all levels;

That in many cases the Board of Administration is not aware of the subjects which are discussed in the capital and which generally relate to real or imaginary problems in the Divisions;

ORDER No. 61:

In order to regularize this situation the following instructions are issued and must be strictly complied with:

1. All trade union or labour problems must be dealt with in the relevant Division between the trade union organization concerned and the Board of Administration at the various executive levels.
2. If a solution is not found with the Board of Administration, the latter will issue a pass or authorize the trade union officials to travel to Santiago for an interview with the Executive Vice-President of Operations or his advisers.
3. In very exceptional circumstances determined by the Board of Administration or delegates to the Office of the General Superintendent of Industrial Relations, trade union officials will be authorized to travel to meet other authorities outside CODELCO.

Issued for the information of all staff members of the Corporation.

Manuel Acevedo Valenzuela
Administrator
Salvador Division

Annex LXXIII

DECREES Nos. 646 AND 648 ISSUED BY THE OFFICE OF THE INTENDANT OF SANTIAGO, (15 DECEMBER 1977), SUBMISSION FROM CONEBECH TO THE OFFICE OF THE INTENDANT (16 DECEMBER 1977), DECREE No. 657 ISSUED BY THE OFFICE OF THE INTENDANT OF SANTIAGO (19 DECEMBER 1977) AND CIRCULARS BY CONEBECH DATED 16 AND 21 DECEMBER 1977

REPUBLIC OF CHILE
Internal Affairs

No. 646

OFFICE OF THE INTENDANT OF SANTIAGO,
Legal Department

Santiago, 15 December 1977

This Office today decreed the following:

HAVING REGARD TO: this background information, the fact that the Office of the Intendant has learned that there will be three posts vacant on the Executive of the National Confederation of Workers' Associations of the Banco del Estado de Chile, and taking into account the provisions of Decree-Law No. 349 of 1974, as amended by Decree-Laws Nos. 911 and 1623,

DECREE:

As of today's date, the following persons are hereby appointed officials of the National Confederation of Workers' Associations of the Banco del Estado de Chile in place of those who have relinquished their posts:

LAMBERTO PEREZ NAVARRO
HECTOR PEÑA CABRERA
JAIME CORREA UNDURRAGA.

FOR REGISTRATION AND TRANSMITTAL. (Signed) ROLANDO GARAY CIFUENTES, Division General and Intendant of the Metropolitan Area. LUIS E. IZQUIERDO BERISSO, Legal Secretary.

Written copy for your information.

Yours faithfully,

LUIS E. IZQUIERDO BERISSO
LEGAL SECRETARY

LIB/rct.
Copies to:

National Confederation of Workers' Associations of the Banco del Estado de Chile.
Registry.

REPUBLIC OF CHILE
Internal Affairs

No. 648

OFFICE OF THE INTENDANT OF SANTIAGO,
Legal Department

Santiago, 15 December 1977

This Office today decreed the following:

WHEREAS:

(1) Article 3 of Decree-Law No. 349, as amended by Decree-Laws Nos. 911 and 1623, empowers this Office to request at any time the resignation of one or more of the members of the executive bodies of the organizations, corporations and foundations governed by the said legal provisions,

(2) Such a request for resignation must be based on serious grounds which hinder the proper functioning of the institution and such grounds are to be determined by this administrative authority,

(3) It has been learned that differences of opinion exist among the members of the Executive of the National Confederation of Workers' Associations of the Banco del Estado de Chile which hinder the proper functioning of the institution and, in the view of this authority, they constitute serious grounds that necessitate reorganization of the Executive of the said body; and

Bearing in mind the provisions of Decree-Laws Nos. 349, 911 and 1623,

DECREE:

1. Within 24 hours of notification of this Decree, the following members of the Executive of the National Confederation of Workers' Associations of the Banco del Estado de Chile:

ANDRES DEL CAMPO HAMEL
ARTURO MORENO PATIÑO

must resign from their posts, under the provisions of Decree-Law No. 349, article 3, paragraph 2, as amended by Decree-Laws Nos. 911 and 1623.

2. Notification of this Decree shall be given by the Chilean Police, which shall deliver copies thereof to the persons whose resignation is requested.

FOR REGISTRATION AND TRANSMITTAL. (Signed) ROLANDO GARAY CIFUENTES, Division General and Intendant of the Metropolitan Area. LUIS E. IZQUIERDO BERISSO, Legal Secretary.

Written copy for your information.

Yours faithfully,

LUIS E. IZQUIERDO BERISSO
LEGAL SECRETARY

LIB/rct.
Copies to:

National Confederation of Workers' Associations of the Banco del Estado de Chile.
Chilean Police.
Registry.

CONEBECH

National Confederation of Workers' Associations of the Banco del Estado de Chile

Morandé 25, Office 701
Santiago, 16 December 1977

Mr. Rolando Garay Cifuentes
Division General and Intendant of the
Metropolitan Area
Santiago

Sir,

Today the National Executive of the National Confederation of Workers of the Banco del Estado was notified by the police of Decree No. 648, issued by your Office, in which a request is made for the resignation of the National President and Vice-President of CONEBECH, Messrs. Andrés del Campo Hamel and Arturo Moreno Patiño.

The aforementioned decree cites as the grounds for this decision the fact that "It has been learned that differences of opinion exist among the members of the Executive of the National Confederation of Workers' Associations of the Banco del Estado de Chile which hinder the proper functioning of the institution and, in the view of this authority, they constitute serious grounds that necessitate reorganization of the Executive of the said body".

On this point, the National Executive of the trade union wishes to inform the Intendant of the following: first, the grounds invoked for adopting such a drastic decision, namely an alleged difference of opinion within the Executive of the Confederation which would hinder the proper functioning of the institution, bear no relation to the true situation within our union, since the activities undertaken by the officials, Messrs. del Campo and Moreno, comply with agreements adopted unanimously by the national officials of the organization, and no conflict or difference of opinion whatever exists that could be described as an obstacle to the proper functioning of the Confederation. Indeed, because of the associative nature of the structure of the National Executive, the actions of its officials must represent the views of the majority of its members. This leads us to believe that the Intendant has made the wrong decision, undoubtedly because he received incomplete or erroneous information.

Second, in exercising the functions entrusted to it by the trade union, the National Executive has consistently confined itself to serving the legitimate interests of those it represents, has always abided by the legal provisions in force and, with due respect and consideration, has drawn the attention of the appropriate authorities to its views, which have all related to the problems affecting the workers and their trade union organization.

Third, in view of the above, our opinion is that a mistake has been made and we respectfully request the Intendant to reconsider this decree and cancel the request for resignations made therein.

Yours faithfully,

Hernán Baeza Jara
General Secretary

Andrés del Campo Hamel
National President

Máximo Barahona Arellano
National Director

Arturo Moreno Patiño
Vice President

Marcelo Navarrete Márquez
National Director

Note: The remaining National Director, Mr. Omar Torres Plaza, has not signed this note because he is away from Santiago, but he stated over the telephone that he supports it on all points.

P.S. 19 December 1977

The original of this submission was delivered under the door of the Registry of the Office of the Intendant of Santiago, on Saturday, 17 December at 11.20 a.m., at the suggestion of the doorman who was on duty at that time in office No. 14 on the second floor of the building. and refused to take delivery of the document.

REPUBLIC OF CHILE
Internal Affairs

No. 657

OFFICE OF THE INTENDANT OF SANTIAGO,
Legal Department

Santiago, 19 December 1977

This Office today decreed the following:

WHEREAS:

(1) Article 3 of Decree-Law No. 349, as amended by Decree-Laws Nos. 911 and 1623, empowers this Office to request at any time the resignation of one or more of the members of the executive bodies of the organizations, corporations and foundations governed by the said legal provisions,

(2) In Decree No. 648 of this Office, dated 15 December 1977, a request was made for the resignation of Messrs. Andrés del Campo Hamel and Arturo Moreno Patiño from their posts as officials of the National Confederation of Workers' Associations of the Banco del Estado de Chile,

(3) In accordance with the provisions of the aforementioned Decree No. 648, such resignation had to be submitted within 24 hours of notification of the said Decree,

(4) As shown in the relevant record of notification, Mr. Arturo Moreno Patiño was notified of Decree No. 648 of this Office on 16 December 1977 at 11.40 a.m.,

(5) As shown in the relevant record of notification, Mr. Andrés del Campo Hamel was notified of Decree No. 648 of this Office on 16 December 1977 at 12.55 p.m.,

(6) Consequently the time-limit for submitting the resignations in question has expired; and

Taking into consideration:

The provisions of Decree-Laws Nos. 349, 911 and 1623

DECREE:

1. Andrés del Campo Hamel and Arturo Moreno Patiño are hereby removed from their posts as officials of the National Confederation of Workers' Associations of the Banco del Estado de Chile.

2. Messrs:

ALEJANDRO MERY BADILLA
RAFAEL DE LA CUADRA ESPINOZA

are hereby appointed to replace Messrs. del Campo and Moreno as officials of the National Confederation of Workers' Associations of the Banco del Estado de Chile.

FOR REGISTRATION AND TRANSMITTAL. (Signed) ROLANDO GARAY CIFUENTES, Division General and Intendant of the Metropolitan Area. LUIS E. IZQUIERDO BERISSO, Legal Secretary.

Written copy for your information.

Yours faithfully,

LUIS E. IZQUIERDO BERISSO
LEGAL SECRETARY

LIB/ret
Copies to:

National Confederation of Workers' Associations of the Banco del Estado de Chile,
Morandé 25, Office 701.
Registry.

CONEBECH

Santiago, 16 December 1977

CIRCULAR No. 74

Dear colleagues,

The National Executive of the Confederation considers that it should inform the members of the following:

First: The National Confederation was today notified of Decree No. 648 issued by the Office of the Intendant of Santiago, according to which, under the legal powers referred to in the Decree, Messrs. Andrés del Campo Hamel and Arturo Moreno Patiño, President and Vice-President respectively of Conebech, are requested to resign from their posts as national officials and tender their resignation within 24 hours on pain of legal summons.

Second: Paragraph 3 of the Decree states that "It has been learned that differences of opinion exist among the members of the Executive of the National Confederation of Workers' Associations of the Banco del Estado de Chile which hinder the proper functioning of the institution and, in the view of this authority, they constitute serious grounds that necessitate reorganization of the Executive of the said body".

Third: In view of this situation, the National Executive of Conebech wishes to inform the members that:

(a) In performing the functions entrusted to it by the trade union for the purpose of heading the organization, the Executive has always concentrated on the interests and aspirations of the workers it represents and constantly sought to secure the fulfilment and full exercise of their rights.

(b) To this end, the Executive has complied with the legal provisions in force, but with due respect and consideration has none the less made known to the authorities its position regarding the restrictions currently facing the trade union movement in our country.

Furthermore, as the members are aware, it has raised with the administration of the Bank the question of the difficult economic situation of the staff. The administration has acknowledged the situation and, at the meeting held with the National Confederation this morning, reported its decision to grant the staff some financial relief before Christmas, payable in the form of a voucher for groceries worth approximately 1,200 pesos. This fact proves once again that the requests made by the union have been fair.

(c) The grounds for the Decree issued by the Office of the Intendant of Santiago, requesting the resignation of the abovementioned officials bear no relation to the true situation within our organization; "differences of opinion which hinder the proper functioning of the institution" do not exist since the management of the union has been approved unanimously by the national officials and endorsed and approved by the rank-and-file members throughout the country whenever it has been possible to obtain their opinion. Furthermore, this National Executive

has requested permission from the public authorities to hold a National Congress, the supreme organ of Conebech according to its statutes, but permission to do so has been denied.

(d) It utterly deplores the procedure being used to restructure the National Executive, since the procedure is contrary to the views of the vast majority of the membership and the principle of the independence of intermediate bodies, which the Supreme Government declares to be one of the fundamental principles on which its action is based.

(e) Whatever the circumstances that may face the trade union, the undersigned national officials, elected by the direct vote of the membership, will maintain their position in defence of the interests of the staff of this institution, ensuring the continued existence of the trade union and the feeling of unity which has always reigned in our organization and which we aim to preserve.

(f) Once again the National Executive of the Confederation reiterates its unswerving loyalty to and firm support for its National President and Vice-President, Andrés del Campo and Arturo Moreno, who in their long and fruitful management of the union have made the greatest efforts and sacrifices for its advancement, a fact which the members realize and which they have had the opportunity to indicate through massive and unselfish support on a number of occasions.

(g) A note has been sent today to the Intendant of Santiago setting out the views of the National Executive and requesting reconsideration of the Decree demanding the resignations.

NATIONAL CONFEDERATION OF WORKERS' ASSOCIATIONS
OF THE BANCO DEL ESTADO DE CHILE

Hernán Baeza J.
General Secretary

Arturo Moreno P.
Vice-President

Andrés del Campo H.
National President

Omar Torres P.
Director of Finances

Marcelo Navarrete M.
Director of Records

Máximo Barahona A.
Director of
Organization and Control

CONEBECH

DISMISSAL OF NATIONAL OFFICIALS

Dear colleagues,

The workers of the Banco del Estado de Chile have, during the course of this week, been informed of the demand made by Mr. Rolando Garay, Intendant of Santiago, in a Decree issued by his Office, for the resignation of President Andrés del Campo and Vice-President Arturo Moreno from their posts as officials of our trade union organization. Subsequently, by Decree No. 657, the said authority proceeded to dismiss del Campo and Moreno from their posts for refusing to tender their resignations.

The profound surprise which this measure has occasioned in our organization is difficult to describe, since the reasons put forward, i.e. alleged internal differences of opinion, are inaccurate, indeed impossible. All of the staff know

that the spirit and raison d'être of our trade union, historically speaking, has been UNITY, a virtue which has made normal and respectful coexistence possible even in the tensest moments experienced by the trade union and by the country. Nothing has ever succeeded in causing a rift within the organization, either in the Executive or among the rank-and-file members, because the feeling of UNITY has been the irresistible force which has enabled it to overcome all the pressures that might in one way or another have led us along paths other than those indicated by the ever-respected views of our members. This is why we have become great, not only in our own country, but also at the international level. Similar organizations and others of outstanding national importance respect us, and in many trade union meetings throughout the continent our union has been held up as an example because of its excellent structure, the responsible attitude of its officials and the quality of its membership. Would it have been possible to achieve such a standard if it had not been for our principles?

The measure which now affects our Executive is therefore all the more inexplicable. The compulsory removal of Andrés del Campo and Arturo Moreno sadly calls to mind the aptness of the popular saying "They received Chilean pay" (i.e. they were treated with gross ingratitude). A stroke of a pen has wiped out the efforts of many years of invaluable work on behalf of their fellow workers, but how can any decent person forget the significance, first for bank workers and then for all workers in public administration, of the five-day week? And the financial benefits on other occasions which clearly raised our standard of living? And the courage in defending our Bank from the many attempts to limit or reduce its important influence on the national economy? And the countless struggles to defend our social security gains? It would take a long time to list all that has happened in our trade union's history; there is only space here to state that the most important pages of that history were written in the indefatigable, calm and forceful presence of these two officials who are now being hailed by thousands of workers in our organization for their brilliant careers and their uprightness.

We, the undersigned democratically elected officials, wish to express our complete solidarity with Andrés and Arturo, because we are well aware that this is precisely that sentiment of the members they have represented so worthily for so many years. At the same time, we have today requested an interview with the Minister of the Interior in order to inform him of this unusual situation and ask for his valuable help in finding a solution to the problem, convinced as we are of the truth of his words when he said that: "The Government's idea has never been to make use of the trade unions, either as partisan organizations or in the service of a cause which is not directly related to trade unionism". We trust that a fair solution to this problem will be found.

NATIONAL CONFEDERATION OF WORKERS' ASSOCIATIONS
OF THE BANCO DEL ESTADO DE CHILE

Omar Torres Plaza
National Director of Finances

Hernán Baeza Jara
General Secretary

Marcelo Navarrete Márquez
Director of Records

Santiago, 21 December 1977

Annex LXXIV

DISMISSAL OF TRADE UNION OFFICIALS BY DECREE (No. 150 OF THE OFFICE
OF THE INTENDANT OF SANTIAGO (4 APRIL 1978))

REPUBLIC OF CHILE
Internal Affairs
OFFICE OF THE INTENDANT OF SANTIAGO
Legal Department

No. 150

Santiago, 4 April 1978

This Office today decreed the following:

WHEREAS:

(1) Article 3 of Decree-Law No. 349, as amended by Decree-Laws Nos. 911 and 1623, empowers this Office to request at any time the resignation of one or more of the members of the executive bodies of organizations, corporations and foundations governed by said legal provisions,

(2) Such a request for resignation must be based on serious grounds which hinder the proper functioning of the institution and such grounds are to be determined by this administrative authority,

(3) The National Association of Workers in the Public Health Administration (ANODOS) has sought to modify its statutes without regard for the provisions thereof, without having been granted the appropriate authorization and with the clear aim of infringing the legal provisions in force,

(4) Furthermore, adequate proof exists that some of the persons at present heading the said Association have infringed the party political recess decreed by the Supreme Government, which action is prohibited by the third article of the statutes of the said organization,

(5) In the opinion of this authority, the foregoing constitutes serious grounds which hinder the proper functioning of the institution and necessitate reorganization of the Executive of the said body; and

BEARING IN MIND the provisions of Decree-Laws Nos. 349, 911 and 1623

DECREE:

(1) Within 24 hours of notification of this Decree, the following members of the National Association of Workers in the Public Health Administration (ANODOS) shall resign from their posts under the provisions of paragraph 2, article 3 of Decree-Law No. 349, as amended by Decree-Laws Nos. 911 and 1623:

Jorge Gómez Cifuentes

Oscar González González

David Lizama Menares

Carlos López Cornejo

Hernán Mery Toro

Federico Stelzmann Larrien

(2) Notification of this Decree shall be given by the Chilean Police, which shall deliver copies thereof to the persons whose resignation is requested or to whomsoever is present at their domiciles at the time of notification.

FOR REGISTRATION AND TRANSMITTAL

(Signed) ROLANDO GARAY CIFUENTES,
Division General and
Intendant of the
Metropolitan Area.

LUIS E. IZQUIERDO,
Legal Secretary.

Written copy for your information.

Yours faithfully,

LUIS E. IZQUIERDO BERISSO

Legal Secretary

LIB/rct.

Copies to:

Nat. Assoc. of Workers in the Public Health Administration (ANODOS).

Registry.

Annex LXXV

LIST OF TRADE UNION OFFICIALS DETAINED AND MISSING
(Delivered to the Group at Santiago ^{INT} in July 1978) ^{INT}

<u>Name</u>	<u>Trade Union</u>	<u>Identity Card</u>	<u>Date of disappearance</u>
1. VICENTE ATENCIO CORTEZ	Construction	56.396 Arica	11/8/76
2. BERNARDO ARAYA ZULETA	CUT/CTCHE metal workers	2189374 Stgo.	2/4/76
3. ARTURO BARRIA ARANEDA	Teachers	3400191 Stgo.	28/8/74
4. JOSE LUIS BAEZA CRUCES	CUT Juvenil formerly National Construction	2471897 Stgo.	9/7/74
5. LINCOYAN BERRIOS CATAIDO	EE.MM	2759542 Stgo.	15/12/76
6. GABRIEL DEL ROSARIO CASTILLO TAPIA	P. Valdivia nitrate fields	13.180 Combarb.	5/8/76
7. CESAR CERDA CUEVAS	Ranquil agricultural workers	1415352 Stgo.	19/5/76
8. HECTOR MANUEL CONTRERAS ROJAS	Radio- controllers	3378378 Stgo.	28/6/76
9. ABUNDIO ALEJANDRO CONTRERAS GONZALEZ		4864608 Stgo.	14/7/74
10. JUAN ELIAS CORTEZ AIRUIZ	Hosp. San Juan de Dios	ios 30334 Quilpué	29/4/76
11. PLUTARCO ENRIQUE COUSIY BENAVIDES		442.042 Valpo.	21/9/73
12. LISANDRO TUCAPEL CRUZ DIAZ		1752825 Stgo.	18/12/76
13. JOSE ENRIQUE CORVALAN VALENCIA	EE.MM.	2351340 Stgo.	9/8/76
14. VICTOR DIAZ LOPEZ	CUT	1001825 Stgo.	12/5/76
15. ULDARICO DONAIRE CORTEZ	Nitrate workers	2095711 Stgo.	5/5/76
16. JAIME DONATO AVENDAÑO	Chilectra	3317362 Stgo.	5/5/76

<u>Name</u>	<u>Trade Union</u>	<u>Identity Card</u>	<u>Date of disappearance</u>
17. HUMBERTO FUENTES RODRIGUEZ	CUT-Endesa electricians	1.844 Renca	4/11/75
18. FRANCISCO JUAN GONZALEZ ORTIZ	Labourers	5743956 Stgo.	9/9/76
19. ALFONSO FERNANDO GAONA CHAVEZ	Enafri	4853823 Stgo.	8/9/75
20. JUAN ANTONIO GIANBELLI COMPANI	SUTE	5086166 Stgo.	26/7/76
21. MAXIMO GEDDA ORTIZ	Television	51.056 Provid.	16/7/74
22. MARIO JESUS JUICA VEGA	OO.MM Renca	4663098 Stgo.	9/8/76
23. LUIS SEGUNDO LAZO SANTANDER	Chilectra	2743046 Stgo.	15/12/76
24. NICOLAS ALBERTO LOPEZ CUAREZ	Finn	3435603 Stgo.	30/7/76
25. GUILLERMO MARTINEZ GUILJON	Printers	667.759 Stgo.	21/6/76
26. RAUL MPNTOYA VILCHES	Construction	2935822 Stgo.	21/7/76
27. JUAN HECTOR MORALES GARCES	Construction	4861596 Stgo.	22/7/76
28. VICTOR HUGO MORALES MAZUELA		2632428 Stgo.	9/8/76
29. MIGUEL LUIS MORALES RAMIREZ	Soft drinks traders	5083545 Stgo.	3/5/76
30. NEWTON MORALES SAAVEDRA	Former President Sumar	2920768 Stgo.	13/8/74
31. HECTOR MORACA GARCES	Construction	4861596 Stgo.	22/7/76
32. FERNANDO NAVARRO ALLENDE	CUT/Railways	312.505 Valpo.	13/12/76
33. MIGUEL NAZAL QUIROZ	UCT	3262756 Stgo.	11/8/76
34. MARCIAL RODOLFO NUMEZ SENAVIDES	BEPP Osorno	65.815 Osorno	18/5/76

<u>Name</u>	<u>Trade Union</u>	<u>Identity Card</u>	<u>Date of disappearance</u>
35. JUAN FERNANDO ORTIZ LETELLIER	University of Chile	1611532 Stgo.	15/12/76
36. JUAN RIENE ORELLANA CATALAN	Ranquil agricultural workers	4037100 Stgo.	8/6/76
37. ENRIQUE PARIS ROA	Teachers		11/9/73
38. WALDO ULISES PISARRO MOLINA	Textile workers	2951237-K Stgo.	15/12/76
39. EXEQUIEL PONCE VICENCIO	Port workers	64.251 Calama	24/6/75
40. ARMANDO PORTILLA PORTILLA	Endesa electricians	2758755-S Stgo.	9/12/76
41. REINALDA PEREIRA PLAZA	Salva	5319316-1 Stgo.	15/12/76
42. LUIS EMILIO RECABARREN GONZALEZ	APE-UPE teachers and students	5473525 Stgo.	29/4/76
43. MANUEL SEGUNDO RECABARREN ROJAS	Nascimiento Publishing House	1464283 Stgo.	30/4/76
44. ALFREDO ROJAS CASTANEDA	Railways	4019953-5 Stgo.	4/5/75
45. ANIBAL RIQUELME PINO	CUT	13.593 V.Alemana	9/76
46. SERGIO ALBERTO RIVEROS VILLAVICENCIO	CUT (Printers)	4339612 Stgo.	15/8/74
47. GERARDO ISMAEL RUBILAR MORALES	CUT Juvenil	1195188 Stgo.	25/1/74
48. JOSE SAGREDO PACHECO	Construction	297.518 Stgo.	3/11/75
49. JORGE SALGADO SALINAS	Ranquil agricultural workers	112.365 Quillota	9/8/76
50. JOSE EDUARDO SANTANDER HIRANDA	Treasury D.J. CUT	4805124 Stgo.	6/8/76
51. PEDRO SILVA BUSTOS	OO.MM Chile	3809582 Stgo.	9/8/76

<u>Name</u>	<u>Trade Union</u>	<u>Identity Card</u>	<u>Date of disappearance</u>
52. JORGE GERARDO SOLOVERA GALLARDO	Fensimet	6199024 Stgo.	4/6/76
53. JOSE VICENTE TOLOSA VASQUEZ	CUT (Printers)	5019913 Stgo.	15/6/76
54. JULIO ROBERTO VEGA VEGA	OO.MM	1252460 Stgo.	16/8/76
55. CARLOS MARIO VISCARR COFRE	FIAT	4665693	11/8/76
56. HECTOR VELIZ RAMIREZ	CUT OO.MM	4234509-1 Stgo.	15/12/76
57. JUAN VILLARROEL ZARATE	Photo-engravers	1735775 Stgo.	13/8/76
58. RODOLFO ARTURO VILLASECA	Enafri		2/1/75
59. MAX ROBERTO VENPURELLI LIERNILLY	FEU students and teachers		
60. LUIS EDUARDO VEGA RAMIREZ	Ranquil agricultural workers	110.479 Curicó	12/9/75

Annex LXXVI

LETTER FROM TRADE UNION OFFICIALS TO THE MINISTER OF THE INTERIOR
APPLYING FOR ANNULMENT OF THE ORDER BANISHING THEM

SANTIAGO, December 1977

General Raul Benavides Escobar
Minister of the Interior
Santiago

Sir,

By virtue of the right to petition guaranteed to us by the legislation in force, we are writing to inform you of the seriousness of the situation of six trade union officials - of the highest level and representativeness - in the places to which they have been banished by the Government of Chile, in exercise of the powers accorded to it under the state of siege.

Mr. Juan Fincheira Cortés has been banished to Viaviri, at 4,068 metres altitude, 250 kilometres inland of Arica. This village consists of a few families of shepherds, a railway station and a police post. He is subject to house arrest and forced to provide for himself in a place where there is no trade and no possible source of work. His health is suffering from the altitude and the extreme temperature fluctuations in the area.

Mr. Carlos Frez Rojo has been banished to Cuatellateri, at 4,800 metres altitude, 280 kilometres inland of Arica. In this volcanic area, there live three villagers and the garrison of a police post. He is also forced to provide for himself and to find any work that he can. In this area, temperatures approach 30°C during the day and 20°C below zero at night. His sole access is by four-wheel-drive jeep, and the Bolivian winter is approaching, which cuts off all communication for four months. This person is suffering from serious psychosomatic disturbances caused by the altitude, temperature fluctuations and isolation. It should be added that Mr. Frez returned from abroad to serve his sentence (a fact which appeared in the press) but was nevertheless forced to proceed to that area with only the light clothes which he was wearing.

Mr. Carlos Arellano is in the Alcerreca area, at 3,917 metres altitude, 140 kilometres inland of Arica, where there is a military outpost, a railway station and a police post. The only accommodation he has been able to find is a hut without even the minimal sanitary installations.

Mr. Juan Manuel Sepúlveda has been banished to Chucuyo, at 3,700 metres altitude, 200 kilometres inland of Arica. It is a small town with a police post. His living conditions are the same.

Mr. Hector Cuevas has been banished to Chapiquifa at 3,700 metres altitude, 200 kilometres inland of Arica. In addition to the abnormal living conditions imposed on the others, he has serious heart problems as a result of the climatic characteristics of the area; and he has been left to look after himself in an isolated place, surrounded by Indians who do not understand his language, and without even a police post to help him.

Mr. Milton Puga, who came forward voluntarily to serve the banishment ordered by a Supreme Decree, has been banished to Caquena at 3,900 metres altitude, in the same geographical area, in extremely hard conditions which are dangerous to his life, like those described in the preceding cases.

In our capacity as sponsoring lawyers in the actions for enforcement of rights brought before the Santiago Court of Appeals on behalf of the banished persons, it is our bounden duty to inform you of the serious threat to the physical and mental health of those concerned. Furthermore, it is our duty to advise you that the very lives of the persons banished will be endangered if they have to endure these conditions any longer. This warning is not exaggerated. The regular inhabitants of these places have a physiological constitution which has been adapted over the generations to the natural rigours of the environment; and the police garrisons which live there are very young men, prepared by suitable training, who undergo frequent medical examinations and have the equipment, clothing and food required by the exceptional nature of the area. The persons we are defending have none of these advantages to attenuate their harsh living conditions.

In brief, the Supreme Government has imposed on these trade union officials a banishment whose harshness is unprecedented in our history and has no parallel whatsoever in the Western world. Their living conditions can only be compared to the tragic destiny of persons banished to Siberia.

You should also be aware that the situation described is incompatible with the provisions of article 5 of the Universal Declaration on Human Rights which states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In addition, article 3 of the American Convention on Human Rights known as the Pact of San José, Costa Rica, stipulates that: "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".

In our view, neither the content nor the spirit of the legal and moral requirements which the Government of Chile has solemnly undertaken to uphold is compatible with confinement of unspecified duration in inhospitable places entirely lacking in facilities for health, accommodation, hygiene, shelter and food, a confinement imposed on persons who are not physiologically adapted to such hardships or prepared to bear them. The above-mentioned legal instruments do indeed provide for some temporary and partial exceptions to the inviolability of the human rights which they affirm: but it is also true that chapter IV, article 27, paragraph 2 of the Pact of San José states that, even in exceptional circumstances, sanctions and security measures which might endanger the life or personal integrity of the persons concerned may not be applied.

Finally, we submit to you, Sir, that the powers granted to the Executive in this matter, by virtue of the existence of the state of siege, are limited to the transfer of persons from one Department to another of the national territory. Neither the original rule establishing the power of administrative banishment - article 72, paragraph 17 of the Constitution of 1925 - nor any later provision permits transfer with the obligation to reside in a city, town, hamlet or place of smaller geographical area than a Department. Nor is it possible, with respect to one and the same person, to combine the measure of transfer and with the measure of house arrest, since domicile is an attribute of the person which can be imposed

only in the cases expressly specified in civil law in relation to persons not having legal capacity. Lastly, the force of the argument which we are advancing will be clear if one examines the actual history of that part of the Political Charter of 1925 which deals with the state of siege, since banishment to the geographical area of a Department was intended to avoid the security measure being transformed into a punishment - which is, unfortunately, exactly what has happened to the persons we are defending.

For the serious reasons explained, and without prejudice to the arguments we shall advance before the Santiago Court of Appeals, we request you, Sir, to suspend immediately the penalty imposed on the trade union officials Mr. Juan Fincheira, Mr. Carlos Frez, Mr. Carlos Arellano, Mr. Juan Manuel Sepúlveda, Mr. Héctor Cuevas and Mr. Milton Puga, who are at present undergoing administrative banishment in the interior of the Department of Arica. As an alternative, we request that the transfer should be commuted to residence in the territory of the Department of Arica.

Trusting that you will take into account the legal, moral and humanitarian considerations which have led us to request that you review this matter,

We remain

Yours faithfully,

For Mr. Juan Fincheira C.

For Mr. Carlos Arellano

For Mr. Carlos Frez R.

Adolfo Zaldívar Larraín
Lawyer

For Mr. Juan M. Sepúlveda

Mr. Héctor Cuevas

Gullermo Videla Vial
Lawyer

For Mr. Milton Puga

José Mr. Galiano ... [illegible]
Lawyer

Annex LXXVII

SWORN STATEMENT BY HECTOR HUGO CUEVAS SALVADOR (ARREST AND BANISHMENT)

HECTOR HUGO CUEVAS SALVADOR, President of the Federation of Workers in the Construction, Timber and Building Materials Industries (Federación Industrial de Edificación, Madera y Materiales de Construcción (FIEMC)), gives an account of his arrest and subsequent banishment

On Wednesday, 23 November, at 10.10 a.m., four persons, three men and one woman, came to our Federation's office and were received by the secretary. They said that they wished to speak with me; and, when the secretary asked who they were, one of them gave his name as Arturo Sanchez. She informed me and I went out to meet them. They presented me with a small pink card, in a plastic case, with some illegible writing. They said that they were from the National Information Agency, and that I was under arrest as from that moment. I asked them if they had an arrest warrant, but they told me contemptuously, and with a great show of haste, that I would be taken away immediately. I tried to inform the rest of the officials in the office of the Federation, but they would not allow me to do this. At that very moment my wife was at the office, waiting for me to come with her on some errands. She asked me what was happening and, when I replied that they were arresting me, she asked them why and where they were taking me so that she would know where I was. The one who said his name was Arturo Sanchez replied that she would be informed in due course. She had no chance to do anything because they shoved me out at a run down the staircase. All this took five minutes.

When we reached the street, they made me get into a blue Peugeot which had the engine running. Then I realized that our Federation's office was surrounded by vehicles and police. The vehicles quickly moved in front of and behind the vehicle in which I was travelling; one of them switched on its siren to make way and we went via the Alameda, and then the Pedro Aguirre Cerda and the Camino a Melipilla, to the los Cerrillos airport. We went into the airport, parked in the main airport access road and waited there until another white vehicle arrived, with the Vice-President of FENSIMET, Mr. Jose Manuel Sepúlveda. We waited there for about an hour, then went on to the airport runway, where there was a twin-engined police aircraft. While we were waiting, I heard on the car radio General Pinochet announcing, among other things, the banishment of five trade union officials to Putre; and it was only the broadcast which made me understand my situation.

While we were waiting inside the car, I was told constantly not to talk or make any movement. There were about 13 persons in civilian dress and two policemen guarding the aircraft. We continued waiting and then an aircraft arrived in which there were only a pilot and co-pilot, both police officers. They made us get out of the car and took our documents and personal effects from us, and searched us again although that had already been done. As we climbed into the aircraft, a policeman with the rank of corporal made us put up our hands and open our legs; he also struck us with the barrel of his machine gun without any reason and shouted insults at us.

When I got into the aircraft there were six people, two trade union officials and four policemen of various ranks who made us sit down and forbade us to move or speak to each other. We took off at 1.30 p.m., and landed at Cerro Moreno at 4 p.m. for fifteen minutes. We were made to get out while the aircraft was refuelled; and at approximately 5 p.m. we took off from Cerro Moreno and reached the airport of El Buitre at Arica.

At about 6.30 p.m., we were made to get out of the aircraft and go into one of the airport buildings. There were many people in civilian dress who asked me some questions and took away my identity card. Later we were taken outside the airport, where we got into a blue GMC lorry with a double cabin, belonging to the municipality of Arica. We were made to sit down in the back seat, in the middle, between an official of SIRE and a uniformed police corporal. In the front seat there was the chauffeur, an official of the municipality of Arica and a police sergeant. We left for the outlying area of Arica at about 7.15 p.m.

At about 8.15 p.m. we arrived at Poconchele, where we stopped and that was the first chance we had to speak to each other. We travelled to Chapiquiña and reached the police post of that village at 10.45 p.m. There our arrival was noted in the register kept by the police; and, after they had asked us further personal questions, they took us to a prison cell, handed us two blankets and gave us a cup of coffee and some bread and butter; that was our first food since our arrest. There we slept and breakfasted on the floor.

Then in the same blue lorry we were transferred to the village of Chapiquiña, about 5 kilometres from the police post. This village lies at an altitude of about 3,700 metres, and there I was left without anywhere to sleep or anything to eat.

Annex LXXVIII

SWORN STATEMENT BY JUAN MANUEL SEPULVEDA MALBRAN
(ARREST AND BANISHMENT)

JUAN MANUEL SEPULVEDA MALBRAN, a Chilean national, married, adult, mechanic, residing at Locarno No. 0463-C, in La Cisterna commune, holder of identity card No. 3,997,795-8 issued by the Santiago Records Office, having appeared and duly taken the oath, made the following statement:

FIRST: I joined the FENSA S.A. pottery factory as a trainee in March 1970 and was hired as a regular member of the staff of the enterprise in June of that year; I held my post until the date of this statement.

SECOND: In June 1973, I was elected President of the Trade Union of Private Employees at this enterprise. In October 1973, an assembly of officials of the metallurgical union elected me Vice-President of FENSIMET (National Federation of Metallurgical Trade Unions). I still hold both posts.

THIRD: At the beginning of November this year - 1977 - for a period of approximately 15 days, strange telephone calls were received at my home; sometimes the purpose of the calls was to insult me and at other times the calls were cut off as soon as they were answered. Obviously, the purpose of the calls was to intimidate me, for on one occasion the caller threatened that a bomb would be placed in my house if I took part in a trade union meeting which I was obliged to attend because of my Union functions.

FOURTH: On Tuesday, 22 November 1977, on leaving the headquarters of the Pastoral Obrera, where I had gone for consultations concerning the Federation, I was followed by a rather suspicious-looking individual who watched my movements until I took the bus for my home. When I reached my home bus stop, I realized with some concern that the aforementioned individual was already there, awaiting my arrival, since he followed me until I entered my house and remained outside it for some time.

FIFTH: On Wednesday, 23 November 1977, at about 10.15 a.m., while I was at my place of work I was told by Moisés Kohl - a worker in the maintenance department - that my presence was required in the office of the General Manager, Mr. Jorge Berhmann. Thinking that the matter was connected with requests the trade union had made on the previous day, I hastened to the management office. On the way to the office, some colleagues told me that two individuals who had identified themselves as belonging to the National Information Agency (CNI) were at the enterprise. I arrived at the management office at the precise moment when Mr. Berhmann was entering his private office. I told the secretary that I had come because I had received a call from Mr. Berhmann. The secretary said that Mr. Berhmann had indeed called me, and told me to wait in the Council Room while she communicated with Hector Galan, who is president of the Mademsa Trade Union, with a view to arranging an urgent meeting. In view of the secretary's insistence that I should wait in the Council Room, I went there and found that there were two individuals in the room who came up to me as soon as they noticed my presence. These individuals told me to come into the room and one of them identified himself

as a member of CNI, showing me a blue identity card bearing a coloured photograph. The same individual told me that I was being arrested on the orders of the President of the Republic and showed me a sort of warrant of arrest. I requested him to show me the "warrant of arrest" again. He did so fairly briefly, so that I could not take note of its contents; all I saw was that it was a white mimeographed sheet of paper, on some parts of which there was handwriting in blue pencil, which was illegible, as indeed was the signature at the bottom of the document. They intimidated me, saying that it was better not to try anything since they would shoot to kill, and at the same time they showed me the weapons they were carrying. Faced with this situation, I explained to them that I was in working clothes and that they should at least allow me to change my clothes. I also asked them on what grounds I was being detained. They told me that I knew the grounds for my detention. I repeated my question, telling them that all my trade union work had always been very clean and public and that I was certain that I had not committed any offence that might result in a warrant for my arrest, since in the trade union field I had always devoted myself to denouncing arbitrary action and injustices against the workers and that, if that was considered an offence, I agreed that I should be regarded as an offender. There was no reply from the persons detaining me. One of them ordered the other to go and look for my clothing. The individual went out and I remained alone with the other - who seemed to be the chief - for a period of approximately ten minutes during which he told me that we were going to Carrillos where I would meet other leaders of the "Group of Ten". He asked me if I was a Christian Democrat and I replied in the affirmative. At that moment, the individual who had gone to collect my clothes returned, bringing with him my jacket and my briefcase with personal documents, including trade union documents, my passport, an address book, receipts for contributions, a personal letter and various cards, together with a card identifying me as a FENSIMET official. At the time I am making this statement, neither the briefcase nor the documents I have mentioned have yet been returned to me. They proceeded to make a thorough search of my jacket and of the clothing I was wearing at that moment. They then told me that we were leaving the room and again warned me not to do anything since I was covered. We left the administrative offices and went to the patio of the enterprise. A white Peugeot 504 car, with no number plates, was stationed there; it had been authorized to enter the plant by the general manager. They made me get into the car and the porter of the enterprise opened the gate to let us out. I must point out that in the car there was another individual who, as soon as I got into the back seat of the car, pointed a weapon at my ribs, as did the individual who was acting as chief. The other individual drove the car. At the exit from the plant, a red Chevy Nova moved in front of the vehicle in which I was being held, and escorted us to Carrillos airport. To facilitate our passage, the red car sounded a siren. Another car placed itself behind the vehicle in which I was travelling. On the journey to the airport they told me that they would advise my family of my situation. When we reached the airport, the Peugeot car drew up alongside a blue vehicle in which was Mr. Hector Cuevas, President of the Construction Workers' Federation. We remained there for a long time. After 11.00 a.m., we went to the air strip, where there was a twin-engine aircraft, known as "El metro", belonging to the police. It was while we were on our way to the runway that I had an opportunity to learn where I was going, since I heard on the car radio, among other announcements made by President Pinochet, that certain trade union officials were being banished to Putre. About one dozen persons in civilian dress and two policemen, who seemed to be guarding the aircraft, were standing round the aircraft. The individuals in

civilian dress constantly threatened me during the hours I had to wait until the aircraft took off. As time was passing and I was still being held inside the car, and as I knew the measure that was being applied to me, I asked what was the cause of the delay. One of the individuals told me that they were waiting for the arrival of an aircraft with some officials from the "El Teniente" copper mine. At about 1.15 p.m., a police aircraft landed and it was surrounded by a large number of officials. I thought that the "El Teniente" leaders would be in that aircraft. I noted, however, that only the pilot and the co-pilot, who were both police officers, with the rank of captain and lieutenant respectively, disembarked from the aircraft. Before making us board the twin-engine aircraft, which had been on the runway for several hours, they again searched my clothing and that of Hector Cuevas; they even made me take off my shoes. Both Cuevas and I were hit on the testicles by a policeman, who gave me a violent blow with the barrel of the submachine-gun he was carrying. They then made us board the aircraft, placing me on a seat in line with that occupied by Hector Cuevas. The two policemen who had been guarding the aircraft were seated in front of us and two individuals in civilian dress behind. They were all carrying weapons. We were forbidden to speak or to make any movement. The aircraft took off from Carrillos at about 1.30 p.m. and we were in the air until we reached Carro Moreno airport, at Antofagasta, at about 4.45 p.m. There they made us get out of the aircraft and wait for approximately 15 minutes while it was being refuelled. At about 5.00 p.m. we took off again and were in the air for over an hour. We reached El Buitre airport, which is located in the town of Arica. At about 6.30 p.m. we disembarked from the aircraft and they made us go into one of the airport buildings, where a large group of individuals in civilian dress was waiting. One of those individuals asked for my personal particulars, which he entered on a form, while another asked me the same questions and noted down the answers on a blank piece of paper. I must point out that this procedure was not applied to the other trade union official who was taken with me to Arica; he was not interrogated. On completion of the interrogation, they returned some of my personal documents which they had taken from me before we boarded the aircraft. The persons who had detained me kept various personal cards, my passport and the document identifying me as an official of the Federation; I have not yet recovered those documents. Both Hector Cuevas and I were made to leave the airport and get into a 1972 (approximately) model GMC double-cabin truck, on one of the doors of which there was a painted disc indicating that it was the property of the Municipality of Arica. Both Hector Cuevas and I were made to get on to the back seat of the truck, between an official of SIRE and a policeman. A non-commissioned police officer and the chauffeur were on the front seat. The vehicle left the airport at about 7.15 p.m. and we passed through Arica, taking the Chacayuta airport road and arriving at Poconchile at 8.15 p.m. After we had left the airport and were in the truck I had my first opportunity to talk to the other trade union official who had been arrested, Hector Cuevas, and with the persons responsible for taking us to Chapiquiña. We reached the Chapiquiña police post at about 8.45 p.m. There, our arrival was noted in a register. After again asking us for our personal particulars, they made us go into a cell which was about two metres long and one and a half metres wide. We were each handed two blankets and given a cup of coffee. That was where we slept. On the following day, at about 9.00 a.m., they took us out of the cell and gave us breakfast. Shortly afterwards, they made Hector Cuevas get into the truck and, according to them, he was to be taken to the village of Chapiquiña, which was approximately six kilometres away from the police post at which we were. I had to wait at the post until about 10.45 a.m. when the

truck returned to take me to Chungará. At about 12.30 p.m. we arrived at the Chucuyo post, and the officer in charge told me that I was destined for Chucuyo but that for that day I would continue on to Chungará and would return to Chucuyo afterwards. He explained that the change in destination was due to the fact that there was no civilian population other than custom officials at Chungará. We reached Chungará at about 1.15 p.m. where I was received by a senior non-commissioned police officer. They gave me something to eat and I stayed there until about 5.00 p.m. when I was taken back to the Chucuyo post where I remained until 30 November. Then I was transferred to the hamlet of Chucuyo, which is inhabited by a group of only 60 Indians. Of this group, only 10 persons, mostly elderly women, actually live in the place, where they are engaged in looking after alpaca, llamas and sheep and in weaving. The remainder of the population perform various tasks in neighbouring areas and return to the village every two or three months for very short periods. This is because transport is difficult, since the village is located at an altitude of 4,600 metres and is reached by earth roads which are often made impassable by rain, snow storms or landslides. As regards the climate, there are great differences in temperature, which rises to approximately 20° above zero during the day and falls to 18° below zero at night. The hamlet is located in a bleak upland area; the houses are built of stone and mud and have straw roofs, and there are no partitions inside them. The streets are unpaved. The water available to the population is obtained from springs and, because of the altitude, it is fairly difficult to cook food. The sole means of communication with the rest of the country is by radio, on which there is considerable interference and which can only be picked up at certain hours. For its electricity supply, the village has an engine which is operated for two hours a day when there is fuel to operate it; it is not trouble-free. On about 15 December, the "Bolivian winter" started; on this, as on other, occasions it was accompanied by electrical storms with a great deal of lightning which made it impossible to leave the houses. As a result of these storms, many animals died. The food was very monotonous, consisting only of alpaca meat and mutton and, occasionally, potatoes, rice and boiled maize which is brought from Arica or Putre. It is not possible to sow in the region, since whatever is planted is "burnt" by the heat or the cold. Sand-storms are fairly frequent as a result of the high wind which is characteristic of the place. I had to remain in those surroundings for more than four weeks, and had to go on foot every day to the Chucuyo police post in order to sign a residence control book which was kept at the station. The distance between the place in which I was staying and the police post is approximately five kilometres and there is no proper path. In order to reach the post, I had to cross hills from which the many volcanoes of the region can be observed, some of them inactive and others active. On Wednesday, 21 December, early in the afternoon, I heard, over the radio, that the "banishment" measure that had been imposed on us trade union officials had been annulled. At that time I was in the company of another official affected by the banishment measure, namely Carlos Arellano, treasurer of the "El Teniente" Mineworkers Union, who had been transferred from Alzarreca to Chucuyo five days previously. I should also mention that a few days previously, another leader, Milton Puga, who had been transferred from Caquana to Codpa, had passed through Chucuyo. After we had heard over the radio that the banishment measure had been annulled, Carlos Arellano and I went down to the Chucuyo post where they were unaware of the news that we had heard over the radio. We stayed at the Chucuyo post until Thursday, 22 December. At about 10 a.m., some port officials from Arica came to the place and took us to the town of Arica. At Arica, we stayed

at the Hotel Lynch and had to present ourselves at the Governor's office at 5 p.m. There we were told that we had seats on a LAN aircraft at 11.30 a.m. the following day. They told us that we should go and collect the tickets on Friday morning. We did this, and went to Chacayuta airport at about 10 a.m. There I was threatened by an individual who had previously been at Carrillos airport. He asked to talk to me in private and told me that he had in his possession a letter that I had sent to the United States; he asked me whether my wife was aware of the situation and proposed that I should collaborate with him. I firmly rejected his proposal and told him that my wife was aware of the contents of the letter. After I had refused to co-operate, the individual told me that he had some information relating to the manufacture and explosion of bombs in which elements of MIR had participated, and that attempts were being made to find the link that existed with Mademsa personnel. I rejected the individual's insinuations and told him that the enterprise's staff had been reduced three times, and that it would not surprise me to learn that the security services had collaborated in choosing which staff members were to be dismissed. The individual who was trying to blackmail and threaten me told me that the documents he still had in his possession would shortly be returned to me and that we would have a talk after the end-of-year festivities. I insisted that there was nothing to talk about and said that, if he wanted, he could keep the documents he had taken from me. The individual told me that he was not convinced that I had nothing to hide and he took leave of me in a rather strange manner, wishing me a happy New Year. At about 11.30 a.m., I and the other officials who had been banished boarded the aircraft for Santiago. In the aircraft, we observed that officials of the security services were also on board, but they did not bother us; they merely kept us under observation and listened to what we were saying. We arrived at Pudahuel airport at about 1.30 p.m. and from there I went directly to my home. On Monday, 26 December, I went to my place of work intending to resume my usual functions which had been unexpectedly interrupted by the events described above. One of the security guards of the enterprise told me that he had instructions not to allow me in, and that I should return at 4.30 p.m. on the same day for an interview with Mr. Washington Malagueño, the Industrial Relations Manager. I asked to speak to Mr. Malagueño on the telephone and explained to him that I could not keep the appointment on the day that had been fixed for me. We agreed to meet at 10.30 a.m. on the following day. I went to the enterprise at that time and saw Mr. Malagueño who, after stating that the enterprise had nothing against me personally, nevertheless told me that I had been dismissed. He handed me a letter dated 24 November 1977, which had been sent by post and returned to the sender, informing me that I had been dismissed from the enterprise. We then proceeded to draw up a document, which was signed by Mr. Malagueño and by me, recording the fact that on 27 December I had been informed of my dismissal. Before leaving the enterprise, I wanted to see some colleagues. I therefore went to the social workers' office and, while I was there talking to them about my experiences in the place to which I had been banished, a person from the administrative management burst into the office and told me that I had to leave the enterprise immediately,

and that I could not stay since I had been dismissed. In order to avoid more problems, I left the premises and up to the time of making this statement I have not returned to the enterprise.

I am making this statement freely and spontaneously, in order to place on record the fact of my arrest, the conditions in which I was "banished", the threats made against me and the fact of my dismissal.

This statement may be made public and used if necessary if I continue to be the victim of events affecting my personal freedom and the freedom of the members of my family and the other trade union officials who were exiled with me.

[Text delivered to the Group at Santiago in July 1978.]

Annex LXXIX

SWORN STATEMENT BY JUAN LORENZO MONTECINOS MONTECINOS
(ILL-TREATMENT AND TORTURE)

JUAN LORENZO MONTECINOS MONTECINOS, Chilean national, married, machinist, identity card 5,228,049 issued by the Santiago Records Office, residing at Maruri 347, Santiago, stated the following under oath:

1. I work as custodian of the premises of the National Federation of Metallurgical Trade Unions - FENSIMET - which are located at Maruri 347, where I reside. I have been performing this function since February 1977;

2. On Friday, 8 July 1977, while I was making my way along Lastra Street towards Independencia Street at about 6.25 or 6.30 p.m., I was stopped by four individuals in civilian dress. They greeted me with the words "Hello, Montecinos old man, how are you?", but I realized that they were not friends or acquaintances. One of them took me by the collar of my coat. I fled and tried to raise the alarm by shouting so that passers-by would realize what was happening. I tried to enter a nearby shop but the individuals caught up with me and hit me on the head with a pistol. I kept on shouting and they hit me again. Then they forced me into a Chevrolet van, 51 model, throwing me inside on to a mattress that was covering the floor. With my feet and hands tied and my eyes blindfolded, and with the individuals continuing to hit me, I was taken to a place whose exact whereabouts I do not know. The journey must have lasted between three-quarters of an hour and one hour.

During the journey, the individuals told me that I "had had it"; it seemed to me that the vehicle was going in the direction of the Panamerican highway. At one moment, they told me that they wanted to talk to me and not to keep on hitting me; I then lost consciousness for a few moments. I recovered and noticed that the van was bumping up and down; we were obviously on an earth track.

Soon we came to a place where there was an iron gate; I realized this from the sound. They made me get out of the van and go into the place. Already in the vehicle they had taken all my personal documents from me and the 950 pesos that I had in my pockets. They led me to a room where the individuals who had arrested me continued to beat me. At the same time they asserted that I had various responsibilities, that I was in charge of the youth section of the group of eight, that I was a member of the Young Communists and the righthand man of Ricardo Lecaros (President of FENSIMET), and that I was taking documents to the Cardijn Foundation and the Vicaría de la Solidaridad of the Archbishopric of Santiago. Afterwards they made me strip completely, drenched me and started to beat me. They then read me some statements made by two persons who had been arrested - Germán Briceno and Eduardo Berríos, the former a member of FENSIMET and the latter a member of the Confederation of Private Employees - who are at present outside the country. According to the individuals who were interrogating and torturing me, these statements corroborated their accusations. They even made me listen to recordings of voices, which I could not identify as belonging to Briceno and Berríos. On hearing my denials, they took me from that room, threatening that they would burn me all over and that I would learn what the grill was. However, they led me to what seemed to be a bathroom, since there were stone flags and the floor was wet and they left me for about half an hour lying on a metal bed which was there, with my hands and feet tied. They then covered me with a blanket since I was shivering

with cold. Then they started to talk to me, inquiring about various young members of Federations whom they mentioned by name (they mentioned the following family names or names: Mafú, Verdugo, Vega and others which I cannot remember) stating that I was the person in charge and responsible for giving orders. As I did not reply, the individual who was questioning me at that time left and another arrived who put the same questions and made the same affirmations. I then heard somebody knocking on a metal door and I heard the voice of my interrogator saying to me: "You've had it. Here comes the chief, and if you don't tell the truth you won't get out alive." The person they called "the chief" did indeed come into the room. He asked my full name and then he himself began to tell me my personal particulars (my address, the address of my parents, my children's school), "so that I would understand", as he said that "I had been watched for six or eight months". He repeated the accusations and when I denied them he ordered that current should be applied to my whole body, telling me that if I wished to speak I should raise the thumbs of both hands. Thus, the "treatment" started; to stop me shouting, they put a wet cloth in my mouth. I was in this situation for approximately an hour and a half. Then they applied bags of ice - or of very cold water - to my extremities and began to beat me with something very hard and wet. They then took me from that place to another room. There they threatened me, saying that we were at war, that "those who die, die"; that "action for enforcement of rights or any other action is useless since very many actions for enforcement of rights have been initiated to no avail"; that "those who have had it, have had it"; and that "the Geneva and other conventions are valueless". They asked me, as if to confirm their statements: "How many of those who disappeared have reappeared?" When I remained silent, they put a cord around my neck and began to raise me up slowly - to this day I still have the marks that this "operation" made on me. They then let me down and read me the names of enterprises, officials and sports organizers taking part in the Federation's sporting activities (Trotter S.A.; Hernando Guzmán, sports organizer; Cerámica Espejo; Gatica, trade union official; "Carbomet"; Benito Villagra, trade union official; "Salomón Sack"; Mario Ilhabaca, sports official; "INDINA"; they mentioned the name "Villegas"; and other enterprises and names that I do not remember). They said that all these persons or officials were militant communists and, according to them, I "was the person who took them the information". All my denials, they added, were false; "Here you have Eugenio Durán (a person who had worked with me at the beginning of 1977 in the Federation) and he confirms what we are telling you". I did not see the person they said was Eugenio Durán; I knew that that person had been at liberty and his possible presence in that place and in those circumstances seemed somewhat strange. I was afraid, and saw no other way out than to level against him the same accusations as they said he had levelled against me; I then heard them ordering the so-called Durán to strip and I heard him scream. Then I was taken from the room and they put me back on the metal bed, repeating the previous procedure (blows and electric shocks, I cannot say exactly for how long). They then mentioned the names of the leaders of what they called "the group of eight" and obliged me to say that I knew them; they are the names of well-known national trade union officials, Ricardo Lecaros, Cuevas, Bobadilla, Villalobos, Teresa Corvajal, Caro, Mery and Guzman. Since they are in the public eye, they are well-known and it was not difficult for me to remember at least their names. "There is only one way in which you can save yourself", they added, "and that is by co-operating with us"; "your task is to keep watch on Lecaros"; to do this you must lead your normal life in the Federation, and in this way you will be sure to have a home". They told me that one of them would follow me, and that I would have to hand over any compromising document so that they could copy it and

return it in due course. "If you do not do what we say", they threatened, "you know that fires are now fashionable and that your parents' house can quite easily be burnt down".

They also told me that my children should remain at school and that if I took them away they would be in danger. They offered me a monthly fee of 1,500 pesos; they would not pay it to me in person but would open an account for me in a bank. They suggested that I should not go on a buying spree since that might attract attention. I could not bear any more, and I agreed; they made me get dressed and they took me to a room where a television programme was showing. They sat me down at a table and, at their bidding, I drank a few glasses of pisco and smoked some hand-made cigarettes which produced a strange drowsy sensation in me (presumably it was marijuana). I was feeling sick and they made me go to another room where I had to sign between six and eight documents, the text or contents of which were unknown to me (they were probably blank). They made me drink another glass of pisco and take a few more puffs on a cigarette. "We are ready", they said and they took me, one of the individuals holding me up by the arm to give the appearance that I was drunk; presently, they told me to bend down because they were going to get into a Fiat 600. I sat down on the floor of the car and they told me to move further back and to sit up properly (I was still blindfolded). Very shortly afterwards, almost at once, one of the individuals asked for money for petrol; I realized that we were alongside a petrol pump. After a journey of approximately 45 minutes, it may have been shorter or longer, in view of my condition they removed the bandage over my eyes. Near the Colina taxi station, the vehicle stopped, they opened the door and made me get out quickly, telling me to walk along without looking back and that, for the continuation of the "work", somebody called Pepe would telephone me at the Federation. Despite the warning, I saw that the car was a white Austin Mini with Argentine number plates. At about the time of the curfew I reached my house.

Annex LXXX

NOTE ENTITLED "THE RURAL POPULATION AND THE INDIGENOUS ETHNIC
MINORITY (MAPUCHES)" TRANSMITTED BY THE GOVERNMENT WITH ITS
COMMUNICATION OF 31 AUGUST 1978

With regard to repression of the rural population and the indigenous Mapuche ethnic minority since 11 September 1973, this State Secretariat has received no information other than that referred to by the Group in its report. Therefore, although this matter is really the responsibility of the police, and is consequently not within the jurisdiction of the Ministry of Agriculture but of the ordinary courts of justice, the relevant data have been transmitted to the Ministry of the Interior for information and subsequent investigation.

ETHNIC MINORITIES (MAPUCHES)

1. Rural population and ethnic minorities

In Chile the rural population represents 21 per cent of the national population, and consists of some 2,160,000 persons. Twelve per cent of this rural population consists of descendants of aboriginal minorities - basically Aymaras (approximately 10,000), who live in the altiplano in Regions I and II, and Mapuches (approximately 230,000) whose territories are situated in Regions VIII, IX and X.

The name "Mapuches" is used to denote the members of various tribes such as the Pehuenches, Puelches, Huilliches, Araucanos, Poyas, Cuncos, etc.

At the level of the national population, the "indigenous" descendants represent approximately 3 to 4 per cent of the total, including those already integrated into the urban community.

2. Previous history of the ethnic minorities in Chile

(a) Recognition granted to the Mapuches and other indigenous groups

Equal citizenship for the indigenous population was recognized in Chile in 1813 and ratified in 1819. Since the sixteenth century, the aboriginal races had gradually been absorbed and thus integrated into the Chilean national life in the central and northern areas of the country. There remained only the aboriginal races in the south, at the time known as "Araucanos", who maintained a state of belligerency until 1866. Once the south was pacified, legislation was enacted which, over a period of 45 years, granted 3,078 titles to indigenous communities, covering 475,422 hectares of agricultural land and benefiting 77,841 persons, who formed the population of the areas concerned.

As early as 1874 private individuals were forbidden to purchase lands belonging to indigenous inhabitants. In 1883 any contract directly or indirectly depriving indigenous inhabitants of possession or tenure of their lands was prohibited. In 1931 legislation was passed to divide up the indigenous communities and to bring them under ordinary law. Indian Courts were set up under

the Department of Indigenous Affairs of the Ministry of Land and Colonization. In 1955 legislation was passed to bring the Indian Courts under the jurisdiction of the Court of Appeals. When it was found that all these developments were proving ineffective, legislation was enacted in 1961 to permit the gradual incorporation of the Indian, with full rights, into the ordinary legal regime. Economic and cultural aid was being granted through the Department of Indigenous Affairs but, in the meantime, the restrictions on the legal capacity of the Indian were being extended. The Indian Courts were given the status of a special court, strictly judicial in nature and subject to the Judicature Code.

In 1972, when the Unidad Popular Government was in office, Act No. 17,1779 was promulgated. This Act is still in force; but in view of the collectivist approach of those who drafted it and also because of its deliberately demagogic nature, its application is limited, quite apart from the fact that its legal approach leaves much to be desired. This Act makes the Indian subject to special regulations, and his property, estate and civil status subject to an exceptional regime. It renders impossible in practice the division of the communities, which is the greatest wish of the Indians themselves; and it establishes the Indigenous Development Institute (IDI). In short both the spirit and the letter of the Act, which is currently being recast, represent an assault on the national integration and constitutional guarantees of these useful citizens and exclude them from genuine integration in the national development process. This Act has a paralysing effect and has been called by the descendants of the Mapuches "the accursed Act".

(b) Preferential treatment accorded to the indigenous population of Chile

One of the Government's chief concerns is to accord to the descendants of Mapuches and other aboriginal races their true status as Chilean citizens.

This concern has been reflected in recent years in the provision of direct assistance to the indigenous population through the Farming Development Institute (INDAP) and IDI, both of which are subordinate to the Ministry of Agriculture. This activity mainly takes the form of the granting of subsidies, credits and technical assistance for improving farming methods. In addition, in conjunction with other Ministries, intensive education programmes (free of charge) are organized at the primary, secondary and technical levels, assistance is granted for the improvement of housing, and programmes are organized in the areas of child nutrition and health in general, training, handicrafts, etc. Other areas in which the Government is active include road construction, electrification, schools, first-aid clinics and free boarding schools in rural areas where there are large concentrations of indigenous citizens.

The new legislation now under consideration will result, inter alia, in the permanent integration of this subsector within the development process and in the granting and disencumbrance of their titles of ownership on an individual basis in accordance with their wishes.

(c) Outlook of the indigenous population, special relationship with the land, need for legal assistance and equality in the administration of justice, their language difficulties and cultural differences

The descendants of Mapuches and other indigenous races living in rural areas are rapidly becoming integrated in the national life as a result of their contacts - direct, individual and through their organizations - with State agencies (INDAP, IDI, etc.). Respect for their cultural values and traditions is considered essential. They receive agricultural assistance from the Government through the competent agencies: this assistance is intended to increase the efficiency of their work and covers such areas as crop rotation and alternative crops and livestock, so as to enable them to increase their production, productivity, earnings, etc. In addition, programmes are organized for young people and adults, Mothers' Centres are being established, and so on. Through IDI the Indians receive continuing assistance in legal matters, in which they enjoy the same rights as other citizens. It should be emphasized that the Mapuches have no language problems: they speak and write Spanish, but at the same time they continue to study the Mapuche language in special schools. As a result of all these activities, cultural differences are gradually disappearing. It may, for example, be noted that Indians have the same access to technical and university studies, etc. as any other Chilean citizen, and many have obtained professional or vocational qualifications. This is a growing trend, since the new policy has been in effect for only five years.

In short, it is the policy of the Supreme Government to introduce realistic legislation on this question and to place the descendants of the Mapuches and other indigenous peoples in the position which is truly appropriate for them and which they desire - namely, the position of being Chilean citizens like the members of all other sectors of the Chilean population, without restrictions and with all the rights and obligations which this status confers on them. This is clearly spelt out in the Government's general policy, in the policies on land and land tenure, and in the economic, social and development policies.

(d) In addition to the above-mentioned activities, INDAP is undertaking the following activities in connexion with the indigenous population:

1. In 1978 INDAP (together with IDI) has been providing assistance to approximately 15,000 indigenous families in the form of working-capital loans, investments, day schools, boarding schools, scholarships, training in handicrafts, etc. The figure given represents 30-35 per cent of the Mapuche population (excluding Regions I and II). The cost of loans and subsidies granted in 1978 will be more than \$US 3 million.
 2. In 1978 INDAP has regularized the position of approximately 12,000 Mapuche families who had encountered difficulties during the period of the Unidad Popular Government and were in arrears with repayments. Their debts have now been funded, with the result that they are now eligible for further credit and technical assistance.
 3. INDAP, through special funds established by the Ministry of the Interior, will grant to this subsector in 1978 assistance and subsidies totalling approximately \$US 500,000 for repairs to houses, warehouses, fences, sheds, shops, etc.
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4. In the sugar-growing season 1978/1979, INDAP will promote the cultivation of sugar-beet by 3,000 Mapuche families in Region IX by means of credits for fertilizers and other inputs, transport and marketing.
5. INDAP maintains all the records concerning the special situation of this subsector in Chile, together with information on the potential of Mapuche lands, agricultural and climatic data, social and economic information, information on regional infrastructure, etc.
6. Among the measures adopted by the Supreme Government for the restructuring of the Agricultural Services, it has been decided that over-all control of INDAP and IDI should be concentrated in a single person.

Annex LXXXI

LETTER DATED 20 SEPTEMBER 1978 FROM THE PERMANENT REPRESENTATIVE OF CHILE
TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN-RAPPORTEUR OF THE
AD HOC WORKING GROUP, WITH ACCOMPANYING INFORMATION ON THE
PROPOSED INDIGENOUS PEOPLES LAW

PERMANENT MISSION OF CHILE TO THE UNITED NATIONS OFFICE
AND THE OTHER INTERNATIONAL ORGANIZATIONS AT GENEVA

Geneva, 20 September 1978

On 11 September His Excellency the President of the Republic, in a speech to the nation, announced the promulgation in the near future of a law relating to indigenous ownership of land, which will make it possible to issue titles of land ownership to thousands of Mapuche families and will thus remedy a situation which has existed for nearly a century.

I append to this letter a photocopy of a report on the above-mentioned law published in the newspaper EL Mercurio on 12 September 1978.

Since this report contains information concerning a subject on which questions have been put to representatives of the Government of Chile, I have deemed it advisable to transmit the report to you and through you to the Ad Hoc Working Group as quickly as possible.

Accept, Sir, etc.

(Signed) Sergio DIEZ
Ambassador
Permanent Representative

LAND OWNERSHIP TITLES TO BE ISSUED TO MAPUCHES

Law to be promulgated in near future. State to bear cost of issuing titles to members of over 2,000 indigenous communities comprising 43,000 families

The forthcoming promulgation of a law relating to indigenous ownership of land, which was announced by the President of the Republic yesterday, will make it possible to issue titles of ownership to thousands of Mapuche families, thereby remedying a situation which has existed for about a century.

The President stated that the new legislation would respect the cultural values of the descendants of the Mapuche race and would enable them "voluntarily and freely to opt for private ownership in those cases in which they prefer this formula to the present system of community ownership".

When asked by El Mercurio about this question, the Minister of Agriculture, Alfonso Márquez de la Plata, stated that the proposed legislation gave an "option" to indigenous communities wishing to accept it, to permit their members to receive individual titles of ownership. Each community, he emphasized, could freely choose to opt for the new legislation or to reject it.

The Minister has just completed a tour of Region IX, where most of the indigenous communities are concentrated. On this tour he held long discussions with indigenous leaders about the new legislation.

In Santiago he had previously met a number of leaders of Araucanian institutions, including Manuel Ladino Curiqueo, Chairman of the Millelche Araucanian Cultural Society, Alfredo Huincahue Cayuqueo, Chairman of the Galvarino Araucanian Union, and Lorenzo Launinquier Antón, Director of the Araucanian Cultural Society, to whom he explained the new legislation.

43,000 FAMILIES

Alfonso Márquez stated that there were at present more than 2,000 communities, which owned lands originating from the pacification of Araucania; from that time until the present day, four or five generations had passed.

Throughout this period, most of the descendants of Mapuches had land which they worked directly, but they did not have individual titles since legally the land was owned by each community as a whole.

This situation prevented them, for example, from using their land as security to obtain bank loans or for carrying out any kind of transaction relating to their land.

The Minister stated that 43,000 families comprising some 250,000 persons were in this situation. Most of these families lived in the Provinces of Malleco, Cautín and Valdivia.

He pointed out that when President Alessandri's Government was in office, a law had been enacted enabling some 900 communities to receive individual titles of land ownership. The process had nevertheless come to a halt when the Allende Government was in office. That was the result of the adoption of a new act which, because of the complexity of its provisions, made it impossible in practice to continue to issue titles of land ownership.

COST TO BE BORNE BY THE STATE

The Minister repeated that this was "an opportunity offered to the indigenous communities" and that "no one will be obliged to accept it".

The whole task of regularizing titles and retaining lawyers, surveyors and other specialists would be undertaken at the expense of the State. The Ministry of Finance had in fact allocated the necessary funds for that purpose.

In his interview with El Mercurio, the Minister estimated that this work could last about five years.

"This work," he said, "forms a part of the programmes of assistance to the most disadvantaged social sectors. It will enable the descendants of the Mapuches to hold titles of ownership like any other Chileans". (El Mercurio, 12 September 1978)

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Annex LXXXII

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON THE REPORT
OF THE AD HOC WORKING GROUP

[Note. Pursuant to an understanding reached between the Ad Hoc Working Group and the representatives of the Government of Chile during the Group's meetings in Geneva in September 1978, the substantive chapters of the present report (chapters II through X) were transmitted to the Government of Chile in order to enable the Government to submit its observations on them. It was agreed that these observations would be annexed to the Group's report if received within two weeks of the date of transmission of the chapters.

This annex contains the observations of the Government of Chile submitted in accordance with that understanding. In relation to those portions of the report not transmitted to the Government of Chile, the Government in a note verbale dated 17 October 1978 stated that:

"observations on parts, chapters, sections or annexes which have not been transmitted will be made directly to the General Assembly once the final and complete text of the report has been made available to the Government of Chile".]

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OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER II
OF THE REPORT OF THE AD HOC WORKING GROUP,
ENTITLED "CONSTITUTIONAL AND LEGAL ASPECTS
WITH A BEARING ON HUMAN RIGHTS"

A. General observations

In this part, perhaps more than in any other, the report of the Working Group reveals its lack of balance and objectivity - two qualities which it has not made the slightest effort to achieve. What is also patent in this chapter is an abuse of the mandate given to the Group by the United Nations Commission on Human Rights, since the Group has openly meddled in Chile's internal affairs in flagrant violation of the provisions of the Charter, a fact which demonstrates the illegitimacy of the report in this and other matters of a political nature which come exclusively within the competence and jurisdiction of the State of Chile.

The Government of Chile not only strongly protests against this violation of the principles of the Charter but also, since the Ad Hoc Working Group and the Division of Human Rights which prepares drafts and working papers for the Group are answerable to the United Nations General Assembly, it feels compelled to draw attention by way of example to some of these cases of unacceptable conduct.

1. Reference to and views expressed on the replacement of the Commander-in-Chief of the Chilean Air Force

The report contains two references to this important internal political matter which comes within the competence solely of Chileans. It is crystal-clear that no international organization can try to intervene in it in any way. The report not only interferes in this matter but, in a surprising statement, it expresses regret that the people were not consulted on the replacement of the Commander-in-Chief of one of the branches of the Chilean armed forces.

2. Organization and structure of the State

In this, as in other chapters, the Working Group takes the liberty of expressing opinions, favourable or critical, on the organization and present structure of the Republic of Chile, although it has no competence in either of these respects. On the contrary, in expressing an opinion at all, it openly departs from its mandate and violates principles of the Charter of the United Nations which we, in the less developed countries, so zealously uphold.

3. The Group criticizes the functioning of the Public Powers in matters which have no bearing on the protection of human rights.

4. It refers to the functioning of the Judiciary in terms that are absolutely unacceptable, as we shall point out later.

5. It expresses its views on the preparation of laws and on the Chilean people's knowledge of them.

6. The Group not only raises this question, but also takes the liberty of making value judgements and of interpreting the law, thereby usurping what is obviously a judicial function.

7. The Working Group passes judgement on the Chilean legal order, which the country has had for many years past. In analysing the legislation on this matter, the Group does not compare it with the Universal Declaration of Human Rights or with the Covenants on Civil and Political Rights, to which the Government of Chile subscribes, but measures it in the light of its own judgements, thus not only acting as an inadmissible intruder but also setting itself up as the mentor of what Chile ought to do.

8. The Working Group also expresses its views on a matter that is completely foreign to it - namely, the organization of Chile's political institutions in the future - and it criticizes the Government's ideas, time-limits and appointments in a domain which no specialist on international law would hesitate to describe as the most clearly-defined and decisive prerogative of States in the exercise of their internal sovereignty, i.e. the right to determine their own structure and that of their authorities.

9. The Group also transforms itself into a kind of political analyst, expressing opinions on Chilean society in language which would be gratifying to any Marxist theoretician. It states that: "Chilean society today is divided into two classes: a small and powerful governing class and the large class which is governed" and, again, "the system is designed to support the governing class".

These opinions, which are absolutely unacceptable in view of their lack of scientific objectivity, should at least be accompanied by the information available to the Group on this subject. In order to determine whether a country is divided into two social classes - one that is very small and wealthy and the other that is very large and poor - it is necessary to consider a whole series of outward signs, such as housing. In a country where there are a few very luxurious houses and a large number of poor dwellings, it may justifiably be presumed that the country is divided into two social classes that are economically far apart.]

Has the Working Group made any inquiries about this? Has it approached international organizations for information on the kind of housing which exists in Chile? Does the Working Group know what percentage of the people enjoy such modern amenities as electric light, drinking water and proper sanitation? Has the Working Group tried to find out how many Chilean families possess a refrigerator, a television set, a radio and electric household appliances? Does the Group know what proportion of the population own their homes and thus enjoy the right of ownership over a part of the national territory?

The Working Group has not investigated any of these aspects. If it had done so, it would have come to exactly the opposite conclusion, since Chile is one of the developing countries in which ownership of property is most widely divided. Nearly 80 per cent of Chilean families own their homes, and the proportion of Chileans with access to the amenities of civilization such as electric light, drinking water, etc., is far higher than the figure indicated. Consequently, the views expressed by the Working Group are merely a reflection of its own politicized approach and a repetition of the politicized statements made by its usual witnesses.

Unfortunately, this distorted image of Chilean society is projected virtually throughout the Working Group's report. It represents a prejudiced point of view, which the Group has evidently been unable to discard.

B. Security agencies

1. Here again the report fails to confine itself merely to observing the present situation of human rights in Chile, or to citing actual cases of violation of some human rights, with a view to co-operating with the Government of Chile in finding a remedy for such violations.

It makes accusations based merely on the lucubrations, suppositions or arguments of the author of the report. For example, the Group attempts to present the situation in Chile as one in which either of the regular police services (carabineros of Department of Investigations) or the CNI may at their discretion arrest any one at any time they choose. This is absolutely false. It must be stated once again that in Chile none of the security agencies nor the police is entitled to arrest a person unless the person is surprised in flagrante delicto, or unless a judicial order has been made for the arrest. In the former case, the sole purpose of the arrest is to place the person at the disposal of the courts of justice. The laws specific to the state of siege or state of emergency also empower the Head of the State, as an exceptional measure, to order the enactment of a decree whereby a person may be temporarily detained on the conditions established by law. This decree is normally carried out by the civil police or the carabineros.

2. The report contains another unfounded and confused accusation when it alleges, in a scandalized tone, that the Director of CNI has the prerogative of being "exempt from the obligation to appear before the courts". Everything which the report says on this subject is false. The rule referred to, which is applicable to the highest authorities in the country, is contained in the Code of Penal Procedure and is similar to the rules in force in other countries of the world. It does not mean that the authorities are not required to appear before the courts to give evidence on their own actions or on offences of which they are charged, but simply that they may present their evidence in writing when the courts require them to testify in a legal action in which they are not directly involved. It is obvious therefore that the facts have been deliberately misrepresented in the report.

C. The Judiciary. Its functions of jurisdictional control and its role

1. The report does not reproduce the comprehensive and fully-documented information furnished to the Group by the Minister of Justice on the legal validity of decree-laws, which was affirmed by the National Congress that was democratically elected on the restoration of institutional normality, which had been undermined during the period from 1924 to 1931 and again between June and September 1932.

All the subsequent Chilean Parliaments adopted the same point of view when totally or partially amending, supplementing or repealing decree-laws. Also the validity of decree-laws has always been recognized by the Judiciary which never fails to apply their provisions in the cases that are brought before it.

2. The report ventures to assert that the non-removability conferred by the Constitution on officials staffing the supervisory institutions and institutions for the protection of the human rights of the people (Judiciary and Office of the Comptroller-General of the Republic) "is not currently operative". It claims to

demonstrate this by stating that: "In fact, the Government has already broken on one occasion with the tradition of appointing the Comptroller-General from among the career officials of the Office of the Comptroller-General by appointing as Comptroller-General on 1 January 1978 Mr. Sergio Fernandez, former Minister of Labour and present Minister of the Interior".

The non-existence of any such "tradition" is demonstrated by the fact that previous constitutional Governments appointed Mr. Agustín Vigorena and Mr. Humberto Mewes to the position of Comptroller-General although neither had ever been career officials of the Office in question. The only Comptrollers-General appointed from among the career officials of the Office in the past were Mr. Enrique Bahamondes, Mr. Enrique Silva and Mr. Héctor Humeres, and now there is Mr. Osvaldo Iturriaga.

3. The report goes on to say that "Although the constitutional provisions concerning the non-removability of judges and of the Comptroller-General remain, they are a dead letter in view of the powers of the present Government". However, the report fails to point out that never, during the five years of government by the Junta, have these powers been invoked to derogate from the non-removability of the Judiciary and of the Comptroller-General; and it does not cite any case that bears out such a serious allegation, apart from the reference to information received by the Group from "various lawyers" who were interviewed by it, to the effect that "at the beginning of the period of military Government, between 60 and 80 magistrates with leftist affiliations had been expelled from the profession". The report omits to mention, however, that both the current President of the Supreme Court, Mr. Israel Bórquez M., and the former Presidents, Mr. Enrique Irrutia, and Mr. José María Eyzaguirre, supplied the Group with detailed and exhaustive information on that affair. That information showed that the incident took place following a special assessment of the members of the Judiciary by the Supreme Court in the exercise of a faculty which it alone possessed and over which the Government had no power; and, as a result of the incident, more than 30 members of the Judiciary had to resign from their posts after being placed on the list for dismissal.

4. These important omissions of any reference to facts that were explained to the Group but - unlike many anonymous and unconfirmed allegations - do not appear anywhere in its report would suggest that the authors of the report, or of this part of it at least, could not have been among the members of the Working Group who visited Chile.

5. The same may be said of the reference to the information given by anonymous lawyers to the effect that the Executive does not obey the orders of the Judiciary, such as an order for release of a detainee in an action for the enforcement of rights, and that this shows that the judges are not free to carry out an independent judicial investigation. The real truth of the matter is that in one case only (that of the action for enforcement of rights by Contreras Maluje) when an order was given for the release of the detainee, the Government was unable to comply with it because the person in question had not been deprived of his liberty by order of the Government, which had not even ordered his arrest in the first place.

6. On the other hand, no mention is made in the report of the boundless respect shown by the Government for the rulings of the Judiciary ordering the revocation of measures taken by the Executive - e.g., in the case of the action for enforcement of rights by 12 leading figures in the former Christian Democrat Party, and of the decree depriving Mr. Humberto Elgueta Garín of his nationality, which is specifically referred to on page 39 of document E/CN.4/1290 of 21 February 1978 (observations by the Government of Chile on the report of the Ad Hoc Working Group (E/CN.4/1266)). No mention is made, either, of cases in which the Supreme Court in full session has declared that provisions of decree-laws enacted by the present Government Junta are inapplicable on the grounds of their unconstitutionality.

7. In referring to judicial remedies for the protection of human rights, and in particular actions for the enforcement of rights (amparo), the report of the Group states that the President of the Supreme Court, in reply to the Group's questions concerning the scope of the remedy of amparo, said "that its purpose was to provide a remedy against improper judicial detention, not administrative detention" and that subsequently, when enlarging upon his explanation, he repeated that "the purpose of amparo was to remedy mistakes of the country's ordinary courts".

A mere glance at article 11 of the 1925 Political Constitution, article 306 of the Chilean Code of Penal Procedure and the 1932 Agreed Decision (auto acordado) of the Supreme Court is enough to show that the explanation given by the President of the Supreme Court has been distorted, since it referred solely to cases in which deprivation of the liberty of a citizen is ordered by the administrative authority in the exercise of constitutional and legal powers exclusive to it, and in accordance with the appropriate formalities, e.g. precisely during the state of siege when the remedy of amparo is obviously inapplicable.

8. In order to cast doubt on the accuracy of a statement made to the Group by the Minister of Justice to the effect that "under the Chilean legal system, as soon as the judicial power received information concerning a particular matter, it instituted proceedings automatically, and no private plaintiff was required", the report refers to a submission made by the Vicaría de la Solidaridad in March 1978 to the Supreme Court in which it is stated that: "nor are there any known cases in which, as provided for in article 311 of the Code of Penal Procedure regulating this remedy (amparo), the background documents have been made available to the Office of the Public Prosecutor to enable it to bring charges in the event of abuses committed in connexion with detentions".

What the Vicaría de la Solidaridad certainly did not say, and the Group failed to realise, was that article 312 of the Code of Penal Procedure states that "when it is apparent from the background information that there is not good and sufficient reason for issuing the order referred to in the previous article, the court shall so indicate in a ruling accompanied by an explanation of its reasons. Its ruling shall not exempt the perpetrator of the abuse from his liability under the law".

9. Lastly, the conclusions expressed by the members of the Group in this part of the report are inadmissibly offensive to the Chilean judiciary, whose proverbial probity, independence, level-headedness and professional pride are acknowledged and praised both in and outside the country.

It has never wavered in the face of all the authority which another arm of the State may arrogate to itself, even in exceptional circumstances, such as those that have been known in the past or that have prevailed from 1973 to this day; and no one has ever been able to assert dispassionately that it has made concessions or failed to exercise to the full the powers conferred upon it by the Constitution and the law for its own exclusive use.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER III OF THE REPORT
OF THE AD HOC WORKING GROUP, ENTITLED "DECREE-LAW NO. 2,191
OF 18 APRIL 1978 GRANTING AMNESTY"

This chapter of the report, entitled "Decree-Law No. 2,191 of 18 April 1978 granting amnesty" is in three sections. The observations will be arranged in a similar order.

1. Promulgation of Decree-Law No. 2,191: consequences

Just as it has done in chapter VI, the Group persists in confusing the effects of the amnesty granted by the Government of Chile with other administrative powers which are exercised by the authorities with a view to preserving internal peace and security and which enable them, in specific cases, to order certain persons to leave the national territory.

Amnesty, whose effects are similar in all legislations of the world, extinguishes criminal liability, i.e. it pardons offences, in respect of all their legal consequences, as though in fact they had never been committed.

The purpose of the Government of Chile in promulgating the amnesty was to help consolidate the reunification of Chileans by releasing many convicted persons or by overlooking the offences committed by persons who, for any reason, had not been deprived of liberty in Chile or abroad. More than 2,000 persons benefited from this Decree-Law; many of them were serving sentences in Chilean prisons, while others were serving sentences abroad - that is, they had been sentenced to banishment.

This obvious purpose and consequence of the Decree-Law enacted has not been understood by the Working Group which, far from recognizing it, states only that in certain cases persons benefiting from the amnesty were not in fact freed but expelled from the country by a resolution of the administrative authority. In other words, it intentionally overlooks the purposes and benefits of the Decree-Law for hundreds of persons, and it resorts to the expedient of singling out very special cases of persons whom the Government, for reasons of internal security, had to order to leave the country, in exercise of a power which has no relationship with the Amnesty Law enacted. Furthermore, the Group has not even mentioned that many Chileans, who had committed offences for political motives but had not yet been accused or charged, can now live in peace since their criminal liability has been extinguished.

2. Scope of the Decree-Law concerning amnesty

The Group has analysed the scope of each article of the Amnesty Law, and has stressed the differences in the interpretation of certain of its rules which have emerged in the Courts of Law.

This fact in no way affects the purposes and real benefits of the Law since this Law, like others, does not claim to be perfect. In Chile the Judiciary, in its independence from the other Powers of the State, has interpreted the Amnesty Law in accordance with the rules for the interpretation of laws, among which special consideration is given not only to the spirit of a law but also to general equity.

3. Critical analysis

In a critical analysis, the Group mentions some legal objections which have been raised by lawyers regarding the scope of the Amnesty Decree-Law, and it endorses the comments made on article 2. In this respect, although it recognizes that the effects of the Decree-Law extend to political opponents who have committed offences, it insists that those effects are limited by the application of Decree-Laws Nos. 81 and 604 which empower the administrative authority to banish certain persons from the country and to control entry into the country in particular circumstances. In so doing, the Group demonstrates once again its confusion between the nature and scope of the amnesty and the administrative powers to which we have referred above, and it fails to mention the enormous scope and benefits for the great majority of persons affected by the amnesty. In its comments on article 1 of the Law, the Group says that it may also favour members of the security services who have committed offences, and that it favours persons who have committed ordinary offences. It seems inconceivable that the Group is unaware of the real nature of an amnesty which is of a general and extensive nature, favouring persons who have committed the offences which it names without discriminating between persons whom it favours on grounds of their activities, office or political colour. The conciliation proposed by the Amnesty Law is based precisely on the desire to avoid discrimination of any kind. Furthermore, it must be assumed that the great majority of persons convicted during the period of the state of siege were persons involved in illegal activities against the Government.

Moreover, the generously wide scope of the Law is demonstrated by the inclusion of ordinary law offences, since it would be difficult to distinguish between offences committed for political motives and those committed for other purposes.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER IV OF
THE REPORT OF THE AD HOC WORKING GROUP, ENTITLED
"LIFE, LIBERTY AND SECURITY OF PERSON"

1. Number of arrests

(a) The Government of Chile wishes first to register a most formal and energetic protest against the fact that the Working Group has not made use of the ample information provided to it regarding the number of detainees, the situation of detainees and the visits made to all places of detention which the Group expressed a wish to visit (and which the Government made arrangements for it to visit), but has rather preferred to use information originating from anonymous and irresponsible sources.

(b) The Government of Chile believes that the problem of human rights is directly related to persons, and not to numbers and statistics. Accordingly, it provided the Working Group with a list of persons detained and interrogated between 1 January and 17 July 1978, and replied to all the questions which the Working Group put to it on the subject of detained persons. In the circumstances, if the Working Group received information or reports concerning persons who were alleged to have been detained but were not included on the lists provided by the Government of Chile, it should have said so, so that the national authorities could have verified the information and given the Working Group an appropriate reply. Unfortunately, the Working Group failed to do this, and preferred to downgrade the information supplied by the Chilean authorities by relegating it to a footnote and playing with abstract and anonymous numbers and statistics which are better material for provoking political attacks, although they may be quite unfounded.

(c) Similarly, the Government of Chile regrets that the Working Group has not reproduced - even if it did not accept - the explanations given by the Chilean authorities concerning the concepts of political offence and political prisoner. That would undoubtedly have clarified matters and placed them in a more correct perspective, especially since the Working Group itself expressly asked for these studies.

2. Specific cases of arrest and detention

(a) Arrest and detention of Rodrigo del T. Muñoz Muñoz

(1) During its stay in Chile, the Working Group received from the Chilean authorities the fullest possible information on the situation of Mr. Muñoz. It was provided with the relevant medical certificates, and was informed that the doctors who signed them were at the Group's disposal to reply to any questions. Nevertheless the Group, perhaps for lack of time, did not ask for them to appear.

(2) The Ad Hoc Working Group received further testimony from Mr. Muñoz Muñoz in Geneva in September 1978 and requested Swiss doctors to produce technical reports on the information furnished by Chilean doctors six months previously regarding the health of Mr. Muñoz Muñoz. The Ad Hoc Working Group did not itself ask the doctors who had examined him in Chile to make statements, which would have been the correct procedure, but merely informed the representatives of the Government of Chile that it could have those doctors come to Geneva to make statements.

This suggestion is inadmissible, since it is not for the Government to present witnesses of any kind in its defence; it is for the Group to request clarification from the doctors concerned because their testimony is relevant to the investigations.

The procedure adopted by the Ad Hoc Working Group, with all the measures taken to obtain a further statement from Mr. Muñoz Muñoz and to obtain other medical opinions concerning his health, contrasts sharply with its failure to summon the Chilean doctors who had previously issued the relevant certificates.

(3) The Ad Hoc Working Group should have incorporated in the text of the report the whole statement of Mr. Muñoz Muñoz, and should not have made light of that part of his statement in which he admits he had been a terrorist, had manufactured bombs and had been responsible for placing them in a bank and a supermarket in Santiago de Chile, especially since both bombs and subversive material were found after his confession, as were his accomplices who were all arrested. Instead of reproducing the whole statement in the report, the Ad Hoc Working Group has chosen to relegate this confession to an annex, thus playing down its relevance for the correct appreciation of the situation. This confession certainly deprives of all credibility the later statements made by Mr. Muñoz against the Government of Chile. We denounce this anomalous and incorrect procedure.

(4) The Government of Chile is bound to deplore the fact that the Ad Hoc Working Group has placed more reliance on the statements of a convicted and self-confessed terrorist whose outrages endangered the lives of many Chilean citizens, than on the responsible and documented statements made by the authorities of the country.

(5) Finally, the Government of Chile wishes to note that though the Ad Hoc Working Group's detailed examination of the whole situation concerning the case of Mr. Muñoz Muñoz was, as is clear from the report, made possible by the fact that the Chilean authorities provided all the information on his case, this attitude has not been explicitly acknowledged by the Working Group.

(b) Arrest and detention of Hayde Palma Donoso, Héctor Riffo Zamorano, Luis Maturana Maturana and Armando del Carmen Barría Oyarzún

(1) With reference to these cases, the Government of Chile provided the Ad Hoc Working Group with the information it had in its possession and informed the Group that the investigations were to be continued and that, until they had been concluded, it was quite logical and objective that these situations should not be mentioned in the report.

(2) The Group disregarded these observations by the Government of Chile and, foregoing once again a meticulous and reliable investigation, preferred to mention these cases in the report though it was well aware that the investigation was still pending and that the evidence in the hands of the Group was not sufficient.

(c) Arrests in the town of Peñaflor

Although the documentation furnished by the Government of Chile to the Working Group showed that in this case there was no violation of human rights, as the Group acknowledges (see para. 331), the report does not reproduce this information but includes it in an annex, which makes it impossible to arrive at an informed and impartial judgement of the situation. This is further proof of the Working Group's lack of objectivity.

(d) Other cases

For the umpteenth time, the Government of Chile is obliged to state that the Working Group in its report seeks repeatedly to create an impression which is different from the realities of life in Chile, since it reproduces in toto in the body of the report anonymous and/or invented statements which, as the Group itself states, have only a relative value, "since the Government was not given an opportunity to comment". If this is so, why are these statements reproduced in toto in the body of the report, and not the replies of the Government of Chile to questions by the Working Group which are included only in the annexes?

3. Ill-treatment and torture of detainees

(a) This section is based mainly on the case of Muñoz Muñiz and the reports of the Swiss doctors who carried out their examinations six months after the event, and after the Group had not wished to contact the Chilean doctors who had treated Mr. Muñoz and signed the relevant certificates.

(b) The Government of Chile protests that the report mentions the detention and ill-treatment of a minor without giving his name, without proof and without consulting the Government of Chile to establish the truth of the accusation; and the Working Group did not make use of its stay in Chile to undertake any investigation in this regard. We must draw attention once again to the political intentions underlying the inclusion of this accusation.

(c) The Government of Chile regrets that, in speaking of the treatment of detainees, the Working Group has not reproduced in its report the opinion of the Chaplain of Santiago Penitentiary. Because of his moral integrity and pastoral activities, his testimony is undoubtedly a fundamental document.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER V OF THE REPORT
OF THE AD HOC WORKING GROUP, ENTITLED "MISSING PERSONS"

In this chapter, the Ad Hoc Working Group clearly establishes the following facts:

- (a) Its report to the thirty-second session of the General Assembly, prepared between September and December 1977 (document A/32/227), contained a list of over 1,000 persons reported to be missing;
- (b) In June 1978, the Vicaría de la Solidaridad drew up and published a list of some 600 persons presumed to be missing;
- (c) To date, the Chilean Bishops have submitted a total of 338 cases to the Ministry of the Interior;
- (d) Almost all the cases reported are said to have occurred between September 1973 and the end of 1976;
- (e) Eight cases are said to have been reported in 1977; and
- (f) No reports of disappearances have been received in 1978.

The above statements, recorded by the Working Group in its report, bear out what the Government of Chile has consistently maintained during recent years and demonstrate that the efforts directed towards solving the difficult problem of missing persons are gradually achieving their objectives.

There can thus be seen to have been a sharp reduction in the numbers and lists of persons presumed to be missing. Whereas there has been talk of 10,000, 5,000 or 2,500 persons presumed to be missing and lists have been put forward containing approximately 1,000 names of persons alleged to be missing, the Catholic Church has concluded that there are 300 or so cases which, in its opinion, need to be resolved.

The marked decline in numbers and names on the lists of persons alleged to be missing is due to the fact that many reports have in the course of time been proved to be false, either because persons have been found at their normal place of residence, engaging in their usual activities, because when they have been located at a place other than their usual address, because they have changed their address, because the names given are assumed ones or for a variety of other reasons, as has been pointed out on numerous occasions.

The Government of Chile considers that the report should have strongly condemned those who have used international humanitarian bodies for political purposes and those informants of the Group who have led it to make erroneous statements and to draw false conclusions from those statements.

The Government of Chile would also like to have seen some reference to the International Committee of the Red Cross, whose co-operation has helped to solve many cases, including a number of cases based on false reports made by persons whose particulars and identities also proved to be false.

On 6 October 1978, the International Committee of the Red Cross informed the Government of Chile that its resident representatives in Chile were to be transferred to Argentina and that, with effect from October 1978, all activities in the Southern Cone would have as their base the Regional Delegation at Buenos Aires.

In an official communiqué, the International Committee of the Red Cross has stated that "the decision taken by the International Committee of the Red Cross to transfer its Delegation from Chile to Buenos Aires was communicated by Mr. Sergio Nessi, the Regional Delegate, to the Minister for Foreign Affairs, the Minister of the Interior and the Minister of Justice of the Chilean Government during his visit to Santiago from 26 to 28 September last. The International Committee of the Red Cross will, nevertheless, maintain a liaison office in Chile and will continue to make regular visits in order to carry out its humanitarian mission on behalf of persons who are still detained and to search for persons who are reported to be missing. The Chilean authorities accepted these proposals and have guaranteed the International Committee of the Red Cross any facilities that may be needed for the performance of its humanitarian functions".

Thus far, the facts have been evaluated impartially and objectively. It distorts the true situation and in no way helps to clarify the facts when, as the Working Group does, a number of individual cases are then repeated, two new cases are raised without prior consultation with the Government, despite the fact that the Working Group had at its disposal facilities for consultation such as have never before been enjoyed by an international body, and emphasis is placed on cases the investigation of which has been concluded. One such case is that of W. Beausire, in which not only has there been evidence to prove that he left Chile but also official confirmation that he entered another country.

The Government of Chile will continue to make every effort to investigate pending cases, because such a course is in conformity with its humanitarian activities; it hopes to have the co-operation of the International Committee of the Red Cross in this long and difficult task. It also hopes to be able to work out with the Working Group a formula which will make it possible for the United Nations to collaborate in the solution of this serious and distressing problem.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER VI OF THE REPORT
OF THE AD HOC WORKING GROUP, ENTITLED "EXILE AND RETURN"

This chapter of the report, entitled "Exile and Return", deals with four subjects, which we will comment on in turn.

1. Amnesty and return

Here there is clearly some confusion concerning the effects of the amnesty granted by the Government of Chile and restrictions on the return to Chile of certain beneficiaries of the amnesty who are outside the country.

It is a generally known fact that amnesty is a means of extinguishing the criminal responsibility inherent in the commission of an offence, irrespective of whether the offence has been dealt with and has given rise to a sentence imposed by the courts of justice or whether the appropriate criminal proceedings could still be brought because the time-limit for such action has not yet expired. In other words, it is an act of oblivion and a pardon for the offences covered by the law on amnesty, whether or not they have been dealt with by the courts.

The foregoing is completely different to the question of existing restrictions on return to the country which the Government may apply for reasons of security

2. Return and security

The Ad Hoc Working Group recognizes that Chileans who are living outside the country wish to return to it, as also that their family members residing in Chile are taking steps to secure such return. This shows that in Chile there is peace and calm which gives full guarantees to everyone, as the Group was able to see for itself and that people wish to return because they will have a better life in Chile than abroad.

The possible discrepancy between the number of rejected applications, as published in the press, and the number given in certain lists officially handed over to the Group may be due to the fact that this is an area which is in a constant state of flux; the situation is not and cannot be static and unchanging, since it is subject to various considerations and decisions which, depend on changing circumstances.

3. Policy regarding return

The overriding concern at the Government of Chile is to assuage feelings and bring about national reconciliation and, accordingly, it is careful about admitting persons who would conflict with this fundamental objective.

The process of return must be carried out gradually and at a suitable rate, so as not to set back the peace and security which have been attained or to endanger the life and tranquillity of the population.

4. Loss of nationality

The Government of Chile is gratified to note that, in its report, the Group records two basic facts concerning this question:

- (a) In five years of government, only seven persons have been deprived of their nationality;
- (b) In the final analysis, the decision to withdraw nationality is one for the Supreme Court and not for the executive, since the mere lodging of an appeal suspends the effect of the decree of loss of nationality. Thus, the decree of loss of nationality will be valid only if confirmed by a decision of the Court.

The Government of Chile is struck by the fact that the Group makes not the least reference to the decision rendered by the Supreme Court in December 1977 in the case of Humberto Elgueta Guerin, which quashed the decree depriving him of his nationality, despite the fact that the Government of Chile brought the decision to the knowledge of the Group in February 1978, as can be seen from the footnote on page 52 of the Working Group's report of 1 February 1978 (E/CN.4/1266).

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER VII OF THE REPORT OF THE
AD HOC WORKING GROUP, ENTITLED "FREEDOM OF EXPRESSION AND INFORMATION"

The chapter of the Ad Hoc Working Group's report dealing with this question is seriously lacking in objectivity. Apart from being subjective, its conclusions are confused and totally at variance with the information it has gathered and with the observation it made, or ought to have made, of the true situation in Chile. The subjectivity and partiality of the report are demonstrated by its conclusions. The report indicates that "The Group during its visit to Chile noted that relatively wide freedom of expression appeared to be enjoyed in certain areas ..." and goes on to say: "but that these areas did not seem to be those at the very centre of national life". This statement is not only fanciful but also confused, incomprehensible and tendentious.

A further obvious distortion of the truth are the statements in the report concerning the range of legal powers enjoyed by the military authorities, the manner in which they have exercised them and the fact that the Government authorities communicate their views to newspaper publishers and may apply sanctions when those views are not respected.

The truth is completely different. A responsible and truthful report ought to have drawn the objective conclusions deriving from the actual facts of the situation and from the observations made by the Group in Chile. These conclusions would have been as follows:

1. There is broad freedom of expression and information in Chile. This is demonstrated by the fact that, although hundreds of radio stations exist and dozens of newspapers and magazines are published, during the whole of 1978 not one radio station was suspended or penalized and only one newspaper was suspended (for two days) in the manner and for the reasons which are described later.
2. This freedom is apparent in the fact that the Chilean press, radio and television report, comment and express opinions freely on topics of all kinds. It is also evident in the foreign newspapers and reviews available to the public in the streets and at all publication sales outlets.
3. The Group could have and should have made it clear not only that the legal powers possessed by the Government and, as appropriate, the military or judicial authorities as far as the communications media are concerned precede the present Government and have existed in Chile for the past 20 years, but also that, as will be explained later, the legal rules laid down by the present Government have restricted and defined the exercise of those legal powers by the authorities and have provided those against whom such powers are exercised with constitutional remedies which did not previously exist. Further, it ought to have been stressed that the most important factor here is the careful, restricted and extremely measured way in which these powers have been applied during the present year.
4. For the whole of the last year, the Group was able to find only two developments worthy of study in the report: the two-day suspension of the daily newspaper La Segunda and the termination of the licences of a few provincial radio stations of the Radio Cooperativa network.

5. Nevertheless, when describing the facts in these two cases, the report commits errors of judgement and fails to establish the truth.

(a) The suspension of "La Segunda". The legal information which the Group gives is erroneous. The truth is as follows:

- (i) The Commander-in-Chief of the emergency zone exercised the power referred to in article 34 (m) of Act No. 12,927 because he considered that the information published in the newspaper in question affected the internal order of the country and ran counter to domestic harmony and peace.
- (ii) He therefore availed himself of a power which has existed since the Act concerned was promulgated, namely, since 1958.
- (iii) The Director of the newspaper in question appealed against this measure to the Military Court, and against its decision to the Supreme Court of Justice; both these high courts disallowed the appeals lodged by him.
- (iv) The provisions of Act No. 12,927 date from the year 1958, when it was approved by the National Congress, by a large majority, and promulgated by the President of the Republic of that time. Article 34 of the Act confers various powers on the military authorities during a state of emergency, some of which are concerned with information and make it possible to prevent the dissemination of certain items of news or to penalize the publication of anti-patriotic propaganda. In order to regulate the exercise of these powers and to avoid any possible excesses Decree-Law No. 1281 was issued, specifying the administrative measures which the military authorities are empowered to take, fixing a limit of six days for the duration of the suspension of the publication or enterprise in question and providing for appeal against such measures to the military court, an appeal which may subsequently, as has happened in a number of cases, be taken to the Supreme Court.

(b) Termination of some radio broadcasting licences

The report shows that the Group has not properly understood the events which occurred in this connexion, despite the fact that it enjoyed extensive co-operation from the Government and reproduced part of the communications it received from it. The Government did not exercise the legal power vested in it by legislation adopted in 1959 in order to cause the licence of any radio station to expire or to terminate any such licence in advance.

All it did was to refrain from renewing the licences when their pre-determined period of validity expired and to award them to other interested parties, bearing in mind that there had been serious irregularities and breaches of the obligations attaching to the granting of a licence under the law. It should also be pointed out that the only policy consideration involved was the need to extend the granting of licences for these communications and information media to a variety of

groups - very frequently the employees of a radio station. This policy is in marked contrast to that pursued by previous Governments, which granted radio-station licences only to the political groups which backed them; this led to the establishment of huge monopolies in the information media.

6. The information given to the Group, as reflected in the report, that the publication of lists of missing persons was prohibited is incorrect. The truth, as the Group could have seen for itself, is that all the lists of persons alleged to be missing which were handed over by the bishops to the Government have been published extensively in the press.
7. Neither is it true that there exists an informal system of communication of Government views to the press and of pressure or threats of possible sanctions designed to undermine the freedom of the press.
8. In its report for the current year, the Inter-American Press Association (IAPA) indicated that there has been a substantial improvement in the freedom of the press and information in Chile.
9. During the current year, freedom of expression and information was especially apparent in Chile in such important manifestations as the following:

The National Referendum of January 1978, in which the opponents of the Government had full access to the communications media to express their opposition to the Referendum.

The public controversy between former Presidents Frei and Alessandri.

Reports, expressions of opinion and discussions concerning the proposed constitutional reform, with wide freedom for all groups. Extensive information on aspects of human rights.

Extensive information and adverse opinions concerning the dismissal from the Government Junta.

Lengthy news items, commentaries and articles contrary to the Government and its policies regularly appear in the information media.

10. Consequently, in Chile there is broad freedom of expression and information going far beyond that which exists in the majority of States.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER VIII
OF THE REPORT OF THE AD HOC WORKING GROUP, ENTITLED
"RIGHT TO EDUCATION"

One of the basic objectives of the Chilean Government's education policy is to ensure due respect for freedom of choice in education, which is one of the fundamental human rights provided for both in the Universal Declaration of Human Rights and in the International Covenants on Human Rights. To that end, it has traditionally maintained a dual system of education, public and private, which has only ever been threatened by the Unidad Popular Government's attempt to curtail the freedom of choice in education, through the establishment of a totalitarian system of education, namely the "national unified school" scheme.

The Chilean Government's concern for education is reflected, as the Group itself notes in its report, both in the studies carried out on the educational situation in the country, and in the increase in the funds allocated to the education sector by the State. It is also reflected in the decisions to improve the situation of teachers and educational premises. In that regard, it is appropriate to point out that the Government of Chile has just passed a new law providing for teachers' careers. Among other things, this law significantly improves the professional situation of teachers, but also their economic circumstances. The cost of this new legislation, which has met with general approval, is over \$100 million.

Consequently, any references in the report to the economic and professional situation of teachers, whatever their past merits, are now obsolete and completely invalid.

It is absurd for the Group to refer to the cost of education in Chile, particularly with regard to the universities and the opportunities for entering them, without making reference either to the large-scale programmes for school and university scholarships or to the research fellowships schemes, both of which are aimed at facilitating access to education by lower-income students. Nor does the Group place sufficient emphasis on the fact that university fees are calculated in accordance with the income of each family group. The Group's failure to refer in its report to these points seems to be a criticism of the system whereby students from higher-income families are charged more, thus helping to increase the scholarships available for those with lower incomes. The Group appears to disapprove of this system of charges, although it is widely applied in different countries throughout the world, facilitates the distribution of income and benefits the more disadvantaged sectors of society. This point is not worth analysing, but it does reveal the biased nature of this part of the report.

The report casts doubt on the existence of free schooling, without observing that the tuition fees chargeable by free private schools were authorized at the request of the parents' associations themselves, and with the sole object of including in the school programme other extracurricular activities selected by the parents themselves, whose associations direct these private schools. The fee, as stated in the report, is charged according to the parents' means and cannot exceed 15 per cent of the lowest salary on the single scale of taxable income.

As regards school enrolments, school drop-out rates, and other figures quoted by the Group in its report, it is quite evident that over 90 per cent of the general school population goes through primary school. The problems linked to school

drop-outs and enrolment have nothing to do with the Government's education policy, but are rather the problems of a developing country whose economy has had to overcome the worst crisis in its history at some sacrifice.

If the situation in Chile in this regard were to be compared with the situation in any other developing country of a similar nature, the results would not be very different.

Any attempt to draw the conclusions which the Group has tried to draw without considering all the underlying factors and the extensive information supplied by the Government is a proof of bad faith or superficial judgement.

The Working Group, using its habitual system of anonymous testimony, maintains that there is no university autonomy in Chile and, quoting a statement made by General Mendoza, a member of the Government Junta, justifies its views on the matter by the fact that rectors in the universities are Government-appointed.

First, it is appropriate to note that there is the broadest measure of university autonomy in Chile, but that autonomy cannot of course be allowed to be used for subversive or other equally condemnable ends, for that would spell the end of such autonomy and would interfere with the university process as such.

Secondly, it is not true that the Government-appointed rectors have absolute powers. They must comply with each and every one of the provisions of the relevant university regulations and must be advised by the appropriate university councils. The rector, whether he is appointed by the Government or not, cannot exceed the law, which is the be-all and end-all of his authority.

With regard to the exodus of professional persons, a phenomenon common to all developing countries, it is sufficient to state that this problem is no more acute now than it has been at other stages in the nation's life, nor is it any more marked in Chile than in other countries of similar educational and professional level. It is, of course, a matter of concern to the Government, which hopes to be able to offer conditions which will minimize the problem as soon as the country's economic situation allows. However, it is appropriate to add that there are many professional people entering or returning to Chile, attracted by the tranquillity and the employment situation which exist throughout the country.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER IX
OF THE REPORT OF THE AD HOC WORKING GROUP, ENTITLED
"FREEDOM OF ASSOCIATION AND RIGHT OF ASSEMBLY"

In the chapter of its report dealing with these subjects, the Group has once again misinterpreted the facts and evaluated and described the current situation in Chile wrongly.

It confuses and makes no distinction between freedom of association and the exercise of the right of assembly - particularly its specific application to labour matters - and the political activities and agitation of extremist or subversive groups.

Thus the Group is mistaken and its report departs from the truth when it maintains, for example, that "many other types of associations, particularly student associations, are also prohibited". It adds, also erroneously, that only trade unions which support the Government's policies "are allowed to be formed or to operate under relatively normal conditions" and that "other trade unions do so under constant surveillance and the threat of Government reprisals". Finally, it puts a somewhat fanciful interpretation on the events which occurred at the Chuquicamata mine, alleging that those events reveal "important aspects of the de jure and de facto limitation and restriction of the rights of association and peaceful and unarmed assembly...".

The report of the Ad Hoc Group wrongly fails to take into consideration a number of points, including the following:

1. Neither student, professional nor trade union organizations have been prohibited;
2. The students maintain their centres and federations, the only restriction being that they should concern themselves with academic, social and professional activities and should not become involved in political activism;
3. The Group does not report, for example, that at the University of Chile, the largest in the country, the introduction of a new statute has made it possible for students at the various university faculties to elect the governing body of FECECH (Federation of Student Centres of the University of Chile).

This election was held in September 1978, and the governing body of FECECH is now in office. If the Group had inquired about this, it would have been informed about the regulations and the dates of the elections. It is evident that the Group's usual informants carefully concealed these facts from it. The Group could also have acquainted itself with the procedure for electing the governing body of the Student Federation of the Catholic University, the second largest university in the country.

4. With regard to the trade unions, it should be pointed out that the statements made in the report are totally without substance. The number and membership of trade unions continue to increase, as do their funds.

The provisions of the new Labour Code now in force specifically favour the freedom, extension and strengthening of trade unions. The fact that the Government has placed non-manual and manual workers on the same legal footing and has eliminated any legal difference between these two categories is a further step in the same direction.

5. None of these facts are mentioned in the report. On the contrary, they seem to have been deliberately ignored or suppressed, and the statements made in this chapter seem to be intended to repeat the criticisms of previous years rather than to analyse the current situation in Chile.

6. Contrary to what the report maintains, the Chuquicanata conflict is an illustration of the fact that, although the exercise of the power to strike has been suspended, Chilean workers have ample freedom to raise their problems, bring pressure to bear to back up their claims, and criticize the management of their enterprises. Furthermore, it demonstrates the understanding and receptiveness shown to workers by the Government authorities and the efforts made by the Government to ensure that enterprises find a solution to any conflict.

7. The report confuses the measures adopted against subversive political extremists and tries to depict such measures as pressure against trade unions, which is inaccurate. At the same time, it omits any reference to the measures adopted by the Government regarding the authorities of the governing bodies of enterprises.

8. One last contradiction must be pointed out: in other chapters of the report, emphasis is placed on the lack of freedom of expression allegedly existing in Chile; in this chapter, however, the sole source of information used is material from various features and articles in the newspaper El Mercurio. This only goes to show once again that the report is not objective and that its conclusions on freedom of expression are false.

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON CHAPTER X
OF THE REPORT OF THE AD HOC WORKING GROUP, ENTITLED
"ECONOMIC AND SOCIAL RIGHTS"

A. The problem of unemployment

1. It is common knowledge that unemployment is a problem which derives from very different and varied causes and affects both developed and developing countries. It is of course more acute in the latter.
2. For a number of reasons known to the Group through the comprehensive information supplied by the Government of Chile, unemployment is one of the most serious problems facing the Chilean economy. Chile's problem, as a developing country, is similar to that of other countries in its position and it cannot properly be said to be more serious in Chile than in other countries.
3. As the Group knows, the Government of Chile is using its best endeavours to put an end to the problem by means of an accelerated national development programme, an anti-inflation campaign and programmes aimed at promoting investments to create more jobs. As Sergio de Castro, the Minister of Finance, said recently, the total number of jobs has been increasing every month since December 1976, which means that the Chilean economy is now producing more jobs than before.
4. The Government of Chile is struck by the fact that the information which it supplied to the Group during the Group's visit to Chile and later supplemented in writing is not given due consideration in the report.
5. Lastly, it would appear that the Group, ignoring the complexity of the problem of unemployment, believes that it can be solved solely by means of governmental decisions. There is no doubt that if this was the case, no country in the world, and certainly not Chile, would be confronted with this problem.

B. Recent labour legislation

1. General observations

- (a) In this part of its report the Working Group has made the mistake of trying to demonstrate, by distorting information or misrepresenting the scope of certain provisions, that the changes introduced in Chilean labour legislation have resulted in a deterioration compared with the situation which existed previously.
- (b) This is not only false, as is evidenced by the fact that the new Chilean labour legislation incorporates all the achievements of the workers embodied either in the legislation in force or in existing practice in Chile, but it also overlooks obvious progress, such as the elimination of the unwarranted distinction between non-manual and manual workers, and the consequent acquisition of benefits by persons who formerly had the status of "manual workers".

(c) The new Decree-Law No. 2,200 recognizes the right of all full-time workers to a minimum income. It also establishes a system of automatic adjustment of remuneration on the basis of seniority, a system which previously applied only to non-manual workers in the private sector. In addition, it facilitates labour relations and the identification of such relations by indicating specifically the persons or bodies who hold the legal status of non-manual workers and establishes presumptive de jure representation of such workers by the leaders of the labour institutions. Furthermore, it establishes severe fines in cases where contracts of employment are not concluded in writing and standardizes the conditions which must be fulfilled by workers in order to enjoy the same rights, such as official holidays, complete working weeks (payment for rest-days and holidays), etc. Lastly, it establishes the obligation to provide compensation for any Sunday or holiday worked, together with other provisions too numerous to mention here.

(d) The new labour legislation adopts the basic principle of avoiding discrimination in the treatment of workers.

2. Abolition of acquired rights: working hours of shop and office workers

The Group considers that the increase in the working week for shop and office workers from 44 to 48 hours is prejudicial to these workers. In this connexion the following observations should be made:

(a) All special working hours established in previous legislation have been maintained, with the sole exception of the working week in shops and offices.

(b) This is without prejudice to the rules affording protection for workers in enterprises or activities for which Sundays and holidays are not rest-days - rules which are in fact more favourable to such workers.

(c) The working hours for shop and office workers have been increased for the following reasons:

(i) There is no scientific or technical precedent for keeping them, nor was any such precedent adduced in Act No. 17,365, which established the shorter working week;

(ii) The lack of precedents obliged the Government at that time (the Frei Administration) to veto the relevant provision in Act No. 17,365. The veto was rejected by the Congress and the matter passed into law;

(iii) The reasons adduced (the fact that the work has to be performed standing up) are not sufficient to grant the benefit in question and still less to extend it to all workers in shops and offices. It should be noted that, even those doing administrative work, and they are many in number, benefited unduly from the Act.

(d) Decree-Law No. 2,200 has made it compulsory for employers who increase the working week to supplement the worker's pay proportionately, on the basis of the regular rate. This obligation applies in respect of all workers engaged as from the date of entry into force of the Decree-Law. Consequently, no harm has been done to them.

(e) The adoption of this provision has also resulted in the abolition of a cause of discrimination against other workers.

3. Agricultural workers

The new legislation is not substantially different from the previous legislation. An effort has simply been made to modernize some of its provisions and effectively co-ordinate them with current legislation on agricultural matters.

On the question of the percentage of perquisites, the new Act has simply left this to the discretion of the parties concerned, establishing an upper limit for this purpose. The Act does not impose a specific percentage but stipulates that it may not exceed 50 per cent, the parties being left free to agree on what is most convenient for them.

4. Home workers

(a) On this question it should be made quite clear that the nature of the contract remains unchanged; in other words, it still constitutes a labour relationship. Furthermore, improvements are made in this labour relationship and the definition of the contract is broadened.

(b) It was thought appropriate to include an option for the payment of social security charges, since these workers frequently work for more than one employer. In this way they may avail themselves of the social security system established for self-employed workers, at much lower cost. If they work for only one employer, payment of charges by the latter may be arranged.

(c) Basically this decision has been taken in order to promote employment of persons who can do their work at home.

(d) Lastly, these measures are experimental and a change in them is considered possible.

5. Limitation of trade-union privilege and maternity rights

(a) Trade-union privileges, which have certainly not been limited in any way and have indeed been guaranteed, will be considered in the section relating to the situation with regard to trade-union rights.

It should be noted that, obviously, trade-union privileges are not applicable in the case of work of fixed duration if the latter is less than that of the mandate of the trade union concerned.

(b) It must be emphasized that maternity rights are fully maintained in the new legislation. Maternity rights consist of the right of the working woman not to be dismissed from her work from the start of pregnancy up to one year after completion of the post-natal recuperation, unless the labour court authorizes dismissal on valid grounds. These grounds may be:

(i) Conclusion of the work or service which was the subject of the contract;

(ii) Expiry of the term of the contract.

It will be seen that both these grounds tend to ensure that employers are not deterred from recruiting female staff. An effort is thus being made to overcome what may in practice be a source of discrimination. Furthermore, it should be noted that the employer may not terminate a contract arbitrarily; he must, on the contrary, apply to the labour court on one of the above-mentioned grounds for authorization to dismiss the person in question. The court must check the facts adduced and render a decision on the question.

6. Protection of stability of employment

(a) Act No. 16,455, on termination of the contract of employment, has been retained in full for all workers engaged prior to 15 June 1978. Consequently, their stability of employment is in no way affected and no acquired right has been modified.

(b) The new rules apply to workers whose contracts commence as from 15 June 1978. Thus, no pre-existing situation has been affected.

(c) Moreover, the new rules have simply affirmed those which were applied in practice. For example, under this system established by Act No. 16,455 the worker's right to keep his job, unless there are justified grounds for termination of his contract or unless he relinquishes his employment, means that if he has been dismissed he has the right to submit a claim to the courts of justice for reinstatement. When the proceedings have been completed and the verdict is in favour of the worker, the employer may, at his own discretion, agree to reinstatement or pay compensation which is established by the court. It is based on one month's pay for each year (or fraction of a year exceeding six months) of uninterrupted or discontinuous service in the enterprise in question.

Experience demonstrated that reinstatement was opposed both by the workers and by the employers, because the parties preferred compensation. Therefore Act No. 16,455 was not effective with regard to the principal right which it affirmed. Moreover, under the old Act, the employer could delay legal proceedings, thus bringing about an agreement under which the worker received less compensation than he would have been entitled to if a final decision had been rendered.

For these reasons, the new legislation, taking into account what actually happened in practice, has established as the principal right the worker's right to compensation and has thus eliminated the obligatory preliminary procedure of applying to the labour courts for reinstatement. The compensation fixed is the same as existed before, with the additional advantage that, under the new Act, it earns interest at current rates, which are sizeable. Again, a court dealing with a case of termination of contract may, if the dismissal is deemed arbitrary, sentence the employer to pay a fine amounting to 20 per cent of the compensation, including interest and readjustments. This is another procedure which did not exist under the previous legislation.

7. Possibility for the employer to amend the contract of employment unilaterally

(a) In conformity with Decree-Law No. 2,200 the conditions of the contract of employment may be amended only with the consent of the parties, except in the following cases:

(i) The employer may change the nature of the services, replacing them by work of a similar kind;

(ii) The employer may change the place or premises in which the services are to be performed, provided that the new place or premises are situated in the same locality or city.

(b) The above-mentioned exceptions are applicable only if both the following related conditions are fulfilled:

(i) They must be made on justifiable grounds;

(ii) The change may not result in harm to the worker.

The labour departments are responsible for checking that these conditions are strictly observed.

(c) The basic reason for this is to give the contract of employment some flexibility and to prevent a recurrence of earlier situations in which, if unforeseen circumstances arose, the only feasible course of action was to terminate the contract of employment of the person concerned.

(d) These provisions are not liable to abuse since the change in the contract must be objectively justified and no harm must be done to the worker.

8. Return to the legal minimum conditions upon termination of collective contracts

The Working Group's observations on this question are inconsistent with the facts of the situation, for under an administrative decision by the labour executive in all specific cases that have arisen (and they have in fact been very few in number), all rights originating in collective contracts are at present deemed to be incorporated in individual contracts as acquired rights that cannot be disregarded. In addition, appropriate legislation is being prepared in order to clarify this situation once and for all.

C. Trade union rights

1. General observations

This section of the report contains an analysis of Decree-Law No. 198 of 29 December 1973. Before challenging any specific aspects of the Group's observations concerning this Decree-Law, it is appropriate to make the following general comments:

(a) During the Group's visit to Chile, a meeting with the Minister of Labour had been planned precisely in order to discuss all matters relating to the labour situation. Unfortunately, this meeting did not take place, since the Group declined to meet the Minister because of lack of time.

(b) It is also surprising that the Group should have referred only once to the reports by the ILO.

2. Suspension of trade-union elections

In this connexion, it may be noted that:

(a) The suspension of trade union elections is purely of an interim nature and is based chiefly on the need to depoliticize the trade unions, which were being run by the political parties until 11 September 1973.

(b) It is the intention of the Government of Chile that, after the requisite legislation has been enacted, trade-union officials will be selected by decisions of the trade union rank and file. The studies on this question have reached a very advanced stage of preparation.

(c) It is a serious error to assert, as is done in the report, that vacant posts are filled by officials elected under systems controlled by the labour authorities and that officials are appointed by decree of the Ministry of Labour. The system established by Decree-Law No. 198 is as follows:

(i) Recognition and renewal of all the mandates in force on 11 September 1973, with all the rights vested in trade union officials, regardless of the political opinions of the office holders;

(ii) In the case of vacant posts, new officials are selected by seniority in order to make up the legal minimum necessary for the governing body to operate. This system prevents arbitrary selection and creates a right that the persons concerned can invoke at any time and they can request recognition on the grounds of highest seniority; for that reason alone, they receive the privileges accorded by law to trade union officials.

Thus, the labour authorities are obliged to comply strictly with these provisions.

(iii) Only where it is impossible to apply the above provisions, namely, those relating to seniority, can the Ministry of Labour lay down special rules for making up the membership of a trade union governing body - a power that has been exercised very moderately and generally at the request of the rank and file of the union concerned.

3. Limitation of trade-union meetings

The extent of the restrictions temporarily imposed on trade-union meetings in conformity with Decree-Law No. 198 is as follows:

(a) Meetings of trade union governing bodies are not subject to any restrictions under the labour laws and the restrictions that did exist as a result of the state of siege no longer apply because that exceptional state has not been in force since 11 March 1978.

(b) Governing bodies can deal with all matters concerning the organizations that they administer, in accordance with the law and with their statutes.

(c) Assemblies may be held solely for information purposes, but it should be added that the assembly can censure the trade union officials, so that it has effective control over them and, consequently, over the administration of the trade union. The authorities have to respect any censure of that kind and take steps to replace the officials in accordance with the rules of seniority.

(d) In accordance with transitional article 4 of Decree-Law No.198, assemblies held for information purposes do not require permission from the military or the police authorities but simply prior notification of the police authorities; and the Group's assertion is therefore incorrect.

(e) It is also incorrect that a member of the military authorities must be present at trade union meetings. The workers have complete freedom to make any comments, in keeping with the meeting's purpose of supplying information.

4. Permission to engage in trade union activities

The assertions made by the Group in this connexion are incorrect.

(a) For the first time in Chile, Decree-Law No.198 established, on a general and compulsory basis, that trade union leaders were authorized to perform official duties during the working day. Previously, this right had been enjoyed only by those who had secured it through collective bargaining. Hence Decree-Law No.198 establishes a trade union benefit that cannot be ignored and it makes for wider rights for all trade union officials.

(b) Also Decree-Law No.198 specifically recognizes the existence of other more favourable systems which are governed by their own rules (e.g. those for seamen).

(c) For the purposes of calculating the time authorized under Decree-Law No.198, no account is taken of the time spent on official duties.

Lastly, a law that is described as restrictive is in fact one which establishes a right for all trade unions.

5. Suspension of collective bargaining

In this connexion, the following may be said in the interest of truth:

(a) The Government of Chile is in no sense opposed to the system of collective bargaining. This is apparent from many statements by the Government, including:

the statement made by the Minister of Labour on 1 May 1978, when he said that collective bargaining would be instituted during the first half of 1979. If that system is to become a practicable reality it is essential to place the country's economic situation on a sound footing.

(b) The decision of the Government is that collective bargaining will proceed via direct understandings between the parties in labour relations, for which purpose the State must supply the necessary mediation and arbitration machinery and assign to itself only a subsidiary role in order to safeguard the higher interests of the community.

(c) The above reasons led the Government to establish a system of collective bargaining based on tripartite commissions; the machinery, scope and functioning of the system are known to the Group and have benefited a large number of workers. Similarly, the Executive was empowered to extend the benefits and working conditions in certain enterprises or activities to all the workers in the sector to which the enterprises or activities belong, a step that is also known to the Group.

6. Suppression of the right to strike

It is true that the right to strike has been suspended, since strikes constitute one of the stages in negotiation under some collective bargaining systems.

Nevertheless, just as machinery must be set up for collective bargaining, it is also necessary to define the measures which the parties in labour relations can take in exercise of their rights, which may include strikes as one of the courses open to workers, if the legislator deems it appropriate. This is laid down in the draft of the new Political Constitution, which expressly recognizes the right to strike.

In any event it should not be forgotten that the suspension of strikes is accompanied also by the suspension of the counterpart legal means of pressure that were available to employers, e.g. lock-outs.

7. Violation of trade-union rights through the exercise of administrative powers and trade-union parallelism

The following observations should be made in this connexion:

(a) The Government has no power whatsoever to remove trade union officials from office. They may be removed only on the grounds for disqualification established in the existing legislation, which antedates the present Government, or as a result of censure by the assembly concerned.

(b) The Government of Chile is in favour of trade-union pluralism; in other words, it considers that there should be complete freedom to form and join trade unions.

(c) The Government of Chile was not consulted by the Group with regard to the cases mentioned in paragraphs 657 et seq. of the report. In any event it reiterates what it has stated in subparagraph (a): the Government has no powers to remove the governing bodies of trade unions.

(d) It is very easy to include in a report alleged acts of intimidation of trade union leaders on the basis of mere statements by the persons concerned and without checking them. This reveals the biased nature of the report, which does not even refer to these acts as allegations but considers them as proven.

D. The situation of agricultural workers

The statement by the Working Group that after 1973 "came the undermining" of the process of agrarian reform is unacceptable. In the interests of truth, it is enough to point out the following.

It is a well-known fact that between 1970 and 1973, the State, acting outside the framework of the Agrarian Reform Act, took over agricultural holdings, regardless of their size. In this way, it managed to consolidate an expropriated area of ten million hectares in all.

Accordingly, the present Government of Chile introduced a policy aimed at strengthening the process of agrarian reform, proceeded to regularize ownership of the expropriated area and, as a matter of priority, to allocate it to the reformed sector, by granting individual title deeds to the rural workers.

Between September 1973 and May 1978, 1,107,144 hectares were allocated to rural co-operatives and 2,022,461 hectares to individual owners. In addition, the situation regarding 2,807,463 hectares was regularized by returning them to the legitimate owners.

In 1978, the Government is planning to complete the process of agrarian reform, by regularizing the situation of land still in the hands of the State.

Attention must also be drawn to the technical assistance programme, whereby each owner of a holding of less than 15 hectares is provided with a package of services that includes farm management accounts, inputs, etc. This package is subsidized to the extent of about \$90 and in 1978 will benefit 10,000 persons allocated land under the agrarian reform. Likewise, since 1974, a vast training programme to improve the skills of the new farm owners has been extended to all rural areas. Thus an attempt is being made to ensure that rural workers, in addition to owning the land, are able to work it efficiently in order to provide for the country's food requirements.

E. The situation of the indigenous populations

The Government of Chile protests strongly against the remarks made by the Ad Hoc Working Group under this heading. It bases its protest on the following facts:

(a) During its visit to Chile, the Working Group gave no intimation of any intention to visit the area in which practically the whole of the country's indigenous population lives;

(b) The Group rejected the suggestion made by representatives of the Chilean Government that it should talk with the Minister of Agriculture, who is in charge of very important aspects of this problem. What is more, during its stay in Chile, the Group did not ask the Chilean Government anything about the evidence it says it has received on this matter;

(c) The Group's information is based almost exclusively on libel and pseudo-studies, written abroad by officials or sympathizers of the previous régime since the present Government came into being. They are devoid of all seriousness and aimed exclusively at creating centres of political unrest or encouraging violence within the country;

(d) The Working Group and the Division of Human Rights had enough time to translate and include these publications in the report; there was no time, however, to analyse the Chilean Government's reply to a general question on the problem raised by the Working Group, a reply which was submitted within the time-limit set by the Group but could not be brought to its attention since the documents were not translated in time;

(e) The inclusion of those paragraphs, without analysing the information requested and simply repeating untruths and insults against the people of Chile patently illustrates the lack of seriousness in drawing up the report.

This lack of seriousness is so blatant that the Group cannot omit mentioning the fact that important information has been received from the Government and is included in the annex, and that it will analyse the problem carefully in its next report.

In view of the prejudices it has shown in this matter, the Group has discredited itself as regards both its methods and the seriousness of its approach.

The Government of Chile points out that these paragraphs reveal irresponsibility and lack of respect towards a member country. For these reasons, it has begun its comments with a strong protest, which it will repeat before the competent bodies.

F. The right to health

1. The intention behind this section is to show that the Government's health policy represents a step backwards. This fundamental assertion is based on the political drift of the report, which maintains that socialized medicine and State-controlled health services alone can make for progress.

2. However, this argument is debunked by the information included by the Group itself, as it recognizes the success of the Government's food programme, the considerable decline in the infant mortality rate and the larger volume of funds earmarked for health, whereas in previous reports the Group affirmed quite the opposite.

3. The Government of Chile cannot fail to note that in paragraphs 777 and 778 the Group simply records a complaint it has received to the effect that a group of doctors is submitting a group of seriously undernourished unweaned infants to an experiment which will produce irreparable damage to their central nervous systems.

The Government considers that the Group should not have included this complaint because, as the Group itself states, it has not tried to ascertain the opinions of the Government or of the relevant scientific bodies. Accordingly, its inclusion can only have a political purpose and it is intended to detract from the achievements mentioned in the report.

4. Lastly, much of the material dealt with by the Group relating to the organizational, administrative, budgetary and management aspects of health policy is exclusively an internal matter for each State and it lies outside the Group's terms of reference.

In this connexion, the Government declares that no opinion or recommendation that the Group may seek to give it on this subject will be followed by the Government of Chile. On such an important matter, in which one of the foremost tasks of every Government lies, knowledge, a serious approach and scientific preparation are essential. On the other hand, the Government will continue to consult and seek advice from the health organizations of the Inter-American System and of the United Nations. We believe that an analysis other than one from those specialized bodies is not worth even the paper on which it is written.

CONCLUDING OBSERVATIONS OF THE GOVERNMENT OF CHILE
ON THE REPORT OF THE AD HOC WORKING GROUP

1. The Government of Chile is pleased to note the historic fact and the important precedent it has set, of being the first country, in a period of emergency, to allow a Working Group of the United Nations to enter the country in order to study the existing situation of human rights in its territory, granting the Group in question the widest freedom of investigation and movement, and ensuring the fullest safeguards for all persons and institutions coming into contact with the Working Group during its visit to the country. It must be pointed out that neither the Ad Hoc Working Group, nor any of the institutions or persons interviewed by it have expressed the slightest doubt about Chile's strict fulfilment of its commitments.
2. This shows that the Government of Chile is pursuing a consistent international policy - one it has always followed - of recognizing the competence of international bodies to deal with matters connected with fundamental human rights. It is proud to have given fresh proof of its long tradition in this field, which led it to participate actively in the drafting of the Universal Declaration of Human Rights and the International Covenants on Human Rights.
3. The Government of Chile, in recording its pleasure at the Group's visit to Chile, thereby carrying out in full the mandate conferred on it by the Commission on Human Rights and the General Assembly, at the same time regrets that the visit was not altogether as fruitful as it might have been, mainly because of the method of work arbitrarily adopted by the Group, which forced it to devote most of its time to hearing testimony, instead of verifying on the spot the situations brought to its notice.
4. The Government of Chile is gratified that the report, although it does not expressly say so, establishes that:
 - (a) In Chile there are no gross or consistent violations of human rights;
 - (b) In Chile torture is not applied as a method of investigation, nor is it in general use, as was formerly maintained;
 - (c) In Chile there is no régime of terror;
 - (d) In Chile there is freedom of expression and journalists are free to exercise their profession;
 - (e) In Chile lawyers may exercise their profession without difficulty and defend their clients with all the guarantees granted by law, regardless of the ideology of such persons or the offence they may have committed;
 - (f) In Chile there are not thousands of missing persons. Moreover, in 1978 there was not a single case of this kind.
5. The Government of Chile would have preferred the Ad Hoc Working Group to adopt a positive attitude, by emphasizing the progress made in the situation in Chile - as would have been only right and objective - instead of maintaining silence, especially as the facts enumerated in the foregoing paragraph are irrefutable.

6. The report clearly points to the freedom which exists in Chile. The Ad Hoc Working Group was informed of a political crisis affecting a distinguished member of the Honourable Government Junta, and although it gathered the views of the opposition on a matter of internal sovereignty, it was able to verify the freedom with which the matter was discussed publicly and even learned of the reactions of General Leigh when he announced that he might appeal to the courts of justice and then decided not to do so.

7. The Government of Chile regrets that in some chapters of the report the Ad Hoc Working Group adopts rigid ideological attitudes and disregards the information supplied by the Government of Chile or the information from international organizations, thereby detracting from the report's reliability.

8. The Government of Chile protests at the interference of the Ad Hoc Working Group in matters falling exclusively within the internal sovereignty of the State of Chile, as in the chapters dealing with the organization of the State, the functioning of the public authorities, the functioning of the courts of justice, the building of a new political reality, financial, labour and health matters, etc. The Working Group, by stretching the content of human rights and its terms of reference to incredible limits, might even jeopardize the consolidation of previous achievements. According to the Working Group's interpretation, the report could cover any matter whatsoever, since in the final analysis everything is related to mankind and thus to human rights. This is clearly unacceptable and incompatible with the Charter of the United Nations, with the letter and the spirit of the relevant international conventions, and with the practice of international organizations in this respect.

9. The Government of Chile draws attention to the anomalous practice generally followed by the Working Group of including at length in the text of the report the testimonies received, even those which are anonymous and vague and, in contrast, relegating to the annexes the information supplied by the Government and the replies to questions formulated by the Working Group itself. It follows from this practice that there is an intention to produce a distorted impression of the real situation in Chile.

10. Finally, the Government of Chile deplores the fact that the Ad Hoc Working Group has not recorded in its report the chance meetings with so many Chileans during its visit to Chile and their spontaneous testimony which bears witness to actual conditions in the country and, with no pretence to any political or other objective, faithfully reflects their feelings and views with regard to the situation in Chile today.