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STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN  
CHILE, WITH PARTICULAR REFERENCE TO TORTURE AND  
OTHER CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT

Report of the Ad Hoc Working Group established  
under resolution 8 (XXXI) of the Commission on  
Human Rights to inquire into the situation  
of human rights in Chile

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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 3 (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. Ghulam Ali Allana, appointed four members of the Commission to serve on the Group in their personal capacity. The composition of the Group is as follows: Mr. Ghulam Ali Allana of Pakistan (Chairman-Rapporteur), Mr. Leopoldo Benites of Ecuador, Mr. Abdoulaye Diéye of Senegal, Mr. Felix Ermacora of Austria and Mrs. Marian J.T. Kamara of Sierra Leone.
2. Under Commission resolution 3 (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. 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.
3. The Group has adopted seven previous reports, four of which were submitted to the General Assembly and three to the Commission on Human Rights. 3/ The present report is the eighth adopted by the Group. Each of its previous reports contained information on the activities of the Group during the period in question,

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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 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.4/1183), 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); report to the General Assembly at its thirty-third session (A/33/331), General Assembly resolutions 33/174, 33/175 and 33/176.

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 the Group made recommendations for steps to be taken to improve respect for human rights in Chile.

4. The Commission on Human Rights, at its thirty-fourth session (February-March 1978), after having considered the sixth report of the Group (E/CN.4/1266) and the observations and other information submitted by the Government of Chile, adopted resolution 12 (XXXIV) on 6 March 1978. The Commission, in that resolution, and in response to General Assembly resolution 32/113, 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 session. 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.

5. 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. With the agreement of the Government of Chile a visit by the Group to that country had been scheduled to take place in July 1975 but just prior to the beginning of the visit the Government informed the Group that the visit was postponed "until a more auspicious occasion". Attempts by the Group to arrange a visit in accordance with its mandate in 1976 and 1977 did not meet with success. <sup>4/</sup> 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, with a view to arranging a visit and, at meetings in May 1978, an agreement was reached which enabled the Group to visit Chile in July 1978. <sup>5/</sup>

6. The seventh report of the Group (A/33/331) was prepared during meetings held in September 1978 and was submitted to the General Assembly at its thirty-third session. It contains details of the Group's relations with the Government of Chile subsequent to the thirty-fourth session of the Commission on Human Rights, the Group's work during that period, its visit to Chile and the Group's findings on the situation of human rights in that country. That report also contains recommendations for steps to be taken aimed at improving the situation of human rights in Chile. 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 Group's report to the General Assembly (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 also agreed that, should the observations be received within two weeks of the date of transmission of the chapter to the Government, the observations would be included in an annex to that report. In accordance with that understanding the observations of the Government were reproduced in annex LXXXIII to the Group's report to the Assembly.

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<sup>4/</sup> For more details, see A/10285, paras.40-62 and A/33/331, paras.4-5.

<sup>5/</sup> For more details, see A/33/331, chapter I.

7. The Group in its reports has called the attention of the international community to two of its particular concerns, one of which is the question of the impact of foreign economic aid and assistance on respect for human rights in Chile. The Sub-Commission on Prevention of Discrimination and Protection of Minorities agreed with the need to study this question and appointed in 1977 Mr. Antonio Cassese as its Rapporteur 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 to the Commission on Human Rights at its thirty-fourth session and his full report to the Sub-Commission at its thirty-first session (E/CN.4/Sub.2/412 (vol.I-IV)). <sup>6/</sup> At the request of the Commission on Human Rights, the Sub-Commission transmitted that report to the General Assembly at its thirty-third session, and the Assembly, in resolution 33/175, expressed its appreciation to the Rapporteur for his report. <sup>7/</sup>

8. The second concern of the Group was the necessity for humanitarian, legal and financial aid to victims of violations of human rights in Chile and their relatives, and the Group recommended that steps be taken in that direction. The Sub-Commission on Prevention of Discrimination and Protection of Minorities in 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 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. The General Assembly in response to the Council's recommendation decided to establish this fund in its resolution 33/174 (see below). <sup>8/</sup>

9. The Chairman-Rapporteur of the Group introduced the Group's report to the thirty-third session of the General Assembly (A/33/331) during the 60th meeting of the Third Committee. In addition to the Group's report, the Committee had before it, in connexion with its consideration of the question of the protection of human

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<sup>6/</sup> For more details see A/33/331, paras.6-8.

<sup>7/</sup> The Government of Chile submitted to the General Assembly observations on that report, see A/C.3/33/7.

<sup>8/</sup> For more details see A/33/331, paras.6-8.

rights in Chile, a number of other documents. 9/ At the same meeting the representative of the Government of Chile expressed his Government's views on the report of the Group. In connexion with its consideration of the question of the protection of human rights in Chile, the Third Committee at its 74th meeting, adopted for recommendation to the General Assembly three draft resolutions. 10/ The General Assembly at its 90th plenary meeting on 20 December 1978 adopted without modification the three resolutions recommended by the Third Committee

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9/ In connexion with its consideration of the question of the protection of human rights in Chile, the Third Committee had before it the following documents:

- Protection of human rights in Chile: note by the Secretary-General transmitting the report of the Ad Hoc Working Group on the Situation of Human Rights in Chile, submitted in accordance with General Assembly resolution 32/118 (A/33/331);
- Protection of human rights in Chile: report of the Secretary-General (A/33/293). (Information from Member States, United Nations agencies and other international organizations on steps taken as a contribution to the restoration and safeguarding of human rights and fundamental freedoms in Chile);
- Protection of human rights in Chile: note by the Secretary-General (A/33/281) (concerning the study of the consequences of the various forms of aid extended to the Chilean authorities);
- Study of the impact of foreign economic aid and assistance on respect for human rights in Chile: report prepared by Mr. Antonio Cassese, Rapporteur (E/CN.4/Sub.2/412 (vols.I-IV));
- Letter dated 17 November 1978 from the Permanent Representative of Chile to the United Nations addressed to the Secretary-General (A/C.3/33/7). (Observations of the Government of Chile on the report entitled "Study of the impact of foreign economic aid and assistance on respect for human rights in Chile").
- Summary records of the 816th to 818th meetings of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-first session, held in Geneva on 7 and 8 September 1978 (E/CN.4/Sub.2/SR.816-818).
- Letter dated 19 December 1978 from the Permanent Representative of the Federal Republic of Germany to the United Nations addressed to the Secretary-General (A/33/533) (transmitting a resolution of the Council of the Inter-Parliamentary Union entitled "The situation in Chile").

10/ - "Establishment of the United Nations Trust Fund for Chile" (A/C.3/33/L.26), recommended by the Economic and Social Council. Adopted by a recorded vote of 88 to 6 with 32 abstentions.

- "Protection of human rights in Chile" (A/C.3/33/L.73), sponsored by Sweden. Adopted by a recorded vote of 88 to 7 with 34 abstentions.

- "Importance of the experience of the Ad Hoc Working Group on the Situation of Human Rights in Chile" (A/C.3/33/L.78), sponsored by Italy. Adopted as revised and amended by a recorded vote of 47 to 22 with 53 abstentions.

as follows: resolution 33/174 "Establishment of the United Nations Trust Fund for Chile" by a recorded vote of 98 to 6 with 35 abstentions; resolution 33/175 "Protection of Human Rights in Chile" by a recorded vote of 96 to 7 with 38 abstentions; resolution 33/176 "Importance of the Experience of the Ad Hoc Working Group on the Situation of Human Rights in Chile" by a recorded vote of 54 to 17 with 66 abstentions (see annexes I, II and III).

10. In resolution 33/174 the Assembly decided to establish a voluntary United Nations Trust Fund for Chile to be administered by the Secretary-General with the advice of a board of trustees to be composed of a Chairman and four members with wide experience of the situation in Chile. The Fund is to receive contributions and distribute, through established channels of assistance, humanitarian, legal and financial aid to persons whose human rights have been violated by detention or imprisonment in Chile, to those forced to leave the country and to relatives of persons in the above-mentioned categories. The Assembly also appealed to Member States to respond favourably to requests for contributions to the Fund.

11. The General Assembly in resolution 33/175 took note with appreciation of the Group's visit to Chile in July 1978, noted the Group's expression of appreciation for the co-operation extended to it by the Chilean authorities and acknowledged the conclusions of the Group concerning the improvement of the situation of human rights in Chile as compared to previous years. However, the Assembly also stated that it was gravely concerned by the conclusions of the Group that violations of human rights, often of a grave nature, continued to take place in Chile and concluded that the human rights situation in Chile justified the continued concern and involvement of the international community and the special attention of the Commission on Human Rights. The Assembly called upon the Chilean authorities to restore and safeguard basic human rights and fundamental freedoms and it urged the Chilean authorities in particular: To cease the state of emergency, under which continued violations of human rights and fundamental freedoms are permitted; To restore the democratic institutions and constitutional safeguards formerly enjoyed by the Chilean people; To ensure an immediate end to torture and other forms of inhuman or degrading treatment and to prosecute and punish those responsible for such practices; To take urgent and effective measures in response to the profound international concern at the fate of persons reported to have disappeared for political reasons, and in particular to investigate and clarify the fate of these persons; To cease arbitrary arrest and detention and to release immediately those who are imprisoned for political reasons; To restore fully the right of habeas corpus; To restore Chilean nationality to those who have been deprived of it for political reasons; To allow those who have been forced to leave the country for political reasons to return home and take appropriate measures to assist their resettlement; To remove restrictions on political activities and re-establish the full enjoyment of the freedom of association; To guarantee the standards of labour protection called for by international instruments and fully restore previously established trade union rights; To fully guarantee freedom of expression; To safeguard the human rights of the Mapuche Indians and other indigenous minorities, taking into account their particular cultural characteristics.

12. In addition, the Assembly in resolution 33/175 invited the Commission on Human Rights to continue to give close attention to the situation in Chile and to that end:

- " - To appoint, in consultation with the Chairman of the Ad Hoc Working Group from among members of the Group as presently constituted, a special Rapporteur on the situation of human rights in Chile who should report to the Commission on Human Rights and to the General Assembly, and to formulate his mandate on the basis of its resolution 3 (XXXI) of 27 February 1975 which established the mandate of the Ad Hoc Working Group;
- " - To consider at its thirty-fifth session the most effective ways of clarifying the whereabouts and fate of missing and disappeared persons in Chile, taking into account the views on this subject expressed by the Ad Hoc Working Group in their report."

The Assembly also urged the Chilean authorities to co-operate with the Special Rapporteur and requested the Commission on Human Rights to submit to the General Assembly at its thirty-fourth session, through the Economic and Social Council, a progress report of action taken in compliance with that resolution.

13. In its resolution 33/176 the Assembly welcomed the fact that the Ad Hoc Working Group was finally able to visit Chile, expressed its great appreciation to the Group for the careful and objective manner in which it carried out its mandate and drew the attention of the Commission on Human Rights to the importance of the experience of the Ad Hoc Working Group on Chile in view of the Commission's future action when dealing with consistent patterns of gross violations of human rights.

14. The present report to the Commission on Human Rights was adopted at meetings held by the Group from 11 to 26 January 1979 at the United Nations Office at Geneva. In a letter dated 12 December 1978 addressed to the Permanent Representative of Chile to the United Nations, the Chairman of the Group stated that the Group would very much appreciate meeting with representatives of the Government of Chile on the occasion of its January 1979 meetings in Geneva to confer and discuss matters relevant to the activities of the Group, including the question of missing persons. On 22 December 1978 the Chairman of the Group, through the Director of the Division of Human Rights, informed the Government of Chile of the Group's wish to discuss, in particular, the reports concerning the finding of bodies in the locality of Lonquen and the efforts to determine if these bodies were those of persons reported missing. The Permanent Representative of Chile to the United Nations Office at Geneva informed the Chairman of the Group by a letter dated 3 January 1979 of the desire of the representatives of the Government of Chile to meet with the Group during the week beginning 22 January 1979 in order to consider the matters referred to in the Chairman's letter of 12 December 1978. By a letter dated 4 January 1979, the Government of Chile transmitted to the Group information on the labour plan of the Government and on measures permitting trade union meetings without prior authorization. (See annex IV). The Group met with the representatives of the Government of Chile in Geneva on 24 January 1979.

15. In preparing this report the Group, as in the past, examined in detail, and made use of, written material received from a variety of reliable sources, including inter-governmental and non-governmental organizations, and the testimony of witnesses. The Group through its Chairman, requested the views of the Government

of Chile on certain specific matters. <sup>11/</sup> During meetings with the Group on 24 January 1979 the representatives of the Government of Chile transmitted orally to the group information relating to the questions raised in the above-mentioned letters as well as on Chilean labour legislation and the situation of indigenous populations in Chile. At those meetings the representatives of the Government of Chile stated that they would transmit more detailed information to the Group on Friday, 26 January 1979, the last day of the Group's meetings. The Group thus has not had an opportunity to study that written information submitted by the Government. However, as appropriate, the Government's submissions have been reproduced in annex V to this report. The Group has considered carefully the other information, both oral and written, submitted by the Government of Chile to the Group.

16. The Group has reviewed carefully the observations of the Government of Chile on the Group's report to the General Assembly at its thirty-third session which were reproduced in annex LXXXII of that report. Those observations were taken into account in preparing this present report. The Group has concluded that the observations of the Government do not warrant any modification in the substance of the Group's report to the Assembly.

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<sup>11/</sup> In addition to the letters already mentioned concerning missing persons, and the reports of the discovery of bodies, the Chairman of the Group, through the Director of the Division of Human Rights, transmitted on 21 December 1978 to the Permanent Representative of Chile to the United Nations Office at Geneva, information on reported arrests and detentions in Chile during September 1978, for any comments which the Government might wish to make. By a letter dated 11 January 1979 the Chairman of the Group informed the Government of Chile concerning information it had received on the death of Javier Maldonado Alvear on 8 October 1978 in the town of La Calera. That information indicated the involvement of a member of the Carabineros. The Chairman stated that the Group would appreciate receiving any information which the Government of Chile might wish to submit, in particular any official investigation reports of the incident and the status of any criminal proceedings relating to the death of Mr. Maldonado. On 12 January 1979 the Chairman of the Group in a letter addressed to the Permanent Representative of Chile to the United Nations Office at Geneva referred to the undertaking of the Government to furnish a list of persons detained by the security agencies in Chile updated to 31 December 1978 and inquired if the Government would, in addition, be able to provide statistics of such detentions for the years 1976 and 1977, thus enabling the Group to have a better overall view of the matter. On 18 January 1979 the Chairman of the Group in a letter addressed to the Permanent Representative of Chile to the United Nations Office at Geneva referred to information received by the Group to the effect that a writ of preventive amparo had been filed on behalf of Gloria Elqueta Pinto and Gaston Muñoz Briones based on a fear that they would be subjected to arrest without valid grounds. The Chairman stated that the Group would appreciate receiving any information the Government might wish to submit. On 26 January 1979 the Group received information submitted by the Government of Chile in relation to the above-mentioned letters. (See annex V).

17. At the request of the representatives of the Government of Chile the Group decided to transmit the substantive chapters of the present report (chapters I-VIII) to the Government of Chile in order to enable the Government to submit its observations on them. The Group decided that the observations of the Government would be included in an addendum to the present report.

18. Since its establishment in 1975 the Group has carried out its mandate objectively, impartially and with the commitment to the highest degree of accuracy possible in its reports. In the successive resolutions adopted by the General Assembly and the Commission on Human Rights regarding the Group's reports, the thorough and objective character of those reports has been recognized.

19. The Group wishes to express its appreciation to the Secretary-General for the constant and effective support he has given to the Group since it was established in 1975.

20. The present report has been prepared in order to update the report submitted to the General Assembly by the Group at its thirty-third session (A/33/331). Its focus is on new matters of special importance and it is intended to be read in conjunction with the Group's report to the Assembly.

21. Finally the Group wishes to record its highest appreciation for the valuable assistance extended to the Group by Mr. Theo C. van Boven, Director of the Division of Human Rights, Mr. Thomas E. McCarthy, Secretary of the Group and the other members of the Division of Human Rights who have worked with great efficiency in collaboration with the Group.



I. CONSTITUTIONAL AND LEGAL DEVELOPMENTS  
AFFECTING HUMAN RIGHTS

A. State of siege and state of emergency

State of siege

22. Since the visit of the Ad Hoc Working Group to Chile, observations on which are contained in its report to the thirty-third session of the General Assembly (A/33/331), some developments have taken place which, in general, confirm the conclusions reached by the Group on that occasion.

23. In the report, attention was drawn to two developments: the termination of the state of siege and the continuation of the state of emergency. Reference was also made to the new powers vested in the Executive by Decree-Law No. 1,877 of 12 August 1977, powers which had previously been reserved solely for the state of siege. A clear indication was given, too, of the powers which the Executive does not have during the state of emergency; such powers include, for example, the transfer of detainees to an area other than that of their domicile, detention for an indefinite period without justification or trial, and the trial of persons charged with certain offences by military courts (see A/33/331, chap. II, sect. B).

24. Reference was made in the latter part of section B of chapter II of the report to the newspaper report of 2 September 1978 concerning the new proclamation of a state of siege in the Province of El Loa (A/33/331, paras. 99 and 100). The event reported, i.e. the re-establishment of the state of siege, meant that the situation in the Province of El Loa reverted to what it had been before. 1/

25. The measure referred to, i.e. the re-establishment of the state of siege, was taken, in accordance with the relevant Decree-Law, as a result of events "which have affected the discipline of the work force and the pursuit of vital economic activities". 2/ Scores of people were arrested and several of them were transferred to different areas outside the confines of the communes in which they had been living (see chap. VII, section B). The detainees included persons who had been active supporters of Unidad Popular. The Government stated that it was proclaiming a state of siege in the face of the threat posed by a Communist-inspired attitude of defiance, which was manifested in the determination to continue the "lunch-box campaign". 3/ The Minister of the Interior said that all the persons arrested had been directly involved as political agitators or instigators. Not all of them lived or worked at Chuquicamata. Some of them were from Coloma, including Cesáreo Castillo, the former Christian Democratic Governor. 4/ However, in the application for amparo which the detainees submitted as a result of their situation, they explained that they had had no knowledge of orders for their arrest and, furthermore, that none of them had been placed at the disposal of the courts within five days of their arrest, which would appear to indicate that their conduct had been irreproachable. 5/ The retired

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1/ For more information on this development see chapter VII, section B.

2/ El Mercurio, 2 September 1978.

3/ El Mercurio, 3 September 1978. It will be recalled that the lunch-box campaign took the form of not using enterprise canteens, which might at the most be described as an act of passive resistance but certainly not as an act of subversion.

4/ La Tercera de la Hora, 8 September 1978.

5/ El Mercurio, 22 September 1978.

General Nicanor Díaz Estrada commented, in connexion with the same subject, that "the situation in Chuquicamata and the absenteeism which occurred at El Teniente show us that there is labour unrest and that it is caused by the low rates of pay", and added that "in Chile there are people who cannot eat more than once or twice a week". 6/

26. Press organs such as El Mercurio which usually support the Government complained about the lack of information on the labour problem, 7/ and although they supported the Government in its "endeavours to safeguard law and order", they pointed out that "such support should not ... be confused with support for the methods which have been used to deal with the labour problem". 8/

27. Trade-union leaders such as Guillermo Medina, said to be supporters of the present Government, 9/ drew attention to responsibilities and mistakes of the Government and CODELCO (State enterprise responsible for working the Chuquicamata copper mines), and stated that the workers' complaints were legitimate. 10/ The periodical Solidaridad commented, in relation to the dispute at Chuquicamata, that "the Government has not adopted a clear position in the talks with labour leaders, but has responded by issuing the decree proclaiming the state of siege in the Province of El Loa".

28. The opinions quoted and the other information given in chapter VII, section B, all reflect the view that the events at Chuquicamata did not amount to more than what may be accurately termed a labour dispute (it was not even a strike) and not a state of internal unrest or imminent danger of such unrest. The clearest proof of this is the tacit or explicit recognition in the most varied quarters of the legitimacy of the workers' complaints. About 70 people were arrested under the state of siege on a charge of conducting subversive activities. 11/ Even after the dispute had been settled, however, the state of siege was maintained. This seems to indicate that the state of siege is of a preventive nature and is intended to avert possible pressure by the workers for negotiation of their demands, rather than to prevent a state of internal unrest. There were many statements in the press at that time to the effect that the labour leaders merely wanted to be heard and to hold peaceful negotiations (La Segunda of 7 September 1978 and information given in chap. VII, section B). These statements include that of Lieutenant-Colonel Jorge Muñoz himself, the Governor of the Province and Commander of the area in a state of emergency, who said that: "The workers took the wisest and most responsible decision ... I congratulate both the workers and their leaders." 12/

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6/ Interview of General Nicanor Díaz Estrada by Radio Cooperativa, published in Solidaridad, No. 51.

7/ El Mercurio, 3 September 1978.

8/ El Mercurio, 2 September 1978.

9/ Guillermo Medina is, in addition, a Government Councillor of State.

10/ El Mercurio, 8 September 1978.

11/ La Tercera de la Hora, 8 September 1978.

12/ Idem.

29. In the circumstances, it is clear that the Government is continuing to invoke, without any objective justification, provisions intended for exceptional situations of internal unrest (Decree-Law No. 640 of 10 September 1974), and that it is seriously restricting the exercise of a number of human rights.

30. One of the regions into which the country has been divided has thus again been placed in the situation which prevailed before 11 March 1978, whose impact on the enjoyment of human rights in Chile has been analysed in a number of earlier reports of the Group. This means that two exceptional states are now in force in this region: the state of siege and the state of emergency. 13/

31. The Decree-Law establishing the state of siege in the Province of El Loa is still in force and does not indicate how long the exceptional measure will remain in force. Even Lieutenant-Colonel Jorge Muñoz, Commander of the area in a state of siege and Provincial Governor, says that he is unable to clarify this matter since it is "the direct responsibility of the Ministry of the Interior". 14/

#### State of emergency

32. In its previous report, the Group also expressed concern about the continuation of the state of emergency throughout the country and the restrictions which this exceptional situation entails for human rights (A/33/331, paras. 76-96). On 10 September 1978, the Government extended the state of emergency for a further six months and appointed area commanders for the metropolitan region and the other 12 regions of the country.

33. Reference is made in the previous report to the power of preventive arrest, conferred by law on the President of the Republic (Decree-Law No. 1,877 of 12 August 1977). This power is exercised by the security organs, which use their judgement in deciding who "are believed with good reason to be guilty of endangering the security of the State" (art. 1 of Decree-Law No. 1,009 of 8 May 1975).

34. Reference is also made to the powers granted to the commanders of emergency areas under Act No. 12,927 of 6 August 1958, as amended by Decree-Law No. 1,281 of 11 December 1975, concerning restrictions on the rights of assembly, association, opinion and information, to the powers vested in the President of the Republic with regard to the expulsion of Chilean citizens (Decree-Law No. 81 of 11 October 1973), and to the restrictions imposed on the right of assembly of trade-union organizations (Decree-Law No. 198 of 10 December 1973).

35. With respect to judicial means of protection, the observations made by the Government of Chile on the report of the Group and annexed to that report (A/33/331) bear out the explanation given by the President of the Supreme Court to the Group during its visit to Chile. By way of clarification, however, the Government adds that "the explanation given by the President of the Supreme Court ... 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" (annex LXXXII, p. 9, para. 7).

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13/ As regards the effects of both states on the enjoyment of human rights, see A/31/253, paras. 73-86 and A/33/331, para. 99.

14/ La Tercera de la Hora, 8 September 1978. Information on the state of siege provided to the Group by the Government of Chile is to be found in annex XXI to this report.

36. The Government of Chile thus acknowledges the ineffectiveness of the remedy of amparo during a state of siege. The Group pointed out in its report that the Supreme Court adopted a similar criterion in a state of emergency, and quoted explicit and clear judgements by the Court (A/33/331, paras. 254 and 255), which has ruled that the grounds on which the Government base its decisions on the matter are not subject to judicial review. The Government is not required to state the reasons why it considers a particular person to be a danger to the security of the State and the courts cannot determine whether the decisions of the Executive Authority are reasonable and whether the measures adopted are strictly commensurate with the needs of the situation. The concept of a person who is a danger to public order is vague, and it is left to the Government to interpret it at its own discretion. The limitations which the Chilean judiciary has thus imposed on its powers of supervising the acts of the Executive Authority relate not merely to the fact of detention and the reasons for it, but also to its duration and to the length of time the detainee is held incommunicado. All these factors contribute to the continuation of violations of human rights relating to the life, physical integrity and health of persons held in custody (A/33/51, para. 194).

37. Accordingly, and as the Group concluded in its previous report, so many practical restrictions are imposed on the remedies of amparo and protection established by the laws in force that it is impossible to assert that the right to life, liberty and security of person is properly protected by the courts against possible arbitrary acts and abuses of power committed during a state of emergency.

38. With regard to the power of the judiciary to ensure compliance with certain formalities relating to arrest and detention, by such means as verifying the existence of an order issued by the competent administrative authority and the enforcement of the provisions of Decree-Laws No. 1,009, article 1, and No. 146 of 10 February 1976, the Group considers that the effective exercise of this power, while not limiting the powers of the Executive Authority in respect of personal liberty, might on the other hand help to strengthen the right to security of person since it would provide a means of establishing responsibilities with regard to the origin and conditions of detention and the treatment received by detainees.

39. The Group, in its report to the General Assembly (A/33/331, para. 779), called for the ending of the state of emergency in Chile in order that all human rights may be fully enjoyed. The Assembly, in resolution 33/175, reflected the Group's call when it urged the Chilean authorities "to cease the state of emergency, under which continued violations of human rights and fundamental freedoms are permitted". The Group recommends to the Commission on Human Rights to once again call upon the Chilean authorities to end the state of emergency and restore full enjoyment of all human rights.

#### B. The specialized State security agencies

40. In its previous report to the General Assembly (A/33/331, paras. 126 to 169) the Group presented a comparative analysis of the decrees-laws that established DINA, dissolved in 1977, and CNI which was brought into being to replace DINA. In particular, the Group examined the functions and powers of those organizations, the rights of their staff and the restricted provisions in both decrees. Reference was also made in that report to the activities of the latter organization. It was noted that, both as a result of the legislation governing it, and in practice, CNI continued to enjoy special powers and rights as well as the collaboration of other security agencies in its activities.

41. Since 1 September 1978, the Group has received a number of complaints concerning the activities of security agencies, in particular SICAR (Carabineros Intelligence Service) and CNI (National Information Agency).

42. It is evident from these reports, which are similar although they came from different sources, that it is only in exceptional cases that any of the established legal requirements for arrests or detentions - such as the production of a warrant of arrest, identification of the agent making the arrest, indication of the place to which the arrested person is taken or notification of the relatives - are actually complied with. In no case are all the requirements met. The presence in places of detention of persons who are in fact detained there is frequently denied, both to their families and to courts requesting information in cases where the remedy of amparo (enforcement of rights) is sought.

43. In practice, the effective powers of the security agencies, and particularly of CNI, appear to exceed those conferred upon them by law. In its previous report to the General Assembly, the Group reported on General Mena's observation that "CNI does not have powers of arrest, as DIINA did". Furthermore, it quoted the document submitted to it by General Mena, Director of CNI, which states that:

"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." 15/

44. However, in the case of the application for enforcement of rights submitted by Manuel Acuña Asenjo, CNI recognizes that "the subject of the action for enforcement of rights was arrested by CNI officials, under the powers given them by Decree-Laws No. 1,009, 1,877 and 1,878, as well as by Supreme Decree No. 187 of the Ministry of Justice. The arrest was made on 1 August 1978 and the subject was released on 4 August 1978, all in accordance with the above-mentioned legislation and within the time-limits laid down therein". 16/ According to the text of the decrees referred to in this communication, CNI could carry out arrests only on the basis of a decree signed by the President of the Republic or a writ or warrant. Neither one nor the other is referred to as authorizing arrest. The case is, therefore, one in which CNI, in making an arrest that was accepted without objection by the courts, exceeded its legal powers.

45. Various complaints received from reliable sources indicate that one of the most frequent activities of the security agencies is harassment and intimidation of specific groups or of individuals. Some people are visited by agents in plain clothes using security agency vehicles, who interrogate them or simply ask for them at their homes or places of work. Others are followed in the street or their houses are watched. In the case of the Carrasco Terraza brothers, the First Juvenile Court of Santiago, before which they appeared to complain of the persecution to which they had been subjected (one of them had been beaten and tortured during brief periods of detention),

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15/ A/33/331, para. 139.

16/ The Group has in its possession a photocopy of the official CNI reply to the Court of Appeals of Santiago relating to the amparo proceedings referred to.

appointed Police Sub-Lieutenant Ricardo Briceño to look after them. In this case, the court assumed responsibility for the protection of the plaintiffs. When Sub-Lieutenant Briceño was looking after the Carrasco Torraza brothers, the persons who had subjected them to acts of harassment appeared again, and the representative of the court demanded that they should identify themselves, which they did to the military. The victims were not informed of the names of their persecutors, which were kept confidential. The acts of harassment were not repeated, and an application for preventive amparo is now before the courts. However, the identity of the persons responsible has not been revealed.

46. The use of torture as normal practice in interrogations of detainees is still the most serious accusation contained in the reports received by the Group. According to those reports, not only CNI, but also other security and police services use such methods. It appears that some agencies make arrests and then hand over the arrested persons to CNI agents who take them to secret premises for interrogation, in which they use physical and psychological torture. The latter is apparently intended to break the prisoner's will by humiliating him and insulting his dignity as a human being.

47. Persons who state that they have been the victims of arbitrary detentions and ill-treatment allege that they have also been subjected to threats to prevent them from making any complaint about their detention or torture. The threats made are of further detentions, reprisals against relatives or dismissals from work. Many of these persons complain of having been forced to sign statements to the effect that they were not subjected to torture.

48. It is also alleged that not only persons suspected of having committed an offence, but also members of their families and friends have been arrested and have sometimes been subjected to similar treatment. A number of written statements received by the Group tell of the detention of relatives of the wanted person. The following is an example:

"They also came to look for us at our house here in Santiago at No. ... on ... Street. When they didn't find us, they arrested my mother, Mrs. ..., who is an invalid. They also arrested my sister's father-in-law, Mr. .... They took my mother to various places in Santiago and then released her at about 10.30, she had been arrested at 8.30 on ... October. They took my brother-in-law ... to a place he could not identify, where they gave him electric shocks. He was arrested at 6 o'clock and released at 9.30 on 21 October 1978."

49. In certain cases the victims allege that they were forced, owing to the severity of the torture, to acknowledge the commission of acts which they had not committed and to furnish the names of relatives or friends. Such a case is revealed in the statement identified by the letter B in chapter II, section B.

50. After suffering such treatment, some prisoners would appear to have been brought before the courts on the basis of groundless accusations, with the result that the courts have ordered their immediate release for lack of evidence.

51. Other complaints indicate that torture is used as a means of inducing a person to make a false statement that incriminates third parties. Part of a statement concerning a case which was given wide publicity in the press is reproduced below as an example:

appointed Police Sub-Lieutenant Ricardo Briceño to look after them. In this case the court assumed responsibility for the protection of the plaintiffs. When Sub-Lieutenant Briceño was looking after the Carrasco Terraza brothers, the persons who had subjected them to acts of harassment appeared again, and the representative of the court demanded that they should identify themselves, which they did to the military. The victims were not informed of the names of their persecutors, which were kept confidential. The acts of harassment were not repeated, and an application for preventive amparo is now before the courts. However, the identity of the persons responsible has not been revealed.

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"They asked me to tell them what political party these people belonged to and I answered that ... was a Christian Democrat. My reply was not to the liking of my interrogators who threatened to take me away and give me more electric shocks. I thought that it would be better to imply that ... was active in a more controversial political party and I said, he is really a member of MIR, but he pretends to be a Christian Democrat. With regard to ..., 17/ I said that he too was a member of MIR. I should make it clear that I have no idea whether these persons were ever active members of any political party, let alone the parties to which I had referred. They told me that I had to continue giving names and informing them of the activities of the persons I mentioned."

52. These purported confessions were used for circulation to the public as news that later proved to be false. Jorge Hourton, the Auxiliary Bishop of Santiago, referred in a statement to the case of a Catholic priest accused by the press, which had based its report on information provided by CNI, of collaborating with a political group that opposed the Government. 18/ In that statement he said, inter alia:

"...

"5. In reply to my request for an interview, General Mena was courteous enough to invite me to lunch on Thursday, 19 October, at the CNI headquarters for a talk. On that occasion he made the same observations as in his letter to Hoy, to which I replied that at least there were two clear facts: (1) That they had been detained by CNI agents for five to seven days in unidentified places; (2) that after a brief visit to prison and the Office of the Prosecutor they were released unconditionally for lack of evidence.

"6. There is a third fact which merits discussion: when they were released they were clearly traumatized and in bad physical condition. They stated under oath that they had been maltreated at CNI, the General denied this, giving as proof his confidence in his subordinates.

"7. I believed them, long before my interview with General Mena, because it seemed to me unlikely that, having recently undergone such an unpleasant experience, they would risk complicating matters further by making false and slanderous accusations under oath. This belief has now been confirmed by the conduct of CNI personnel; now they tell me that 'you can't believe a word they say', but when one of them 'confessed' that political meetings were being held in the parish and that a priest was advising them and allowing them, even 'counselling' them, to cover themselves by pretending they were a Church movement, their interrogators believed them immediately. Not only did they believe them, but they circulated the information widely in the press and on the radio and television throughout Chile. No inquiry was made of the person incriminated nor was any addressed to the parish or the Bishop.

"8. This is what brought me to denounce publicly in Church the slander and defamation of a priest and a parish on the basis of information from the security services. Furthermore, the correct version of the story was never

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17/ The names mentioned in the statement are those of persons connected with the Catholic Church of Chile.

18/ El Mercurio, 16 September 1978.



revealed by the security services but by the person who subsequently confessed shamefacedly that he had said it under pressure. It is curious to note when all is said and done that, having denounced a case of slander, I should now be labelled a slanderer whose statements lack 'any basis in truth'". 19/

Question of the penal responsibility of members of the police and security services for violations of human rights

53. The Government of Chile has come to recognize publicly that excesses have been committed by the police and security forces in Chile. During a press conference given to foreign journalists in November 1978, President Pinochet stated in relation to the debate on human rights at the United Nations that:

"I do not believe there is any country in the world which does not have human rights problems caused by the police suddenly exceeding their authority. Don't tell me that the police in the countries you represent have not exceeded their authority, because nobody in the world will believe you." 20/

Similarly, in his speech of 11 September 1978, President Pinochet said concerning the Amnesty Decree-Law of April 1978:

"There has been no lack of small groups which have sought to denigrate it, alleging that it provides a cloak to cover any abuses committed by members of the Security Services during the period when the state of siege was in force.

"With the moral authority that stems from always acting truthfully, this morning I maintain that the amnesty was indeed intended to be broad in scope so as to expunge the possible excesses committed by both sides in the fratricidal struggle unleashed in our country by Marxism, and I denounce as extreme affrontery any attempt even to insinuate that the crimes of those who were the cause of a civil war situation and who were defeated should have been pardoned, while the possible abuses of those who succeeded in their difficult task of averting that situation should be punished". 21/

The Group in this regard reported to the thirty-third session of the General Assembly that one of the principal negative effects of the Amnesty was to remove the criminal responsibility of those having committed such acts as torture of detainees and acts resulting in their deaths. (A/33/331, para. 779).

54. In each of its prior reports the Group has presented clear evidence that violations of human rights such as illegal arrest and detention and torture and other cruel and inhuman treatment were, to varying degrees, part of the methods of operation of the Chilean police and security services. Such acts were clearly not isolated instances of excessive zeal or overreaching by a few individuals, and they took place during the years when official Chilean declarations attested to the calm conditions prevailing in the country. The General Assembly and the Commission on Human Rights endorsed the Group's findings and called repeatedly upon the Chilean authorities in particular to prosecute and punish persons responsible for torture

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19/ Hoy, 15 November 1978.

20/ Hoy, 15 November 1978.

21/ El Mercurio, 12 September 1978.

and cruel, inhuman and degrading treatment. The Group also notes for example that the Inter-American Commission on Human Rights reached similar conclusions and called for the trial and punishment of those responsible for torture. 22/

55. General international law in regard to human rights, as reflected in the International Covenant on Civil and Political Rights, the American and European Conventions on Human Rights and the Geneva Conventions of 1949 lays down clearly the principle that torture or cruel and inhuman treatment are not permitted even in time of war or other public emergency. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 23/ states in its article 3 that:

"No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment".

This Declaration also provides that torture shall be made a criminal offence, that persons committing torture shall be punished and that, if public officials are involved, the victim shall have the right to compensation. The Geneva Conventions also call for the States to establish penal sanctions for torture and inhuman treatment. 24/

56. In the light of the attempts by the Chilean authorities to remove the penal responsibility of persons having committed violations of human rights, and in particular acts of torture and acts resulting in the death of detainees, the Group reiterates the firm view expressed in its report to the General Assembly 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 (A/33/331, para. 779). The Group thus recommends to the Commission on Human Rights that it should again call upon the Chilean authorities to identify, prosecute and punish those responsible for such violations of human rights or torture and acts leading to the death of detainees.

57. Based on the evidence before the Group, it is clear that excesses are being continuously committed by security agencies. It is essential in maintaining the human dignity of the individual that the Government of Chile be called upon to put an end to these excesses.

#### C. The role of the judiciary

58. The existence and effective functioning of judicial institutions for the protection of human rights are of particularly vital importance in periods when the operation of other institutional and social machinery designed to guarantee the full enjoyment of such rights has been suspended. This is why, in all its previous reports,

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22/ Third Report on the Situation of Human Rights in Chile,  
OEA/Ser.L/V/II.40, doc. 10, 11 February 1977.

23/ Approved by the General Assembly in its resolution 3452 (XXX) of 9 December 1975.

24/ Ibid., articles 7, 10 and 11.

the Group has referred to the role of the judiciary in protecting human rights in Chile. During its visit to that country, the Group interviewed magistrates, lawyers and legal advisers to persons giving evidence and alleging violations of human rights. In the report it submitted to the General Assembly after its visit to Chile, the Group referred to the general attitude of the courts to the protection of human rights in the context of the laws promulgated by the present Government and various administrative measures aimed at limiting the protection of such rights (see A/33/331, paras. 182-212).

59. The information examined by the Group since the submission of that report has not, in general, led it to modify its views expressed therein.

60. Various communications received from reliable sources indicate that the Judiciary continues to comply with, or at least to give its passive consent to, the steps and measures taken by the Executive, even when such measures are clearly contrary to laws in force. This compliance with all the measures taken by the Executive - an attitude which implies a refusal on the part of the judiciary to assume its role in safeguarding rights and guarantees - is reflected in the acceptance, without any criticism whatsoever, of reports which are prepared by the Ministry of the Interior in connexion with actions for enforcement of rights (amparo) and which fail to provide basic information such as the date of arrest, the authority issuing the warrant, the legal reasons for an arrest and the place of detention 25/ (see annex VI). The courts do not even inquire as to whether arrest warrants have been issued by a competent authority. Such omissions by the courts are evident in the decision handed down in connexion with Manuel Acuña Asenjo's action for enforcement of rights: after being informed of the arrest of Manuel Acuña Asenjo by the National Information Agency (CNI) without any decree or warrant ordering the arrest (see part B of this chapter above) and despite the fact that Decree-Law No. 1878 establishing CNI did not give the latter power of arrest, 26/ the court accepted this security agency's report 27/ and rejected the defence argument that the arrest was illegal since only a body expressly authorized to do so could have made the arrest legally.

61. Nor do the courts question the accuracy of official reports. However, all the information received from various sources indicates that the security services often conceal their role in activities for which they are responsible, including acts of persecution and harassment. In such cases, the courts reject applications for amparo without trying to check the accuracy of the information submitted, even when evidence is submitted in support of the facts on which the application for amparo is based.

62. Chilean judges apparently assume, without allowing evidence to the contrary, that all arrests effected by order of or with the consent of the Executive are legal. Thus, in the case of one application for enforcement of rights, the Ministry of the Interior initially stated that the person had not been arrested. Three days later it

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25/ The Group received a photocopy of one of these reports by the Minister of the Interior, the text of which is reproduced in annex VII. Information from other sources confirms that this type of incomplete report is frequent in cases of amparo.

26/ See A/33/331, paras. 137-141.

27/ See the report by CNI in annex VII.

changed its report and announced that he was in fact being held at the disposal of a military prosecutor, although by order not of that prosecutor but of a criminal court. 28/ Neither the inaccuracy of the first report, nor the irregularity of a situation in which the detainee was being held at the disposal of a military judge other than the judge issuing the warrant moved the court to investigate the case.

63. The Group has received additional information concerning unjustified delays in proceedings. In several cases, where persons were detained illegally for several days in secret CNI premises and tortured, the reports of the agencies concerned were submitted to the court, only after the detainees had been released and no steps were taken to obtain a reply within the legal time-limit. Just as they avoid applying basic principles such as habeas corpus (see A/33/331, para. 192), the courts accept delays in the processing of appeals, and this can seriously jeopardize security of the persons concerned.

64. In recent months, the security services have made arrests on the basis of "general warrants" issued by military or ordinary courts in connexion with investigations related to certain cases. The use of those "general warrants" has made it possible to detain persons totally unconnected with the case for which the warrant was issued. This is what happened to people living in the northern part of Santiago, who were held for questioning in connexion with activities of the Vicaría de la Solidaridad and whose arbitrary arrest was justified by the allegation that they were connected with a trial with which they had absolutely nothing to do. The Office of the Military Prosecutor dealing with the case ordered their immediate release, but neither the Court of Appeals, nor the Court-Martial, nor yet the Supreme Court accepted the application for amparo, despite the obviously arbitrary use made of the "general warrant of investigation". In a similar case, the court also rejected the application, although one judge was in favour of reporting in plenary "on the abuses that had taken place in connexion with general warrants of investigation".

65. According to El Mercurio of 3 January 1979, the Court-Martial temporarily suspended the criminal proceedings initiated to investigate the crimes alleged to have been committed against Mr. Carlos Contreras Maluje, who is missing, when a body of evidence confirming Mr. Maluje's detention by security agencies had been collected (see chapter III, the resolution of the Organization of American States concerning this case). Once again, the courts refused to investigate a case in which the evidence could have shown who was criminally responsible.

66. Mr. Israel Bórquez, President of the Supreme Court, told the Group during its visit to Chile that the purpose of amparo was to remedy the mistakes of the country's ordinary courts, not to inquire into arbitrary abductions or detentions by the Executive. 29/ In its report, the Group presented alternative interpretations of Chilean legislation as provided by Chilean lawyers. It noted that the Supreme Court's interpretation deprived Chileans of the safeguards for their freedom and security which, according to the interpretations of courts prior to September 1973, 30/ were granted by legislation in force.

67. In a speech made in December 1978 to newly-qualified lawyers taking their oath, the President of the Supreme Court, referring to the lawyers as colleagues of the judicial administration, urged them to ensure that "their denigration and repudiation

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28/ The Group has received reliable information concerning this application for enforcement of rights.

29/ A/33/331, para. 187.

30/ A/33/331, paras. 191-198.

at home and abroad are not facilitated and encouraged as a result of ambiguous pleas or petitions that are known to be contrary to the law and must inevitably be rejected". 31/ In its editorial comment on the speech in question, El Mercurio stated that:

"There is ample evidence to show that events in Chile are frequently distorted abroad. In the view of those who would defame us abroad, law in Chile is practically non-existent. Members of the Bar must therefore act with great care, particularly in cases that attract the attention of the public." 32/

68. The Group would have wished the President of the Supreme Court to make a more explicit statement urging the lawyers to assume fully their role of defending without hindrance those who believe that their rights are being disregarded or flouted.

69. The role played by the judiciary in Chile in the protection of human rights and fundamental freedoms is not one to be proud of and leaves much to be desired. The Chilean Courts do not seem inclined to proceed with investigations into serious violations of human rights.

#### D. Civil and political rights: the draft Constitution

70. In its report to the thirty-third session of the General Assembly, the Group noted that the Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, and that the will of the people, which shall be expressed in genuine elections held by free voting procedures, shall be the basis of the authority of government. 33/ It should be mentioned that the International Covenant on Civil and Political Rights also protects the right of all citizens to take part in the conduct of public affairs (article 25).

71. The Group also referred to the suspension of civil and political rights in Chile, which prevents Chilean citizens from participating in the adoption of decisions relating to the political affairs of the country. It also described some outlines of the Government's institutional proposals concerning civil and political rights, which were to serve as a basis for the elaboration of a draft Constitution that would be submitted to a plebiscite (L/33/331, paras. 213-247).

72. In the period since the preparation of that report, the Group has not been informed of any developments which have modified the situation with regard to political rights. The total suspension of the exercise of political rights continues to be one of the basic features of the national life of Chile. Since the last report of the Group, a number of trade union associations have been dissolved and severe restrictions have been imposed on the right of association in trade union affairs. These measures removed one of the very few means of participation in the public life

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31/ El Mercurio, 24 December 1978.

32/ Ibid.

33/ Article 21 of the Universal Declaration of Human Rights. The above-mentioned rights are also protected in the International Covenant on Civil and Political Rights, article 25.

of the country and possibilities of expression which were open to the entire population of Chile, a means of participation and expression which has acquired particular importance in the general framework of suspension or limitation of the enjoyment of civil and political rights. <sup>34/</sup> The state of siege in force in one part of the country and the state of emergency in force throughout the country reinforce these restrictions. The effect of the new legislation is to give a stable or permanent character to provisions and measures which initially appeared to be a response to an exceptional situation or were introduced by virtue of the state of siege but which are now reproduced in the new legislation and in the draft Constitution with a view to being made into a permanent feature of the "new institutional system". <sup>35/</sup>

73. The day after the state of emergency had been extended for a further six months <sup>36/</sup> and four days after the text of the preliminary draft Constitution prepared by a Government-appointed commission presided over by Enrique Ortúzar Escobar had been released to the mass media, <sup>37/</sup> General Pinochet made a speech in which he referred, *inter alia*, to the draft Constitution and to the phases in the process for the introduction of the institutional system announced in his Chacarillas statement <sup>38/</sup> and referred to again in his address of 5 April 1978. <sup>39/</sup> He placed particular emphasis on the need for a "strong and vigorous authority" and announced the procedure which would be followed for approval of the draft Constitution. In this connexion, he stated:

"The procedure to be followed with regard to the new Constitution may be summarized as follows: the preliminary draft recently submitted by the Commission for the Study of the New Constitution will shortly be transmitted to the Council of State for its opinion. Once the Council's report has been received, the Governing Junta will embark on a final review and, with the technical assistance of the Constitutional Commission, will approve the final wording of the draft which will subsequently be submitted to a plebiscite after being widely disseminated among the general public." <sup>40/</sup>

74. The draft Constitution provides for the holding of elections to appoint the President and the majority of members of Parliament. <sup>41/</sup> In the same speech, however, President Pinochet announced that the new Constitution would not enter into force in the immediate future. The President stated that:

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<sup>34/</sup> See chapter VII, section B, sub-section 2.

<sup>35/</sup> See chapter VII, section B, sub-section 2, for an analysis of the new labour legislation and, in particular, Decree-Laws Nos. 2,346 and 2,376.

<sup>36/</sup> The state of emergency was extended on 10 September 1978. See section A of this chapter.

<sup>37/</sup> El Mercurio, 7 September 1978.

<sup>38/</sup> See A/32/227, annex XIV.

<sup>39/</sup> See A/33/331, paras. 224 and 225.

<sup>40/</sup> El Mercurio, 12 September 1978.

<sup>41/</sup> Under the draft, part of the membership of Parliament would be appointed by the President and other institutions of the State, and former Presidents would be members by rights. El Mercurio, 19 October 1978.

"The Constitution itself will set the date for its entry into force; for this purpose a reasonable period will be allowed from the date of its approval by plebiscite, such a period being essential for the promulgation of certain organic laws acts prior to the application of the Constitution.

"Once the new Constitution enters into force, there will be a period of transition lasting an estimated six years during which, as has already been stated, the future Parliament and other constitutional bodies will be established with the structure and functions prescribed for them under the definitive institutional system, subject to the special alternative arrangements for the transitional phase; political elections shall not, however, take place until 1985, when the various authorities concerned will be elected in the circumstances and in the manner laid down by the new Constitution, thus initiating the full application of the Constitution." 42/

75. Work is still being done on the text of the draft Constitution; it is currently in the hands of the Council of State, 43/ to which it was referred for consideration and for transmission to the President of any comments the Council may deem pertinent. The Council of State has invited citizens to submit their suggestions in the form of written and duly signed statements. 44/ This is being done at a time when the country is under state of emergency, and the right of assembly 45/ and the exercise of all political rights are severely limited.

76. The Council of State has received 150 suggestions and comments, submitted in writing and bearing the signatures of their authors, and has decided that only about 70 of them are worthy of attention, according to press reports. 46/

77. The text of the draft Constitution as released to the press contains no provision regarding the period of transition announced by President Pinochet in his speech. Commenting on this presidential message in an editorial of 13 September 1978, El Mercurio stated the following:

"A particularly important feature of the message is the period of transition between the present phase of the régime and the full entry into force of the constitutional system to be approved by plebiscite. This transition in no way signifies the ending of the military Government, as His Excellency rightly points out. It is the period during which the organs created by the new Constitution will begin to operate. Many of them are not formed by elections and can therefore be organized and enter into operation as soon as the provisions of the Constitution enter into force, the basic laws envisaged in the draft Constitution having first been enacted. It is presumed that the Chambers will also operate during the transitional period, on the basis of members chosen by the Governing Junta. A preferable course of action, it seems to us, would be to refrain from bringing the Congress into operation during

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42/ El Mercurio, 12 September 1978.

43/ Sec A/33/331, paras. 235 and 236.

44/ El Mercurio, 17 November 1978.

45/ See chap. VII, the suspension of a meeting of the Group for the Study of the Constitutional Reform.

46/ El Mercurio, 21 December 1978.

the period of transition. His Excellency will not find many capable persons prepared to perform elective parliamentary functions who would be appointed on a one-time basis by means of an Executive decree. A councillor of State or any other executive, advisory or consultative officer can legitimately be appointed by the Government; however, the same is not true of participation in a branch of government such as the legislative power. Such participation results either from an exceptional military revolt such as that of 11 September 1973 or from election by the population. It is difficult for the authorities which emerged from the military revolt to delegate legislative powers, and whoever received such a delegation of powers will always, in practice, feel subordinate to presidential authority. Chambers selected by a President or a Junta will lack credibility abroad."

78. On this question, a variety of opinions have been made public which emphasize the lack of provisions for the immediate future, a deficiency which is in contradiction to the apparent haste to approve a Constitution whose date of entry into force has not been established and which, in any case, would not come into effect before 1985. In a communication addressed to the Council of State, the Circle for Constitutional Studies (Circulo de Estudios Constitucionales) stated that there has been an "obvious omission" from the articles of the draft of specific provisions regarding the "precise date of entry into force of the new Constitution" and an "indication of the constitutional régime governing the present transitional phase". 47/ General Leigh, a former member of the Governing Junta, stated that: "I consider it more important to have clear rules for the period of transition than to concern oneself with a Constitution which would be applied in several years' time". 48/

79. For the time being, there is no knowledge of any official plans to prepare electoral rolls. Since the period of transition is apparently to last for six years commencing once the plebiscite has been held and terminating in 1985, it would seem that the plan is to hold the plebiscite in 1979. 49/ The holding of a plebiscite without electoral rolls would give rise to a situation contrary to regular practices and more or less similar to that which the Group commented on in connexion with the plebiscite of 4 January 1978. 50/

80. The Group for the Study of the Constitutional Reform issued a statement which is reproduced in part in the issue of El Mercurio dated 9 September 1978, and in which it observed that:

"... in any event, the approval of a Constitution demands a procedure which guarantees the free and effective participation of the population and respect for its truly expressed will. This means reconstituting the electorate as defined in article 7 of the Political Constitution of the State, as amended by Act No. 17,284 of 23 January 1970, a provision which is still in force. It

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47/ The Circle for Constitutional Studies has the following members: former Senator Hugo Zepeda Barrios, Chairman; former Senator Tomás Pablo Elorza, first Vice-Chairman; Rafael Barbosa Popolizio, second Vice-Chairman; César Araneda Encina, Secretary; and Jorge Arancibia Muñoz, Gonzalo Figueroa Yañez, Jorge Rogers Sotomayor and Alejandro Vivanco S., El Mercurio, 27 December 1978.

48/ Las Ultimas Noticias, 13 October 1978.

49/ El Mercurio, 17 September 1978.

50/ E/CN.4/1266, para. 38.



is therefore imperative to open the electoral register with a view to reconstituting the electoral roll - i.e., the list of Chileans who are entitled to vote. This involves re-establishing an electoral authority which is independent of the Executive and which guarantees that suffrage is exercised in conditions ensuring that the will of the population is respected. The process of registration could be completed in a period not exceeding six months, provided that it is initiated immediately and is carried out in accordance with the provisions mentioned above." 51/

81. At a plenary meeting of the Group for the Study of the Constitutional Reform attended by more than 100 persons, a document relating to this question was circulated which states, inter alia, that:

"The present emergency régime makes it impossible to engage in any genuinely free public debate which would make it possible to compare the different tendencies within the Chilean community with a view to seeking a basis for agreement and to ascertaining the true opinions and desires of the majority ..."

and rejects "here and now the validity of any 'plebiscite' similar to the so-called 'consultation' of 4 January 1978 and designed to secure ratification by the people of the official draft of a new Political Constitution." 52/

82. One of the points which President Pinochet expressly mentioned during his aforementioned speech, 53/ in referring to the draft Constitution, was that it:

"penalizes, by the loss of political rights, persons who propagate doctrines whose idea of society is declared, by a court which offers the broadest guarantees of competence and of independence from the political authorities, to be contrary to the principles which constitute the foundation and the essence of our national being." 54/

83. It will be seen that the draft to be submitted for approval provides for a crime of opinion, in that it penalizes acts aimed at the dissemination of ideas which differ from those explicitly embodied in the new Constitution. Consequently, far from signifying any advance in the enjoyment of human rights, the text would seem to give a permanent character and constitutional status to certain restrictions on human rights imposed by Decree-Laws and by the judicial practice established under the present Government, both of which have been criticized by the Group in its reports. In an editorial dated 22 October 1978, El Mercurio described the concepts applied in regard to freedom of expression as unacceptable.

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51/ The Group for the Study of the Constitutional Reform is preparing a draft Constitution as an alternative to the Government's text: the Group's membership includes jurists, university professors and experts.

52/ El Mercurio, 3 December 1978.

53/ El Mercurio, 9 December 1978.

54/ The penalty referred to is provided for in article 8 of the draft Constitution.

84. The Group is particularly struck by the restrictions imposed in the Government draft on the remedies of amparo and protection during states of emergency. Article 46 (3) of the Government draft states:

"The remedy of amparo may not be invoked during a state of assembly or a state of siege in respect of measures adopted by virtue of those states by the competent authority, acting in accordance with the rules established by the Constitution and the law.

"The remedy of protection may not be invoked during states of emergency in respect of official measures adopted in accordance with the Constitution and the law, which affect such constitutional rights and guarantees as may have been suspended or restricted in conformity with the rules applicable to such states.

"In the cases covered by the foregoing paragraphs, the courts of justice may in no circumstances pronounce on the grounds for measures adopted by the authorities in the exercise of their powers."

85. The above-mentioned provisions impose restrictions on the powers of the judiciary similar to those applied in judicial practice since the present Government took over on 11 September 1973; the ineffectiveness of those powers in defending personal security and freedom has been repeatedly emphasized by the Group (A/33/331, recommendation (13)).

86. The Group notes that the legitimacy of any institutional proposal is largely dependent on compliance with the principles affirmed in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights. In other words, the population must enjoy the right freely to participate in public discussion and its opinion, expressed through a free voting procedure, must carry weight in decisions regarding the direction and implementation of such institutional changes.

## II. LIFE, LIBERTY AND SECURITY OF PERSON

87. The Ad hoc Working Group dealt with the situation of the right to life, liberty and security of person in Chile in chapter IV of its report to the General Assembly at its thirty-third session (A/33/331). That chapter contained information on international standards and Chilean constitutional and legal provisions relating to the right to life, liberty and security of person, on the number of arrests and detentions and the practices used in arrest and detention, on ill-treatment and torture including the question of identifying and punishing those responsible for torture, on places of detention, on conditions in the prisons and the right to a fair trial without undue delay and on the long-term effects on persons of violations of the right to liberty and security of person. The final section of that chapter contained the Group's evaluation of the situation with respect to liberty and security of person in Chile during the period covered by that report (A/33/331 paras. 378-385). The observations of the Government of Chile on chapter IV of the Group's report to the Assembly are contained in pages 13-15 of annex LXXXII of that report. The information on the situation of the right to life, liberty and security of person in Chile received by the Group since the adoption of its report to the General Assembly and which is reflected in this chapter generally confirms the information and views contained in the Group's report to the Assembly.

### A. Arrest and detention

#### 1. Number of arrests in 1978

88. Information from a reliable source has been received by the Group updating prior information concerning the number of arrests for political or national security reasons during 1978. These arrests were carried out by Carabineros, agents of the CNI (Central Nacional de Informaciones) or other security services or agents of the Investigations Bureau (Investigaciones). In some cases the persons making the arrest did not identify themselves or simply stated that they were security agents. In the following table the number of arrests for 1978 are set out. The 780 arrests made on May Day 1978 and the 400 arrests made on 7 June 1978 of students demonstrating in support of the hunger strike of relatives of missing detainees have not been included in this table.

#### Arrests for political or national security reasons

	<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	31
August	97	26	24
September	39	68	85
October	19	36	42
November	15	52	-
December	20	20	-
	<u>552</u>	<u>346</u>	<u>378</u>

(Figures for November and December 1978 not available)

Even though the figures for November and December 1978 are not available, this table shows more arrests for political or national security reasons in 1978 than in 1977, which leads the Group to conclude that there has been a deterioration in this particular area.

89. Information has been transmitted to the Group by the Government of Chile concerning the persons detained and interrogated by the CNI from 1 January 1978. <sup>1/</sup> (See A/33/331, para. 310, footnote 8). The following table reflects the information furnished by the Government.

	<u>1978</u>
January	17
February	7
March	0
April	1
May	3
June	9
July	2
August	8
September	5
October	0
November	0
December	7

90. In addition to information on arrests, the Group has continued to receive confidential information from reliable sources on cases of intimidation which consisted of entering and searching homes, usually at night, questioning persons about their political or humanitarian activities, and following persons or watching their homes in a conspicuous manner. In 1977 more than 100 such cases were reported and for the first ten months of 1978 the number is 150. This indicates that the situation has deteriorated in 1978 as compared with 1977, as is also reflected above concerning arrest for political and national security reasons.

## 2. Specific cases of arrests and detention

91. The confidential information received by the Group from reliable sources indicates that during the second half of 1978 arrest for political or national security reasons continued in most instances to be effected without fully complying with existing Chilean laws governing arrest (see A/33/331, paras. 301-302). Arrest or search warrants were not shown and the family members were rarely informed of the arrest and place of detention as prescribed by law. In certain cases and some time after the arrest took place, notice of arrest was given to the family but it did not fulfil the substantive requirements of the law. It has been reported that in certain cases in which persons have been arrested in their homes, violence to other family members and violent searches have taken place.

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<sup>1/</sup> See annexes V and XXI to the present report and A/33/331 para. 310, footnote 8.

The use of automobiles without licence plates in arrests continues to be reported. In most cases the arrested person is blindfolded and taken to one or more secret places of detention for questioning. Information from the individuals after their release indicates the places of detention are other than those prescribed by Chilean law and that they are thus illegal.<sup>2/</sup> The treatment of persons during their detention is described in section B of this chapter.

92. In most of the reported cases of arrest the persons concerned were simply released on the street after their interrogation. Reports of threats being made for the purpose of forcing the person to collaborate with the security services or of preventing him from reporting his arrest and detention have been received. Since the persons released on the street were not turned over to the courts no independent official record of arrest exists. In a few cases the detained persons after questioning were turned over to the military prosecutor and the civilian courts. With reference to the reasons on which arrests were based, the Group notes that in many of the cases brought before the civilian courts the person was rapidly released and the charges dropped as not being well-founded. This could be seen as one of the positive results of the ending of the state of scige and the restoration of the jurisdiction of the civilian courts. In almost all of the cases of arrest reported since August 1978 both those in which the person was released and those in which he was turned over to the prosecutor and the courts, the detention, although in an illegal place, did not exceed the five-day maximum period of detention provided by law.

93. The following cases have been selected as representative of the information received by the Group.

(a) Arrest and detention of six persons accused of preparing subversive pamphlets.

94. In September 1978 Chilean newspapers carried reports from the security services concerning the arrest and detention of six persons accused of being members of the communist party, of preparing subversive literature and possessing three fire arms. The security services linked a Catholic priest to the subversive activities. El Mercurio of 16 September 1978 under the headline "Seis detenidos: desbaratada célula del PC" reported the arrests in part in the following terms:

"Six members of the outlawed Communist Party, charged with preparing pamphlets and subversive documents, were arrested by security agents. Investigators stated that these individuals, two of whom were placed at the disposal of the Office of the Military Prosecutor of the First District, were found to be in possession of two portable duplicating machines, a large number of documents and pamphlets, and three fire arms".

.....

"According to reports, Pizarro Vallejos (one of those arrested) was responsible for preparing pamphlets at the home of Lucindo Sandoval Barros, who was also arrested, at the Villa Conchali, 5632 República de Brasil".

"There, by their own admission, they were assisted by the French priest Pablo Andrés, who advised them that they should not present themselves openly as an underground political movement, but rather as members of the Catholic Working Youth".

.....

<sup>2/</sup> Confidential reports of arrest and detention in the files of the Group.

"The investigating officials informed journalists that all the individuals involved had been arrested in accordance with the established legal procedure and their families informed in writing."

The six persons were brought before the courts and released unconditionally because of lack of evidence in the case against them (falta de méritos).

95. The Group has received a copy of a sworn statement by Lorenzo Pizarro Vallejos made after his release in which he described his arrest and detention. This statement, from which the following excerpts were taken, was presented to the Court of Appeals of Santiago.

"At about 2 a.m. on 9 September 1978, I was asleep at home. It was then that I became aware of a great commotion in my residence. The door was struck violently, after which the persons who had arrived at the house jumped over the garden gate, which was closed. Three men in civilian clothing, all armed and carrying lamps, came to my bedroom, declared themselves to be police officers and demanded to see my identification papers. Wearing only the few garments that I was able to collect before being handcuffed, and without being shown any warrant for my arrest or being given any explanation of the reasons for it or regarding the place to which I was to be conducted, I was taken from my home and placed in a large, modern vehicle, light grey in colour. I was blindfolded with a piece of cloth. The vehicle changed direction several times so that I lost my bearings, and after a journey of some twenty minutes, we arrived at the place in which I was to be held, deprived of my liberty, incommunicado and maltreated for several days.

.....

"From there, they took me to another room - I don't know if it was the same one in which they interrogated me the first time - in which I was ordered to undress once again, and as I did so they told me that they didn't like being lied to. They went on to say that I was a liar and proceeded to tie both my hands to my feet and passed an iron bar behind my knees. I felt myself being lifted and my head hanging backwards. While I was in that position, they began to apply electric current to various parts of my body and asked me questions. Unable to stand the pain caused by the electric current and the blows that they were dealing me, I said 'DON'T TORTURE ME ANY MORE, I'LL TELL THE WHOLE TRUTH'. I thought that the only way of avoiding even greater suffering was to give the names of certain individuals. I was then taken out and carried to a bunk; later on they sat me on a chair. Although I knew for certain that the names I was going to give had nothing to do with any matter that could be of interest to my interrogators, I said that I was the leader of a Communist Youth cell, a function that had been entrusted to me by RAMON GODOY, and that I did not yet know who the members of the cell would be. They insisted that I must have been given some sort of information and that someone would have to give me my orders. While they were interrogating me, I was concocting the story that I would eventually tell them. I replied that the person who gave me my information

was Luis Vera. They pressed me to tell them whatever else I knew. I replied that I knew nothing else. They threatened that if I was lying I would get more of the treatment I had already tasted. They asked me to tell them about the Anti-Fascist Front, since I must know something. I replied that - and this was all the product of my imagination - in the northern district of Santiago there was a church organization that operated in the 'Casa de Vidrio' and another that operated in the adjacent house, and that I belonged to the one in the Casa de Vidrio. I also told them that two groups met there: a meditation group which devoted itself to purely spiritual questions, and the other called EJAS - Equipo Juvenil de Acción Solidaria - which, in addition, engaged in activities of a political nature. I also said that, next to the Casa de Vidrio, was the Pastoral Obrera, which was in charge of Luis Jeldres and Patricio Reyes. I added that when the Casa de Vidrio and Pastoral Obrera groups undertook joint activities, it was always Luis Jeldres who chaired the meetings. They asked me whether the 'priests' were aware of this or not. I replied that the 'priests' were either unaware of or simply turned a blind eye to these goings-on. They asked me about the activities of the priests and their names. I replied that I knew the priests as Pablo Andrés, of French nationality, Pierre Roland, of the same nationality, and Father Claudio, who I thought was also French, although I was not sure. They asked me who was the parish priest of that church and I replied, although in fact I did not know, that it was Pierre Roland. I added that the priest who, judging from his enthusiasm was most in sympathy with our activities, was Pablo Andrés, since he understood us better and advised us that our activities should appear to be those of a workers' church group and not as political activities. They insisted that I should tell them about the activities planned by the Anti-Fascist Front.

.....

"After leaving the bath, they took me to a room where they sat me on a chair, told me to remove the blindfold from my eyes without looking to either side, and handed me a number of typewritten sheets of paper. They told me that I must copy in my own handwriting what was written on the sheets. I obeyed and copied everything that was written on the sheet, which took me quite a while. On the sheets that I had to copy by hand were set out all the things that I had been forced to say under torture, none of which were true. After I had finished writing, I had to declare that I had not been subjected to any form of pressure or maltreatment, and that my statement had been obtained voluntarily. When I had finished copying the statement, they returned me to the room in which the other detainees were being kept ... At that Office (Office of the Military Prosecutor of the First District), I made a statement, having been instructed by the clerk of the court to use the same words as before, otherwise I could be taken back to the place from which they had brought me. In view of this 'warning', or rather threat, I repeated the story that I had told when I was being interrogated and tortured ..."

96. Information received by the Group indicates that the other five persons were arrested without the required warrants, that the arresting officers did not identify themselves, that the required search warrants were not shown and that they received treatment similar to that of Mr. Pizarro during detention. However, it was reported that during the days following their arrest the families of the detained persons were notified that the arrested persons were being held by the CNI. Although the arrested persons were held in unauthorized places of detention, they were turned over to the courts within the required period.

97. The Group by a letter of 21 December 1978 transmitted information on the above-described arrests and detentions to the Government of Chile with the view to the submission by the Government of any observations which it might wish to make. On the last day of the Group's meeting, 26 January 1979, it received information on these cases from the Government. As appropriate, this information is included in annex V.

98. For excerpts from sworn statements describing arrests and detentions made during September and October 1978, see Section B below.

(b) Arrests of persons and searches of places connected with the humanitarian activities of the Catholic Church

99. The Group has received information on the arrests of persons and the search of places connected with the humanitarian activities of the Catholic Church (see also chapter I, Section B above). On 17 October 1978 four agents of the Investigations Bureau (Servicio de Investigaciones) searched the home of three priests; one priest was an official of the Vicaría de la Solidaridad and another was adviser to the Movimiento Obrero de Acción Católica. The search lasted for three hours and no search warrant was shown. The priests were questioned and prevented from using the telephone and the agents removed some written material from the house. The Archbishop of Santiago formally protested this search. The Government stated that officers had gone to the house in question pursuant to a court order to investigate a taxi robbery which had taken place some time before and that they did not know that priests were living in that house.<sup>3/</sup> In a press release dated 8 November 1978, the Archbishop of Santiago disputed the version of the events given to the press by the Government.<sup>4/</sup>

100. The magazine Solidaridad published by the Vicaría de la Solidaridad in its issue No. 57 of October 1978 reported among others the following four incidents.

On 2 August last, Mrs. Marina Grez, a member of the New Dawn Employment Exchange for Retired Persons was approached by individuals in civilian clothes and uniformed carabineros in a room in the premises in which the Vicariate of the eastern zone operates. They asked to see her identification papers and where she was going, and told her that they had orders to check all persons in the vicinity of the Vicariate.<sup>5/</sup>

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<sup>3/</sup> La Torreccera de la Hora, 19 October 1978

<sup>4/</sup> El Mercurio, 9 November 1978.

<sup>5/</sup> Solidaridad, No. 57, October 1978.



On 6 August, Mr. Rogelio Correa, a distributor of the review Solidaridad, was arrested by carabineros while unloading copies of the review in the parish of San Gregorio. The carabineros carefully inspected the vehicle which Rogelio Correa was using, and found inside it copies of the United Nations Universal Declaration of Human Rights, published by the Vicaria de la Solidaridad. He was taken under arrest to the 27th Carabineros Station, from which he was later released.<sup>6/</sup>

On 26 August, during a folk festival, Father Jesús Herreros Vivar was detained while visiting the Carabineros Station in the village of Dávila to seek information about the arrest of the person who had organized the festival and one of the participants. He was interrogated at the Station by carabineros about the action taken by the parish in connexion with missing detainees. Later on he was interrogated by two civilians regarding the organization of the folk festival and his personal participation in the Association of Relatives of Missing Detainees. The persons questioning him continually asked him to co-operate and threatened him with a visit by CNI at his home.<sup>7/</sup>

On 14 September, Juan Carlos Berríos Alvarez, a university student, was arrested in the centre of Santiago (see Solidaridad No. 54) and taken to a secret place of detention where he was interrogated and forced to sign a statement implicating church officials and organizations in "subversive activities". The bodies named included the Alameda Pastoral Centre, University Parish, the Vicariate of Solidaridad and the Vicariate of Pastoral Juvenil.<sup>8/</sup>

#### B. Ill-treatment and torture

101. Reports concerning the ill-treatment and torture of detainees in Chile continue to be received by the Group. For the month of August 1978, ill-treatment or torture was reported to have taken place in 9 of the 24 reported cases of arrest and detention for political or national security reasons. The figures for September are 10 cases of ill-treatment and torture out of the 85 cases of arrest and detention and for October ill-treatment or torture was reported in 12 of the 42 cases of arrest and detention.

102. Ill-treatment and torture usually take place during the period of detention before the detainee is brought before the courts. Reports indicate that persons are subjected to beatings and other types of physical abuse such as being hung by the arms or legs and that electric shocks are still widely used as a form of torture. Recent reports of torture indicate that it is now used principally to obtain confessions from detainees implicating them and others in illegal activities. This is illustrated by the sworn statement of Lorenzo Pizarro (see section A above). However, the dismissal of charges by the civilian courts in some of these cases indicates an unwillingness of the courts to base prosecution on such confessions as they are obviously obtained under duress.

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<sup>6/</sup> Ibid.

<sup>7/</sup> Ibid.

<sup>8/</sup> Ibid.

103. The following descriptions of arrests and detentions which took place during September and October 1978 are taken from two sworn statements received by the Group. The Group has been requested to keep the identities of the persons making the statements confidential and thus their names and certain other details have been eliminated.

Statement A

"I was arrested at my home on ... October 1978 at 3 p.m. On that date, three armed civilians arrived at my home, forced their way in and held me and my brother at gunpoint. These individuals had arrived in a sky-blue Peugeot 504. Both my brother and I were handcuffed, put in this vehicle and forced to crouch down on the floor; plastic tape was placed over our eyes and we were covered with a poncho. We later learned from our families that these same persons returned to our home and broke in, causing damage and removing all the photos that could be found. At no time did they identify themselves or produce a warrant. With my brother I was taken to an unknown place ... where we were ordered to undress. They stretched me out on the floor and struck me with both hands on my ears - a method which my captors called the "telephone"; electric current was applied to all parts of my body, but in particular to my anus and testicles, and water was poured over me while the current was being applied, causing convulsions and indescribable pain throughout my body. This went on for about an hour. The convulsions produced by the application of the electric current made the adhesive tape come away so that I could see my brother who was seated handcuffed on a chair and watching what they were doing to me.

"I asked my torturers to tell me why I was being detained and why they were doing all this, but they made absolutely no reply and continued to maltreat me. As a result of my continual convulsions, the handcuffs injured my wrists. On a number of occasions I lost consciousness, but they revived me with water and continued to apply electric current to my body.

"At about six in the evening, after two hours of beating me and applying current, they ordered me to "tell where the revolver is", asked me about an assault on a carabinero, in the course of which his revolver had been taken, told me that I had the revolver and that I should tell them who had helped me carry out the assault on the carabinero. I told them I had no idea, but they continued to beat me and apply current to all parts of my body. Such was my suffering that I told my interrogators that although I knew nothing I was prepared to take the blame provided they stopped maltreating me; nevertheless they insisted that it was me. After a further hour of this kind of ill-treatment they seemed to be convinced that I was innocent, ordered me to get dressed, gave me a little water and immediately took me to a car. I was in a bad way, on the verge of passing out and being sick. In the vehicle they blindfolded me with adhesive tape and put glasses on me, presumably dark glasses. They made me pretend that nothing was wrong and that I was just taking a ride with them. They offered me money and told me to inform them who had assaulted the carabinero and had the revolver. It was then that they said that I must co-operate with them. We drove for about 30 minutes.

"At about 1.20 p.m. on ... October 1978, I was released near my house. My brother remained in detention until Wednesday, ... October and was released at 5 p.m."

Statement B

"On Saturday, ... September of this year (1978) at about 1.30 a.m., while I was asleep at home, three carabineros arrived bringing my brother. The carabineros forced their way into my home and woke me up, after which, without offering any kind of explanation, they took me to the Carabineros Station in a sky-blue station wagon, although I cannot be sure of the colour since I was still half asleep.

"At this Station I was interrogated to determine whether I had any knowledge of a weapon which had been lost by a police officer during an attack or assault on his person some days previously - I think they mentioned the previous Saturday. As I knew nothing of the matter about which they were questioning me, I told them so, with the result that they put me into a cell. Presumably my reply did not satisfy my interrogator, who proceeded to cover my eyes with adhesive tape and handcuffed my hands behind me. Then, handcuffed and blindfolded, I was put into the back of a vehicle - a yellowish coffee-coloured station wagon - and taken somewhere else ...

"In this unknown place, I was led down to a cellar and immediately laid on my back on a table and where a rope was placed around my chest, with my hands still handcuffed behind me. Totally immobilized and tied up in this way, in addition to being naked - as I had been forced to strip beforehand - my interrogation was begun. In the course of the interrogation, I was continually punched and kicked, as well as subjected to powerful electric shocks which left burns and marks. Moreover, in the desperation caused by the pain I was experiencing, I tried to get out of the handcuffs, which cut deeply into my wrists. I was asked whether I knew anything about the assault on a police officer some days previously. I was told that the police officer in question had been assaulted and robbed of some money and a gun. They explained that they were interested not so much in the money as in the gun, which, according to them, could cause injury to some innocent person. I said that I knew nothing of what they were asking me about and that, if I knew anything, I would certainly tell them, but that unfortunately I had nothing to tell them. Following my reply I was beaten further and they proceeded to hang me up because, according to them, I didn't want to tell the truth. Having hung me up, they applied electric current to my anus. Since I could tell them nothing of interest to them, they lowered me from where they had hung me up and asked me if I had any friends. I replied in the affirmative and gave the name of a fellow member of a sports club called ... In reality, at that moment, I gave his name in the hope of stopping them from beating and torturing me any further, in spite of the fact that I had absolutely no idea whether the person in question was in any way connected with the events about which they were questioning me.

"After I had given the name of my friend, they dressed and untied me and placed me, still handcuffed and blindfolded, in a vehicle.

.....

"When we were again inside the van, we left that place and returned to the place where they had tortured me previously and where once again they took me down steps, up steps, round corners and along stretches where

I had to bend down to get through, after which they put me in a cell, and did the same with ..... in an adjoining cell. We stayed there for a long time, during which a person came to my cell at regular intervals and told me that I had better admit that I was involved in the affair, since a number of other persons had been arrested who had stated that I knew where the weapon was. Each time that this person made this statement, I replied that I knew nothing about the weapon and that I would like him to bring the persons whom he said ...".

C. The role of the judiciary in the protection of the right to life, liberty and security of person

104. In its report to the General Assembly at its thirty-third session the Group dealt with the failure of the Chilean courts to make effective use of the writ of amparo (habeas corpus) as a means of protecting the right to life, liberty and security of person and of the failure to identify, prosecute and punish persons guilty of torturing and ill-treating detainees (A/33/331, paras. 182-212 and 382-385). As the Group has shown in chapter I, section C, of this report, the Courts continue to refuse to make effective use of the writ of amparo as a means of protecting persons from illegal arrest and detention and from ill-treatment and torture during the period they are held by the security services, prior to being turned over to the courts. However, as noted above, persons tortured and ill-treated during detention are often released after being brought before the courts.

105. The information received by the Group does not reflect any efforts by the Chilean judiciary to identify, prosecute and punish those persons responsible for publicly known cases of ill-treatment and torture.

### III. MISSING PERSONS

106. The disappearance of persons after their detention by Chilean police or security agencies has received the close attention of the Group in each of its prior reports including the report submitted to the General Assembly at its thirty-third session (A/33/331, chapter V). In the latter report the Group dealt with the information it received in Chile - including eye-witness accounts - of many specific cases of arrest and subsequent disappearance; the question of places of detention and missing persons; efforts undertaken in particular by the relatives of missing persons and the authorities of the Catholic Church to find the missing persons; the informations on missing persons supplied to the Group by the Government, official investigation and action taken by the Government in the matter. The Group also informed the General Assembly of the Group's proposals to the Chilean authorities concerning the establishment of an independent commission of enquiry and the response of the Government of Chile to these proposals. Since the adoption of its report to the Assembly the Group has received information on additional specific cases of missing persons and on continuing efforts in Chile to find or clarify the fate of the missing persons.

107. As the Group informed the General Assembly (A/33/331, para. 406) Cardinal Henriquez Silva and various Bishops of the Chilean Catholic Church began in June 1978 to submit to the Minister of the Interior background information on specific cases of missing persons. The background information summarizes the information in the files of the courts and in the files of the Catholic Church. The presentation of this information to the Minister of the Interior is based on the Church's belief that the relatives of the missing persons had the right to an answer in each particular case. As of October 1978 the number of cases presented to the Minister of the Interior was 478, and the background information on the remaining cases is being prepared. Fifty-six of the cases presented to the Minister of the Interior were not on the list of 600 missing persons prepared by the Vicaría de la Solidaridad. That list contained only the well documented cases of missing detainees and did not include many cases not as fully documented but for which the available information led to the strong presumption of detention and disappearance (see A/33/331, paras. 386, 412-415). The following breakdown by year of the cases of missing persons has been received: 1973 (September to December), 247; 1974, 223; 1975, 76; 1976, 111; 1977, 12. No cases of persons missing in 1978 have been brought to the attention of the Working Group.

108. Information received from the Government of Chile on the results of its investigations into the cases of missing persons reported by the Church are contained in the Group's report to the General Assembly A/33/331, paragraphs 413-414. 1/ Chilean newspapers reported that two additional persons on the Vicaría's list of 600 missing persons were located; Aquiles Antonio Calderon Muñoz (Vicaría Case No. 14) 2/ and César Avila Lara (Vicaría Case No. 605). 3/

109. The relatives of missing detainees have continued to press for a full investigation into each of the cases of missing persons. On 19 October 1978 they addressed a letter to the President of Chile which, with reference to the cases

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1/ The Government also reported on information gathered concerning two persons on the Red Cross list of missing persons (A/33/331, annex LVI and A/32/227, annex IV). That information did not reveal the present whereabouts of the two persons concerned.

2/ El Cronista, 15 November 1978.

3/ El Mercurio, 10 November 1978.

presented by the Church to the Minister of the Interior, stated that "nothing has been done to establish the truth about these cases". This letter dealt particularly with the decree-law on presumed death reportedly under examination by the Government, which would shorten the period of time needed for a missing person to be presumed dead. In this connexion the letter stated:

"One of the basic requirements for the establishment of presumed death is that the whereabouts and situation of a person should be unknown. The missing persons were arrested by security agents and taken to places of detention which can easily be identified by the Government. If the worst has happened to some of them, presumed death is not the rational solution under Chilean law, since, in this case, only the circumstances of the death and the criminal responsibilities of the perpetrators of the act have to be determined".

For the relatives of missing detainees the only solution to the problem of missing persons is the truth, which should be given publicly. The letter requested that the Government should not go ahead with the proposed decree-law on presumed death and asked for a meeting with the President to explain in person their views. 4/

110. The Catholic Church has also continued to press for a solution to the problem of the missing detainees. The Archbishopric of Santiago stated on 8 September 1978 that "it will continue to do everything in its power to ensure that the relatives of missing persons obtain the answer to which they have a legal right" and that it was absolutely necessary to "clarify once and for all the fate of each of the missing persons, for otherwise there can be no peace for their families and no true peace in the country, and Chile's image abroad will remain tarnished." 5/ The Episcopal Vicars of the Archdiocese of Santiago petitioned the Supreme Court on 3 November 1978 requesting the appointment of a special investigating judge (Ministro en visita extraordinaria) in each of eleven jurisdictions of the Court of Appeals. These judges should investigate the circumstances surrounding the arrest, the places of detention and the actual location or the fate of 651 missing persons whose names were furnished to the Court. The following eight reasons were given for once again requesting the Court to appoint special judges:

"1. There is general agreement regarding the existence of cases in which persons have been arrested and gone missing;

"2. The disappearances are the result of the activities of the government security agencies;

"3. The Government has indicated its willingness to explore 'any serious means that may be suggested to it in respect of any particular case', but, despite that statement and the many other solemn offers which have been made, the problem has not been elucidated;

"4. The authorities admit that the problem is as extensive as the relatives of the missing persons and the Church have claimed;

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4/ Letter dated 19 October 1978 to the President of Chile from the Association of Relatives of Missing Detainees. Copy in the Files of the Group. See also Solidaridad No. 57, p.5.

5/ El Mercurio, 9 September 1978.

"5. The general public openly recognizes the existence of this anomalous situation and urgently demands its clarification;

"6. It is acknowledged that the answers previously given to explain these cases and to discredit the accusations were false;

"7. The accumulated evidence regarding the arrests forms a solid basis for carrying out a criminal investigation to shed light on the fate of these persons;

"8. The various cases of persons who have been arrested and gone missing exhibit features which give them a common character that calls for their joint investigation".

111. Point seven of the petition to the Supreme Court contained, as an illustration, a long series of concrete steps which could be taken by the special judges in particular cases; the names of many officers of the Armed Forces, Carabineros or DINA were given and, because of their reported involvement in the arrest of missing persons, they could be questioned concerning their whereabouts. Similarly, automobiles which had reportedly been used to arrest missing persons were identified by description and licence number and the ownership of those vehicles could be investigated. Finally, the petition contained a list of specific places of detention along with the missing persons reportedly held there in order that the individuals in charge of those places of detention could be questioned. This petition is reproduced in annex VIII.

112. Ten days later the Supreme Court decided to request from each Court of Appeals the lists of cases of missing persons being investigated by them and the status of each case. This was done with a view to a future decision on the merits of the petition requesting the designation of special judges. <sup>6/</sup> To date no further information has been received on any decision of the Supreme Court on the matter.

113. With reference to the steps which may be taken in investigating individual cases of missing persons, the Group received a sworn statement from a former political prisoner now living in Europe who states he was held in cell No.13 of Cuatro Alamos from 24 July to 4 October 1974 and that during that period he was at one time or another with 19 missing persons. <sup>7/</sup> He also states that until 31 August 1974 the interior portion of Cuatro Alamos was under the authority of the Carabineros commanded by Major, subsequently Colonel, Conrado Pacheco Gallando. In addition, he states that upon leaving Cuatro Alamos for Tres Alamos and upon returning to Cuatro Alamos each detainee was required to identify himself and that his name was entered in a registry book. This information, and the information contained in the cases transmitted to the Minister of the Interior and in the Church's recent presentation to the Supreme Court should be pursued seriously.

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<sup>6/</sup> El Mercurio, 14 November 1978. La Tercera de la Hora, 14 November 1978, p.13.

<sup>7/</sup> These persons are: Stalin Arturo Aguilera Peñaloza, Arturo Barria Araneda, Abundio Alejandro Contreras Gonzalez, Luis Fernando Fuentes Riquelme, Carlos Gajardo Wolff, Hector Genaro Gonzalez Fernandez, Hernán Galo Gonzalez Inostroza, Américo Ivan Guerra Gonzalez, Joel Huaiquiver Benavides, Newton Morales Saavedra, Germán Rodolfo Moreno Fuenzalida, Vicente Segundo Palominos Benitez, Alejandro Arturo Parada Gonzalez, Artagnán Rodriguez Gonzalez, Heriberto Rojas Copelli, Victor Rojas Copelli, Teovaldo Antonio Tellos Garrido, Hector Cayetano Zúñiga Tapia and Eduardo Fernández Zúñiga Zúñiga.

114. The facts concerning the arrest of Carlos Humberto Contreras Maluje by DINA agents on 3 November 1976 have been reported in detail by the Group. <sup>8/</sup> Mr. Contreras Maluje was injured in a traffic accident on a street in Santiago, at which time he stated that he was fleeing DINA agents who had tortured him. Officers of the Carabineros who arrived at the scene of the accident witnessed the re-arrest of Mr. Contreras Maluje by persons who identified themselves as DINA agents, and he was driven away in a car belonging to the Chilean Airforce Intelligence Service. In response to a writ of amparo the Court of Appeals on 31 January 1977 decided that "in the light of the information obtained ... there are good grounds for inferring that on 3 November last, DINA agents arrested the subject of the action for enforcement of rights", and that the detention was illegal. The Court on that date ordered the Minister of the Interior to release Carlos Contreras Maluje. <sup>9/</sup> However, on 4 February 1977 the Minister of the Interior responded that it was impossible to comply with the order and that the Ministry's files contained no information on Contreras Maluje. After the failure of the action of the writ of amparo to gain the release of Contreras Maluje, a criminal investigation was initiated in the civilian courts which was subsequently terminated and the case was turned over to the military courts which had exclusive criminal jurisdiction over DINA agents. The Government of Chile informed the Group in August 1978 that the investigations into this case had been postponed. <sup>10/</sup> The Group has since been informed through other sources that on 28 December 1978 the military court closed the investigation into this case. Representatives of the Government of Chile informed the Group that the Supreme Court rejected an appeal by Mr. Contreras Maluje's family requesting that the investigation into this case be re-opened.

115. In addition to the decision of the Court of Appeals of Santiago finding that DINA agents had arrested Carlos Contreras Maluje, the Group has received a copy of a decision dated 23 June 1978 by the Inter-American Commission on Human Rights which, after having reviewed the evidence in the case, decided "To declare that the Commission has in its possession unambiguous proof that Mr. Carlos Humberto Contreras Maluje was arrested illegally by agents of the Government of Chile, on 3 November 1976 and has been missing from that moment". In this case the writ of amparo has failed to free or determine the whereabouts of Contreras Maluje and the civil and military criminal procedures have failed to identify and punish those responsible for his detention. This failure of national remedies clearly demonstrates the need for the establishment by the Commission on Human Rights of more adequate procedures for an independent and thorough investigation of cases of missing persons in Chile.

116. The Permanent Committee of the Episcopal Conference of Chile again took up the question of missing persons in a statement of 9 November 1978. This statement, which is reproduced in full in annex IX, reflected the Committee's belief that, from the evidence gathered and presented to the Government, the missing persons, with some possible exceptions, were arrested by government security services. The Committee

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<sup>8/</sup> A/33/331, paras. 399-400; E/CN.4/1266, para. 66; A/32/227, paras. 104-105.

<sup>9/</sup> Ibid.

<sup>10/</sup> A/33/331, para. 400, A/32/227, paras. 104-105, E/CN.4/1266, para. 66. The Group has received a copy of a request made to the courts for further investigations in the case which contains specific suggestions concerning persons to be questioned, including one member of the Chilean Airforce Intelligence who is reported to have had knowledge of Contreras Maluje's arrest. The Group itself has suggested specific investigatory steps which might be taken.



referred to the serious avenues for establishing the truth it had suggested to the Government but concluded that "the Government will not undertake a thorough investigation of past events in order to find out what actually happened in each case and establish responsibility accordingly." The Committee also "reached the conclusion that many if not all of the persons missing while under arrest have died, without any legal justification whatsoever." Finally the statement read, "Our sole motive is the desire for peace. But we insist yet again that for peace to exist there must be truth, there must be justice, there must be respect and brotherly love for all, without exception."

117. The Minister of the Interior in a statement distributed to the press on 10 November 1978 responded to the statement of the Permanent Committee of the Episcopal Conference of Chile concerning missing persons. 11/ The Minister's statement, reproduced in full in annex X, stated in part that "he categorically rejects the assumptions and estimates made in the statement in support of charges which no court of law has deemed well-founded". The Minister also rejected the view that the Government refused to investigate the cases of missing persons and stated that the entire country knew of the action taken by the Government to exhaust the serious avenues in each case, under the conditions of great difficulties created by the situation of civil war with which they were confronted. Finally, the Minister's statement stated that "the Government will, in fact, continue to investigate all the cases, steadily and unhurriedly, without allowing anyone to divert it from its straight, serious and calm path, and will supply the information which it compiles in the form announced some months ago".

118. In relation to the statement by the Minister of the Interior, the Association of Relatives of Missing Detainees in a statement also published on 10 November 1978 criticized the Government for promising an investigation which it did not wish to carry out and for refusing to clarify a problem affecting directly hundreds of Chileans and which constituted a wound for the entire national community. The Association confirmed its determination to continue to work towards the clarification of the whereabouts and fate of the missing detainees. 12/

119. During December 1978 a number of unidentified bodies were discovered buried at an abandoned mine near the town of Lonquén, Chile. The press reported that the discovery was the result of a confession made to a Catholic priest concerning the burial of the bodies in early 1975. The person making the confession requested that his name be kept confidential. This information was conveyed to the Auxiliary Bishop of Santiago, Enrique Alvear who, together with other persons, transmitted it to the Supreme Court of Chile which ordered that Judge Juana Godoy of the Criminal Court of Talagante, which has jurisdiction over the area, begin an investigation. Subsequently the Supreme Court appointed Appeals Court Judge Adolfo Bañados Cuadra as a special investigating judge (ministro en visita) to investigate the discovery of the bodies. The press reported that the remains or partial remains of some 25 persons were removed from a circular upright kiln in which they were buried and sent together with such things as clothes and spent cartridge shells to the Institute of Forensic Medicine for examination. Preliminary reports indicated that the bodies were buried between two and three years prior to their discovery, that is in 1975 or 1976. 13/

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11/ El Mercurio, 11 November 1978.

12/ La Tercera de la Hora, 11 November 1978.

13/ El Mercurio, 5, 6 and 8 to 14 December 1978. Las Ultimas Noticias, 8 December 1978, El Cronista, 8 December 1978, Hoy, No. 82, 20 December 1978.

The manner in which the bodies were buried, as reported in the press, indicate that an effort was made to make their discovery difficult. The review Hoy reported: 14/

"At one level (in the kiln) there was earth which had not altogether settled, and also stones. This layer was easy to penetrate with implements. Under it, the diggers encountered a slab of cement. Fragments of old iron, including an old iron bedstead, were sticking out of the slab. The assumption made by some was that the liquid mixture had been poured over this framework of metal and had solidified into a rough but very hard crust. Under this convex-shaped covering - some hard work with a pickaxe was needed to break through it - there was more earth and then the object which was the cause of this meticulous work of concealment: a pile of corpses. The bodies had been put inside the funnel leading from the 'hearth' in which the fuel employed to operate the kiln in bygone days used to be placed. Under the bodies, those who buried them had placed a kind of stopper or bung which gave way as the hole in the slab was enlarged, and the bodies fell out like an avalanche."

120. The special investigating judge, one day after his designation, requested the complete list of missing persons for the years 1973 to 1976, with a view to determining if any of the bodies were those of missing persons. 15/ The Association of Relatives of Missing Persons declared in relation to the discovery of the bodies that although they had always maintained the hope, based on concrete information, that they would find their relatives alive, they were not able to exclude the possibility that some had been killed. The Association was unable to say, at that point, if the bodies belonged to any of the missing persons, but they demanded that the identity of the bodies be investigated. 16/

121. An investigation was also reported to have been ordered by the Carabineros into the use of the area around the mine as a meeting and training place for members of the MIR (Movimiento de Izquierda Revolucionaria). 17/

122. The discovery of this mass grave has been extensively reported in newspapers and magazines all over the world. Some of those reports will be found in annex XI. This is a very serious matter, which cannot but shock people both inside and outside Chile. The Group has not had time to thoroughly investigate this matter, but it hopes that a vigorous inquiry will be carried out.

123. The Chilean Government, through the Minister of the Interior, stated in relation to the finding of the bodies that it adopted the same attitude as for any criminal matter and that the judicial authorities should act to determine those responsible and to punish them. The Executive would guarantee the full independence of the judiciary as it invariably has. The Ministry of the Interior also ordered full co-operation from those authorities under its jurisdiction. 18/ The Group notes that a lawyer connected with the Vicaría de la Solidaridad expressed his satisfaction at the way in which the courts were carrying out the investigation. 19/

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14/ Hoy, 13 to 19 December 1978.

15/ El Segunda, 7 December 1978.

16/ Las Ultimas Noticias, 6 December 1978.

17/ El Mercurio, 8 December 1978.

18/ El Mercurio, 10 December 1978.

19/ El Mercurio, 6 December 1978.

124. With regard to the press reports of the finding of bodies in the Lonquén mine, the following statement was made at the United Nations Headquarters, New York:

"The Secretary-General is aware of these reports and, as far as we know, the judiciary in Chile is carrying out, together with medico-legal experts, an investigation in order to establish the identity of the corpses. The question of the disappeared persons has been and is a matter of continuous concern to the Secretary-General and to the Ad Hoc Working Group on Chile of the Commission on Human Rights. The Ad Hoc Working Group will undoubtedly take up this matter when it meets in Geneva in January.

"In the meantime, the Secretary-General expresses the hope that the judicial authorities in Chile will be able to carry out their task in an effective and expeditious manner so as to establish the truth. As is also clear from the resolution on the protection of human rights in Chile adopted by the Third Committee yesterday, the United Nations will continue to make all efforts which are conducive to clarifying the whereabouts and fate of missing and disappeared persons in Chile."

125. As was indicated in the introduction to the present report, at the request of the Chairman of the Ad Hoc Working Group, a letter dated 22 December 1978 was sent to the Permanent Representative of Chile to the United Nations Office at Geneva referring to the meetings of the Group in Geneva in January 1978 and its wish to meet with the representatives of the Chilean Government at that time. That letter informed the Government of the Group's wish to discuss in particular the reports concerning the finding of bodies in Lonquén and efforts to determine if the bodies are those of persons reported missing.

126. The representatives of the Government of Chile during meetings held on 24 January 1979 confirmed orally to the Group the discovery of the bodies at Lonquén. The Government representatives stated that at that time there were no definitive findings yet made by Judge Bañados on the number of bodies found or on any bullet wounds in the bodies. Written information provided by the Government in this case is reproduced in annex V.

127. The Group also received information concerning the discovery of at least two unidentified bodies buried at Cuesta Barriga, Chile. This discovery was reported to the Court of Casablanca on 19 December 1978 by the Auxiliary Bishop of Santiago, Monseigneur Jorge Hourton. In connexion with this discovery, the Chilean press carried reports about executions which reportedly took place there after 11 September 1973 and also about persons from the area who disappeared after detention. The press also reported that the investigators, in their initial report, stated that the remains appeared to be some ten years old and may have been removed from a cemetery. The information concerning the age of the remains and their removal from a cemetery was also transmitted to the Group by the representatives of the Government of Chile. The investigation into this case continues. Annex XII contains information from the press relating to this matter.

128. The Group during its meetings held in Geneva in January 1979 heard testimony from the sons of two missing persons (annex XIII). They informed the Group of the very serious psychological and financial impact on them and other members of their families which the disappearance of their fathers had. They stated that no serious investigations had yet been undertaken into the question of missing persons in Chile and they requested, especially in light of the discovery of the bodies at Lonquén, that an international investigation be carried out in the matter.

#### IV. EXILE AND RETURN

129. The Group, since its first report to the General Assembly (A/10285), has been concerned with the right to live in one's own country, the right to return to one's country and the right to a nationality. 1/ In its report to the thirty-third session of the General Assembly, the Group dealt in particular with Chilean legislation governing the return of Chilean citizens to their own country and the application of that legislation. The Group noted Decree-Law No. 604 of 10 August 1974 which gives the Government discretionary power, not limited to periods of states of siege or emergency, to prohibit the entry into Chile of persons on various grounds, one of which is that, in the opinion of the Government, the person constitutes a danger to the State. 2/ The Group also dealt with some cases in which the return of Chileans living abroad was permitted and the many cases in which permission to return was denied. In this regard, the Amnesty decree of April 1978 does not appear to have affected positively the right of return for exiled Chileans since under Decree-Law No. 604 their return may be prohibited.

130. Information received by the Group since the adoption of its last report to the General Assembly indicates that a large number of Chileans are still living outside their country as exiles and that persons are continuing to leave Chile. The Intergovernmental Committee for European Migration informed the Group that during 1978 it assisted 1,253 persons to leave Chile. In the period since October 1973, ICEM has resettled outside Chile over 18,000 persons, 2,533 of them were prisoners or detainees. Information from reliable sources and appeals made by individuals to the Group concerning their own return or that of members of their family indicate that many Chileans living outside the country wish to return but are unable to obtain the required Government permission.

131. The position of the Government of Chile concerning the return of Chileans living abroad was made clear by the Minister of the Interior in a statement issued on 22 September 1978. This statement was in response to the requests made by the wives of five former Chilean political leaders who were living outside the country (Clodomiro Almeyda, Luis Maira, Juan Carlos Concha, Anselmo Sule and Jorge Insunza) that they be allowed to return. The wives had travelled to Chile for the purpose of meeting with the Minister of the Interior in order to present their request. 3/ The Minister did not meet with them and he released a statement outlining the Government's policy in the matter. This statement read in part:

"the Government reiterates its unshakeable determination not to permit the return to the country of any person involved in the international campaign against Chile or of any activist of the international Marxist movement or any of its front organizations."

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1/ Universal Declaration of Human Rights, article 13; International Covenant on Civil and Political Rights, article 12. American Declaration of the Rights and Duties of Man, article XIX.

2/ See A/33/331, para.433 for the other grounds.

3/ El Mercurio, 22, 23 and 24 September 1978.

132. In regard to the return to their country of Chileans living in exile, the Group heard testimony from Mrs. Maria Elena Carrera, who stated that she is a medical doctor and was senator in Chile from 1967 to 1973. She informed the Group that she had first applied to return to Chile after the announcement of the amnesty of April 1978 but that her request was rejected. Because of the serious medical condition of her father she applied in December 1978 to the Chilean Consulate in West Berlin and by cable to the Minister of the Interior and the Minister of Foreign Affairs for permission to return for a temporary visit to be with her father. After six days, during which she received no answer to her request, and in view of the increasingly serious condition of her father, she decided to travel to Chile. She was to change planes in Buenos Aires but, because of a cable from the Chilean section of Interpol saying she would be forbidden to enter Chile, she was prevented by the personnel of Aero-Peru from boarding their flight to Santiago on 13 December 1978. Subsequently, she went to Lima, Peru. Both in Buenos Aires and Lima she made repeated requests to be allowed to visit her father and, at the request of the Ministry of Foreign Affairs, she had medical certificates presented concerning his health. To these requests she received no reply until 5 January 1979 when her request was rejected. On 6 January 1979 her father died. Subsequent to her father's death she sought permission to return for his funeral but that was not granted.

133. The Group has been informed that Rafael Agustin Gumucio, a former Chilean Senator, requested the Minister of the Interior to allow his return by reason of his health condition and the fact that he fulfilled the legal requirements. He presented a list of 12 witnesses in his favour, among them three former Presidents of Chile. However, his request was denied by the Minister. 4/

134. The Group has also received information from Dr. Eduardo Movoja Monreal that in June 1978 the Chilean Consul-General in Venezuela informed him that his request for permission to return to his country had been denied. Mr. Movoja states that his family learned that the refusal was based on Supreme Decree No. 80 of June 1978, in which it was alleged that he had carried out activities against the interests of Chile and that he was a danger for internal security. Regarding these allegations, Mr. Movoja states that since 1973 he has been involved only in scientific and university activities in institutions of the highest academic standing.

"I am not, and never have been, actively involved in political parties. I am an intellectual and a technician. The allegation that I am a danger to State security is outrageous and devoid of all foundation. My only weapons are my voice, my pen and my intellectual standing."

With regard to this case the Group refers to the International Covenant on Civil and Political Rights (article 14) which proclaims the right of everyone to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations. However, current Chilean legislation and practice appears to deny to Mr. Movoja and others in similar situations the right to an impartial determination of the truth of the allegations made against them, on the basis of which they have been deprived of their right to live in their own country.

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4/ El Mercurio, 3 December 1978. La Tercera de la Hora, 5 December 1978.

135. Concerning the expulsion of Chileans from their country, the Chilean press reported that on 6 November 1978 Mario Juan Carrero MobaLes, a 65-year-old painter and Director of the Department of Art of the Catholic University of Chile, was notified by the Ministry of the Interior that a decree had been issued ordering his expulsion from the country and that he had been given twenty-four hours to leave the country. A writ of amparo against this measure was filed in the Court of Appeals of Santiago and the Court ordered the execution of the expulsion order suspended until it had finished its investigation. Subsequently, the Ministry of the Interior informed Mr. Carrero MobaLes that it would not proceed to implement the expulsion order. 5/

136. During its visit to Chile the Group requested that, in appropriate cases, persons convicted of political or national security offences and serving prison terms be allowed to leave the country (A/33/331, para.372). In this regard the Group has received information that Roberto Eduardo Rodriguez Sapiains, who had been held in the Valparaíso Jail since September 1973, was allowed to leave the country in December 1978. The Group, during its visit to Chile, expressed its concern over this particular case (A/33/331, para.368), and welcomes this humanitarian act of the Government of Chile.

137. The Group reported in the past that Mr. Orlando Letelier, former Chilean ambassador, minister and civil servant, was deprived of his Chilean nationality 11 days before he was killed by the explosion of a bomb that had been placed in his car (E/CN.4/1221, para.229). In November 1978, the widow of Mr. Letelier returned to Chile and filed a petition with the Supreme Court of Chile requesting that Mr. Letelier's nationality be restored to him. 6/ El Mercurio reported on 24 December 1978 that the Supreme Court had rejected the petition because it had been filed after the end of the 90-day period which began upon publication of the decree depriving Mr. Letelier of his nationality. The Group is of the opinion in this case that the Government of Chile should restore by special decree Chilean nationality to Mr. Orlando Letelier which is possible under Chilean law.

138. Reviewing the information covering the period since the adoption of its report to the General Assembly, the Group finds no evidence of change in the situation in Chile as reported to the Assembly regarding the right to live in one's own country, the right to return to one's country and the right to a nationality. The Government still retains the legal power to expel Chileans from their country and in at least one case an attempt to do so was made. Further, in spite of the amnesty of April 1978 the return of every Chilean living abroad, for whatever reason and without regard to how the person left the country, is subject to the discretionary power of the Minister of the Interior to deny permission to return. The Group has also learned of the physical and psychological difficulties and hardships encountered by many Chileans forced to live outside their country. While recognizing the humanitarian efforts made by host Governments and international organizations such as the United Nations High Commissioner for Refugees and the Intergovernmental Committee for European Migration, the Group finds that much remains to be done from a global point of view.

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5/ La Tercera de la Hora, 15 November 1978, El Mercurio, 15 November 1978.

6/ La Tercera de la Hora, 28 November 1978, and 2 December 1978.

## V. FREEDOM OF EXPRESSION AND INFORMATION

139. Freedom of Expression and Information in Chile was dealt with by the Group in chapter VII of its report to the General Assembly at its thirty-third session (A/33/331). That chapter referred, among other subjects, to Chilean constitutional and legal provisions relating to freedom of expression and information, to the ending under government order of broadcasting by seven Chilean radio stations and to the suspension also under government order of a newspaper for two issues. The observations of the Government of Chile on that chapter are contained in annex LXXII of that report.

140. In relation to the legal rules governing freedom of expression and information in Chile, the Group reported in the past that bando 107 of 11 March 1977 required the prior authorization of the commander of the military zone of Santiago for the establishment of new newspapers or magazines, and the publication of books or other printed matter. Prior authorization was also required for the importation of printed matter. Similar provisions were enacted in the other military zones of the country. These measures were criticized within Chile as limiting freedom of expression and information. 1/ In August 1978 the Government of Chile 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. 2/ On 5 December 1978 the Group was informed by the Government of Chile that bando 107 had been abrogated and that the free importation and commercialization of all categories of books, magazines and printed matter in general had been re-established. 3/

141. According to an article in El Mercurio, bando 107 had been abrogated by bando 122 issued by the Military Commander of the Emergency Zone (Jefe de la Zona en Estado de Emergencia). In addition to abrogating bando 107, bando 122 provided in its article 2 that:

"Authorization to establish, edit, publish, circulate or distribute new newspapers, journals, magazines or printed matter in general shall be granted directly by this Emergency Zone Command, after notification of the Division of Social Communications, the General Secretariat of the Government and the Metropolitan Council of the Association of Journalists."

In explaining the maintenance of the requirement of prior authorization for matter printed within Chile, the Director of Social Communications of the Government (Director de Comunicación social del Gobierno) was quoted by El Mercurio as saying that it was necessary "to prevent the public from being misled by the sale or establishment of magazines that were completely insolvent. Consequently certain requirements are imposed". 4/

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1/ See A/32/227, paras.72-73 and 203-204, and A/33/331, paras.470 and 480.

2/ A/33/331, para.480, and annex LXI.

3/ Letter dated 5 December 1978 from the Permanent Representative of Chile to the United Nations addressed to the Chairman of the Ad Hoc Working Group.

4/ El Mercurio, 1 December 1978.

142. The elimination of restrictions on the importation of printed matter received a favourable reaction. 5/ However, with regard to the continuation of the requirement of prior authorization for the publication within Chile of books and for the establishment of new newspapers or magazines, the President of the Association of Journalists of Chile (Colegio de Periodistas de Chile) stated that the Association was not satisfied because all that was involved was the replacement of certain provisions by others that were embodied in another bando comprising identical restrictions. 6/ El Mercurio in an editorial of 2 December 1978 stated regarding the new bando that "it does not constitute an improvement in relation to existing prior controls for the Chilean press and literature", that the maintenance of prior controls "precisely, does not lend support for the view that freedom of the press exists in Chile", and that the new bando "does not remove considerable obstacles impeding freedom of the press and cultural freedom in Chile".

143. In chapter VII of the present report, the Group deals with the limitations on freedom of thought, expression and information resulting from bando 2 issued by the Military Commander of the Emergency Zone of the province of El Loa, where the labour conflict in Chuquicamata was taking place. Any person who thought or acted with the clear intention to subvert public order would be punished and, in relation to the mass media, this bando states that "Within the controlled freedom prevailing under the state of emergency, the media shall refrain from publishing news items which constitute anti-patriotic propaganda". Regarding persons within the Emergency Zone who would speak with news media from outside the zone, this bando provided that "it shall be clearly understood that any person who does so intentionally or maliciously acquires responsibilities which the Commander of the Zone under State of Siege shall assess in the exercise of his legal powers". 7/

144. Bando 2 constitutes a severe restriction on the freedom of thought, expression and information of the population not only of the emergency zone but, because it aims at controlling information and views given to the media outside the area, of Chile as a whole. The threats of the legal consequences which violators will suffer together with the vague and subjective criteria which would be used in judging infractions ("with the manifest intention of subverting public order", "intentionally or maliciously") could not but severely discourage the people from exercising the fundamental human right to freedom of thought and expression. This bando's limitations on freedom of expression is difficult to justify in view of the statement in article 2 of that bando concerning the normal conditions prevailing in the province. 8/

145. Freedom of expression and information are also affected by measures taken in the domain of freedom of association and assembly. These questions are discussed in chapter VII of this report. The Group wishes to note that while some meetings are not permitted, for example the meeting of a study group on constitutional reform (see chapter VII below), other groups have been permitted to meet on the same subject and the results have been to suggest to the Government changes in the proposed constitution. A commission made up of representatives of the Association of Chilean

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5/ El Mercurio, 16 December 1978.

6/ La Tercera de la Hora, 2 December 1978.

7/ For the full text of the pertinent articles of this bando see chapter VII.

8/ See chapter VII.



Radio Broadcasters, the Association of Journalists of Chile, and the National Press Association was formed in November 1978 to study the draft constitution and it submitted its observations including suggestions for changes to the President of Chile. This report was reflected in the press. <sup>9/</sup> The Group also notes that the newspaper El Mercurio published a detailed analysis of the provisions concerning freedom of opinion and expression in the draft constitution which was critical of that document's protection of the freedom of opinion and expression. <sup>10/</sup> Finally, during 1978 a number of seminars and other meetings were organized by the Catholic Church and in particular the Vicaría de la Solidaridad on topics dealing with human rights.

146. The Chilean newspaper El Mercurio carried information on a report on press freedom in Chile which was presented to the October 1978 meeting of the Inter-American Press Society. This report was based on a visit to Chile in September 1978 by two representatives of the society. They reported finding a substantial improvement in the press environment in Chile since the last mission in 1975. A large part of this improvement had taken place since the ending of the state of siege in March 1978. However, the report found that in spite of this improvement the press in Chile could not be said to be free. In particular this report stated that:

"The fear of reprisals by the Government continues, in practice, to be an ever-present element in the daily life of the Chilean newspaper editor ... as long as a state of emergency exists and the normal means of protection are lacking, reprisals must be regarded as a possibility. No editor can feel free when the Government requires him to deliver a copy of his journal to its offices on the day preceding the date of publication, as is still the case with some Chilean journals." <sup>11/</sup>

147. The Group notes that the Chilean press does reflect international reports concerning the situation of human rights in that country. In addition to the above-mentioned report of the Inter-American Press Society, the Group notes the extensive and accurate summary published by El Mercurio of the report the Group submitted to the General Assembly at its thirty-third session. <sup>12/</sup>

148. The complex nature of the extent to which freedom of expression and opinion is enjoyed today in Chile and the impact on the public of Government policies in that area are reflected in statements made to the magazine Solidaridad by Renato Hevia, Director of the magazine Mensaje. Mr. Hevia found that a certain liberty of press existed in Chile but it was restricted to certain media which do not have a massive influence. He was quoted as saying:

"The Government allows certain media to speak out and to speak out more or less strongly because they have a limited audience. Public opinion is, in fact, controlled by the mass media, which have no freedom; television, which covers the whole country, is a case in point. The various television stations conform to the government line, as do the vast majority of Chilean radio stations and most if not all newspapers. The only exceptions are a few magazines which have a very limited circulation.

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<sup>9/</sup> El Mercurio, 12 November 1978 and 17 and 20 December 1978.

<sup>10/</sup> El Mercurio, 28 and 29 September 1978.

<sup>11/</sup> El Mercurio, 11 and 20 October 1978.

<sup>12/</sup> El Mercurio, 22 November 1978.

"In addition, the general public is conscious of the fact that its range of permissible reactions is very limited. There is much fear. Fear has been increased to incredible proportions: certain opinions cannot be expressed because the fact of expressing them would immediately arouse suspicion. Generally speaking, especially among the working classes, no one is willing to take any risks in these times of tremendous unemployment. No one wishes to take the risk of being branded as a possible opponent and the forums in which these questions could be freely talked about or discussed do not exist. There are no neighbourhood councils or assemblies to consider questions in any field.

"The social sense of the population is gradually being obliterated. By means of a massive ideological campaign, the belief is being instilled that anything that has to do with an interest in the country is evil because it raises political questions, and that somehow any form of attempt to participate in joint management or any kind of democratic effort is also viewed with ill favour. This is gradually creating very great apathy, as well as fear." 13/

## VI. RIGHT TO EDUCATION

149. In various reports, the Group has referred to the situation prevailing in Chile with regard to the enjoyment of the right to education provided for in article 26 of the Universal Declaration of Human Rights and in article 13 of the International Covenant on Economic, Social and Cultural Rights. The Group has also discussed the question of academic freedoms in Chile, namely the exercise of the right of opinion and research in the field of education. 1/

150. In a statement made at the opening of the Third Congress of Teachers at a time when he was Minister of Education, Rear-Admiral Luis Niemann said:

"There has been a sustained increase in the State budget for education and culture, which has risen from an amount of approximately \$400 million to a figure currently approaching \$600 million." 2/

151. According to figures provided by the Budget Division of the Ministry of Finance, State expenditure on education was \$567,440,000 in 1972, declining to \$279,580,000 in 1975 before increasing to \$346,280,000 in 1977. There was an even sharper decline in the per capita education budget; calculated in 1976 dollars, it amounted to \$58.43 in 1972, \$27.27 in 1975 and \$32.55 in 1977. 3/

152. It would appear that the increase in the education budget announced by former Minister Luis Niemann is to be channelled mainly into subsidized private education, namely private education supervised by the State and receiving financial assistance. Institutions of this kind will receive additional resources amounting to \$21.3 million, or almost twice as much as in previous years. 4/ The schools benefiting from this increase are the so-called subsidized free schools which do, however, impose a fee which "is charged according to the parents' means and cannot exceed 15 per cent of the lowest salary on the single scale of taxable income". 5/

153. This type of school provides instruction to 13 per cent of the total primary and secondary school population (370,000 pupils). The figure entails a subsidy of 4,000 pesos (\$US 117) for each primary school pupil and 5,000 pesos (\$US 147) for each secondary school pupil. 6/

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1/ See A/33/331, paras. 485-540.

2/ El Mercurio, 29 November 1978.

3/ Source: Gasto fiscal en educación, 1970-1977 (State spending on education, 1970-1977), table No. 27; Población total, 1970-1977 (Total population, 1970-1977), ODEPLAN-CELADE projection.

4/ El Mercurio, 20 December 1978.

5/ Observations of the Government of Chile on chapter VIII of the report of the Ad Hoc Working Group to the thirty-third session of the General Assembly, A/33/331, annex LXXXII, p.23.

6/ El Mercurio, 21 December 1978.

154. In its report to the General Assembly (A/33/331, paras. 512-518), the Group referred to the decrease in enrolments at various levels of education and the serious problems of repetition of courses and dropping out from school. In this connexion, Alfredo Prieto, Under-Secretary for Education, stated that:

"He considers the cause of school repeating to be 'the fact that, as a result of an unsatisfactory pre-school situation involving malnutrition, a low level of psychomotor development, a negative family atmosphere and other factors, the pupil does not have the intellectual capacity to follow the school curricula'". 7/

155. Rear Admiral Luis Niemann, the then Minister of Education, expressed similar views regarding school failures and the deficiencies of the educational system:

"The main reason for school failures, whether at the primary or at the secondary level, is socio-economic problems whose origin must be sought in the family". 8/

156. Both these government authorities recognize that the economic and social circumstances of the pupils and of their families are the cause of the serious situation regarding primary and secondary education in Chile, which has to be considered in conjunction with the situation regarding the enjoyment of other economic and social rights (see chap. VIII.).

157. In 1979, the universities will continue to suffer a decline in their income, despite the substantial cuts to which they were subjected in previous years (see A/33/331, para. 491). In December the repeal was announced of Act No. 11,898 of 29 September 1955 and Act No. 17,291 of 19 February 1970, which granted certain universities the benefit of resources derived from the "Polla Chilena de Beneficencia" and the "Loteria de Concepción". 9/

158. According to El Mercurio, many universities in the country will probably be affected by this measure as well. In addition, universities will increase their registration fees and their charges. In the first half of 1979, the University of Chile will charge a standard matriculation fee of 1,400 pesos (\$US 41) and a differentiated fee payable in monthly instalments ranging from 140 pesos (\$US 4.11) for families with an income of between 5,500 and 6,700 pesos (between \$US 161.75 and 194.10) (those with lower incomes are exempt) to 2,500 pesos (\$US 73.52) for families with an income of more than 40,600 pesos (\$US 1,194). 10/ For the first half of 1979, the Catholic University will charge a standard registration fee of 1,000 pesos (\$US 29.41) and a matriculation fee of 6,200 pesos (\$US 182.35), equal for all students and payable in four instalments. 11/

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7/ El Mercurio, 5 September 1978.

8/ El Mercurio, 7 September 1978.

9/ El Mercurio, 3 December 1978.

10/ El Mercurio, 21 December 1978.

11/ El Mercurio, 28 December 1978.

159. Referring to the situation developing in the field of university education, a document entitled "Humanismo cristiano y nueva institucionalidad" ("Christian humanism and new institutions"), drafted for the Plenary Assembly of the Chilean Bishops, stated:

"Furthermore, subject as they are to a policy of self-financing, how could the universities avoid assuming characteristics of a commercial nature, when fund-raising has become a major factor and the student body has been reduced to the role of a consumer? It is not in itself unjust or out of the question for those who receive higher education to participate in its financing. On the contrary. But, when it is reduced to the status of a piece of merchandise up for sale, higher education becomes a commodity accessible to a privileged group, and not obtainable by virtue of effort and talent, and this leads to an unfair distribution of the common heritage of science and culture". 12/

160. Among a series of articles for teachers published by the magazine Solidaridad appears the following statement by a teacher:

"Three months ago, two colleagues did not attend a teachers' meeting because they did not have the money for transport. Food co-operatives have been set up in several colleges. I have heard that in Santiago alone there are more than 4,000 teachers, with their families, whose monthly budget is based on these donations of food. What is the point of speaking about clothes, housing, books, rents? I believe, and it grieves me to have to say so, that the cultural development and professional skills of teachers have been, and continue to be, seriously impaired. With an almost total lack of access to shows, magazines and training courses, teachers are frustrated, and this affects the prospects of their students." 13/

161. In its observations on the report of the Ad Hoc Working Group (A/33/331, annex LXXXII, p.23), the Government of Chile provided information about decisions to improve the situation of teachers and educational premises. In this connexion, the Government indicated that it "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".

162. The legislation referred to by the Government is Decree-Law No. 2,327 of 1 September 1978, relating to the teaching profession. By virtue of this instrument, five teachers of the VIIIth region were transferred to other regions of the country on the ostensible grounds of good service. The Pastoral Research Development Centre of the Archbishopric of Concepción (CIDEP) made the following statement:

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12/ El Mercurio, 22 November 1978.

13/ Solidaridad, No. 5, August 1978.

"The enactment of the decree providing for the so-called teaching profession is a source of great disquiet. By virtue of this decree, outstanding teachers have been transferred from the region unexpectedly in the past few days. These transfers were arranged arbitrarily, without consultation and without the persons affected being informed of the reasons for such a drastic sanction. For the persons concerned, all of whom are Christians of avowed evangelical calling, these measures create insoluble emotional, family, economic and cultural problems. The measure in question is detrimental to the stability and peace of mind of all teachers in the region and the country, who feel insecure and consider themselves to have been notified that to give free expression to their beliefs is a sufficient ground for being transferred without any possibility of appeal". 14/

163. The Concepción Teachers' Association declared itself incompetent to express an opinion on the government measure. In that connexion, CIDEP said that at present "all the really important decisions are taken at the central level" and that the leaders of the Teachers' Association "were chosen by the Government, without any grass-roots participation; as in almost all trade-union organizations, the leadership represents the Government more than it does the Association's members". 15/

164. One of the participants in the Teachers' Association Congress, which was opened by the Minister of Education, 16/ drew attention to the "difficulties encountered by the Association's leadership in carrying out its work, particularly because members have been appointed rather than elected". 17/

165. Olga Poblete, a Chilean educator, referring to the Chilean education system, stated the following:

"The organization of the system is of course strictly vertical, and this characteristic has been heightened by the Statute on the Teaching Profession - in other words, as in all national activities, this fruitful participation in educational planning is disappearing. This not only affects the teachers directly, but also the children and young people and, of course, the parents and the community. The school is becoming a sort of service which dispenses, in an extremely rigid and schematic manner, a specific amount of pre-selected knowledge. This selection process is fairly obvious and the criterion applied is highly discriminatory and political. The human values involved in history, geography, etc., are not clearly apparent. The same is true of secondary education and particularly of the university". 18/

166. The preceding information and the information on which the Group commented in chapter VII, section A, of this report seem to indicate that participation in educational decisions is not encouraged and that an authoritarian system continues

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14/ El Mercurio, 3 October 1978.

15/ Ibid.

16/ El Mercurio, 29 November 1978.

17/ El Mercurio, 30 November 1978.

18/ Solidaridad, No. 59, November 1978.

in effect at all levels of education, as the Group pointed out in its previous report (A/33/331, paras. 523-540). The document "Humanismo cristiano y nueva institucionalidad" already cited confirms this information:

"It follows that, while authoritarian intervention by the Government in the universities may achieve the salutary effects which are sought, such as a certain degree of depoliticization, discipline and dedication to study, it runs the risk of producing, through intimidation, other and more disquieting effects, such as the discouragement of creative energy, the extension of a sectarian outlook, politicization in other guises, distortion of the academic career, the extraneous consideration of 'reason of State' in organizing the sciences and segregating them when establishing the curriculum, the decline from community collaboration to professionalism and competition, selectivity among the student body on the basis of extra-university criteria, etc." 19/

167. The Group notes that the Government speaks of freedom in education to support its inclination towards the gradual transfer of education into private hands, education "which will operate on the basis of the creative initiative of private individuals", in the same way as the economy. 20/ However, it continues to exclude both teachers and pupils from any participation in the decisions which concern them. It also continues to restrict academic freedoms by means of a system which is discriminatory in regard both to the teaching staff and to the opinions and knowledge imparted in educational establishments.

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19/ El Mercurio, 22 November 1978.

20/ From statements by the Director of the Centre for the Teaching Profession, appearing in El Mercurio on 21 December 1978.

VII. FREEDOM OF ASSOCIATION AND THE RIGHT OF ASSEMBLY

168. The Group informed the General Assembly at its thirty-third session (A/33/331) that the restrictions on freedom of assembly and association which had been described in previous reports, particularly in the above-mentioned report (chapters IX and X-C), were still in force in Chile. Political parties have been dissolved, their property confiscated and their activities punished as offences. Thus, one of the channels for the expression of views on the general subject of the country's leadership and orientation is blocked. There are serious limitations on other forms of association as well. For example, the Constitutional Reform Study Group, a body composed of prominent Chileans which is examining a draft revised constitution differing from the official draft, was prevented from holding a meeting when the Headquarters of the State of Emergency Zone informed the manager of the premises in which the meeting was to be held that the meeting had not been authorized and was therefore to be cancelled in accordance with the provisions of the Internal State Security Act. 1/ Yet no accusation connected with the restrictions imposed by the Act invoked has been made against the Group, whose activities are confined, according to its own statements which have not been denied, "to formulating the legal and political bases" for "modifications to the fundamental Charter of 1925" "which can be given practical effect when the people are able freely to express their opinion" and not as "an alternative to the official preliminary draft". 2/

169. The Group was informed however that a number of meetings which had dealt with human rights questions had been held without any difficulty. These included meetings convened by the Archbishop of Santiago on the occasion of the thirtieth anniversary of the Universal Declaration of Human Rights. In addition, an international seminar on "Human Rights and International Relations", organized by the Institute of International Studies of the University of Chile, the Chilean Institute of Humanistic Studies, the OAS Inter-American Human Rights Committee and the University of Notre Dame, was held from 15 to 17 November. The celebration of Human Rights Year, which was organized by the Archbishop of Santiago, culminated in an International Symposium on Human Rights, the opening and closing ceremonies of which were held in Santiago Cathedral. 3/

170. The Group considered various reports on the legal effectiveness of the rights of association and assembly, particularly in universities and trade unions, which will be dealt with in the following paragraphs.

A. Freedom of association and the right of assembly in universities

171. Certain changes in the officially authorized system for the appointment of student representatives were introduced in Chilean universities in September 1978.

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1/ El Mercurio, 27 October 1978.

2/ El Mercurio, 10 November 1978.

3/ Various articles and reports published in the press provided information on the conduct of these meetings in Chile. For example: La Tercera de la Hora, 8, 19 and 23 November 1978; Las Ultimas Noticias, 22, 24 and 25 November 1978; La Segunda, 22 November 1978; Qué Pasa, 30 November 1978; El Mercurio, 24 September 1978 and 15, 19, 22 and 25 November 1978.



Claudio Illanes, the Vice-Rector of Student Affairs of the University of Chile, described the objectives of the new system as follows:

"With this system the spirit of organization will not be broken, but large-scale election-type votes will be avoided; such votes would be inconsistent with the Statute since, for election to the leading posts, there would be a rush of candidates with regard to whom the student body would seem to be influenced by political factors, which is something we want to do away with for ever.

"Students are motivated by interests which are not political. Why then should we encourage them to act politically? We must show that student leaders who do not actually pursue political aims can emerge. We prefer to believe in the success of this system rather than do nothing because there are risks involved". 4/

172. This system replaces the one which was used hitherto by the military Government and under which the authorities appointed all student representatives. Under the new statute, a Government-sponsored organization would call elections for representatives of each course in April 1979. Two of the four persons obtaining the highest number of votes would be appointed student representatives. The top officials of the organization would be elected by student bodies formed as a result of this procedure, but on the proposal of the outgoing leaders.

173. Meanwhile, some leaders of student centres have been appointed in the following manner, according to information supplied by El Mercurio:

"The Council of Student Centres of the University of Chile in the metropolitan area has appointed the first president of the Centre's Federation (FECECH). Those voting in the election had been appointed by the university authorities. The new President, who will remain in office for one year, will, within the next few days, have to appoint the new leaders of the students centres who will be his close collaborators during the next 12 months." 5/

174. On the occasion of the appointment of the student leaders, ceremonies which were attended by the authorities and at which the recently appointed leaders took the floor were held in several of the country's universities. At the ceremony held in the University of Chile, the President of FECECH said:

"We are and always shall be independent of this or any other Government, but we support the successful decision of 11 September 1973 to construct a free society."

"In this connexion, we warn any political agitators who might attempt to disturb this process by creating artificial disorder, that they will meet with strenuous opposition in our organization and that we shall also extend this opposition to those persons who, under fanatical and counter-productive pseudo-nationalism, play into the hands of marxist groups and their fellow-travellers." 6/

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4/ El Mercurio, 28 September 1978.

5/ El Mercurio, 2 October 1978.

6/ El Mercurio, 4 October 1978.

Similar ceremonies were held at the State Technical University (UTE), 7/ at the Antofagasta branch of the University of Chile, 8/ at the Catholic University, 9/ at the Arica branch of the University of Chile, 10/ and at other regional branches.

175. The new method of appointing representatives which is to be applied in 1979 was critically received by groups of students who attempted to express their disagreement. When the features of the new system were being discussed, groups of students were denied permission to hold meetings "to consider the lack of student participation in University affairs", the authorities alleging that the meetings envisaged had characteristics of political demonstrations. 11/

176. Although authorization had not been given, some groups of students sought to express at public meetings their views on the system of representation 12/ and on other questions in which they were interested, such as, for example, the situation prevailing in Nicaragua. 13/

177. The purpose of one of the meetings was to express disagreement with the new system for the election of student representatives, which had been drawn up by the presidents of Student Centres and approved by an order of the Rector's Office. Only representatives appointed with the agreement of the Rector of the University appear to have known about and approved this system. 14/

178. The reasons for the students' protest were the lack of consultation on a regulation concerning them and their disagreement with the system of appointment, the official bases of which are those indicated by Vice-Rector Illanes (mentioned above) but which, in the opinion of a student who was interviewed by journalists "would make it possible to maintain perpetually in power only those who support political positions approved by the authorities". 15/

179. The holding of the meetings gave rise to severe disciplinary measures. On 14 November 1978, El Cronista published the following report:

"Yesterday, the President of the Student Federation of this FEUC establishment, José Miguel Olivares, had an interview with the Rector of the Catholic University, Jorge Swett, to discuss the expulsion of two students from the college, a measure adopted because the students had led political-type demonstrations at Oriente Campus.

"The persons concerned are Jorge Carrasco Espinoza, of the Faculty of Theology, and Juan Claudio Godoy Sáez, of the Faculty of Education, who, by order of the Rector's Office, were expelled from the University from 9 November after 'promoting events intended to disrupt sound conditions of co-existence at the University'.

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7/ El Mercurio, 5 October 1978.

8/ El Mercurio, 11 November 1978.

9/ El Mercurio, 16 November 1978.

10/ El Mercurio, 14 December 1978.

11/ El Mercurio, 6 September 1978.

12/ El Mercurio, 9 November 1978.

13/ El Mercurio, 7 September 1978.

14/ El Mercurio, 2 October 1978.

15/ Solidaridad No. 57, "FECECH, una respuesta en el aire".

"Both were accused of preparing a political demonstration concerning the situation in Nicaragua last September and another one in connexion with the approval last week of the new statute of the local Students' Federation.

"It seems that, in the Catholic University, the expulsion having been ordered by the Rector's Office, the persons concerned, who had previously been warned of the risk they were running as a result of their having engaged in extra-academic activities, will have no right of appeal."

180. In its edition of 17 November 1978, El Mercurio, in commenting on the events which gave rise to the expulsion, notes their peaceful character:

"It would be foolish to allow a regrettable disciplinary incident to be transformed into an ideological and political quarrel, into a source of demonstrations and counter-demonstrations and into front-page news. The Chilean University is faced with grave and urgent problems, but the episode which caused some 50 students of the faculty of Theology to engage in chanting and other expressions of peaceful protest is not among the most important."

181. El Mercurio also reported that the punished students' request to the Rector of the University for reconsideration of the expulsion measure had been rejected. For his part, the Rector of the Catholic University, Jorge Sweet Madge, who applied the measure, told students who interviewed him that he was not prepared to discuss the question of the expulsions, which were irrevocable, and said that, within a year he might lift the punishment depending on the conduct of the students. 16/

182. In addition to the above-mentioned expulsions, proceedings were initiated against a group of students of the Faculty of Education of the University of Chile, following events similar to those which had given rise to the expulsions. 17/

183. According to reports in El Cronista of 14 November 1978, the expelled students are accused of preparing "political demonstrations". The authorities do not seem to use the same criteria in deciding which of all the demonstrations held in the University are to be regarded as "political", nor do they seem to adopt an equally severe approach to the various types of political demonstration. The deputy Rector of the Catholic University, Jaime del Valle, when asked by a journalist of the magazine Hoy whether the formation of a student movement opposed to the union-type Group (sponsored by the authorities) would be authorized, replied that it would be, provided it abided by the rules of the game. He explained that to express disagreement with the Government's institutional plan would constitute "political" opposition, which is forbidden for students. To the journalist's question whether FEUC's public support of the Government was not political, he replied that the Rector had warned FEUC's President whenever the latter had made political references in his speeches. 18/ Apparently there are political demonstrations that are punished by expulsion whereas others, although repeated, merit nothing more than a warning.

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16/ El Mercurio, 1 December 1978.

17/ La Tercera de la Hora, 21 November 1978.

18/ Hoy, 15-21 November 1978.

184. According to the information given above, the right of assembly and association in the University depends on the type of opinion held by those wishing to avail themselves of those rights. The Group notes that the only student organizations permitted in the University are those sponsored by the Government (or possibly those which comply with Government-established rules). Other groups which seek to meet in order to voice opinions, even opinions on matters connected only with university affairs, are subject to severe punishment, including loss of the right to education. In the circumstances, restrictions on the right of assembly and association cannot be said to have been relaxed in the universities, since enjoyment of such rights is not guaranteed to all students on equal terms.

B. Freedom of association and the right of assembly in the case of trade unions

1. The Chuquicamata conflict

185. In its preceding report (A/33/331, paras. 541-567), the Group referred to a number of restrictions imposed on the right of assembly of workers as a result of the labour conflict at Chuquicamata, in the province of El Loa, which took the form of the so-called "lunch-box campaign". The workers at CODELCO (a State-owned copper-mining enterprise) boycotted the company canteens for a period in protest against the failure to give due consideration to wage claims submitted over the preceding two years. The report also referred to the declaration of a state of siege in the province of El Loa, where the Chuquicamata mines are situated, and to the legal and practical consequences of that declaration (paras. 99 and 100).

186. Following the events described in the report, the Office of the Commander of the State of Siege of the Province of El Loa issued proclamation No. 1 of 2 September 1978, which provided as follows:

"1. The holding of all meetings, assemblies, demonstrations and gatherings of any kind in the province of El Loa are hereby prohibited. The Commander of the Zone under State of Siege may, however, authorize the holding of meetings, assemblies or other activities, subject to the submission to the Garrison Commander, not less than 24 hours beforehand, by the parties concerned or their representatives, of a written request indicating the reasons for which it is made.

2. The entry of persons into and the departure of persons from the province of El Loa shall be controlled. For this purpose the Chilean police shall arrange the necessary control measures at appropriate locations.

3. Motor vehicle movements within the province between the hours of 12.00 p.m. and 6.00 a.m. daily shall also be subject to control.

4. Permits allowing private individuals to carry firearms are suspended for the duration of the State of Siege.

5. Social, family and religious gatherings such as weddings, may be held without prior permission. However, persons attending such gatherings must ensure that they do not instigate any act likely to result in a disturbance of the peace.

6. As from this date, the entry of persons into the mine itself shall be restricted to workers employed in the mine. Visitors and persons unconnected with the mine operations must, in order to be admitted, obtain a safe conduct from the designated Commander of the Zone under the State of Siege." 19/

187. With the declaration of the State of Siege, the workers were unable to hold meetings, and visits to the zone were restricted to the point where the Apostolic Administrator of the Prefecture of Calama was denied entry, on the orders of the Commander of the Zone under State of Siege, who stated, in a communication dated 18 September 1978, addressed to the above-mentioned prelate:

"Your planned visit to Ascotán is strictly prohibited. For reasons of military security, the movement of vehicles into and out of that area is suspended until further notice."

188. About 70 persons, charged with using the conflict for political purposes, were arrested under the powers conferred on the President by virtue of the State of Siege. The majority of them were mine workers, but there were also residents of the province who had been politically active in parties opposed to the Government (see chap. I, sect. A). Three of them were held under house arrest, but the majority were taken to remote areas, some of which had harsh climates that adversely affected the health of these detainees. 20/ Then, after about a month, the persons who had been arrested were released, for lack of evidence. A number of them stated that their health had suffered from the prolonged isolation in which they had been held on their removal to remote areas. 21/

189. The right of assembly and freedom of expression were subjected to severe restrictions under proclamation No. 2, issued by the Office of the Commander of the Zone under State of Siege on 7 September 1978, which stated, inter alia:

"2. In connexion with the calm prevailing in the province, I feel it my duty to state that those citizens who observe the regulations in effect and conduct themselves in a lawful and patriotic manner, by performing the duties of their various professions, functions and occupations, should continue to do so, in the assurance that the armed forces and law enforcement authorities of the province will ensure conditions that are absolutely normal in all respects.

3. I warn any person who is thinking of acting with the obvious intent of disrupting public order, that he will be subjected to the full force of the law, and that he cannot expect the slightest leniency, since he will be acting against all Chileans and against his own country.

4. Organizations, clubs, associations and other groups wishing to hold meetings of any kind must request the appropriate authorization 48 hours beforehand at the Headquarters of the Military Garrison of Calama and Chuquicamata or at the Office of the Provincial Governor, it being clearly understood that the submission of a request does not mean that authorization has been granted.

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19/ El Mercurio, 3 September 1978.

20/ Solidaridad 53, "Detenido ex Parlamentario".

21/ La Segunda, 18 October 1978.

5. Under the controlled freedom of the state of emergency, the communications media shall prevent the dissemination of information constituting anti-patriotic propaganda. It is my duty to draw attention to the responsible and correct attitude adopted by the provincial media. However, I wish to make clear the legal liability of any person making a statement of any kind to organs of information from places outside the province. It must be very clearly understood that any person doing so deliberately or maliciously shall render himself liable to penalties to be determined by the Commander of the Zone under State of Siege in the exercise of his legal powers." 22/

190. The Group notes the statement in the proclamation that any person "who is thinking or acting with intent to disrupt public order will be subjected to the full force of the law", which implies that the authorities are empowered to carry out repressive measures on the basis of assumptions as to the opinions of individuals. The threat contained in the proclamation was carried out in the case of the persons arrested, who were never brought to trial, despite the serious charges made against them in official statements, which suggests that no specific charges against them existed. The Group also notes that the intentions expressed in this proclamation extend beyond the boundaries of the province under State of Siege and that the aim is to prevent information concerning events in the Zone from being disseminated by the information media to the rest of the country.

191. The Group notes that the restrictions on the rights of assembly and freedom of expression imposed in the Zone are related to the attitude of the authorities towards the labour problem. Sergio de Castro, Minister of Finance, said that talks between the enterprise and the workers must be conducted in an atmosphere totally free of any pressure. 23/ The Vice-President for Marketing of CODELCO-Chile, Colonel Gastón Fernández, also stated quite clearly: "If wage negotiations are to take place, we are not prepared to accept pressure". 24/ These statements show quite clearly that the purpose of the measures described above was apparently to prevent the mineworkers from exerting any pressure with a view to securing progress in the negotiations, in accordance with their repeated claims.

192. The information received by the Group indicates that the workers confined themselves to drawing attention to their problems, without adopting positions that might have warranted such drastic measures. The statement issued by their leaders following their approach to the authorities in Santiago sheds some light on their position:

"In view of the lack of response to the requests which we have made over the past two years and which were reiterated in a document delivered over a month ago to the government authorities and to CODELCO-Chile, we find ourselves in the painful position of having to return to Chuquicamata with a feeling of frustration and disillusion in our hearts, caused by the indignation that would be felt by anyone who considers himself to have been cheated when, in exercising his right to call on the authorities to solve his economic problems, he receives the moral slap in the face of red tape or is met with the deafness of insensitivity.

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22/ La Tercera de La Hora, 8 September 1978.

23/ La Segunda, 7 September 1978.

24/ La Tercera de la Hora, 3 September 1978.

Nevertheless, we wish to make it clear, for the information of workers, of public opinion in general and, in particular, of men and women of goodwill everywhere, that:

(a) The proposals made in our petitions relate exclusively to ECONOMIC AND TRADE-UNION MATTERS. If there do exist interests of another kind, that is not our responsibility. The moment of truth will come, however, when the true political connotations that have been so well publicized are investigated, and we hope that the authorities will then have the courage to tell us if unwarranted situations or wrongful arrests have taken place, matters which are at present of great concern to us." 25/

193. Subsequently, some improvements were granted to the workers. Of those who had been arrested, not all were able to keep their jobs. CODELCO called for the resignations of 53 of the 72 persons arrested for alleged political reasons. According to information provided by Lieutenant-Colonel Jorge Muñoz Potony, the Governor of El Loa, those workers were forced to leave the province and forbidden to return as long as the State of Siege lasted. 26/

194. In the light of the proclamations and statements made and of the arrests and other measures taken in the Zone, the Group feels compelled to state that the restrictions imposed on human rights were disproportionate to the exigencies of the situation prevailing in the Zone at the time when they were imposed. A number of the orders and rules put into effect adversely affect freedom of thought and conscience, as has already been pointed out - freedoms which may not be restricted even in situations presenting a genuine threat to the life of the nation. 27/ The Group also notes that the restrictions imposed on the right of assembly and freedom of expression place insurmountable obstacles in the way of workers' participation in the decision-making process in matters of direct concern to them.

195. Furthermore, the limitations imposed have prevented priests from visiting their congregations. This amounts to infringement of their right to carry out the activities inherent in their religious mission and, in fact, constitutes a denial of freedom of religion and the right to perform religious duties.

## 2. New legislation affecting freedom of association

196. In its last report to the General Assembly, the Group examined a number of legislative enactments relating to the trade-union movement and the rights of workers which introduced changes prejudicial to rights already established for various categories of workers, and, in particular, Decree-Law No. 2,200, amending the Labour Code. The report also dealt with the serious restrictions placed on trade-union rights which affect all categories of workers in Chile (A/33/331, paras. 600-630). A number of amendments to the labour legislation were introduced from September 1978 onwards.

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25/ El Mercurio, 13 September 1978.

26/ El Mercurio, 19 October 1978.

27/ See, for example, article 4, paragraph 2, of the International Covenant on Civil and Political Rights and article 27 of the American Convention on Human Rights.

197. On 19 October 1978, the Minister of the Interior delivered a speech on radio and television announcing a number of measures that were being taken by the Government in the labour field. He referred, inter alia, to the promulgation of a decree-law giving special powers to the Minister of the Interior with a view to "developing the necessary flexibility for the task of administration, empowering him, for that purpose, to recommend to the Head of State the dismissal of any official who, by his action or deliberate inaction, impedes the exercise of the rights of the public, and to eliminate or simplify, in the various departments, unnecessarily bureaucratic procedures that are incompatible with a modern society ...". He also announced that the Government "had decided to disband, as unlawful associations, seven trade unions which were clearly marxist-oriented and which were still in operation, and to impose legal penalties on any organization operating in the trade union field while not possessing any legal existence".

198. He further announced that "in the next few days, the Government would make known the course it planned to follow in order to create a new institutional framework for trade unions, which would contrast with the politicization and divisiveness trade unionism had suffered from in the past, when it had been made an instrument of party politics". 23/

- (a) Decree-Law No. 2,345 of 17 October 1978. Discretionary powers of the Government in respect of dismissals from the Civil Service and State enterprises.

199. Article 5 of Decree-Law No. 2,345 of 17 October 1978 (for full text, see annex XIV), enacted in accordance with the policies announced by the Minister of the Interior in the speech referred to above, provides as follows:

"In performing his responsibilities, the Minister of the Interior may propose to the President of the Republic that any official of the State administration, regardless of the capacity in which he works, should be dismissed when such action is necessary for the faithful execution of any regulations or instructions issued.

A decision on such a proposal shall be a matter for the exclusive judgement of the President of the Republic.

The Minister of the Interior may also propose the appointment of persons to replace officials dismissed in conformity with this article.

The dismissal of officials in conformity with this article shall not be governed by any other legal requirement or provision. In particular, such action shall not be prevented or deferred by reason of the existence of legal rights or tenure of any kind, and shall not be subject to the Administrative Statute (Decree with Force of Statute No. 338 of 1960) or to other similar organic provisions.



Any document ordering the dismissal of an official in conformity with this article shall bear the signatures of the Minister of the Interior and the Minister responsible for the matter in question.

No official dismissed in conformity with this article shall be deprived of his social security rights or his rights to severance pay in cases where this is applicable."

200. The scope of the powers conferred on the Minister of the Interior by this provision is defined in article 2, in which it is stated that the provision covers all organs through which the State performs, directly or indirectly, the function of public administration, and in particular all the Ministries and their departments, the central or decentralized services and State enterprises. 29/

201. Decree-Law No. 2,345 affects, in particular, workers' representatives. In article 5, it is stated specifically that this power of the Minister of the Interior "shall not be prevented or deferred by reason of the existence of legal rights or tenure of any kind, and shall not be subject to the Administrative Statute (Decree with Force of Statute No. 330 of 1960) or to other similar organic provisions". If the officials in charge of the public sector are deprived of their union rights - by the specific repeal of the provisions affording them the protection necessary for the full and independent performance of their functions - then it will be possible for workers' representatives to be dismissed by a simple decision of the Executive Power. Not only are representatives thus deprived of protection from action by the authorities, but all State workers will be without adequate representation of their interests.

202. Decree-Law No. 2,345 also constitutes a warning to all employees of the Administration and of State enterprises, whose right to work will henceforth be afforded no legal protection of any kind. It states, in its preamble, that its aim is "to achieve efficiency in the functioning of the services of the State administration in all its aspects, in other words, the expeditious execution of the provisions which govern State activity, consideration and concern for the users of the services, and effective management of the services". However, the scope of the powers conferred on the Executive Power to dismiss "any official of the State administration, regardless of the capacity in which he works" - a power which "shall not be governed by any other legal requirement or provision" - seems to confer arbitrary power. This power would not be limited by any of the existing rules that have hitherto governed the labour rights of State employees, such as protection of seniority or other rules established in the statutes concerning State officials. 30/

203. The National Association of Government Employees (ANEF) has commented on this provision in a document in which it is stated that:

"Apart from the fact that this Government decision constitutes an extension of powers of the same type as those which the Minister of Finance has held since April 1976 regarding the dismissal of Government employees, 'it appears difficult to explain in the light of the fact that, for more than four years, the Supreme Government has been debureaucratizing the Government apparatus, there have been mass dismissals of countless officials and whole services have been eliminated or are in the process of being abolished, as in the case of CORA'". 31/

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29/ For full text see annex XIV.

30/ With regard to the implementation of this Decree-Law and practical measures to which it has given rise, see paragraph 249.

31/ El Mercurio, 22 November 1978.

204. Large numbers of workers and their representatives would be affected by this Decree-Law, including coppermine workers, some of whose leaders have expressed concern regarding Decree-Law No. 2,345, in spite of being known supporters of the Government. Referring to the above provision, Guillermo Media, a Councillor of State and a leader of the coppermine workers, stated that, in the Union

"It was agreed to ask the Ministers of the Interior and Labour for a hearing, since it is felt that any reduction in the number of coppermine workers should be carried out in accordance with the Labour Code, so that the status of coppermine workers would clearly remain as established in the Constitution." 32/

205. For the purpose of ensuring compliance with the provisions of article 23, paragraph 4, of the Universal Declaration of Human Rights, the protection of workers' representatives is specifically referred to in international instruments such as Convention 135 of the International Labour Organisation, article 1 of which states:

"Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements."

206. In accordance with the above principle, as embodied in the Convention, the Freedom of Association Committee of the International Labour Organisation (ILO) has, on a number of occasions, decided as follows:

"One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures - and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations should have the right to elect their representatives in full freedom." 33/

207. The views of the Government on the trade-union rights of workers of the State administration and State enterprises were expressed by Vasco Costa, the Minister of Labour, on 27 October 1973, when he announced the Government's decision

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32/ La Tercera de la Hora, 28 October 1973.

33/ Freedom of association. Digest of decisions of the Freedom of Association Committee of the Governing Body of ILO No. 215. Second edition. ILO 1976: 19th Report, Case No. 97, para. 48; 30th Report, Case No. 174, para. 229; 44th Report, Case No. 200, para. 157; 57th Report, Case No. 231, para. 120; 128th Report, Case No. 651, para. 58; 135th Report, Case No. 646, para. 135; 142nd Report, Case No. 673, para. 36; 144th Report, Case No. 762, para. 144; 147th Report, Case No. 717, para. 260.

to call union elections for certain categories of workers. On that occasion, he said "I should point out that ... officials of the State administration, in respect of whom the law neither does, nor will, countenance the right to unionize, or to enter into collective bargaining, for reasons which are obvious and a matter of public knowledge". He went on to say "workers in State enterprises will continue to be governed by their respective regulations, which must be updated before any collective bargaining procedure can be put into effect; such collective bargaining procedures must differ in some respects from those applicable in the private sector". 34/

(b) Decree-Law No. 2,346 of 17 October 1978. Dissolution of the trade unions and confiscation of their assets

208. In the previous report of the Group (A/33/331, paras. 656-664), information was given on the removal of trade-union leaders in some of the workers' organizations and their replacement by other persons who supported the Government. Information was also given on the revocation of the legal personality of unions or their dissolution and subsequent replacement by pro-Government unions.

209. By Decree-Law No. 2,346 of 17 October 1978 (see annex XV), the Government of Chile declared seven unions illegal (art. 1). 35/ It also ordered the unions to be dissolved and annulled their legal personality (art. 2). The same provisions were applied to all the trade-union organizations affiliated to the bodies declared illegal (art. 3). In addition, the Government ordered the confiscation of all their assets, which were transferred to the State (art. 4). This measure was executed on 20 October 1978, the day on which the Decree-Law was published in the Diario Oficial. "All the furniture and other possessions of the seven unions that had been dissolved were confiscated by officials of the Ministry of Land and Settlement, who used police lorries while members of the uniformed police mounted guard." 36/

210. Sergio Fernández, the Minister of the Interior, stated that the purpose of dissolving trade-union bodies which had no legal personality was to enable "the workers to be represented solely by authentic leaders". 37/

211. The bank account of the SUMUR Workers' Union was subsequently frozen, as were also those of other rank-and-file organizations affiliated to the seven unions in

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34/ El Mercurio, 28 October 1978. The Minister's allusion to workers in State enterprises reveals that the statutes of other workers covered by the Decree-Law are no longer in effect.

35/ Decree-Law No. 2,346 names the following: The "Ranquil" National Confederation of Agricultural and Indigenous Workers; the National Confederation of United Agricultural Workers (UOC); the National Confederation of Metalworkers' Unions (FENSIMET); the Santiago Building Workers' Union; the National Textile and Garment Federation (FENATEX); the Federation of Workers in the Construction, Timber and Building Materials Industries (FIEMC) and the National Federation of Mine Workers (FIMI).

36/ El Mercurio, 21 October 1978.

37/ El Mercurio, 21 October 1978.

question. 38/ In addition, some of the unions belonging to the disbanded federations were also closed, namely the Cemento Melón Workers' Union at La Calera; the Workers' Union at the El Soldado mine, which is owned by the Cía Disputada Las Condes, and the Molino Schatt Workers Union, also at La Calera.

212. Monsignor Alfonso Baeza, Vicar-General of the Pastoral Obrera in the Santiago Archdiocese, announced that a group of lawyers was investigating the possibility of protecting the assets of the organizations on the ground that the workers would be prejudiced by their confiscation, since the organizations offered their members social protection and their property and the premises they used had been purchased with funds contributed by the members. 39/ The lawyers of the Pastoral Obrera Vicariate pointed out that the measure "was unconstitutional both in form and in substance, since it violated the rights of association, union membership, petition and ownership, which were laid down in the Constitutional Acts". 40/

213. The trade-union organizations concerned comprised 550 unions with a nation-wide membership of 400,000 workers according to one of the leaders of a dissolved union, but the Minister of Labour puts the figure at 112,795 workers. 41/

214. The protection of workers' organizations with regard to the possible adoption of measures inimical to their interests by the administrative authorities of the State is a matter that is covered by the international rules for the protection of trade-union rights.

215. In article 4 of the International Labour Organisation (ILO) Convention No. 87 of 1948 it is stated that:

"Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority." 42/

216. As a result of the complaint presented by the dissolved trade-union organizations, the ILO Committee on Freedom of Association took up the matter in its one hundred and eighty-seventh report to the Governing Body, and made the following observations:

"Whatever the reasons invoked by the Government in the legislative decree dissolving these organizations, the Committee must point out that the procedure followed in these cases for the dissolution of these organizations is not compatible with the principle that workers' organizations should not be dissolved by administrative authority. The measures taken are of a particularly serious nature since affiliated organizations are also affected under the legislative decree, and their assets transferred to the State (article 4 of the decree). Accordingly, the Committee would request the Government to provide, as soon as possible, its observations on this aspect of the case." 43/

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38/ El Mercurio, 25 October 1978.

39/ El Mercurio, 21 October 1978.

40/ El Mercurio, 27 October 1978.

41/ El Mercurio, 21 October and 24 October 1978.

42/ Trade union rights are also dealt with in the International Covenant on Civil and Political Rights (article 22) and the International Covenant on Economic, Social and Cultural Rights (article 8).

43/ ILO document GB.200/10/14, 208th session, 14-17 November 1978.

(c) Decree-Law No. 2,347 of 17 October 1978. New Offence against the security of the State

217. Decree-Law No. 2,347 was published in the Diario Oficial on 20 October 1978, that is, on the same day as Decree-Law No. 2,346 concerning the dissolution of seven trade-union federations and confederations and their associated bodies. It establishes a new offence which, in jurisdiction and procedures, is subject to the provisions of Title VI of Act No. 12,927 of 6 August 1978 on the Security of the State (article 2) (see the full text of Decree-Law No. 2,347 in annex XVI). Article 1 provides as follows:

"Any associations or groups of persons which, without possessing legal capacity to do so, under labour legislation or ordinary law, whichever is applicable, undertake the representation of sectors of workers are hereby declared contrary to public order and the Security of the State, in accordance with the provisions of article 1, section 9, of Constitutional Act No. 3.

Any persons contravening the provisions of the preceding paragraph shall be punished by medium-term imprisonment in the medium to maximum degrees".

218. The first part of the article quoted specifies that it is prohibited to "undertake the representation of sectors of workers without possessing legal capacity to do so". As legal capacity is granted by the Government through its administrative organs, only those associations to which the Government gives the necessary authorization may represent the workers or their unions. The second paragraph of the article establishes penalties involving deprivation of liberty for persons who violate this prohibition.

219. Decree-Law No. 2,347 had an immediate impact on the trade-union organizations. On 21 October 1978, its effects were commented upon in La Tercera de la Hora as follows:

"If this measure is enforced indiscriminately, 35 nation-wide trade-union organizations or groups will be placed outside the law and their leaders will be liable to penalties as prescribed in Decree-Law No. 2,347." 44/

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44/ The list of those that would be affected is as follows: COMACH, directed by Eduardo Ríos; COMACHITA, directed by Martín Bustos (both represent sectors of shipping federations or unions); the National Workers' Union (UNTRACH), headed by Bernardino Castillo and Hernol Flores; the Labour Front (pro-Government), presided over by René Sottolichio; the National Trade Union Co-ordinating Body, headed by Manuel Bustos; the Group of Ten; the United Workers' Front (FUT); the National Petroleum Central Office; the National Union of Leather and Footwear Workers (FONACC), which has a contingency fund equivalent to \$3 million; the National Bakers' Federation; the National Federation of Workers in Commerce and Co-operatives; Federation of Workers in Commerce and Industry; branch offices of the Confederation of Copper Workers (including the branch office at El Teniente headed by the State adviser, Guillermo Medina); the National Office of the Telephone Company Unions; the Joint CAP-Huachipato Union; the Federation of Chemists and Pharmacists; the Confederation of Professional Associations; the National Association of Copper Supervisors (ANSCO); the Federation of Professional and Technical Personnel of the National Health Service; the National Federation of Health Workers (FENATS); the National Federation of Newspaper Vendors; the Federation of Workers in the Medium-sized Mines; the CEPCH for persons living on pensions and gratuities; the Federation of Iron and Steel Unions; the Associations of Paperworkers' Unions; the Federation of Workers in Private Education; the Federation of Public Entertainment Workers; the Federation of Tanners; the Federation of Glass Workers (La Tercera de la Hora, 21 October 1978).

220. The Group has no information on the immediate practical effects of this provision on the organizations named above. In any case, the mere possibility that the decree will be enforced prevents trade-union leaders from expressing their views freely on controversial matters within their sphere of competence.

221. The first paragraph of article 1 of Decree-Law No. 2,347 severely restricts the right of association since it prohibits workers' organizations which are not approved by the Government from engaging in any kind of trade-union activity.

222. Under the second paragraph of article 1 violations of the prohibition imposed in the first paragraph are punishable by imprisonment. A new penal offence is thus created, namely, membership of an association or group of persons that undertakes to represent workers' groups without possessing legal capacity to do so.

223. While the first paragraph of article 1 states that certain trade-union associations are contrary to public order and State security simply because they have not been approved by the Government, in the second paragraph makes membership of an outlawed association an offence, even though the activities, intentions and procedures of the association may not have impinged upon public order or State security in any way. The mere fact of establishing an association which speaks or presents petitions on behalf of a group of workers or of belonging to such an association is sufficient to warrant penal sanctions, and this is inconsistent with directly relevant rules of international law.

224. The principle thus established conflicts with the principle enunciated in International Labour Organisation Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize, article 2 of which states that:

"Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

Article 7 of the Convention specifically provides that:

"The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of articles 2, 3 and 4 hereof".

225. Decree-Law No. 2,347 places serious constraints on the right to associate. As indicated above, it prevents all trade-union organizations that have not been approved by the Government from engaging in any of the activities proper to such bodies, and thus deprives them of their very reason for existence. A trade-union association which is unable to express an opinion or make claims on behalf of the workers cannot fulfil the purpose for which it was established.

226. The object of the Decree-Law does not seem to be to ensure the legitimacy of the representation of the workers' representatives, to prevent the commission of acts genuinely damaging to public order or the Security of the State or to ensure that disputes are settled in an orderly and peaceful manner, but simply to prevent the existence of and the expression of views by independent associations of workers. This is a serious violation of trade-union rights.

(d) Decree-Law No. 2,376 of 26 October 1973 providing for the holding of trade union elections

227. Following the announcement by the Minister of the Interior on 19 October concerning the new institutional framework for trade unions, the Government enacted Decree-Law No. 2,376, which, inter alia, established the rules to govern the trade-union elections of 31 October 1973. The public announcement was made by Vasco Costa, the Minister of Labour, on 27 October 1973, i.e. three days before the date fixed for the elections. Mr. Vasco Costa said in his address:

"In accordance with the Chilean Government's Declaration of Principles, the new institutional framework in the labour field has three guiding principles.

Firstly, restoration of the dignity of work, as an important aspect of the human being, both spiritually and materially speaking, which renders him particularly valuable to the State.

Secondly, recognition of the right to unionize as a facet of the natural human right of association, which, as far as trade unions are concerned, should be restricted only for specific reasons involving the common good that would render such a right inappropriate in the case of a particular activity.

And finally, an approach to all the intermediary groups between the individual and the State which, in accordance with the principle of hierarchical subordination, recognizes their legitimate autonomy in the pursuit of their own specific objectives. As applied to trade unionism, this last principle implies the freedom of the bodies concerned to decide upon their own destiny, but always within the framework of their specific function, outside which trade union activity would not be truly legitimate." 45/

228. Despite Minister Vasco Costa's reference to freedom of association and the dignity of workers, various aspects of Decree-Law No. 2,376 and of the electoral procedure do not appear to be compatible with those principles. Firstly, Decree-Law No. 2,376 disqualifies certain people from being elected as trade-union leaders on political grounds. Any worker who has engaged in party political activities, who has been a militant member of a political party or has applied for a post of people's representative or any other type of representative of a political party in the 10 years before becoming a trade-union official, or who has engaged in any of these activities while holding office is disqualified from election. Furthermore it is provided that failure to comply with any of these requirements while holding office shall constitute grounds for disqualification (art. 4).

229. In this connexion, the Committee on Freedom of Association of the International Labour Organisation (ILO) has decided in similar cases that political discrimination in the election of trade-union officials violates Convention No. 87 which states that employers' and workers' organizations "have the right to elect their representatives in full freedom". 46/

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45/ El Mercurio, 28 October 1973.

46/ Twenty-fourth report, case No. 146, paragraph 273. No. 87 idem ...

230. Secondly, transitional article 11 disqualifies:

"Persons whose mandates have been extended or who have been nominated under the provisions of Decree-Law No. 198 of 29 December 1973".

from exercising the functions of a trade-union official, for the five years following the publication of the Decree-Law.

231. This provision disqualifies all the present trade-union leaders. With regard to this ban, the ILO Committee on Freedom of Association has decided as follows:

"The ban on the re-election of trade union officials is not compatible with Convention No. 37. Such a ban could have serious repercussions on the normal development of a trade union movement lacking in persons capable of adequately carrying out the functions of trade union office." 47/

232. The elections were called unexpectedly, only three days before the date set for the voting, an event which took place on the day of publication of Decree-Law No. 2,376. The workers did not have time for individual reflexion or for discussion of the matter which would have encouraged the "social deliberation" that is essential for the exercise of trade-union rights. In an editorial article, El Mercurio commented as follows:

"The trade-union elections were called unexpectedly, a course of action which the Government took deliberately in order to prevent the elections from being manipulated for political purposes. Minister Costa was quick to state that fact in no uncertain terms." 48/

233. Decree-Law No. 198 of 29 December 1973 (see A/32/227, para. 242, and A/33/331, paras. 638-655) remained in force except during the 24 hours during which the voting took place. Consequently, on the days preceding the voting the workers could meet only with prior authorization from the authorities, in the presence of civil or military officials and solely for information purposes, since any form of meeting for purposes of discussion was prohibited.

Furthermore, transitional article 2 of Decree-Law No. 2,376 states:

"The trade-union elections referred to in the preceding article shall be governed by the following rules:

(1) All members of the trade union who satisfy the requirements prescribed in article 376 of the Labour Code shall be candidates. Accordingly, nominations of candidates for election to offices in trade unions shall not be permissible;"

Not only were the voters prevented from selecting their candidates freely, but also, under that provision, the people elected had no choice as to whether they wished to stand for election or not.

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47/ Eighty-sixth report, case No. 451, para. 143; 143rd report, 1, No. 89. Idem ...

48/ El Mercurio, 29 October 1973.



234. Specific instructions and warnings from official quarters advised workers that they should abstain from voting for anyone who might possibly be subject to the disqualification under the legislation referred to above. Minister Vasco Costa stated in the course of a speech made on 27 October:

"When voting, each worker must, so as not to waste his vote, take care to cast his ballot for a worker who has not engaged in the militancy or political activity described." 49/

235. The only supervision of the electoral process was that carried out by the Government. Decree-Law No. 2,376 made no provision for any form of worker participation in ensuring the validity of the elections and the reliability of the results. Neither did Decree No. 159, which gave effect to Decree-Law No. 2,376. Decree-Law No. 2,376 provides in transitional article 2 paragraph 5:

"The election shall be held in the presence of a labour inspector. For this purpose alone, the Director of Labour shall delegate to such municipal, provincial and regional authorities as he deems appropriate the power to confer the status of labour inspector on any public official, who shall have this status for the exclusive purpose of supervising and bearing witness to the elections with such powers as may be conferred on him by the decree of the President of the Republic who authorizes the election and by the Director of Labour."

236. The Government also intervened in trade-union activities in other ways. In order to take office, elected representatives had to take the following oath, set out in article 6 of Decree-Law No. 2,376, in the presence of the Labour Inspector:

"I swear that I comply with the requirements prescribed by law for holding office as a trade-union official, that I do not participate and will not participate in any political activity or movement while I hold office, that I shall not attempt to politicize trade-union organizations, or distort their aims, or serve as an instrument for that purpose, and that my sole aim shall be faithfully to represent member workers."

237. Attention is drawn to the fact that article 4 (referred to previously) and article 6 establish disqualifications for the exercise of political rights during the 10 years prior to the election and the term for which the leader is elected. Such disqualifications entail not only discrimination based on the exercise of legitimate political rights which were in force during the period prior to that covered by the law, but also a renunciation of the exercise of those rights in the future. The provision affects not only the right of association, but also the right of expression, as it penalizes any leader who, before becoming a member of any kind of association, "attempts to politicize trade-union organizations". This formula, which is not accompanied by a precise definition, would seem to indicate that any statement dealing with matters not specifically related to the enterprise in which the leader works, or any comment on government labour policy in general, could be interpreted as an "attempt to politicize".

238. In addition to the provisions already mentioned, there is also transitional article 9 of Decree-Law No. 2,376, which states:

"The Director of Labour shall have the widest possible powers to settle any doubt or difficulty that may arise in connexion with the election and with the application of this law, for which purpose he may issue such instructions and decisions as may be necessary."

239. The administrative authorities may declare vacant the posts of leaders who do not take the oath provided for in article 6, and they may decide whether leaders have committed perjury or failed to abide by their oath when in office (transitional article 8). An appeal may be lodged against their decision, within five days following notification thereof in the court having jurisdiction in labour matters in the place where the trade union concerned has its head office and that court shall base its decision solely on the facts alleged by appellant and on the report of the Director of Labour. The judge shall assess the evidence as he thinks fit (article 5).

240. Although the administrative decision ordering dismissal may be appealed before a labour court, such a court does not have at its disposal specific criteria for determining, for example, when an attempt has been made "to politicize" an organization. The decision will be left to the discretion of the judges who will have before them information provided by an administrative office of the Government (article 5). The ILO Committee on Freedom of Association has decided in similar cases that:

"It would be necessary to delete the provisions of legislation enjoining respect for 'the higher interests of the Nation and the common good', on the basis of which labour courts are to decide whether the conduct of trade union officers warrants their dismissal, in view of the fact that these provisions are drafted in terms so wide that they fail to afford any precise criteria for judicial decision". 50/

241. Transitional article 7 of Decree-Law No. 2,376 provides that vacancies arising for any reason - inter alia the disqualifications decided upon by the Director of Labour, or refusal to take the oath - shall be filled in accordance with the provisions of Decree-Law No. 198, namely by appointing the worker with the most seniority who is a member of the trade union concerned or, in some cases, though designation by the Minister of Labour of a person to replace the elected officer. 51/ The same procedure shall be employed for the election of the provisional governing bodies of future trade unions (transitional article 6).

242. Although national workers' organizations have repeatedly demanded the right to hold trade-union elections, the calling of this election can scarcely be regarded as a satisfactory response that takes full account of the workers' right to elect their representatives freely. The present discriminatory disqualifications and the restrictions on the right of assembly and freedom of speech as well as the presence of the Government in the elections and its extensive powers to decide who qualifies as a workers' representative and who does not all present a picture of interference in the elections. This violates a number of international principles concerning freedom of association.

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50/ 113th report, case No. 266, para. 75, idem ...

51/ La Tercera de la Hora, 3 November 1978.

243. In this connexion, the ILO Committee on Freedom of Association has decided that:

"Provisions which involve interference by the public authorities in various stages of the electoral process, beginning with the obligation to submit the candidates' names beforehand to the Ministry of Labour, together with personal particulars, continuing with the presence of a representative of the Ministry of Labour or the civil or military authorities at the elections, and culminating with the approval of the elections by ministerial decision without which they are invalid, are not compatible with the right to organize free elections." 52/

244. Workers in the State enterprises (who constitute an important sector and are governed by Decree-Law No. 2,345), those in the maritime and agricultural sectors, employees in commerce and those in a number of other activities which do not require large concentrations of workers did not participate in the trade-union elections. Furthermore, the terms of the leaders of the trade-union federations or confederations which were not dissolved under Decree-Laws Nos. 2,346 and 2,347 were not renewed. The leaders who remained, however, had to take the oath set out in article 6.

245. The trade-union leaders elected in accordance with this provision will be the only leaders authorized to take part in collective bargaining in accordance with rules to be promulgated in the future (Transitional article 4).

246. Although press reports indicated that the number of participants in the vote was very high, 53/ many of the new trade-union leaders elected in certain parts of the country obtained their posts with 8 votes. Some were even elected with just 1 vote and others won exceptional support with 65 votes. 54/ Since the nomination of candidates was prohibited, many of these new leaders are obliged to take up their posts without having given any previous thought to the responsibilities they are assuming, and frequently against their own desire. Interviews of elected leaders by El Mercurio give an idea of the characteristics of the new workers' representatives and the difficulty of their task in dealing with their employers, who have more experience and whose organizations have not undergone any changes either in structure or leadership. One of these new leaders stated:

"With regard to my election ... it may have been that I had seniority or perhaps because they know me for my sports activities ... as far as trade unions are concerned I am a nothing, in other words I have no experience. However, I intend to meet my responsibilities towards the people who voted for me, who were unfortunately few - which means that I am not representative of any great number. The election encouraged this splitting of votes. I think I represent a third of the trade union. I only hope that the situation will improve with time."

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52/ Eighty-sixth report, case No. 451, paras. 135 and 136; one hundred and forty-seventh report, cases Nos. 668 and 730, para. 61. No. 132 idem ...

53/ El Mercurio, 1 November 1978.

54/ El Mercurio, 2 November 1978.

"The work is hard because the three of us forming the new trade union have very little experience and we have to deal with an employer who is a past master in this art and has stood up to all the governing bodies in the past. Therefore we have to prepare ourselves to be responsive to the workers' needs and clear up any doubts which those who didn't vote for us may have."

Another said:

"I have no trade-union experience and I hope that the applicable rules will soon be established for the new trade-union/employer relationships and the support which the Government will have to give this trade-union movement." 55/

247. The first experiences of the new leaders in a large enterprise are illustrated by the statement made by one of them:

"It was made clear that, of the six leaders elected, four of us had to work, on a rotating basis weekly shifts from 7 a.m. to 3 p.m., from 11 p.m. to 7 a.m. and from 3 p.m. to 11 p.m. In other words when we have to work the night shift, we will not be able to undertake any union work during the day because obviously we also have to sleep.

"We brought this up with Goodyear Industrial Relations, whose representatives not only told us that unfortunately we would have to continue working these shifts but also that we would have to delegate our responsibilities to other leaders or appoint committees. Moreover - the new leaders pointed out - Industrial Relations informed us that if they wanted to have an interview with us and we were working a shift they would come and see us at night.

"During the long period when INSA 56/ was functioning - they said - facilities were always granted to the trade-union leadership. There was even a clause on that question in the last agreement reached. Now Goodyear simply does not wish to grant us facilities and we think that it is inhuman to expect us to do our duty as trade-union leaders after having worked all night long." 57/

248. According to an announcement by the Minister of Labour, collective bargaining will be carried out in future only within each company individually. This means that the new leaders, who lack experience and are sometimes not very keen to do the job, representing as they do only a small number of colleagues who voted for them,

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55/ El Mercurio, 5 November 1978.

56/ INSA is the State enterprise which owned the industry that was sold to the tyre company Goodyear de Chile in 1978 (El Mercurio, 11 March 1978).

57/ El Mercurio, 15 November 1978.

will, without the support of large groups of workers, have to confront experienced employers who enjoy all the economic and cultural facilities inherent in their social condition and whose organizational structures have not altered. 58/

249. At the meetings which the Group held with representatives of the Government of Chile in January 1979, the latter referred to the Government's labour plans and to a number of measures taken in connexion with trade-union activities and drew the Group's attention to the documents which the Government had transmitted to it a few days before. These documents contained the text of a speech made by Mr. José Piñera Echenique, Minister of Labour, describing the Government's labour plan. They also contained the instructions issued by the Minister of the Interior on 2 January 1979, authorizing all legally constituted trade-union organizations to hold ordinary meetings of their members without prior authorization. Both documents are reproduced in annex IV. The Group also heard the testimony of a Chilean trade-union leader and member of the dissolved organizations, who also supplied in writing further details concerning the legislative measures commented on in this chapter and their implementation in practice. With regard to the actual effects of the implementation of Decree-Law No. 2,345, commented on above, on the dismissal of State employees, the witness handed to the Group a photocopy of an official communication sent by the Minister of Transport and Telecommunications to the Minister of the Interior, in which State employees were evaluated with a

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58/ A group of trade-union leaders sent to the ILO and other international organizations, a communication whose text was published by La Tercera de la Hora on 12 November 1978. It stated: "The trade-union movement which existed until 30 October of this year has been wiped out by a frontal attack as can be seen from an analysis of the following points: 1. the leadership of almost the entire trade-union organization in the private sector was abruptly removed when the terms of office of the leaders were ended and their re-election was not permitted. Not only did this affect the leadership of the local unions but also that of the federations and confederations since their members are no longer entitled to represent the workers. 2. the new rules have caused the disintegration and dispersion of the trade-union movement, since they only authorize membership of local or company unions. This means that the trade union organization is prohibited from operating through its normal organizational structure, namely at the local, federation and confederation levels. 3. the rejection of any form of trade union other than the company union, such as unions for particular trades, seriously restricts freedom of association for agricultural workers, transport workers and shop workers, since a large percentage of the centres of this type of occupation do not have the minimum number of employees that is required in order to form a trade union. Such important labour groups as the construction workers are practically excluded from trade unionism. 4. the local unions of the trade-union movement in the public sector have also been destroyed, because, under Decree-Law No. 2,345, the leaders have been stripped of their powers and irremovability and, under Decree-Law No. 2,376, the organizations are deprived of economic resources, the deduction of trade-union dues at source having been prohibited". The communication is signed by Ernesto Vogel Rodríguez (railway workers), Enrique Mellado Espinoza (Triunfo Campesino), Manuel Bustos Huerta (textile workers), Juan Manuel Sepúlveda Malbrán (metal workers), Carlos Frez Rojo (ex-president of the dock workers) and Juan Pincheira Cortés (ex-president of the "El Teniente" trade union - Rancagua).

view to the implementation of the Decree (see annex XVIII in which this document is reproduced). The witness also described how the elections had been held in the private industrial enterprises, in accordance with the provisions of Decree-Law No. 2,376, in the presence of armed military personnel and under the supervision of a government representative assisted by the employer. The latter indicated the names of those persons who could not be elected since they were covered by the discriminatory provisions of the Decree. The statements handed to the Group by the witness are reproduced in annex XVIII.

250. The Group observed that the new institutional framework in the labour field announced by the Government is not what it purports to be; in fact the Government is continuing to apply the severe restrictions on the exercise of freedom of association which were mentioned in the Group's previous report (A/33/331). In addition, it notes that the restriction of trade-union rights has recently been stepped up with the dissolving of trade unions, the elimination of trade union privileges for representatives of workers in the public sector and the introduction of penal legislation which constitutes a serious violation of freedom of association and freedom of opinion. The dissolution of the trade unions and their national federations by Decree-Law No. 2,346 deprived the workers of officially recognized national leaders. Moreover, the election of 31 October 1978 concerned only trade-union representatives at the factory level and did not result in the election of national trade-union leaders to replace those eliminated by the dissolutions. Furthermore, the direct intervention by the Government in the establishment of trade-union structures and the discriminatory rules applied to the appointment of leaders restrict the possibility for workers to defend their labour rights, all of which is detrimental to their social and economic position and their enjoyment of human rights in this field.

251. The Group wishes to recommend to the Commission on Human Rights that it call upon the Government of Chile to restore, as early as possible, full respect for trade-union rights as provided for in international instruments.

## VIII. ECONOMIC AND SOCIAL RIGHTS

### A. The problem of unemployment and the situation of workers

#### 1. Unemployment

252. The Group has referred in its previous reports to the serious unemployment problem in Chile in 1978. 1/

253. The President of the Central Bank explained that a rapid growth of the labour force (7 per cent, "just double the historical rate of growth, which was 3.5 per cent during the 1960s") was preventing reduction of the level of unemployment, which was still 13.7 per cent in Greater Santiago, 10.7 per cent being persons who had lost their jobs and 3 per cent persons seeking employment for the first time. 2/ Furthermore, the unemployment rates in other urban centres are reported to be higher than the Greater Santiago rate, 3/ which would seem to indicate, if account is taken of the lower rate of unemployment in the rural areas (7.9 per cent according to a report by the National Institute of Statistics), 4/ that there is a movement of manpower from rural areas to the nearest towns. Analysing a report by ODEPLAN, El Mercurio stated:

"Unemployment is the main problem facing the country today. According to the report entitled 'Plan de Fomento del Empleo' (Employment development plan) which has been issued by ODEPLAN, unemployment in Greater Santiago rose from 7 per cent in late 1973 to 18.7 per cent in 1975 and then fell to 13.6 in 1976. By the end of 1977 the rate was keeping relatively stable at 13.2 per cent."

254. The unemployment rate calculated by these official agencies does not include workers under the Minimum Employment Plan (PEM) which was launched in 1975 as a temporary solution to the unemployment problem and enables persons out of work to obtain short-term employment at wages much below the officially fixed minima (see A/333/331, paras. 582-586). The official unemployment rate also does not take account of those persons who did not make formal application for employment during the week prior to the survey, since, for the purposes of the latter, such persons are considered "inactive" and not "unemployed". If only the PEM workers (of whom there were 148,027 in June 1978) 5/ are added to the survey figures, a real unemployment rate of 18.1 per cent is obtained for 1977,

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1/ See A/32/227, para. 226; E/CN.4/1266, paras. 127 to 132 and A/33/331, paras. 568-599. In an address on 11 September 1978, President Pinochet said: "... one of the matters about which I am particularly concerned, as a member of the Government, is the amount of unemployment which still exists in Chile, even though the unemployment rate has declined to 12.7 per cent for Greater Santiago, the area where unemployment is most severe." (El Mercurio, 12 September 1978).

2/ El Mercurio, 4 October 1978.

3/ Survey carried out by the Department of Economics of the University of Chile. El Mercurio, 26 September 1978.

4/ El Mercurio, 4 November 1978.

5/ Source: Community and Social Development Division, Ministry of the Interior.

when the official rate was 12.7 per cent. Furthermore, according to figures given by Mr. Sergio de Castro, Minister of Finance, in January 1978 in the Statement on the Public Finances:

"... the percentage of people seeking work for the first time has been decreasing since 1973 and people who are not seeking work because there is none to be found are now included in the total of 'inactive' persons. Those entering the labour market for the first time represented 31.5 per cent of the total of unemployed in 1973. This figure has been falling steadily, reaching 25.2 per cent in 1977. If the 'inactive' group are added to this figure an unemployment rate very different from that indicated by the surveys is obtained." 6/

255. In previous reports the Group noted the existence of this problem, whose origin in the economic changes introduced in 1973 is also recognized by the Government. The latter attributes it to the need to correct distortions caused in the past, as well as to the world economic crisis. 7/

256. As part of the process of modification of the earlier economic patterns, the Government introduced measures which caused much unemployment in the public sector, 8/ a reduction of employment possibilities in many rural areas 9/ and much industrial unemployment, owing to the closing of enterprises and many bankruptcies. 10/ One of the arguments most frequently used by the present Government is that there had previously been an artificial expansion of posts and services that were not needed or that resulted in the provision of few goods

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6/ Solidaridad, No. 50, "Un problema de opciones", August 1978.

7/ Labour Plan of the Government of Chile transmitted to the Chairman of the Ad hoc Working Group, letter dated 4 January 1979. See annex IV.

8/ El Mercurio reported on 21 March 1978 that 52,200 posts had been eliminated in 11 ministries and on 25 February 1978 it published the announcement by the Acting Minister of Finance that he had ordered all public sector departments, institutions and enterprises to draw up lists covering 2.5 per cent of their staff and to request the resignation of the employees concerned within a period of 10 days. More recently, Decree-Law No. 2,345 has authorized the Ministry of the Interior to dismiss any employee in the State or local public service and in all State agencies, departments and enterprises. Many State bodies were dissolved or reduced in size because of the policy of turning over enterprises and services to private hands.

9/ See E/CN.4/1266, paras. 146-148 and A/33/331, para. 574.

10/ See E/CN.4/1266, para. 128. A report by SOPAFA (Sociedad de Fomento Fabril) reproduced in El Mercurio on 21 January 1978 stated that "there has been an accelerated opening of our economy to the rest of the world and a delay in the introduction of measures which would enable Chilean producers to face this competition on a footing of equality". In the monthly economic report for March 1978, El Mercurio reproduced a survey by the Department of Economics of the University of Chile which indicated that, of the total number unemployed, 33.7 per cent were in industry and 18.9 per cent in building. Which means that these two sectors accounted for 52.6 per cent of those unemployed. A report in the issue of Hoy for the period 27 December 1978 to 2 January 1979 indicates that the number of bankruptcies in Santiago alone in 1978 was 146.



or services. 11/ However, according to the official figures, "the proportion" of the total of persons employed which is engaged in the production of services remains fairly steady: 58 per cent in 1973; 58.2 per cent in 1978, 12/ whereas serious problems still remain in other employment sectors.

257. The employment outlook does not seem encouraging. In the latter half of 1978 the Chilean press was constantly publishing reports of possible dismissals and of shutdowns of enterprises, which suggests that employment trends will remain the same in 1979. 13/

258. The observations of the Government of Chile on the report of the Special Rapporteur, Mr. Antonio Cassese (E/CN.4/Sub.2/412), entitled "Study of the impact of foreign economic aid and assistance on respect for human rights in Chile", 14/ contain the following statement:

"(d) During the period of economic contraction a number of programmes were established to solve problems relating to unemployment:

- (i) A Minimum Employment Programme which guarantees a subsistence income;
- (ii) Unemployment compensation subsidies;
- (iii) Tax incentives to promote the hiring of new employees;
- (iv) Equalization of family allowances for all workers;
- (v) Reduction in costs relating to employers' contributions to social security.

The maintenance of these programmes that eliminate distortions and obstructions in the labour markets, together with a sustained growth in output and investment, are the only means of generating useful employment for the growing labour force."

El Mercurio commented as follows in an editorial in its issue of 9 November 1978:

"The possibility of overcoming the unemployment problem is bound up with the removal of restrictions on labour relations. The lower amount of unemployment in rural areas shows this to be an effective way of securing

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11/ El Mercurio, 24 September 1978.

12/ Solidaridad, No. 50. "Un problema de opciones", August 1978.

13/ For example, the OSORNO cold-storage plant was handed over to an enterprise that has now gone bankrupt, and 400 workers may thus be without jobs; the same is true of 160 workers at Maestranza SEG (Boletín Hoy, 19 and 20 August); 800 workers at the Agricultural Trade Enterprise are reported to have been dismissed (Boletín Hoy, 20 August 1978); 4,000 workers will be dismissed when the Government orders the closure of the Schwager coal mine, a development which will put an end to a village which lives on mining (El Mercurio, 25 and 27 November 1978); the National Sugar Industry (IANSA) has dismissed 400 workers in various parts of the country (El Mercurio, 9 November and 6 December 1978); 1,100 workers at CORA will be dismissed as a result of the winding-up of that organization (Hoy, 20-26 December 1978).

14/ A/C.3/33/7.

lower rates of unemployment. It is essential to start out next year with labour regulations that are freer than they have been in the past. The election of new trade union leaders and the introduction of collective bargaining, without State interference, calls for the elimination of the traditional distortions due to entrenchment in employment, exaggerated minimum wages, high social security taxes, etc. If no headway is made in this connexion, it will be very difficult to reduce unemployment speedily and all that will be achieved will be a redistribution of income away from unorganized wage-earners to those who have strong trade unions."

259. In the statement which he made on 11 September, referred to earlier, General Pinochet spoke of "the sharp reduction in the rate of social security contributions, which stood at 60 per cent in 1973 but now is only 34 per cent, the difference being financed by the increased revenue from taxes". In other words, social security contributions previously paid by the employers, are now being met by all taxpayers, including the workers. Furthermore, under Decree-Law No. 1,050 of 29 May 1975, the State granted to private companies an allowance equivalent to 50 per cent of the applicable minimum wage for each new worker they took on. <sup>15/</sup> This special allowance has been extended until May 1979 under Decree-Law No. 2,239 of 23 June 1978, although the allowance now stands at 30 per cent of the minimum wage.

260. It is also intended to maintain programmes which result in reduced labour costs. One of these is the Minimum Employment Plan, under which the unemployed can be paid wages that are much lower than the authorized minimum. <sup>16/</sup> Another is the "apprenticeship contract", which has been incorporated in the Labour Code and authorizes the employment of minors at a wage equivalent to 60 per cent of the minimum; minors are deemed to be persons between 14 and 21 years of age. <sup>17/</sup> Other provisions of Decree-Law No. 2,200 of 15 June 1978 remove many of the "restrictions" on labour relations, which were described by the Group in its report to the General Assembly (A/33/331). These include the increase in the working day for workers in shops and offices, without additional pay for hours over and above the 48-hour working week (paras. 613-614); the incorporation into the wages of rural workers of benefits that were previously granted free of charge, such as the dwelling that the rural employer was obliged to provide (paras. 618-619); the abolition, in the case of home workers, of the minimum legal remuneration, social security benefits and compensation for years of service on completion of the labour contract (paras. 620-621); the limitation of trade-union privileges, which affects trade-union rights, and the limitation of maternity rights, which affects the rights of women. <sup>18/</sup> The adoption of the system of

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<sup>15/</sup> See A/33/331, para. 587.

<sup>16/</sup> See A/33/331, paras. 582-586.

<sup>17/</sup> El Mercurio, 27 June 1978.

<sup>18/</sup> The Group has received a statement from the Coordinadora Sindical Femenina (Women's Trade Union Co-ordinating Body) which states, inter alia: "Nowadays, unemployment, low incomes and the high cost of living that are a result of the current economic policy affect our family life and our jobs and mean child malnutrition, school absenteeism ... Unemployment affects us directly, for many women have been dismissed from their jobs". Referring to the changes introduced in the Labour Code, it states that they "deprive us of legitimate acquired rights which protected working mothers from arbitrary dismissal, inasmuch as they had for some years been entitled to maternity rights".

dismissal at will, which abolishes stability of employment and allows the employer to modify the labour contract unilaterally; the return to the legally guaranteed minimum conditions of employment upon termination of a collective labour contract and in the absence of a new contract (previously the conditions of the collective contract continued to apply until they were re-negotiated) (paras. 632-633), and the cancellation of labour debts for more than two years of service, (paras. 634-635).

261. In addition, the new decree-laws that have dissolved trade unions, prohibited trade-union associations not authorized by the Government and called for elections in all private enterprises but have established discrimination in the election of representatives (see chap. VII, sect. B) add up to incentives for employers. This would seem to indicate that the "removal of restrictions" which has been called for by El Mercurio and has been a permanent feature of the Government's labour policy has not achieved the expected results in eliminating unemployment, which still constitutes a serious obstacle to realization of the economic and social rights of Chilean workers.

## 2. The economic situation of certain sectors of the population

262. In the above-mentioned observations (A/C.3/33/7), the Government of Chile states:

"It is evident from both the Rapporteur's quotations and the official figures that there has been no wage freeze in Chile. On the contrary, the Government adopted a policy aimed at minimizing the effect of inflation on workers' income. This policy began to produce the desired effect once the upward trend of the hyperinflationary period was reversed".

263. A recent report prepared by the Workshop on the Economic Situation of the Institute of Economics of the University of Chile, which relates to the first half of 1970 and uses the price and wage index (IPC) calculated quarterly by the National Institute of Statistics and the Census (INE), reaches the conclusion that "wage levels similar to those of 1970 in real terms" have been reached. This means "that on the average the workers have recovered their purchasing power, but it does not imply that they enjoy the same living standard as at that time, ... because during the period when incomes fell sharply in real terms, households had to sell some of their possessions and property which they are not yet in a position to recover". The author of the report also points out that the calculation was made on the basis of the "employed sectors", with the result that it was unable to take account of the substantial sector of the labour force which is unemployed. The report also notes that the INE index does not include the remuneration of the services sector or the agricultural sector. <sup>19/</sup> With regard to the consumer price index (IPC) used in the above-mentioned report, some economists expressed the view that, in calculating the index for the fourth quarter of 1973, real inflation was underestimated by some 51 per cent. <sup>20/</sup> Others consider that it was underestimated by 46.7 per cent. <sup>21/</sup> This distortion of the index, which

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<sup>19/</sup> El Mercurio, 17 September 1978.

<sup>20/</sup> Cortázar, René, "Índice de precios al consumidor y estructura de consumo", CIEPLAN, Notas técnicas No. 3, Santiago, August 1977.

<sup>21/</sup> Ramos, Joseph, "El costo social: hechos e interpretaciones", in Estudios de economía No. 6, Second half of 1975, published by the Department of Economics of the University of Chile.

was designed to conceal the inflation that occurred during the fourth quarter of 1973, has affected the figures for all subsequent calculations of the IPC, with the result that the official figures based on that index would not appear to be realistic.

264. With regard to recent calculations based on the IPC, an analysis recently published in the periodical Mensaje reads as follows:

"On the basis of the IPC it has been estimated that the cost of living has increased by 36.6 per cent during the past 12 months, from September to September. It is this index which has been used for the purposes of wage adjustments. The products widely consumed by workers and their families - products whose prices we have recorded and which our workers have had to buy - have increased by substantially greater margins. 22/

The cost of these essential products as a whole has increased by approximately 51.43 per cent during the past 12 months. Over the same period, the general IPC showed an increase in the cost of living of 36.6 per cent and the IPC for food products showed an increase of 32.7 per cent.

We are naturally struck by the difference this year between our index and the general index, especially since the differences between the indexes have been negligible during the past two years. Furthermore, the current disparity noted in our table confirms the very widespread impression of the realities facing the Chilean worker, who feels that this year the IPC does not reflect the real increase in the cost of living as he experiences it. So widespread is this feeling, in fact, that trade-union organizations such as the Chilean Confederation of Employees in the Public Sector (CEPCH) have devised their own consumer price index based on essential products.

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22/ "The economic success of Chile from a worker's standpoint", José Aldunate S.J., Mensaje No. 275, December 1978. The author states: "In short, our method may be said to have been determined by the purpose which we are pursuing, namely, to ascertain the economic situation of the low-level wage-earner. For this purpose we have noted changes in his real earnings, in other words, his purchasing power. We have taken a typical family - a couple with three children - and have established the expenses which it will have to meet and the income which it receives. Comparing the present situation with that of previous years, we have determined whether the family's purchasing power is deteriorating or improving. In order to determine the level of expenditure, we have taken as a direct basis not the official IPC index, for the reasons which we stated last year, but a sample of 19 essential products widely consumed by the working classes. These products do not exactly constitute a shopping basket; they might be said to form part of a basket, since we have not included articles which are essential for human life. In order to determine the working family's earnings, we have taken the amount of the legal 'minimum income' and all the allowances which the worker receives for himself and for his four dependants. We believe that the value of the method lies in the fact that it determines comparatively whether or not and to what extent the actual situation of the vast majority of workers has improved. We have thus endeavoured to establish more precisely the reality confronting poor families who have to reduce their expenditure to an essential minimum."

Regardless of the explanation for it, this disparity jeopardizes wage-earners. The reason is obvious: under the present system, wages are adjusted in accordance with the official IPC, even though over a given period the increase in the prices of the most essential products which wage-earners must buy has been greater." 23/

265. The prices of a number of essential products and the increases in these prices which occurred in 1978, according to data published by two Chilean periodicals, are shown in the annexes. 24/

266. In order to estimate the situation of the various sectors, the wages earned in each sector may be compared. Information from reliable sources indicates that the wage of a Minimum Employment Plan worker in November 1978 was 880 pesos (\$US 26.21), the minimum wage of an industrial worker was 2,376 pesos (\$US 70.76) and the minimum wage of a primary-school teacher was 3,410 pesos (\$US 101.55). 25/ The construction workers' federation requested an interview with the Minister of Labour in order to discuss the problem of the low wages received by its members, whose minimum wage is 1,978.20 pesos. 26/

267. The new wage scales for the public sector issued by the Office of the Controller-General in December 1978 establish a minimum wage of 2,163.31 pesos and a maximum of 26,180.30. In addition, there are the subsidies paid at the lowest levels and the allowances common to all grades: family allowance (206.28 pesos), transport allowance (183.98) and meal allowance (225.16). 27/

268. Statistical information provided by SENCE (the service responsible for supervising the employment offices) gives the following facts for the third quarter of 1978:

"Of the people for whom jobs were found, 60.7 per cent were males in the age groups 15 to 24 years of age (35.3 per cent) and 25 to 34 years (31.7 per cent). In 70.4 per cent of the cases the wages were negotiated; 12.0 per cent obtained 1,000 to 2,000 pesos (\$US 30 to 60) and 13.4 per cent obtained 2,000 to 3,000 pesos (\$US 60 to 90) per month." 28/

Enquiries made by El Mercurio found that:

"There are wide differences in wages depending on the situation of the enterprises concerned and the qualifications of the workers. Some of them stated that they were earning 3,000 pesos (\$US 90) a month or even less, while others, who were skilled workers, were bringing in 20,000 pesos (\$US 600)." 29/

269. In the case of the remuneration scale for public sector employees, referred to earlier, the situation is much the same.

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23/ See annex XIX.

24/ Ibid., and annex XX.

25/ Report received by the Group from reliable sources.

26/ Solidaridad, No. 57, October 1978.

27/ El Mercurio, 6 December 1978.

28/ El Mercurio, 27 November 1978.

29/ El Mercurio, 1 October 1978.

270. The National Training and Employment Service has provided the following indices for Minimum Employment Plan workers, which show that wages have dropped in real terms (the year 1975 is taken as a basis, earnings in that year being assigned the index 100):

<u>Year</u>	
1975	100
1976	94.8
1977	77.2
1978 (July)	65.6

271. Although prices in general have risen less than in earlier years, the greatest increases have been in food products. <sup>30/</sup> Since these products are the largest item in the budget of the lower-income groups, whose wages are barely enough to cover expenditure on food, the reduction of the rate of inflation, which is pointed to as one of the greatest accomplishments of the Government, has not been of any great benefit to those groups. The above-mentioned article in the periodical Mensaje concludes that, according to calculations based on 19 items widely consumed by workers and their families, a worker with the minimum income had 6.8 per cent more in real terms in 1978 than in 1977. This is below the 1970 level and falls far short of that of 1972. The writer also makes the following observation:

"We should also note that even the workers who have been given the minimum cost-of-living adjustment complain that their purchasing power has declined (expressed in terms of the high cost of living). This would appear to be due to the trend towards elimination of many benefits, subsidies, special rates and exemptions to which they were formerly entitled and which have now been merged, as it were, with the 'minimum wage'. For many people the 'minimum wage' has thus become the 'maximum wage'." <sup>31/</sup>

272. Humberto Vega, the economist, whose views were published in the periodical Solidaridad, stated that: "Furthermore, these levels of unemployment are accompanied by an accentuation of social differences, that is visible in every area of life - in consumption, in housing and elsewhere". <sup>32/</sup>

273. The gravity of the situation in the poorest sectors has been recognized by the Government as well. President Pinochet stated, in the course of the address referred to earlier:

"Nevertheless, although our social targets call for long-term endeavours on a wide front, the needs of the poorest groups are so urgent that they must be met without delay and we are therefore continuing to take direct social action." <sup>33/</sup>

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<sup>30/</sup> El Mercurio, 11 September 1978.

<sup>31/</sup> "The economic accomplishments of Chile from the worker's point of view", José Aldunate S.J., Mensaje, No. 275, December 1978.

<sup>32/</sup> Solidaridad, No. 59, November 1978.

<sup>33/</sup> El Mercurio, 12 September 1978.

274. As was mentioned by President Pinochet in his September 1978 address, <sup>34/</sup> the food programmes were increased by 35 per cent in 1978. Furthermore, the Government of Chile, in its letter of 17 November 1978 (A/C.3/33/7) referred to earlier, stated that:

"It is to be expected that as inflation rates decrease to about 30 per cent in 1978 and 15 per cent in 1979, and as collective bargaining in the private employment sector is introduced in November 1978, this process of real increases in wages will continue at a rate of 7 to 10 per cent per year."

275. The Group informed the General Assembly of the existence and scope of the assistance programmes operated by the Government and other institutions (see A/33/331, paras. 765-778). The report examines the meagre results of the reduction of inflation for those groups which have to spend all their income on food, and in chapter VII, section B, it reviews the measures taken in connexion with freedom of association and right of assembly in relation to trade unions, which are also liable to affect the collective bargaining that, according to reports in the Chilean press, may be introduced in 1979.

276. In the light of the above information, the Group notes that the persistence of a high rate of unemployment together with the existence of wage levels that fall far short of the legal minimum - which itself is not enough to cover a family's basic necessities but which many people are forced to accept in order to survive - severely restrict the exercise of the economic and social rights that are recognized in articles 23 and 25 of the Universal Declaration of Human Rights and in articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

277. In view of the serious economic and social situation of certain population groups, these should be given the greatest possible protection for the enjoyment of their fundamental human rights in the economic, social and cultural spheres and in the civil and political spheres, by means of the adoption of the appropriate economic, legal and institutional measures. In addition, they should be allowed to make use of all the internationally recognized means available for the defence of workers.

278. The Group notes, however, that the labour legislation examined in chapter VII, section B, of the present report and in the earlier report to the General Assembly at its thirty-third session (A/33/331, paras. 600-655) has deprived the workers of many of the legal safeguards they previously enjoyed, as well as of their right to associate freely for the purpose of forming or supporting organizations that will represent them and express their views in labour negotiations. This further limits the exercise of their economic and social rights.

### B. Situation of rural workers

279. In its report to the Commission on Human Rights at its thirty-fourth session (E/CN.4/1266, paras. 146-148), the Group referred to the situation of persons working in rural areas, where some 40,000 families had become homeless and had no livelihood as a result of legislation designed to change the structure of agriculture in Chile. Details were also given of the system used for reallocation of land, a system under which persons who had engaged in trade union activities frequently experienced discrimination.

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<sup>34/</sup> Ibid.

280. In its report to the General Assembly at its thirty-third session (A/33/331, paras. 681-684), the Group described information received on the situation of rural workers and it decided to consider the matter in the present report.

281. From 11 September 1973 onwards, a process of change was started in the structure of agriculture; changes were made in Law No. 16,640, the basic instrument of the agrarian reform initiated in 1967, and new provisions were issued or, quite simply, practical steps were taken for that purpose. For example, part of the land has been returned to the former owners, some lands have been transferred to institutions which are selling them off at public auction and others have been assigned to individuals or associations.

282. In view of the fact that a large number of persons allocated land are selling their plots for lack of technical assistance and credit facilities, at least 75 per cent of the expropriated land is of benefit not to the peasants who are working it but to another sector which symbolizes the achievement of what was expressed by the present Minister of Agriculture: "The aim is for the land to be held by those who have the economic and management capability to cultivate it under normal conditions of efficiency, without relying on the State".

283. In March 1978, Mr. Raúl Orrego, President of the "Provincias Unidas" Peasants' Confederation, said:

"The peasants in the reformed sector are facing very serious problems because of the determination of CORA (Agrarian Reform Corporation) not to endorse their applications for credit and because of the situation resulting from the indiscriminate selling and leasing of their land. The selling and leasing of land in the reformed sector is disgraceful. Some people who have money take out leases on land for 30, 50 and even 90 years, with an option to buy. The small farmers, weighed down by debts and the interest they have to pay, are obliged to lease out their land or sell it. Even the rights are sold for periods of 15 and 30 years." 35/

284. Professor José Garrido, in his statement on the agricultural sector, took the view that the most serious problem in the reformed sector is the selling of lands allocated to some of the assignees, amounting to as much as 25 per cent of the assignees in some areas of the country. Garrido is concerned not so much by the land being sold off "as by the reasons for which they are obliged to sell; the widespread scarcity of help in terms of organization, advisory services and credits is leading them into difficult situations". 36/

285. The President of SNA (National Farming Society), who supports the Government's economic policy, said:

"The cost of credit has been a continuing concern of SNA. Farmers had to start out the year with the two-fold task of paying off the credits outstanding from previous years and securing the financing needed to carry on their activities this year." 37/

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35/ El Mercurio, 4 March 1978.

36/ El Mercurio, Monthly Economic Report, March 1978.

37/ El Mercurio, 27 October 1978.



286. For many peasants this situation means the loss of their livelihood, because those who have bought the land cannot pay off their debts and the settled peasants or those without a deed of individual ownership cannot opt to buy the land. El Mercurio announced auctions by the authorities of many plots of land belonging to individuals or co-operatives, a thing that has not happened before in some communes. 38/

287. During its visit to Chile, the Group learned of the text of Decree-Law No. 2,247 of 16 June 1978. This Decree-Law contains legislation on the following points:

- (a) It promulgates rules for the allocation of lands acquired by CORA which are not suitable for allocating in family agricultural units because of their arid nature or other serious drawbacks;
- (b) It puts an end to the legal process of expropriations by abolishing the grounds on which the expropriations were carried out;
- (c) It abolishes the rules which prohibited the purchase and farming of holdings by bodies corporate, something that can now be done by any individual or body corporate. This means, inter alia, that joint-stock companies or limited liability companies can be formed in order to engage in farming;
- (d) It makes complete or partial restitution of holdings expropriated from their former owners lawful.

288. For the purposes of the allocation of lands, the arrangement is that they can be sold direct to the settled peasants, who can purchase them if they meet the following requirements:

- (a) They must not have any debts to CORA outstanding; and
- (b) They must pay 10 per cent of the price in cash and the balance over 15 years with two years' grace, at an annual rate of interest of 6 per cent; the balance is calculated in equal and automatically-adjusted annual instalments.

289. Lastly, article 7 grants non-purchasing settlers the right to a loan of up to 316 automatically-adjusted "development units" (169,692 pesos calculated at 4 July 1978) for the purchase of a building site, dwelling or farm, as they choose. The loans will be granted through INDAP 39/ over thirty years with two years' grace; they are calculated in automatically-adjusted "development units" and are at the legal rate of interest.

290. It is striking that the law does not grant any credits for opting for and purchasing land offered for direct sale to the settled peasants; on the contrary, it first grants them to those who do not want to buy the land or cannot apply for it. These loans seem to be compelling reasons for the settled peasants to lose interest in the land offered to them, land on which they live and which they

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38/ El Mercurio, 2 August 1978. 5,865 prosecutions for debts to the State are announced in the commune of Quillota, 3,324 in Cartagena and 1,375 in Curacén.

39/ National Farming Development Institute.

have worked for a number of years. Indeed, the encouragement is to leave the land and accept the INDAP loan to buy an urban plot or a house to live in; this will be a solution to their housing problem but it will compel them to depend for work on the purchasers of the land, who will certainly be people with greater financial resources.

291. In fact, very few peasants can opt to buy the land, because the majority of them have not met their obligations to CORA. Moreover, they do not have the resources for the initial investments required to make the land profitable.

292. The situation of the peasants, both the settlers and those who are owners of small plots of land, is further aggravated by the problems affecting all those engaged in farming, as pointed out by the President of the National Farming Society (SNA), mentioned earlier.

293. The Chilean press has reported the announcement by the Minister of Agriculture of a draft law which removes the mortgages on plots of land allocated to peasants by the Agrarian Reform Corporation (CORA). It is said that, under the terms of the draft, "these mortgages will be removed automatically on 31 December of this year (1978), the date on which CORA will cease to function". Consequently, the owners of the holdings that have been allocated "will have to be able to pledge their land as security for credit and other operations, thus giving them an effective and concrete tool for advancement and stability as landowners". The recovery of unpaid balances will be transferred to the Office of the Treasurer of the Republic, which will collect the annual instalments under a system similar to that which regulates the payment of taxes on real estate. The new draft includes the procedure for winding up CORA "and for compensation of its staff". 40/

294. The announcement was received cautiously by peasant leaders, who requested further information on the actual provisions of the draft. The opinion was expressed that these measures could "create serious problems for persons who have been allocated land, because if entering into economic and financial commitments with banks and other institutions, they may fall into arrears and automatically lose their land". It was added that up to now CORA has acted as guarantor for the peasants and, in future, they will be required to "enter into direct commitments without intermediaries, which will mean that they will have to use their own resources to meet unfavourable financial eventualities or situations". It was also pointed out that "since no mortgages are available and CORA will close down at the end of the year, the peasants will be on their own in dealing with the banks, which make no distinctions in the requirements for repayment of their services". 41/

295. As a result of the process of the restitution and the selling of land and the consequent loss of livelihood in the weakest rural sectors, the rural population is seen to be migrating increasingly towards the towns, in search of other ways of earning a living, and this is causing extensive areas of slum housing to spring up in the towns. At a meeting organized by the Association of Geographers of Chile, the causes of the disproportionate growth of certain towns were studied and it was stated that:

"Some towns such as Concepción or Valparaíso attract too many people from rural areas and, in view of the limited possibilities for development in the countryside, they are flocking unceasingly to the large towns,

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40/ El Mercurio, 8 and 9 September 1978.

41/ El Mercurio, 9 September 1978.

creating hyperdevelopment and all its attendant problems in housing needs and the strain on costly services such as drinking water, sewage, electric lighting, etc."

296. They also expressed their concern at "the urban growth of recent years in Greater Santiago with the aggravating factor, in this case, that the city is encroaching alarmingly on the agricultural areas which supply the capital with food and horticultural products".

Situation in regard to employment and trade unions in rural areas

297. On the basis of the information given to the Group, it appears that there is no real action by the Government against unemployment. For example, the PEM (Minimum Employment Plan), which allows a form of disguised unemployment to exist - unemployed persons are paid less than 50 per cent of the minimum wage and do not qualify for social security - is implemented only to a limited extent in the agricultural sector.

298. In some cases this plan has been implemented in a distorted manner, since some agricultural employers, in Malleco and Osorno for instance, have dismissed full-time workers who at least were being paid the minimum wage and have replaced them with PEM workers controlled by the municipal authorities; they pay them less than half the minimum wage, without perquisites, and make them do the same kind of work as those who have been dismissed. This offer of work paid at half the minimum wage means that in many areas employers engage only unemployed persons who will accept such a wage, and the situation gives rise to extreme poverty and exploitation of labour. It reflects changes for the worse in social security, medical benefits, stability of employment, remuneration in kind, disregard of benefits acquired under collective agreements for new employees, etc.

299. The beneficiaries of the CORA agreement, arrived at some months ago and authorizing the leasing of plots of land, have been the medium-sized owners or traditional landlords of large estates rather than the unemployed or those excluded from the allocation of land.

300. The reform of labour legislation, analysed in the report of the Group (A/33/331, paras. 615-619), affects rural wage-earners in particular.

301. With collective bargaining for all workers shelved by Decree-Law No. 275 and subsequent decrees, Chile's agricultural workers and their large families continue to receive totally inadequate wages, fixed by decree-laws which have systematically ignored the real increase in the cost of living. The minimum agricultural wage in July 1978 was set at 2,200 escudos per month, the employer being required to pay 50 per cent in cash in accordance with Decree-Law No. 275 of January 1974, now confirmed by article 138 of Decree-Law No. 2,200. 42/

302. In other words, the agricultural worker not receiving perquisites would receive from that month onwards, 2,200 escudos, or the equivalent of \$US 68.49, and in the event of his receiving perquisites he might be paid 1,100 escudos a month in cash. All this means that the agricultural worker today in no sense has an adequate standard of living guaranteeing health and welfare services and particularly food, clothing, housing, medical care and the necessary social services for him and his family.

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42/ It should be noted that this disregards an acquired right to receive 75 per cent in cash and it incurred the unanimous opposition of all agricultural workers' organizations, when the draft Code was made known in May 1978.

303. According to documents received by the Group, the trade unions, federations and confederations of rural workers have also been the object of closedowns, decapitation of the trade-union leadership, "shadow" trade unions, confiscation of property, suspension and abolition of the financing allocated to them each month under Law No. 16,625 of 1967 and all kinds of difficulties in operating and organizing peasant trade unions. There has been a consistent denial of the right of trade-union organizations of rural workers to participate in the process of formulating the rural labour policy and agrarian policy which so deeply affect their rights and freedoms. The peasants have not even been able to take part in the so-called Tripartite Committees set up under Decree-Law No. 670 of 1974.

304. It should be noted that drastic measures have recently been taken against trade union organizations of rural workers. Thus, of the seven trade union organizations dissolved in October 1978, and alluded to in the chapter on trade union rights in this document, two of them have a membership of approximately 100,000 agricultural workers. They are the Ranquil Peasant and Indian National Confederation and the Unidad Obrero Campesina (UOC) National Confederation. In addition to the dissolution of these organizations, which were declared illegal, the trade unions affiliated to them were dissolved, their legal personalities were cancelled since all their property had passed to the State and their headquarters were searched during the night of 19 October and evacuated on 20 October, in conformity with the decree issued by the Minister of the Interior. 43/

305. The very serious consequences of the situation for rural families were touched on in a pastoral letter from the Bishops of the Catholic Church to the peasants of Chile, dated 1 July 1978, in which the following problems affecting this sector were mentioned:

Loss of work and also of land in the case of settled peasants;

Loss of housing for the majority of wage-earners or settled peasants, depending on whether they are on farms or settlements;

Virtual obligation to migrate from the countryside to nearby towns or cities, resulting in wretched living conditions or even departure for neighbouring countries in search of work;

Break-up of the family;

Malnutrition and serious health problems for the family unit;

A rise in illiteracy to levels already left behind many years ago, since the children who were studying have stopped doing so and those who might be able to start cannot do so now because of poverty at home.

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43/ El Mercurio, 21 and 25 October 1978.

C. Situation of the indigenous populations

306. In its report to the General Assembly at its thirty-third session the Group approached the question of the human rights of indigenous populations in Chile through a detailed analysis of the situation of the Mapuche Indians. The Mapuches who represent the most numerous indigenous population in Chile, appeared to have been particularly affected by Government policies since 1973. The information available to the Group included reports of the deaths of many Mapuches, the loss of previously acquired land, difficulties with the operation of their co-operatives, the failure of the authorities to recognize the ethnic specificity of the Mapuches, for example, by not allowing the use of their language in schools, malnutrition and the need to pay for previously free medical services. The Group gave particular attention to information concerning the division or proposed division into individually owned parcels of land previously held in common by the Mapuche communities. In this regard the Group was informed of the danger that such new land ownership policies posed to the continuation of the life of the Mapuche community, to the Mapuche culture and eventually to the existence of the Mapuches as an ethnic group (A/33/331, paras. 685-727).

307. During the meetings in September 1978 at which its report to the Assembly was adopted, the Group learned of a statement by President Pinochet in which he announced the promulgation in the near future of a new indigenous property act. This act, with due respect to the cultural values of the descendants of the Mapuches, would enable them to voluntarily and freely opt for private land ownership in cases where they preferred it to community ownership. Given the importance of this subject the Group decided to further examine the question of indigenous populations in its report to the Commission on Human Rights at its thirty-fifth session (A/33/331, paras. 725-726).

308. On the basis of the information received since the adoption of the Group's report to the General Assembly, the Group finds that the situation regarding the human rights of the indigenous populations of Chile, has remained essentially the same as that described in that report. With respect to the proposed new law on indigenous property announced by President Pinochet, there is no indication that it has been promulgated. According to press reports the Minister of Agriculture has made public statements concerning certain provisions of the proposed text and he criticized those persons who had voiced objections, in particular, to the private ownership aspects of the proposed decree-law. <sup>44/</sup> However, the Group has been informed that the text of the proposed act has not been made public and that, despite requests, interested citizens' groups have not been able to obtain a copy of it.

309. The Group has received information concerning a meeting of 155 representatives of 90 Mapuche communities which took place in the city of Temuco on 12 September 1978. This meeting was called because of the concern aroused by the announcement of the reform of the law on indigenous property. As a result of this meeting a statement of the concerns of the Mapuche representatives was

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<sup>44/</sup> El Mercurio, 9, 12 and 21 September 1978.

drafted and sent to President Pinochet with the request that the contents of the statement be studied before promulgating the proposed decree-law. This statement of concern reads as follows:

"PETITION

- "1. The Mapuches request the Supreme Government to provide them with a copy of the text amending Act No. 17,729 before it is promulgated, so as to give the people themselves sufficient time to study and acquaint themselves with it.
- "2. The participants unanimously reject the division of their land which, in their view, should remain forever in the hands of the Mapuche people.
- "3. They do not agree that the land should be sold for tourism, commercial and other purposes, in view of the danger that they might lose their unity as the Mapuche people.
- "4. Although they are aware of the existence of Mapuche organizations, the latter have not acted in a representative manner as none of those present has been consulted by them on this subject. For this reason, they request the opportunity of reorganizing themselves from the bottom up so that their organization can be truly representative.
- "5. They consider that, if the Mapuche race is to endure for ever as the Mapuche people, its ethnic and cultural characteristics must continue to be respected, and that a provision to this effect should be embodied in the Indigenous Act.
- "6. Proposals for the improvement of the economic situation of the Mapuche people:
  - "6.1 Special legislation for them.
  - "6.2 Restoration of land that has been usurped, or extension of their land.
  - "6.3 Better land planning.
  - "6.4 Better technical assistance.
  - "6.5 Better credits; meaningful credit accessible to a larger number of Mapuche families.
  - "6.6 Sound representative organization.
  - "6.7 Instruction in their culture and traditional language.
  - "6.8 Scholarships for the education of their children."

310. On 26 January 1979 the Government of Chile submitted information on the situation of indigenous populations in Chile. See annex V.

311. In its report to the General Assembly at its thirty-third session, the Group expressed its deep concern about the situation of the Mapuches, in particular regarding the danger to the existence of the Mapuches as an ethnic group resulting from Government programmes concerning, in particular, land ownership and the lack of effective technical and financial assistance (A/33/331, para. 779 (21)). The Assembly, in resolution 33/175 reflected the Group's concern when it urged the Government to safeguard the human rights of the Mapuche Indians and other indigenous minorities, taking into account their particular cultural characteristics. The Group, in light of the information recently received believes that such special concern by the Government of Chile to safeguard the human rights of the Mapuches as an ethnic group continues to be necessary.

#### D. Right to health

312. The right to health, which is recognized in many international human rights instruments, <sup>45/</sup> and its enjoyment in Chile have been dealt with by the Group in prior reports. <sup>46/</sup> In its report to the thirty-third session of the General Assembly (A/33/331), the Group noted the provision concerning health in the 1925 Constitution of Chile and that in Constitutional Act No. 3 of 1976 which reflect a change of emphasis in government policy from one of a responsibility for health and the maintenance of a national health service to one of guaranteeing equal access to health services and of implementing State health measures without prejudice to free private initiative. The Group also informed the Assembly of reports of reductions in public health expenditures, the transfer of the administration of health service establishments from public to private hands, limits on access to medical treatment and certain aspects of the problem of malnutrition (A/33/331, paras. 728-778). The observations of the Government of Chile on these matters are contained in annex LXXXII to that report.

313. The Group has continued to receive information from a variety of sources that over the past few years serious reductions in public health expenditures have been made in Chile. The review Solidaridad in its issue for the first half of November 1978 quoted the Chilean medical journal Revista médica, as saying:

"We genuinely believe that the health budget up to this year (1978) has been lower than usual and, even if it was fixed in constant monetary values, the fact remains that the health institutions are now bearing the cost - and I am not saying whether this is a good or a bad thing - of items which they formerly did not pay for, such as customs duties, lighting, and so on. This means that in practice less money is available for actual medical treatment." <sup>47/</sup>

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<sup>45/</sup> Universal Declaration of Human Rights, art. 25, International Covenant on Economic, Social and Cultural Rights, art. 12, and European Social Charter, art. 11.

<sup>46/</sup> See in particular A/32/227, chap. VII, sect. D, A/31/253, chap. XI, E/CN.4/1221, paras. 262-264.

<sup>47/</sup> Solidaridad No. 58, p.21.

The former Dean of the Faculty of Medicine of the University of Chile, Dr. Alejandro Goic, was reported by the magazine Hoy as saying that the actual health policy in Chile was not aimed at strengthening and perfecting the assistance services. In this connexion he is reported as stating that:

"During the past five years there has been a substantial reduction in public expenditure on health. The percentage of total public expenditure on health has also declined and is now at a lower level than at any time during the past 15 years (4.2 per cent). This decline is apparent in the irritating shortages of human resources and medicines, and the limited number of laboratory tests conducted. The National Health Service (NHS) now has fewer beds than when it was established in 1952. The working atmosphere is steadily deteriorating because of problems relating to remuneration and lack of resources, and above all, because all competition to fill the posts of office employee, technician and director has been abolished". 48/

314. The Group has received information based on a report published in 1978 by the University of Chile which agrees with Dr. Goic's statement concerning health expenditures. The per capita public health expenditures in constant dollars went from \$US 32 in 1970 to \$US 43 in 1972 and from \$US 25 in 1973 to \$US 22.8 in 1976. These expenditures represented 7.6 per cent of the total public expenditures in 1970, 8.4 per cent in 1972, 5.7 per cent in 1973 and 4.2 per cent in 1975, the latest year for which such percentages were given. 49/ Other information received by the Group and based on information from the Budget Directorate of the Ministry of Finance shows a reduction beginning in 1973 in the per capita fiscal expenditure in constant dollars, which in 1970 was \$US 16.4, in 1972 \$US 26 and in 1977 \$US 13.7. The Government of Chile, on the other hand, provided the Group with information reflected in the Group's report to the General Assembly (A/33/331, para. 741) that public expenditure on health (\$US 422 million), per capita expenditure (\$US 38.93) and the percentage of the gross national product (3.84 per cent) were, in 1978, the highest of the period 1969-1978. 50/

315. The importance of public expenditures for health in the Chilean context is reflected in the fact that almost all the medical services available in the country are provided by the public sector. One report from a reliable source estimates that no more than 5 per cent of overall medical attention in Chile is

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48/ Hoy, 22 to 28 November 1978, p. 21.

49/ F. Ochoa, "La salud pública en Chile", University of Chile, 1978. See also "Study of the impact of foreign economic aid and assistance on respect for human rights in Chile", report prepared by Mr. Antonio Cassese (E/CN.4/Sub.2/412, paras. 195-213).

50/ In this regard see also "Observations of the Government of Chile on the report of Mr. Antonio Cassese entitled 'Study of the impact of foreign economic aid and assistance on respect for human rights in Chile'" (A/C.3/33/7).



provided by the private sector and that the care received by workers and the poorer parts of the population comes almost exclusively from the public sector. An editorial on 26 December 1978 in El Mercurio stated that:

"Until quite recently, the NHS constituted approximately 90 per cent of the infrastructure available in Chile, for the treatment of patients. Although private medical centres have developed, there is no doubt that the NHS continues to be the most important institution in this field.

"What takes place within the NHS is consequently representative of the medical attention received by a high proportion of Chileans, at least as far as curative treatment is concerned".

316. The Chilean press in several recent articles has described the shortcomings encountered by patients of the National Health Service and the deterioration in the care received. El Mercurio in its editions of 23 October and 19 and 2 November 1978 51/ reported on the limited services available at some National Health Service locations and the need for patients to arrive very early in the morning in order to obtain one of the few numbers given out each day which allow patients to see a doctor. These articles also reported on the long waiting lines, the need in some cases for the patients to return the next day in order to be examined and the lack of doctors. Special difficulties were noted in the maternal and child-care areas. The publication Solidaridad, referring to the journal Revista médica, stated:

"On this question the same journal states that 'the problem is very serious in dispensaries in the peripheral areas, and some (Medical Association) advisers informed the Under-Secretary (for Health) that the attention received in the dispensaries had declined from the basic to the primitive'."

That same article in Solidaridad also stated:

"Access by the low-income sectors is being impeded within the NHS by means of the charges, the irritating formalities entailed in establishing destitute status and the decrease in the number of NHS personnel. The amount of attention provided has thus decreased. In 1976 the national population was 1 million greater than in 1971. Nevertheless, paediatric consultations decreased between 1971 and 1976 by some 11.2 per cent, while over the same period the number of adults who received medical attention decreased by about 24 per cent. 52/

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51/ "There are continuing complaints about medical attention. The shortage of doctors and the delays in receiving attention were apparent from a tour of clinics in the northern and southern districts", 23 October 1978.

"National Medical Service (SERMENA) patients complain of poor treatment", 19 November 1978.

"There was harsh criticism by the public of the poor attention and shortcomings in procedures at NHS dispensaries", 26 November 1978.

52/ Solidaridad No. 58, pp. 21-22.

Further, according to Solidaridad and the Revista médica, the lack of funds for the National Health Service prevents it from hiring the new doctors just leaving medical school. Because the private sector is too small to absorb them, many graduates from Chilean medical schools are required to leave the country in search of employment. 53/

317. However, according to information received by the Group based on National Health Service statistics an important decline has taken place in the death rates of children and the general population in Chile. Child deaths per 1,000 were 79.3 in 1970, 65.2 in 1973 and 47.5 in 1977. The death rate of the general population was 8.9 in 1970, 8.4 in 1973 and 6.9 in 1977. In addition, the Government has reported that since 1973 there has been a rise in the percentage of births with professional care and that the life expectancy (63 years) in Chile, the population per doctor (1,600) and population per nursing person (470) compare favourably with the average for other middle-income countries. 54/ However, an increase in some infectious diseases, for example, typhoid, has been noted in Chile. 55/ With regard to improvements in the health of the population of Chile, Dr. Ernesto Medina, Director of the Department of Public Health of the University of Chile and President of the Medical Association (Colegio Médico), was reported by the journal Hoy as saying:

"The achievements of the NHS during the past 25 years have been considerable. The over-all mortality rate in Chile has been reduced by half, the maternal mortality rate by some 58 per cent and the infantile mortality rate by about 53 per cent; the life expectancy of Chileans has increased by 15 years. The decrease in the risk of death during the past three decades in Chile has been greater than in any other Latin American country. According to Dr. Medina, this is due to the existence of a basic organized health service, the NHS. Although the number of consultations per inhabitant has not increased, the improvement in the indicators betokens the rationalization and increased effectiveness of the current system." 56/

318. As the Group indicated in its report to the General Assembly (A/33/331, paras. 733-739), a debate has been under way in Chile concerning the principles which should be at the bases of the future organization of that country's public health services. In particular, the Government has been favouring the introduction of market-economy policies and an increased role for private enterprise in the area of health. On this question Dr. Medina is reported by El Mercurio to have stated:

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53/ Ibid.

54/ See "Observations of the Government of Chile on the report entitled 'Study of the impact of foreign economic aid and assistance on respect for human rights in Chile'" (A/C.3/33/7).

55/ "Study of the impact of foreign economic aid and assistance on respect for human rights in Chile" (E/CN.4/Sub.2/412, paras. 201-205).

56/ Hoy, 22 to 28 November 1978, p. 21.

"I believe that we physicians as a professional group have been insufficiently forceful in expressing our alarm at the attempt to organize Chilean medicine on economically-oriented bases, through the establishment of the profit motive and the attempt to apply models which constitute useful incentives for the production of material goods but are completely inappropriate for social needs such as health or education".

This same article states:

"Dr. Medina also expressed his uncertainty about the new generations of doctors, who were constantly increasing in number, and emphasized the disagreements with the Ministry which existed with regard to the reform of curative medicine.

"He added that it would be inappropriate to make any change in the national health structure unless provision had been made for all the implications of the change and its effects on the various levels of attention, the type and number of doctors required, the organization and management of health services, the teaching of medicine, professional practice and ethics, efficiency and effectiveness, and, above all, consideration for the human and psychological aspects of the patients whom it was intended to serve".

319. The question of the enjoyment of the right to health in Chile has been of special concern to the Group, and both the present report and the report to the General Assembly at its thirty-third session reflect information concerning the reduction in government expenditures in the health field, the deterioration in the care provided by the National Health Services, rises in the cost of medicines and medical care, and high unemployment, which result in limiting the access of the poor and unemployed sectors of Chilean society to basic health services. The Group recommends that the Commission on Human Rights urge the Government of Chile that in its policies and programmes concerning health it keep in mind the need to make health care effectively available to the Chilean people and especially the poor and unemployed sectors of society.

IX. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

320. The Ad Hoc Working Group has carefully reviewed the information which it has received concerning the present situation of human rights in Chile and which is reflected in this report. The Group finds that the situation of human rights in Chile remains unchanged from that described in its report to the General Assembly at its thirty-third session (A/33/331) except in three areas: cases of arrest and intimidation, trade union rights, and freedom of expression. The Group has noted the increase in the number of reported cases of intimidation and of arrests for political or national security reasons, as well as the continuation of torture and ill-treatment of detainees. The Group also has described in this report the severe restrictions on trade union rights, including the dissolution of trade unions and their national federations, the destruction of the national leadership of the trade unions, the limitations on persons permitted to be union representatives and the prohibition of union leaders from any activity which could be characterized by the Government as "political". On the other hand, the Group noted the continued expression in the Chilean press of a relatively wide range of opinion and the organization in Chile by associations such as the Association of Radio Broadcasters and the Medical Association of meetings at which Chilean Government policies have been criticized. Nevertheless, the legal provisions on which greater government control over freedom of expression could be based remain in force and Government toleration of free expression does not extend to all parts of society, for example to the universities, nor to all questions, for instance, the labour conflict at Chuquicamata.

321. The Group reported to the thirty-third session of the General Assembly that the situation of human rights in Chile had improved from that reported in the years immediately following the change of government in September 1973, but that violations of human rights often of a serious nature continued to take place and that the situation warranted continued concern by the international community (A/33/331, para. 779). The most recent information received by the Group confirms that analysis and the continuing necessity for the United Nations to keep the situation of human rights in Chile under consideration until respect for human rights meets international standards. On the basis of the information now before the Group and reflected in this report the Group reaffirms the conclusions and recommendations made in its report to the General Assembly and reflected in the Assembly's resolution 33/175.

322. The state of emergency, applied to the whole country for more than five years, and the state of siege, applied to one region, severely limit the enjoyment of basic human rights. The continued application in Chile of the state of siege and state of emergency is not justified, as international law requires, by any public disaster, armed uprising or other similar situation and the Group recommends that the Commission on Human Rights call upon the Chilean Government to end the state of siege and emergency.

323. Since September 1973 the people of Chile have not enjoyed the basic human right to take part in the government of their country and fundamental changes in policy continue to be made without the participation of the Chilean people. The Group urges a rapid restoration to the people of Chile of their right to take part freely in the conduct of public affairs.

324. The state security agencies continue to exercise wide powers especially in arrest and detention without respecting existing Chilean legislation and without effective control by the courts. The security agencies are also principally responsible for the torture and ill-treatment of detainees. The Group urges that effective control be established over the Chilean state security agencies.

325. The Chilean courts in a few instances have acted to release persons falsely accused of crimes by the security agencies but the Chilean courts still refuse to use the powers given them under the writ of amparo to protect Chilean citizens from false arrest, illegal detention, torture and ill-treatment by the security agencies. The courts also refuse to prosecute and punish those responsible for torture and ill-treatment of detainees. The Group concludes, as it did in its report to the General Assembly, that the remedies in Chile to protect the right to 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 human rights instruments (A/33/331, para. 779). The Group thus strongly urges that, until the national means of protecting human rights are operating adequately, the international community and especially the United Nations, should continue to be vigilant.

326. The Group again urges the identification, prosecution and punishment of those responsible for torture and acts which have resulted in the death of detainees. The Group reiterates its firm view that an amnesty declared by a Government in favour of officials who engaged in systematic and gross violations of human rights is legally ineffective as contrary to the generally accepted principles of law and that on the international level persons responsible for such violations are liable for crimes committed by them.

327. The arrests for political or national security reasons reported in 1978 exceed those reported for 1977. Those persons arrested individually or in small groups are usually taken to unknown places of detention for questioning and continue to be subjected to ill-treatment and torture as part of the interrogation process. In its report to the General Assembly the Group recommended that to prevent these particular violations of human rights 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 human rights instruments which Chile has ratified - irrespective of whether the person was arrested by military personnel or security agents (A/33/331, para. 779).

328. Many Chileans living outside Chile wish to return to their country, but are prevented by Government decisions the legality or well foundedness of which cannot be reviewed by the Courts. The Group recommends that the Commission call upon the Chilean Government to fully respect the right of Chilean citizens to return to their country and empower the courts to fully review Government decisions prohibiting re-entry.

329. The Group again expresses its concern that the growing cost of education, the difficult economic situation of the lower income groups in Chile, and the reduction of credits for public education, are seriously limiting the real chances of many children and young people to have access to an adequate education. The changes in the legal status, the remuneration of Chilean teachers, the exclusion of teachers, pupils and parents from real participation in the decisions affecting education and the limits on academic freedom are also matters of great concern.

330. The persistence of a high rate of unemployment together with low wage levels and high prices for basic necessities which result partly from government economic policy, severely restrict the enjoyment of basic economic and social human rights for certain sectors of the population. The Group recommends that the Commission call upon the Chilean Government to take adequate and effective measures to enable all parts of Chilean society to enjoy a minimum standard of economic and social rights.

331. The Group has reported that factors such as the reduction in Government expenditures for health, rising costs of medicine and medical care and deterioration in the care provided by the Chilean national health service result in limiting the access of the poor and unemployed sectors of Chilean society to basic health services. The Group recommends to the Commission that it urge the Government of Chile to take appropriate measures to make health care effectively available to all sectors of Chilean society, in particular the poor and unemployed.

332. The Group again expresses its deep concern about the situation of the Mapuche Indians in Chile and in particular with regard to the danger to the continuation of the specificity of their living conditions and cultural life. The Group recommends to the Commission that it urge the Chilean Government to safeguard the human rights of the Mapuche Indians and other indigenous minorities, taking into account their particular cultural characteristics.

333. Severe restrictions continue to be applied by the Chilean Government on the exercise of trade union rights. Recently trade unions have been dissolved, the protection of union representatives in the public sector eliminated, penal sanctions introduced for legitimate but unauthorized trade union activities, limits placed on persons eligible for union leadership positions and on the activities of union leaders. These measures constitute serious violations of freedom of association and opinion. The Group recommends to the Commission that it call upon the Chilean Government to establish full respect for freedom of association and trade union rights as provided for in international law.

334. The General Assembly concluded in its resolution 33/175 of 20 December 1978 that the human rights situation in Chile justifies the continued concern and involvement of the international community and the special attention of the Commission on Human Rights. To that end, and in the same resolution, the General Assembly invited the Commission on Human Rights to appoint, in consultation with the Chairman of the Ad Hoc Working Group from among members of the Group as presently constituted, a Special Rapporteur on the situation of human rights in Chile who should report to the Commission on Human Rights and to the General Assembly,

and to formulate his mandate on the basis of its resolution 8 (XXXI) of 27 February 1975 which established the mandate of the Ad Hoc Working Group. The Group welcomes this decision of the General Assembly.

335. The Group continues to be deeply concerned with the serious humanitarian problem of missing persons. Reliable evidence has been gathered on the arrest and detention by Government security agents of over 600 persons now missing in Chile. Investigations by the Government and courts have failed to determine the whereabouts or fate of the missing detainees. The necessity for serious investigations has not diminished, rather the recent discovery of unidentified bodies in a mass grave in Chile has made such investigations even more urgent and indispensable. The Group has carried on conversations with the Government of Chile, both during the Group's visit to that country and at subsequent meetings, with a view to reaching an agreement on the means to ensure a thorough investigation of the cases of missing persons in Chile. Concrete suggestions were made in this regard, but no agreement was reached. Because of the importance of determining the whereabouts and fate of the missing persons and due to the failure of the Chilean Government and the Chilean Courts to carry out adequate investigations, the Group welcomes General Assembly resolution 33/175 in which the Assembly invited the Commission on Human Rights to consider at its thirty-fifth session the most effective ways of clarifying the whereabouts and fate of missing and disappeared persons in Chile, taking into account the views on this subject expressed by the Ad Hoc Working Group in their report.

336. The Group welcomes the decision of the General Assembly in its resolution 33/174 to establish the United Nations Trust Fund for Chile with the purpose of distributing humanitarian, legal and financial aid to persons whose human rights have been violated by detention or imprisonment in Chile, to those forced to leave the country and to relatives of such persons. The Group in the past recommended to the Commission that steps be taken to provide such aid and the Commission may wish to keep itself informed through the Secretary-General of the benefits of the Trust Fund by inviting the Chairman of the Board of Trustees to report annually, on behalf of the Board, to the Commission on the achievements of the Fund.

337. The Group wishes to acknowledge the co-operation of the Government of Chile which has proved of particular value over the last year and the Group wishes to record its appreciation.

338. The Group wishes to express its thanks to the General Assembly which, in its resolution 33/176, expressed its great appreciation to the Ad Hoc Working Group for the careful and objective manner in which it carried out its mandate. The General Assembly further drew the attention of the Commission on Human Rights to the importance of the experience of the Ad Hoc Working Group on the Situation of Human Rights in Chile in view of its future action, when dealing with consistent patterns of gross violations of human rights.

X. ADOPTION OF THE REPORT

339. At the meeting held on 26 January 1979 the present report was unanimously adopted and signed by the members of the Ad Hoc Working Group on Chile.

Ghulam Ali Allana (Pakistan)  
Chairman/Rapporteur

Leopoldo Benites (Ecuador)

Abdoulaye Dieye (Senegal)

Felix Ermacora (Austria)

Marian J.T. Kamara (Sierra Leone)



Annex I

GENERAL ASSEMBLY RESOLUTION 33/174 OF 20 DECEMBER 1978

Establishment of the United Nations Trust Fund for Chile

The General Assembly,

Recalling its resolutions 31/124 of 16 December 1976 and 32/118 of 16 December 1977 and taking note of Economic and Social Council resolution 1978/15 of 5 May 1978 and Commission on Human Rights resolution 13 (XXIV) of 6 March 1978,

1. Decides to establish a voluntary fund, called the United Nations Trust Fund for Chile, administered in accordance with the Financial Regulations of the United Nations by the Secretary-General with the advice of a Board of Trustees, composed of a chairman and four members with wide experience of the situation in Chile, to be appointed by the Secretary-General with due regard to equitable geographical distribution and in consultation with their Governments, to serve for a three-year term, to receive contributions and distribute, through established channels of assistance, humanitarian, legal and financial aid to persons whose human rights have been violated by detention or imprisonment in Chile, to those forced to leave the country and to relatives of persons in the above-mentioned categories;
2. Adopts the arrangements for the management of the Fund set forth in the annex to the present resolution;
3. Authorizes the Board of Trustees to promote and solicit contributions and pledges;
4. Requests the Secretary-General to put into immediate effect the provisions of the present resolution and to give the Board of Trustees all the assistance it may require;
5. Appeals to Member States to respond favourably to requests for contributions to the Fund.

90th plenary meeting  
20 December 1978

ANNEX

Arrangements for the management of the  
United Nations Trust Fund for Chile

1. The Secretary-General shall apply the arrangements set forth below for the management of the United Nations Trust Fund for Chile.

A. Solicitation and acknowledgement of pledges and collection  
of contributions

2. The Controller, in consultation with the Under-Secretary-General for Political and General Assembly Affairs and the Director of the Division of Human Rights and with the advice of the Board of Trustees of the Fund, shall determine the procedures for soliciting voluntary contributions to the Fund.

3. Any prospective donor desiring to make a voluntary contribution to the Fund shall submit a written proposal to the Secretary-General. The request for acceptance should contain all relevant information including the amount of the proposed contribution, the currency and the timing of payments.

4. The proposal, with the comments, inter alia, of the Under-Secretary-General for Political and General Assembly Affairs and the Director of the Division of Human Rights, shall be forwarded to the Controller, for determination that the proposal is acceptable under the Financial Regulations and Rules of the United Nations, including the determination of whether or not any proposed gift or donation might directly or indirectly involve additional financial liability for the Organization. Before acceptance of any gift or donation involving such liability, the Controller shall request and obtain the approval of the General Assembly.

5. The Controller shall acknowledge all pledges and shall determine the bank account or accounts in which contributions to the Fund should be deposited. He shall be responsible for collecting contributions and following up on payments of contributions pledged.

6. The Controller may accept contributions in such currencies as he deems usable by the Fund or readily convertible into usable currencies.

#### B. Operation and control

7. The Controller shall ensure that the operation and control of the Fund shall be in accordance with the Financial Regulations and Rules of the United Nations. He may delegate responsibility for the operation and administration of the Fund to the heads of departments or offices designated by the Secretary-General to execute activities financed by the Fund. Only officials so designated may authorize the execution of specific activities to be financed by the Fund.

8. In respect of activities conducted by the United Nations, requests for allotments of funds shall be submitted to the Controller by the Director of the Division of Human Rights accompanied by such supporting information as the Controller may require. After review, allotments to provide for expenditures of the funds received shall be issued by the Director of the Budget Division, and certifying officers for the Fund shall be designated by the Controller in accordance with established procedures.

9. The Controller shall be responsible for the reporting of the financial transactions of the Fund and shall issue quarterly statements of assets, liabilities and unencumbered Fund balance, income and expenditure.

10. The Fund shall be audited by both the Internal Audit Service and the Board of Auditors, in accordance with the Financial Regulations and Rules of the United Nations.

#### C. Reporting

11. An annual report showing funds available, pledges and payments received and the expenditures made from the Fund shall be prepared by the Controller and submitted to the General Assembly and, as appropriate, to the Commission on Human Rights.

Annex II

GENERAL ASSEMBLY RESOLUTION 33/175 OF 20 DECEMBER 1978

Protection of human rights in Chile

The General Assembly,

Emphasizing its commitment to foster universal respect for, and observance of, human rights and fundamental freedoms for all in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights,

Recalling that in accordance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights 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 to 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 in its resolution 3452 (XXX) of 9 December 1975,

Reaffirming once more its condemnation of all forms of torture and other cruel, inhuman or degrading treatment or punishment,

Recalling its resolution 32/118 of 16 December 1977, in which it reiterated its profound indignation, as well as its resolutions 3219 (XXIX) of 6 November 1974, 3448 (XXX) of 9 December 1975 and 31/124 of 16 December 1976 concerning the human rights situation in Chile,

Bearing in mind Commission on Human Rights resolution 8 (XXXI) of 27 February 1975, in which it established the Ad Hoc Working Group on the Situation of Human Rights in Chile, and resolutions 3 (XXXII) of 19 February 1976, 9 (XXXIII) of 9 March 1977 and 12 (XXXIV) of 6 March 1978 of the Commission, by which it extended the mandate of the Ad Hoc Working Group,

Noting with appreciation the steps taken by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to implement General Assembly resolutions 31/124 and 32/118,

Having considered the study prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the consequences for human rights in Chile of the various forms of aid extended to the Chilean authorities,

Taking note of the important role that regional human rights organizations can play in situations of violations of human rights,

Taking note with appreciation of the fact that in July 1978, for the first time, members of the Ad Hoc Working Group were enabled to visit Chile in pursuance of their mandate, which represents a valuable experience for the United Nations when dealing with constant and flagrant violations of human rights,

Having considered the reports of the Ad Hoc Working Group and of the Secretary-General under this item, as well as the observations and documents submitted by the Chilean authorities,

Noting that the Ad Hoc Working Group records its appreciation for the co-operation extended to it by the Chilean authorities,

Noting also that the report of the Ad Hoc Working Group confirms the substance of its previous reports,

Acknowledging the conclusions of the Ad Hoc Working Group that the present situation of human rights in Chile has improved, as compared to previous years, in that cases of torture and ill-treatment as well as the number of arrests for political reasons have decreased, large numbers of political prisoners are no longer held; no cases of persons disappearing in 1978 have been confirmed and the expression in the press of a wider range of opinion appears to be permitted, which developments are mainly attributable to the efforts of the Chilean people and of the international community,

Gravely concerned by the conclusions of the Ad Hoc Working Group that violations nevertheless continue to take place, often of a grave nature, of human rights provided for in:

(a) The International Covenant on Civil and Political Rights, and manifested inter alia by ill-treatment and torture, arrest and detention for political reasons, denial to Chileans of the right to return and live in their country, prohibition of political parties by infringement of freedom of expression and the lack of effective legal remedies,

(b) The International Covenant on Economic, Social and Cultural Rights, and manifested, inter alia, by denial of the right to collective bargaining and the right to strike,

Concerned furthermore by the recent dissolution of labour organizations, arrest and persecution of labour leaders and trade union members and infringements of acquired labour rights,

Particularly concerned also by the lack of progress in clarifying the fate of missing and disappeared persons in spite of appeals by the General Assembly, the Commission on Human Rights, the Secretary-General, private institutions and citizens of Chile,

Concluding, therefore, that the human rights situation in Chile justifies the continued concern and involvement of the international community and the special attention of the Commission on Human Rights,

1. Expresses its continued indignation that violations of human rights, often of a grave nature, continue to take place in Chile, as has been convincingly established by the report of the Ad Hoc Working Group on the Situation of Human Rights in Chile;

2. Expresses also its particular concern and dismay at the refusal of the Chilean authorities to accept responsibility or account for the large number of persons reported to have disappeared for political reasons, or to undertake an adequate investigation of cases drawn to their attention;

3. Calls once more upon the Chilean authorities to restore and safeguard, without delay, basic human rights and fundamental freedoms and fully to respect the provisions of the relevant international instruments to which Chile is a party, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as to heed the concerns expressed by the international community;

4. Urges the Chilean authorities in particular:

(a) To cease the state of emergency, under which continued violations of human rights and fundamental freedoms are permitted;

(b) To restore the democratic institutions and constitutional safeguards formerly enjoyed by the Chilean people;

(c) To ensure an immediate end to torture and other forms of inhuman or degrading treatment and to prosecute and punish those responsible for such practices;

(d) To take urgent and effective measures in response to the profound international concern at the fate of persons reported to have disappeared for political reasons and, in particular, to investigate and clarify the fate of these persons;

(e) To cease arbitrary arrest and detention and to release immediately those who are imprisoned for political reasons;

(f) To restore fully the right of habeas corpus;

(g) To restore Chilean nationality to those who have been deprived of it for political reasons;

(h) To allow those who have been forced to leave the country for political reasons to return home and take appropriate measures to assist in their resettlement;

(i) To remove restrictions on political activities and re-establish the full enjoyment of the freedom of association;

(j) To guarantee the standards of labour protection called for by international instruments and fully restore previously established trade union rights;

(k) To fully guarantee freedom of expression;

(l) To safeguard the human rights of the Mapuche Indians and other indigenous minorities, taking into account their particular cultural characteristics;

5. Expresses its appreciation to the Special Rapporteur for his report on the consequences for human rights in Chile of the various forms of aid extended to the Chilean authorities;

6. Commends the Chairman and other members of the Ad Hoc Working Group for their thorough and objective report;

7. Invites the Commission on Human Rights to continue to give close attention to the situation in Chile and, to this end:

(a) To appoint, in consultation with the Chairman of Ad Hoc Working Group from among members of the Group as presently constituted, a Special Rapporteur on the situation of human rights in Chile who should report to the Commission on Human Rights and to the General Assembly, and to formulate his mandate on the basis of resolution 8 (XXXI) of the Commission, by which it extended the mandate of the Ad Hoc Working Group;

(b) To consider at its thirty-fifth session the most effective ways of clarifying the whereabouts and fate of missing and disappeared persons in Chile, taking into account the views on this subject expressed by the Ad Hoc Working Group in its report;

8. Urges the Chilean authorities to co-operate with the Special Rapporteur;

9. Requests the Commission on Human Rights to submit to the General Assembly at its thirty-fourth session, through the Economic and Social Council, a progress report on action taken in compliance with the present resolution.

90th plenary meeting  
20 December 1978

Annex III

GENERAL ASSEMBLY RESOLUTION 33/176 OF 20 DECEMBER 1978

Importance of the experience of the Ad Hoc Working Group  
on the Situation of Human Rights in Chile

The General Assembly,

Bearing in mind Commission on Human Rights resolution 8 (XXXI) of 27 February 1975, in which it established the Ad Hoc Working Group on the Situation of Human Rights in Chile, and resolutions 3 (XXXII) of 19 February 1976, 9 (XXXIII) of 9 March 1977 and 12 (XXXIV) of 6 March 1978 of the Commission, by which it extended the mandate of the Ad Hoc Working Group,

Welcoming the fact that the Ad Hoc Working Group was finally able to travel to Chile and carry out, on the spot, an investigation of the human rights situation in that country in accordance with its mandate,

Aware of the importance of this experience in the framework of United Nations activities, when dealing with consistent patterns of gross violations of human rights,

1. Expresses its great appreciation to the Ad Hoc Working Group on the Situation of Human Rights in Chile for the careful and objective manner in which it carried out its mandate,
2. Draws the attention of the Commission on Human Rights to the importance of the experience of the Ad Hoc Working Group in view of its future action, when dealing with consistent patterns of gross violations of human rights.

90th plenary meeting  
20 December 1978

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Annex IV

INFORMATION CONCERNING THE LABOUR PLAN OF THE GOVERNMENT  
OF CHILE AND MEASURES PERMITTING TRADE UNION MEETINGS  
WITHOUT PRIOR AUTHORIZATION (SUBMITTED BY THE GOVERNMENT  
OF CHILE UNDER COVER OF A LETTER DATED 4 JANUARY 1979).

On Tuesday, 2 January 1979, the Government of Chile, through its Minister of Labour and Social Security, José Piñera Echénique, announced a Labour Plan which sets forth the basic guidelines and decisions relating to the establishment of a new institutional system for labour.

The measures were announced in the presence of a broad and representative group of 63 labour and business leaders, members of the labour departments of the Embassies of the United States, the Federal Republic of Germany, Brazil, France, Spain and Colombia, François Agostín, senior ILO official, and Manuel Montt, member of the Governing Body of ILO.

STATEMENT BY THE MINISTER

Mr. Piñera's statement is reproduced below.

"Only four working days after having taken up the duties of Minister of Labour and Social Security, I wished to meet a broad and representative group of labour and business leaders, in order to outline to them one of the principal initiatives which this Ministry will undertake in the near future and the basic ideas that will underlie this activity.

On 11 September 1973 Chile set about achieving the arduous and ambitious objective of making itself a great nation. Summoning up the most estimable characteristics of the national identity, which has been shaped by a history that fills us with the most legitimate pride, the Chilean people and the Government of the Armed Forces and Public Order realized that only a profound desire to rectify and to create could project our country towards the future on solid bases.

A great nation is one which succeeds in establishing a stable political order that strengthens freedom, thereby ensuring a framework for communal life which respects the rights inherent in man's spiritual dignity and promotes the greatest possible fulfilment of each person's vocation, through which he must seek to perfect himself.

A great nation is one which designs a social structure that promotes justice and enables all its members to fulfil their basic needs, to lead a decent life and to enjoy the legitimate reward for personal merit and effort, within a context that gives pride of place to equality of opportunity in life.

Lastly, a great nation is one which understands that freedom can be harmonized with justice only in a society which sets due store by the requirements of economic efficiency, in order to advance decisively along the path of progress.



In accordance with these principles, I should like this afternoon to describe a number of basic guidelines and decisions relating to the establishment of a new institutional system for labour which, in the light of their content and schedule for execution, we shall call the "Labour Plan". These guidelines and decisions have been, and will continue to be, analysed and established in close co-operation with the Minister of the Interior, Mr. Sergio Fernández, in his capacity as co-ordinator of the process of national institutionalization, and the Minister of Finance, Mr. Sergio de Castro, in his capacity as director of the Economic Plan. All these activities will, of course, be subject to the supreme control of His Excellency the President of the Republic.

## LABOUR PLAN

### 1. Workers and the Economic Plan

I am profoundly convinced that the Economic Plan is of direct benefit to the workers in that it is promoting rapid and sustained economic growth, based on the full and efficient use of the Chilean labour force. The difficult situation which has been experienced, and is to a certain extent still being experienced, by the workers originates not from the current Economic Plan, but from the disorder which was caused by the Marxist Government and from the effects of the most serious international economic crisis of this century. However, once the bases have been established for vigorous development, the workers will begin to appreciate the benefits of the enormous progress which is approaching with ever-growing clarity.

### 2. Institutional system for labour

In order to gain a proper understanding of this question, we must refer to the basic concepts underlying it, to the time required to establish the new system and to certain definitions which will eliminate all confusion during the period between now and the promulgation of the definitive legislation and provisions relating to this matter.

#### A. FUNDAMENTAL PRINCIPLES

In this connexion it is appropriate to reaffirm the full validity and great importance of the concepts embodied in the Declaration of Principles of the Chilean Government, in which, on the basis of the common good as an objective of State policy - the common good being understood as the set of social conditions which will enable every Chilean to fulfil himself to the greatest extent possible, emphasis is placed on the importance of recognizing the "subsidiary" principle as a key to a genuinely free society.

This entails accepting the fact that every intermediate body between the individual and the State should enjoy autonomy in attaining its individual and specific objectives; a sphere of activity and, at the same time, a limit must therefore be established, both for the intermediate bodies and for the State itself. The State cannot unlawfully encroach upon the spheres of activity peculiar to the intermediate bodies, and these bodies cannot overstep the boundaries inherent in their specific nature.

From this standpoint, the trade unions emerge as vital elements in society. Their principal role is the responsible defence of the interests of their members, without prejudice to the broader contribution which they can make to the activity of the Government and the community.

## ORGANIZATION OF TRADE UNIONS

The principles which I have mentioned will automatically lead to trade unionism which is:

(a) Free. This implies the right of the workers to demonstrate collectively in the field of common labour, through trade unions which are established and organized in accordance with the wishes of their members, without other limits than any exceptions that may be established by the law in this respect in response to the clear requirements of the common good and any legal requirements that guarantee the responsible observance of the established procedures and conformity to the objectives peculiar to the unions.

An irreplaceable corollary of trade-union freedom is the non-delegable right of the worker to join or leave a union as a free and voluntary personal act. No one may be compelled to join a union, even as a condition for the performance of a specific job or activity.

In addition, emphasis should be placed on a complement to this freedom, namely, the right of a trade-union assembly, as the central decision-making organ of the union concerned, to express an opinion on all matters relating to its sphere of activity.

As regards the number of trade unions which may exist within a particular enterprise as a consequence of the freedom of membership, and the right to form trade-union federations and confederations, the law will establish provisions that strike a balance between the variety which originates from the wishes of the workers and the requirements for the rational and efficient functioning of the economy in general and the business enterprises in particular.

(b) Trade unionism must also be democratic, which means that trade-union members must have freedom to generate their own executive committees and that there must be a guarantee that these committees' activities will conform to the decisions of the workers who make up the union concerned. Equally important is the requirement that the adoption of decisions by trade-union assemblies should not be influenced by any form of moral or material pressure. It is therefore advisable that the most important decisions should be taken by secret ballot.

(c) Trade unions must be financed. This means that, just as there is freedom to join or to refrain from joining a union, any person who does join a union has an obligation to pay a subscription to it, the amount being freely decided by the union members.

For greater practical convenience, the subscription may be deducted by payroll offices; this question will have to be decided by each union member within each enterprise. Decisions concerning the federations or confederations to which each union should be legally affiliated will be taken by a majority of the members of each union, in a free and secret ballot and with a statutory quorum.

Just as it is only correct to expedite the collection of subscriptions, it is necessary to ensure that the sound financing of a trade-union organization should be derived from the organization's effectiveness and not from compulsory legal provisions for the workers.

(d) Trade unions must be autonomous and depoliticized. This requirement stems naturally from the obligation on unions to conform to their own objectives. This should prevent any manipulation of union organizations by groups or interests outside these organizations, regardless of their character or origin. Any other course would be tantamount to permitting betrayal of the inalienable right of the workers to have a union that effectively represents them.

In the light of our own past experience, the prohibition of the politicization of trade unions is particularly important. In order to avert situations in which they are led by persons who pursue party political activities, precise provisions will have to be established in the new Political Constitution of the State, without prejudice to any other restrictions of competence that may be provided for in the new Constitution for this purpose in connexion with those persons who are declared responsible for propagating doctrines contrary to the essential bases of the institutional system. The relevant cases and situations will be determined in the new Constitution, whose text will require popular approval by means of a plebiscite.

Responsibility for reaching a decision on the above-mentioned restrictions on competence or incompatibilities in each individual case shall always be vested in independent tribunals, in accordance with the Constitution or the law.

As a counterpart to these restrictions, legally elected trade-union leaders shall enjoy full union privileges which will guarantee them independence in the genuine representation of union members.

#### COLLECTIVE BARGAINING

The same guiding principles as those which I have just described for the new institutional system for labour extend to the field of collective bargaining, which is an irreplaceable instrument in labour activity and which, when properly regulated, places the parties on a desirable footing of equality.

To this end, an effort must be made to establish, on the one hand, a flexible labour market and, on the other, a negotiating procedure which has the following characteristics:

(a) It must be efficient and equitable. Consequently, negotiation should be conducted within the context of each enterprise, without prejudice to the exceptions that are strictly necessary for those activities in which this procedure is not feasible. The essential role of collective bargaining is, in fact, to determine how the earnings derived from an enterprise's productivity should be distributed for each period between capital and labour. Logically, this matter can be resolved seriously and equitably only within the organization in which these earnings, large or small as the case may be, are achieved.

It should be noted that within an economy which is competitive and open to foreign trade, negotiation between employers and workers, apart from not involving government authority directly or indirectly, provides a safety valve which checks unrealistic or excessive demands by the workers, while at the same time the machinery which the workers will have available to them under the future legislation will enable them to exercise their rights by means of a wide range of effective instruments.

A balance must be sought in just economic reward for both labour and capital, in the light of their actual contribution to the production of the enterprise concerned.

(b) Negotiation must be conducted at an appropriately technical level. This means that both parties should not only negotiate with a complete and perfect knowledge of the relevant background information, but should also have access to any technical assistance that may be necessary for a proper mastery of this information.

The traditional shortcomings which existed in this respect in the collective bargaining system in Chile undoubtedly constituted one of the main obstacles to the success of the system, within the realism that must prevail in such a procedure.

(c) Negotiation must be responsible and comprehensive. These conditions can be fulfilled only within a context of conciliation machinery that is effectively supported by the law and the parties concerned, since past experience in this matter indicates that procedures such as mediation and arbitration were not provided for in law and lacked the practical prestige which would expedite the equitable, peaceful and successful conduct of wage negotiations.

Consequently strikes proliferated, to the obvious detriment of workers, employers and the country as a whole. Instead of constituting the final stage in an unresolved dispute, they practically became the habitual and immediate means of obtaining a settlement of a dispute.

Beyond respectable and interesting doctrinal discussion of the questions whether or not the right to strike exists and what element of justice a strike contributes to the settlement of a labour dispute, no one disputes the point that strikes constitute an established fact in the face of which the legal system must adopt a definitive position.

The new institutional system clearly indicates that a strike cannot be accepted as legally valid when it affects public utilities or when work stoppages seriously jeopardize health, supplies to the population or the national economy or security. In requiring compulsory arbitration in such cases, our country is following the course which has been followed by the majority of the most modern and advanced democracies.

A very different situation arises with regard to business activities in which stoppages do not have irreparably harmful effects on society and the problem amounts to no more than a dispute between employers and workers which does not vitally affect either the State or the population. In these cases, there is no economic or social disadvantage in admitting the possibility of a strike or conversely a lock-out, since the harmful effects of the stoppage are neutralized by the very functioning of the competitive economic system and the risk of losing either work or capital operates as a deterrent to irrational or capricious conduct.

It is true that the strike weapon always engenders prejudicial tension, but until there is general agreement on the advisability of establishing comprehensive substitute procedures, there is every reason to recognize it within the limits which I have just mentioned.

In concluding these observations on collective bargaining, it would seem appropriate to place on record the fact that they obviously do not apply to workers employed by the State or the municipalities.

B. SCHEDULE FOR IMPLEMENTATION OF THE LABOUR PLAN

As well as describing the substance of the Labour Plan, I consider it appropriate to announce that the law which will establish regulations for trade-union organizations on a comprehensive and definitive basis will be promulgated not later than 30 June next.

Also prior to this date, the provisions on collective bargaining will enter into force, in accordance with a staggered time-table which will prevent all these provisions from entering into force at the same time and thereby having undesirable economic effects.

In addition, the Government has decided that any trade-union election held in the near future should be subject to the permanent provisions. These provisions will in fact stipulate that a statutory quorum of members of any trade union which has renewed its executive committee in accordance with the recent Decree-Law No.2,376 and Supreme Decree No.159 is empowered to call for the committee's resignation only once during its legal term of office. In such a situation a new election will be held, in accordance with the definitive legislation which will by that time govern such matters. This legislation will enable the performance of the newly-elected leaders to be evaluated by the members whom they represent after an appropriate part of their term of office has elapsed.

C. SUPPLEMENTARY MEASURES

Lastly, I wish to announce that this Ministry has decided:

- (1) To intensify contacts with all leaders of employers' and workers' organizations in order to establish a frank and fluid relationship and to obtain as much information and as many viewpoints as possible - an approach which will help to enrich the new institutional system for labour.
- (2) To perfect the supervisory systems established by the labour legislation and to increase respect therefor on the part of the parties involved in the labour relationship, with special consideration for the sectors which are most disadvantaged and have least social influence.
- (3) To develop the machinery for vocational training and industrial relations, so as to promote an atmosphere of integration and harmony within the activities of the various enterprises, such an atmosphere being vital in order to link economic efficiency with the concept of a human working community which is the definition that the present Government has given to its lofty ethical and social conception of the enterprise.
- (4) To embark on the immediate execution of the less complex parts of the Labour Plan in respect of which no further delay is necessary. I am pleased to be able to conclude my remarks by announcing that as a first step in this connexion and as of this date the Ministry of the Interior, in accordance with the powers conferred on it under Decree-Law No. 2,345, has issued instructions to the Intendants and Governors to the effect that trade-union meetings may be held at the headquarters of the organizations concerned in order to discuss matters relevant to those organizations without need for any form of authorization.

I believe that what I have said constitutes the best possible evidence of the constructive, creative and dynamic spirit of a Government whose sole objective is to serve all Chileans, thereby keeping constantly open renewed channels for social participation which will be used by all those who, in a spirit of national unity, wish to make their contribution to the building of a future in which Chile will once again enjoy the destiny of greatness, peace and well-being that we desire for ourselves and for our children."

TRADE-UNION MEETINGS WITHOUT PRIOR AUTHORIZATION

Pursuant to an instruction issued on 2 January 1979 by the Minister of the Interior, Sergio Fernández Fernández, the Government of Chile has authorized all legally established trade-union organizations in Chile, whether they be trade unions, federations or confederations, to hold ordinary meetings of their members without need for prior authorization by the competent authorities.

This instruction by the Minister of the Interior is addressed to all the Regional Intendants and Provincial Governors, in accordance with the powers established in Decree-Law No.2,345 of 1978.

The text of the instruction by the Minister of the Interior reads as follows:

"IN VIEW OF:

The powers conferred on me under Decree-Law No.2,345 of 1978, I issue the following instructions:

1. In order to promote the development of the activities of the legally established trade-union organizations, I should be grateful if you would take note of the following:

(a) As from this date all executive committees of trade-union organizations, whether they be trade unions, federations or confederations, are empowered to hold ordinary or extraordinary meetings in order to discuss with their members matters relevant to the organization concerned, without need to apply to the competent authorities for any form of prior authorization;

(b) The above-mentioned meetings shall in all cases be held at the headquarters of the organization concerned and outside working hours.

2. Accordingly, I should be grateful if you would take all appropriate steps to comply with this instruction and to promote the efficient operation of the workers' organizations.

Yours sincerely,

Sergio FERNANDEZ FERNANDEZ  
Minister of the Interior"

Annex V

LETTER DATED 25 JANUARY 1979 FROM THE PERMANENT REPRESENTATIVE OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF THE AD HOC WORKING GROUP

With reference to your communications of 21 and 22 December 1978 and 11, 12 and 22 January 1979, in which you request the Government of Chile to provide information on various matters, I have pleasure in informing the Ad Hoc Working Group of the results of the inquiries made with the relevant agencies, so that the Group can include this information in its report to the Commission on Human Rights.

A. List of persons arrested by security agencies between 1 September and 31 December 1978

Twelve persons, whose particulars and circumstances are given below, were arrested during this period:

I. In proceedings initiated in September 1978 before the Office of the First Military Prosecutor, case No. 567-78, the Prosecutor issued an order for a full investigation with powers of arrest and search if necessary, and in pursuance of this order the following persons were arrested by members of the National Information Agency:

Luis Humberto Vergara Torres  
Lorenzo del Carmen Pizarro Vallejos  
Lucindo Fermín Sandoval Ramos  
Luis Humberto Vera Mendez  
Claudia Donoso Crocco.

The above-mentioned persons were brought before the Office of the First Military Prosecutor after they had made out-of-court statements, and were released by that Court.

The Press gave full coverage to the fact of their arrest, and explained the reasons for it.

With reference to the long sworn statement by Lorenzo del Carmen Pizarro Vallejos which has been communicated by the Group, and which does not bear a date though it is indicated that it was made after he had been released, the Government attaches hereto a handwritten out-of-court statement made by Pizarro in which he recounts in detail facts which, according to information in the possession of the Group, he would later appear to deny.

The truth of the matter is that the statement was first handwritten and later typed so that it could be added to the file, and not vice versa as Mr. Pizarro states (annex I).

It should be emphasized that the torture which the witness describes is not mentioned in his long handwritten statement. Nor was it mentioned to the Prosecutor, since in the Court he said that he had been threatened (sic).

There would seem to be some paradoxes in the talkativeness and volubility of the witness, who was nevertheless released by the Court which is said to have induced him by "threats" to make a statement that coincided with what he had told the security agencies, and even though he repeated what he had said to them.

The Government rejects the terms and content of Mr. Pizarro's sworn statement, which has no basis in logic and much less in other elements of conviction.

In order that the Commission on Human Rights may judge for itself, the Government requests the Group to give instructions that the handwritten statement of Mr. Pizarro, or extracts from it, be translated and incorporated in the report depending on whether or not the sworn statement is to be incorporated in the text of the Group's report.

II. Following a series of terrorist attacks which took the form of placing bombs in various places in Santiago, the Office of the Second Military Prosecutor began an inquiry and issued an order for a full investigation with powers to search and arrest those responsible. The order was communicated to the security services and to the Carabineros and the Investigation Bureau.

In pursuance of the order, the security services arrested the following persons on 15 December 1978:

Pedro Juzmán Torres Silva  
Margarita Del Carmen Leblanc Castillo  
Guillermo Mauricio Leblanc Castillo  
Ricardo Serey Segura  
Luis Fernando Merino Jara  
Carlo Gilberto González Silva  
José Andrés Bengoechea Rubio.

The above-mentioned persons, after making out-of-court statements, were brought before the Office of the Second Military Prosecutor. The Prosecutor, after questioning them, declared that he was incompetent to deal with the case and referred it to the Santiago Court of Appeals. The latter Court appointed one of its members, Miss María O'Neil, to act as investigating judge. After interrogating the prisoners, Miss O'Neil charged Margarita and Guillermo Leblanc Castillo, Pedro Torres and Luis Merino Jara with crimes but released Ricardo Serey, José Bengoechea and Gilberto González.

It must be pointed out that of those sent for trial by Miss O'Neil, the investigating judge, Pedro Torres confessed that he had placed a bomb on the premises of the head office of Shell Chile Ltda. He also admitted that he was in possession of two weapons without authorization, that he was an active member of the Movement of the Revolutionary Left (MIR) and that he had had guerilla training in Cuba in 1972. All this is according to the out-of-court statement which is attached (annex II a/).

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a/ Available in the files of the Group.



The defendant, Luis Fernando Merino Jara, admits in his out-of-court statement, which is also attached (annex III a/), that he was a member of MIR, that he took part in three raids on places he mentioned in order to obtain "financing", that he was detained from 7 October 1976 until June 1977, and that in September he was again arrested, this time for only 24 hours. He was again arrested by order of the Office of the First Military Prosecutor in October 1977 and released 25 days later when the amnesty law was enacted. His complicity in the crime for which he is now being detained consisted of acting as a link between Pedro Torres and a person known as Marisol.

The prisoners entered a first plea for enforcement of rights and, after being charged with crimes, a petition for release on bail. Both petitions were rejected by unanimous decision of the Court of Appeals.

This situation was also given extensive publicity in Chile as will be seen from the accompanying Press cuttings (annex IV a/).

III. The Government regrets that it is not in a position to attach a list of persons detained during the years 1976 and 1977 since the Group's request, which is dated 12 January 1979, did not, in view of the complexity and difficulty of the work, allow sufficient time for it to be undertaken.

#### B. The Lonquen affair

After noting the information conveyed to it by Bishop Enrique Alvear and the lawyers Máximo Pacheco and Alejandro González (chief counsel of the Vicaría de la Solidaridad) concerning the discovery of corpses at Lonquen, the Supreme Court appointed an extraordinary investigating judge (in accordance with the procedure laid down in articles 560 et seq. of the Code of Court Organization). Mr. Adolfo Beñados Cuadra, Judge of the Santiago Court of Appeals, was chosen for this appointment.

In statements to the Chilean Press, the lawyers conveying the information have expressed their satisfaction at the appointment of Judge Beñados and with the manner in which he has conducted the investigation.

What has been established to date is that a number of bodies - it is not yet known exactly how many, but possibly about ten - were found buried in the rural locality of Lonquen, in a disused building intended for processing lime, but long since abandoned.

The investigating judge has ordered an inquiry, requested the relevant technical and specialized reports - which have not yet been completed - and heard statements by persons summoned to appear before him.

The remains discovered consist only of bones, without any fleshy substance, plus some pieces of hair and clothing. This will make it possible to determine age, sex, race, stature, physical constitution, weight, shoe-size, bone lesions or dental peculiarities.

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a/ Available in the files of the Group.

The rest of the information which has been published is pure speculation, as the investigation is still in progress.

Reports of traces of bullets in the bodies, of spent cartridges in the vicinity, and of the mutilation of some of the corpses, etc., have not been confirmed and do not even seem to be based on any serious evidence.

In reply to the question by the Chairman of the Working Group as to whether the remains are those of persons alleged to be missing, the Government wishes to state that the investigation which has been initiated is certainly designed to ascertain whether the corpses are those of persons killed in an ordinary crime, or of persons assumed to have been killed in one of the clashes which occurred immediately after 11 September 1973, or of persons alleged to be missing. Obviously, the Government cannot answer this question. Only the examining magistrate is competent to do that. It would be risky, to say the least, to hazard any conclusion before the investigation has been completed.

Finally, the Government of Chile wishes to point out once again to the Working Group that, in connexion with this inquiry, the Minister of the Interior stated on 6 December 1978 that the Government "has issued the relevant instructions to the effect that all authorities under its jurisdiction are to provide maximum facilities to enable the judicial organs to perform their functions with all the efficiency that the case demands, since the community and the authorities are equally interested in establishing the complete truth concerning this situation".

C. Case of Javier Maldonado Alvear

This was a regrettable criminal incident, with no political significance whatsoever, in which the main role was played by a corporal of the Carabineros.

Corporal Luis Armando Rojas Saavedra was returning to his home in the town of La Calera at about 1.40 a.m. on 8 October, when a group of young people emerged from a party in a neighbouring building and caused a disturbance in the public highway outside Corporal Rojas' home.

According to the statements by Corporal Rojas, he was insulted as he passed by the young people. However, he did not react but went into his house. When the group of young people continued to create a disturbance outside his home, he went out armed and warned them and then fired a shot into the air. Subsequently, he fired more shots at medium height. As a result of his shooting, Javier Maldonado Alvear was wounded and taken by his friends to hospital, where he died at about 2 a.m.

Because of the liability he might incur for these events, Corporal Rojas Saavedra was dismissed from the force on 9 October 1978.

At the same time, case No. 9950 was opened before the criminal judge of La Calera, who ordered Rojas Saavedra to be tried for the crime of simple manslaughter. The latter is now detained in Quillota prison on this charge.

D. Case of Gloria Elgueta Pinto and Gastón Muñoz Briones

Both Gloria Elgueta Pinto and the man with whom she lives, Gastón Muñoz Briones, appear to be members of MIR, according to information obtained during the investigation into the terrorist attack by Pedro Torres and others on the head office of Shell Chile Ltda.

It has been established that it was Gastón Lorenzo Muñoz (alias Juan) who ordered Pedro Torres to carry out the said attack and provided him with the bomb he planted (see the references to "Juan" in the statement by Pedro Torres attached as annex II).

On Friday, 12 January 1979, Gloria Elgueta and Gastón Lorenzo Muñoz, together with two minors, sought asylum at the Costa Rican Embassy, but this was refused by Ambassador Don Fernando Arias.

At present, both are in hiding in Santiago.

Nevertheless, on 14 January of this year, the Vicaría de la Solidaridad entered a plea for enforcement of rights on behalf of Gloria Elgueta, maintaining that on 13 January she had been sought by security agents bearing an order conferring broad powers for her arrest. In view of the history of the case, this plea was rejected by the Santiago Court of Appeals.

Moreover, as reported in the latest issue of the MIR pamphlet El Rebelde, "comrade Gloria Raquel Elgueta Pinto has not been arrested, but has gone underground and is discharging her revolutionary responsibility as a militant and member of the resistance".

The Press has reported these facts in extenso, and the public has been asked in the Press to collaborate in securing her arrest (see cuttings from the newspaper El Mercurio of 16 January 1979 and from the magazine Qué Pasa of 24 January 1979 in annex V a/).

#### E. Information on other subjects

##### 1. Economic and financial situation

Since the Working Group in its previous reports has made observations on the economic and social situation of the country - even in areas in which, in the opinion of the Government of Chile, it is not competent to intervene since they concern the internal affairs of Chile - the Government, continuing its traditional policy of keeping the international organizations informed, has pleasure in enclosing the latest statement made by the Minister of Finance on Thursday, 18 January 1979, and mentioning the following facts:

- (a) in 1978, the country's balance of payments showed a surplus of \$630 million;
- (b) the country's reserves amount to \$1,500 million;
- (c) exports in 1978 totalled \$2,500 million;
- (d) the growth rate of the gross national product was 6 per cent;
- (e) employment increased by 4.6 per cent and the purchasing power of wages by 14 per cent; and
- (f) budgetary expenditure for social purposes amounted to \$1,075 million.

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a/ Available in the files of the Group.

The Government of Chile believes that this and other information contained in the Minister of Finance's public statement will be of interest to the Working Group and should be taken into account in any analysis it may make of the country's economic and social situation (annex VI a/).

2. The situation of the indigenous population

The Government of Chile informs the Working Group that Legislative Committee No. 3 is considering a bill to regulate the property of Indians.

According to the statistics, there are now in the southern part of the territory 2,029 Indian communities composed of 43,000 families and probably representing some 200,000 persons.

All these groups have been maintained under an imperfect land tenure system with no solid legal basis, a state of affairs which came into being about a century ago. This legal situation has had the effect that development has been impeded and the possibilities of attaining higher economic levels have been reduced owing to lack of access to credit and uncertainty regarding the fate of money invested in these properties.

The new Act will enable the Indian communities to request that they be divided up when boundary and land-tenure problems are settled. Under the new Act, division will not be compulsory; but, in the words of the Minister of Agriculture, "the Ministry of Agriculture will take action only in those Mapuche communities where 100 per cent of the members request the regularization of their titles".

Up to the present date, surveys to determine the boundaries of the individual property of the land-holders or occupants have been undertaken in 50 Indian communities representing 2.5 per cent of the total area of land in the possession of the Indians; and a survey has been requested to determine the boundaries of a further 50 communities in order to enable their members to become individual landowners when the Act now under consideration enters into force.

In this connexion, I have pleasure in attaching a press cutting containing the statements of the Minister of Agriculture (annex VII a/).

Accept, Sir, the assurances of my highest consideration.

(signed) Sergio Diez Urzua  
Ambassador  
Permanent Representative

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a/ Available in the files of the Group.

Declaration of Lorenzo Pizarro<sup>\*/</sup>

I, Lorenzo del C, Pizarro Vallejos, identity card No. 6,806,658-9, Santiago, born 9 March 1953, son of Lorenzo Celina, sisters: Natalia, Silvia and Victoria, domiciled at Republica de Panamá 5631, Villa Conchalí district.

Hereby declare, freely and spontaneously and of my own free will, without being subjected to any pressure or duress, that I am an active member of the Young Communists, and that I participated in politics when I first attended Higher Industrial School No. 3 at Santiago, Juarez 760, since I had a hand in the takeovers of colleges and in the strikes which occurred at that time (1971-1972).

I left the Industrial School in December 1972, after specializing in industrial engineering. I had three months' practical training with the Salvador Copper Company at Barquito. Even at that time I sympathized with the Young Communists, but did not engage in any political activity at that place due to lack of time. After spending January, February and March in the north, I came to Santiago and joined the Broad Left Front (FAI), seeing that I was already an active member of the Young Communists in the Conchalí district, and all the political parties of the Left (Communist Party, Socialist Party, MAPU, Christian Left) belonged to this Front. I was responsible for planning the Young Communists' base and later, in the middle of 1973, I became political secretary of the base which was called the "Youth" section. There were other sections, besides this, in the various districts of the northern sector.

The section for which I was responsible came under the North Regional Group, which had its headquarters at the corner of Avenida la Pincoya and Recoleta, linking up with the Young Communists' sector, where I was on various occasions. I was appointed representative of my Youth section in the middle of 1973. On 11 September 1973, the day of the military rising, a raid was carried out in the entire Villa Conchalí sector, but I was not arrested.

After 11 September 1973, I spent nearly two years away from political activities. I worked throughout 1974 as a teacher in charge of class 6 (primary level, all subjects) at a private school called Alejandro Flores in the Conchalí commune.

In 1975, I joined Cenaolí as a clerk and remained there until February 1976, when I resigned of my own free will. In that same period, I began to play an active part again in political affairs. The place where all of us who had belonged to FAI began to meet again was the Parroquia Casa de Vidrio (Parish Hall) of Conchalí. We were advised by Father Pablo Andrés (French), who recommended that we should pretend to be participating in activities relating to the Church - for example, Catholic youth, Catholic workers' activities, etc. and not openly proclaim our interest in politics.

The first move to reassemble the dispersed militant members of the Left under the protection of the Church came from the Christian Democrats, represented by two active members of that political group. The first, Roberto Santibañez, lives in calle Río Cachapoal - I forget the number - in the Victoria de Conchalí district, where calle Aguirreluco turns into calle Cachapoal. His house is in the third block. It is made of wood and has an iron grill in front.

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<sup>\*/</sup> The present translation is based on the original handwritten statement, the meaning of which is in parts unclear.

Roberto is well-known, as he works at home as a tailor (he is 1.76 m tall, with straight, light-brown hair). He is also adviser to the Catholic Young Workers' Association of Victoria Conchalí district.

The other militant member, Juan Manuel, lives in the 28 de Julio de Conchalí district - I cannot recall either the street or the number. These two, supported by the Church (Casa de Vidrio) since they belonged to local young workers' associations, induced militants of the Left to start coming to the parish hall. All this took place in 1976.

First, a Reflexions group was formed, under the leadership of Father Pablo Andrés. Later, a parallel group, the Solidarity Action Youth Team (EJAS) was set up and operated at the Casa de Vidrio. It included among its members militants of the Christian Democrat, Socialist and Communist Parties.

The main Socialist Party members of EJAS were: Miguel Angel Miño Lillo, living at República de Panama 5654;

Luis Humberto Vergara Torres, living with his parents at República de Santo Domingo No. 454; and

Alonso Sánchez - I forget his second name - living in calle República de Panama where it enters República de Santo Domingo - I forget the number.

The main members from the Young Communists were: Ramón Godoy, living in Avenida La Pincoya just before the corner with los Aromes. He did not participate directly in EJAS, but informed himself about everything I told him and co-operated and still co-operates at the Casa de Vidrio as a member of the board of the Retirement Fund which was set up by order of the Vicaría Norte. Father Pablo Andrés and Father Claudio are its advisers.

The other principal member from the Young Communists is myself, as the group's political secretary.

The most important members from the Christian Democrats are Roberto Santibañez and Juan Manuel, who are in charge of people from the Catholic Young Workers' Association operating at the Casa de Vidrio.

Round about the month of May 1978, or rather in the middle of April, the Anti-fascist Front was formed, composed of members of the Pastoral Obrera Association, which operated from premises located near the Casa de Vidrio and owned by the Vicaría and members of EJAS. As for advisers, Father Pablo Andrés advises actively and openly, Father Pier Roland conceals his participation rather more and Father Claudio participates very little. Father Pablo is the one who has established the closest links with the Front.

The Anti-fascist Front engages in various activities which serve as a screen for its political ends.

For example, there is a folklore group. I am in charge of this group and am its director. It has no definite name but was known as workshop 9 because the group was originally composed of nine members. Now, however, there are fewer, as three have transferred to the literacy section.

Participants in the folklore section include:

Gloria Allende Castro, living in a two-storey wooden house in calle República de Panama - I forget the number - Villa Conchalí;

Horacio Gajardo - I forget his second name - residing at No. 5629, República de Panama, Villa Conchalí;

Roberto - I forget his surnames - called the Indian, resides at Remodelación Americo Vespucio - I forget the number - but his house may be located in the Jardín Sol Naciente in the same district. I do not know its name;

Cristian - I do not remember his other forenames and surnames - does not live at Conchalí. I do not know where he lives, but he joined the group through two members of EJAS who introduced him, namely, Marta and Veronica, daughters of Zamorano, Chairman of the Retirement Fund;

Luis Magún Fuentes, who lives at Villa Conchalí, calle Sierra Leona or calle Zambia - I forget exactly which - near the corner with Avenida El Bosque;

Luis Vergara Torres, who originally belonged to the group, but is now in the literacy section. I have already mentioned that he belonged to the Socialist Party;

Hugo Rivera - I forget his second name - who lives in the second block in República de Zambia, I cannot recall the number, and a man nicknamed Cholo, but I do not know where he lives or what his real name is.

Another group which operates under cover of the literacy section includes Miguel Angel Miño Lillo, Luis Humberto Vergara Torres, the sisters Marta and Veronica Zamorano, Alonso Sánchez, Hugo Rivera and I too, participate in this group from time to time.

A health committee is also in process of formation, but is still in the early stages. The person in charge of this section is Gloria Vergara, who receives her instructions from Father Pablo Andrés in order to take advantage of the cover provided by a policlinic operating on a short-term basis in the Casa de Vidrio. Gloria is studying at the hospital of the University of Chile; she is the sister of Luis Humberto Vergara Torres. She lives with her parents at República Santo Domingo 464.

In addition, some folklore performances have been organized with a view to attracting new recruits to the Front - I recall that this year there have been several - there was one to inaugurate the EJAS building, which was built with the aid of money provided by Father Pablo Andrés, next to the Casa de Vidrio, while the most recent ones were held at the beginning of this month under the auspices of the Retirement Fund.

The leaders of the Anti-fascist Front, from EJAS, are: Miguel Angel Miño; Luis Vergara Torres, Silvia Vergara Torres, all members of the Socialist Party; Hugo Rivera and myself from the Young Communists and Roberto Santibañez from the Christian Democrats, and a Juan Manuel.

From the Pastoral Obrera group, the leaders are Patricio Reyes, living at Remodelación Americo Vespucio - I do not recall either the street or the number - and Luis Jeldres.

Reyes is a member of MIR and Jeldres pretends to be a Christian Democrat, but he, too, is actually a member of MIR.

Other members of the Front, also from the Pastoral Obrera, are María Lira and her husband Guillermo, who do not live in the Villa Conchalí suburb, but say they come from the more select district of Providencia. They come to the Pastoral Obrera building in a white Renault break. I do not know any further details.

As soon as the Front was formed, its members began to undertake propaganda activities, in which pamphlets played an important part.

Their contents were typed on stencil, using a typewriter from the Casa de Vidria. The priests lent us the machines, and copies were reproduced on a duplicator at the Pastoral Obrera building, of which Luis Jeldres was in charge. The latter keeps the keys of this building, which belongs to the Vicaría Norte.

I estimate that we produced between 300 and 400 pamphlets a day using the Pastoral Obrera duplicator. We all took turns in this work, depending on how much time each person had available. Generally, the pamphlets were distributed the same night, and at other times on the following day.

The priests knew about these pamphlet-printing activities, but turned a blind eye; they did not let on, no doubt in order to evade responsibility.

Luis Jeldres handles the finances of the Vicaría of which he is a kind of adviser or rather an employee. He administers the funds given him by the Vicaría to maintain the Pastoral Obrera building and also to provide the paper which is used for the pamphlets.

We studied the contents of the pamphlets at meetings, the subject depending on circumstances and contemporary national events. These meetings were always presided over by Jeldres and Reyes.

For my part, speaking for the Young Communists, I can add that we produced pamphlets on another duplicator belonging to Fermín Sandoval Barros, who lives at República de Brazil 5632, Villa Conchalí, and has a shop in the same house.

Don Fermín provided us with the duplicator to produce pamphlets, which we did at his home, and he also assisted us in this task. Each day, we produced between 200 and 300 pamphlets, all of them containing slogans of the Young Communists. We usually distributed them in the sector during the night.

Fermín Sandoval is an active collaborator of my Young Communists base, but he does not belong to my group, as he is a former active member of the Communist Party and he also collaborates indirectly with the Anti-fascist Front to which my group belongs.

I may add that on one occasion, in the middle of 1978, I invited Mr. Fermín to attend a meeting of the Anti-fascist Front, and he came. Don Clotario Blest was the main speaker at that meeting, which was held at the Casa de Vidrio with the consent of one of the priests. It was Jeldres who requested the use of the premises. The priests did not come, but they knew about the meeting.



After this meeting, I asked Don Fermín what he thought about the Anti-fascist Front. He said he liked it, but that he did not have time to participate on account of the shop. However, he offered to co-operate.

The Front and its members also participated in incidents in the Plaza Almagro sector and we seized the opportunity to distribute the pamphlets of our organization. When the Carabineros came, we ran off to the Alameda. Afterwards, seeing people enter the Church of St. Francis, I went there with other members of the Front and we went inside. After conducting a lightning operation in the Church of St. Francis, we withdrew to my own district.

I would point out that among the manifestations organized by the Anti-fascist Front in connexion with 11 September, we were going to hold a folklore performance in the San Alberto parish hall at Conchalí with a view to assembling members of the Front and the public in that sector, and when it was over women were to arrive to take over the church in order to create an anti-Government feeling in the United Nations. I am not sure whether the priest who had for that occasion prepared songs of protest on the national event was aware of this intention. I do not know what happened as a result of these actions, as I was arrested beforehand.

I believe the Vicar-General Monsignor Hurtor knows about all our activities, since the funds used by Jeldres, the leader of the Front, come from him and he has also been in the Pastoral Obrera building having been invited by the parish congregation and clergy to give a talk on that occasion. He spoke frankly on problems of human rights and afterwards he spoke to those of us from the Front who were present and some who only belonged to EJAS. He supported us in the political work we had to do, but said we must proceed cautiously, noting that pastoral work would serve to camouflage our political activities. That is all, written in my own hand.

Lorenzo del C. Pizarro Vallejos  
Identity Card No. 6,886,658-9 Santiago

Annex VI

COMMUNICATION DATED 21 SEPTEMBER 1978 FROM THE MINISTER OF  
THE INTERIOR ADDRESSED TO THE PRESIDENT OF THE COURT OF APPEALS  
OF SANTIAGO CONCERNING AN ACTION FOR ENFORCEMENT OF RIGHTS

REPUBLIC OF CHILE  
MINISTRY OF THE INTERIOR  
OFFICE OF THE LEGAL COUNSEL

RESTRICTED

RESTRICTED COMMUNICATION No. 366/3347/8

REF: Communication No. 349-78 of  
13 September 1978  
From the Court of Appeals of  
Santiago

SUBJECT: Action for enforcement of  
rights in respect of  
LUIS HUMBERTO VERGARA TORRES  
Santiago, 21 September 1978

FROM: Minister of the Interior

TO: The President of the Court of  
Appeals of Santiago

1. The Ministry of the Interior has received the above-mentioned communication in which you request information on the status of the action for enforcement of rights initiated in respect of Luis Humberto Vergara Torres.

2. In this connexion, it is my duty to inform you that this person was arrested and placed at the disposal of the Office of the First Military Prosecutor of Santiago, which, according to information furnished to the Ministry, ordered his release on 20 September.

(Signed) Sergio FERNANDEZ FERNANDEZ  
Minister of the Interior

Copies to:

1. President of the Court of Appeals of Santiago.
2. Confidential Office.
3. Office of the Legal Counsel

Annex VII

COMMUNICATION FROM THE NATIONAL INFORMATION AGENCY  
ADDRESSED TO THE PRESIDENT OF THE COURT OF APPEALS  
OF SANTIAGO CONCERNING AN ACTION FOR ENFORCEMENT  
OF RIGHTS

REPUBLIC OF CHILE  
National Information Agency

National Information Agency ( ) No. S-204485

SUBJECT: Reply to the communication

REF: Communication No. 329-78 of  
7 August 1978 from the court of appeals  
of Santiago concerning action for  
enforcement of rights No. 157-78

SANTIAGO, 6 ..... 1978

FROM: THE DIRECTOR OF THE NATIONAL INFORMATION AGENCY

TO: THE PRESIDENT OF THE COURT OF APPEALS OF SANTIAGO

1. In the communication referred to above, you asked the National Information Agency (CNI) for information concerning Manuel Acuña Asenjo, in respect of whom an action for enforcement of rights has been initiated.

2. Manuel Acuña Asenjo was arrested by CNI agents under the powers granted by Decree-Laws Nos. 1,009, 1,877 and 1,878, and by Supreme Decree No. 187 of the Ministry of Justice.

The arrest was made on 1 August 1978, and Manuel Acuña Asenjo was released on 4 August 1978, in full compliance with the above-mentioned legislation and within the time-limit established thereby.

3. I take this opportunity to point out to you that any information required from CNI should be requested from the Ministry of the Interior, in accordance with the order issued by the former Minister of the Interior and reiterated by the present Minister in a circular dated 25 May 1978.

I bring this matter to your attention in order that future requests for information may be addressed directly to that Ministry, since the National Information Agency is precluded from giving information directly to the courts of law.

4. However, since this is the first time that you have contacted CNI, the information requested in your communication has been provided in order to avert delay.

Yours etc.,

BY ORDER OF THE MINISTER

(Signed) Jeronimo PANTOJA  
Colonel  
Chief of Staff of CNI

Annex VIII

PETITION TO THE SUPREME COURT BY THE EPISCOPAL VICARS OF THE  
ARCHBISHOPRIC OF SANTIAGO REQUESTING THE APPOINTMENT OF  
INVESTIGATING JUDGES  
(3 NOVEMBER 1978)

On the basis of the facts set out and the new circumstances referred to, it is requested that investigating judges should be appointed to inquire into the present situation of the missing detainees indicated. THE FIRST ADDITIONAL PETITION contains lists of the missing detainees regarding whom an investigation is requested. THE SECOND PETITION contains information given to the Minister of the Interior by various bishops of the Catholic Church.

Your Excellencies of the Supreme Court:

You have been petitioned on many occasions regarding the situation of persons who have gone missing following their unlawful arrest by officials of security agencies.

Both the families of the missing persons, acting individually and collectively, ministers of various Christian churches, the Committee for Co-operation for Peace in Chile and the Vicaría de la Solidaridad have repeatedly demanded clarification of these distressing cases from the courts of law and from the Government authorities, but without any success. If these requests had given rise to vigorous and determined action to elicit the truth, the number of missing persons might not perhaps have increased, as has sadly been the case.

Today we, the Episcopal Vicars of the Archbishopric of Santiago who have signed this petition, once more raise our voices before the Supreme Court in search of a way to clarify the fate of these persons once and for all. We do so for love of them and their families, whose anxiety and uncertainty moves us, and for love of peace. We also do so in the conviction that we are appealing to the organ which is competent under the Constitution and whose primary and most important task is duly to safeguard the fundamental rights of all the inhabitants of this land. We do so, finally, in the firm belief that you will give due consideration to the new circumstances concerning the matter which warrant and necessitate a favourable reception for our petition.

We are convinced that never in the history of our country has there been an occurrence of the seriousness of that which prompts this petition. Never before has the national community had to face such a shocking and alarming event as this systematic arrest and subsequent disappearance of hundreds of political dissidents. We are faced with a particularly serious form of violation of the right to life and the physical integrity of persons and, since this has occurred in our country, which has always been exemplary in its respect for these principles, it has shocked the international community and obliged the Government of Chile to provide explanations that are not always either satisfactory or convincing.

We are sorry to see that the authorities have in fact tended to regard the international denunciations as a form of "aggression" against the country, thus involving all of us in a controversy in which greater importance is attached to the problem of the Government's "image" than to the fate of the missing persons. The accusations and rebuttals made on this subject push the main issue into the background, that issue being the lives of the missing persons and the sorrow of their families, who are constantly clamouring for any information which will enable them to find those persons. What is involved is not so much a problem of "image"

as the very identity of our country, its inmost being. Unless we resolutely face up to the challenge of finding the missing persons or clearing up their cases once and for all, we as a nation shall be relinquishing the possibility of living together in a community founded on justice and respect for basic human rights. We shall have left unanswered a question which will always recur as a source of hatred and vengeance, hampering any attempt at peaceful progress in the future.

That is why the Chilean bishops spoke so forthrightly in referring to the plight of the missing persons: "We respectfully request the President of the Republic to arrange for the Government to provide the courts of law with the co-operation they need to clarify once and for all the fate of each of the persons presumed to have gone missing between 11 September and the present date, for otherwise there can be no peace for their families and no true peace in the country and Chile's image abroad will remain tarnished. If abuses or arbitrary acts have been committed - as is sometimes inevitable - it is better to recognize the fact or take steps to avoid a repetition. And if there is a valid explanation for each of the cases reported, the Government, in providing it, will gain prestige in the eyes of Chilean and foreign opinion". ("Nuestra Convivencia Nacional" ("Our National Co-existence"), Chilean Episcopal Conference, 25 March 1977)

There will be no true peace in Chile if the situation of those compatriots who went missing after being unlawfully arrested by the security services is not explained to their families and to national and international public opinion.

There will be no true peace in Chile if the families of the missing persons are subjected to a new form of psychological torture that involves denying them accurate information on their loved ones or allowing their petitions to accumulate without a reply from the authorities.

This is how the Chilean bishops, with their profound knowledge of the national soul, assessed the situation. And so serious and urgent was their concern over this national tragedy that they did not hesitate to request that the truth concerning each one of the missing persons should be established "once and for all". They know, as we do, that we cannot live together in peace and justice unless we courageously face up to the truth about what happened to our Chilean brothers, whatever the price.

It must be understood that, in this case, time, far from healing wounds or inducing feelings of resignation, will deepen still further the distress of those who wait every day for their loved one, whether father, husband, son or brother, to appear at the door. Thus those who, in good faith or for some ulterior motive, hope that the mere passage of time will consign this sorry episode in the nation's life to oblivion are mistaken. Only the truth and the courage to face it will enable the national community to assess the facts freely, to administer justice, to right wrongs and to continue its advance.

However, we have noted with profound regret that, far from any facing up to the truth "once and for all", it is daily becoming more difficult to find an authoritative explanation which would end the distressing and agonizing wait of the families of the missing detainees. Thus a new outrage is added to the extremely serious violation of the right to life and physical integrity involved in these disappearances, namely the insecurity and uncertainty to which the relatives are now subjected because of the systematic refusal of the authorities to provide them with any information or to reply to their petitions.

A few months ago, the late Pope Paul VI denounced in strong terms the situation confronting the families of detained persons, which seek news of their loved ones in vain: "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 1976).

"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".

The authoritative voice of His Holiness will enable you to understand our insistence that the Supreme Court should henceforth play a more active role in investigating the facts related to the disappearance of persons. We are keenly alive to His Holiness's call and to his insistence that such 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.*). In the face of the kind of problem which concerns us, the Church cannot but have recourse once again to the highest court of the land; this is not only expedient, but necessary, since there is no "remedy" more "adequate" and "effective" than the exercise of the full jurisdictional powers of the Supreme Court to look into matters of this sort, which alarm public opinion.

There are many factors which in the past have prevented the truth from being established; today, however, they cannot inhibit the activities of the courts, but should, on the contrary, encourage them to exercise their powers with greater vigour and zeal. The fact that the Directorate of National Intelligence and other security agencies governed by secret regulations and enjoying de facto exemption from responsibility for their acts have operated outside the juridical system has made it difficult to establish the truth; similarly, the lack of resolution on the part of the Government authorities to face up to and co-operate in a strict and impartial investigation has also constituted an obstacle; the weakness and inadequacy of the action taken by the courts in investigations which they are legally entitled to make has been a further factor hampering the establishment of the truth. However, it is never too late to demand that the courts should act to determine what really happened to the missing prisoners, the more so at the present time when there are indications that more hopeful prospects are opening up.

We have referred to the existence of new circumstances which warrant and necessitate a favourable reception for this petition. An examination of developments since 20 August 1976, when the Vicaría de la Solidaridad of the Archbishopric of Santiago appealed to you to appoint an investigating judge to inquire into the disappearance of 411 persons, reveals the following:

1. There is general agreement regarding the existence of cases in which persons have been arrested and gone missing;
2. The disappearances are the result of the activities of the Government security agencies;
3. The Government has indicated its willingness to explore "any serious means that may be suggested to it in respect of any particular case", but despite that statement and the many other solemn offers which have been made, the problem has not been elucidated;
4. The authorities admit that the problem is as extensive as the relatives of the missing persons and the Church have claimed;

5. The general public openly recognizes the existence of this anomalous situation and urgently demands its clarification;
6. It is acknowledged that the answers previously given to explain these cases and to discredit the accusations were false;
7. The accumulated evidence regarding the arrests forms a solid basis for carrying out a criminal investigation to shed light on the fate of these persons;
8. The various cases of persons who have been arrested and gone missing exhibit features which give them a common character that calls for their joint investigation.

Obviously this new framework gives unquestionable moral force to the Church's support for the families of missing detainees, particularly in their dealings with the Chilean courts. Furthermore, it all stems from the constant daily activity which is often misunderstood, of those relatives whose main weapon is the force of truth. Each of the points referred to above confirms the presumptions derived from the information which the Vicaría de la Solidaridad of the Archbishopric of Santiago submitted to the Supreme Court on the aforementioned date.

1. There is general agreement regarding the existence of cases in which persons have been arrested and have subsequently gone missing.

The existence of the problem of persons who have been arrested and gone missing is today recognized even by the Government itself. The significance and scale of these cases led the Minister of the Interior to address the population over the national radio and television network in order to set forth the Government's position on the subject. The Minister of the Interior explicitly recognized the existence of the problem when he affirmed that the Government had not "remained impassive or 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". The Minister also admitted an important point, namely the political nature of the disappearances, when he stated that "the vast majority of them involve Communist, Socialist and MIR militants", that is, exactly the political allegiances of the missing persons as described by their relations.

He referred directly to the tragic aspect of the situation when he stated that "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" and appealed for "constructive action on the part of all Chileans -- and particularly those in positions of authority in all areas of national life" to overcome that situation.

In his message of 11 September last, General Augusto Pinochet himself officially recognized the existence of this problem for the first time and admitted that there were "a number of persons who might truly be affected".

In November of the previous year, Mr. Sergio Diez, Chilean Ambassador to the United Nations, stated before that body that "the most grave and serious matter confronting Chile is the question of the missing persons".

It would be difficult to find a more explicit official acknowledgement of the situation and thus therefore serves to support a present request to the Supreme Court.

2. The disappearances are the result of the activities of the Government security agencies.

In addition to the wealth of evidence which has been adduced to demonstrate the responsibility of the security agencies for the arrest of persons who have subsequently gone missing, the authorities themselves have now recognized this fact. No other possible conclusion can be drawn from the text of the aforementioned address by the Minister of the Interior, when he stated that certain "excesses" had already been punished; it is also clear from the words of General Pinochet, when, referring to the disbanded DINA in his message of 11 September 1977, he described it as a "body created to deal with the most difficult phase of subversive activity" and admitted that "some mistakes, which were hard to avoid in view of the difficulty of the task, were made".

It was so obvious that the security services were involved in complex criminal activity that the Government authorities themselves declared that the amnesty decreed last April covered "security officials who may have committed some excesses during their struggle" (address of the Minister of the Interior referred to above).

The disappearance of persons following their arrest is not a consequence of isolated incidents or chance, but is the result of concerted action in which an agency such as DINA was able to command sweeping powers vis-à-vis individuals and the courts of law themselves.

3. The Government has indicated its willingness to explore any serious means that may be suggested to it in respect of any particular case, but despite that statement and the many other solemn promises which have been made, the situation of the missing detainees has not been clarified.

The Government has repeatedly promised to seek a solution to the problem. The latest statements to that effect have not yet produced tangible results but cannot be rejected, and it is for the courts of law to accept this manifest willingness so as to dispel the doubts concerning the Government's true position once and for all and to give it the opportunity to prove its attitude to the country and the world as a whole.

The Minister of the Interior, in the address referred to above, promised that "the Government will explore any serious means that may be suggested to it in respect of any particular case". In his message of 11 September 1978, General Augusto Pinochet himself solemnly promised the country that his Government "will explore any serious means which could lead to an effective result in respect of any particular case".

We know that it is not the first time that the Government has made such promises and that they have so far remained unfulfilled. On other occasions promises were made concerning the case of the so-called "119", to the President of the International Committee of the Red Cross, and to high United Nations authorities. However, it is precisely for the courts of law, acting in full exercise of their legal powers, to request and demand that the Government should give concrete expression to the willingness it has indicated. Furthermore, the Minister of the Interior himself, in the address referred to, recognized the pre-eminent role of the courts in carrying out investigations by stating that "whatever the real truth in each particular situation, it can be investigated by the courts of justice".

It would clearly be difficult for the Government itself to apportion responsibility as between individuals who, being members of security agencies, were closely connected with the disappearances and who had an institutional link with the Government. Furthermore, the fact that the Government has granted an amnesty to officials of the security agencies who committed criminal acts disqualifies it from acting as judge, although it can investigate or provide accurate information on what happened.



4. The authorities admit that this problem is as extensive as the relatives of the missing persons and the Church have claimed.

The authorities now suggest that the problem is just as serious as the relatives and the Church have always claimed in their petitions to the courts of law. We can answer for the reliability of the petitions sponsored by eminent churchmen; in the latest petition, dated 20 August 1976, in which the appointment of an investigating judge was requested, we drew the attention of the Supreme Court to 413 cases, a figure which subsequently rose to 651. The complete reliability of our petitions is proved by the fact that the Government is now publicly recognizing that the problem concerns a similar number of persons. Thus the Minister of the Interior, while rejecting foreign claims that there are 2,500 persons missing, suggests that the real figure would be "one quarter of that number", this being the number of cases in respect of which no "satisfactory explanation has been provided". A member of the Government Junta has stated that "we are now concerned about the disappearance of perhaps 600 persons" (statements by General Fernando Matthei on 28 September 1978).

5. The general public openly recognizes the existence of these cases and urgently demands their clarification.

Whereas, in the years immediately following the military revolt, the press reacted to this issue by describing it as a fabrication and a political device designed to discredit the Government, it is now admitting that it is a dramatic reality which requires clarification.

As an example of some of the statements made, we can quote the editorial which appeared in the daily newspaper La Segunda on 30 May 1978: "As stated on other occasions in these columns, if one of us was unlucky enough to have a close relative who was missing, he would not hesitate to take any action which might help to shed light on the whereabouts of that relative ... as we have stated before, the Government has an obligation to do its utmost to provide the relatives of missing persons with any information it may have concerning them ... provision of such information is a basic moral duty which cannot be shirked under any pretext. If in the past the authorities made mistakes or were guilty of excesses, the time has come to remedy them and to punish them if necessary".

On 28 May 1978, the daily newspaper El Mercurio stated, also in an editorial, that "the question of the missing persons constitutes a serious and distressing human problem, the dimensions of which can be exaggerated out of all proportion, but which is very real in specific cases ... errors have been committed, very probably criminal outrages have occurred. It would be counter-productive to shrug off these facts ... The Government has gradually been eliminating the pretexts used by its adversaries to sustain the foreign campaign against Chile. In that context, action should also be taken concerning the problem of missing persons".

On 4 April 1978 an article on DINA entitled "organismo con deuda de arrastre" ("Organization with an unpaid debt") in the review Ercilla stated: "As the Government has promised, it is essential, for the domestic peace and the prestige of our country, that the murky waters of this river which would seem to have a lot to conceal should be thoroughly explored".

In an editorial of 1 June 1978, the review Qué Pasa pointed out: "This week the question of missing Chileans has once again impinged on the national conscience. And this time, there are increasing signs that the time has come for an explanation which would put an end to the speculation of all these past years". On 8 June 1978

this same magazine stated the following, again in an editorial: "This is why, at the present historical juncture, getting to the bottom of the problem is not only the fairest solution but also the one most likely to clear the way and to induce everyone to make the efforts which the country needs for the tasks confronting it".

The review Mensaje, in an editorial in July 1978 entitled "Los detenidos desaparecidos: tragedia nacional" ("The missing detainees: a national tragedy"), concluded: "We hope that the Government will soon clarify this tragic situation, which is poisoning the national spirit, so that all the pain our wounded country has suffered may give way to a flowering of reconciliation".

In addition to these various statements, there are those made by the different social sectors of our country since the time when this drama began. All of them give only an inkling of the impact which the problem has had on the Chilean population. Indeed, this general impact is unquestionably yet another argument to urge you to act without delay.

6. It is acknowledged that the answers previously given to explain these cases and to discredit the accusations were false.

We note that the various explanations of this tragic situation which were given in the past have finally been abandoned. It is no longer maintained that the missing persons have gone into hiding or do not legally exist; nor is it claimed that they left the country or that the percentage of missing individuals is normal in any society. As can be seen from the earlier quotations, it is now commonly believed that the problem of the missing detainees is a real one, and this is another new factor which should make it easier for the courts to conduct an investigation which will present the problem in its true light. Responsible accusations are still outstanding, while many past explanations of the problem have now been abandoned. The fate of the missing persons is an unresolved question which needs to be cleared up.

7. The accumulated evidence regarding the arrests forms a solid basis for carrying out a criminal investigation to shed light on the fate of those persons.

Judicial action is facilitated by the existence of a wealth of specific and definite evidence which undoubtedly makes it possible for the courts to perform their investigating functions.

Thus, for instance, it would be enough to take statements from the persons identified as being responsible for arrest and subsequent disappearance in specific cases. The background information brought to our attention indicates that it would be possible to question Osvaldo Romo Mena, a DINA official, about the situation of Eduardo Ziedo, Juan Chacón Olivares, Sergio Tormen Méndez, María Inés Alvarado Borgel, Alfonso Chanfreau Oyance, Jaime Buzio Lorca, Modesto Espinoza Pozo, Manuel Carter Lara, José Flores Rojas, Violeta López Díaz, Mónica Llanca Iturra, Manuel Jesús Villalobos Díaz, Eugenia Martínez Hernández, Luis Fuentes Riquelme, Jorge D'Orival Briceño, Sergio Reyes Navarrete, Claudio Silva Peralta, Fernando Silva Camus, Anselmo Radrigán Plaza, Juan Carlos Rodríguez Araya and Cecilia Castro Salvadores.

It would be possible to question Marcia Alejandra Morino Vega, a DINA official, about the situation of Muriel Dockendorff Navarrete, Luis Fuentes Riquelme, Jorge Müller Silva and María Angélica Andreoli Bravo.

It would be possible to question Major Edgardo Ceballos, of the Air Force Intelligence Service, about the situation of José Luis Baeza Cruces.

It would be possible to question Sergeant of Carabineros Luis Hidalgo about the situation of Hernán Sarmiento Sabater.

It would be possible to question Army Lieutenant Jorge Nazar Sabag about the situation of Oscar Valdivia González.

It would be possible to question Army Lieutenant Marcelo Morel about the situation of Alan Bruce Catalán.

It would be possible to question the DINA official, Luz Arce Sandoval, about the situation of Alvaro Barrios Duque and Sergio Riveros Villavicencio.

It would be possible to question Patricio Alvarez Poblete, a DINA official, about the situation of Alvaro Barrios Duque.

It would be possible to question Army Lieutenant Hernán Ramírez about the situation of José Flores Araya.

It would be possible to question Army Captain Luis Pavez Parra and Army Colonel Alfredo Rheren Pulido, of the Non-Commissioned Officers' Academy, about the situation of Arturo Barría Araneda.

It would be possible to question Army Lieutenant Fernando Adrian Lauriani Maturana about the situation of Jorge Andrónico Antequera and Juan Carlos Andrónico Antequera.

It would be possible to question Lieutenant León, of the Copiapó Carabineros, about the situation of Pedro Acevedo Gallardo.

It would be possible to question Army Colonel Eduardo Oyarzún, Commanding Officer of the Maipo Regiment of Valparaíso, about the situation of Fabián Ibarra Córdova, Sonia Ríos Pacheco, Alfredo García Vega, Carlos Rioseco Espinoza, Horacio Carabantes Olivares, María Gutiérrez Martínez, Abel Vilches Figueroa and Elías Villar Quijón.

It would be possible to question Warrant Officer of Carabineros Julio Contreras Chávez, attached to DINA, about the situation of Fabián Ibarra Córdova and Sonia Ríos Pacheco.

It would be possible to question José Manuel MacMillan Godoy, a civil servant and brother-in-law of Contreras Chávez, about the situation of Fabián Ibarra Córdova and Sonia Ríos Pacheco.

It would be possible to question Major of Carabineros Conrado Pacheco about the situation of Juan MacLeod Trever and María Ramírez Gallegos.

It would be possible to question Colonel Jaime Garín Cea, former Commander of the Zone under State of Siege of the Department of Talagante, concerning the situation of Enrique Astudillo Alvarez.

It would be possible to question Lieutenant of Carabineros Lautaro Eugenio Castro and Second Sergeant of Carabineros González, who was in charge of the guardroom of the Campo del Estadio Nacional, about the situation of Carlos, Nelson and Oscar Hernández Flores, Enrique Astudillo Alvarez, Omar and Ramón Astudillo Rojas, Sergio Maureira Lillo and José, Rodolfo, Segundo and Sergio Maureira Muñoz.

It would be possible to question General Rolando Garay Cifuentes and DINA agent No. 3,869 about the situation of Carlos Carrasco Matus.

It would be possible to question Army Colonel Jorge Espinoza Ulloa about the situation of Oscar Castro Videla.

It would be possible to question (A) Squadron Leader Enzo Di Nocera García about the situation of Martín Elgueta Pinto.

It would be possible to question Army Lieutenant Ernesto O'Ryan Cárdenas about the situation of Luis Trejo Saavedra.

It would be possible to question Superintendent of Carabineros Luis Ignacio Zúñiga about the situation of Albano Fiorasso Chau.

It would be possible to question Army Lieutenant Aroldo Latorre about the situation of José Flores Araya.

It would be possible to question Captain Bravo, of the Paine Carabineros, about the situation of Juan Leiva Vargas.

It would be possible to question Sergeant of Carabineros Diógenas Toledo Pérez, of the Catillo Police Post, about the situation of Miguel Rojas Rojas, Gilberto Rojas Vásquez and Ruperto Torres Aravena.

It would be possible to question Lieutenant Federico Stigman about the situation of José Salazar Aguilera.

It would be possible to question Edmundo Sandoval, of the 7th Carabineros Station of Santiago, about the situation of José Vidal Molina.

The background information brought to our attention indicates that it would be possible to trace the owner or owners of the vehicles identified as those in which the persons detained and now missing were taken away.

It would be possible to trace the owner of the Chevrolet C-10 van, licence No. CJ-790, year 1974, Municipality of La Reina, in which Francisco Bravo Nuñez was taken away.

It would be possible to trace the owner of the C-10 van, licence No. UI-55, year 1974, Municipality of La Granja, in which Luis Gendelman Wisniak was taken away.

It would be possible to trace the owner of the sky-blue Chevy Nova motor car, licence No. DD-22, year 1974, in which Bernardo de Castro López was taken away.

It would be possible to trace the owner of the red Chevrolet C-10 van, licence No. EM-965, year 1974, Municipality of Las Condes, in which Manuel Jesús Villalobos Díaz, Jacqueline Drouilly Jurich, Jorge D'Orival Briceño, Sergio Reyes Navarrete and Claudio Silva Peralta were taken away.

It would be possible to trace the owner of the red Chevrolet C-10 van, licence No. BI-896, year 1974, Municipality of Conchalí, in which María Isabel Jouy Petersen and Francisco Rozas Contador were taken away.

It would be possible to trace the owner of the Renault van, licence No. NE-81, year 1976, Municipality of Santiago, in which José Flores Garrido was taken away.

It would be possible to trace the owner of the Fiat 125 motor car, licence No. EG-388, year 1976, in which Carlos Contreras Maluje was taken away.

It would be possible to trace the owner of the cream Chevrolet C-10 van, licence No. SV-790, year 1974, in which Enrique Toro Romero was taken away.

It would be possible to trace the owner of the Chevrolet C-10 van, licence No. HSN-38, year 1974, Municipality of La Cisterna, in which María Angélica Andreoli Bravo was taken away.

It would be possible to trace the owner of the light grey Fiat 600 motor car, licence No. DG-586, year 1975, in which Francisco Ortíz Valladares was taken away.

It would be possible to trace the owner of the garnet-coloured Chevrolet C-10 van, licence No. XX-589, year 1974, in which Isidro Pizarro Meniconi was taken away.

It would be possible to trace the owner of the Chevrolet C-10 van, licence No. HSN-36, year 1974, Municipality of La Cisterna, in which Agustín Reyes González was taken away.

It would be possible to trace the owner of the motor car, licence No. BV-189, year 1974, in which Pedro Vergara Inostroza was taken away.

The background information brought to our attention indicates that it would be possible to question the military or security personnel who were in charge of the premises where the detained persons who are now missing were confined. It would be possible to question the person who was in charge of the Tejas Verdes camp, between January and May 1974, about the situation of Eduardo Alarcón Jara, Ofelio Lazo Lazo, Alvaro Barrios Duque and Jorge Ojeda Jara.

It would be possible to question the person who was in charge of the DINA house at Calle Londres 38, which was brought into operation in mid-January 1974, about the situation of Carlos Cubillos Gálvez, Eduardo Ziede Gómez, José Ramírez Rosales, Enrique Toro Romero, Bárbara Uribe Tamblay, Edwin Van Jurick Altamirano, Jaimo Buzio Lorca, Artemio Gutiérrez Avila, Juan Chacón Olivares, Martín Elgueta Pinto, Máximo Geda Ortíz, Jaime Cádiz Norambuena, Luis Guajardo Zamorano, Sergio Flores Ponce, María Inés Alvarado Borgel, Zacarías Machuca Muñoz, Alfonso Changreau Oyarce, Sergio Montecinos Alfaro, Muriel Dockendorff Navarrete, María Andreoli Bravo, Mauricio Jorquera Encina, Newton Morales Saavedra, Alvaro Barrios Duque, Rodolfo Espejo Gómez, María Elena González Inostroza, Hernán González Inostroza, Sergio Riveros Villavicencio and Aurelio Troncoso Muñoz.

It would be possible to question the person who was in charge of the School of Parachutists at Peldehue about the situation of Leopoldo Muñoz Andrade.

It would be possible to question the person who was in charge of the cellars in the Ministry of National Defence about the situation of José Baeza Cruces.

It would be possible to question the person who was in charge of the Chilean Air Force Academy about the situation of Pedro Merino Molina, Carlos Salcedo Morales, José Baeza Cruces, Ofelio Lazo Lazo and Cecilia Labrín Sazo.

It would be possible to question the person who was in charge of the Cuatro Alamos Camp about the situation of Héctor Garay Herмосilla, Juan Chacón Olivares, Sergio Flores Ponce, Ofelio Lazo Lazo, Alfonso Chanfreau Oyarce, Alejandro Parada González, Muriel Dockendorff Navarrete, Cecilia Labrín Sazo, Newton Morales Saavedra, Rodolfo Espejo Gómez (block 4, cell 8), Gregorio Gaete Farías, María Elena González Inostroza, Hernán González Inostroza, Aurelio Troncoso Muñoz, Antonio Cabezas Quijada and Jacqueline Binfa Contreras.

It would be possible to question the person who was in charge of Villa Grimaldi about the situation of Héctor Garay Hermosilla, Martín Elgueta Pinto, Alfonso Chanfreau Oyarce, Newton Morales Saavedra, Antonio Cabezas Quijada, Modesto Espinoza Pozo, José Flores Araya, Víctor Alfonso Martínez, Manuel Villalobos Díaz, Rodolfo Marchant Villaseca and Herbit Ríos Soto.

It would be possible to question the person who was in charge of La Sereva prison about the situation of Ismael Chávez Lobos.

It would be possible to question the person who was in charge of the houses at Nos. 1,367 and 1,347 José Domingo Cañas, which DINA began to use in August 1974, about the situation of Cecilia Castro Salvadores, Teobaldo Tello Garrido, Jacqueline Binfa Contreras, Francisco Aedo Carrasco, Carlos Pérez Vargas, Luis Durán Rivas, Sergio Pérez Molina, María López Stewart, Cecilia Bojanic Abad, Flavio Oyarzún Soto and Amelia Bhrun Fernandez.

It would be possible to question the person who was in charge of the Army Non-Commissioned Officers' Academy about the situation of José Flores Araya and Arturo Barria Araneda.

It would be possible to question the person who was in charge of the Osorno Regiment barracks about the situation of Jaime Vásquez Sáez.

It would be possible to question the person who was in charge of the barracks of the Regiment of Engineers at Copiapó about the situation of Pedro Acevedo Gallardo.

It would be possible to question the person who was in charge of Colina Air Base about the situation of Humberto Fuentes Rodríguez.

It would be possible to question the person who was in charge of the Silva Palma barracks in Valparaíso about the situation of José Salazar Aguilera.

It would be possible to question the person who was in charge of the DINA house at the intersection of Irán and Los Plátanos, Nuñoa commune, about the situation of Jorge Ortiz Moraga.

It would be possible to question the person who was in charge of the Santiago Military Hospital about the situation of Claudio Thauby Pacheco, Iván Insunza Bascuñán and Gonzalo Toro Garland.

It would be possible to question the person who was in charge of the Maipo Regiment barracks, Valparaíso, about the situation of Fabián Ibarra Córdova, Sonia Ríos Pacheco, Alfredo García Vega, Carlos Rioseco Espinoza, Horacio Carabantes Olivares, María Gutiérrez Martínez, Abel Vilches Figueroa and Elías Villar Quijón.

It would be possible to question the person who was in charge of the Central First-Aid Post of Santiago about the situation of Antonio Aguirre Vásquez.

It would be possible to question the person who was in charge of the Carabineros Police Post at Lonquimay about the situation of María Arriagada Jeréz.

It would be possible to question the person who was in charge of Carabineros Radio-patrol Station No. 17 about the situation of José Astorga Nanjarí.

It would be possible to question the person who was in charge of the Artillery School at Linares about the situation of María Isabel Beltrán Sanchez.

It would be possible to question the person who was in charge of Carabineros Station No. 9, Santiago, about the situation of Albano Fioraso Chau.

It would be possible to question the person who was in charge of the clinic at Santa Lucía No. 162, ran by DINA, about the situation of Nilda Peña Solari.

It would be possible to question the person who was in charge of the Santiago penitentiary about the situation of David Silberman Gurovich.

Each individual case to which attention has been drawn, by way of example, offers possible courses of action which could be followed in every instance and which, if pursued diligently by a person exercising the powers normally vested in a high court judge, will provide the solution to the tragedy of the missing detainees which is sought and desired by all.

8. The problem of the missing detainees exhibits features which give it a common character that calls for a joint investigation.

The disappearances began to be a systematic occurrence after 11 September 1973 and continued until the end of 1977; the fact that there have been no such cases in the course of the current year provides no guarantee against their recurrence so long as the matter is not clarified once and for all.

Initially, in conjunction with the circumstances surrounding the events of 11 September, disappearances were indiscriminate but mainly affected members of the rural and urban population who in one way or another had collaborated with the previous Government, in the exercise either of trade union or of political activities. Starting in 1974, signs began to emerge of a campaign directed towards the elimination of particular individuals, all of whom had connexions with the Movimiento de Izquierda Revolucionaria (MIR); when this initial phase was completed, repressive activity was focused at the beginning of 1975, on the leadership of the Socialist Party, and in 1976 on the leadership of the Communist Party. In 1977 there were further disappearances of persons who were in some way connected with those political parties. As has been confirmed by the Minister of the Interior himself, these disappearances follow a standard pattern and differ only in the varying methods used in the course of time.

In short, the problem of the hundreds of missing persons has a uniform character: it is the consequence of a strategy of repression, fully planned and co-ordinated by a single authority, and directed against those who might be suspected of engaging in any activity hostile to the régime.

The appointment of a special investigating judge to clear up the problem of the missing persons once and for all is absolutely essential.

It would appear that never in the history of Chile has there been a situation which so clearly requires the intervention of a senior judge to resolve once and for all a most serious problem which needs to be tackled as a whole by means of a uniform and centralized investigation vested with judicial powers. The current public outcry about the problem of the missing persons unreservedly calls for an explanation. The Government recognizes the problem and acknowledges the need to shed light on this tragedy, offering its collaboration to that end. There is also universal agreement on the course that should be followed in order to obtain the requisite information. There is not even a need for documents: papers can be burnt, but events, particularly tragic ones, are impressed more firmly on minds which cannot be burnt, consciences which, because of the dramatic nature of the events, are struggling to express themselves and will do so in the impartial hearing which a

senior magistrate will give to their evidence. In short, there are witnesses, and it is a matter of urgency that they should appear methodically and in force before a high judicial authority which is able to assemble all the information so that it is not diverted along false trails, but may compare and confirm facts. The fact, now unanimously recognized, that the problem has a uniform cause calls for an investigation placed under the central direction of a senior judge; otherwise, the truth about events, which are fundamentally related will never be discovered. Individual judicial proceedings involving investigation on a case-by-case basis, have proved to be ineffective - inter alia, because they disregard the essential uniformity of a collective problem which has to be approached as a whole. There is no doubt that the accumulation of all the information in the hands of a single investigator vested with jurisdictional power would render the investigation entirely effective.

It is also obvious that a senior judge finds himself in a different position from that of the Government vis-à-vis the problem. Although the Government has offered its co-operation, its many personal and institutional links with the former DINA and other security services clearly hamper it in involving itself directly in the problem. The fact of having decreed a general amnesty extended to persons involved in these events to some degree inhibits it from carrying forward on its own a process leading to a complete explanation. However, there is nothing to inhibit a magistrate who has no personal or institutional relationship with the services responsible for these events from establishing "the truth, the whole truth and nothing but the truth", to which, as the entire country now recognizes, the family members of the missing persons are entitled. Thus, it will not be the Government which directly conducts the investigation and summons the witnesses to appear, but a collaborator who has earlier undertaken to assist in throwing light on a problem whose clarification is his sole and specific concern. The Government itself has recognized that the problem, involving as it does the most sensitive rights of our legal order, is of an inherently legal nature, a fact which makes it essential for the most eminent authorities of the judicial power to intervene. In the words of the Minister of the Interior: "Whatever the real truth in each particular situation, it can be investigated by the courts of justice".

It is surely unnecessary to add a single word to what the Church has said during these past five years and to the previously quoted statements from the Minister of the Interior, the Chilean Ambassador to the United Nations, General Augusto Pinochet and many editorials which reflect the state of public opinion on the question, to be able to affirm that this national tragedy which is causing a public outcry constitutes the "public alarm" which under the law justifies the appointment of a special investigating judge. It is hardly possible to envisage a greater degree of public alarm than that caused by the incontrovertible fact, now recognized by all and regarded as a national tragedy, of the definite disappearance of 651 Chileans. However, this public concern will grow greater still if such a tragic occurrence is not clarified once and for all. Is it not alarming for a society that not only can such an event take place in it, but that it is not even possible to ascertain how, in what circumstances, and by whose hand, hundreds of its members have vanished from the face of the earth? So long as the problem is not cleared up, the suspicion will linger that those who created it have the power to prevent such clarification, with the consequence that, if this is true, the threat that it may recur hangs over our society. The strong public alarm evoked by such a situation is undeniable. In fact, the only way to achieve security in this regard is to prove that our society is strong and healthy enough to expose and condemn the realities of the situation. Those responsible for this tragedy are now hiding in the shadows and revelling in their anonymity and the ignorance of society as to what really happened. In such circumstances, if they or others concoct evil schemes in the future, will they alone be responsible for further tragedies? To present them with the spectacle of weak



social institutions is perhaps to strengthen their hand. Illegality thrives on the weakness of the law. If, on the other hand, the country is treated to a display of exemplary conduct by an unyielding judiciary which, in its commitment to justice for society, performs its task of shedding light upon this tragedy of the missing persons, fears concerning a possible repetition of such acts by the same or different groups will be dispelled. It will be impossible to satisfy Chile's historic aspiration to move resolutely towards an institutional future if we set off bearing such a burden.

THEREFORE:

Invoking the rights to protection of life, physical integrity and individual freedom of the persons who have gone missing following their arrest and the right of their families to obtain from the judicial authorities definitive clarification of these cases, which are a source of continuing uncertainty and anxiety for them, we respectfully request the Supreme Court, entrusted by the Constitution with supreme responsibility for the protection of fundamental rights, to appoint a special investigating judge from each of the Courts of Appeal of Iquique, Antofagasta, Copiapó, Valparaíso, Santiago, Rancagua, Talca, Chillán, Concepción, Temuco and Valdivia, who would assume responsibility in their respective jurisdictions for judicial investigations directed towards establishing the circumstances in which the missing persons named in the lists drawn up separately for each of the aforementioned Courts of Appeal and annexed to the first additional petition were arrested, the place or places to which they were taken after their arrest, the place or places where they were or are still being held, unlawfully deprived of their freedom, and their present condition or the fate which befell them.

FIRST ADDITIONAL PETITION:

We enclose lists containing the names of 651 missing detainees falling within the competence of the various Courts of Appeal indicated in the principal petition, for the investigation of whose arrest and fate the appointment of special investigating judges is requested.

Depending upon the outcome of this petition and whether it is deemed to be admissible, we shall send duplicates of these lists for transmittal to each of the judges who are appointed.

Please find attached the lists concerned.

SECOND ADDITIONAL PETITION:

By reason of the undertaking entered into by the Minister of the Interior in his statement of 15 June 1978 over the national radio and television network, when he promised that the Government would explore "any serious means that may be suggested to it in respect of any particular case", a number of Bishops of the Catholic Church have sent him information concerning missing detainees.

We enclose the information which has already been communicated, relating to 478 persons, and wish to inform you that, depending on the outcome of this request, we shall transmit the information relating to the remainder of the

persons included in the lists, so that the judges appointed will be in possession, from the start of their investigations, of the background information concerning all the missing detainees with which they are required to deal.

ENRIQUE ALVEAR URRUTIA

Auxiliary Bishop of Santiago  
Episcopal Vicar,  
Western District

IGNACIO ORTUZAR ROJAS

Vicar-General and Episcopal Vicar,  
Providencia-Las Condes District

GUSTAVO FERRARIS DEL CONTE, S.D.B.

Episcopal Vicar,  
Southern District

MAURICIO VEILLETE G.O.M.I.

Episcopal Vicar,  
Avda. Matta District

RENE VIO VALDIVIESO, SS.CC.

Episcopal Vicar,  
Rural Coastal District

JAVIET MAC MAHON, A., O.F.M.

Episcopal Vicar for Nuns

JORGE HOURTON POISSON

Auxiliary Bishop of Santiago  
Episcopal Vicar,  
Northern District

CRISTIAN PRECHT BAÑADOS

Episcopal Vicar for Solidarity  
Pastoral Secretary of the  
Archbishopric

SERGIO URIBE GUTIERREZ, O.F.M.

Episcopal Vicar,  
Central District

ALFONSO BAEZA DONOSO

Episcopal Vicar for Pastoral  
Activities among workers

JUAN DE CASTRO REYES

Episcopal Vicar,  
Eastern District

Annex IX

STATEMENT BY THE PERMANENT COMMITTEE OF THE EPISCOPAL CONFERENCE OF  
CHILE REGARDING MISSING PERSONS (9 NOVEMBER 1978)

The Permanent Committee of the Episcopal Conference of Chile, acting in accordance with its evangelical duty, has considered once again the problem of persons who have disappeared after being arrested, and it wishes to state the following:

1. On a number of occasions, we have approached Government representatives concerning the problem of the missing persons. The replies received hitherto have not been satisfactory.
2. The persons who have disappeared after being arrested, and who number several hundreds according to the information collected and submitted to the Government, must in our opinion, be considered, with a few possible exceptions, as having been arrested by the Government security services.
3. We have done everything in our power to determine the truth concerning this tragic problem. We have placed in the hands of the authorities the information available to us, both the information furnished by the relatives of the persons concerned and the information collected in the course of judicial process. We have suggested many "serious avenues" which the Government might "explore".

Unfortunately, we have reached the conclusion that the Government will not undertake a thorough investigation of past events in order to find out what actually happened in each case and establish responsibility accordingly.

4. We regret to have to state that we have also reached the conclusion that many, if not all, of the persons missing while under arrest have died without any legal justification whatsoever.

We can do no more. We hope that the families of the missing and also the public at large will understand this. It is for the Government, and not for the Church, to provide a solution to this problem.

5. However, we cannot remain silent in the face of what has happened. We are compelled to state that the commandment "Thou shalt not kill" remains the foundation of all civilization, and therefore of all Christian humanism.

No end can justify the use of unlawful means. To kill a man without legal justification is a crime against which we protest in the name of God, the Creator and Father of all mankind.

6. We beseech not only the authorities, but all Chileans, to renounce once and for all the use of any violence against persons, and to renounce torture, terrorism and contempt for human life. Violence breeds violence. Peace can be achieved only with the instruments of peace.

7. We know it is not easy to resign oneself to the death of loved ones, particularly when they have been the victims of unjust violence; and we know that it is difficult to forgive and to calm the feelings of bitterness and revenge in one's heart.

Nevertheless, we who have stood and continue to stand by the families of the missing persons throughout this time of trial beseech them, in the name of Jesus Christ and of the Chilean people, to find forgiveness in their hearts, to refrain from vengeance and, in their justified efforts to discover the truth, to confine themselves to judicial procedures - even though they are aware of their limitations - and to measures which are not based on violence.

We ask this for the good of Chile and so that the day will come when we can build a just and fraternal society.

8. The Minister of the Interior has assured us that, as long as he is in office, human rights will not be flouted. We know, however, that these rights are still being violated, although on a smaller scale and only occasionally. We shall report any case which comes to our attention. We trust that the Government will take the necessary measures to prevent and punish abuses if they continue to occur. We demand this in the name of the God, whom the spokesmen of the Government themselves invoke.

9. Our sole motive is the desire for peace. But we insist yet again that, for peace to exist, there must be truth, there must be justice, there must be respect and brotherly love for all, without exception.

The Permanent Committee of the Episcopal Conference of Chile.

Annex X

STATEMENT BY THE MINISTER OF THE INTERIOR REGARDING  
MISSING PERSONS (10 NOVEMBER 1978)

The Permanent Committee of the Episcopal Conference of Chile yesterday issued a statement concerning the situation of persons presumed to be missing. In this connexion, the Minister of the Interior has the duty to state that:

- (1) He categorically rejects the assumptions and estimates made in the statement in support of charges which no court of law has deemed well-founded;
- (2) He resolutely rejects, in particular, the assumption that the Government does not wish to investigate the alleged disappearances or that, in practice, it has been unwilling to do so;
- (3) The whole country is aware of the position and action of the Government in this respect, as stated by the Minister of the Interior on 15 June last, with regard to the exhaustive exploration of any serious avenues that may present themselves to it in each particular case, bearing in mind the great difficulties that this involves as a result of the objective situation of civil war which had to be confronted, and also in view of the fact that many people wish to exploit this situation for political and anti-Chilean motives;
- (4) He regrets the unfortunate coincidence between the statement by the Episcopal Conference of Chile and the international event in which insults are being flung at Chile and its Government. The Minister is convinced that this coincidence is fortuitous; but it does make it clear that these matters must be handled carefully by those who are invested with a religious and moral authority which may be used for underhand purposes by the enemies of Chile.
- (5) Lastly, the Government will continue to investigate all the cases, steadily and unhurriedly, without allowing anyone to divert it from its straight, serious and calm path, and will supply the information which it compiles in the form announced some months ago; and, when necessary, the Minister of the Interior or some other Government authority will speak on behalf of the Government, irrespective of the person who may be holding the office concerned, since the principles of humanism, Christianity and nationality have been and are immutable and do not depend on individuals who are temporarily performing a particular function.

Annex XI

PRESS REPORTS CONCERNING THE DISCOVERY OF  
UNIDENTIFIED BODIES AT LONQUÉN, CHILE

A. Chilean magazine Hoy, 13 to 19 December 1978

MACABRE DISCOVERY

Mystery at Lonquén

Courts acknowledge gravity of report made by  
Archbishop of Santiago by appointing  
investigating judge

By Ignacio González

The sickening smell of decomposing bodies unearthed in a kiln at the abandoned lime pit at Lonquén (12 kilometres from Talagante) was a blow to one's sensibilities rather than to one's sense of smell.

The discovery caused a public outcry which prompted the Supreme Court last Wednesday to appoint Judge Adolfo Bafiados as investigating judge to examine the facts of the case. Judge Bafiados, who is described as independent and diligent, and has already enjoyed a brilliant career as a criminal court judge, has been given all the available information compiled by Judge Juana Godoy of Talagante.

The repercussions of the case have spread beyond national frontiers and have aroused unusual interest in the United States, Latin America and Europe, together with a demand for further information. In a statement made by Sergio Fernández, Minister of the Interior, the Government announced that it had issued instructions that the judicial authorities should be provided with every facility to enable them to function as effectively as the case required "since the community and the authorities are equally interested in establishing the complete truth concerning this situation".

General René Vidal, Minister Secretary-General of the Government, stated "From the information that we have, it would seem to be strictly a police case".

From visits to the scene, and on the basis of facts that have been made known, Hoy has determined that, as of last Thursday morning, the team of men excavating the kilns had discovered at least 10 skulls and the remains of an eleventh (most of them bearing bullet marks, according to La Tercera). The corresponding skeletons still bore pieces of flesh. On the basis of a preliminary examination, forensic experts believed that the victims included two or three women.

Hidden grave

There are two kilns. The one on the east side of the lime pit, which is larger than the one on the west side, appears to have contained no human remains. Only a few dog bones were found. There was practically no significant covering of earth, and there was no overpowering stench of decomposed human bodies.

The other kiln had been literally converted into a crypt. At one level (see diagram) there was earth which had not altogether settled, and also stones. This layer was easy to penetrate with implements.

Under it, the diggers encountered a slab of cement. Fragments of old iron, including an old iron bedstead, were sticking out of the slab. The assumption made by some was that the liquid mixture had been poured over this framework of metal and had solidified into a rough but very hard crust.

Under this convex-shaped covering - some hard work with a pickaxe was needed to break through it - there was more earth and then the object which was the cause of this meticulous work of concealment: a pile of corpses. The bodies had been put inside the funnel leading from the "hearth" in which the fuel employed to operate the kiln in bygone days used to be placed. Under the bodies, those who buried them had placed a kind of stopper or bung which gave way as the hole in the slab was enlarged, and the bodies fell out like an avalanche.

In the part of the crypt where the remains lay three cartridge cases were found. Another had been found on the upper level.

In the course of his preliminary examination, one of the forensic experts said that the dead persons seemed to have been tied up. This theory was supported by the presence of a length of stout electric cable.

Excavation of the area surrounding the funnel was due to begin on Thursday in order to determine whether there were more corpses. According to one newspaper report, at least 12 more corpses were buried in the filled-in kiln.

#### Identification possible

One question which arose at the outset was how to identify the remains. Although nothing could be determined in this respect from the bones and remains of flesh, the clothing of the corpses proved to be in good condition and was therefore easily identifiable. On the feet of some of the corpses almost new cotton or nylon socks were found. At first sight, they were not of the type normally worn by country people.

One of the forensic experts was of the opinion that, given the stage of decomposition and the type of limy soil with which they had been covered, the remains had been there for about four years. This estimate tallies with the information given by the person who told a priest the exact location of the burial site, namely that the corpses had been placed there early in 1975.

This anonymous individual disclosed his secret during confession, his only request being that his identity should be kept absolutely secret. He said that he was distressed and that his sleep was troubled by his knowledge of the existence of the remains. On the basis of this information and evidence that there actually were human remains buried at Lonquén (see Hoy No. 80), Bishop Enrique Alvear and Cristián Precht, the bishop in charge of the Vicaría de la Solidaridad, submitted a report to the President of the Supreme Court and requested an on-the-spot investigation.

In the early part of last week, the court at Talagante verified a fact that was communicated to the Supreme Court. Its telephones were quite clearly being monitored. An unusual number of plain-clothes security personnel were also noticed at the site of the discovery, even though, according to information received, the judge had not issued an appropriate order requesting their presence.

#### Accelerated procedure

In the view of Alejandro González, the chief attorney of the Vicaría, the speed with which the Judiciary had acted could only be regarded as "excellent, deserving of the highest praise. Its investigation has been prompt and timely, demonstrating that it has attributed to these developments the seriousness they deserved. The instructions to the judge to conduct an inquiry and the appointment of an investigating judge demonstrate clearly its desire to shed light on the matter".

One newspaper asked why a police matter like the Lonquén case was being "blown up ... on the day when Chile is protesting against the boycott". The newspaper considered it significant that a statement by the relatives of missing detainees should also be given press coverage. The group, who have been wandering from place to place for years in a fruitless search for their relatives, said "We cannot yet confirm whether or not (the bodies) are those of our relatives. We can only demand - and we are doing so - a serious investigation into the identity of the remains found".

For his part, Judge Bañados, on the day after he had been put in charge of the investigation, requested the complete list of persons who had gone missing following arrest between 1973 and 1976.

Máximo Pacheco, former Minister of Education and former Dean of the Faculty of Law of the University of Chile, was a member of the unofficial commission which accompanied Bishop Alvear to the kilns before submitting the report. He almost fainted at the overwhelming spectacle. He told Hoy:

"It was the most gruesome experience of my life. It stirred my conscience as a man and as a lawyer. My greatest wish is that we should all, without exception, co-operate in the investigation in order to shed light on this case, for otherwise the responsibility will fall on all Chileans and will constitute an affront to our nation."

In reply to a question asked by a journalist, Bishop Alvear expressed some painful thoughts:

"One wonders what happened here, what crime was committed, who committed it".

Although some of those who visited the lime pit and saw the remains formed the impression that all the persons in the grave had been finished off at the pit itself, it will be some time before the investigation, which has no fixed time-limit, provides an answer to this question. It was stated that the Institute of Forensic Medicine will play a key role. The former Co-operation for Peace Committee (subsequently replaced by the Vicaría) had complained about the procedure followed in 1973 and 1974 by the Institute in receiving bodies transported by persons wearing military uniforms who were not asked to identify themselves. The opinion or interpretation reached by the Institute regarding the remains now lying in its refrigerated storage rooms will be of vital importance for the success of the judicial inquiry.



B. Chilean magazine Hoy, 20 to 26 December 1978

LONQUÉN CASE

To remove all suspicion, relatives of missing detainees will reportedly propose that foreign experts assist in identifying bodies. Meanwhile, Hoy informed that dead number 25.

By Ignacio González

There are two views which, as of last Monday, were in indirect and undeclared conflict regarding the work being carried out by the Institute of Forensic Medicine on the corpses found in the west kiln at the Lonquén lime pit.

The press has reported views expressed by Dr. Claudio Molina, Director of the Institute, to the effect that the Institute is perfectly capable of identifying the remains.

The "opposition", which includes the relatives of the missing detainees, saw in this statement an attempt to preclude the possibility of intervention by foreign resources and personnel who might be brought to Chile in order to collaborate in the work of identification. Some maintain that the Institute no longer has the technical standing that it attained under its previous director, the late Alfredo Vargas, who won international renown with his team of forensic scientists.

The relatives of the missing detainees would not be satisfied with the mere classification of the remains by sex, age, date of death and physical characteristics. They are hoping for complete identification which will determine the first name and family name of each body.

At the time of the discovery of the skeletons at Lonquén (by means of a tip-off by a person whom The Washington Post describes as a former agent of the secret police who has since left the country), three relatives of missing detainees were in the United States. Their companions in misfortune telephoned them to ask them to approach specialized United States agencies in order to determine the extent to which scientific procedures could be used in order to identify remains such as those discovered.

"When we are in a position to provide these resources", Hoy was told by Pamela Pereira, who has had no news of her father since October 1973, "we will approach Adolfo Bañados, the investigating judge, in order to place them at his disposal".

It is reported that, at the same time, the support of various countries is being sought for the establishment of an international commission of experts prepared to come to Chile.

Twenty-five dead

As an indication of the world-wide astonishment at the discovery, the Santiago embassies of European and American countries have endeavoured to gather all available information relating to the case. The West German press initially used an expression which translates as "graveyard of hundreds of bodies" to describe the kilns.

This expression, although valid in the basic sense of horror that it conveys, is numerically inaccurate. Sources close to the investigation assured Hoy that 25 bodies have been found. Also according to these sources, this figure comprises 14 complete bodies, apart from one which had no skull, and the remains of 11 other persons.

Foreign reaction found expression at a high level in the person of Kurt Waldheim, Secretary-General of the United Nations. Through a spokesman, he expressed the hope that the Chilean authorities would identify the remains. "The question of the missing persons", the spokesman went on to say, "has been and is a matter of continuous concern to the Secretary-General and to the Ad Hoc Working Group on Chile of the Commission of Human Rights". He added that the Ad Hoc Working Group would undoubtedly take up the matter when it met in Geneva in January.

Aware of the impact of the discovery of the bodies, because of the a priori connotation which might be placed on it, high-ranking officials of the Ministry of Foreign Affairs have been analysing the effect which the case might have on the regime's image abroad.

The relatives of the missing detainees (whose energy is born of desperation which has not been eroded by the passing of the years) have endeavoured to ensure that the investigations are conducted in the most effective manner possible. From Israel Borquez, President of the Supreme Court, they have received the reassuring reply that they can have full confidence in the judicial authorities. They have also had talks with the other judges of the Supreme Court. In general, the judges said that they were as concerned as the relatives themselves that an absolutely thorough investigation should be conducted, adding that the intention was to get to the bottom of the matter through the inquiry being led by Bañados. The relatives have also been received by the investigating judge himself.

#### Unknown destination

In keeping with the assumption that the bodies are those of persons who died about four years ago and were between 20 and 30 years of age, available information indicates that at about the same time several groups left political detention centres never to be seen again. It will be recalled that, in mid-1974, a group of 10 persons was taken from Cuatro Alamos. Early in 1975, three other groups left Villa Grimaldi to be taken to unknown destinations. Neither their relatives nor detainees in these or other camps ever heard of them again.

Since 1973, no larger number of bodies than that discovered at Lonquén had been found in one place. Between September and December of that year, many unidentified bodies were deposited at the Institute of Forensic Medicine. Several more were found in the River Mapocho.

In May 1976, at least eight bodies with their fingertips removed were found in the River Maipo. In an editorial, the magazine Qué Pasa took up this question, together with the discovery of other bodies in Papudo and on the banks of the Bío-Bío. The magazine called for a full investigation, since "only in this way can we uphold the principle of the value of human life, a principle of which we have always been proud and which has been a distinctive feature of our society".

In those times of uncertainty for the relatives of missing detainees, there was not one of them who did not continually visit the Institute of Forensic Medicine to determine whether their relatives were among the bodies stored there. They were invariably confronted with the same reply: "No, the characteristics which you describe do not correspond to anything we have here".

And they were not allowed to enter the Institute.

The continual disappearances of individuals ceased in about October of last year. Of the documented total of 650, some 415 disappearances took place in the geographical area under the jurisdiction of the Santiago courts.

Judge Bañados has not only requested the complete list of missing persons. His request for information covers all actions for enforcement of rights brought before the courts since September 1973. He has removed from the archives the reports of disappearances - some 13 in number - filed in Talagante. Another of his lines of inquiry has been to question a number of farm workers at Lonquén.

C. Le Monde, 9 December 1978

Chile

Discovery of charnel-house once again raises question of  
persons who have gone missing since 1973

Santiago, Chile (AP)

At least 25 decomposing bodies have been discovered in an abandoned lime pit 40 kilometres south-west of Santiago in the course of a search undertaken on the basis of information communicated to the authorities by Monseigneur Enrique Alvear, suffragan bishop of Santiago.

Searchers had to dig to a depth of 4 metres to reach the bodies, which had apparently been thrown into a large brick kiln that had then been filled in. Police circles believe that the bodies have probably been there for three or four years. Quoting unidentified sources, the newspaper La Tercera reports that most of the skulls seem to bear bullet-marks.

The news has given rise to speculation that the bodies might be those of some of the 600 leftist militants or sympathizers who have disappeared since the coup of September 1973.

A group representing the families of missing persons stated that, although there was as yet no proof that the bodies were those of their relatives, the discovery demonstrated the validity of their requests for a thorough inquiry into the disappearances.

The search was undertaken on the basis of information given to a priest in the course of a confession about two weeks ago. The penitent is thought to be a former member of the now disbanded DINA secret police who has since left the country. The substance of the confession was brought to the attention of the episcopate and a commission was established to conduct a secret investigation at the lime pit. The commission was led by Monseigneur Alvear and included, among others, Monseigneur Cristián Precht - the episcopal official responsible for human rights, two lawyers who had been senior officials in the Christian-Democrat Government under Mr. Frei and two newspaper editors.

Annex III

PRESS REPORTS CONCERNING THE DISCOVERY OF UNIDENTIFIED BODIES  
AT CUESTA BARRIGA, CHILE

A. Chilean magazine Hoy, 27 December 1978 to 2 January 1979

DISCOVERY OF BODIES AT CUESTA BARRIGA

FURTHER REPORT OF SECRET BURYING PLACE OPENS NEW INVESTIGATION

"Speaking not as a judge in this case, but as an ordinary individual, I think that it should now be said that, as a consequence of the state of war in which we were living at that time, we were bound to reach the point where people were exterminated. It should be recognized that this is what happened, and that it was inevitable. That would put an end to the problems."

Olga Quijada, the surrogate judge of Casablanca - 36 years old, married, with one son - who is in charge of the case of the bodies discovered at Cuesta Barriga, did not have much doubt as to what was involved. She anticipated by a day the statement by the Government which, as if it had heard her, finally acknowledged that it was "not ruling out the possibility that, in the struggle which became inevitable after the events of 11 September 1973, in order to repel attacks by armed groups and to overcome subversion organized on the scale of a civil war, persons belonging to this faction may have died and not been properly identified ..."

However, this statement has not satisfied the relatives of missing detainees who have been struggling all these years to obtain some information about their loved ones. They have said:

"It is surprising that, at a time when there is not yet sufficient evidence on which to base an accusation, the Government should have issued a public statement in which it virtually acknowledges that these bodies may be connected with the problem of the missing detainees."

The question of amnesty worries them even more because, although in June of this year, Monica Madariaga, Minister of Justice, stated "it is despicable to think that the amnesty was proclaimed for the benefit of DINA", they believe that this was the case. The Government has now stated that the purpose of the law was "to extinguish the penal effects both of crimes committed by those who had coldly and systematically fomented civil war, and of possible excesses that may have been committed by those whose mission was to end it."

The relatives of the missing persons say:

"For our part, the least we are asking is that information on the persons shot at Lonquén and Cuesta Barriga should be made available and that those responsible should be brought to justice. Before amnesty can be granted to anyone, his degree of responsibility must first be established. Are the Chilean courts today obliged to apply a law which is intrinsically illegal?"

### Mass shooting

The reply is given by the lady judge from Casablanca who says that: "The amnesty is a matter for the Government. Our duty is to investigate." And she is ready to do so.

The first witnesses questioned by Judge Quijada were Manuel Barrera and Ofelia Rojas, the father and wife of José Guillermo Barrera Barrera, one of the persons missing from Curacaví. The old man, apprehensive and taciturn, was unwilling to say much. He sat in the courtroom, with his younger grand-daughter, gazing at the floor, his hat in his hands ...

On 16 September 1973, his son José Guillermo was miraculously saved from execution by firing squad at Cuesta Barriga. The body of one of his six companions fell on top of him, and he was later able to escape over the hills and to reach Rinconada de Maipú, where he was cared for. His family sent him to Huasco, where he stayed five months before returning to Curacaví on 14 March 1974. He appeared before the military governor, who told him that there was no problem and that the case against him had been dropped. However, that same night, hooded police officers in civilian clothes and carabineros came to fetch him from his house. Since then nothing more has been heard of him.

Other evidence already in the hands of the judge is a photograph taken on 13 September 1973 in the police station at Curacaví. It shows 18 detainees of whom the following have been identified: José Guillermo Barrera, missing; Nicolás Górate, missing; Justo Mendoza Santibañez, missing; José Gómez, missing; Jorge Toro, dead, with death certificate issued by the Institute of Forensic Medicine, and Gastón Manso, to whom the same applies.

There is yet another witness who will be a key witness in establishing the truth in this case. There were in fact two persons who escaped from the shooting on 16 September; and the second one is in Chile, alive and prepared to testify, provided that the usual guarantees are given. He will be able to tell the judge who were the individuals facing the firing squad, where and why they were arrested, where the execution took place and who carried it out.

### The hills have much to tell

The discovery at Cuesta Barriga was made 12 $\frac{1}{2}$  kilometres from the Santiago-Valparaiso highway. There, in the middle of this bright, calm Chilean countryside, there is nothing to suggest that one may come upon death at a bend in the road. Death without grave and without rest, bodies thrown on the ground, and later buried by the charitable hands of the local people, who never told what they knew, because, they say, they were afraid. Nevertheless, they placed flowers on the site and brought candles for the dead, as if each was one more "little soul". In the little ravine, a white-pointed cross and a few uprooted geraniums are all that remains of the macabre burying place reported through the Vicaría de la Solidaridad.

Some young girls who live at Planta Carena, a hydropower station in the Papelera, which is alongside the ravine, told us in all innocence that:

"All the people who live here know how long the bodies have been here. One morning, the mini-bus carrying a group from the Planta Carena Mothers' Centre stopped because there were other cars by the side of the road. It was because of the bad smell that was noticeable. Everybody went down to look and there were two bodies there. Nothing else was known about them. They were not people of the area."

"Were the people who came to bury them here strangers?"

"It seems they came to kill them here since, as for burying them, they didn't bury them at once. They left them out in the open, and afterwards the locals buried them."

Fabiola Huérez was seven years old at the time, and although she was travelling in the bus she didn't want to see them, because she was afraid. Mrs. Lucrecia Hoya, who lived in a house close by, didn't see them either. However, she said that:

"I always knew that there were bodies on the hill. Since 11 September. There at the bend (where the discovery was made), there were two which were being eaten by dogs. Nobody knew who they were. They didn't have the slightest idea. They were thrown there during the night, since there was no one on the hill at that hour."

Alfredo Tamayo, who works in Planta Carena, says that:

"Of course, we heard the shots over on the hillside, but nobody saw it happen. We knew what had happened, but we hadn't witnessed it."

#### New reports

The house which is closest to the grave at the entrance to the hydropower plant was, until four years ago, a carabineros post. There, on a white wall in the stables, one can see holes which experts say are bullet holes. However, nobody knows anything about this.

The report received at the Vicaría mentions other bodies buried in the hills about three kilometres from the first grave. And new reports are still coming in. Relatives of missing persons speak of the Chena, Colina and Peldehue hills.

In the light of the Government statement, the families of missing persons are asking that the Government should pass all the information to the judiciary.

"For all these years, the Government has been asserting that the individuals concerned were without legal identity, that they had left the country, that they had dual identity or that they had gone underground. Now comes the theory of the civil war and its consequences, which are alleged to have lasted a long time. Now it will be necessary to establish the responsibility of those directly involved, and also the political responsibilities - a matter which concerns not only the families of the missing persons, but the entire country."

B. El Mercurio, 22 December 1978

Julio Veas, expert in forensic medicine, says that:

"The Casablanca remains are more than 10 years old."

INVESTIGATOR'S ASSESSMENT SUGGESTS THAT BONES WERE DISINTERRED AND BROUGHT FROM A CEMETERY.

JUDGE OLGA QUIJADA AND THE POLICE AUTHORITIES AT PLANTA CARENA, SITE OF THE DISCOVERY.

PLANTA CARENA (Casablanca) (by M. Beatriz Undurroaga Gómez, photographs by Oscar Lagos Pérez, special correspondents).

"After 32 years of experience in forensic medicine, I think I can say that these bones are 10 years old or more and, judging from their distribution and the disorder in which they were found, it is highly likely that they were brought to this grave and thrown down in a heap."

These were the observations made here yesterday by Dr. Julio Veas, an investigator from the Institute of Forensic Medicine. Dr. Veas visited the site where the bones and skulls of two persons were discovered. The site of the discovery is on a slope of the Cuesta Barriga, opposite the 45 kilometre stone on this road and very close to the Carena hydropower station.

The existence of the bones was reported to the court at Casablanca by Mgr. Jorge Hourton, Suffragan Bishop of Santiago, on the 19th of this month. According to Mgr. Hourton, the discovery was made on the morning of that day by persons whom he did not identify.

Yesterday afternoon, the excavations ordered by Olga Quijada, the surrogate magistrate of Casablanca, and judge in charge of the investigation, were officially started. However, the judge did not request any extension of the excavations, and operations were confined to the grave already opened and to a small area where someone had recently placed a white-painted wooden cross. The operations led to the discovery of new skeletal fragments, including many phalanxes, and also some incisor teeth and three buttons (two dress buttons and one yellow shirt button), the remains of an orange- and yellow-striped shirt, another piece of cloth in black and white check, some cornflower blue-cloth and jacket padding.

At the site of the investigation from the early afternoon onwards were Dr. Julio Veas, who was also in charge of the investigation of the Lonquén remains; Colonel Ramón Otero, Prefect of the Northern Area of Santiago; Walter Illanes, a major of Carabineros; Iván Andrusco, Superintendent of Police of Curacaví; staff from the Investigation Bureau, the judge, her clerk, who did not identify himself, and other legal aides.

Bones from a cemetery

At the site, El Mercurio spoke with Dr. Julio Veas, before the arrival of the judge. On examining the bones, the Doctor said that they showed no signs of having been in contact with the earth covering them.

"It is probable that they were brought here, which would have been a contemptible act. It can be seen that they are very old, for the simple reason that they bear no vestiges of articular surfaces, and I can distinguish between bones in different states. The skulls which are in the Institute, together with the other parts, are under lock and key. However, I can tell you that the skulls appear to be brittle and on the point of disintegration. I'll swear that there is something unusual here. Even if we enter the realm of supposition, why is it not conceivable that these bones could have been brought from some cemetery?"

Dr. Veas gave instructions that four paving-stones marked with white crosses and found over the grave should be taken to the Institute of Forensic Medicine.

Eye witnesses at the discovery also told El Mercurio:

"When we arrived here we were accompanied by the priest, Mgr. Hourton. He picked up one of the skulls and left it some yards from the grave. Then he searched in the earth and in the centre of the grave he found the other skull."

This statement, made out loud, drew the attention of the forensic medicine expert and of the police who were present at the excavations. The forensic medicine expert said that:

"It is natural that a body should be made up of a head, a trunk and extremities. The fact that the skull was in the centre and the pieces of the skeleton were in such disorder makes me think ... that there is something unnatural about it."

#### The judge

At about 4 p.m., the judge from Casablanca arrived, but did not go down to the site of the discovery itself. She watched, through binoculars, the activities of the clerk and the excavation operations. "I don't know anything about an investigating judge at the moment" she said. "I am conducting this case solely in my capacity as judge of Casablanca." Asked whether she had questioned anyone, she replied that while the inquiry was in progress, that was a confidential matter.

The police informed her that everything that had been found on the site and might be considered as evidence had been sent to the Institute of Forensic Medicine, where it was under lock and key. The evidence included clothing, bones and broken glass.



Annex XIII

STATEMENTS BY THE SONS OF TWO MISSING PERSONS

A. Testimony of Ivan Donato, son of Jaime Donato, missing since 5 May 1976

My name is Ivan Donato Guzmán, I am 13 years old and I am the son of Jaime Donato Avendaño. I am the oldest of five brothers.

As you know, my father, together with Mario Zamorano, Jorge Muñoz, Uldarico Donaire and Elisa Escobar, was arrested in a raid by DINA, now CNI, on the night of 4/5 May 1976 at Calle Conferencia No.1587, and is now missing.

My father was born on 30 May 1934. He was for many years an employee of the Chilean Electricity Company (CHILECTRA). He distinguished himself as a trade-union official in CHILECTRA, becoming president of the company's single union and a national official of the Single Federation of Workers of Chile (CUT).

After the military coup, my grandparents' house, Villa Frei, calle 7, No.4615, was searched and my father was summoned to the Bureau of Investigation, where he was detained; after being questioned, he was taken to the Ministry of Defence where he was questioned by three colonels from the Military Intelligence Service (SIM) who intimidated him by saying that he and his family would be shot.

For months afterwards, he and the family continued to be harassed. We had to move to a new house, and we went to live at calle Padre de las Casas No.2473, but the new house was also searched twice by the Buín Regiment.

The first time the house was searched, they took us from the house (my mother was pregnant at the time), put us up against the wall and pretended that they were going to shoot us. After this act of barbarism, they took my brother Alex (now 17 years old) and threatened to hit him if he refused to tell them where the arms were. It was on this occasion that they took away our passports, pay slips and all kinds of personal papers, including the family photograph album. This happened in November 1973 my father was taken into detention and, after being interrogated and tortured, he was released though they threatened that he would be watched constantly.

The second time that my father was arrested, in December 1973, the same thing happened and the soldiers did whatever they liked in our house; they overturned the beds, ransacked the bureau and left all our papers and other belongings scattered all over the floor. Once again, my father was tortured horribly and later released.

On 5 May 1976, he was arrested in a house at Calle Conferencia No.1587; we learned this later from statements made by Juan Becerra, the owner of the house, who stated in his testimony that his house had been occupied by agents from DINA, now CNI, since 30 April 1976, and that all the people who came there namely Mario Zamorano, Uldarico Donaire, Jorge Muñoz, Elisa Escobar and my father, were arrested one by one.

Some months after his arrest, my mother told me that some of his friends had seen him go by, with a beard and long hair, while they were working on the roads. Since then, there has been no news of him.

When my father failed to return home, my mother, Mariana Guzman Núñez, began to worry and started making enquiries everywhere, thinking that he had been arrested. She contacted lawyers and applied for enforcement of rights (amparo) on 19 May 1976.

This was a time of endless worry and anguish for my family, and that anguish is still with us.

In May 1977, my brother Alex, who was sixteen at the time, was arrested by DINA while on his way to school No.16 in Renca where he was a pupil.

He was blindfolded, taken away in a car, beaten and questioned about the activities of the families of the missing persons, our family, my mother and myself. He was asked repeatedly what my mother did in the Vicaría de la Solidaridad.

He was asked the names of the mothers who were organizing the Vicaría movement. When he refused to reply, he was beaten again. His captors spoke of me, indicating that they knew that I was a pupil in the Gabriela Mistral school. They also mentioned the names of his closest friends, saying who played basketball and football and on what side, and they indicated that they knew everything about Alex and our family, since they could give the names of friends we had had when we were ten years old.

They also tried to bribe him with money and gramophone records if he helped them by agreeing to work for them. After keeping him in the car for a long time, they released him, set him down and said: "If you turn round when we take off the blindfold, we will come back and beat you up", and they added: "We will see you tomorrow for your reply".

When my brother came home, he told my mother everything and we had to hide him, with the result that he lost a year of school. Alex returned home six months later, but he did not go out into the street much, and when he did, he had to go with a large group of friends to prevent the same thing happening.

After my father's arrest and disappearance, the task of supporting the family fell to my mother and me. We had extremely serious financial problems and it was very difficult to earn enough money for food for the whole month. We received financial assistance from the outset, and this helped us to survive. But we had to deal with the problem in any way we could. I had to take work selling vegetables in a vegetable stand in the Vega Central. In the morning I went to college and from there I went to work.

My mother devoted herself entirely to the activities of the Vicaría de Solidaridad in the courts, doing everything possible to try to establish my father's whereabouts. She went on hunger strike twice while I was still in Chile. After I left in April 1978, she took part in a third hunger strike and did not eat for seventeen days.

My brothers and I know my mother is quite sure that our father is alive and that she will continue her campaign until she finds him. I remember very well how she would say: "I want to know whether he is alive or dead; if they tell me he is dead, let them show me his body, and if he is alive, let them hand him over to me". This shows that our mother is very strong-willed, despite all her grief and indignation; this gives her the drive and the courage to go on.

I would like to say a little about my father, what he meant to us and what he represents for all of us, his sons.

For me and my brothers, my father was both a father and a friend, since he helped us a great deal whenever a problem arose among us and he was concerned with and took an interest in our studies and our life in all its aspects. For example, we miss very much something that had become a tradition each week-end: we all got together and he asked us about the problems we had had during the week, and the good thing is that we always reached agreement. Despite his political and trade-union commitments, on Saturdays and Sundays we usually went for walks, to the cinema or to play basketball; we all played basketball, since both my father's and my mother's families were good players.

Thus, we harboured a great and growing affection for my father. My brother Nelsón is sixteen years old and is the third oldest. He is a member of the Vicaría Norte youth group. The purpose of the group is to provide every possible assistance to the mothers of detainees who are missing. The group sometimes provides encouragement and entertainment by organizing significant cultural events. They have a folk group. The women write to other countries and make patchworks depicting the situation in Chile. I regard this as very important, because what we are living through is tragic and dramatic and we can see that we are not alone.

The other little brother whom I would like to mention is the youngest. He will be five in January and is called Jaime, like my father. He was two when my father disappeared. But even he knows that Pinochet is to blame for his father not being at home. For example, when Jaimito is watching television and Pinochet appears on the screen, he says in a loud voice: "There's Pinochet; he took away my dad and he's bad, very bad".

Despite the fact that he is very young, Jaimito is always asking questions about his father. Where is he? Will he come back home later? He is so small, but already he knows all about what we have to put up with.

This gives some idea of the drama we are living through and the anguish we feel at having no news of our father. He is just one among the thousands who have suffered the same fate, and that is why we are all trying to do everything we can to establish their whereabouts and bring pressure to bear in order to discover where they are. Because the lives of all of them are in the hands of Pinochet and CNI. I want to know what they have done with all our fathers and what is happening to those in Chile; my family and I are certain that they are alive, and I therefore ask you who are investigating the human rights situation in our country to continue visiting Chile directly in order to ensure that the investigation proceeds.

January 1979

[Signed]  
Ivan Donato

B. Testimony of Víctor Donaire, the son of Uldarico Donaire

My name is Víctor Donaire and I am 17 years old. My family consists of my father, Uldarico Donaire, my mother, Marta Pérez, my two sisters, Marta and Miriam, and my brother Roberto.

My father was always a very quiet man at home; he always treated my mother and us in the best possible way. He was a member of the Central Committee of the Communist Party of Chile and of its Political Commission, posts which he held until the coup. Until that date, my father worked in the Horizonte printing house, and afterwards he and my mother set up a small business to help support the family. This meant that my brothers could pursue their studies, although with some difficulty.

Two of my father's brothers were arrested, tortured and dismissed from their jobs. A third brother of my father also lost his job because, if he had gone to work, he would have run the risk of being arrested. Their only offence was to be my father's brothers.

A few months after my father's disappearance, another of his brothers was kidnapped and beaten for several hours; he was later forced to sign a resignation from his job.

Our family had to move to a new house because the owner of the first house was blackmailing us and threatening to report the fact that our father was there. The search for a new place to live was by no means easy, since my father's health was rather fragile. We had been living in the new house for nine months when my father was arrested on 5 May 1976.

That day, my father left the house very early, as he usually did. But he did not return. For my mother and all the rest of us, that was the beginning of a period of great anxiety, of constant searching and of efforts to find our beloved and unforgettable father.

At first we thought that he had had an accident, but we were able to establish that there had been no accident and that our father had been arrested. We then decided to go to the Vicaría de la Solidaridad and we made a number of applications for enforcement of rights. The first application, No.375, was made by my mother on 10 May 1976. Some days later, the application was rejected by the Supreme Court and the case was referred to the ordinary courts.

I should mention that a few days before my father's arrest, some DINA agents had called at the house of some neighbours of ours in calle Maule, immediately behind our house at calle Juan Vicuña No.1596. They asked the people in that house for information about the persons living in our house. While the DINA agents were questioning these neighbours, a son of the family arrived and told his parents and brothers to warn the Donaire family of the visit. This shows that my father was being looked for by Pinochet's secret services.

My sister Marta had to give up university because her classes finished very late and there was a danger that she would not return home. She had been President of the Students' Association in her college and she was in great danger because of that. It was for that reason that some men in civilian clothes had already made enquiries about her at the house of a friend. We had to draw up a paper before a notary to prevent anything happening to her because, whenever the authorities arrest someone and that person then disappears, they say that he or she "has gone underground".

Marta went back to university, changing courses, but her worries were not over and she was even afraid for the life of her little daughter. Penélope, who was three years old and had to stay in a kindergarten while her mother studied. Children are often used for blackmailing families.

Like all the other women and men facing the same problem of arrested and missing relatives, a problem of truly dramatic proportions, our mother is working extremely hard to obtain our father's freedom. She is assisted in her efforts by the Vicaría de la Solidaridad. Each time my mother went to the Vicaría de la Solidaridad, she was followed by agents in civilian clothes whose purpose was to intimidate her, frighten her and press her not to continue with her accusations.

Together with other relatives of detained and missing persons, she has taken part in hunger strikes, press interviews, street demonstrations in front of courts of justice and interviews with various national and international bodies and with well-known Chileans and foreign diplomats.

Our life in Chile was becoming more and more difficult. If any member of the family was ten minutes late in coming back to the house, the others began to worry. The fact that someone was late might mean that they would never come back, as happened to my father. This is no way to live: it is impossible to study or to relax. It is impossible to do anything with a quiet mind.

The life I am describing here is not something out of the past. It is the life being lived in Chile by my mother, my sisters and all the relatives of missing prisoners who are campaigning side by side and untiringly to discover the fate of persons who have been arrested and are missing, our relatives who are so dear to us and whom we miss so much.

The whole world knows that the problem of detained and missing persons has not been resolved. They are being held somewhere in Chile. The impressive and influential international assistance received by our people has made it possible to save thousands of lives in Chile.

I ask the Ad Hoc Working Group of the United Nations Commission on Human Rights to visit Chile again and establish the truth. It is important to realize that all these people were kidnapped by agents of the secret services of the military Junta; it is particularly important to realize this now, when piles of bodies are being found in various places in Chile, bodies that show that the persons were tortured before dying. Some are blindfolded or have their hands tied and have been shot through the head. This makes us even more fearful for the life of our dear father and for the thousands of other Chileans who have disappeared.

As the son of one of them and on behalf of my family, I ask for your assistance in obtaining my father's freedom and ensuring that those who are to blame for so much suffering are punished. We must demand that Chile respect the most fundamental of human rights, the right to life.

I firmly believe that my father is alive, since there is evidence that many missing detainees have been seen months and years later in secret places of detention by persons who managed to recover their freedom or who were subsequently transferred to recognized prisons or concentration camps. We are sure that, even when faced with the extremely arduous conditions which we can imagine from the stories of those who have fallen into the clutches of DINA (now CNI), my father will make very great efforts to survive, since he firmly believes in the justice of his views and is sure that this régime of continuous violation of human rights will come to an end.

January 1979.

[Signed]  
Victor Donaire

Annex XIV

DECREE-LAW NO. 2,345 OF 17 OCTOBER 1978

Ministry of the Interior

ATTRIBUTION OF POWERS TO THE MINISTER OF THE INTERIOR  
IN RESPECT OF MATTERS INDICATED

No. 2,345. Santiago, 17 October 1978.

Bearing in mind the provisions of Decree-Laws Nos. 1 and 128 of 1973, Nos. 527 and 788 of 1974, and No. 991 of 1976, and

Considering:

1. That, in the document entitled "National objective of the Government of Chile", which was approved for peremptory implementation, reference is made, within the General Policy of the Supreme Government, to the need for a rationalized, modern and functional public administration;

2. That, through the adoption of numerous measures, progress has been made in fulfilling the fundamental conditions for the aforesaid policy, whose underlying purpose is the re-establishment of the noble and honourable Portalean \*/ ideal of "public service", which should guide the functioning of our public administration and was formerly the pride and prestige of the State;

3. That, notwithstanding the progress made so far, it is necessary to intensify efforts to achieve efficiency in the functioning of the services of the State administration in all its aspects, in other words, the expeditious execution of the provisions which govern State activity, consideration and concern for the users of the services, and effective management of the services;

4. That, for these reasons, it has been considered appropriate to place responsibility for the implementation of the policies aimed at the debureaucratization and streamlining of the civil administration of the State within a single Ministry, without prejudice to those functions which the Supreme Government has entrusted to other organs;

The Government Junta of the Republic of Chile, acting in exercise of its Constituent Power, has resolved to enact the following Decree-Law:

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\*/ Translator's note: Diego Portales (1793-1837) was a Chilean politician who occupied a number of ministerial posts between 1830 and 1837, and restored public order and the principle of authority.

Article 1. It shall be the responsibility of the Minister of the Interior to implement in a unitary manner the policy of debureaucratization and streamlining of the State administration promoted by the Supreme Government.

Article 2. The expression "State Administration" shall be understood to comprise all those organs through which the State performs, directly or indirectly, the function of public administration, and in particular all the Ministries and departments or units subordinate to the Ministries, all public and semi-public services, within the central or decentralized administration, all State enterprises and the municipalities.

For the purposes of this Decree-Law, only the armed forces and police forces, the judiciary and the Office of the Controller General of the Republic shall be excluded from the scope of the expression "State Administration".

Article 3. In exercising these powers, the Minister of the Interior may:

(a) Issue any instructions or regulations that may be necessary in order to implement the policies aimed at the debureaucratization and streamlining of the State administration;

(b) Eliminate or amend administrative procedures, shorten time-limits, amend schedules, abolish or amend documentary requirements or requirements of any other nature, and in general adopt any type of measure for the implementation of these policies.

Any orders that may be issued for this purpose shall bear the signatures of the Minister of the Interior and the Minister responsible for the matter in question; they shall be understood to amend any provision with which they are in conflict.

(c) Define and require the execution of the programmes and administrative measures relating to these policies;

(d) Ensure the faithful execution of any instructions that he may issue, imposing penalties on any persons responsible for interference or inefficiency in their execution; and

(e) Make use of all the human and material resources entrusted to his supervision for the purposes of the faithful, expeditious and timely execution of his responsibilities.

Article 4. In respect of matters closely connected with the policy of debureaucratization and streamlining of the State administration, the Minister of the Interior may make provision for and supervise the execution of the aforesaid policy by all the Ministries, organs subordinate to the Ministries and organs related to the Government through the Ministries, with the exception of those organs referred to in article 2 of this Decree-Law.

Article 5. In performing his responsibilities, the Minister of the Interior may propose to the President of the Republic that any official of the State administration, regardless of the capacity in which he works should be dismissed when such action is necessary for the faithful execution of any regulations or instructions issued.

A decision on such a proposal shall be a matter for the exclusive judgement of the President of the Republic.

The Minister of the Interior may also propose the appointment of persons to replace officials dismissed in conformity with this article.

The dismissal of officials in conformity with this article shall not be governed by any other legal requirement or provision. In particular, such action shall not be prevented or deferred by reason of the existence of legal rights or tenure of any kind, and shall not be subject to the Administrative Statute (Decree with Force of Statute No. 338 of 1960) or to other similar organic provisions.

Any document ordering the dismissal of an official in conformity with this article shall bear the signatures of the Minister of the Interior and the Minister responsible for the matter in question.

No official dismissed in conformity with this article shall be deprived of his social security rights or his right to severance pay in cases where this is applicable.

Article 6. Any directives issued by the Minister of the Interior to the State secretariats and other organs within his sphere of competence shall be peremptory, and the Ministers and Chiefs of Services shall be personally responsible for their execution.

Any Chiefs of Services or other officials whom the Minister of the Interior may request to prepare reports for the purposes of implementing this Decree-Law shall submit them within 48 hours, unless a longer time-limit is stipulated in the actual request. Failure to comply with this regulation shall be regarded as a serious misdemeanour.

Article 7. The President of the Republic is hereby authorized to issue, within a period of one year from the date of publication of this Decree-Law in the Diario Oficial, any provisions with force of statute that may be necessary to achieve the purposes set forth in article 3 (a) and (b) of this Decree-Law, in so far as regulations having legal status are modified for this purpose.



To be registered in the Office of the Controller 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. - CESAR MENDOZA DURAN, Director-General of the Carabineros. - General FERNANDO MATTHEI AUBEL, Commander-in-Chief of the Air Force. - Vice-Admiral ARTURO TRONCOSO DAROCH, Acting Commander-in-Chief of the Navy. - SERGIO FERNANDEZ FERNANDEZ Minister of the Interior.

I am sending you the above for your information. - Air Force Colonel (Legal branch) Enrique Montero Marx, Under-Secretary of the Interior.

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Annex XV

DECREEE-LAW NO. 2,346 OF 17 OCTOBER 1973

DECLARATION OF ILLEGALITY AND DISSOLUTION OF  
THE ORGANIZATIONS INDICATED

No. 2,346. Santiago, 17 October 1973.

Bearing in mind the provisions of Decree-Laws Nos. 1, 77 and 128 of 1973, No. 527 of 1974 and No. 991 of 1976, and Constitutional Act No. 3 of 1976, and

Considering:

1. That it is the duty of the State to promote the harmonious integration of all sectors of the nation, for which purpose it must ensure that the intermediate associations operate within the area peculiar to their spheres of competence, and similarly that it is incumbent upon the State to protect all citizens against those activities which directly or indirectly tend to foment social antagonisms or doctrines that are subversive and contrary to the common good;
2. That the conduct of the organizations referred to in this Decree-Law and the actions of their leaders have revealed that these organizations are acting under foreign inspiration, since their activities and purposes substantially coincide with the principles and objectives of Marxist doctrine and, in short, they pursue aims that tend to disrupt the national community; and
3. That, in this manner, these organizations have repeatedly and seriously distorted the nature of their functions, to the extent that their existence and operation are incompatible with the need to preserve national unity;

The Government Junta of the Republic of Chile, acting in exercise of the Constituent Power, has resolved to enact the following Decree-Law:

Article 1. The following organizations shall be prohibited and shall accordingly be deemed to be illegal associations:

- (a) National Confederation of Agricultural and Indigenous Workers, Ranquil;
- (b) National Confederation of United Agricultural Workers (UOC);
- (c) National Confederation of Metalworkers' Unions (FIENSIMET);
- (d) Santiago Building Workers' Union;
- (e) National Textile and Garment Federation (FENATEX);
- (f) Federation of Workers in the Construction, Timber and Building Materials Industries (FIEMC);
- (g) National Federation of Mine Workers (FINM).

Article 2. The organizations referred to in the preceding article are consequently declared dissolved and their legal status in cases where it exists, is cancelled.

Article 3. In addition, any trade union bodies that are affiliated to the organizations referred to in the preceding article are hereby declared dissolved and their legal status, in cases where it exists, is cancelled.

Article 4. The assets of the aforesaid bodies shall be transferred to the State.

The assets covered by the preceding paragraph and the action to be taken with regard to these assets shall be announced by supreme decree of the Minister of the Interior.

To be registered in the Office of the Controller 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. - CESAR IZENDOZA DURAN, Director-General of the Carabineros. - General FERNANDO MATTHEI AUBEL, Commander-in-Chief of the Air Force. - Vice-Admiral ARTURO TRONCOSO DAROCH, Acting Commander-in-Chief of the Navy. - SERGIO FERNÁNDEZ FERNÁNDEZ Minister of the Interior.

I am sending you the above for your information.

- Air Force Colonel (Legal branch) Enrique Montero Marx, Under-Secretary of the Interior.

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Annex XVI

DECREE-LAW NO.2,347 OF 17 OCTOBER 1973

DECLARATION OF ILLEGALITY OF THE ASSOCIATIONS INDICATED

No.2,347. Santiago, 17 October 1973.

Bearing in mind the provisions of Decree-Laws Nos.1 and 128 of 1973, No.527 of 1974 and No.991 of 1976, and

Recognizing:

1. That there are persons and organizations which, without having legal status, undertake to represent sectors of workers vis-à-vis the authorities and public and private organizations; and
2. That these circumstances have given rise to situations of conflict which the Supreme Government can no longer continue to permit; accordingly,

The Government Junta of the Republic of Chile has resolved to enact the following Decree-Law:

Article 1. Any associations or groups of persons which undertake to represent sectors of workers without having legal status for this purpose, in accordance with labour legislation or ordinary law, as the case may be, are hereby declared contrary to public order and the security of the State, in conformity with the provisions of Constitutional Act No.1, article 1, No.9, fourth paragraph.

Any persons who infringe the provisions of the preceding paragraph shall be punished by medium-term imprisonment in the medium to maximum degrees.

The jurisdiction of, and procedures to be followed in, any proceedings to which the implementation of this Decree-Law may give rise shall be governed by the provisions set forth in Act No.12,927, Title VI, relating to the security of the State.

Such proceedings may be initiated only at the behest of, or upon an information laid by, the Minister of the Interior.

To be registered in the Office of the Controller 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. - CESAR MENDOZA DURAN, Director-General of the Carabineros. - General FERNANDO MATTHEI AUBEL, Commander-in-Chief of the Air Force. - Vice-Admiral ARTURO TRONCOSO DAROCH, Acting Commander-in-Chief of the Navy. - SERGIO FERNANDEZ FERNANDEZ, Minister of the Interior.

I am sending you the above for your information. - Air Force Colonel (Legal branch) Enrique Montero Marx, Under-Secretary of the Interior.

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Annex XVII

DECREE-LAW NO.2,376 OF 26 OCTOBER 1978

MINISTRY OF LABOUR AND SOCIAL SECURITY

OFFICE OF THE UNDER-SECRETARY FOR LABOUR

Reorganization of the governing bodies of workers' trade unions by means of elections and establishment of rules relating to trade union organizations

No.2,376. Santiago, 26 October 1978.

Bearing in mind the provisions of Decree-Laws Nos.1 and 128 of 1973, 527 of 1974 and 991 of 1976,

Considering:

1. That Decree-Law No.2,200 of 1 May 1973 eliminated all discrimination in employment and put an end to the former legal differentiation between categories of workers, but that the distinction between non-manual and manual workers for the purposes of the exercise of trade union rights was retained pending the preparation of appropriate legislation;
2. That it is the frequently repeated intention of the Supreme Government to promote and realize, as soon as permitted by the gradual achievement of the national goals, a new order regulating labour matters on the basis of social and labour harmony, in accordance with the principle of granting extensive freedom to all who participate in the economic process, without at the same time losing sight of the general common good;
3. That it is necessary for this purpose to reorganize and strengthen the worker's freedom to express his opinion on collective activities in the field of employment;
4. That the natural place for expression of the right to form and join trade unions is the place at which the worker performs his functions, because it is there that questions arise on which workers' organizations are expected to collaborate, free from extraneous influences or interferences which disturb normal labour relations;
5. That, when the Government Junta assumed the legislative power, a considerable number of intermediate bodies, including trade unions were embroiled in a serious and total distortion of the functions proper to them, encouraged by the demagogy of a corrupt political power and of leaders whose main objective was to bend to their will and destroy every social organization by imposing an official ideological discipline that was inflexible or subservient to the political power;
6. That, in view of this chaotic situation, the Supreme Government enacted provisions for filling the vacancies in trade unions so as to permit the normal progress of their activities, such vacancies to be filled on the basis of objective and impartial machinery taking into account the length of a worker's service in the enterprise or activity; and,

7. That the circumstances now prevailing in the country make it possible to speed up the process of normalization of trade union activity by a gradual reorganization of trade union governing bodies by means of genuinely free elections:

The Government Junta of the Republic of Chile has resolved to enact the following Decree-Law:

Article 1. Workers shall be ensured the widest possible freedom to join trade unions existing at the establishment, place of work or enterprise in which they are employed.

The decision to join or resign from a union shall be personal, free, and voluntary and may not be delegated.

The worker may join only a trade union which consists exclusively of workers at the place of work or establishment in which he is employed. If there is no trade union at the said place of work or establishment, he may join the trade union of the enterprise concerned, provided that the enterprise has its head office in the province in which the worker performs his functions.

Article 2. With effect from the date of publication of this law, all industrial and professional trade unions consisting solely of workers at one and the same place of work, establishment or enterprise shall be deemed to be constituted as workers' trade unions.

Accordingly, all persons who are bound to the employer by a contract of employment of indefinite duration and who are employed at the same place of work or establishment may join the unions, and no restrictions or prohibitions on membership may be imposed on grounds of the predominance of physical or intellectual effort in the work performed in fulfilment of the contract.

Every trade union covered by this article shall be known as a "workers' trade union", to which designation shall be added the name of the place of work, establishment, enterprise or activity in the enterprise concerned, and also a number depending on the date on which a union acquired legal personality in accordance with the regulations, in cases where there are two or more unions.

Article 3. Workers' trade unions shall be directed by a governing body consisting of three persons. This rule shall not apply to trade union organizations in State enterprises.

In future, workers' trade unions may be formed in public or private enterprises only after a period of two years has elapsed since commencement of operations at the place of work, establishment or enterprise, as the case may be.

The organization of a workers' trade union must be agreed to by more than 30 per cent of the total number of permanent workers in the place of work, activity, establishment or enterprise as the case may be. In any case, this percentage shall not be fewer than 25 permanent workers.

The rule set forth in article 402 of the Labour Code shall, with respect to trade unions that may be constituted in the future, be applied as soon as the number of members falls below 25 permanent workers or is less than the percentage mentioned in the preceding paragraph.

Article 4. Article 376 of the Labour Code shall be replaced by the following text:

"Article 376. In order to be a trade union official, a person must:

- (a) Be at least 21 years old;
- (b) Be of Chilean nationality. Nevertheless, aliens whose spouses are of Chilean nationality and aliens who have been resident in the country for more than five years - incidental absences being discounted for this purpose - may be officials of unions;
- (c) Not have been convicted of and not be currently charged with a crime or offence;
- (d) Be able to read and write;
- (e) Have served continuously for at least five years in the enterprise; however, if the enterprise has been in operation for less than five years, this requirement shall be deemed to be satisfied by workers who have worked in it since it started operations or, if there are none, by workers with at least two years' uninterrupted service; and,
- (f) Not have engaged in party political activities, not have been a militant member of a political party, not have applied for a post of people's representative or any other type of representative of a political party in the 10 years before becoming a trade union official, and not engage in any of these activities while holding office.

Failure to comply with any of these requirements while holding office shall constitute grounds for disqualification."

Article 5. It shall be the duty of the Department of Labour to ensure that the requirements set forth in article 376 of the Labour Code are complied with at all times.

The Director of Labour shall, ex officio, consider and resolve all questions relating to compliance with the requirements of article 376, subparagraph (f), of the Labour Code and arising at the time when a person is about to take office in a trade union or during his tenure thereof. Such questions shall be considered in accordance with the procedure established in the regulations, and the person concerned may appeal against the decision only to the court having jurisdiction in labour matters in the place where the trade union concerned has its head office. The time-limit for lodging an appeal shall be five days from the date of notification of the Director's decision.

The court shall give priority to the appeal proceedings; it shall request a report from the Director of Labour who shall provide it within a period of 15 days. Once this period has elapsed, the court shall take a decision on the appeal within 15 days, and shall base its decision solely on the facts alleged by the appellant and on the report of the Director of Labour.

When such cases are heard before the ordinary courts, there shall be no oral pleadings and the court shall assess the evidence as it thinks fit.

Article 6. Before taking office as a trade union official, a trade union member shall take the following oath in the presence of the labour inspector concerned:

"I swear that I comply with the requirements prescribed by law for holding office as a trade union official, that I do not participate and will not participate in any political activity or movement while I hold office, that I shall not attempt to politicize trade union organizations, or distort their aims, or serve as an instrument for that purpose, and that my sole aim shall be faithfully to represent member workers".

The text of the oath shall be prepared in two copies which shall be signed by the trade union official and the labour inspector in whose presence the oath has been taken. One copy shall be kept in the labour inspectorate and the other in the archives of the trade union concerned.

Article 7. Governing bodies of trade union organizations which fail to submit by the due date the economic, financial, accounting or property data required by law or regulation shall, for this reason alone, cease to exercise their functions unless there is supporting evidence, which is accepted by the Department of Labour, showing good reason for the delay. In this case, the Department of Labour shall allow a period of grace of not less than 60 days for complying with the requirements of the laws and regulations, with the warning that the relevant authority will otherwise be requested to dissolve the trade union that has infringed the regulations. If this requirement is not met within the time-limit, which may not exceed 90 days, the legal personality of the organization may be cancelled.

Article 8. Professional trade unions other than those referred to in article 2 of this law may not pay ordinary or extraordinary contributions or subscriptions to trade union meetings, associations, federations or confederations. This rule shall apply to the workers' trade unions referred to in article 2 above, but shall not affect the dues established with respect to a federation of trade unions whose members consist exclusively of workers at the same place of work, establishment or enterprise.

Article 9. Employers shall not deduct from the remuneration of workers the subscriptions which the latter pay to trade unions or trade union organizations of workers outside the enterprise.

Article 10. In enterprises where the number of permanent workers is sufficient to permit the establishment of a trade union, pursuant to the provisions of article 3 of this law, workers may not join any trade union organization of workers outside the enterprise.

Article 11. In order to participate in future ordinary trade union elections, a worker must have been a member of the trade union for at least two years. However, workers who voted in the most recent election of another trade union of workers in the same enterprise may not vote in the first ordinary election of their new union.

Article 12. Within a period of one year from the date of publication of this law, rules will be issued regulating the trade union system, establishing the structure of trade union organizations, and containing provisions relating to their constitution, purposes, property, operation and dissolution and other provisions relating to the right to form and join trade unions and to the exercise of that right.



#### MISCELLANEOUS PROVISIONS

Article 13. Subscriptions paid by public officials to associations, unions or any other guild-type bodies to which they belong may not be deducted from their remuneration provided that such organizations are not of a trade union nature.

Article 14. Every rule contrary to or incompatible with the present law is hereby repealed, with the exception of rules relating to organizations of maritime workers and workers in the major copper mines to which the provisions of articles 4, 5, 6 and 7 and of transitional article 3 of this law shall in any case apply.

#### TRANSITIONAL PROVISIONS

Transitional article 1. The President of the Republic is hereby empowered to order the reorganization of the governing bodies of the trade unions referred to in article 2 of this law, by means of elections by direct, personal and secret ballot. The supreme decree shall indicate the trade unions whose governing bodies are to be reorganized, the date of the elections and the rules and procedures to which they are to be subject and such other administrative provisions as may be necessary for holding the elections.

Transitional article 2. The trade union elections referred to in the preceding article shall be governed by the following rules:

(1) All members of the trade union who satisfy the requirements prescribed in article 376 of the Labour Code shall be candidates. Accordingly, nominations of candidates for election to offices in trade unions shall not be permissible;

(2) Each worker member shall have two votes which may not be cast for the same person;

(3) Those workers who, having satisfied the prescribed requirements, obtain the three highest total number of votes shall be declared elected;

(4) All permanent workers who are members of the trade union on polling day may vote in the elections. Any worker who votes in more than one trade union shall be liable to termination of his contract of employment without any compensation. The same penalty shall be imposed on any worker who commits or attempts to commit any type of fraudulent act aimed at distorting the normal and correct result of the election; and,

(5) The election shall be held in the presence of a labour inspector. For this purpose alone, the Director of Labour shall delegate to such municipal, provincial and regional authorities as he deems appropriate the power to confer the status of labour inspector on any public official, who shall have this status for the exclusive purpose of supervising and bearing witness to the elections with such powers as may be conferred on him by the decree of the President of the Republic who authorizes the election and by the Director of Labour.

Transitional article 3. Officials elected in accordance with the aforementioned rules shall remain in office for four years. As soon as they have taken the oath referred to in article 6 of this law, they shall decide among themselves who is to hold the offices of president, secretary and treasurer, and they shall communicate their decision to the labour inspectorate concerned within five days.

Transitional article 4. The trade union organizations referred to in the decree issued by the President of the Republic in accordance with transitional article 1 of this law shall certify, prior to commencement of collective bargaining regulated by rules promulgated for the purpose, that they have proceeded to reorganize their governing bodies in accordance with the provisions of this law and the aforementioned decree.

Transitional article 5. The supreme decree authorizing the trade union election shall specify a time-limit within which the election is to be held. If elections have not been held before this time-limit expires, the mandate of the governing body of the trade union shall be considered to have lapsed unless the elections have been delayed because of the absence of the authenticating officer (ministro de fe), by force majeure or by unforeseen circumstances accepted as such by the Director of Labour, in which case the reorganization procedure as specified in the aforementioned decree shall be followed.

Transitional article 6. In the case of future workers' trades unions of the type referred to in article 2 of this law, the provisional governing body shall be appointed in accordance with the provisions of Decree-Law No.193 of 1973. As soon as such unions have obtained legal personality, they must request the Ministry of Labour and Social Security to issue a supreme decree authorizing the appointment of the definitive governing body by means of elections.

Transitional article 7. The workers who obtain the three highest total numbers of votes in the elections and who satisfy the requirements specified in article 376 of the Labour Code shall acquire the status of trade union official as soon as they take the oath referred to in article 6 of this law.

The oath must be taken within 30 days of the elections. If the oath has not been taken before the aforementioned time-limit expires, the office shall be regarded as vacant and steps shall be taken to fill it in accordance with the provisions of the following paragraph.

Vacancies arising for any reason in offices of governing bodies that are filled by election shall be filled only for the unexpired period of the mandate of the person being replaced in accordance with the provisions of Decree-Law No.193 of 1973.

Transitional article 8. Existing officials of trade union organizations whose offices are not affected by the reorganization provided for in this law, or officials of labour or guild-type associations in the public or private sector, with no exceptions whatsoever, shall within 30 days of the publication of this law make a sworn statement before a notary that they are not participating in any political activity or movement, that they do not intend to participate in such activities or movements while they hold office, that they will not attempt to politicize the organizations and distort their aims, that they will not serve as instruments for that purpose and that their sole aim will be faithfully to represent the members.

Officials who do not comply with the requirement prescribed in the preceding paragraph within the specified time-limit shall automatically be removed from office, and the vacancies shall be filled in accordance with the laws in force.

The provisions of the second, third and fourth paragraphs of article 5 of this law shall apply to officials of trade union organizations who commit perjury or fail to abide by their oath when in office; the penalty of immediate removal

from office, against which there shall be no appeal, shall be applied to officials of other labour or guild-type organizations by the authority responsible for filling the vacancies.

Transitional article 9. The Director of Labour shall have the widest possible powers to settle any doubt or difficulty that may arise in connexion with the election and with the application of this law, for which purpose he may issue such instructions and decisions as may be necessary.

Transitional article 10. Any person who attempts to interfere with the normal course of the elections or to obstruct the elections or the procedures preceding or following them shall be liable to imprisonment or penal servitude in the minimum or medium degree.

The employer shall collaborate in the conduct of the election and shall, in particular, be obliged to provide the authenticating officer with a list of names of the staff who are members of trades unions, with suitable premises for voting, with private rooms or locked places that can serve as such, with urns, padlocks and keys, with ballot papers in a number equivalent to the membership of each organization plus 30 per cent, and with pencils, sealing wax and such other equipment as the decree of the President of the Republic or the instructions of the Director of Labour may describe as necessary for the election.

All the material equipment supplied by the employer which does not bear witness to the election and its results shall be returned to him by the authenticating officer after the voting has been concluded and the votes counted and recorded.

Transitional article 11. Persons whose mandates have been extended or who have been nominated under the provisions of Decree-Law No.198 of 1973 may not be nominated for the post of trade union official in the elections referred to in these transitional provisions.

The provisions of the preceding paragraph shall remain in force for five years only following the publication of this law.

To be registered in the Office of the Controller General of the Republic, to be published in the Diario Oficial and to be inserted in the Official Digest of the said office. - AUGUSTO PINOCHEZ UGARTE, General of the Army, President of the Republic. - CESAR MENDOZA DURAN, Director-General of the Carabineros. - General FERNANDO MATTHEI AUBEL, Commander-in-Chief of the Chilean Air Force. - Vice-Admiral ARTURO TRONCOSO DAROCH, Acting Commander-in-Chief of the Navy. - VASCO COSTA RAMIREZ, Minister of Labour and Social Security.

Transmitted for your information.

(Signed) Juan Raúl Ventura-Junca

Annex XVIII

DECLARATION AND DOCUMENTS RELATING TO TRADE UNION RIGHTS  
(January 1979)

A. Statement by a Chilean trade union leader

The Chilean trade union federations dissolved by decree-law enacted by the Government Military Junta in October 1978 are appearing before the United Nations Ad Hoc Working Group to report on developments concerning trade union matters since September 1978.

On 6 September 1978, the National Trade Union Co-ordinating Committee, the United Workers' Front and the Confederation of Private Employees of Chile submitted to the Government a document on trade union questions entitled "The Workers and the Present and Future of Chile", in which they expressed their concern regarding the trade union, economic, social, employment and institutional policy of the Military Junta.

The Government's reply took the form of a brutal suppression of the workers' organizations. Invoking the Constituent Power, the Military Junta enacted three decree-laws which seriously affected the trade union activities of Chilean workers.

Decree-Law No. 2,345 conferred extraordinary powers on the Minister of the Interior to dismiss any official from the public administration, regardless of his capacity and whether or not he enjoys trade union privileges.

Further, Decree-Law No. 2,346 dissolved seven national trade union federations and confederations and 530 local trade unions. The national organizations which are affected are the National Federation of Mine Workers, the National Textile and Garment Federation, the Federation of Workers in the Construction, Timber and Building Materials Industries, the National Confederation of Metalworkers' Unions, the Ranquil National Confederation of Agricultural and Indigenous Workers, the National Confederation of United Agricultural Workers and the Santiago Building Workers' Union. Thus, over 500,000 workers were deprived of a trade union organization.

This measure, which declared the workers' trade union organizations to be illegal, also involved the transfer to the State of all the assets of those organizations.

On 19 October 1978, at 8.30 p.m. when the Minister of the Interior was announcing these measures to the population on the national television and radio network, persons in uniform and in plain clothes were at the same time proceeding, without any court order, to search trade union premises and confiscate the assets of the workers. Persons who happened to be on the premises were arrested; they were harassed, humiliated, photographed and questioned for eight hours and then released. They included Luis Letelier and Rolando Olivares, trade union officials of the National Federation of Metalworkers' Unions.

Decree-Law No. 2,346 also disrupted the normal operation of professional trade unions and the national trade union federations to which the trade unions in enterprises are subordinate and which were maintained by the contributions of Chilean workers for the purpose of resisting the powerful organizations of employers. This Decree-Law prohibits workers from contributing to organizations not directly related to their enterprise and accordingly weakens the Chilean trade union movement.

The third decree-law enacted by the Government against the workers is Decree-Law No. 2,347 which prescribes medium-term imprisonment in the medium to maximum degrees for any person, group or association which undertakes to represent sectors of workers without having legal status, since this is deemed to be contrary to public order and the security of the State.

This decree-law which imposes penal sanctions for the just and legitimate activities of workers has impeded the possibilities of trade union organization in Chile, and gives the Government absolute discretion to decide whether an organization represents the workers or not.

We wish to state that the former DINA, now known as the National Information Agency (CNI), has taken part in all these anti-trade union activities promoted by the present régime. This is obvious, for instance, from confidential communication No.126, of December 1978, addressed by the Minister of Transport and Telecommunications to the Minister of the Interior (see C below). This communication reports the dismissal of various workers, including Mr. Ernesto Vogel, the ex-Vice-President of CUT (Single Federation of Workers of Chile), a former trade union official, an opponent of the Government of Popular Unity and a well-known figure in the Christian labour organizations of Chile. The document shows how ideological discrimination is practised in respect of officials and workers who do not support the régime and how the DINA-CNI continues to be fully active.

In these circumstances, on 31 October, the Government organized trade union elections.

The new officials were elected in a clumsily falsified electoral process devised to impose selected persons who represented the views of the employers and official circles. It was forbidden to submit lists of candidates or to express an opposition to the elections which were conducted in the presence of the uniformed police, armed with machine guns, and civilians belonging to the CNI. The employers were also present at the polls and they decided which workers could be elected.

In the notice announcing the elections, certain prohibitions were established. For instance, no trade union official could be re-elected, and any person who "has been actively engaged in party political activities, has been a militant member of a political party, or who has been a candidate for the posts of people's representative or any other type of representative of a political party in the last 10 years" was disqualified from representing the workers.

It was established that the newly elected officials will not be able to hold dissenting opinions on any aspect of the Military Government's policy. The personal history of each of them was studied and they were compelled to take the following oath:

"I swear that I do not participate and will not participate in any political activity or movement while I hold office, that I shall not attempt to politicize trade union organizations, or serve as an instrument for that purpose ...".

This oath implies in effect total ideological submission, and is a gross violation of freedom of opinion. This affront to the workers even elicited a public statement by the Permanent Committee of the Episcopal Conference of Chile, which described the oath referred to in article 6 of Decree-Law No. 2,376 as discriminatory, unclear and unjust (see D below).

There has also been an escalation of repression against the trade union movement which has been manifested in various acts.

On 14 December 1978, a number of trade union organizations applied to the appropriate authority for permission to hold a public meeting in order to reply to the insults and slanders to which our organizations had been subjected by trade unionists representing the views of official circles. We were told that permission would not be granted to hold a meeting at 5 p.m. on the day in question and, consequently, many workers went to the rendezvous in the Plaza Pedro Aguirre Cerda in Santiago. On their arrival, the police proceeded to arrest over 70 men and women who were taken to the Sixth Police Station and beaten up and treated inhumanly.

Besides this escalation, there was the fire deliberately started on 8 January 1979 at the headquarters of the Triunfo Campesino Trade Union Confederation located at No. 17, calle Almirante Barroso in Santiago. Three days later, highly insulting statements concerning trade union officials were daubed in black paint on the facade of the National Association of Public Employees.

We also wish to draw attention in this statement to an occurrence which, as workers and Chileans, we feel in duty bound to mention. It concerns the discovery of two burial places containing the corpses of persons who had died recently; these burial places are located in the regions of Lonquén and Cuesta de Barriga. We have not the least doubt - and, furthermore, the opinions expressed by the Minister of the Interior and the Minister of Justice indicate - that the secret services of the Government were implicated in these mass killings.

For us, this macabre discovery recalls an era which we believed to belong to the past. If the inquiry reveals that even one of these corpses is that of a missing person, we should be faced with a hideous crime, a phenomenon which would lead us to believe in the commission of an act of genocide never before known in our country's history.

We hope that our report will evoke a response in the international community, so that the latter will continue to exert pressure on the Chilean authorities to re-establish complete respect for human rights in our country.

In conclusion, we appreciate the opportunity afforded to us to make a statement to the Ad Hoc Working Group on these events.

B. Letter addressed by the dissolved trade union organizations  
to the ILO Committee on Freedom of Association

Santiago, 17 November 1978.

The trade union associations signatories to this document report the following:

By Decree-Law No. 2,345 of 20 October 1978, the Government Military Junta of Chile, acting in exercise of the constituent power, proceeded to amend the Political Constitution of the State, to declare our organizations to be illegal associations, to cancel their legal personality and to confiscate their assets without compensation.

The dissolved organizations are:

- (1) The National Federation of Mine Workers (FINM), in actual existence since 28 February 1938, with 75 affiliated trade unions and 78,228 members;
- (2) The National Textile and Garment Federation (FENATEX), in actual existence since 7 September 1938, with 60,000 members;
- (3) The Federation of Workers in the Construction, Timber and Building Materials Industries (FIEMC) which dates from 7 November 1934 and has 185,000 worker members and 67 affiliated trade unions;
- (4) The National Confederation of Metalworkers' Unions (FENSIMET) in actual existence since 18 November 1922, with 18,000 members and 135 trade unions;
- (5) The Santiago Building Workers' Union, affiliated to the FIEMC;
- (6) The Rancuél National Confederation of Agricultural and Indigenous Workers, established on 8 May 1968, with 162,000 members and associating 27 provincial federations, 340 communal trade unions and 10,000 property committees and production units;
- (7) The National Confederation of United Agricultural Workers (UOC), set up on 22 December 1971, with 40,000 affiliated workers associated in 15 federations and 106 trade unions.

The Government has argued, in justification of this measure, that the dissolved trade union organizations constitute a danger to national security; and it is accordingly treating as a crime the political participation of workers in social affairs.

The trade union organizations which have been dissolved are, by their origin and conduct, the legitimate and continuing heirs of the work of the founders of the Chilean workers' movement, and have given ample proof of their fidelity in defending the interests of workers, employees and peasants.

To the members of the Committee on Freedom  
of Association,  
ILO,  
Geneva,  
Switzerland.

The majority of these organizations have been in existence and have engaged in trade union activities for thirty years or more.

Our organizations have sought all the remedies available under the legislation in force in order to defend their existence and freedom and will continue to do so. Seven applications for protection have been lodged with the Court of Appeals of Santiago, whose findings are awaited.

One of our main concerns relates to the expropriation of our assets. Despite the public statements by the Minister of Labour that they are to be returned, the law has not been repealed and the assets remain in the hands of the authorities.

Further, we wish to state that it is our firm and unanimous decision to continue to fight for our legitimate right to represent and speak on behalf of the workers, to have a free and autonomous existence, and to express our views independently and publicly. All these rights are accepted unanimously in international instruments.

The violation of these rights is an extremely serious offence against trade union freedom, and is completely contrary to the right of association, the right to form trade unions, the right to equality before the law and the right to own property; consequently, we bring these matters to the attention of the International Labour Organisation so that it may decide that they should be one of the questions to be discussed at the next conference and assembly, for the purposes for which the Organization was set up to pursue.

Yours truly,

(Signed)

RIGOBERTO CONTRERAS,  
SECRETARY,  
FINM

MANUEL BUSTOS,  
VICE-PRESIDENT,  
FENATEX

JUAN CASTILLO,  
SECRETARY,  
FIEMC

JUAN M. SEPÚLVEDA,  
VICE-PRESIDENT,  
FENSIMET

LUIS BECERRA,  
TREASURER,  
SANTIAGO BUILDING WORKERS' UNION

RENE TELLO,  
VICE-PRESIDENT,  
RANQUIL CONFEDERATION

ALAMIRO GUZMAN,  
PRESIDENT,  
FINM

FERNANDO BOBADILLA,  
PRESIDENT,  
FENATEX

HECTOR H. CUEVAS,  
PRESIDENT,  
FIEMC

RICARDO LECAROS,  
PRESIDENT,  
FENSIMET

ISMAEL LAZO,  
PRESIDENT,  
SANTIAGO BUILDING WORKERS' UNION

CARLOS OPAZO,  
SECRETARY-GENERAL,  
RANQUIL CONFEDERATION



RAUL ARAVINA,  
CENTRAL SECRETARY,  
UOC CONFEDERATION

CARLOS MORALES,  
PRESIDENT,  
UOC CONFEDERATION

Copies to: United Nations Commission on Human Rights  
W.C.L., W.F.T.U., I.C.F.T.U.  
Dissolved organizations

C. Communication from the Minister of Transport and Telecommunications  
to the Minister of the Interior

REPUBLIC OF CHILE

MINISTRY OF TRANSPORT AND TELECOMMUNICATIONS

CONFIDENTIAL

CONFIDENTIAL COMMUNICATION No. 126

Rcf. CN1 communications 1976-1977, 1978

Subject: Report on staff working under  
the control of this Ministry and  
in the transport sector

Santiago, 21 December 1978

From: The Minister of Transport and Telecommunications

To: The Minister of the Interior

1. With regard to the list of officials and their personal histories transmitted to this Ministry for evaluation in connexion with the proposal concerning the dismissal of staff as referred to in article 5 of Decree-Law No. 2,345, I wish to communicate the following information concerning the reports submitted by the various authorities:

State Railways

Santiago Santa Cruz Fernández: The documents concerning his retirement are being processed. He is on official leave. He will not return to the Company.

Juan Eulogio Contreras Ariza: Is at present the subject of an administrative inquiry. When the inquiry has been concluded, his future will be settled.

Ernesto Vogel Rodríguez: The Minister of the Interior will be requested to propose to the President of the Republic that this person should be dismissed from the Company, under the powers conferred by article 5 of Decree-Law No. 2,345 of 17 October 1978. In any case, steps must be taken to prevent this official from becoming active at the headquarters of the Retired Railwaymen's Association where, in the absence of any type of control, he will certainly be able to do more harm than in his present situation. His present and future status is being studied.

Ivan Robles Pantoja, Jorge Araneda Vergara, Jorge Osvaldo Riveros Pérez and Carlos Muscatt Carrido: These four officials will remain with the Company in order not to create a problem in its operations, and since they are not trade union officials. For this reason, it would seem unnecessary for the Supreme Government to assume responsibility for their removal; they will be eased out gradually, under the arrangements being made by the Company for cutting down staff.

Jorge Miguel Poblete: He is no longer an official of the Company and is at present in prison.

National Airline (IAN)

Jaime Amunategui Silva: Has left the Company.

Adrián Aros Cataldo: Separated from the Company since 30 May 1977, under Order No. 49 of 1 July 1977. Statutory provision: article 2, No. 10, of Act No. 16,455. Operational requirements of the Company.

Arturo Ebnor Barrera: Separated from the Company since 11 August 1978 under Order No. 93 of 6 November 1978. Statutory provision: article 2, No. 11, Act No. 16,455. Serious breach of contract.

Jorge Hofer Orrego: Separated from the Company since 15 April 1977, under Order No. 41 of 17 May 1977. Statutory provision: article 2, No. 10 of Act No. 16,455. Operational requirements of the Company.

Ana Maria Jensen Haupt: Separated from the Company since 16 August 1978 under Order No. 67 of 29 August 1978. Statutory provision: article 2, No. 10 of Act No. 16,455. Operational requirements of the Company.

Sergio Sepúlveda Ruiz: Separated from the Company since 11 August 1978 under Order No. 92 of 6 November 1978. Statutory provision: article 2, No. 11 of Act No. 16,455. Serious breach of contract.

Enrique Celodón Lagos: Separated from the Company since 28 November 1978. Statutory provision: article 2, No. 10 of Act No. 16,455. Operational requirements of the Company.

Gladys del Jesus Martínez Vera: Separated from the Company since 28 November 1978. Statutory provision: article 2, No. 10 of Act No. 16,455. Operational requirements of the Company.

Alejandro Benocio Pérez Salas: Separated from the Company since 28 November 1978. Statutory provision: article 2, No. 10 of Act No. 16,455. Operational requirements of the Company.

Pedro Araya Díaz-Valdez: His situation in the Company is being studied with a view to taking action under article 5 of Decree-Law No. 2,345 of 17 October 1978, issued by the Ministry of the Interior.

Patricio Zaror Zaror: No record. According to information provided by IAN, (communication No. 284 - Office of the Chairman, 20 December 1978), it is felt that he should be retained in service.

Rosa Exilda Azar Cortez: Action will be taken when her maternity leave has ended.

Clodomiro Rodríguez Labraña: According to information provided by IAN (communication No. 284 - Office of the Chairman, 20 December 1978), the charges made against him are highly subjective, since no formal or responsible complaint was made at the appropriate time. The information provided also indicates that the Security Unit has asked that he should not be included in any forthcoming cuts in staff.

Post and Telegraph

José Caterpilla Chaura, Luis Galvez Vallejos, Froilan Elizalde García, María Josefina González Bustos and Julian Cárdenas González: With communication No. 163 (CONF) of 15 December 1978, the Director of the Postal Service enclosed information on the files of these five officials and indicated that appropriate measures will be taken, depending on the job performance of each of the persons involved, who are under constant watch.

Juan Puig Venegas: Resigned on 1 May 1976.

Guillermo Sepúlvera Zapata: Resigned on 1 December 1973.

Colia del Carmen Fernández Fuentes: Resigned in 1976.

Raúl Díaz Moyano: Resigned on 3 October 1977.

Guido Poblote Bahonondes: Resigned on 30 December 1976.

Fernando Gallegos Ravanal: Resigned in 1976.

State Collective Transport Authority

Mario Ross Junemann: Ship's captain (R). Further information is requested so that an inquiry into the charges brought against him may be conducted as quickly as possible.

2. This is the information concerning the list and the purposes for which it might be used.

Yours faithfully,  
(signed): José Luis Federici Rojas

D. Statement by the Permanent Committee of the Episcopal Conference of Chile concerning the oath referred to in Article 6 of Decree-Law No. 2,376

Having been consulted by various trade union leaders concerning their problems of conscience arising from the obligation to take an oath before assuming their posts, the Permanent Committee has agreed to make the following statement:

1. An oath is customarily understood to be a religious act of a sacred nature, which presupposes faith and in which there is an explicit reference to God as witness of the truth.

This is not the case with the oath mentioned in the article we have studied. It may therefore be considered simply as a promise.

2. In view of the sacred nature of an oath, it should not be used in vain (Cf. Matthew 5, 33-37). In this case, adequate grounds are not seen to exist for requiring an oath.

3. To require that trade union officials alone should take this oath appears to be discriminatory, since the same requirement does not exist for persons occupying posts of equal or greater responsibility, such as leaders of employers' associations, or senior government officials - ministers, ambassadors and so forth.

4. The content of the oath is not sufficiently clear. The words "political activity" may be, and in fact are, interpreted in different ways by different people and in different circumstances.

5. To "participate in political activity" is a right and a duty of every citizen. It does not seem legitimate to require that a trade union official should swear to refrain from something which is both legitimate and good when there is no adequate ground for so doing.

6. It is not legitimate to require an oath which might be used against the person who takes it.

The just interests of the workers whom the trade union official must serve may lead him to take steps which he will determine in accordance with his conscience, but which the authorities may consider not to be in keeping with the oath he has taken and thus to be grounds for punishment.

7. Finally, we consider that for the common good of his fellow workers, and despite all these objections, a trade union official may take the required oath and consider it simply as a promise, without prejudice to his rights of conscience and his duty to act in accordance with its dictates.

The Permanent Committee of the Episcopal Conference of Chile - 9 November 1978.

Annex XIX

EXTRACT FROM AN ARTICLE ENTITLED "CHILE'S ECONOMIC SUCCESS  
FROM THE WORKING MAN'S POINT OF VIEW. REAL WAGE LEVELS  
IN 1978" BY JOSE ALDUNATE, S.J., PUBLISHED IN THE REVIEW  
MENSAJE, No. 25, DECEMBER 1978

Cost of living: September 1977 and September 1978

According to the consumer price index there has been a 36.6 per cent increase in the cost of living during the past 12 months from September to September. It is this figure which has been used to calculate wage adjustments. The widely consumed products whose prices we have recorded and which Chilean workers have had to buy show a considerably greater increase. Table No. 1 indicates prices per unit of sale (kilo, litre, etc.) and the last two columns show the daily expenditure which would be incurred on each product in the two years indicated. The table as a whole gives a balanced picture of the increase in expenditure entailed by the purchase of these items in a family shopping basket.

Table 1. Prices and cost of living, September 1977 and September 1978

Item	Unit	Price Sept. 1977 (pesos)	Price Sept. 1978 (pesos)	Equivalent consumption	Daily expenditure 1977	Daily expenditure 1978
Bread	kg	8.10	14.80	1.5 kg	12.15	22.20
Sugar	kg	11.10	15.80	0.2 kg	2.22	3.16
Oil	litre	26.90	42.70	1/10 litre	2.69	4.27
Milk	litre	6.50	12.00	1 litre	6.50	12.00
Rice	kg	10.70	22.80	1/4 kg	2.68	5.70
Potatoes	kg	4.50	8.00	1/2 kg	2.25	4.00
Beans	kg	10.40	13.00	1/4 kg	2.60	3.25
Pasta (Carozzi)	kg	16.26	26.90	1/4 kg	4.07	6.73
Onions	kg	16.00	9.00	1/4 kg	4.00	2.25
Eggs, best quality white	one	1.65	2.30	3 units	4.95	6.90
Chicken	kg	49.70	66.00	1 kg weekly	7.10	9.43
Fish	kg	21.00	28.00	2 kg weekly	6.00	8.00
Tea	1/4 kg	14.30	18.50	1/4 kg "	2.04	2.64
Detergent	Packet	10.10	13.20	One weekly	1.44	1.89
Medium-sized packet of Omo	300 g			One weekly		
Lux soap, medium-size	one	13.80	16.00	One weekly	1.97	2.29
Light	kW/hour	1.27	1.54	2	2.54	3.08
Gas	Cylinder 15 kg	68.40	128.50	One monthly	2.28	4.28
Kerosene	litre	4.10	6.50	3/4 litre	3.08	4.87
Transport	bus fare	2.00	3.00	2 trips	4.00	6.00
Total daily expenditure					74.56	112.94

COST OF BASKET, 1977: 74.56 pesos per day

COST OF BASKET, 1978: 112.94 pesos per day

INCREASE IN THE COST OF THE BASKET, September 1977-September 1978: 51.48 per cent.

The cost of these basic products taken as a whole has increased by about 51.48 per cent during the past 12 months. Over the same period the general consumer price index has risen by 36.6 per cent, while the consumer price index for food products has risen by 32.7 per cent.

The difference which has arisen this year between the index we have obtained and the general index is striking. It is all the more striking since the differences between the two indexes have been negligible in the past two years. Furthermore, the current disparity shown by the table confirms the very widespread impression among Chilean workers that this year's consumer price index does not reflect the actual increase in their cost of living. So strong is this impression that trade-union organizations such as the Chilean Confederation of Employees in the Private Sector have devised their own consumer price index on the basis of essential products.

Whatever the explanation for it, this disparity jeopardizes wage-earners. The reason is obvious: under the present system, wages are adjusted in accordance with the official consumer price index, even though over the period in question the increase in the cost of the most basic products which wage-earners have to buy has been greater than the increase in the index.

Bread is a case in point. The price of this product, which is widely consumed by workers and their families, was fixed at 8.10 pesos per kilo in September 1977. As from 26 October the price of bread was liberalized. The economic theoreticians predicted that competition would be more beneficial for the public and would maintain the price of bread at its previous level. Quite clearly, however, the level reached by the price of bread was not exactly the level wanted by the general public. The price of bread soared and by September 1978 it had reached about 14.80 pesos per kilo, which meant that it had risen by some 82.7 per cent. So a worker who could buy 12 kilos of bread with two days' wages (100 pesos) in 1977 can now buy only 9 kilos of bread with two days' wages, which have supposedly been adjusted in accordance with the consumer price index (136.60 pesos). His wages will thus have decreased by 25 per cent in terms of the amount of bread he is able to buy. These considerations lead us to a study of the income of a worker with four dependants.

#### Workers' incomes. September 1977 and September 1978

As we have stated, a system of automatic wage adjustments is used to compensate for cost-of-living increases. As from last year, adjustments have been made three times a year - in March, July and December, in accordance with the cost of living increases during the preceding months as reflected in the consumer price index. However, under Decree Law No. 2,072 in January of this year a special adjustment was applied to minimum earnings and raised them to 2,000 pesos. As a result of this special adjustment, the total earnings of a working-class family increased by some 12.9 per cent in relation to its earnings in December.

Table 2 shows the relevant data:

Table 2. Workers' incomes and adjustments

	September 1977 (pesos)	December adjustment 18% (pesos)	Jan. 1978 special adjustment (pesos)	March adjustment 8% (pesos)	July-Sept. adjustment 10% (pesos)	Adjustment over 12-month period
Minimum income	1 411.37	1 665.42	2 000 (20.1% more than in December)	2 160	2 376	68.35
Family allowances for four dependants	525.56	620.16		669.77	736.72	40.18
Other allowances	260.60	307.51		332.11	365.31	40.18
Total income	2 197.53	2 593.09	2 927.67 (12.9% more than in December)	3 161.9	3 478.03	58.27
Daily income	73.25				115.93	

Our workers' income has thus increased from 2,197.53 pesos in September 1977 (73.25 pesos per day) to 3,478.03 pesos in September 1978 (115.93 pesos per day). This represents an increase of approximately 58.27 per cent.

It is interesting to note that, had it not been for the special cost-of-living adjustment decreed in January, the automatic adjustments would have led to an increase in incomes of only 40.18 per cent, i.e. slightly higher than the increase in the cost of living according to the consumer price index, but considerably lower than the real increase in the cost of living.

With regard to the situation of a worker earning a minimum wage, table 3 shows the relationship between the increase in his daily expenditure and the increase in his daily income over the 12-month period.

Table 3. Comparative table: expenditure and income in September

	September 1977 (pesos)	September 1978 (pesos)	Increase
Price of basket	74.56	112.94	51.48%
Daily family income	73.25	115.93	58.27%

Increase in the purchasing power of the daily income: 4.48 per cent.



In the 12 months between September 1977 and September 1978, our worker's family income has increased slightly more than family expenditure on the products in the basket. The increase in the purchasing power of his income amounts to approximately 4.48 per cent.

General level in 1978 as compared with 1977.

So far this study has simply described the relative situation of the average worker in September 1977 and September 1978. We have seen (on the basis of our survey) that his purchasing power has increased by about 4.48 per cent. A projection for 1978 as a whole could now be made to see whether there will be an over-all improvement compared with 1977 as a whole, and if so to what extent. In other words, what we wish to determine is whether this working-class family will have been able to buy more during the whole of this year than during the whole of 1977. For this purpose, our calculations will have to be based on the average expenditure and average income of the family in each of these years. We shall also have to make a projection of expenditure and income during the remaining months of 1978. <sup>3/</sup>

Table 4 shows the results of our calculation.

Table 4. Average cost of basket and average income

	1977 (pesos)	1978 (pesos)	Increase
Average cost of basket <sup>4/</sup>	68.14	105.86	55.36%
Average daily income <sup>5/</sup>	66.58	110.43	65.86%
Increase in purchasing power of average income from 1977 to 1978 ... 6.76%			

It can be seen that average income has increased from one year to the next by a slightly higher percentage (65.86 per cent) than expenditure on the list of items surveyed. The cost of these items has increased by about 55.36 per cent. Thus during the year as a whole there will have been a real, though limited, increase in purchasing power of about 6.76 per cent.

It is only natural that the situation for the whole of 1978 should have improved to a slightly greater extent than would seem to be indicated by a comparison of the months of September 1977 and September 1978. The benefit of the special adjustment granted in January has been felt throughout 1978.

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<sup>3/</sup> This study was prepared at the beginning of November. For the purposes of the study, we have assumed the following variations in the consumer price index: for November, 1; for December, 2. Hence, the variation for the whole of 1978 would be 30.7 per cent and the average would be 40.1 per cent. The December adjustment would amount to about 11 per cent.

<sup>4/</sup> The average consumer price indexes for September have been used to calculate the "average cost" of the basket in each year.

<sup>5/</sup> This is the total income of a wage-earner, including allowances, divided by 360 days. Bonuses which are not part of wages have not been included and have in any case been reduced: 500 pesos in November 1977 and 736.72 pesos (allowance for four dependants) in September 1978. Furthermore, the proportional value of these bonuses is almost identical and the fact that they are not included does not alter the results of the calculation.

Some conclusions

(1) This year there has been a significant difference between the increase in the prices reflected in the general consumer price index (and in the consumer price index for food products) and that suggested by our sample, of widely-consumed basic products. In fact, in September, the variation in the general consumer price index over a 12-month period was 36.6 per cent, whereas the variation in the cost of our shopping basket was 51.5 per cent.

(2) It therefore follows that any calculation of this year's increase in real wage values, based as is usually the case on the consumer price index, will not be valid for those persons who spend practically all their income on widely consumed products such as those covered by this study. 6/

(3) The real income of a worker earning a minimum wage in 1978 as a whole will have increased by about 6.8 per cent in relation to 1977. (In September 1978 the increase over September 1977 was 4.5 per cent.)

This 6.8 per cent increase added cumulatively to the 15 per cent recovered in 1977 represents an increase of 22.8 per cent over 1976. 7/

(4) What does this 22.8 per cent increase over 1976 mean in terms of recovery of the purchasing power lost since 1973? A 22.8 per cent increase over 1976 means that 22.8 per cent of lost purchasing power has been regained. In fact, as we have stated, by 1976 the purchasing power of wages had fallen to half what it had been in 1972. In order to return to the 1972 level, therefore, they had to rise by about 100 per cent. In two years 22.8 per cent has been recovered and 77.2 per cent still remains to be recovered.

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6/ The following table illustrates the difference in evaluation of a worker's situation depending on whether the data from the consumer price index or the data from the shopping basket are taken as a point of reference. The figures given represent differences as between 1978 and 1977.

Increase in the average cost of living according to the consumer price index	40.1 per cent (estimate)
Increase in the average cost of living according to the shopping basket	55.4 per cent (estimate)
Increase in family income	65.9 per cent
Growth of purchasing power with reference to the consumer price index	18.4 per cent
Growth of purchasing power with reference to the shopping basket	6.8 per cent

7/ As we have seen, other recovery figures have been given: about 25 per cent in 1977 and about 13-15 per cent in 1978. These combined would give a recovery of about 41.2 per cent or 43.7 per cent for the two years. But these figures are based on other estimates and relate to the official data derived from the consumer price index. They do not reflect the real situation of the great majority of workers.



It therefore follows that without the special adjustment in January, the other adjustments would not have compensated for the increase in the cost of living. In other words, the workers would have lost about 5.5 per cent of their purchasing power. 2/

(6) It might be thought that those persons who have not been at the minimum income level and have not therefore benefited from the special adjustment have suffered a reduction in their power to purchase essential products this year. Their purchasing power would, in fact, have declined by about 5.5 per cent. However, this conclusion should be questioned or at least qualified, since the shopping basket used in this survey was not conceived with the middle sectors of society in mind.

In any case, a decline in living standards has definitely been experienced, as we have indicated, by huge sectors of office workers and many medium-level manual workers. This explains the mistrust which has been caused by the calculations based on the consumer price index.

(7) It should also be noted that even the large mass of workers who have received the minimum adjustment complain that their purchasing power has declined (expressed in terms of the high cost of living). This would appear to be due to the trend towards elimination of many benefits, subsidies, special rates and exemptions to which they were formerly entitled and which have now been merged, as it were, with the "minimum wage". For many people the "minimum wage" has thus become the "maximum wage".

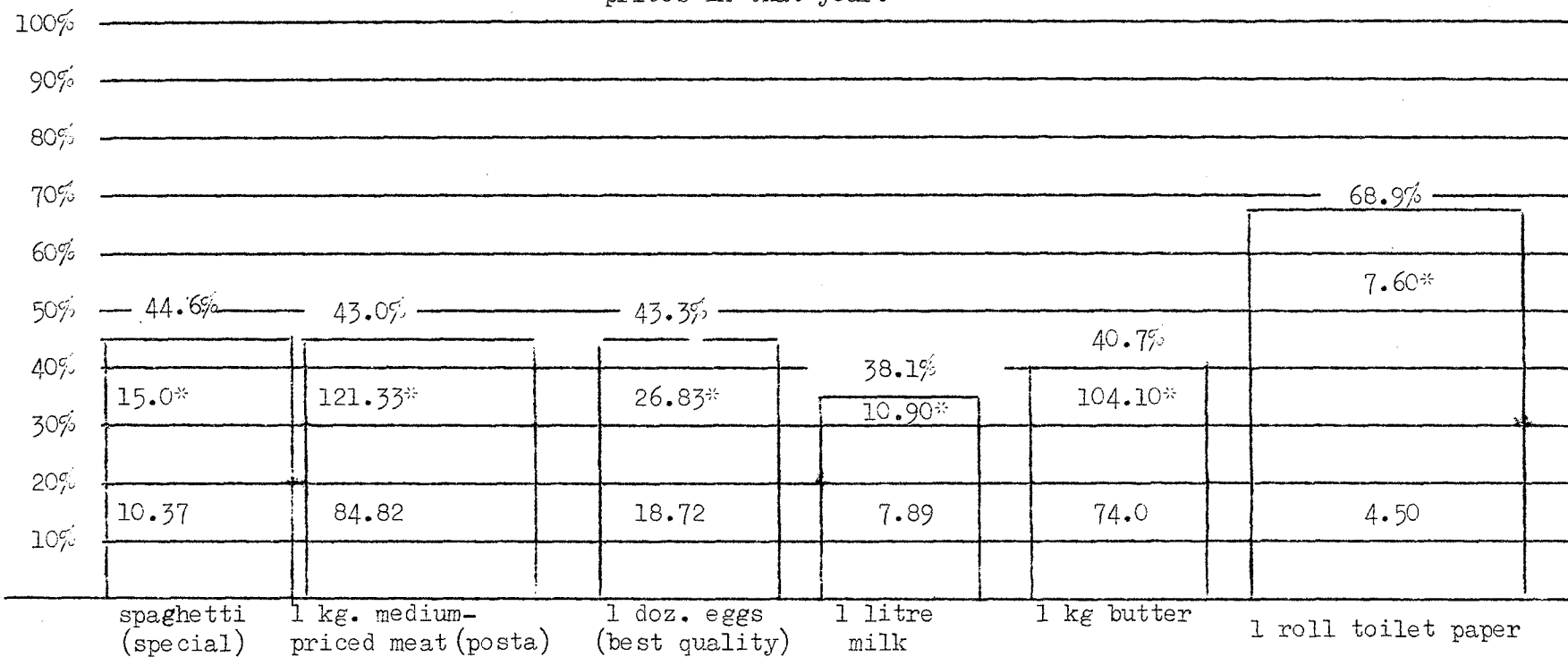
(8) What final conclusion can be drawn concerning the "success of our economic policy" from the standpoint of the recovery of the real values of wages? After listening to the Chilean workers and their wives who go out to fill their shopping baskets, we leave the answer to our readers.

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2/ It has therefore proved pointless to expect a substantial improvement in real wages through the system of automatic adjustments alone in a situation of decreasing inflation. That might have been feasible in the middle of 1975, but it was deliberately prevented when certain rules of the game were changed. The 1977 and 1978 increases are largely due to special adjustments. And any future contribution from this system will be insignificant. There will have to be substantial increases over and above the automatic adjustments if the wage-earner is to continue to recover all that he has lost in terms of living standards.



Source: Prices quoted for December 1977 are those recorded in that month by the National Institute of Statistics (INF). Those for December 1978 (marked with an asterisk) are the findings of a survey made by Manuel Delano, a Hoy reporter on the basis of observations in four Santiago supermarkets. Although it is not a statistical survey, it gives an idea of the changes in prices in that year.



December 1978 prices\*: Hoy survey

December 1977 prices: cost-of-living index figures.

Annex XXI

NOTE VERBALE DATED 31 JANUARY 1979 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 Chairman of the Ad Hoc Working Group on the Situation of Human Rights in Chile of the Commission on Human Rights and has the honour to refer to two questions which it has recently been asked, the first concerning any persons who may have been detained in July and August 1978, and the second concerning the duration of the state of siege in the Province of El Loa.

I. With regard to the first point, the Permanent Mission of Chile is in a position to state that the only arrests reported to have been made by the Security Services between 17 July and 31 August 1978 were those resulting from investigations concerning an attack on a taxibus by three men and one woman armed with a machine-gun and sawn-off fire-arms. This attack took place on 26 July 1978 and was witnessed by the driver of the vehicle, Daniel Rodríguez Herrera, and three passengers, as reported in the press (see the newspaper La Tercera de la Hora, 27 July 1978 - annex I). a/

It should be pointed out that after the attack, the taxibus had to be abandoned and was daubed with slogans referring to the Movement of the Revolutionary Left and the anniversary of the Cuban revolution, and slogans attacking the Government (see annex I). a/

On 17 August, there was a confrontation between extremists and security forces, as a result of which one member of the security forces was injured, three extremists were arrested and the other extremists involved managed to escape. This incident was also duly reported in the press (see La Tercera de la Hora, 18 August 1978, p. 25; El Cronista, 18 August 1978, p. 11; and Las Ultimas Noticias, 19 August 1978, p. 36 - annex II). a/

Of those who escaped only one was arrested (on 22 August 1978), but identikit pictures of the others were published for the purposes of their identification and arrest (see La Tercera de la Hora, 23 August 1978 - annex III). a/

The names of the persons arrested, who were handed over to the Office of the First Military Prosecutor on whose orders they had been arrested, are as follows:

Angel Antonio Sanhueza Garrido  
Jaime Enrique Sepulveda Astudillo  
Heriberto Manuel Mana Bastías  
Alfonso Ogaña Villafaña  
Fernando Enrique Bastías Silva  
Carlos Angel Silva Villegas  
Ricardo Gabriel Valenzuela Serrano

The first six were sent to the Office of the Prosecutor on 22 August 1978, and the seventh was sent on 24 August 1978 because he had been arrested some days later than the others.

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a/ In the files of the Group.

Lastly, it should be emphasized not only that the persons concerned resisted arrest with fire-arms, injuring a member of the security forces, but also that various weapons, equipment for the manufacture of explosives, instructional microfilms and material concerning guerilla techniques and documentary material published by the Movement of the Revolutionary Left were found in a search of the home of Angel Antonio Sanhueza Garrido, the leader of the group. The items found were included in the inventory of confiscated items drawn up before witnesses living in the building in which Sanhueza was arrested (see annex II).

II. With regard to the state of siege that was declared in the degree of simple internal commotion in the Province of El Loa on 31 August 1978 at the time of the public incidents which occurred there, the final internal formalities are being completed with a view to lifting the state of siege. Since the events which gave rise to the declaration of the state of siege, no person has been arrested as a result of this measure. An announcement will be made as soon as the state of siege is lifted.

The Permanent Mission of Chile takes this opportunity to renew to the Chairman of the Ad Hoc Working Group of the Commission on Human Rights the assurances of its highest consideration.



Annex XXII

OBSERVATIONS OF THE GOVERNMENT OF CHILE ON  
THE REPORT OF THE AD HOC WORKING GROUP

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## INTRODUCTION

The report of the Ad Hoc Working Group actually constitutes no more than an allegation against Chile. It summarizes all the foreign and domestic ideological - political criticisms of the political, economic, social and cultural development of the country, while concealing or distorting the substantive facts of the Chilean situation and, in particular, those facts which are most relevant and decisive with regard to human rights.

To this end, the Group resorts to methods such as the following: it includes the information it requests from the Government of Chile in the annexes while in the body of the report it transcribes, and frequently endorses all kinds of views contrary to those of the Government; or it fails to emphasize substantive facts, devoting only a few words to them while artificially expanding denunciations which it reproduces in full even though they are anonymous.

The Government of Chile comments below on each of the chapters of the report and concludes with a brief commentary which simply lists the principal aspects of the situation in Chile with regard to human rights in 1978.

## CHAPTER I

### CONSTITUTIONAL AND LEGAL DEVELOPMENTS

#### A. State of siege

1. The Group devotes several paragraphs to the state of siege which was declared in the degree of simple internal unrest for the province of El Loa on 1 September 1978.

This event had already been dealt with in the report to the General Assembly; but is now taken up again and the impression is given that this area has reverted to the situation existing prior to March 1973, when the state of siege was terminated throughout the country.

At the same time, the Group expresses some considerations regarding the justification for this measure.

2. In this connexion, the following main points should be made:

(a) The fact that the state of siege was terminated throughout the territory on 10 March 1973 does not, of course, preclude the Executive from decreeing a similar measure in all or part of the same territory when subsequent events make it advisable. This power is exclusive to the Executive and derives from its duty to maintain public order; it has been accorded under the provisions of the Constitution and the law ever since the establishment of the Republic and has been exercised by almost every Government;

(b) Consequently, the comments of the Group on this question not only go beyond its competence, but constitute an unacceptable interference in the internal affairs of Chile;

(c) The establishment of a state of siege in accordance with the Constitution and the law, and the resulting exercise of the relevant powers, cannot in themselves be subjected to a critical study by the Group, or by any other organ of the United Nations.

3. Contrary to what is stated by the Group, the state of siege in question is to last for a period of 6 months, in accordance with the relevant constitutional norms and practices, which the present Government has followed faithfully. Moreover, this term of 6 months is soon to expire. The Government informs the Group that, at present, no person is in detention or exile by virtue of the state of siege in question, and that the decree terminating it is in preparation.

4. The above-mentioned facts, together with the consideration that the measure in question relates to problems which have now been solved clearly show how unnecessary and inappropriate it is to accord priority attention to the situation in the province of El Loa.

#### B. State of emergency

1. Here, the Group is guilty of a particular lack of objectivity, as is the case throughout the report. It does not take the trouble to study the historical context in which it has been necessary to continue the state of emergency, a context which is abundantly illustrated by serious events that are matters of public knowledge and are closely linked to the difficult task of overcoming the state of complete abnormality to which the country had been reduced.

It must be stated once again that the powers exercised in zones declared to be in a state of emergency do not conflict with any judicial order, have long been part of Chilean legal reality and have been used by virtually all Governments of the most widely differing political persuasions.

2. It should also be recalled, for the umpteenth time, that the remedy of amparo remains fully applicable during the period in which the declaration of zones of emergency is in effect. As is well known, the essential purpose of this remedy is to permit the judicature to determine whether an act of deprivation of liberty has been ordered by a legally competent authority and whether it has been carried out in the manner prescribed by law. All this is done during states of emergency. The only significant restriction imposed during states of emergency is that the judicial authorities in question are not competent to pronounce on the question whether or not the measure involving deprivation of liberty affects public order. This determination can be made solely by the authority responsible for maintaining public order. This power has always been exercised exclusively by the Executive, not only in Chile, but throughout the world. It derives from the nature of the powers of the State, from the separation established between those powers and from the very nature of acts endangering public order. Any other situation would be unacceptable in States as at present conceived and organized.

4. It should be noted also that the remedy of amparo, although it may appear ineffective, also remains fully in effect - even during the period for which an area is declared to be in a state of emergency - in respect of any restrictions imposed on personal freedom by a person or authority other than the commander of the emergency zone; this represents a field of application which is wide enough to deserve mention in a report that prides itself on being objective and meticulous.

#### C. The specialized State security agencies

1. It is paradoxical that the Group should think it worth including in its report a paragraph such as paragraph 42, in which it states that:

"... it is only in exceptional cases that any of the established legal requirements for arrests or detentions - such as the production of a warrant of arrest, identification of the agent making the arrest, indication of the place to which the arrested person is taken or notification of the relatives - are actually complied with."

In the first place, it should be pointed out that the Group is unable to point to any single case in which persons detained have not been released or brought before the courts within the legal time-limit at present in force. Secondly, there have been no claims that any persons has been detained without his whereabouts being made known, also within the legal time-limit.

2. In the only case in which an application for enforcement of rights has been made on the grounds that a person (Gloria Elgueta) has been detained and her whereabouts are unknown, it has emerged that the person in question asked a Latin American Embassy to grant her asylum, which was refused; and HIR declared that she "has gone underground and is discharging her revolutionary duties."

3. The Group, instead of recognizing that the arrests made by the security agencies usually conform to the legislation in force, reaches exactly the opposite conclusion.

Moreover, it adds that "the use of torture as normal practice in interrogations of detainees" still continues.

The Government rejects this assertion.

Firstly, with one exception - that of Mr. Pizarro Vallejos - no specific cases of torture have been reported to the Government. Consequently, even assuming that the Government had acknowledged that case, the Group would only have been able to consider one case as proven. It can in no way state that torture is still a normal practice.

But this is not all. The Group has been provided with detailed replies on this one case. The person concerned made a detailed handwritten statement of his subversive activities, which was certified before the courts. Nevertheless, he was released by the courts.

No traces of ill-treatment have been noted; no instances of ill-treatment have been reported to the courts. No one has complained of having had their period of detention extended until marks or signs of torture had had time to disappear.

In short, the only case of torture reported to the Government has been disproved. At the most, even someone who was prejudiced against the Government could only reach the conclusion that the question is DEBATABLE.

Nevertheless, the Group concludes that torture is still a normal practice in interrogations. This is unacceptable.

4. Paragraphs 49 and 50 are also paradoxical. They assume that detainees are ill-treated to force them to incriminate friends or relatives. The basis for this assumption is a statement which has not been communicated to the Government, not even without revealing the name of the person concerned.

However, these "victims" of torture, when brought before the courts within the legal time-limit, are released and no one says anything about the alleged torture, except to the Group, to which people are quick to submit a "sworn statement".

All of them are persons opposed to the Government, who are making use of the best international political weapon available to them - namely, a Group which has consciously shown itself to be credulous, and whose policy is to accept any testimony against the Government of Chile, without considering its content or credibility.

5. The Government is also compelled to reject and protest the intention which the Group ascribes to it in the reference in paragraph 56 to "the attempts by the Chilean authorities to remove the penal responsibility of persons having committed violations of human rights". This assertion is made in connexion with the Amnesty Law.

Firstly, this point has been analysed repeatedly by the Government, so that the Group, while it may disagree, is in no position to presume an intention which obviously does not exist.

Secondly, when the Amnesty Law was enacted, not only the Church but all sectors of Chilean society, including the opposition, immediately welcomed it as a praiseworthy measure.

Thirdly, the sole purpose of the Government was to move towards national reconciliation by pardoning the excesses committed by both sides during the period of fratricidal conflict.

Fourthly, it is childish and senseless to think that the Government should grant amnesty only to its opponents for any crime they may have committed.

Fifthly, to claim that an amnesty should be partial is contrary to the very nature of this institution. If granted, an amnesty relates to ACTS and not to persons, so that the beneficiaries are ALL those who may have participated in such acts, regardless of their attitude towards the Government decreeing the amnesty. This is the fundamental difference between amnesty and pardon. Amnesty is general, whereas a pardon is specific.

#### D. The role of the judiciary

1. The Government is obliged to contest the whole content of this chapter, and, in particular its final paragraph. Any one who is genuinely familiar with Chilean reality can confirm that the main characteristics of the judiciary are its dedication and its independence.

The Group disputes this. However, it makes no attempt to verify the qualifications and origins of the Chilean judiciary, or the manner in which it performs its functions, or even to compare it with other judiciaries in other parts of the world. The Government stresses that Chile can continue to be proud of its judiciary, in spite of what the Ad Hoc Working Group of the United Nations Commission on Human Rights may say.

2. Only one paragraph will be refuted directly, precisely because it demonstrates the Group's ignorance of the situation in Chile. In paragraph 64, the Group states that "in recent months" the security services have made arrests on the basis of "general warrants".

In fact, this is a procedure which, although not authorized by any specific legal provision, does not contravene any law and has been employed regularly for years. During the period of the Frei Government, objections were raised when extremists were arrested under "general warrants". The same thing happened during the Allende Government when arrests were made under "general warrants". Now the Group is reacting in the same way, but believes that such practices have been introduced "in recent months".

The law empowers a court to investigate an act when it receives a report. The courts normally authorize the services responsible for carrying out the investigation to arrest and, if necessary, search the homes of persons appearing to be responsible for the act reported. This is known as a "general warrant". Actions for enforcement of rights have occasionally been brought against such warrants, on the grounds that arrests have been made illegally. However, the courts in their rulings have repeatedly taken the position that such warrants, while ideally they should always be specific in nature, must in certain cases be "general", which is not prohibited by the law.

If the Group had raised the question with the Government, it would have been aware of the situation described above and would have avoided reaching an erroneous conclusion regarding penal procedure in Chile.

However, it chooses to accept any allegation, regardless of the circumstances, as long as it censures the Government or even, as in this section, the judiciary.

5. One thing must be made clear. In paragraph 65, it is stated that "once again, the courts refused to investigate a case in which the evidence could have shown who was criminally responsible" (Contreras Maluje). The Group cannot make such a statement. It was precisely the courts, in this case the Military Courts, which reopened the investigation, ordered several inquiries to be undertaken and, when the results of those enquiries were such that no further progress could be made, TEMPORARILY suspended the proceedings - which means that whenever new evidence is brought to light, the case can be reopened for investigation and responsibility can be attributed accordingly.

It is therefore false and inaccurate to state that the courts refuse to investigate, particularly when the basis of such a statement is precisely a case where no such occurrence has taken place. It is one thing to reject a complaint - a disciplinary procedure which is applied in very exceptional cases - but it is quite another to refuse to investigate a report.

## CHAPTER II

### LIFE, LIBERTY AND SECURITY OF PERSON

#### A. Arrest and detention

1. In this connexion, the Government is obliged to make the same comment as it has done on previous occasions: official information is contrasted with information whose source is not identified and which is obviously of doubtful veracity.

The information supplied by the Government gives the names of the persons, the dates of their arrest, the court before which they were brought, the reason for their arrest and, where appropriate, the date of release - particulars which the Group should have included in paragraph 89 but has failed to do so.

By contrast, the anonymous information reproduced by the Group does not give names, places or any precise particulars. As it is made up merely of numbers, it can be fabricated easily with a minimum of imagination, and it is impossible to demonstrate whether it is true or false. The Government of Chile is obliged to reiterate that this procedure adopted once again by the Group does not, to put it mildly, constitute a serious method of work.

2. If the Group were in possession of information or reports indicating that the information furnished by the Government was incomplete and that a person had in fact been detained by the security agencies, but had not been mentioned in their lists, it should have said so and requested clarification. If the serious replies by the Government are contrasted with numerical falsehoods in order to give an erroneous impression of an increase in detentions which can then be mentioned in the conclusions, the manoeuvre is too obvious and discredits the report.

3. The arrests on which the Group requested information from the Government were documented and amply explained at meetings held with the Group. The relevant background information was transmitted by letter dated 25 January 1979.

Unfortunately, in this connexion the Group has simply stated in paragraph 97 that: "As appropriate, this information is included in annex V" (sic).

In accordance with what might be described as a well-established custom, any information that conflicts with the Group's assertions or demonstrates their inaccuracy or reflects the seriousness and diligence of the Government of Chile is merely included in the annexes, with the object of maintaining a negative image of Chile in the body of the report. This sophistry has been constantly repeated, and it is not absent from the latest report by the Group.

4. The problem of arrests involves something much more profound than a mere numerical count of them. The number depends on events that have occurred in Chile during the year and on the amount of violent and terrorist activities, not on the will of the authorities. The Government of Chile has therefore always indicated the grounds for arrest in the documents which are submitted to the Group, but which the Group systematically relegates to the annexes; and it has called upon the Group to study the history of the detainees and the events which led to their arrest.

5. To confirm the views expressed in the preceding paragraphs, it will suffice merely to quote, as an example, what has happened in the case of the present report. The Group has included practically in extenso a sworn statement by

Lorenzo Pizarro Vallejos in which he asserts that he was tortured, compelled to denounce his friends, etc. The Government transmitted a handwritten statement by Pizarro Vallejos that had been authenticated before the court; and this was of course included in the annexes, despite a specific written request that it also should be included in the body of the report so that it could be compared and evaluated by the Commission on Human Rights.

6. The Group did not take the trouble, either, to examine the case in which Pizarro and his companions were arrested by order of the court and released after making statements to it. The fact that the detainees were released in the light of statements which, they claim, were extracted from them by force does not elicit any comment by the Group.

For the Working Group, a mere communication reporting ill-treatment is enough. By adopting this approach, it reveals once again its lack of objectivity and its superficiality, which make it possible for its reports to be used for political purposes.

#### B. Ill-treatment and torture

1. In this part of the report, the Group asserts that reports concerning ill-treatment and torture continue to be received. Also, paragraph 103 reproduces parts of what are called "Statement A" and "Statement B".

In the first place, the Group once more follows the method of incorporating anonymous and unidentified "statements" in the report.

In the second place, these statements are not communicated to the Government.

2. However, what is striking is that these occurrences are not reported to the courts.

Contrary to what is stated by the Group, whenever the courts receive reports of torture, they are extremely diligent in investigating them. In order to enable them to act, however, it is essential to report the facts to them.

The correct procedure is not an action for enforcement of rights, which is designed exclusively to determine whether someone has been illegally deprived of his liberty. In order to determine responsibility for torture, someone must initiate the appropriate legal proceedings in a responsible manner.

3. Accordingly, it is unjust of the Group to conclude in paragraph 104 that the judiciary is making no efforts to identify, prosecute and punish persons guilty of torture and ill-treatment.

The Government would ask the Group: Were any accusations or charges made in those cases? If not, this conclusion is manifestly wrong.



CHAPTER III

MISSING PERSONS

1. In this connexion, the Government notes that, in paragraph 107 of the report, the Group states that no cases of persons missing in 1978 have been brought to its attention.

This important fact deserved some comments which are, however, not to be found in the report. This is yet another demonstration of what the Government has always maintained: for the Group, any acknowledgements to the Government of Chile are forbidden. Whenever the Group cannot avoid making some acknowledgements, their ungenerousness is abysmal.

2. With regard to the new petition to the Supreme Court for the appointment of an investigating judge to examine the case of the missing persons (paragraphs 110-112), the Group simply states that no decision has yet been taken by the Supreme Court.

However, the Group does not feel obliged to point out that, despite earlier decisions of the Supreme Court refusing the appointment of an investigating judge, it has agreed to consider this latest request and has ordered several measures in this connexion.

In this delicate matter, the judiciary is starting to investigate every report for which there are serious foundations, and the Government is certain that it will do so in accordance with the legal procedures in force in Chile.

3. In the case of Contreras Maluje, which the report mentions again in paragraphs 114-115, we must reiterate our previous comments.

The Supreme Court's decision was taken in response to a complaint designed to rectify a fault or abuse by the judges in ordering a temporary stay of proceedings.

The Court took the view that, since there was no new information, the judges had not committed any fault or abuse in suspending the proceedings and, accordingly, it rejected the complaint.

However, this does not mean, as the Group asserts, that the judiciary refuses to investigate. Any NEW evidence will certainly be considered, and thus, the stay of proceedings is TEMPORARY and not final, which means that the case can be re-opened when any new evidence is produced or if any further measures reveal new information that will clarify what happened.

4. Finally, it must be pointed out that the establishment of an investigation into the case of missing persons in Chile by a body other than the judiciary is unacceptable.

It is unacceptable, because the judiciary is the sole authority in Chile for investigating acts which are criminal offences. Any other INVESTIGATORY BODY is unconstitutional.

It is unacceptable, because foreign investigators would violate Chilean independence and sovereignty and they would obviously be in breach of the principle of non-interference in the internal affairs of States.

It is unacceptable, because of the seriousness of such a precedent in our national life.

Lastly, it is unacceptable because it involves discrimination and selectivity in the case of Chile alone, when far more serious problems in the rest of the world are passed over in silence.

5. With regard to paragraph 119 of the report, concerning the discovery of human remains in the area of Lonquén, the Government furnished some oral and written information in the hope that, until the investigations were completed, the report would simply record proven facts and would not include groundless speculations or opinions.

Unfortunately, the Group has failed to record the tenor of the information provided by the Government, once again relegating it to an annex; and, what is more, the report also echoes a number of Press reports that are either sensationalist or constitute veiled criticism of the Government.

Once again, seriousness and objectivity have been set aside in favour of ill-conceived pressure on the Government of Chile.

This new display convinces the Government that no type of ad casum procedure can be accepted, since it will be used solely for political purposes, however well-intended the persons responsible for such procedures.

6. In connexion with the Lonquén case, the Government has stated through the Minister of the Interior that:

"With regard to the recent discovery of human remains at an abandoned mine in the locality of Lonquén, concerning which the Courts of Justice are carrying out an exhaustive investigation, the Government has issued the relevant instructions to the effect that all authorities under its jurisdiction are to provide maximum facilities to enable the judicial organs to perform their functions with all the efficiency that the case demands, since the community and the authorities are equally interested in establishing the complete truth concerning this situation".

7. With regard to the discovery of bones at Cuesta Barriga, the Government notified the Group at one of its recent meetings that:

(a) In this case, no request has been made for the appointment of an investigating judge;

(b) According to statements by forensic medicine experts, at first sight the human remains appeared to be more than ten years old and the form and distribution of the bones indicated that they were not bodies which had been buried but osseous remains that had been moved there (the bones were strewn in a disorderly way around two skulls);

(c) The investigation is continuing and, according to reports, a case of tomb-robbing at a cemetery in a neighbouring area (Casablanca) is being investigated;

(d) Mgr. Hourton, the Bishop who reported the matter, has not made any further statement nor has he pressed the matter.

The Government is awaiting the findings of the investigation, which in this case might well prove to be the discovery of a macabre political manoeuvre.

CHAPTER IV

EXILE AND RETURN

1. The Government finds it paradoxical that the Group should accord preferential attention to this question.

From the tenor of the report of the Group itself, Chile appears as a country in which there is no safety, in which human rights are daily trampled underfoot, in which opponents of the Government are tortured, etc., etc.

Nevertheless a large number of exiles, all of them opponents of the Government, are keenly interested in returning to this country - the situation in which was, according to the Group, the very reason which prompted them to leave it.

Either conditions in the country are such that the Chileans who left it, or were expelled, wish to return; or the situation in the country is as reflected in the report, in which case it is difficult to understand why exiles should wish to return.

Moreover, there are no reports of international agencies pleading for Chilean citizens to be allowed to leave Chile. Anyone wanting to leave Chile may do so whenever he wishes.

Consequently, the Group's position does not seem to be consistent. The situation in the country is good, and the Group is therefore asking that exiles should be allowed to return. But, if this is the case, it is impossible to take seriously the picture of the country presented by the Group in its reports. This chapter is in fact the clearest refutation of the incorrect and politicized appraisals made by the Working Group.

2. The Government for its part has authorized the return of many citizens to Chile, but only after it has conducted enquiries and established that the individuals concerned will not undermine the process of national consolidation which it has promised the population it will pursue. It will continue to authorize persons to return constantly and gradually; but it cannot undertake to authorize such returns indiscriminately.

The Government is responsible primarily to the 10 million inhabitants of Chile, rather than to the minority who opted for voluntary exile or were expelled because of their own actions.

It should be noted that, in spite of a number of terrorists attacks - which are well-known to the Group since they have been described in the Chilean press, but which it has never mentioned - the safety of the Chilean population has been guaranteed by the present Government; and, during the period covered by the report, not one life has been lost in Chile for political reasons or in connexion with them. This is its obligation. For this, it is responsible to the population: and this is why it does not authorize the return of exiles indiscriminately.

3. With regard to paragraph 137, where it is stated that a special decree-law should be enacted to restore Chilean nationality to Orlando Letelier, the Government notes that Mr. Letelier's death is a judicial matter which has been placed in the hands of the competent authorities.

However, the Government also notes that, judging from the information brought to light in recent months regarding Mr. Letelier's activities, this is a clear and undisputable instance in which the action taken by the Government in depriving him of his Chilean nationality was absolutely justified. His conduct in opposing the Government went far beyond what was justifiable and reached the point where it was affecting the country, independently of its Government. This is punishable by the measure taken in his case, i.e. depriving him of his nationality.

The foregoing comments are, of course, without prejudice to the fact that the Government has from the outset condemned and continues to condemn the attack on his life, that repugnant act, and has co-operated in the investigation to establish the identity of those responsible.

It is necessary to correct the error - which has frequently been made in the reports of the Group - of linking the Amnesty Law with the regulations governing the return to Chile of individuals who have jeopardized the national security. A ban on returning to Chile does not have any necessary causal relationship with penal situations.

Accordingly, the Government is not acting contrary to the Amnesty Law, and has not misled anyone.

#### CHAPTER V

#### FREEDOM OF EXPRESSION AND INFORMATION

The Group has had no alternative but to recognize the extent of freedom of information which now exists in Chile, since the bulk of the information which it uses in preparing its reports is referred to in footnotes as having been taken from newspapers which are freely available in the country.

Furthermore, the discussions reflected in the report, concerning criticisms by the information media of the regulations in force in this regard, are a reliable indicator of the degree of freedom which the Government has been establishing in this area.

As in all democratic societies, the actions and opinions of the Government are the subject of wide-ranging discussion, criticism and comment. The Group is invariably receptive in its reports to opinions opposed to the Chilean Government, and it ignores opinions favourable to the Government; however, in doing so, it has, because of its very role, become indisputably the foremost witness of the freedom of expression existing in Chile.

It has incidentally demonstrated its lack of objectivity and lack of concern for impartiality by providing a confused summary of various opinions expressed by opposition publications. In reading the passages quoted, one is struck by the disproportionate importance which the Group attaches to magazines of clearly anti-government leanings, such as Solidaridad and Hoy.

In keeping with its consistent approach of obscuring the increasing normalization of Chile by over-emphasizing secondary and isolated incidents, the Group devotes two long paragraphs to an explanation of the restrictions imposed on information media by the Military Commander of the Emergency Zone of El Loa as a result of the conflict in the Chuquibambilla copper mines. It does not give due consideration to the fact that bando 2, which is analysed at length, relates to a past situation which was simply one episode in the national context and affected a very small segment of the population and territory. Moreover, the bando is in conformity with the

relevant regulations dating from 1942, as contained in the legislation on emergency zones which has been implemented in similar terms by almost every political régime that has been compelled to enforce it in order to safeguard public order.

5. The clear picture of a freedom of expression which extends to the publication of "accurate summaries" of its earlier reports, as the Group itself says, should not be obscured by the opinion of Mr. Renato Hevia, Director of the magazine Mensaje, as quoted at the end of the chapter, in which he complains of the very limited circulation of opposition publications. Naturally, the Government cannot force people to buy such publications. On the other hand, it can state quite definitely that their limited circulation is yet another demonstration of the freedom of the Chilean people to choose which publications to buy and which not to buy.

This quotation, included by the Group, should rather lead it to weigh the questionable value and representativeness of publications which do not appeal to public opinion in Chile, and to accord greater importance to those publications with a wide circulation among the population.

## CHAPTER VI

### RIGHT TO EDUCATION

1. The Government of Chile reaffirms that one of its main concerns is to extend the highest possible level of education to the largest possible percentage of the population.

By education it means not only the systematic education given at the various levels into which Chilean education is divided but also, to a very large degree, the education of adults by technical and vocational training.

2. In this area tens of thousands of workers, under a procedure which permits them to maintain their jobs and their income, and frequently with scholarships financed by the State, have received vocational training in order to enable them to participate in the stage of accelerated development which the country is now undertaking and whose first results neither politicizing nor slander have managed to obscure.

3. The budget for education has increased from \$400 million to \$600 million per year. In addition, a system of self-financing at low cost and based on income is being applied at some levels of education, as stated in the report of the Group itself. Thus, total national expenditure on education is much higher than in the past.

4. In addition, the State encourages community participation in education in the most effective and genuine way, i.e. it permits, recognizes and provides financial aid for private education. This proves how effectively the right to education - as affirmed in international instruments and, much earlier, in Chilean legislation - is being guaranteed to the people of Chile.

5. The Government of Chile points out that the Group does not show any great interest in defending freedom of education, the most genuine expression of which is the freedom to teach - for which purpose freedom to open, maintain and manage educational establishments that are independent from the State is essential.

6. In a country with a level of development which Chile now possesses, this freedom of education would not be effective without State participation in the financing of private education. This is the reason for the increase in the subsidy to private education which, in 1978, received almost twice as much as in previous years.

7. Private education does not conflict with the education provided by public institutions, nor with the fact that education is still one of the main concerns of the State which has obligations in this area that cannot be delegated to others. Attempts to foster a kind of struggle for predominance between the two are typical of an ideology which Chile has overcome.

Indeed, the State, the Catholic Church, and other religious denominations, and also national and foreign private institutions and foundations and individuals whose vocation is teaching all form part of the Chilean educational system, recognize each other's professional qualifications and status, co-operate in the improvement of teaching systems and the elaboration of syllabuses and texts and generally make education a collective undertaking.

8. The policy of subsidizing private education is not only a way of promoting freedom of education; it also has the effect of combining all the constructive efforts of the community in an undertaking of transcendental importance. Furthermore it makes for a better use of public resources, since the subsidy is paid per pupil and the amount is always lower than the cost of a pupil's education in a public establishment.

9. With regard to the new legislation which establishes teachers' careers and increases salaries, and consequently involves an annual increase in expenditure of more than \$100 million, the only comment the Group found to make referred to the transfer of five teachers by virtue of that legislation. In making this comment, the Group is not only interfering in matters of a purely administrative nature which are beyond its competence; it is also displaying a lack of judgement and lack of ability to evaluate and appreciate the serious initiatives of which it has been informed.

10. In Chile there has always been intensive discussion concerning educational problems; and this discussion continues to enrich the national experience with the wisdom of many persons who are well versed in the subject and who represent various points of view. To refer only to one part of this discussion, as the report does, is undoubtedly to detract from its quality by reproducing only criticisms of Government policies.

The participation of teachers, parents and pupils in educational decisions is increasing. Evidence of this is to be found daily in the Chilean press, the same press which the Group quotes on other subjects.

## CHAPTER VII

### FREEDOM OF ASSOCIATION AND THE RIGHT OF ASSEMBLY

On 2 January 1979, the Minister of Labour of Chile announced the Government's Labour Plan; implementation of the Plan has already commenced and will culminate, before 30 June 1979, in the enactment of new legislation on the subject of this chapter. Since 2 January two important legal instruments have been enacted: Decree-Law No. 2,544, which establishes the freedom to hold trade-union meetings without prior permission or notice in both the public and the private sectors, thus repealing the fourth transitional article of Decree-Law No. 190, and Decree-Law No. 2,545, which establishes regulations concerning the systems of payment and collection of trade-union dues on the basis of three trade-union premises - the right freely to join and leave a trade union, compulsory payment of dues and democratic collection of dues.

The Labour Plan represents a further step towards the comprehensive implementation of the principles and objectives which, in this field, have guided the Government's work of restoration since the commencement of its activity, and has

been made possible by the degree of normality that has been achieved, as a result of this same activity, in the economic, social and political sectors in Chile.

The Plan provides for the complete restoration of the system of collective bargaining and the introduction of a broad, comprehensive and modern trade-union system, which is intended to be free, democratic and financed. Quite naturally, provision is made in the Plan for the right to strike and a new system of free, undiscriminatory trade-union elections.

The task of examining this remodelled institutional framework in the labour field has been entrusted to a specialized commission, participation in which is open to all interested sectors.

This initiative by the Government has been widely publicized and has rapidly won widespread public recognition in both the national and the international sectors.

The activity and attention of the entire Chilean labour community are at present concentrated on the task described above.

In view of this constructive development in the process of normalization of Chile - a development of which the Group is aware, it seems incredible that the Group does not mention it in the report but merely incorporates, as one of the many annexes to the report and without any comment, the speech of the Minister of Labour to which reference has been made. On the other hand, the Group devotes this lengthy chapter in its entirety to a repetition of inaccurate and unfair judgements of situations which are fast being left behind.

Not only does this make quite clear the proverbial superficiality and partiality with which the Group treats these very important and delicate problems, but also in this case the report cannot hide the political and ideological slant that patently characterizes all the opinions expressed by the Group.

It is impossible for the proponents of the political and ideological views in question to give evidence of the return to a normal labour situation in Chile, because by so doing they would lose the most valuable tool, which they use and abuse, in their work of disrupting free society.

#### CHAPTER VIII

#### ECONOMIC AND SOCIAL RIGHTS

1. It is in this area that the excesses which the Working Group has committed in its analysis of the situation in Chile can be seen most clearly: it has in fact extended its mandate without complying with any of the Articles of the Charter or the accepted principles of international law. It appears to be unaware of the principle of non-intervention in the internal affairs of States and believes that any subject relating to man falls under international jurisdiction. Such an interpretation is absolutely unacceptable and tends to create distrust among Member States.

2. The prudence and good judgement that must be exercised in order to harmonize two such outstandingly important principles as international jurisdiction over human rights and the independence and sovereignty of States in matters which are per se their own exclusive concern, have simply not entered into the consideration of the Group, which has precipitately and thoughtlessly devalued its function and in so doing has discredited a valuable precedent.

3. Under the pretext of analysing the enjoyment of economic and social rights in Chile, it encroaches on matters that are the concern of the Government, such as the pattern of socio-economic events and the socio-economic situation, as reflected in complex unemployment problems, wages, prices, development and health problems. This approach appears even more misguided when one recalls the circumstances which gave rise to the establishment of the Group and which were completely unrelated to such problems.

4. Economic and social matters constitute one of the areas which are most susceptible to the attention of the various political ideologies and, in Chile, it is on this sector that the domestic political opposition concentrates its attack. The Group has evidently not escaped this influence and, in this area in particular, it assumes the role, with unconcealed glee, of spokesman of specific international schools of thought and of domestic and foreign detractors of the Chilean Government. Politicization - which should be carefully avoided in order to lend universality and seriousness to the study and promotion of human rights - is the most striking characteristic of this chapter.

5. The above-mentioned problems of unemployment, wages, prices and health are highly technical and complex, and are linked to numerous national and international factors. To approach these problems without a thorough knowledge of them and outside a broad context of background information and comparisons constitutes irresponsible superficiality and a reversion to the outdated belief that these problems are only a question of goodwill and a desire for justice. This belief has caused mankind more decline and misfortune than is generally thought and the struggle against the ignorance of those who level criticism is of enormous importance in this area.

6. If to all this we add the description of the problems in the context of an investigation of alleged violations of human rights by the Government of Chile, the whole approach constitutes an inadmissible affront. If we further add a request to the Commission on Human Rights to call upon the Government of Chile to give priority consideration to these problems, the affront becomes even more serious because it implies that the problems have been ignored by the Government of the Republic, which would thus be neglecting its principal obligation to promote the common good.

7. Lastly, the Working Group clearly has State-oriented views with regard to economic and social rights. It is obvious that, in the Group's opinion, the State should play a virtually exclusive role in matters such as the economy, health, education, etc.

However, the Government of Chile is in fundamental disagreement with such an approach.

In Chile the Government has pursued - and pursued successfully, however much the Working Group may resent the fact - a policy of community participation through freedom of private initiative. This freedom comprises freedom of education, free enterprise, free trade unionism, voluntary membership of trade unions, participation of private individuals in the health sector, and so on.

8. Without wishing to impose its own system elsewhere, without claiming that the system it has chosen is suitable for all, and without any messianism, the Government firmly and independently reiterates its views, and believes that it has a legitimate right to do so and that the international community cannot criticize it in consequence.



9. The Government of Chile does not consider it appropriate to indulge in polemics with the Working Group on matters which are within its exclusive domestic jurisdiction and in respect of which the Group lacks the essential technical expertise. In this respect, the responsible opinion of the international community is reflected in the various technical specialized agencies; the Government of Chile is pleased to state that it maintains a fruitful dialogue with all these agencies, that it acts in the closest collaboration with them, and that it has received and continues to receive their assistance.

#### CONCLUSIONS

The Chilean Government's conclusions - which should also be those of any impartial and objective body - concerning the period covered by the report (1978) are as follows:

1. Deaths in 1978 resulting from or related to political incidents: none.
2. Persons condemned to death: none.
3. Persons whose whereabouts are unknown: none.
4. Persons expelled from the national territory: none.
5. Persons deprived of nationality: none.
6. Persons currently detained without a trial: none.
7. Accusations or complaints of ill-treatment lodged with Chilean courts: none. Accusations of ill-treatment lodged with the Working Group, with identification of the case: four.
8. Freedom of the press: recognized by the Group, whose reports have been given wide publicity.
9. Institutional framework: in the process of being established, with public discussion of the subject, the final decision on which will be taken by the people of Chile in a plebiscite scheduled for this year.
10. Restoration of labour freedoms. Freedom of assembly and association in force and institutional framework in the labour field under public discussion with the interested sectors, the said discussion to be completed by 30 June 1979.
11. Right to health: decline in the infant mortality and general mortality rates, and in other indicators, according to statistics compiled by specialized organizations.
12. Economic and social rights: decline in the inflation rate; decline in unemployment, which continues to be a serious problem and is being given preferential attention by the Government; increase in the purchasing power of wages; surplus in the balance of payments; budget balanced; increase in per capita income; reserves totalling 1,500 million dollars. All these facts are recognized in reports of specialized organizations. Full freedom of activity for the people in this area. Nutritional programmes endorsed and studied by the United Nations.

13. Right to education: increase in the annual budget from 400 million to 600 million dollars. Establishment of the teaching career. Respect and support for the freedom of education through the increase in subsidies for private education.
  
14. Co-operation with the United Nations: visit by the Working Group to Chile. Information supplied on all matters on which questions were asked. Celebration by various institutions of the anniversary of the Universal Declaration of Human Rights, in which teachers, presidents of non-governmental organizations and the Director of the United Nations Division of Human Rights took part.