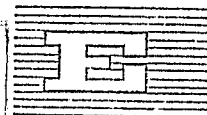


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Forty-first session
Item 5 of the agenda

QUESTION OF HUMAN RIGHTS IN CHILE

Note by the Chairman

1. Justice Lallah, who resigned as the Commission's Special Rapporteur on the situation of human rights in Chile (see E/CN.4/1985/41), has suggested to the Chairman of the fortieth session of the Commission that his relevant report to the General Assembly (A/39/631), the statement he made in the Third Committee when introducing that report and General Assembly resolution 39/121 on the situation of human rights and fundamental freedoms in Chile, be placed before the Commission at its forty-first session.
2. Document A/39/631 is already available to the Commission, while the introductory statement and the General Assembly resolution mentioned above are annexed to the present note.

GE.85-10594

Annex ISTATEMENT BY JUSTICE LALLAH INTRODUCING HIS REPORT ON THE SITUATION
OF HUMAN RIGHTS IN CHILE TO THE THIRD COMMITTEE ON 3 DECEMBER 1984

Mr. Chairman, I would like to thank you and, through you, the Third Committee for the opportunity given to me to introduce the report on the situation of human rights in Chile (A/39/631). This report has been compiled in accordance with the mandate entrusted to me as Special Rapporteur by the Commission on Human Rights in March this year.

It will be recalled that, following my last report to the General Assembly in December last year (A/38/385 and Add.1), I submitted to the Commission on Human Rights at its fortieth session in March this year a further report (document E/CN.4/1984/7) on the situation of human rights in Chile up to the end of 1983. The Commission had before it all three documents and, after considering them, it adopted resolution 1984/63 which, for purposes of convenience, has been reproduced as appendix III to the report now before the Committee.

For the purpose of preparing this report, I again sought the collaboration of the Government of Chile with a view to obtaining at least some idea of the situation in Chile as the Government viewed it. The Government, however, reiterated its decision to withhold its collaboration as a matter of principle, indicating that its attitude had nothing to do with the person of the Special Rapporteur. Paragraphs 5 to 8 of the report deal with the approaches I made in this regard, the response of the Government and a consideration of the reasons underlying this response.

Given the stand of principle adopted by the Government and with a view to presenting as complete a picture as possible, I have endeavoured to obtain relevant information from such official and other material as could be found in publications available in Chile, administrative and legislative provisions and, particularly, court decisions or proceedings of major significance. A number of organizations and institutions, both governmental and non-governmental, have made available useful and valuable material. Finally, a number of individuals, who had personal or direct knowledge of various aspects of the human rights situation in Chile, have given testimony and have been heard. I would wish to emphasize that the situation has been viewed and assessed exclusively in terms of international human rights norms, as contained in international conventions that have been subscribed to by Chile, or other applicable norms of international human rights.

The report this year, although shorter than last year's report is nevertheless extensive. My concern has been to present to the Committee the situation as it exists and to let the situation speak for itself with regard to all aspects of human rights that have, in the perspective of my mandate, appeared to me to be affected in one way or another. Because of the length of the report, I thought it appropriate, with a view to assisting the Committee in its consideration thereof, to summarize as briefly as I could the substance of the various chapters of the report. This summary is to be found in paragraphs 358 to 392.

The present report covers the situation as it has evolved since December last year up to the end of June this year. In some instances, where it was possible to analyse events with some degree of certainty up to August, I have included them in this report. Some events of significance have occurred after August and it is desirable that I refer to some of them:

(1) First, a national protest took place on 4 and 5 September. Nine persons were killed, including the French priest, Father Jarlan, some 10 persons were injured and there were reportedly more than 500 arrests. The main objective of the protest was a call for the re-establishment of democratic order.

(2) Secondly, on 4 October, the Workers National Command (CNT) which groups a number of unions in the industrial sector called for a national strike on 30 October. The authorities countered a few days later with an application to the courts for the arrest, under the internal security laws, of the leaders of a broad spectrum of political alliances and of the CNT on the ground that they were inciting protests likely to disturb public order. The persons arrested as a result were Manuel Bustos, one of the leaders of the CNT, and a number of political leaders, namely Gabriel Valdes, Mario Sharpe, Enrique Silva, Manuel Almeyda, Fanny Pollarolo and Juan Claudio Reyes. These seven persons were released the following day and the charge against them was not proceeded with.

(3) Thirdly, 29 and 30 October saw 48 hours of national demonstrations and strikes. Not all industrial sectors were reported to have taken part in them though response to the call for the strikes was reported to have been wide-ranging. About seven or eight deaths; dozens of injured, including both law enforcement officials and civilians, and hundreds of arrests were reported. A night curfew was imposed. A black-out on news about protests and similar events was imposed on the media.

(4) Lastly, a number of bomb attacks against electrical installations and buildings have been reported on a number of occasions. In early November a number of civilians and some six law enforcement officials were reported to have been killed or injured.

(5) The Cabinet resigned but the President declined to accept the resignations. The state of siege which was in operation after the overthrow of the President in 1973 and was lifted in 1978 was restored on 6 November 1984.

Under a state of siege, which is a further state of emergency, the Executive is invested with wide powers which relate, among other matters, to restricted residence, house arrest, arrest in places which are not prisons, expulsions, extensive restrictions on the right of association and of assembly and censorship of information and correspondence. Most of these powers were already exercisable under the state of emergency proclaimed under article 40, paragraph 3, of the Constitution or under the state of danger of disturbance of internal peace proclaimed under the twenty-fourth transitional provision of the Constitution. Both the latter states of emergency are described in paragraphs 28 to 37 of the report now before the Committee. It should be observed that under a state of siege both recourse to amparo (enforcement of constitutional rights) and to the remedy of protection would appear to be completely suspended.

There were at least four immediate practical consequences of the declaration of the state of siege. First, a night curfew was imposed in Santiago and other towns with effect from 6 November. Secondly, Decree No. 1216 issued on 7 November outlawed all public gatherings except with the prior authorization of the military regional governors. Thirdly, Decree No. 1217 issued on the same day banned six magazines critical of the present regime. They are: Cauce, Analisis, APSI, Fortin Mapocho, La Bicicleta and Pluma y pincel. Censorship was imposed on a seventh publication, the magazine Hoy. That decree also restricted reporting and comments in all communications media to official communiqués. The accreditation of foreign journalists is reported to be under review. Lastly, the inhabitants of shanty towns have been massively rounded up, their homes searched for arms or

what the authorities consider to be subversive material, several hundreds of them exiled to distant villages and a number of their leaders made subject to detention in prisons. A number of political, trade-union and community leaders are being sought with a view to their arrest, and a few days ago Fanny Pollarolo, one of the leaders of the Movimiento Democrático Popular (MDP) and Mario Araneda, the Vice-President of a Santiago community organization, were reported to have been arrested. Mgr. Ignacio Gutiérrez, the head of the Santiago Archbishopric's human rights office, has been prevented from re-entering the country.

The present legal order in Chile is thus characterized by three levels of derogations from fundamental norms by which Chile has bound itself. First, there is the level of derogation constituted by the negation of inalienable political rights within the framework of an exceptional legal order which is designed to last until 1989 when, furthermore, the new President is required to be designated by the Commanders-in-Chief of the Armed Forces and the Carabineros or, failing their agreement, by the National Security Council, the choice of the new President being, however, subject to ratification by referendum. Secondly, within that exceptional legal order, there is a further set of derogations constituted by the three kinds of states of emergency I referred to earlier. And, thirdly, there is an integrated system of legislative, executive and administrative measures which, because of the different states of emergency and the transitional powers which suspend important provisions of the Constitution, virtually lie beyond judicial supervision and control.

It is to be observed that those legislative measures emanate not from a representative parliamentary institution but from the Executive itself. The main thrust of all these measures is to implement the negation of political rights and in the process and as a direct result, it has most adverse consequences on other fundamental rights and freedoms, in particular, the right to life, physical and moral integrity and security, freedom of movement, thought, opinion, expression and association.

The report now before the Committee gives an indication of serious violations of these rights in the chapters in which particular rights are examined. It is to be observed that the figures quoted therein refer to the period ending June 1984. Given the events that have subsequently occurred, these figures have considerably increased not only as regards the number of persons reported to have been killed, injured, arrested, subjected to torture or other cruel or inhuman treatment or sent into internal exile. It is also to be observed that judicial decisions in the first half of the year have confirmed that remedies of protection and of amparo are not available in the context of the state of emergency and the state of danger and disturbance of internal peace, both of which were already in force before the declaration of the state of siege at the beginning of November.

To sum up the general turn of events this year, it may be said that as the aspirations for the re-establishment of democratic order and the protection of human rights, have intensified so the legal and administrative machinery designed to preserve the present legal order has been perfected; and the adverse consequences for human rights have become all the more pronounced. The attitude of the authorities in maintaining the present legal order until its scheduled end has hardened and none of the organic laws dealing with political parties and the electoral process that were said to be in preparation have been enacted. There have been signs that a few are losing hope that peaceful and collective protest will achieve their aims and have resorted to violent means against persons and property. There has also been isolated violent action by gangs unsympathetic to those who are striving for change to a democratic order. Fortunately recourse to violent action has been random and isolated. The mainstream of opinion is still

consistently directed towards an orderly change of the present order, with a view to solving the increasingly grave political, social and economic crisis currently affecting Chile. It is more important than ever before that the Government of Chile adopt urgent measures to restore a democratic order and to re-establish the promotion and protection of human rights. In this connection, I wish to draw particular attention to the conclusions and recommendations set out in paragraphs 391 to 393 of the report now before the Committee.

In conclusion I wish to say that there are grave risks that the situation will become far worse than can be imagined at this moment unless early and appropriate measures are taken. I am convinced that the leadership in Chile does have regard for the commitment which Chile as a State has undertaken under international instruments for the promotion and protection of human rights. I am confident also that the international community as represented by States parties here will find the right accents to persuade and encourage Chile to put an end to the present situation. I am also convinced that it is imperative to do now what can and, inevitably, will be done later but only at the cost of needless and much worse human suffering, anguish and bitterness than has already been endured in Chile.

Annex II

GENERAL ASSEMBLY RESOLUTION 39/121 */

Situation of human rights and fundamental freedoms in Chile

The General Assembly,

Aware of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all and determined to remain vigilant with regard to violations of human rights wherever they occur,

Stressing the obligation of Governments to promote and protect human rights and to carry out the responsibilities they have undertaken by virtue of various international instruments,

Recalling its resolutions 3219 (XXIX) of 6 November 1974, 3448 (XXX) of 9 December 1975, 31/124 of 16 December 1976, 32/118 of 16 December 1977, 33/175 of 20 December 1978, 34/179 of 17 December 1979, 35/188 of 15 December 1980, 36/157 of 16 December 1981, 37/183 of 17 December 1982, and 38/102 of 16 December 1983 all related to the situation of human rights in Chile, as well as its resolution 33/173 of 20 December 1978 on disappeared persons,

Recalling also the resolutions of the Commission on Human Rights relating to the human rights situation in Chile, especially resolution 1984/63 of 15 March 1984, in which the Commission decided, inter alia, to extend for a year the mandate of the Special Rapporteur on the situation of human rights in Chile,

Deploring once again the fact that the repeated appeals of the General Assembly, the Commission on Human Rights and other international organs to re-establish human rights and fundamental freedoms have been ignored by the Chilean authorities, which continue to refuse to co-operate with the Commission on Human Rights and its Special Rapporteur,

Once again expressing its grave concern at the general persistence of the serious situation of human rights in Chile, which, as established by the Special Rapporteur, has continued to deteriorate, and that the Chilean authorities have not been responsive to the concerns of the international community, as expressed in resolutions of the General Assembly and the Commission on Human Rights,

Observing that, according to the Special Rapporteur, the right to enter and leave one's country freely is seriously restricted for Chilean citizens and that this situation has been aggravated by the issuance of a list containing the names of thousands of Chilean nationals who are not allowed to enter their country without conditions,

*/ The final edited text of this resolution will be published in Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 51 (A/39/51).

Taking note with utmost concern of the re-establishment of the state of siege on 6 November 1984, which has aggravated the situation of human rights and fundamental freedoms in Chile, particularly by the increase in the number of arbitrary mass arrests, of persons sent to internal exile and the practice of torture and other forms of inhuman and degrading treatment as well as the additional restrictions on the freedom of expression and information, assembly and association,

1. Commends the Special Rapporteur for his report on the situation of human rights in Chile prepared in accordance with resolution 1984/63 of 15 March 1984 of the Commission on Human Rights;

2. Expresses its profound distress at the persistence of an increase in serious and systematic violations of human rights in Chile, as described in the report of the Special Rapporteur, and, in particular at the violent suppression of popular protest in the face of the refusal to restore the democratic order and human rights and fundamental freedoms on the part of the authorities, which have in fact committed further serious and flagrant violations of human rights, with mass arrests and numerous deaths;

3. Reiterates once again its dismay at the disruption in Chile of the traditional democratic legal order and its institutions, particularly through the maintenance of emergency legislation, the institutionalization of states of emergency, the extension of military jurisdiction and the existence of a Constitution which does not reflect the will of the people freely expressed and whose provisions not only fail to guarantee human rights and fundamental freedoms, but suppress, suspend or limit their enjoyment and exercise;

4. Alarmed by the fact that the repressive activities of the police and security agencies and, in particular, the National Information Agency continue to go unpunished, as pointed out in the report of the Special Rapporteur;

5. Once again views with concern the ineffectiveness of the remedies of habeas corpus or amparo and of protection, owing to the fact that the judiciary does not exercise its power of investigation, monitoring and supervision in this respect and performs its functions under severe restrictions;

6. Urges once more the Chilean authorities to restore and respect human rights in accordance with the obligations they have assumed under various international instruments and, in particular, to put an end to the regime of exception and the practice of declaring states of emergency, under which serious and continuing violations of human rights are committed, with the view to the re-establishment of the principle of legality, the democratic institutions and the effective enjoyment and exercise of civil and political rights and fundamental freedoms;

7. Urges the Chilean authorities to terminate the state of siege decreed on 6 November 1984 and the consequences of that state of siege;

8. Once more urges the Chilean authorities to investigate and clarify the fate of persons who have been arrested for political reasons and who later disappeared and to inform their families of the results of such investigation and to bring to trial and punish those responsible for their disappearance;

9. Once again draws the attention of the Chilean authorities to the need to put an end to intimidation and persecution, as well as arbitrary or illegal arrests and imprisonment in secret places, and to respect the right of persons to life and physical integrity by halting the practice of torture and other forms of cruel, inhuman or degrading treatment which, in some cases, have resulted in unexplained deaths;

10. Once again urges the Chilean authorities in accordance with article 12 of the International Covenant on Civil and Political Rights, to respect the right of Chilean nationals to live in and freely enter and leave their country, without restrictions or conditions of any kind, in particular, to annul the "list" limiting the right of Chilean nationals to enter the country and other recent measures affecting other individuals, and to cease the practice of "relegation" (assignment of forced residence) and forced exile;

11. Renews its appeal to the Chilean authorities to restore the full enjoyment and exercise of trade union rights, in particular the right to organize trade unions, the right to collective bargaining and the right to strike, and to put an end to the system of repressing the activities of trade-union leaders and their organizations;

12. Once more urges the Chilean authorities to respect and, where necessary, restore economic, social and cultural rights and, in particular, the rights intended to preserve the cultural identity and improve the social status of indigenous populations, including the legitimate enjoyment of their land;

13. Concludes, on the basis of the report of the Special Rapporteur, that it is necessary to keep under consideration the situation of human rights in Chile;

14. Calls again upon the Chilean authorities to co-operate with the Special Rapporteur and to submit their comments on his report to the Commission on Human Rights at its forty-first session;

15. Invites the Commission on Human Rights to study in depth the report of the Special Rapporteur at its forty-first session and to take the most appropriate steps for the effective restoration of human rights and fundamental freedoms in Chile, including the extension of the mandate of the Special Rapporteur for one more year, and requests the Commission to report, through the Economic and Social Council, to the General Assembly at its fortieth session.

101st plenary meeting
14 December 1984