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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

This addendum contains the report of the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile, transmitted in accordance with paragraph 6 (b) of Commission on Human Rights resolution 11 (XXIV) of 6 March 1979.

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Report of the Expert on the Question of the Fate
of Missing and Disappeared Persons in Chile

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INTRODUCTION

1. At its thirty-third session, the General Assembly adopted on 20 December 1978 resolution 33/175 entitled "Protection of human rights in Chile", in which it expressed its particular concern about the lack of progress in clarifying the fate of missing and disappeared persons and its particular concern and dismay at the refusal of the Chilean authorities to accept responsibility or to 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. The Assembly 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 and invited the Commission to continue to give close attention to the situation of human rights in Chile and, to that end, 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".

2. At its thirty-fifth session, the Commission on Human Rights adopted on 6 March 1979 resolution 11 (XXXV), in which it concluded, as had the General Assembly, that the human rights situation in Chile justified the continued concern and involvement of the international community and the special attention of the Commission, and decided to continue to give close attention to the situation in Chile. To that end, in paragraph 6 (b) of resolution 11 (XXXV) the Commission authorized its Chairman, in response to the request in General Assembly resolution 33/175,

"to appoint as experts in their individual capacity, Mr. Felix Ermacora and Mr. Waleed M. Sadi to study, in conformity with the modalities set forth in its resolution 8 (XXXI) of 27 February 1975, in co-operation with the Special Rapporteur and in contact with the Chilean authorities, the question of the fate of missing and disappeared persons in Chile, and to report to the Commission on Human Rights at its thirty-sixth session and, through the Special Rapporteur, to the General Assembly at its thirty-fourth session".

Paragraph 7 of that resolution of the Commission urged the Chilean authorities to co-operate, inter alia, with the experts appointed to study the fate of missing and disappeared persons. At the Commission's 1524th meeting, the Chairman announced that, pursuant to resolution 11 (XXXV), he appointed Mr. Felix Ermacora and Mr. Waleed M. Sadi as experts to study the question of the fate of missing and disappeared persons in Chile. 1/

3. By a letter dated 29 August 1979, Mr. Waleed M. Sadi informed the Director of the Division of Human Rights and the members of the Commission on Human Rights that,

1/ E/1979/36, para. 56.

"I am unable to participate in the work of the experts to investigate the situation related to the disappeared and missing persons in Chile and, in order to avoid frustrating the work of the experts and betray the trust which the Commission has bestowed upon me, I would like to resign from the above-mentioned assignment".

Since paragraph 6 (b) of Commission resolution 11 (XXXV) provided for the appointment of two experts acting in their individual capacity and not for the establishment of a group, as one of those experts I reached the conclusion that, even without the participation of the other expert, I remained charged with a mandate by the Commission and thus requested the Director of the Division of Human Rights to inform the Chairman of the Commission on Human Rights and the Special Rapporteur on the situation of human rights in Chile of my decision to continue to carry out the study entrusted to me by paragraph 6 (b) of Commission resolution 11 (XXXV).

4. The principal purpose of the study called for by paragraph 6 (b) of Commission resolution 11 (XXXV), as is made clear by that resolution, by General Assembly resolution 33/175 and by the most recent reports of the Ad Hoc Working Group on Chile, 2/ is to deal with the situation of missing persons in Chile, in particular by finding an adequate response to "the right of families to know the fate of their relatives", a right embodied in Protocol I to the Geneva Convention of 1949 and supported by the Chilean Catholic Church. 3/ In practice, the realization of this right means that a thorough investigation must be undertaken of each case of a missing person in order to determine that person's actual location or fate and to inform that person's relatives. 4/ In order to lay the bases for a thorough investigation of each case, the present study analyses the available information on missing persons in Chile so as to make the factual situation as clear as possible to the Government of Chile, the relatives of missing persons and the international community. Building up on this, the Expert may be able to contribute to future steps by the Government and by the relatives of the missing persons to clarify each particular case. Another objective of this study, as is also made clear by the resolutions of the General Assembly and the Commission on Human Rights, is to deal with the question of the responsibility for the disappearance of persons in Chile. The analysis of available information undertaken in this study will provide some elements of a response to the question.

5. The question of missing persons is one which today extends beyond the case of Chile alone, as will be brought out below. In this connexion, the present study may be useful as a contribution to the wider effort by the United Nations 5/

2/ E/CN.4/1310, paras. 106-128, 335; and A/33/331, paras. 386-423 and 779 (15).

3/ A/33/331, para. 418.

4/ A/33/331, paras. 418-423; E/CN.4/1310, para. 335.

5/ See, for example, General Assembly resolution 33/173 and resolution 5 B (XXXII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

to deal with the phenomenon of missing persons in other contexts and, eventually, to the development of national and international measures designed to prevent the disappearance of persons and to mobilize the necessary means to search for missing persons in the various regions of the world.

6. In undertaking this study, and as is specifically provided for in paragraph 6 (b) of resolution 11 (XXXV), contact was made with the representatives of the Government of Chile. In a letter dated 17 May 1979, the Government of Chile was informed of the plan for the Experts to meet in Geneva from 29 May to 1 June 1979 to determine their programme of work in implementation of Commission resolution 11 (XXXV) and the Government was asked whether it would wish to send representatives to confer and discuss relevant matters with the Experts at that time. In a letter dated 30 May 1979, the Acting Chargé d'Affaires of the Permanent Delegation of Chile to the International Organizations at Geneva referred to the above-mentioned letter dated 17 May 1979 and stated in part:

"As you are already aware, the position of the Government of Chile regarding the Group of Experts was explained both at the latest session of the Commission and in an official statement dated 7 March 1979 by the Ministry for Foreign Affairs, which statement was communicated to the Secretary-General of the United Nations in diplomatic note No. 291/39, dated 15 March last. In that note, the resolution which gave rise to the establishment of the Group of Experts was totally rejected because it constitutes a discriminatory procedure which violates, inter alia, the principle of the legal equality of States, a principle embodied in the Charter of the United Nations. Accordingly, Chile will not accept any other ad hoc or ad cassum procedure such as that of the Experts on whose behalf you sent your note. My country will co-operate only under agreements which conform to standards of a universal nature and of general application".

In a statement to the Commission on Human Rights at its thirty-fifth session, the representative of the Government of Chile, referring to the draft which became Commission resolution 11 (XXXV), stated that General Assembly resolution 33/175 was "unlawful, discriminatory, unbalanced and unjust" and that his country rejected the proposed special procedures. He also stated that, in its relations with the various international organizations, his Government would abide by the commitments which it had undertaken in accordance with the Universal Declaration of Human Rights, the International Covenants and within the framework of the Organization of American States and would continue to co-operate with the United Nations in accordance with the general provisions in force and with those which would be adopted in the future.

7. The Special Rapporteur on the situation of human rights in Chile has dealt in detail with the views of the Government of Chile concerning the procedures selected by the General Assembly and the Commission on Human Rights in relation to the human rights situation in that country and the Expert on the question of the fate of missing persons in Chile shares the Special Rapporteur's views. 6/

It may be pointed out that, in taking action in connexion with Chile, the General Assembly referred explicitly to the Charter of the United Nations and the Universal Declaration of Human Rights and to the Assembly's commitment to foster respect for and observance of human rights and fundamental freedoms. Note may also be taken of the long-standing practice of the United Nations to exercise wide competence in dealing with situations of large-scale violations of human rights and the well-established principle that the United Nations may, in dealing with such situations, employ all appropriate methods under the Charter. Such decisions are within the competence of the organs concerned and do not depend on the decision of an individual Member State. In addition, it can be pointed out that, in adopting the procedures set out in its resolution 11 (XXXV), the Commission on Human Rights was acting at the request of the General Assembly. It is thus clear that the objections of the Government of Chile to the competence of the Expert on the question of the fate of missing persons are without any legal foundation.

8. The Expert regrets that he has not had the benefit of co-operation from the Government of Chile and hopes that the Government of Chile will co-operate with him with a view to the preparation of the report he will be submitting to the Commission on Human Rights at its thirty-sixth session.

9. With a view to collecting relevant information for the preparation of this study, letters were addressed to the ILO, UNESCO, the Council of Europe, the Inter-American Commission on Human Rights, non-governmental organizations in consultative status with the Economic and Social Council and to the Association of Relatives of Missing Persons in Chile with a request that any new and relevant information (not already transmitted to the United Nations in connexion with the activities of the Ad Hoc Working Group on Chile) which those organizations might wish to submit should be forwarded to the Experts in care of the Division of Human Rights at Geneva. In addition, in August and September 1979, hearings took place during which witnesses testified on matters relating to missing persons in Chile.

10. The reports of the Ad Hoc Working Group on Chile and the information submitted to the Expert on the question of the fate of missing persons in Chile clearly show a link between missing persons in Chile and DINA. 7/ The Ad Hoc Working Group tried unsuccessfully in 1978 to obtain the testimony of General Manuel Contreras, the former Director of DINA. Because the evidence presented to courts in the United States in the investigation into the death of Orlando Letelier showed that Mr. M. Townley was connected with DINA, it was decided to contact the attorney acting for Mr. Townley in order to determine if Mr. Townley would be able to provide information on the functioning of information-gathering agencies in Chile and if a meeting between the Expert and Mr. Townley could be arranged for that purpose. In a letter dated 6 September 1979 Mr. Townley's attorney informed the Expert that:

"My client, Mr. Townley, is not in possession of relevant information regarding the fate of missing and disappeared persons in Chile. Therefore, it would serve no useful purpose for you to establish contact with him, or for me to arrange a meeting between you and him".

7/ Dirección de Inteligencia Nacional (National Intelligence Directorate). See infra, chapter IV B.

I. UNITED NATIONS CONCERN ABOUT MISSING PERSONS AS A
GENERAL PROBLEM AND IN SPECIFIC SITUATIONS

11. In resolution 33/173 of 20 December 1978 entitled "Disappeared persons", the General Assembly expressed its deep concern at reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations, often while such persons were subject to detention or imprisonment, and as a result of unlawful actions or widespread violence. The Assembly also expressed its concern at reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons, including reports of the persistent refusal of such authorities or organizations to acknowledge that they hold such persons in their custody or otherwise to account for them. The Assembly stated that it was mindful of the danger to the life, liberty and physical security of missing persons arising from the persistent failure of security authorities to acknowledge holding missing persons and the anguish and sorrow caused to relatives of missing persons. With regard to missing persons, the Assembly referred to the following specific human rights proclaimed by the Universal Declaration of Human Rights and defined and safeguarded by the International Covenant on Civil and Political Rights: the right to life, liberty and security of person, freedom from torture, freedom from arbitrary arrest and detention, and the right to a fair and public trial.

12. In that resolution, the Assembly thus called upon Governments, in the event of reports of missing persons, to devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations. It also called upon Governments to ensure that law enforcement and security authorities or organizations are fully accountable, especially in law, in the discharge of their duties, such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights. Governments were also called upon to ensure that the human rights of all persons, including those subjected to any form of detention and imprisonment, are fully respected, and to co-operate with other Governments, relevant United Nations organs, specialized agencies, intergovernmental organizations and humanitarian bodies in a common effort to search for, locate or account for such persons in the event of reports of enforced or involuntary disappearances.

13. With regard to United Nations organs, the Assembly also requested the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations and it urged the Secretary-General to continue to use his good offices in cases of enforced or involuntary disappearances of persons, drawing, as appropriate, upon the relevant experience of the International Committee of the Red Cross and of other humanitarian organizations. Finally, the Secretary-General was requested to draw the concerns expressed in that resolution to the attention of all Governments, regional and interregional organizations and specialized agencies for the purpose of conveying on an urgent basis the need for disinterested humanitarian action to respond to the situation of persons who have disappeared.

14. For lack of time, the Commission on Human Rights was unable at its thirty-fifth session to take a decision on the question of missing persons,

although the matter was considered closely. ^{1/} The Economic and Social Council, at its first regular session for 1979, adopted resolution 1979/38 entitled "Disappeared persons", in which it requested the Commission on Human Rights at its thirty-sixth session to consider as a matter of priority the question of disappeared persons, with a view to making appropriate recommendations. In the same resolution, the Council requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider the subject at its thirty-second session, with a view to making general recommendations to the Commission on Human Rights at its thirty-sixth session, and it also requested the Sub-Commission to consider communications on disappeared persons in accordance with the relevant resolutions.

15. The Sub-Commission on Prevention of Discrimination and Protection of Minorities considered the problem of missing persons at its thirty-second session and on 5 September 1979 adopted resolution 5 B (XXXII), in which it pointed out that, according to information brought to its notice, enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations continued to occur and that the danger involved for such persons warranted urgent reaction on the part of all individuals and institutions as well as of the Governments. The Sub-Commission considered that General Assembly resolution 33/173 places not merely a legal but also a moral obligation, based on the principles of elementary humanity which inspire the international community, on all those participating in United Nations activities to take account at every appropriate opportunity of disappearances brought to their knowledge and to combine their efforts to try to locate the missing and disappeared persons in different regions of the world. The Sub-Commission proposed that the emergency action called for by the situation of missing persons might be entrusted to a group of experts of the Sub-Commission, which would be given all the information available for locating the missing and disappeared persons in different regions of the world and would make the necessary contacts with the Governments and families concerned. The Sub-Commission thus requested the Commission on Human Rights to authorize members designated by the Chairman of the Sub-Commission to undertake that task. Furthermore, the Sub-Commission transmitted to the Secretary-General for action, pending the decision by the Commission, in accordance with the appropriate procedures and to such extent as he deemed possible as part of the good offices urged upon him by the General Assembly resolution, the lists of missing persons communicated to him by members of the Sub-Commission. Finally, it was suggested by the Sub-Commission that if the phenomenon of missing persons were to continue, its extreme gravity would justify envisaging some form of emergency remedy, based on the notion of habeas corpus or any other type of legal protection, designed to induce official organs to devote the necessary means to the search for the missing and disappeared persons in different regions of the world.

16. In addition to its concern at the phenomenon of missing persons in general, the United Nations has dealt with specific situations. In its resolution 4 (XXXI) of 13 February 1975, the Commission on Human Rights called for the intensification of efforts aimed at tracing and accounting for missing persons in Cyprus and the General Assembly later that same year, in resolution 3450 (XXX) of 9 December 1975, expressed its grave concern about the fate of a considerable number of Cypriots who were missing as a result of armed conflict in Cyprus. In that resolution the Assembly reaffirmed the basic human need of families in Cyprus to be informed about

^{1/} E/1979/36, paras. 187-191.

missing relatives and requested the Secretary-General to exert every effort, in close co-operation with the International Committee of the Red Cross, to assist in tracing and accounting for persons missing as a result of armed conflict in Cyprus. ^{2/} In 1977, the Assembly expressed in resolution 32/128 its concern at the lack of progress towards the tracing and accounting for missing persons in Cyprus and requested the Secretary-General to provide his good offices, through his Special Representative in Cyprus, to support the establishment of an investigatory body, with the participation of the International Committee of the Red Cross, which would be in a position to function impartially, effectively and speedily so as to resolve the problem without undue delay. The General Assembly, at its thirty-third session, expressed in resolution 33/172 its regrets at the delay in the implementation of its resolutions 3450 (XXX) and 32/128 and urged the establishment of an investigatory body under the chairmanship of a representative of the Secretary-General, with the co-operation of the International Committee of the Red Cross, which would be in a position to function impartially, effectively and speedily so as to resolve the problem without undue delay; the representative of the Secretary-General would be empowered, in cases of disagreement, to reach a binding independent opinion which would be implemented.

17. The question of missing persons in Chile was mentioned explicitly for the first time in a resolution of the General Assembly in 1975 when, in resolution 3448 (XXX), the Assembly called upon the Chilean authorities to take steps to clarify the status of individuals who were not accounted for. This same call was repeated by the Commission on Human Rights in resolution 3 (XXXII) of 19 February 1976. In these and earlier resolutions, the Assembly and the Commission, and also the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 8 (XXVII), expressed concern over, among other things, practices in Chile of arbitrary arrest and detention and violation of human rights involving human life and liberty. At its thirty-first session, the General Assembly expressed in resolution 31/124 of 16 December 1976 its profound indignation at the disappearance of persons for political reasons and called upon the Chilean authorities to clarify forthwith the status of individuals whose disappearance was attributable to political reasons. The Commission on Human Rights also expressed in resolution 9 (XXXIII) of 9 March 1977 its profound indignation at the disappearance of persons for political reasons and called upon the Chilean authorities to end the practice of secret arrests and subsequent disappearance of persons whose detention was systematically denied or never acknowledged.

18. At its thirty-second session, the General Assembly adopted on 16 December 1977 resolution 32/118, in which it expressed its grave concern that, in spite of the appeals by the General Assembly, the Secretary-General, private institutions and citizens of Chile, the Chilean authorities had consistently failed to give a satisfactory account of missing persons. The Assembly also expressed its particular concern and indignation at the continuing disappearance of persons, which was shown by the available evidence to be attributable to political reasons, and the refusal of the Chilean authorities to accept

^{2/} In resolution 4 (XXXII), the Commission on Human Rights requested the Secretary-General to continue and intensify his efforts under General Assembly resolution 3450 (XXX) in respect of missing persons in Chile.

responsibility or to account for the large number of such persons or even to undertake an adequate investigation of cases drawn to their attention. The Assembly deplored, in that connexion, the unsatisfactory way in which the Chilean authorities had sought to fulfil their undertakings to the Secretary-General of the United Nations, acting under the mandate of General Assembly resolution 31/124, and relating to the disappeared relatives of the Chileans who had drawn attention to their plight by engaging in a hunger strike at the headquarters of the Economic Commission for Latin America at Santiago. Finally, the Assembly demanded that the Chilean authorities put an immediate end to practices of inadmissible secret arrests and subsequent disappearance of persons whose detention was systematically denied or never acknowledged, and to clarify forthwith the status of such persons. At its thirty-fourth session, the Commission on Human Rights adopted on 6 March 1978 resolution 12 (XXXIV), in which it expressed its profound indignation at the disappearance of persons for political reasons in Chile and viewed with particular concern and indignation the continued refusal of the Chilean authorities to accept responsibility or to account for the large number of persons who had disappeared and whose disappearance was shown by the available evidence to be attributable to political reasons. The Commission demanded that the Chilean authorities clarify forthwith the fate of the numerous persons who had thus disappeared in Chile.

19. General Assembly resolution 33/175, adopted on 20 December 1978 at the thirty-third session, and Commission on Human Rights resolution 11 (XXXV) of 6 March 1979 both deal in detail with the question of missing persons in Chile and their contents in this regard are described above in the introduction to this report.

20. A number of organizations within the United Nations system and organizations of a regional character have dealt with the question of missing persons in Chile. More details on this matter will be included in the report to the Commission on Human Rights at its thirty-sixth session.

21. The United Nations has expressed its concern at the phenomenon of missing persons that appears to be emerging throughout the world and has paid particular attention to the situation in two countries. The seriousness of the problem cannot be denied and it is hoped that the present detailed inquiry into missing persons in Chile will also lead to a better understanding of other situations and will suggest ways of preventing the disappearance of persons in the future.

II. MISSING PERSONS IN CHILE: THE REPORTS OF THE AD HOC
WORKING GROUP ON CHILE AND THE OBSERVATIONS OF THE
GOVERNMENT OF CHILE ON THOSE REPORTS (1973 TO 1979)

22. The Ad Hoc Working Group on the Situation of Human Rights in Chile included in each of its eight reports information relating to the disappearance of detainees in Chile. Each report contained a specific section dealing with the problem and headed variously as "Missing persons", "The problem of disappeared persons" or "Disappearance of detained persons". Relevant information was also set out in those reports under the headings of arrest and detention, for in many cases persons who disappeared were first reported as victims of illegal arrests. In the observations which it submitted to the General Assembly and the Commission on Human Rights in connexion with the reports of the Ad Hoc Working Group, the Government of Chile included information on missing persons. The resolutions adopted by the General Assembly and the Commission on Human Rights in relation to the reports of the Ad Hoc Working Group have been described above.

23. In its progress report of 30 August 1975 to the General Assembly at its thirtieth session, 1/ the Ad Hoc Working Group reported on the specific cases of the disappearance of David Silbermann Gurovich and Guillermo Beausire Alonso. The Group also dealt with the press reports of the deaths, outside Chile, of 119 persons who had been previously reported as having been arrested and it characterized the disappearance of persons after their arrest as a "very serious problem". In addition, the Group described the failure of the relatives to obtain satisfactory information on the actual location of missing persons, either through the courts by applications for amparo or through requests to SENDET (National Executive Secretariat for Detainees), the Government agency responsible for information on detainees. 2/ The Group annexed to its report the list of missing persons presented to the Supreme Court of Chile in July 1975. It also reported on the way persons were arrested in Chile by the security agencies, in particular DINA; arrests were carried out "without even the semblance of formalities" and the arresting agents did not identify themselves. 3/

24. The Government of Chile, in the material presented to the General Assembly at its thirtieth session in connexion with the Assembly's consideration of the report of the Ad Hoc Working Group, provided information on its investigation of various lists of missing persons it said had been circulating. The investigation revealed that the lists contained duplications of names, persons missing who did not legally exist, persons legally dead, persons in asylum, persons ordered to leave the country, persons in detention, persons who had been released and persons

1/ A/10285.

2/ A/10285, paras. 138-151.

3/ A/10285, para. 133.

who had never been detained. The Government also stated that persons had gone into hiding, been killed abroad, left the country illegally or had used false identification papers and that normally 2,500 persons disappear in Chile every year. It also supplied information on the Beausire and other specific cases and on the list of "119" names. 4/

25. The report to the Commission on Human Rights at its thirty-second session, which the Ad Hoc Working Group adopted on 30 January 1976, included information on the legal provisions governing arrest and detention in Chile, on the practice of the Chilean security agencies in the matter and also on missing persons. Three specific cases of missing persons were described (Bautista van Schouwen Vasey, Jorge Carlos Ruz Zuñiga, Alfonso René Chanfreau) and, for the first time, the Group included evidence in the form of sworn statements concerning the disappearance of persons. It also mentioned reports estimating that from 1,000 to 2,000 persons had disappeared in Chile and spoke of the failure of the applications for amparo or the requests for information to the Government to determine the actual location of detainees. 5/ In its observations on that report, the Government of Chile requested that it should be provided with the names of the 1,000 to 2,000 missing persons "once and for all" and referred to the information which had been submitted to the General Assembly on the surprising results of the Government's investigation of lists of missing persons. 6/

26. In its report to the General Assembly at its thirty-first session, in 1976, the Ad Hoc Working Group gave considerable attention to the question of missing persons. With regard to the list of "119" persons reportedly killed outside Chile, the Group included information on statements by detainees in Chile that they had been kept in official detention camps together with persons on the list of "119" and it reported on the written acknowledgement by the authorities of the detention of one person on that list. A number of specific cases or groups of cases of missing persons were reported, with the existing evidence that the persons had been arrested. Among these cases were the eight missing persons in Valparaíso, Víctor Díaz López, and the persons arrested at Calle Conferencia in May 1976. The Group also reported that the Comité de Co-operación para la Paz had presented lists of missing persons and allegations of facts concerning their disappearance to the Supreme Court, with a request for an investigation. The President of the Supreme Court, in explaining the Court's rejection of the request, stated that the official reports received by the Court showed that many of the alleged missing persons were at liberty, living abroad, in detention under the state of siege or awaiting trial before military or civilian courts. However, the Group reported that a comparison of the official reports on which the Supreme Court said it had based its decision with the list of the Comité Pro-Paz showed that no one on the list was in any of the situations described by the Supreme Court. The Group also stated that it had information, including photographs, which showed that persons

4/ A/C.3/639, Part Two, chap. Two, para. 4, II, and La Situación Actual de los Derechos Humanos en Chile, Vol. No. 2, October 1975.

5/ E/CN.4/1188, paras. 78-109.

6/ E/CN.4/1207, chap. II (g).

who, according to the Government of Chile's report to the General Assembly at its thirtieth session did not exist, did in fact exist and the Group expressed its serious doubts as to the results of the Government investigation into these matters. It annexed to its report a list of persons said to have disappeared during 1976 as well as information from the Government on persons reported to be missing. 7/

27. In its observations on the report of the Ad Hoc Working Group to the General Assembly at its thirty-first session, the Government of Chile referred to the information relating to the list of "119" it had presented to the thirtieth session of the Assembly. It reported in connexion with the eight missing persons in Valparaíso that they had been arrested but immediately released. The Government provided information on the identities of the persons it had reported as not existing, on the use of forged documents and false identities and on specific cases of persons said to be missing, such as Víctor Díaz, and the persons reportedly arrested at Calle Conferencia. 8/

28. The question of the disappearance of detained persons was dealt with at some length by the Ad Hoc Working Group in its report to the Commission on Human Rights at its thirty-third session (February-March 1977). 9/ The Group found that the evidence before it, particularly statements by former detainees, substantiated and reinforced the Group's earlier findings that the security agencies were arresting persons and keeping them in unofficial places of detention while the authorities repeatedly denied their arrest. Statements by former detainees that they had seen missing persons in detention were reported and a list of missing persons seen in detention was annexed to the report. In addition to such statements, the Group found that the detention of missing persons by the authorities was confirmed by the similarity between the methods of arrest used in cases of persons who eventually turned up in official detention and those used in cases where the person was never seen again. Witnesses to the fact that a person was in the custody of agents outside detention centres and written or oral confirmation of arrest by officials were also ways in which the detention by the authorities of a missing person was confirmed. In connexion with the fate of missing persons, the Group expressed concern at the reports of the discovery of badly mutilated and often unidentifiable bodies in Chile and a close examination was made of the case of Marta Ugarte, who had been reported missing and whose mutilated body was discovered on a beach. With regard to investigations concerning missing persons, the Group reported that the Vicaría de la Solidaridad had presented to the Supreme Court in August 1976 a list of 383 missing persons and four volumes of evidence of their arrest and that it had requested the appointment of a special investigating judge. The Supreme Court rejected the request on the grounds that the ordinary investigations were being carried out with diligence and zeal and

7/ A/31/253, paras. 133-301, annexes XVII, XVIII, XIX.

8/ A/C.3/31/6, chap. IV C., 4 and D.

9/ E/CN.4/1221, paras. 130-185.

that certain of the missing persons were free and living in their homes or had gone abroad or were in detention or awaiting trial. However, after reviewing the Supreme Court's decision, the Vicaría denied that anyone on the list it presented was in any of the situations described by the Supreme Court. The Working Group found that no serious investigation concerning the missing persons had taken place and called on the Government to make such an investigation. 10/

29. The Government of Chile, in its observations on the above report, spoke of adversaries who were ready to go underground and undertake a campaign of "disappearances" and of the resulting difficulties in proving the existence of missing persons. It referred to the information it had presented in the past, which showed the results of its inquiries and the fact that a substantial number of cases on the list of missing persons of the International Committee of the Red Cross had been cleared up. It mentioned a special investigating judge's report that some of the 13 persons alleged to be under arrest and missing at the end of 1976 had left the country and had entered Argentina. It also provided information on corpses found in Chile and details of the Marta Ugarte case and impugned the reliability of certain witnesses. Information was supplied on individual cases and the Government stated it could have furnished more information if it had been given sufficient notice. 11/

30. The Ad Hoc Working Group, in its report to the General Assembly at its thirty-second session, in 1977, 12/ included information on disappearances in 1977 and new information on cases of missing persons occurring in earlier years. Information on missing persons seen in custody was annexed to the report and the Group dealt with official investigations into cases of missing persons, including the rejection by the Supreme Court of a petition calling for an investigation of 501 cases of missing persons presented in March 1977. The sit-in and hunger strike by relatives of missing persons at the headquarters of the Economic Commission for Latin America was examined, as was the information provided by the Government of Chile on the results of its investigations into lists of missing persons. The Group annexed to its report a computer list of information on 1,015 persons who had been reported missing to the Vicaría de la Solidaridad and the International Committee of the Red Cross, and also the information supplied by the Government of Chile in connexion with the Red Cross list. The Group referred to the finding contained in its previous report that:

"a system has been established in Chile whereby individuals believed to oppose the present Régime, including persons active in the labour movement, are arrested by Chilean authorities and detained in various unknown locations while the responsible authorities deny their arrest or detention and after having been interrogated under torture, most of these individuals are never seen alive again".

10/ E/CN.4/1221, para. 185.

11/ E/CN.4/1247/Add.1, Part II, chaps. IV and V.

12/ A/32/227.

The Group found that no effective investigation of the cases of missing persons had been carried out and called upon the Government to undertake an investigation and to make the results public. 13/

31. The Government of Chile, in its observations on the Group's report to the General Assembly at its thirty-second session, pointed out the difficulties of investigating cases of alleged missing persons, because of the fact that many people had more than one identity and had forged identity cards, a large number of persons had gone underground, and Chilean legislation made it difficult to keep a check on the actual residence of people who were free to move about. Despite these difficulties, the Government was able to locate approximately 100 persons on the Red Cross list of 893 missing persons and had asked for more information on an additional 100 cases. It furnished information on persons reported missing in 1977 and on the 13 persons who allegedly disappeared in November and December 1976. Furthermore, it referred to the investigation undertaken in the Beausire case and stated it would continue investigating the cases on the Red Cross list. It also said that the Group had not reported on the results of the investigation undertaken by the Government relating to the Red Cross list because, had the Group done so, it would have had to report the success and the specific results achieved and the existence of a deliberate campaign against Chile. 14/

32. In its report to the Commission on Human Rights at its thirty-fourth session (February-March 1978), 15/ the Ad Hoc Working Group on Chile set forth information concerning persons who were reported to have disappeared in 1977 and new information relating to cases of persons missing in earlier years. The Group spoke of the steps taken by relatives of missing persons to determine their whereabouts or fate, the Chilean judiciary and missing persons. It reported that the Chilean judiciary had been called upon to release missing detainees, determine their fate and discover and punish those responsible, but in fact the judiciary provided a screen behind which the reality of the missing persons was officially hidden. The Group concluded that persons detained by security agents continued to disappear, that this must be brought to an end, that the fate of the missing detainees must be clarified, and that only a thorough and impartial investigation into the evidence of the fact of detention and disappearance would be able to produce satisfactory answers. 16/ In its observations on this report by the Ad Hoc Working Group, the Government of Chile pointed out that the applications made by the Vicaría de la Solidaridad to the Supreme Court in connexion with the missing persons were not the proper way to request an investigation; rather, criminal complaints should have been filed. It stated that it was continuing its investigation into the lists presented by the Red Cross. The Government also made comments on the list of missing persons annexed to the Group's report to the General Assembly at its thirty-second session and, referring to the results of its investigation into the Red Cross lists, it categorically rejected the Group's assertion that it had declined to undertake an adequate investigation. 17/

13/ A/32/227, paras. 88-91, 101-134, 293-294.

14/ A/C.3/32/6, chap. III, A and B and Conclusions 4(a).

15/ E/CN.4/1266, paras. 65-77 and 152(b) and (c).

16/ E/CN.4/1266, para. 152(b).

17/ E/CN.4/1290, chap. III, B.6.

33. In July 1978, the Ad Hoc Working Group visited Chile to collect information on the human rights situation, information which was reflected in its report to the General Assembly at its thirty-third session, in 1978. 18/ New information was obtained on cases of missing persons occurring between 1973 and 1977, including new evidence of their disappearance and the results of investigations. No disappearances were reported to have occurred in 1978. With regard to the 13 persons missing in November-December 1976, the Group learned that the records of the border station through which they reportedly left the country had been carefully altered in order to show the departure of those persons. The Group reported on its visit to Villa Grimaldi with a former detainee who indicated the places where persons who were missing had been detained. It also visited the office of the Ministry of the Interior where the files covering missing persons and the decrees ordering detention or release under the state of siege were kept. The Group was able to compare the information on some cases in the Ministry's files and the results of the Ministry's investigations with the information contained in the Group's own files. It was also informed of the continuing efforts of the relatives of missing persons to determine their location and fate and of the background information given by the Catholic Church to the Minister of the Interior in connexion with missing persons. The Minister of the Interior informed the Group that the missing persons problem had come about as a result of dual identities, deaths in confrontations, people fleeing the country, people who went into hiding and persons about whom no information was available. In some cases the Government had supplied private information about missing persons to the relatives. The Group concluded that, once DINA had denied having detained a person, the courts and the Ministry made no investigation into the facts of the alleged detention, even when there were statements by persons who had witnessed the arrest. The investigations by the courts and the Government were inadequate, the Working Group concluded, and in its conversations with the Government it discussed several approaches to organizing an adequate investigation. However, no agreement was reached on the matter. 19/

34. In its observations on the Group's report to the General Assembly at its thirty-third session, the Government of Chile noted the steep reduction in the number of cases of alleged missing persons, which was due to the fact that the reports were false, the persons had been found or the alleged missing persons were using assumed names. The Government stated that it would continue with its investigation of cases pending and hoped to find a formula for collaboration with the United States. 20/

35. In its report to the Commission on Human Rights at its thirty-fifth session (February-March 1979), 21/ the Ad Hoc Working Group spoke of the efforts by the relatives of missing persons in Chile and by the Catholic Church to clarify the fate

18/ A/33/331

19/ A/33/331, paras. 386-423, 779 (15).

20/ A/33/331, annex LXXXII.

21/ E/CN.4/1310.

of the missing persons. They included the request of November 1978 to the Supreme Court for the appointment of special investigating judges in the eleven Courts of Appeals in Chile. The request included a large number of concrete steps which the judges could take - for example, persons to be interviewed in connexion with specific cases, specific detention centres to be investigated, and automobiles identified as being connected with missing persons which could be traced. The Group also reported on the finding of graves of then unidentified persons at Lonquén and of unidentified persons at Cuesta Barriga and the investigations which had been ordered. In its conclusions, the Group found that reliable evidence had been gathered on the arrest by Government security agents of over 600 persons who remained missing, but that the investigation by the Government and the courts had failed to determine the whereabouts or the fate of the missing people. An adequate investigation was urgent and indispensable. 22/ In its observations on this report, the Government criticized the Group for failing to comment in favour of the Government on the fact that no persons were reported to have disappeared in 1978. The Government noted the consideration by the Supreme Court of the petition for the appointment of special investigating judges and the investigations that were under way into the Lonquén and Cuesta Barriga graves. It stated that the establishment of investigating bodies outside the judiciary was unacceptable, since another body would be unconstitutional and foreign investigators would violate the independence and sovereignty of Chile. 23/

36. The efforts of the Ad Hoc Working Group to call the attention of the Government of Chile to the disappearance of persons arrested by Government agents and to induce it to put an end to the practice and to inform the relatives of the missing persons of their whereabouts or fate have not been the only efforts made in this direction. Organizations within the United Nations system such as the ILO and regional organizations such as the Inter-American Commission on Human Rights have expressed similar concerns and made similar calls on the Government. Non-governmental organizations outside Chile and religious organizations within the country, as well as the relatives of the missing persons, have engaged in widespread activities on behalf of missing persons in Chile. It may be said that the efforts of the United Nations, the specialized agencies, the regional intergovernmental organizations, non-governmental and Church organizations and private individuals have contributed to a more cautious attitude by the Government concerning the disappearance of persons in Chile and to the fact that no disappearance of detainees in Chile is reported to have taken place during 1978 and the first half of 1979. But, unfortunately, these efforts have not in general led to adequate investigations, nor have the relatives received information on the fate of their missing family members, except in the case of the bodies buried at Lonquén.

22/ E/CN.4/1310, paras. 106-128.

23/ E/CN.4/1310, annex XXII, chap. III.

III. RECENT DEVELOPMENTS CONCERNING MISSING PERSONS IN CHILE (1979)

37. Since the adoption in January 1979 by the Ad Hoc Working Group on Chile of its report to the Commission on Human Rights at its thirty-fifth session, 1/ the developments concerning missing persons in Chile have occurred principally in the activities of the courts, i.e. the appointment of a number of special investigating judges (ministros en visita) charged with investigating cases of missing persons, the termination of the inquiry into the bodies buried at Lonquén, and the filing of new criminal complaints connected with missing persons. During this period, both the Association of Relatives of Missing Detainees and the Catholic Church have been active in seeking an adequate response from the authorities on the actual location or the fate of the missing persons.

Appointment of special investigating judges

38. As was reported by the Ad Hoc Working Group, the Episcopal Vicars of the Archdiocese of Santiago petitioned the Supreme Court of Chile on 3 November 1978 to appoint a special investigating judge (ministro en visita) in each of the 11 jurisdictions of the Chilean Courts of Appeals to investigate the arrest, detention and actual location or fate of 651 missing persons whose names were furnished to the Supreme Court with that petition. In addition, the background information on 477 cases of missing persons previously submitted to the Minister of the Interior for investigation was transmitted to the Court. 2/ On 21 March 1979, the Supreme Court partly agreed to the request by instructing the Courts of Appeals in Santiago, Rancagua, Chillán, Concepción and Temuco to appoint special investigating judges. With regard to the six remaining Courts of Appeals, the Supreme Court did not instruct them to appoint special investigating judges but left the decision to the Courts themselves. In those jurisdictions where no special judge was appointed, the Supreme Court did ask that the ordinary investigating magistrates should give personal and preferential attention to specific cases of missing persons listed by the Supreme Court. For those jurisdictions in which the Supreme Court did decide on the appointment of special judges, it should be noted that, according to the Supreme Court's instructions, the mandates of the special judges did not extend to all cases of missing persons within the territory falling under the jurisdiction of the respective Courts of Appeals but only to those cases in which the investigation remained open and which had occurred in one department within that Court's jurisdiction. 3/ Thus, many cases in which the investigation had been suspended (sobreseído) or which occurred in other departments were excluded. However, it was reported that, in practice, some of the special judges extended their investigations to suspended cases or cases outside the one department.

1/ E/CN.4/1310.

2/ E/CN.4/1310, paras. 110-112.

3/ El Mercurio, 24 and 27 March 1979.

39. Information from reliable sources indicates that the special investigating judge for the Court of Appeals of Santiago has some 105 cases under study. Some 233 other cases fall outside the scope of his investigation, either because the investigations into those cases had been suspended or the cases occurred within the jurisdiction of the Court but outside the Department of Santiago. The activities of this judge are not known with exactitude since he did not allow the access to Court files that the lawyers for the relatives had enjoyed previously. The investigation by the special judge appointed for the Court of Appeals of Rancagua is limited, according to the most recent information, to 20 cases of missing persons who were arrested by army personnel on 16 October 1973. ^{4/} With regard to these cases of missing persons, the Government of Chile informed the General Assembly in 1975 that two of the persons had never existed and that seven had been registered by the Santiago Institute of Forensic Medicine as having died. ^{5/} Reliable sources report that, as with similar information provided on persons buried at Lonquén (see below), the authorities of the Institute of Forensic Medicine state that such information is false. It has also been reliably reported that the special judge has been denied access by the military courts to the file on a case concerning the discovery of bodies in the area which might be bodies of missing persons. In addition, the military authorities have reportedly refused to provide the special judge with the names of officers and men from the Military School of San Bernardo that he had requested in order to question them about the arrest of the 20 missing persons. The special judge appointed by the Court of Appeals of Temuco is reported to be investigating 27 cases, and the judge appointed for Concepción is investigating five cases. The judge for the Court of Appeals of Chillán is reported to have closed his investigation, which covered seven cases. Finally, in addition to the special judges appointed at the request of the Supreme Court, on 22 August 1979, the Court of Appeals of Concepción, at the request of officials of the Archbishopric of Concepción, appointed a special investigating judge for 20 cases of missing persons in the locality of Laja. In connexion with this investigation it has been reported that the bodies of 18 persons secretly buried in a cemetery at Yumbel have been discovered recently. Details on this case are given below in chapter IV.

^{4/} El Mercurio, 27 March 1979. The names of the missing persons whose cases are reported to be under investigation by the special judge of Rancagua are: Adasme Nuñez, José Domingo; Cabezas Villegas, Pedro Antonio; Castro Maldonado, José Ignacio; Gaete Balnaceda, Luis A.; Lazo Quinteros, Carlos Enrique; Lazo Maldonado, Samuel del Tránsito; Lazo Maldonado, Luis Rodolfo; Lazo Quinteros, Samuel; Maureira Gajodo, René del Rosario; Muñoz Peñaloza, Jorge Hernán; Muñoz Penalosa, Mario Enrique; Nieto Duarte, Carlos Alberto; Pinto Garoca, Hernán; Quiroz Pezoa, Laureano; Silva Carrenos, Ramón Luis; Serrano Galaz, Roberto; Valenzuela Alvarez, Basilio Antonio; Muñoz Peñaloza, Ramiro Antonio; and Muñoz Peñaloza, Silvestre René.

^{5/} La Situación Actual de los Derechos Humanos en Chile, Vol. 2, October 1975, pp. 276-379 and 381-383.

Investigation into the bodies discovered buried at Lonquén

40. The Ad Hoc Working Group on Chile reported to the Commission on Human Rights at its thirty-fifth session the discovery in December 1978 of a number of bodies buried at Lonquén and the appointment of a special investigating judge a few days after the discovery. 6/ As is reported in detail below, the special judge completed his investigation, in which the bodies were identified as those of 15 missing persons, and concluded that a carabinero officer was responsible. By reason of this latter fact the special judge declared himself without jurisdiction and the case was transferred to the military courts. After carrying out his own investigation, a military judge indicted and ordered the arrest of eight carabineros, charging them with unnecessary violence leading to the death of the 15 persons whose bodies were found at Lonquén. The eight carabineros were subsequently released and the court decided that they could not be prosecuted because of the amnesty of April 1978. 7/

41. As is also reported below, the relatives of the 15 persons whose bodies were found at Lonquén petitioned the military court asking that the bodies be returned to them for burial, but these requests were rejected. 8/ On 3 September 1979 the Association of Relatives of Missing Detainees began a hunger strike in four Santiago churches and the Danish Embassy, calling upon the authorities to give proper answers concerning the fate of missing persons and to do justice to the martyrs of Lonquén. Objections were raised to the application of the Amnesty Decree-Law in order to protect those who had killed the persons buried at Lonquén and to the failure to return the bodies to the relatives. 9/ Some 130 Catholic priests and nuns fasted for 48 hours in support of the hunger strike and a number of persons were arrested during demonstrations in favour of their demands. 10/ On 11 September 1979 the military court, in a decision addressed to the military prosecutor, ordered that the remains discovered at Lonquén be returned to those legally establishing a family relationship with the persons whose bodies were found and, as a result of this decision, the hunger strike was terminated. The military prosecutor in the case was notified of the decision but nonetheless ordered the Institute of Forensic Medicine to bury all the remains, with the exception of those of Sergio Adrián Maureira, in a common grave at the town of Isla de Maipo. The judge gave orders for Sergio Maureira to be buried there in a separate grave. These burials took place without the families having been notified. 11/

6/ E/CN.4/1310, paras. 119-126.

7/ See chapter IV below.

8/ El Mercurio, 5 July 1979, and La Tercera de la Hora, 14 August 1979.

9/ El Mercurio, 4 and 7 September 1979.

10/ El Mercurio, 11 September 1979.

11/ El Mercurio, 15 September 1979.

Activities of the Association of Relatives of Missing Detainees

42. In addition to the hunger strike of September 1979, the Association of Relatives of Missing Detainees has continued its activities during 1979 to obtain information on the actual location or the fate of missing persons. On 18 April 1979 some 60 relatives of missing detainees chained themselves to the fence surrounding the garden of the National Congress building, which now houses the Ministry of Justice, in order to bring attention to their call for proper answers concerning the actual location or the fate of the missing persons and to their objections to the use of the Amnesty Decree-Law to protect the persons responsible for the disappearance of detainees. ^{12/} They were arrested and charged with violating the law on the security of the State but were released on 23 April by the judge charged with the case, who found no basis for prosecuting them. ^{13/} In May 1979 the Association addressed a letter to the Minister for Foreign Affairs pointing out the international repercussions of the problem of missing persons in Chile and requesting that missing persons be released or that their fate be clarified.

43. The Association of Relatives of Missing Detainees has drawn special attention to cases of women who were pregnant when they were detained and are still missing. Seven cases are cited in particular and in two of them it is reported that the women gave birth while in detention. However, no information has been obtained on the location of the mothers or their children. (see annex IV).

44. The authorities of the Chilean Catholic Church have issued numerous statements supporting activities of the Association aimed at determining the actual location or the fate of the missing persons. ^{14/} The Vicaría de la Solidaridad, on the occasion of the opening of the judicial year in March 1979, stated in an official petition to the Supreme Court that, in the light of the discovery of the burial of missing persons at Lonquén "and in order to restore the national dignity and preserve public morality, there is no alternative but to make a full and final investigation of the hundreds of cases of disappearances still unsolved".

45. According to reliable sources, the manner in which the investigation into the persons buried at Lonquén was carried out and the appointment by order of the Supreme Court of the special investigating judges in five Courts of Appeals appear to have had a two-fold effect. First, in known cases of missing persons new witnesses are coming forward to testify, thus providing new evidence of arrest and detention. Again, new cases of missing persons are coming to light and relatives are now filing new complaints before the courts. For example, it is reported that

^{12/} Solidaridad, No. 68, April 1979, pp. 6-7.

^{13/} El Mercurio, 21 and 22 April 1979. For more details see the Report of the Special Rapporteur on the Situation of Human Rights in Chile to the General Assembly at its thirty-fourth session.

^{14/} See, for example, Solidaridad, No. 68, April 1979, p. 6.

the Vicaría de la Solidaridad requested the appointment of special investigating judges for 29 cases falling within the jurisdiction of the Court of Appeals of Temuco, 75 cases in Concepción, 51 cases in Chillán and that new complaints have raised these figures to 39 for Temuco, 107 for Concepción and 75 for Chillán. In chapter IV below, detailed information is given on new complaints filed in connexion with missing persons in Laja and Osorno.

46. Although there are now some positive developments in the judiciary's attitude towards missing persons, a tragic humanitarian problem still remains for those relatives - parents, wives, husbands, children - who do not yet know the actual location or the fate of their missing family members. As has been reported by the Ad Hoc Working Group on Chile, this has decidedly adverse effects on the economic situation and on the moral and psychological condition of the relatives. 15/

15/ E/CN.4/1310, para. 128 and annex XIII; and A/33/331, paras. 376-377.

IV. MISSING PERSONS IN CHILE: AN ANALYSIS OF SELECTED CASES

Introduction

47. The exact number of missing persons in Chile will most certainly never be known because of the disturbances in public order during the change of régimes in September 1973, because accurate records were not kept on events which took place in the months that followed and because in subsequent years a conscious effort was made by the security agencies to arrest and detain persons in circumstances which would reduce the possibility of the arrests and detentions being reported by witnesses. Organizations such as the World Council of Churches have estimated that the number of missing detainees exceeds 1,000 and may even be close to 2,000. 1/ Statistics on a year-by-year basis are in some instances deceptive, for during certain periods arrested persons remained missing for months only to turn up later in official custody. In 1977 the Ad Hoc Working Group on Chile prepared a computerized list consolidating the names of persons reported missing to the International Committee of the Red Cross and to the Vicaría de la Solidaridad. The list contained 1,015 names. The situation of some of the persons on the list has been clarified. 2/ While some persons reported missing were found later on and the information in other cases proved to be false, the fact that over 600 people have disappeared in Chile after arrest by Government agents is undeniable. In 1976 the Vicaría de la Solidaridad presented evidence to the Supreme Court on 383 well documented cases of missing detainees and the number rose to 501 in 1977. In June 1978 the Vicaría published a list of more than 600 such cases and the most recent information puts the figure at 669. With a view to obtaining an investigation of the cases of missing persons by the Government, in June 1978 the Catholic Church in Chile began to transmit to the Minister of the Interior background information on missing persons taken from the files of the courts and the Vicaría. 3/ At present, background information has been submitted on 477 cases. This information has been published in seven volumes under the title "Dónde Están?" ("Where are they?"), which contains more than 1,800 pages of information.

48. Because it would be impossible at this stage to analyse the facts in each case of reported missing persons, a selection has been made of cases which appear to be illustrative of each period. Testimony and information gathered by the Expert on the question of the fate of missing persons in Chile and by the Ad Hoc Working Group on Chile, the information submitted by various individuals and organizations and the information published by the Vicaría have been analysed and cross-checked to produce the summaries given below.

49. The question of missing persons must be studied in the context of the events that took place in Chile in particular periods and more especially in the context of the legal norms and the actual practice followed by the Chilean authorities in matters of arrest and detention in those periods. Information on these subjects

1/ E/CN.4/1188, para. 100.

2/ A/32/227, paras. 124-127 and annex LV; and E/CN.4/1266 para. 68. For comment by the Government of Chile, see E/CN.4/1290, Final Part, chap. III B.6.

3/ A/33/331, paras. 405-406.

is included in each section. The period between September 1973 and the presentation of this report has been divided into four parts: September to December 1973; January to December 1974; January to December 1975; January to December 1976 and January to December 1977. As indicated above, no cases of missing persons have been reported since the end of 1977.

A. September to December 1973

50. By a military pronunciamiento on 11 September 1973, a junta composed of the Commanders-in-Chief of the Army, Navy and Air Force and the Director-General of Carabineros assumed supreme command of Chile and placed the entire country under a state of siege and a state of emergency. Certain human rights were suspended and jurisdiction in criminal matters was transferred from civilian to military courts. 4/ In particular, article 72, paragraph 17, of the Chilean Constitution, which provides that during a state of siege the President of the Republic has the authority to transfer individuals from one Department to another and to detain them there, in their houses or at other places not intended for the detention of common criminals, was invoked. 5/

51. The events of 11 September 1973 were followed by a period of acute internal tension throughout Chile. Many persons were killed and many thousands arrested. These widespread arrests were aimed at those who were connected in one way or another with the Allende Government, either through their posts in national or local government or through political parties, labour unions or other organizations. Known supporters of the previous Government such as journalists, university professors and students were also arrested, as were relatives of members of the Allende Government. In addition, persons were arrested who, though not directly connected with the previous Government, were believed to be in a position to supply information on persons who were being sought; other persons were reportedly arrested by mistake. These arrests were carried out by military personnel and carabineros and the individuals arrested were taken to military premises or police stations and then transferred to places of detention such as the National Stadium in Santiago and the National Stadium in Concepción. In some cases persons reported voluntarily to the authorities in response to radio bulletins ordering them to do so. 6/

52. In the large-scale arrests of the period following 11 September 1973, the normal legal procedures consisting of arrest warrants or decrees were not followed and the civilian court procedures for protecting liberty, for example the application for amparo (a remedy similar to habeas corpus), were not applied. 7/

4/ See A/10285, paras. 85 et seq., and the Report on the Present Situation of Human Rights in Chile submitted to the General Assembly at its thirtieth session by the Government of Chile (A/C.3/639), Part One, chap. II, para. II.

5/ E/CN.4/1188, para. 64.

6/ Report of the Ad Hoc Working Group on Chile to the General Assembly at its thirtieth session (A/10285, paras. 124-137). Report of the Ad Hoc Working Group on Chile to the Commission on Human Rights at its thirty-second session (E/CN.4/1188, paras. 73-99). Report on the Status of Human Rights in Chile by the Organization of American States and Observations on the report by the Government of Chile (E/CN.4/1166/Add.3, chap. II, V and IX).

7/ A/10285, paras. 99 and 128; E/CN.4/1188, paras. 73, 97, and 101.

53. The special powers of arrest and transfer during a state of siege are, according to the Chilean Constitution, to be exercised by the President of the Republic. However, in the period from September to December 1973 those powers were exercised by "various and sundry administrative authorities", and Decree-Law No. 228 of 24 December 1973 sought to legalize the retroactive use by administrative authorities of the President's powers of arrest and transfer. 8/ The Chilean Minister of the Interior, during a meeting with the Ad Hoc Working Group on Chile in July 1978, discussed the situation of arrest and detention prior to 1973 and the minutes of his statement read:

"SENDET, 9/ which had been established on 31 December 1973 to put an end to the disorganization which had existed previously when each department had arrested and held detainees separately, had kept a list of detainees until its disbandment on 26 April 1978, whereupon the list had been handed over to CNI". 10/

At that same meeting with the Ad Hoc Working Group, the Chilean Under-Secretary of the Interior described the conditions existing in the country in the months immediately following 11 September 1973 and the minutes of his statement read as follows:

"In the early days of September, Chile had been in what amounted to a state of war. The armed forces and the carabineros had been involved in sizable confrontations in various regions of the country and had operated like an army. SENDET had been established in order to draw up a list of detainees and to operate in conformity with the law. From 11 September 1973 to 31 December 1973, the information received had been purely military in nature. The Ministry of the Interior had been without office space, the Ministry premises having been destroyed in the shelling of the Mint. The state of war was not something that had been established by decree, but it had existed in fact. It was impossible to determine what had happened during the state of war, since the information relating to it was totally confused. Moreover, the courts had had no jurisdiction. Authority to administer justice had been vested exclusively in the military. The situation had been such that ordinary judges had not had access to the courts". 11/

54. The Executive Secretary of the Inter-American Commission on Human Rights, after a visit to Chile from 12 to 17 October 1973, reported to the Inter-American Commission on certain aspects of the situation in Chile during October 1973 in the following terms:

8/ Report on the Status of Human Rights in Chile by the Organization of American States, E/CN.4/1166/Add.3, chap. IV.

9/ National Executive Secretariat for Detainees (SENDET); see chap IV B.

10/ Ad Hoc Working Group on Chile, Minutes of the meeting with the Minister of the Interior on 20 July 1978.

11/ Ibid.

"With regard to summary executions, we can only refer to the news published in this connexion in the newspaper El Mercurio of Santiago, Chile. The newspaper stated in its 22 September edition that: At a carabineros post, executions took place yesterday at 6 a.m. of three persons prosecuted by military justice for having machine-gunned an ambulance on September 11'; the 28 September edition reported that the ex-Governor of the province of Talca had been executed; the 2 October edition reported that nine persons had been executed 'on-the-spot' in Santiago for opening fire on uniformed personnel; the 5 October edition reported that 'Comandante Pepe' had been executed in Valdivia; the 6 October edition reported that 16 extremists in Valdivia, Temuco and Arirra had been executed and the 11 October edition that an extremist had been executed in Puerto Cisne.

~~Regarding~~ this subject, reference must also be made to the so-called 'Law of Flight' (shooting prisoners while trying to escape). According to the 5 October edition of El Mercurio, this law was applied to three individuals in Temuco; the 11 October edition reported that the law was applied to three individuals in Concepción, and the 12 October edition reported that the law was applied to six individuals in San Felipe". 12/

55. It has been estimated that from 40,000 to 50,000 persons were detained in the period following September 1973; although many were released, the Inter-American Commission on Human Rights reported that, on the basis of Government sources, some 5,500 persons were still in detention in June 1974. 13/ It is difficult to establish the exact number of persons who were killed or disappeared between September and December 1973, but the Vicaría de la Solidaridad has reported 247 strongly documented cases of persons who disappeared after being arrested during that period. 14/ The following examples have been selected to illustrate the cases of disappearance, and in particular the circumstances in which persons were arrested and subsequently disappeared during the period from 11 September to December 1973.

1. Jorge Klein Pipper 15/

56. Mr. Klein Pipper, a member of the Communist Party, was an advisor to the General Secretariat of the Government and a personal physician of former President Allende. During the afternoon of 11 September 1973 military personnel headed by General Javier Palacios arrested a group of Government advisors, civil servants and security guards at the offices of the President of Chile

12/ Report on the Status of Human Rights in Chile by the Organization of American States (E/CN.4/1160/Add.3, chap. II). See also Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile (OEA/Ser.L/V/II.37, doc. 19 corr. 1, chap. II C).

13/ E/CN.4/1188, paras. 89-91; E/CN.4/1166/Add.3, chap. XVI.

14/ E/CN.4/1310, para. 107.

15/ Dónde Están?, case No.171, vol.3, p. 731.

(Palacio de la Moneda); among them was Mr. Klein Pipper. A photograph published in the magazine "Qué pasa" was reported as showing Mr. Klein in the custody of carabineros. Mr. Klein Pipper, as well as Arsenio Poupin Dissel, Enrique Huerta Corvalán and Claudio Jimeno Grendi, who were arrested at the same time but were subsequently released, were taken to the Tacna Barracks of the Chilean Air Force. Since then no information has been received on the whereabouts or fate of Mr. Klein Pipper. On 29 March 1974 an application for amparo was submitted on his behalf and on 20 December 1974 it was denied. On appeal, this denial was confirmed by the Supreme Court, which recommended on 31 January 1975 the appointment of a special investigating judge. On 29 September 1975 the special investigating judge declared himself without jurisdiction, basing himself on the fact that the persons making the arrest were military personnel and were thus subject to military jurisdiction. The case was therefore sent to a military court, which temporarily suspended the proceedings on 14 September 1976.

2. Cuesta Barriga. Reports of missing persons and the discovery of bodies 16/

57. At the end of 1978 the Chilean press reported the discovery of at least two unidentified bodies at Cuesta Barriga. The discovery was communicated to the Court of Casablanca on 19 December 1978 by Monseigneur Jorge Hourton, Suffragan Bishop of Santiago. In connexion with the information on the finding of the bodies the Chilean press carried reports about executions which were said to have taken place in the area after 11 September 1973 and about persons from the locality who had disappeared after having been detained. 17/ One of these cases is the following. In March 1979, Juan Antonio Barrera Barrera filed a criminal complaint (querrela) for the attempted murder and the kidnapping of his son José Guillermo Barrera Barrera. Juan Antonio Barrera stated that his son was arrested by four carabineros under the command of Lieutenant Gerardo Aravena Longa on 12 September 1973 and transferred to the Carabineros post at Curacaví. Juan Antonio Barrera says his son informed him that, during the night of 15 or 16 September 1973, he (José Guillermo Barrera) and six other detainees were taken from the Carabineros post for transfer to the National Stadium at Santiago. The six other detainees were Joaquín Mendoza Santibañez, Nicolás Garate, Edmundo Manso, Jorge Gómez and Jorge Toro. He was also informed by his son that, when they arrived at the highest point of Cuesta Barriga, the seven were made to leave the vehicle they were travelling in, were lined up against a wall and shot with machine-guns. The two detainees at the ends of the line, i.e. the son of Juan Antonio Barrera, José Guillermo Barrera, and another person named Patricio Venegas Santibañez were not killed by the gun fire and, by pretending to be dead, were eventually able to escape. In his criminal complaint Juan Antonio Barrera states that in February of the following year, 1974, another son, Víctor Barrera spoke on behalf of the family and explained what had happened to Col. Saavedra and an Air Force officer named Marín at the Ministry of Defence in Santiago. The Air Force officer Marín, took Víctor to Carabineros Major Hernández at Talagante; the latter requested that José Guillermo Barrera, who had escaped after the shooting in September 1977, should come to him as soon as possible. José Guillermo Barrera, his brother Víctor and their mother went to Major Hernández on 13 March 1974 and the Major spoke by telephone with Lieutenant Gerardo Aravena Longa, Chief of the Carabineros post at Curacaví. Major Hernández assured the family that there were

16/ See E/CN.4/1310, para. 127 and annex XII.

17/ See, for example, E/CN.4/1310, annex XII.

no charges against José Guillermo and that they could go home peacefully. Juan Antonio Barrera states, however, that at 2 a.m. the next day, 14 March 1974, five heavily armed hooded men dressed in Carabineros and military uniforms came to their home and took José Guillermo away. He said that one of the men who took his son could be identified as Lieutenant Aravena Longa. Since then José Guillermo remains missing. The results of the criminal complaint filed by his father in 1979 were not known at the time of the preparation of this report.

58. According to an article in the Chilean magazine HOY, the judge investigating the discovery of the bodies at Cuesta Barriga has in his files a photograph taken on 13 September 1973 at the Carabineros post at Curacaví which shows 18 detainees, of whom the following have been identified: José Guillermo Barrera, missing; Nicolás Garate, missing; Justo Mendoza Santibañez, missing; José Gómez, missing; Jorge Toro and Gastón Manso dead, with death certificates issued by the Institute of Forensic Medicine. 18/ On 10 December 1976 the President of the International Committee of the Red Cross handed to the President of Chile a list of persons who had been reported missing to the Red Cross and the name of Segundo Nicolás Garate Torres is on that list as having disappeared on 12 September 1973. 19/

3. Fernando de La Cruz Olivares Mori. 20/

59. Mr. Olivares Mori, a staff member of the United Nations Latin American Demographic Centre (CELADE) from 1965 onwards, was arrested at about 10.30 a.m. on 6 October 1973 within United Nations premises by Navy Lieutenant Jorge Osses Novoa, who stated that he was acting on the orders of Major Vergara. Mr. Olivares Mori, followed by a fellow staff member of the United Nations, Mr. Jorge Arévalo Martínez, was taken to the Ministry of Defence. The arrest was witnessed by the Director of CELADE, Mrs. Carmen Miro, and fifty employees. Mr. Arévalo was later informed by Major Vergara that Mr. Olivares was under arrest and had probably been taken to the National Stadium. However, at the National Stadium Mr. Arévalo was informed that Mr. Olivares was not on any lists of detainees. On the day of Mr. Olivares' arrest, an official of the Demographic Centre telephoned the Ministry of Defence and, on 8 October 1973, a letter on the subject was sent to Major Moya of that Ministry. The Ministry of Foreign Affairs was also notified on 5 November 1973. In October 1977 the Legal Counsel of the United Nations drew the attention of the Chilean authorities to this case during a visit to Chile. 21/ On 19 April 1974 an application for amparo was submitted to the Court of Appeals of Santiago, which denied it on 31 May 1974, and the Supreme Court rejected an appeal against the denial on 11 July 1974. The Ministry of Defence and the Ministry of the Interior have denied the detention but the National Executive Secretariat for

18/ HOY, issues of 27 December 1978 to 2 January 1979; see E/CN.4/1310, annex XII.

19/ See A/32/227, annex IV, No. 340.

20/ See A/33/331, para. 410 and annex L11.

21/ See A/C.3/32/7.

Detainees (SENDET), in document No. 3550-300 of 9 January 1974, acknowledged the arrest of Mr. Olivares. Detailed information on this case was transmitted to the Government of Chile by the Ad Hoc Working Group on 3 August 1978 and on 4 September 1978 the Government submitted the following report to the Group:

"With respect to the present case, which is of great concern to the United Nations, in addition to the information furnished to the Group during its visit to Chile and to what may be ascertained from inquiries in Santiago, the following is submitted:

- (a) The Working Group must take into consideration the fact that the event concerned occurred in October 1973, more specifically on the 5th of that month.
- (b) On the basis of the information supplied, the existence and whereabouts of the Marine Officer Jorge Osses Novoa is being investigated and an attempt is being made to find out who the person named Major Vergara is and to which branch of the armed forces he belongs.
- (c) Once these checks have been carried out and if the inquiries are successful, statements will be taken from the persons concerned regarding the alleged arrest of Fernando de la Cruz Olivares Mori.
- (d) In addition, efforts are being made to ascertain why such statements were not taken previously or, if they were, where the documents containing them are to be found.
- (e) Finally, an investigation is being conducted into the information regarding the arrest of Fernando de la Cruz said to have been furnished by the National Office for Detainees (Servicio Nacional de Detenidos - SENDET)". 22/

No further information has been received and the whereabouts or fate of Mr. Olivares Mori remain unknown.

4. Longuén: Missing persons from the Maureira, Astudillo and Hernández families

60. The case of missing persons whose bodies were found buried in a kiln at an abandoned mine near Longuén will be dealt with in some detail here because it is the one case in which the fate of missing detainees has been clarified and the persons responsible for their disappearance have been officially identified. Furthermore, this case serves both as an example of a successful judicial investigation by a judge making full use of his powers and as an example of the failure of a judicial investigation when such powers were not fully used. This case will be dealt with under the following headings: the arrests; legal action to determine the whereabouts of the missing persons and official replies; the discovery of bodies buried at Longuén and judicial investigations; and requests by the relatives for the return of the bodies.

22/ A/33/331, annex LII.

(a) The arrests

- (i) Maureira family: Sergio Adrián Maureira Lillo and his four sons, José Manuel Maureira Muñoz, Rodolfo Antonio Maureira Muñoz, Segundo Armando Maureira Muñoz and Sergio Miguel Maureira Muñoz, were arrested late in the evening, 7 October 1973, between 9.45 p.m. and midnight by a group of five carabineros from the Isla de Maipo Carabineros post.
- (ii) Hernández family: Carlos Segundo Hernández Flores and his two brothers, Nelson Hernández Flores and Oscar Nivaldo Hernández Flores, were also arrested late in the evening of 7 October 1973 by the same group of five carabineros from the Isla de Maipo post. Ignacio Vergara Guajardo, a brother-in-law of the Hernández, was arrested at the same time but was released from the carabineros post later that night.
- (iii) Astudillo family: Enrique René Astudillo Alvarez and his sons, Ramón Astudillo Rojas and Omar Astudillo Rojas, were also arrested on 7 October 1973 by the above-mentioned group of carabineros from the Isla de Maipo Carabineros post. The arrest was witnessed by Mrs. Astudillo and the rest of her four children.

These arrests were carried out in the following order: first, Sergio Adrián Maureira Lillo was arrested at his home, the members of the Hernández family were then arrested at their home, following which the brothers Sergio Miguel and Rodolfo Antonio Maureira Muñoz were arrested at their homes. Then the members of the Astudillo family were arrested at their home and all the detainees were taken to the Isla de Maipo Carabineros post. Later, the two sons of Sergio Adrián Maureira were arrested at their father's house and taken to the Carabineros post.

- (iv) Arrest of other missing persons: Earlier on that same day, 7 October 1973, at about 10 a.m. four young men were arrested in the Plaza de Armas of the town of Isla de Maipo and they were taken to the Isla de Maipo Carabineros post. The men were José Manuel Herrera Villegas, Miguel Brant Bustamante, Iván Gerardo Ordoñez Lama and Manuel Jesús Navarro Salinas. With the exception of Ignacio Vergara Guajardo, none of the persons listed above have been seen alive since their arrest, nor were their families able to obtain information on their fate until after the discovery in December 1978 of the bodies buried at Lonquén.

(b) Legal action to determine the whereabouts of the missing persons and official replies

61. In response to an application for amparo filed on behalf of the missing members of the Maureira, Hernández and Astudillo families, official reports from the Isla de Maipo Carabineros post dated 10 and 12 December 1974 state that they

were arrested because they had been surprised in a clandestine meeting at the home of Sergio Adrián Maureira Lillo, that they all were known to be connected with leftist extremists and, together with others, they were planning attacks on carabineros from the Isla de Maipo post and their relatives. These reports also state that, in order to determine the real scope and objectives of their activities, they were sent to the National Stadium in Santiago to be questioned by specialized personnel and that their arrival at the National Stadium was shown in a receipt dated 8 October 1973, signed by a Sergeant González. The reports also note that there was no arrest warrant from a court or detention order from the Ministry of the Interior.

62. An application for amparo presented to the Santiago Court of Appeals on 29 March 1974 was rejected on 28 November 1974. However, the Supreme Court, on an appeal against the rejection, ordered the appointment of a special investigating judge. On 29 September 1975 the judge declared himself without jurisdiction (because the case came under the jurisdiction of the military courts). The judge reached this decision on the basis that the Carabineros had reported delivering the detainees to the National Stadium but that SENDET had not said anything either about receiving or not receiving the detainees. Consequently either the Carabineros or ~~SENDET~~ were responsible and both organizations came under the jurisdiction of the military courts. The case was then transferred to the military courts and the investigation was temporarily suspended on 14 September 1976.

63. In October 1975 the Government of Chile presented information to the General Assembly concerning missing persons and, in that information, Sergio Adrián Maureira Muñoz was listed as a presumed missing person who had never existed. Under the heading of persons reported missing who had died, the Government reported that the Santiago Institute of Forensic Medicine listed José Manuel Maureira Muñoz as having died at 8.30 p.m. on 11 October 1973; Rodolfo Antonio Maureira Muñoz as having died at 1 p.m. on 15 October 1973; Segundo Armando Maureira Muñoz as having died at 2 p.m. on 15 October 1973; Nelson Hernández Flores as having died at 2.30 p.m. on 11 October 1973 and Oscar Humberto Hernández Flores as having died at 12.30 p.m. on 9 October 1973. 23/ However, in 1977 the Government of Chile informed the Commission on Human Rights that, according to the Institute of Forensic Medicine, there was no record of the death of Segundo Armando Maureira Muñoz and that the Central Identification Office reported no one registered there by the name of Oscar Hernández Flores. 24/

(c) The discovery of bodies buried at Lonquén and judicial investigations

64. In December 1978 a number of unidentified bodies were discovered buried at an abandoned mine near the town of Lonquén. The press reported that the discovery was a result of a confession made to a Catholic priest and that the information had been conveyed to Enrique Alvear, Suffragan Bishop of Santiago, who, together

23/ La Situación Actual de los Derechos Humanos en Chile vol. No. 2, October 1975, pp. 375-391.

24/ E/CN.4/1247/Add.1, chap. V.

with other persons, transmitted it to the Supreme Court of Chile. As a result, Appeals Court Judge Adolfo Bañados was appointed special investigating judge to investigate the discovery of the bodies and the press reported that, under the supervision of Judge Bañados, the remains or partial remains of a number of persons were removed from a circular upright kiln and sent to the Institute of Forensic Medicine at Santiago for examination. The manner in which the bodies were buried, as reported in the press, reveals an effort to make their discovery difficult. 25/

65. Information concerning the investigation carried out by Judge Bañados indicates that the steps he took included:

(a) Instructing all the courts in the area to report to him on the hearings they had held in connexion with the disappearance of persons;

(b) Questioning many peasants, who made statements on the events that had occurred in the area in the days following 11 September 1973;

(c) Requesting those who had made the discovery to provide any information they had on missing detainees, including information on applications for amparo presented on their behalf and on criminal proceedings;

(d) Collecting all the information that could be provided by the group of relatives of missing detainees;

(e) Summoning and questioning the relatives of missing detainees in the area;

(f) Requesting reports from the Institute of Forensic Medicine and the Technical Laboratory of the Investigation Bureau. The Institute of Forensic Medicine was requested to identify the remains and determine the time and possible causes of the deaths;

(g) Taking steps to have the relatives of the missing persons identify the clothing found in the kiln. These were the steps which finally made it possible to identify the corpses; and

(h) Questioning all the carabineros who had been on the staff of the Isla de Maipo post in early October 1973.

All of these steps enabled Judge Bañados to arrive at the conclusion that the persons whose remains were found in the kilns at Lonquén were the same group of young people and peasants who had been arrested by the Isla de Maipo carabineros on 7 October 1973.

66. Carabineros Captain Lautaro Castro, who was in charge of the Isla de Maipo post in October 1973, and other members of that post reportedly testified in the investigation that they had arrested the eleven members of the Maureira,

25/ E/CN.4/1310, paras. 119-126.

Hernández and Astudillo families and had taken them to the Carabineros post for the reasons reported above. They denied arresting the four young men José Manuel Herrera Villegas, Miguel Brant Bustamante, Ivan Gerardo Ordoñez Lama and Manuel Jesús Navarro Salinas. The carabineros testified that on the same night, 7 October 1973, the eleven were placed in a van to be taken to the National Stadium at Santiago, but on the way they stopped near the Lonquén kilns because one of those arrested had stated that guns had been hidden in the kilns. It was about midnight and all eleven were taken from the vans and marched off towards the kilns in search of weapons. At that moment unknown persons began to shoot at the carabineros and the eleven prisoners fled. After the firing stopped the carabineros found all eleven dead and they were buried in the kiln because the carabineros feared reprisals. After a search of the surrounding area, no trace was found of the persons who had shot at the carabineros. None of the carabineros were wounded. Captain Castro testified that during subsequent judicial enquiries he had lied because he had feared reprisals. However, carabinero Nancupil Raquilea reportedly testified that, in addition to the eleven members of the Maureira, Hernández and Astudillo families, the four young men whose names are given above had in fact been arrested and detained at the Isla de Maipo Carabineros post and that they had all been kept at that post for some days before being placed in a van for transfer to Santiago.

67. After completing his investigation, Judge Bañados decided on 5 April 1979 that, since military personnel had been identified as being responsible for the death, the case came under the jurisdiction of the military courts and he thus transferred it to the Second Military Court of Santiago. Three days later, on 8 April 1979, Judge Bañados submitted a report on his investigation to the Supreme Court which reads as follows:

"In pursuance of the provisions of article 563 of the Code on the Organization of the Courts, I hereby report to you the action which, in my capacity as investigating judge and on instructions from the Supreme Court, I have been taking in connexion with case No. 123/3 before the Court of Talagante.

The basic statements required for the judicial inquiry having been received, it has proved possible, as a result of the completion of the expert appraisals deemed necessary, the personal conclusions reached after numerous visits to the site of the occurrence and the examination of similar cases, to arrive at the following conclusions, without prejudice to whatever may be brought to light by the steps still pending and bearing in mind the fact that the case is still at the investigation stage:

- (a) The corpses buried in the lime kiln are those of the persons who were arrested or abducted on 7 October 1973 at Isla de Maipo and whose names have hitherto been included in the lists of missing persons as a matter of public knowledge;
- (b) The information provided by the records of the investigation support the presumption that this case involves several acts of homicide, apparently perpetrated on a single occasion;

- (c) The official reports previously available stated that 11 of the dead persons had been arrested by carabineros and sent to the prison camp in the National Stadium. However, there is recent evidence from the Ministry of the Interior, transmitted by the Ministry of Defence, to the effect that these persons never reached the aforesaid prison camp;
- (d) Similarly, an official statement that the bodies of some of the aforesaid persons were received at the Institute of Forensic Medicine in 1973 or 1974 does not seem entirely reliable for reasons based on many points in the investigation;
- (e) Captain Lautaro Castro, who on the date on which the events under investigation were estimated to have occurred was the senior officer at the Isla de Maipo post, and the men who were under his command at that time admit that they arrested 11 of the missing persons concerned (who number 15 in all). They also admit that these persons were not delivered to the National Stadium and state that they died as a result of shots fired by unknown persons during the night when the police unit was taking the prisoners to the area of the kilns in order to carry out a search for weapons which were believed to have been hidden there;
- (f) This explanation runs counter to the facts of the investigation and is, moreover, inherently implausible since it is scarcely conceivable that in the circumstances described the bullets hit only the prisoners and not their captors, that there should be no other trace of any kind of the shooting which occurred there and that in all cases the wounds were such that they caused the victims to die instantly;
- (g) According to the reports and medical records obtained from the Institute of Forensic Medicine, there were no traces of bullet wounds in the skeletons and remains examined at the Institute. Consequently, the deaths must be attributed to other causes;
- (h) For these reasons, at this stage of the investigation, Captain Castro must be held responsible for the facts brought to light;
- (i) According to his statement and the statements of the other police officers, as referred to above, they were all acting in the performance of their official duties;
- (j) Consideration was given to the dossier compiled by the Second Military Court of Santiago, Judge Enrique Zurita having declared himself not competent to act. In this case, which bears the reference number 1382/76, the Court is investigating the possible offence or offences committed in connexion with the disappearance of precisely the eleven persons arrested by the carabineros, who according to the information supplied by the uniformed police, were five members of the Maureira family, three members of the Hernández family and three members of the Astudillo family. This case (No. 1382) was submitted to, and accepted by, the Military Court a long time before the current investigation was initiated at the beginning of December 1978;

(k) Action on the above case in the Military Court has been suspended as a result of a temporary stay of proceedings;

All the foregoing facts, honourable members of the Supreme Court, compelled me on the 5th of this month to transmit the three volumes of the present investigation, together with all the annexes and the dossier in question, to the Second Military Court so that it may be apprised of them and substantiate them, since the ordinary courts are not competent in the matter for the two basic reasons previously stated.

At present, all these documents are in the possession of the Military Court, so that it may study them.

This is all I have to report to the honourable members of the Supreme Court."

68. The Military Judge of Santiago accepted jurisdiction in the case on 12 April 1979 and assigned it to the Second Office of the Military Prosecutor of Santiago, which undertook a new investigation into the case that repeated much of the investigation carried out by Judge Bañados. On 2 July 1979 the Military Prosecutor officially indicted eight carabineros (Lautaro Eugenio Castro Mendoza, Juan José Villegas Navarro, Felix Héctor Sagredo Aravena, Manuel Enrique Muñoz Rencoret, Jacinto Torres-Gonzales, David Coliqueo Fuentealba, José Luis Mario Belmar Sepúlveda and Justo Ignacio Romo Peralta), charging them with unnecessary violence causing the death of the 15 persons whose bodies were found in the Lonquén kiln. The eight carabineros were detained in their respective service units at Santiago. 26/

69. On 5 July 1979 lawyers acting for the relatives of the persons whose bodies were found at Lonquén submitted a petition to the Military Court that had indicted the eight carabineros, requesting that the charges should be increased from unnecessary violence causing death to nomicide, kidnapping and falsification of documents. At that time the relatives also asked that the remains of their family members be returned to them. 27/ This request was not granted. In August 1979, General Enrique Morel Donoso, the Military Judge of Santiago, decided to suspend proceedings against the eight carabineros, basing himself on the Amnesty Decree-Law of April 1978. The eight were released on bail and the decision suspending the case against them was referred to the Military Court which has the power to confirm or revoke the decision. 28/

70. The investigation by Judge Bañados led the carabineros to admit that they had provided false information, either through official documents or in testimony to Chilean courts investigating the disappearances prior to the discovery of the bodies. In addition, it is reported that an investigation was made into the

26/ El Mercurio, 3 July 1979.

27/ El Mercurio, 5 July 1979.

28/ El Mercurio, 17 August 1979.

origin of the information provided to the General Assembly by the Government of Chile in which the Government stated that seven of the missing persons were listed as having been registered as dead by the Santiago Institute of Forensic Medicine. In this regard, the present Director of the Institute reportedly stated in connexion with the Institute's report and the relevant autopsy reports that:

"The autopsy reports on sheets 389, 390 and 391, which are in the Institute's archives, have been made available to you as an illustration of the possible length of the list of 'presumed missing persons who turned up in the records of the Santiago Institute of Forensic Medicine'. The autopsy registration or report numbers next to the names of Armando, Antonio and Manuel Maureira Muñoz match the numbers in that list of presumed missing persons.

The list is obviously inaccurate, at least with regard to report No. 3332, for when the corpse was examined, it turned out to be that of a woman. At the bottom of a photocopied list I happened to see in an official publication with a green cover - issued, I think, in 1975 - there was a signature by Dr. Veas which we identified as that of Dr. Vargas, but I do not know what motives he might have had for signing the report".

With regard to the signature it is reported that some of Dr. Vargas' collaborators - Dr. Vargas is dead - state that it was his signature, while others had doubts. It was also stated that the stamp used on the document submitted to the United Nations is similar but smaller than that used by the Institute in 1975. Furthermore, no official letters transmitting the document to the Ministry of Foreign Affairs were discovered, but three hand-written lists of the names on the Ministry's list were found in the Institute's safe.

(d) Requests by the relatives for the return of the bodies

71. The relatives of the persons whose remains were buried at Lonquén made repeated requests to the Military Prosecutor, the Military Court and the Chilean authorities for the return of the remains of their family members in order to enable them to be given a proper burial. This was one of the points raised during the hunger strike begun on 3 September 1979 in four Santiago Churches and the Danish Embassy by the Association of Relatives of Missing Detainees and the hunger strike was ended when, on 11 September 1979, the Military Court announced its decision to return the bodies to the relatives. The Military Court's order reads, in part, as follows:

"It is hereby ordered that the military prosecutor in the case should have the appropriate person hand over the human remains found during the investigation to anyone who can legally prove that he is related to the persons involved". 29/

The Military Prosecutor, Gonzalo Salazar, reportedly agreed on 13 September 1979 to hand over to the relatives the order instructing the Institute of Forensic Medicine to deliver the remains to them. However, this was not done and the relatives

learned by radio on 14 September 1979 that the Institute had buried all the remains in a cemetery at Isla de Maipo. The remains of Sergio Adrián Maureira Lillo were buried separately and the remains of the other 14 persons were placed in a common grave. The Military Prosecutor's order to the Institute read as follows:

"In case No. 200-79, it has been officially ordered that you should arrange to hand over the identified remains to the nearest relatives or kin, in accordance with the legal rules and regulations in force, in the town of Isla de Maipo.

After verifying the relationships stated in the appropriate filiation certificates, you shall hand over for burial the remains of Sergio Adrián Maureira Lillo. For legal purposes, the Institute shall request the entries to be made in the Civil Register.

Since the records show that the skeletal remains cannot be identified, arrangements shall be made for their legal burial in the town of Isla de Maipo, where the deaths occurred." 30/

72. On 14 September 1979 the Archbishopric of Santiago issued the following declaration relating to the burials:

"The Archbishopric of Santiago, moved by what it considers the inconceivable and cruel fate of the Lonquén victims, feels inescapably bound to state the following:

1. It is a matter of public knowledge that the relatives of the missing prisoners, in seeking their loved ones, have resorted to many judicial and administrative measures, without any result.
2. The Church has been with them in their long and painful ordeal. It has appealed to the highest authorities of the country on innumerable occasions, both publicly and privately, without obtaining any reply.
3. In the last few days the relatives have been on hunger strikes in an effort to obtain some response, however slight, to their legitimate petitions. They have been supported by days of fasting and prayer on the part of bishops, priests, nuns and the faithful. These actions ended on 11 September, when the Military Court ordered that the remains of the Lonquén victims should be handed over to their families.
4. On 13 September the Second Military Prosecutor undertook to issue the necessary authorization for the relatives to claim the victims' remains at the Institute of Forensic Medicine.

On the basis of that information and at the request of the close relatives, a Requiem Mass was arranged for 3 p.m. today, Friday, at the Franciscan Church of Recoleta.

The necessary authorization could not be obtained either yesterday afternoon or at any time today, despite the countless requests made to the judicial authorities and to high-ranking government officials.

While those representations were being made, we learned to our shock and consternation that the remains had already been buried by officials of the Institute of Forensic Medicine, without any consultation with the close relatives. Furthermore, the body of Mr. Sergio A. Maureira Lillo instead of being handed over to his relatives - as stipulated in an order from the Military Prosecutor - had been taken direct to a cemetery at Isla de Maipo and buried there. So far as can be ascertained, the remains of the other victims were buried in a common grave.

This action is the culmination of the countless humiliations endured by these people over the last few years.

5. The Church of Santiago cannot but raise its voice in vigorous protest against this unfeeling and inhumane attitude to the sufferings of fellow human beings. By what right may a person be buried without the consent of his relatives? The Church of Santiago considers itself morally bound to continue supporting these families in their legal proceedings also.

6. The Church does not speak out simply because human dignity has been grossly violated; it also feels deeply wronged. Several government authorities are aware of the goodwill efforts it has been making for some time past in search of a just and fitting solution that would contribute to the longed-for national reconciliation. They also know what steps have been taken, in agreement with the families concerned, to attain those objectives, including the holding of the funeral ceremonies. Once again the Church of Santiago has not been heeded. It feels injured in its mission of protecting human dignity, which it holds sacred since that mission comes from God, its witness and judge.

7. Furthermore the Church grieves at this new affront to the feelings of those who love their country and who desire to follow the paths of respect and justice which lead to fraternal co-existence. These events unhappily help to tarnish Chile's image in the eyes of the world and of the universal Church.

8. Sharing the sorrow of the mourners we have decided, at their request, to hold the Requiem Mass in our Cathedral at 11 a.m. tomorrow, 15 September. Together we shall pray for these families, that in their hour of sorrow the Lord may grant them the gift of strength. We shall also pray for our conversion and for that of the persons responsible for these deeds so that they may never occur again. Finally, we shall pray for the eternal repose of those to whom it has not been possible to give a funeral according to the rites with which the Church honours its dead.

9. On this day of Our Lady of Sorrows, accompanying her Son on the Cross, we reject all violence and beg for her intercession so that the capacity to love and to forgive may be renewed in us".

It has been reliably reported that the procedure followed in Chile in the past concerning deaths of a large number of persons whose identities are known but where difficulties are encountered in identifying the remains, for example in aeroplane disasters, has been to return the remains to the families and allow them to organize the normal funeral service and burial.

5. Bautista van Schouwen Vasey 31/

73. Mr. van Schouwen Vasey held both British and Chilean nationality and was a member of the Central Committee of the MIR (Revolutionary Left Movement). Because of his political responsibilities, beginning on 11 September 1973 the Government requested through the media information that would lead to van Schouwen's arrest and offered a reward. 32/ Together with four other persons, he was arrested on 13 December 1973 in the Rectory of the Capuchinos Catholic Church by individuals dressed in civilian clothes. The body of one of the other persons arrested, Patricio Munita Castillo, was returned a few days later to his family. Another person arrested, Father Enrique White, was subsequently released. An article in "El Mercurio" of 21 August 1974 stated:

"For the second time in two months the Court of Appeals denied the application for amparo submitted by the defence attorney of the ex-MIR leader Mr. Bautista van Schouwen. Mr. Bautista van Schouwen is being charged by the First Military Prosecutor of Santiago. This extremist was detained on 13 December 1973, shortly after the military takeover of 11 September 1973. Bautista van Schouwen is now under arrest in a national prison."

Reports indicate that he was admitted to the Valparaiso Naval Hospital for treatment of injuries caused by torture and that he was photographed in that hospital. Furthermore, on 8 August 1974 the Minister of the Interior informed the Criminal Court of Santiago in connexion with the criminal case concerning van Schouwen Vasey's disappearance that van Schouwen "is at the disposal of the First Military Judge of Santiago". However, this statement was revised a month later by the same Ministry to say that "an involuntary error" had been committed and that it was Roberto Fernando van Schouwen Vasey who was under arrest, not his brother Bautista.

74. On 19 February 1974 an application for amparo was submitted to the Santiago Court of Appeals, which based its decision on the replies in the negative from the Ministry of Interior and other authorities and rejected the request on 4 June 1974. A criminal complaint was then filed with the Second Criminal Court of Santiago, which temporarily suspended the proceedings on 30 July 1975. In March 1979 a lawyer for the family of Bautista van Schouwen filed an application for amparo which was rejected. However, instructions were given to the special investigating judge for Santiago to include this case in his investigations. No further information on this case has been received.

31/ Dónde Están?, case No. 270, vol. 5, p. 1095.

32/ See, for example, El Mercurio, 28 September 1973.

6. Opening of new court proceedings for persons who disappeared in 1973

Criminal complaint concerning the disappearance in 1973 of eleven persons in Osorno and nearby towns

75. In May/June 1979 a criminal complaint was filed with the First Criminal Court of Osorno for the crimes of kidnapping, serious injury and possible homicide committed against eleven persons in Osorno and the region. 33/ Below are brief indications of the elements in each case.

(a) Santiago Domingo Aguilar Duhau 34/ was Governor of the Department of La Unión until 11 September 1973 and a member of the Communist Party. He was arrested on 17 September 1973 at about 9.45 a.m. at Police Station No. 3 in Osorno, where he had gone to obtain a permit to move. Various witnesses informed Mr. Aguilar's wife that he was detained there from 17 to 19 September 1973. On 6 October 1973 a complaint was made to the Office of the Military Prosecutor of Valdivia concerning his disappearance.

(b) Lucio Hernán Angulo Carillo 35/ A member of the MAPU Worker Peasant Party, he was arrested on 15 September 1973 at 10 a.m. by carabineros from Puerto Octay under the command of Lieutenant Juan Ríos. After his arrest, his wife visited the possible places of detention and was told that her husband's name was not on the lists of detainees.

(c) Héctor Alejandro Barría Bassay and Guido Ricardo Barría Bassay (brothers). 36/ Members of the Socialist Party, they were arrested at 12 noon on 16 October 1973 by carabineros from the Río Negro Carabineros Station under the command of Lieutenant José Hernán Godoy Parrientos. They were taken to the "Retén de Riachuelo" and transferred on 17 October 1973 to the Río Negro Station. Their mother reports that Lieutenant Tomas Palmovich of the Osorno Carabineros Court said that the brothers were being prosecuted in that court and that they were in the city jail. At the jail and other places of detention she was informed that they were not being held.

(d) René Burdiles Almonacid 37/ A member of the MAPU Worker Peasant Party, he was arrested during the morning of 16 September 1973 at the Puerto ~~Octay~~ Carabineros Post, where he had reported in the company of his mother to Lieutenant Juan Ríos Villalobos. Lieutenant Ríos had visited the Burdiles house the night before in search of René Burdiles. René's father reports that on 20 September 1973 his name was found on the list of prisoners of Osorno the Station No. 3 but he was informed his son had been freed.

33/ Solidaridad, No. 71, June 1979, p. 8.

34/ Dónde Están?, case No. 305, vol. 6, p. 1209.

35/ Ibid., case No. 307, vol. 6, p. 1217.

36/ Ibid., cases No. 309 and 310, vol. 6, pp. 1221 and 1223.

37/ Ibid., case No. 311, vol. 6, p. 1226.

(e) Arturo Chacón Salgado. 38/ A member of the Socialist Party and a trade union official, he was arrested on 17 September 1973 at the San Pablo Carabineros Post. He had gone there as a result of instructions given to his wife by Lieutenant Nelson Rodríguez Meléndez during a search of her home earlier in the day. His wife was informed that he had been transferred to Osorno. Chacón's mother reports that she did not take any legal action because of threats by carabineros from San Pablo.

(f) Raúl Wladimir Leveque Carrasco and Rodolfo Iván Leveque Carrasco 39/ (brothers). Both were members of the Communist Youth of Osorno and were arrested at about 10 a.m. on 15 September 1973 by carabineros from the Osorno Station No. 3. A neighbour informed the mother of Raúl and Rodolfo that he had seen both of them at the Station on 16 September 1973. The mother was informed at the Station that their names were not on the list of detainees. She reported difficulties in making complaints to the authorities about the disappearance of her sons and, after her husband also was arrested, she took no more legal actions out of fear.

(g) Marco Sandoval Vásquez. 40/ A Communist Party representative on the Municipal Council of Río Negro, he was arrested at his home at about 1.45 p.m. on 17 September 1973 by carabineros from the Río Negro Station under the command of Major Hans Schemberger Valdivia. Later that day, his wife was informed at the Río Negro Station that her husband had been transferred to Osorno. One week after his arrest, Sandoval's wife and mother were able to speak with him at the Osorno Carabineros Station. From there he was taken to the Estadio Español at Osorno, where he stayed until 7 October 1973, when he and six other prisoners were taken away in a Carabineros lorry. The Prefect of Osorno reported on 14 August 1979 that Sandoval had been arrested and released. The National Executive Office for Detainees (SENDET) reported on two occasions that Sandoval was not registered by that office.

(h) José Mateo Vidal Panguilef. 41/ A member of the Socialist Party, he was arrested at about 4 p.m. on 17 September 1973 at Osorno Station No. 3 by Captain Adrián Fernández Hernández. Vidal had gone to the Station as a result of a military order read out over the radio, ordering him to report to the police. He was accompanied by his wife.

(i) Carlos Zapata Aguila. 42/ A member of the Socialist Party and a trade union official, he was arrested at about 6 p.m. on 17 September 1973 by carabineros from the San Pablo Station, one of them being Lieutenant Nelson Rodríguez. He was reportedly taken from the San Pablo Station to the Osorno barracks. At the end of September 1973, Zapata's mother filed a criminal complaint with the Osorno Criminal Court.

38/ Ibid., case No. 312, vol. 6, p. 1228.

39/ Ibid., cases No. 313 and 314, p. 1230-1236.

40/ Ibid., case No. 319, vol. 6, p. 1247.

41/ Ibid., case No. 320, vol. 10, p. 1249.

42/ Ibid., case No. 320, vol. 10, p. 1249.

Criminal complaint concerning the disappearance in 1973 of 20 persons in Laja

76. At the request of the Department of Social Assistance of the Archbishopric of Concepción, the Court of Appeals of Concepción on 22 August 1979 designated José Martínez Gaensly as a special investigating judge to investigate the disappearance of twenty persons in Laja during September 1973. The relatives of the missing persons had already filed a criminal complaint concerning kidnapping and murder against thirteen carabineros from the Laja Carabineros Post. The allegations are that the twenty persons were arrested after 11 September 1973 and held at the Laja Police Station until the morning of 18 September 1973, when they were taken from the Police Station for transfer to the barracks at Los Angeles. However, it is reported that they never arrived there. 43/ With two exceptions, the files on these missing persons were presented to the Minister of the Interior. The names of the missing detainees are given below and followed by the number of the corresponding case in the publication Dónde Están?: Fernando Grandón Gálvez (420), Jorge Andrés Lamana Abarzúa (424), Rubén Antonio Campos López (417), Juan Carlos Jara Herrera (422), Raúl Parada Urrea (431), Luis Armando Ulloa Valenzuela (430), Omar Sanheuzza Contreras (429), Dagoberto Enrique Garfias Gatica (419), Luis Alberto del Carmen Araneda Reyes (416), Juan Antonio Acuña Concha (415), Juan Villaroel Espinoza (432), Heraldo del Carmen Muñoz Muñoz (426), Jorge Lautaro Zorrilla Rubio (433), Federico Riquelme Concha (427), Mario Jara Jara (423), Jack Eduardo Gutiérrez Rodríguez (421), Alfonso Segundo Macaya Barrales (425), Luis Saéz Espinoza (428) and Manuel Mario Becerra Avello 44/ and Wilson Muñoz Rodríguez 45/.

77. In connexion with the investigation being carried out by Judge José Martínez Gaensly, it was discovered that eighteen bodies had been secretly buried in a grave in the Yumbel cemetery and, upon the judge's instructions, the bodies were exhumed on 2 October 1979 and handed over to the Concepción Institute of Forensic Medicine. A statement by the Archbishopric of the Catholic Church of Concepción on 3 October 1979 reported that the remains appeared to be the corpses of persons arrested in Laja and San Rosendo in September 1973 who were missing and an article in "Le Monde" of 10 October 1979 reports that relatives have identified 13 of the 18 corpses and that the examination carried out by the Institute of Forensic Medicine showed the bodies to be 18 of the 21 persons reported missing in September 1973.

43/ La Tercera de la Hora, 7 August 1979; El Mercurio, 23 and 25 August 1979.

44/ No case report was published on this person.

45/ No case report was published on this person. He was reported missing to the International Committee of the Red Cross. See A/32/227, annex IV, No. 617.

B. January to December 1974

78. Throughout 1974, Chile remained under the state of siege that was initially proclaimed on 11 September 1973 for six months and extended for periods of six months in March and September 1974. As from September 1974, the level of the state of siege was reduced from that of internal war to that of internal defence. 46/ The special powers of the President of Chile concerning arrest and transfer remained in effect but the exercise of these powers was delegated to the Government Junta acting through decrees signed by the Minister of the Interior. 47/ Under Chilean law prior to September 1973, such decrees would have been effective only after a check on the legality of their substance and form by the Office of the Comptroller-General of the Republic. However, after September 1973 the Comptroller's Office, except for a brief period in 1977, decided not to review decrees ordering arrest and a potentially important safeguard of the human rights of the detainees thus became ineffective. 48/

79. In order "to deal with the problems arising out of the existence of persons deprived of their liberty under the powers derived from the state of siege" the National Executive Secretariat for Detainees (SENDET) was established by Ministry of Defence Decree No. 517 of 31 December 1973. 49/ Decrees ordering arrest and decrees ordering release were centralized at the Secretariat, which kept a list of detainees from the time it was established until it was disbanded in April 1978. 50/ It seems that this list refers only to persons arrested under an order issued by the Ministry of the Interior.

80. The National Intelligence Directorate (Dirección de Inteligencia Nacional), DINA, was established under Decree-Law No. 521 of 14 June 1974 as an organ of a "professional and technical character responsible direct to the Government Junta" and not to any Ministry. DINA was vested with authority to co-ordinate the activities of other intelligence services and these other services supplied DINA with personnel. DINA was also vested with the power to make arrests and searches under the state of siege by articles of Decree-Law No. 521 which were kept secret and not published in the Official Journal. 51/ Employees of DINA were under no obligation to appear in courts and give evidence. 52/ DINA was thus immune from judicial supervision and reported direct to the Government Junta. This explains why the Minister of the Interior could respond to requests for information about arrested persons with the formula "not being detained by an order from the Ministry" when the persons were actually in detention. The Ad Hoc Working Group on Chile reported cases in which official denials of detention were followed by official admissions that the person was being held and cases in which the opposite occurred. 53/

46/ A/10285, paras. 89-91.

47/ Decree-Law No. 288 of 24 December 1973; see E/CN.4/1188, para. 64.

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

49/ A/10285, para. 102.

50/ Ad Hoc Working Group on Chile, Minutes of the meeting with the Minister of the Interior of Chile on 20 July 1978.

51/ A/10285, para. 102; E/CN.4/1221, paras. 193-196.

52/ Ad Hoc Working Group on Chile. Minutes of the meeting with the Minister of the Interior on 20 July 1978.

53/ A/32/227, paras. 111-113.

81. The actual operation of the system of arrest and detention followed by DINA was described in a meeting that the Ad Hoc Working Group on Chile held with the Minister of the Interior during the Group's visit to Chile in July 1978. The Minister emphasized that the National Information Agency (CNI), which replaced DINA in August 1977, could arrest a person only if a decree had first been issued by the Ministry of the Interior. The Minister's explanations of the DINA procedure for arrest and detention reads as follows in the minutes of that meeting:

"Prior to the disbandment of DINA, the opposite had been the case. DINA had the authority to arrest individuals and then send an official letter containing the details of the case and requesting a decree from the Ministry of the Interior. Those decrees, the only means by which detention had been officially authorized, had been kept in the archives of SENDET (National Executive Secretariat for Detainees), as had been decrees ordering the release of detainees, which also had been promulgated only by the Ministry of the Interior...

"The register of detention decrees was available for examination by the Group but it was difficult to know which detainees had been held by DINA, since detainees had also been held by the armed forces and the Carabineros, and the decrees were not filed by category. Each case would have to be examined separately".

With regard to SENDET's effectiveness in providing information for the families of detainees, after a visit to Chile in July 1974 the Inter-American Commission on Human Rights observed that "the office installed by the Government in Santiago to provide that information was inadequate to reply to such questions", 54/ and the same Commission noted in its Second Report on the Situation of Human Rights in Chile "the absence of a properly organized central registry ..., while the existence of agencies that exercise wide powers of arrest and have been operating with great independence, such as DINA, must make it very difficult for the Government of Chile itself to be accurately informed on this matter ...". 55/ The reason for this can be found in the fact that SENDET was not informed of all the arrests made by DINA.

82. In order to protect personal liberty, the Chilean Constitution of 1925 provides for "recurso de amparo", a remedy analogous to habeas corpus, whereby a judge may order that a detained person be brought before him in order to determine the lawfulness of his arrest. The Minister for Foreign Affairs informed the Inter-American Commission on Human Rights that the remedy of amparo was not operative in connexion with arrests under the state of siege 56/ and the Inter-American Commission itself, after its July 1974 visit to Chile, concluded that:

54/ E/CN.4/1166/Add.3, chap. IX.

55/ OEA/SER.L/V/II.37, doc. 19 corr. 1, chap. III.

56/ A/10285, para. 99.

"The numerous applications for amparo submitted to courts competent to determine the whereabouts and, if they were known, to obtain the release of persons detained on the pretext of the existence of a state of siege, were systematically rejected by the courts. The remedy of amparo has not served as a suitable tool for determining whether the powers of arrest and transfer have been exercised fairly or whether they have been invoked to commit abuses of authority (torture, harassment, detention in secret places, etc)." 57/

83. With regard to public order in Chile during 1974, reference may again be made to the report of the Inter-American Commission on Human Rights, which visited Chile from 22 July to 2 August 1974. The report states that:

"During the Commission's stay in Chile, it did not observe anything resembling a 'state of war', regardless of what might have occurred previously. Neither in Santiago nor outside Santiago - and members of the Commission travelled between Antofagasta and Talcahuano - did the Commission observe street disorders, acts of violence committed by groups of civilians, attacks against the armed forces, insubordination to their orders, or anything of the kind. Some of the Commission's members witnessed a few operations carried out by carabineros, in which groups of persons in recreation areas in the centre of the city were arrested. An excessive number of policemen or soldiers or an exaggerated show of arms in the streets of the cities and towns was not noted. A normal observer would not have imagined that he was in a country in a 'state of war!'" 58/

84. During 1974, arrests for political or national security reasons continued throughout Chile and a large number of detainees were held in various places of detention. 59/ The manner in which arrests on grounds of national security were made changed during 1974. In 1973 these arrests had generally been made by uniformed members of the armed forces or Carabineros using distinctive military or police vehicles and, in the cases of missing persons during that period, there were generally numerous witnesses to the actual arrest. However, as the security services and DINA become more involved in arrests in 1974, persons who dressed in civilian clothes and often used unmarked vehicles without licence plates started to carry out arrests. Of the persons arrested for national security reasons in 1974, a large number were eventually released, but many were never seen again. While the exact number will never be known, the Vicaría de la Solidaridad reports 223 well documented cases of missing detainees for this period. 60/ Church sources also report that, from a situation of indiscriminate disappearances in 1973, 1974 saw the emergence of a campaign directed towards the elimination of particular individuals, all of whom had connexions with MIR. 61/ The cases set out below have been selected as illustrative of those occurring during this period.

57/ E/CN.4/1166/Add.3, chap. IV, C and chap. XVI.

58/ E/CN.4/1166/Add.3, chap. I.

59/ E/CN.4/1166/Add.3, chaps. V and XVI; and A/10285, paras. 124-134.

60/ E/CN.4/1310, para. 107.

61/ E/CN.4/1310, annex VIII, para. 8.

1. The "119" missing persons

85. One hundred and five cases of missing persons in 1974 and fourteen cases which occurred at the beginning of 1975 have come to be treated together as the case of the "119" because, in July 1975, two publications, one in Brazil and one in Argentina, reported that the "119" had been killed in fighting between themselves or with security forces outside Chile. These reports gave rise to serious concern, since the "119" individuals had previously been reported to Chilean courts by their relatives as missing. 62/ Most of the "119" are said to be members of MIR. On two occasions, in 1975 and 1976, detainees in Chilean camps publicized letters in which they stated that persons on the list of the "119" had been seen alive in detention by Government security agencies. 63/ On 20 August 1975, the President of Chile announced that he would order a check on the sources of the press reports and on 25 August 1975 the Minister for Foreign Affairs informed the Santiago Court of Appeals that, after appropriate inquiries, it had been determined that one newspaper had published only one edition and the other only two editions and there was no proof that the "119" had left Chile or that they had died outside the country. The following cases are illustrative of the "119":

(a) Bárbara Uribe Tambley and Edwin van Jurick Altamirano 64/

86. Bárbara Uribe Tambley, a member of MIR, was arrested at 8 a.m. on 10 July 1974 at her mother-in-law's house by DINA agents who were subsequently identified as Osvaldo Romo Mena and Miguel Machenco. Earlier that same day, her husband Edwin van Jurick Altamirano, who was also a member of MIR and had British and Chilean nationality, had been arrested on a Santiago street, and on the following day, 11 July 1974, Edwin's brother Cristián van Jurick Altamirano was arrested during the morning at a house at 1033 Elicer Parada, Santiago. Cristián van Jurick was subsequently held at the Tres Alamos and Ritoque detention camps and was released in November 1976. He testified before the Ad Hoc Working Group on Chile that he had been detained together with Bárbara Uribe and Edwin van Jurick at the DINA detention centres at Calle Londres and Calle José Domingo Cañas. In a sworn statement, Edwin's father testified that his son Cristián, subsequent to the detentions described above and while still under arrest, was brought to his home by men who identified themselves as "military police" and informed him that both Edwin and Bárbara were being detained. Numerous other persons have testified to being detained together with Bárbara Uribe Tambley and Edwin van Jurick.

87. Because of van Jurick's British citizenship, the British Embassy requested information from the Government of Chile about the case. On 14 August 1974, the Ministry of Foreign Affairs informed the British Embassy that Edwin van Jurick and his wife Bárbara Uribe "... are under arrest pending investigation and that their health is perfectly normal. As to their place of detention, we have not been

62/ A/10285, paras. 149-151.

63/ A/31/253, paras. 231-236.

64/ Dónde Están?, case No. 268, vol.5, p. 1081.

informed yet". However, a year later, in July 1975, the same Ministry retracted that statement and said "We inform you, not without regret, that our previous information is in error". On 16 July 1974, an application for amparo was filed on behalf of Edwin van Jurick Altamirano, Cristián van Jurick Altamirano and Bárbara Uribe Tambley with the Santiago Court of Appeals, which rejected it some 14 months later on 1 September 1975. The Ministry of Interior informed the Court of Appeals that "they are not being detained by an order from this Ministry". On 2 August 1974 a criminal complaint was filed with the Santiago Eighth Criminal Court and the proceedings were temporarily suspended. In March 1979 a British lawyer acting on behalf of the relatives of Bárbara Uribe and Edwin van Jurick filed an application for amparo but it was rejected. However, the special investigating judge for Santiago was ordered to investigate the cases.

(b) Martín Elgueta Pinto, Juan Chacón Oliveras, María Inés Alvarado Borgel 65/

88. María Inés Alvarado Borgel, a member of MIR, was arrested by three men in civilian clothes at the corner of Avenida Providencia and Calle Lyor at about 3.30 p.m. on 15 July 1974. Mrs. Verónica Martínez Ahumada witnessed the arrest and immediately returned to her apartment (Antonio Varas 240, Dept. 202). At 6.30 p.m. the same day, about seven men identifying themselves as DINA agents came to that apartment with María Inés Alvarado and arrested Martín Elgueta Pinto and Juan Chacón Clivares. Verónica Martínez witnessed the arrests and was taken along with the others to 38 Calle Londres. The mother and brother of María Inés Alvarado testified that on several occasions María Inés and Martín Elgueta were brought to their home in the custody of persons in civilian clothes. Numerous persons have testified to having been detained at the house on Calle Londres or in Villa Grimaldi with some or all of these three missing persons. 66/

89. On 25 July 1974 an application for amparo was made to the Santiago Court of Appeals on behalf of Juan Chacón and on 12 December 1974 (nearly five months later) the Ministry of Interior informed the Court that Chacón was not being held in detention. Subsequently, the Ministry informed the Court that he had been freed by Decree No. 274 of 7 August 1974. In January 1975, the National Executive Secretariat for Detainees (SENDET) informed the San Miguel Police Station that Juan Chacón had been in detention at Tres Alamos since 15 July 1974. With regard to Martín Elgueta, his mother states that on 26 July 1974 a SENDET official gave her verbal confirmation of her son's detention. The Ministry of the Interior, in a letter dated 16 September 1974, stated that the cases of her sons Raimundo and Martín would be reviewed by the appropriate bodies and that she would be informed of any decision. Three applications for amparo were submitted to the Santiago Court of Appeals and rejected. A criminal complaint was filed, specifically accusing Mr. Osvaldo Romo (DINA agent) of kidnapping, illegal arrest and possible murder in relation to Martín Elgueta. The President of the Supreme Court, Mr. José María Eyzaguirre, in a letter dated 5 July 1976 to Mrs. Elgueta Pinto,

65/ Dónde Están?, case No. 20, vol.1, p. 112.

66/ Ibidannex 1, case report No. 7.

stated that in a conversation with Colonel Manuel Contreras (DINA) he had been informed that Mr. Osvaldo Romo had been a DINA agent until November 1975 and had then left the country. The investigation of the criminal complaint has been temporarily suspended with the following closing statement: "...it can be established from the judicial records that a crime has been committed. Nevertheless, there is insufficient evidence to prosecute a specific person as the perpetrator of or an accessory to the crime". The case has been suspended until new evidence is presented.

2. David Silberman Gurovich 67/

90. Mr. Silberman Gurovich, a member of the Communist Party, was General Manager of the Chilean Copper Company "Cobre Chuquí" until 11 September 1973. On 15 September 1973, he presented himself voluntarily to the Military Commander of Calama and was charged with offences under the law concerning State security and weapons control. Sentenced by the Calama Court to 13 years imprisonment, he was transferred on 30 September 1973 to Santiago prison to serve the sentence. More than a year later, on 4 October at about 6.40 p.m., four men, three of them wearing military uniforms, entered the Santiago prison after giving the requisite password. One of these persons was identified as having been involved with bringing other prisoners to the prison previously. One person identified himself as Army Lieutenant Alejandro Quinteros Romero with the necessary Professional Identity Card (TIFA No. 245-03) and presented an order signed by Colonel Marcelo Rodríguez V. requiring Silberman to be turned over to him. The order stated that it was to be confirmed at telephone No. 516403. This was done and Silberman was then turned over to Lieutenant Quinteros and has been missing ever since. Witnesses testified to the Ad Hoc Working Group on Chile, and a number of former detainees have submitted declarations, that they saw and heard Mr. Silberman Gurovich in the clandestine interrogation centre at Calle José Domingo Cañas and in Cuatro Alamos. Mrs. Silberman states she was told by a Ministry of Justice official that Mr. Silberman was in the hands of a security service - not identified - but that after a few days he would be returning to the penitentiary.

91. In the investigation of the case, the Government reported that Quinteros, Rodríguez and the other named military personnel did not belong to the Army. Furthermore, the unit they said they had belonged to, i.e. the Asesoría Militar a Tribunales de Tiempo de Guerra, and Identity Card TIFA 245-03 did not exist. A police investigation led to a telephone company employee (Alejandro Olivos) who testified that he had been ordered by Major Marcos Derpich Mirando to make a temporary connexion with telephone No. 516403 on the day of Silberman's disappearance. Major Derpich, who stated that he had been assigned to the telephone company for especially confidential work and maintained direct contact with the security agencies, denied giving the order. DINA reported that it had found the above-mentioned identity card and telephone equipment in a house belonging to MIR and that Silberman had been taken from the prison by that organization, which was the enemy of the Communist Party. However, the prison warden stated that neither the photo nor the card itself was that which had been shown to him by Quinteros. Other prison personnel confirmed that the photo on the card was not that of Quinteros.

67/ Dónde Están?, case No. 265, vol.5, p. 1061.

92. In connexion with the application for amparo presented in this case on 14 October 1974, the Minister of the Interior stated that the only information he had about Silberman was that concerning the conviction for which Silberman was in the Santiago prison. The Ministry of Defence responded similarly and SENDET reported that Silberman had not been detained. The investigation of a criminal complaint filed on 18 November 1974 was temporarily suspended in October 1976. It may be noted that, in February 1975, the Second Military Judge reported that he had refused to visit Cuatro Alamos, one of the places at which Silberman was alleged to be held, since the responsible authority had stated that Silberman was not being detained there. All attempts to locate Mr. Silberman through administrative and judicial channels have been unsuccessful.

3. Guillermo Roberto Beausire Alonso 68/

93. Mr. Beausire Alonso held both British and Chilean nationality and was reported to have no political affiliations. However, Beausire's sister, Mary Ann, is the wife of the MIR leader Andrés Pascal Allende, a nephew of former President Allende. At approximately 3.30 p.m. on 2 November 1974, Guillermo Beausire Alonso left Chile from Pudahuel airport on IAN Chile Flight No. 145 for Buenos Aires, via Montevideo. His final destination was the United Kingdom and his arrival in Buenos Aires has been confirmed by the Argentine authorities. On the same day, 2 November 1974, he was arrested at the Argentine international police office at Buenos Aires airport, to which he had been called by loudspeakers upon his arrival. He was held in Argentina for three days and then returned to Chile in a Chilean military aircraft. Approximately one hour after Beausire's flight left Pudahuel, his mother Inés Alonso Boudat and his sister Diana Beausire Alonso were arrested by DINA agents at their home, which was searched. In a conversation reported by a former detainee, these arrests were attributed by Mrs. Alonso and by Guillermo Beausire, to the search for Andrés Pascal Allende then underway. Guillermo Beausire's mother (Inés Alonso Boudat) and his sister (Diana Beausire) report having seen him at various places of detention, beginning in November 1974. Numerous other witnesses have also testified that they were detained with him at various places, including the house on Calle José Domingo Cañas and in Villa Grimaldi, the latest date being July 1975. Another sister, Juana Francisca Beausire, reports receiving telephone calls from him in December 1974. According to the testimony of Mr. Venegas Jara, Guillermo Beausire said he had been tortured.

94. Applications for amparo submitted on his behalf in 1975 and 1979 were rejected on the basis of replies from the Minister of the Interior that Mr. Beausire Alonso had never been detained. After the rejection of the application for amparo in 1979, which had been presented by a British lawyer, the special investigating judge for Santiago was instructed to investigate the case. The investigation of a criminal complaint filed on 17 February 1975 was temporarily suspended on 24 March 1975. The United Kingdom Government took special interest in the case and informed the Ad Hoc Working Group on Chile that it had made approaches to the Government of Chile since Mr. Beausire's disappearance in November 1974 and that memoranda together with supporting evidence

68/ Dónde Están?, case No. 400, vol.7, p. 1721.

had been handed to the Chilean Government. The Government of Chile informed the British Embassy that a complete investigation had been carried out by Professor Miguel Schweitzer Speisky, then Minister of Justice, and that the investigation concluded that Beausire had left Chile on 2 November 1974, entered Argentina on that date and that "there is no reliable or presumptive evidence that could confirm that he returned to Chile". For its part, the British Embassy, in a memorandum to the Government of Chile in 1977, stated that it was "firmly and genuinely convinced that responsibility for the disappearance of Mr. Beausire lies with the Directorate of National Intelligence (DINA)".

(January to December 1975

95. The state of siege continued in Chile throughout 1975. As was mentioned above, in September 1974 Decree-Law No. 641 prolonged the state of siege for an additional six months but at the reduced level of internal defence. The Decree-Law explained that, since the grave circumstances in the country which had been the reason for the declaration of the "state or time of war" were now found to be largely superseded and the subversive action of organized groups that had been attempting to take political control of the country had been put under control, it was appropriate to adjust the regime of the state of siege to the true situation in the country. In March 1975 Decree-Law No. 922 continued the state of siege at the same level for six more months and, on 11 September 1975, Decree-Law No. 1181 extended the state of siege for a further six months but reduced its degree to one of internal security. Decree-Law No. 1181 of 1975 described the situation in the country in terms identical to those used in Decree-Law No. 641 of 1974. 69/

96. The President's special constitutional powers of arrest and transfer during states of emergency thus remained in force. The rules governing the exercise of these powers were further modified on 31 March 1975 by Decree-Law No. 951, which provided that the President's special powers were henceforth to be exercised through a Supreme Decree signed by the Minister of the Interior and stating "By order of the President of the Republic". Furthermore, exercise of the President's special powers was delegated to the Regional or Provincial Intendants (Military Governors) who were empowered to order arrest or transfer by resolutions. In the latter case the Minister of the Interior must be informed within ten days. By Decree-Law No. 1008 of 5 May 1975, the constitutional limit (article 15) of 48 hours within which an arrested person had to be released or turned over to a judge was extended to five days in cases involving national security during a state of siege. Decree-Law No. 1009 of 5 May 1975 provided that the families of detainees must be notified within 48 hours of their arrest and that, within five days, the detainee must be turned over to a court, the Minister of the Interior or set free. This Decree-Law also provided for punishment of persons guilty of exerting illegitimate pressure on detainees. 70/

97. Arrests for political or national security reasons continued in Chile during 1975 and a large number of persons, for example some 5,000 in May of that year, continued to be held in the country's political detention camps. Arrests were still carried out principally by members of DINA or other security forces dressed in civilian clothes and using unmarked vehicles without licence plates. Increasingly, the arrests were made in circumstances designed to reduce the chances of other persons witnessing them. The persons arrested were usually taken blindfolded to interrogation centres and kept there for some time before being transferred to Cuatro Alamos and eventually to Tres Alamos, where they were allowed contact with the outside world. However, some were never seen again. 71/ Information from the

69/ A/10285, paras. 89-91; E/CN.4/1188, para. 26.

70/ A/10285, para. 95; E/CN.4/1188, para. 65.

71/ E/CN.4/118, paras. 80-83.

Committee Pro Pax indicates that in 1975 not less than 1,300 persons were arrested by security agencies. ^{72/} That Committee studied the arrests which occurred in the seven-month period following the issue of Decree-Laws Nos. 1,008 and 1,009 and concluded that, in 90 per cent of the cases, the detainee had disappeared for a period of time. Of those who had disappeared, 25 per cent reappeared within five days without the requisite 48 hours' notice being given to their families and 75 per cent had disappeared for longer than five days, with 28 per cent remaining missing at the time the study was carried out. ^{73/} The Vicaría de la Solidaridad reports that its files contain 76 strongly documented cases of persons from this period who remain missing after their detention. ^{74/} The arrests focused in the beginning of 1975 on MIR and then shifted to the leadership of the Socialist Party. The following cases of missing persons have been selected as illustrating those which occurred in 1975.

1. Eight persons arrested in Valparaíso in January 1975

98. The persons in question are Fabián Ibarra Córdova, Sonia Ríos Pacheco, Alfredo Gabriel García Vega, Carlos Ramón Rioseco Espinoza, Horacio Neftalí Carabantes Olivares, María Isabel Gutiérrez Martínez, Abel Alfredo Vilches Figueroa and Elías Ricardo Villar Quijón. ^{75/}

(a) FABIAN ENRIQUE IBARRA CORDOVA and SONIA DEL TRANSITO RIOS PACHECO

They were arrested together at the home of Rina Mónica Medina Brave, 870 Jackson, Chorrillos, Viña del Mar, during the evening of 17 January 1975 by DINA agents in an operation carried out in Valparaíso against MIR. They were then taken along with Rina Mónica Medina, a witness to their arrest, to the Maipo Barracks in Valparaíso.

(b) ALFREDO GABRIEL GARCIA VEGA

He was arrested at about 11 a.m. on 18 January 1975 in Calle Montaña in Viña del Mar by DINA agents who were carrying out an operation against MIR in Valparaíso. He was taken together with a witness to the arrest, Erick Zott Chuecas, to the Maipo Barracks.

^{72/} Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile (OEA/Ser.L/V/II/37, doc. 19 corr.1, chap. II, B and chap. III).

^{73/} Ibid., chap. III.

^{74/} E/CN.4/1310, para. 107.

^{75/} Dónde Están?, cases Nos. 329, 332, 327, 333, 325, 328, 336 and 337.

(c) CARLOS RAMON RIOSECO ESPINOZA

He was arrested at about 6 p.m. on 18 January 1975 in Calle Montaña, between Alcalde Prieto Nieto and Quinta Vergara, in Viña del Mar by DINA agents who were carrying out an operation against MIR in Valparaíso. Carlos Ramón Rioseco and a witness to his arrest, Erick Zott Chuecas, were taken to the Maipo Barracks.

(d) HORACIO NEFTALI CARABANTES OLIVARES

He was arrested at about 11.30 a.m. on 21 January 1975 in front of the Municipal Market of Viña del Mar by DINA agents, one of whom, Pedro René Alfaro Hernández, testified in subsequent court proceedings (see Dónde Están?, case No. 325) to taking Neftali Carabantes into custody and transporting him to the Maipo Barracks. According to René Alfaro, Carabantes was wanted because of his connexions with MIR.

(e) MARIA ISABEL GUTIERREZ MARTINEZ

She was arrested by DINA agents on 24 January 1975 in the city of Quilpué and was taken, along with Hernán Horacio Brian Pizarro who was arrested at the same time, to the Maipo Barracks in Valparaíso.

(f) ABEL ALFREDO VILCHES FIGUEROA

He was arrested by DINA agents at approximately 4 p.m. on 27 January 1975 in the Lomas de Chorillos sector of Viña del Mar and taken to Maipo Barracks in Valparaíso.

(g) ELIAS RICARDO VILLAR QUIJON

He was arrested on 27 January 1975 in Valparaíso by DINA agents and taken to the Maipo Barracks in Valparaíso.

Sonia Ríos Pacheco was held at the Maipo Barracks from 17 to 21 January 1975, when she was transferred to Santiago and detained at Villa Grimaldi. The remaining seven of the eight persons listed above were held until 28 January 1975 at the Maipo Barracks. Numerous other persons who had been arrested in the operation against MIR in Valparaíso and were subsequently released testified that they had been held at the Maipo Barracks with the eight persons in question. The wife of Neftalí Carabantes, Liliana Castillo Rojas, who was arrested on the same day as her husband (21 January 1975), was transferred from detention with the other prisoners to the Barrack's hospital, where she gave birth to twins.

99. On 28 January 1975 some twenty persons held at the Maipo Barracks, including seven of the eight persons mentioned, were placed in a refrigerator truck and taken to Villa Grimaldi in Santiago. Many witnesses have testified that they were held with these eight missing persons at Villa Grimaldi from 28 January to 20 February 1975. Isabel Gutierrez and Neftalí Carabantes were transferred to Cuatro Alamos on 2 February and returned to Villa Grimaldi on 12 February 1975. On 20 February 1975 the eight persons named above were transferred to the Silva Palma Barracks in Valparaíso and, in this regard, Jorge Zurita Figueroa testified that the last time he saw them was at about 11 a.m. on 11 March 1975.

100. Applications for amparo were made on an individual basis for these eight persons. For example, on 3 March 1975 an application for amparo was submitted to the Santiago Court of Appeals on behalf of Fabián Ibarra and Sonia Ríos Pacheco and on 6 March, 17 April and 16 June 1975 the Minister of the Interior reported either that they were not detained by order of that Ministry ("No se encuentran detenidos por orden de este Ministerio") or that there was no record of them. On 18 June 1975 the Director of DINA informed the Court that DINA had no information about them. ("DINA no pose antecedentes al respecto"). The same answer was given by DINA in an application for amparo concerning Alfredo García Vega. On 4 February 1975 an application for amparo was submitted to the Santiago Appeals Court on behalf of Neftalí Carabantes and was rejected. Another application was made to the Valparaíso Court of Appeals on 25 March 1975 and, in connexion with that application, the Commander of the Maipo Barracks confirmed that DINA had detained and questioned Carabantes and his wife at the Barracks and that Carabantes had been transferred to an unknown place. On 22 April 1975 the Minister of the Interior reported that Carabantes "was not being detained by order of this Ministry" and on 26 May 1975 the Minister reported not having ordered the arrest and that there was no other information about Carabantes. On 13 June 1975 the Minister of the Interior reported that:

"Following consultations with DINA, the latter has stated that the said person (Carabantes) has never been detained but that he was placed under protection since his life was in danger because he had supplied information which led to the discovery and arrest of a group of extremists operating in Valparaíso. According to the same report, Neftalí Carabantes is at liberty in a place of his own choice unknown to that Security Service".

These individual applications for amparo were all rejected.

101. On 25 July 1975 the relatives of the eight persons presented a collective application for amparo on their behalf which was rejected on 17 October 1975. Other applications for amparo were made on behalf of the eight; in relation to one of them the Director of DINA informed the Supreme Court on 14 July 1977 that, in an operation against MIR in Valparaíso in January 1975, Alejandro Villalobos Díaz had died in a confrontation and Horacio Carabantes Olivares had been detained. The latter, in consideration of the attention given to his wife Liliana Castillo at the time of the birth, had collaborated with the DINA agents and thus facilitated the arrest of many members of the MIR Regional Committee in Valparaíso. The Director of DINA said that, because of the small part they had played and/or the little danger they represented, Fabián Ibarra, Sonia Ríos, María Isabel Gutiérrez, Carlos Rioscco, Alfredo García, Elías Villar and Abel Vilches had been released immediately afterwards in Valparaíso. Carabantes had been released at his own request, according to this statement, at a place of his own choice after being transferred to Santiago on 18 January 1975, since he feared reprisals from his comrades, who accused him of being an informer. This same information, including the date of Carabantes' release, 18 January 1975, had previously been submitted by the Government of Chile to the General Assembly at its thirty-first session in October 1976 (A/C.3/31/6/Add.1, annex 20). The relatives of the eight persons noted, however, that the date of Carabantes' release had been several days before his wife gave birth to the twins. In March 1978 the Director of DINA corrected the date of Carabantes' release to 28 January 1975 and stated that the exact date had been supplied to the Minister of the Interior on 5 June 1975. This exact date had not been reflected in the information supplied to the United Nations.

102. In September 1976 the Supreme Court ordered the designation of a special investigating judge to continue the investigation into the disappearance of the eight persons. This judge subsequently declared himself without jurisdiction because military personnel and DINA were involved and the case was transferred to the Military Court in Valparaíso. On 15 May 1978 the Second Military Judge closed the case, basing himself on the Amnesty Decree-Law of April 1978. ^{76/} On 24 April 1979 however, after the Military Judge's decision had been appealed, the Military Court of Appeals ordered the case to be re-opened and instructed the investigating judge to undertake certain specific steps, such as to question Captain Gustavo Haide about the statements by the witness Erick Zott Chuecas and to proceed to the CNI offices to determine whether the eight missing persons were detained or were registered in the CNI's books or lists of detainees. No information has been received about the outcome of these investigations.

2. Carlos Enrique Lorca Tobar and Modesta Carolina Wiff Sepúlveda ^{77/}

103. Carlos Lorca, a former Congressman and a member of the Central Committee of the Socialist Party, and Carolina Wiff, also a member of the Socialist Party, were arrested at about 4 p.m. on 25 June 1975 by persons in civilian clothes who were waiting at Dr. Lorca's house (130 Calle Maule) and took them into custody after they had entered the house together. Passersby testified that they had noticed several vehicles parked in front of the house and several persons on the lookout and that the two were taken out in handcuffs, placed in a red Fiat 125 without licence plates and driven away. Dr. Lorca's name had been included in the list of persons who were ordered on 11 September 1973 to report to the Ministry of Defence and his house and that of his parents had been searched. The house of Carolina Wiff was searched on the day of her arrest and her relatives report having been informed unofficially that she and Dr. Lorca were being held by DINA at a house in the commune of El Quisco, in Costanera. Several former detainees, among them Lautaro Videla, have stated that they saw Lorca detained at Villa Grimaldi in June and July 1975 and, during a visit by the Ad Hoc Working Group on Chile to Villa Grimaldi, former detainee Riffo Zamorano pointed out the rooms where Carlos Lorca had been detained and tortured. Furthermore, an Italian lawyer, Guido Calvi, reports that in a taped telephone conversation of 17 July 1975, the Director of SENDET told him that: "He (Lorca) is under arrest and he will be tried in Court". It was also reported to the Ad Hoc Working Group on Chile that, in a letter dated 4 September 1975 addressed to President Pinochet, DINA agents María Angélica Aguilera and Julio Ameño stated that:

"We carried out all the instructions received by Colonel Contreras in connexion with the cases of Carlos Lorca, Luis Baeza, Miguel Rivas, Renato Sepúlveda, Héctor Cayetano and Diana Aaron, who were detained in that unit (Villa Grimaldi) and for whom we were given direct and absolute responsibility".

104. On 1 July 1975 an application for amparo was made to the Santiago Court of Appeals with a request that the Ministry of the Interior and DINA should be asked for information. On 9 July 1975 the Ministry of the Interior replied that Dr. Lorca was not being detained. On 14 July a sworn statement by a witness was added to the file and the next day the Court was requested to ask the President of Chile if he had

^{76/} See below, section G, 2 and also A/33/331, paras. 248-300.

^{77/} Dónde Están?, case no. 29, vol. 1, p. 146.

ordered DINA to arrest Dr. Lorca. On 25 July the application for amparo was rejected without any answer having been received from DINA. In a letter dated 15 November 1978, the Ministry of Foreign Affairs informed the Inter-Parliamentary Union that "despite the various investigations carried out by the administrative police and judicial authorities, it has not been possible to ascertain the whereabouts of Mr. Lorca", but that "the Government will continue its inquiries regarding (this case) and all such information which may be obtained will be brought to (the Union's) attention in due time". An application for amparo on behalf of Carolina Wiff accompanied by sworn statements describing her arrest was filed with the Santiago Court of Appeals on 24 June 1975 and, on 14 July, the unofficial information received by her relatives concerning where she was being held was communicated to the Court. The application was rejected. Two criminal complaints were filed, one on 21 August 1975 and the other in October of the same year. The investigation of the latter was suspended on 30 April 1976.

3. Luis Hernán Trejo Saavedra 78/

105. Luis Hernán Trejo, a municipal worker and trade union official, was arrested at 11.45 p.m. on 15 September 1975 at his home in Curicó by three persons dressed in civilian clothes. Trejo's wife reports that next day she was informed at the Military Telecommunication Unit of Curicó that he had been arrested by DINA agents from Santiago and taken there. On 20 October 1975 the following official communication was sent to Trejo's wife:

"Chilean army, Third Military Court, Office of the Army Prosecutor of Curicó, 20 October 1975. Brief communication. In accordance with the provisions of Decree-Law No. 1,009 of 8 May 1975 of the Government Junta, I inform you that: LUIS TREJO SAAVEDRA, resident of Población Manuel Rodríguez, Pasaje Gabriela Mistral, house No. 125, Curicó, has been arrested and placed at the disposal of the authorities in Santiago. Reason: further inquiries. Signed, on behalf of the Court, by Ernesto O'Ryan Cardenas, secretary."

Trejo had been called twice to the Curicó Barracks and warned against political activities. On 11 November 1975 an application for amparo was submitted to the Santiago Court of Appeals together with a copy of the above communication. The application was rejected.

4. Alejandro Juan Avalos Davidson 79/

106. A professor at the Catholic University of Chile and a member of the Communist Party, Alejandro Avalos was arrested at about 5 p.m. on 20 November 1975 while on his way from the University to his mother's home. Professor Avalos has Chilean and British citizenship. The Chief of the Executive Office of the Rector of the University of Chile, Carlos Ramón Bombal, testified that persons identifying

78/ Dónde Están?, case No. 187, vol. 4, p. 798.

79/ Dónde Están?, case No. 10, vol. 1, p. 57.

themselves as DINA agents visited the Rector on 3 November 1975 requesting information on Professor Avalos Davidson. When Mr. Bombal began to telephone the Director of the Institute where Professor Avalos worked, the DINA agents stopped him, saying that they had orders to arrest Professor Avalos without any witnesses present. The Rector of the University confirmed the visit and the request for information but was not able to confirm or deny any statement about the arrest of Avalos Davidson. A number of former detainees have testified that they were held with Professor Avalos at different places, in particular the Villa Grimaldi. On 6 December 1975 an application for amparo was submitted to the Santiago Court of Appeals, which rejected it on the basis of information from the Ministry of the Interior that Professor Avalos was not being detained by order of that Ministry. In 1975 and 1977 criminal complaints were filed, and are still being processed. In March 1979 a British lawyer submitted an application for amparo on behalf of Avalos Davidson that was rejected. This case is, however, one which is under investigation by the special investigating judge for Santiago.

5. José Ramón Ascencio Subiabre 80/

107. José Ramón Ascencio is a member of the Communist Party and was arrested at his place of work at about 6.30 p.m. on 29 December 1975 by six persons dressed in civilian clothes. A number of persons who had been detained under the state of siege and were subsequently released testified that they had been detained with José Ramón Ascencio at Villa Grimaldi. Among these witnesses are Oscar Patricio Orellana Figueroa, Iván Ernesto Segura Aguilar, Dagberto Manio Trincado Olivares and Raúl González Anjari. On 30 December 1975 an application for amparo was submitted to the Court of Appeals, which rejected it on 13 March 1976 because the Ministry of the Interior reported that José Ramón Ascencio Subiabre was "not being detained by order of this Ministry". A criminal complaint was filed on 20 February 1976 and is still before the court. In August 1977 a request was made for the investigating judge in the case to visit Villa Grimaldi and on 27 October 1977 the Court of Appeals ordered the Military Prosecutor of the Office of the Third Military Court to make the visit, since under Decree-Law No. 1775 of 1977 civilian judges are forbidden to carry out investigations on military premises. Although requests have been made on several occasions to the Military Court for information on this investigation, none has been received.

80/ Dónde Están?, case No. 147, vol. 3, p. 648.

D. January to December 1976

108. For the whole of 1976 Chile was under a state of siege at the internal security level by virtue of decree-laws promulgated by the Government Junta. 81/ Thus, the Minister of the Interior, the provincial military governors (Intendentes) and DINA continued to be authorized to exercise the President's special powers of arrest and transfer during the state of siege. Decree-Law No. 1,009 of 5 May 1975 was still in effect and it authorized detention for up to five days during the state of siege and required notice to be given to relatives of detainees within 48 hours of the arrest. In January 1976 Supreme Decree No. 187 was promulgated for the purpose of making adequate provisions to guarantee the rights of persons detained under the state of siege in accordance with Decree-Law No. 1,009. Supreme Decree No. 187 provided for medical examinations of detainees when they entered and left places of detention and investigations of reports of ill-treatment, and written detention orders specifying the place of detention were to be communicated to the detainee's relatives within 48 hours. Moreover, written search orders were required, places of detention had to keep records of arrivals and departures and the President of the Supreme Court and the Minister of Justice were authorized to inspect such places. In Supreme Decree No. 146 of 25 February 1976 three places of detention were established for detainees under the state of siege: Puchuncaví (near Valparaíso) and Tres Alamos and Cuatro Alamos in Santiago. Detention at other places was prohibited, except that detainees could be held in police stations and offices of the Investigations Bureau only for as long as was strictly necessary to send them to one of the three authorized places of detention. In a memorandum explaining these decrees, the Government of Chile stated that failure to comply with the requirements of the decrees "will mean that the detention is arbitrary and that habeas corpus (amparo) is then applicable, and this, in the last instance, requires a ruling from the Supreme Court". 82/

109. The Ad Hoc Working Group on Chile reported to the Commission on Human Rights in February 1977 that, during the year 1976, 552 persons had been arrested for national security reasons in the Santiago area. No statistics were presented on arrests outside Santiago. At the time of that report, 121 persons, or 22 per cent of those arrested, remained missing. 83/ Towards the end of 1976 a large number of detainees under the state of siege or persons convicted of national security offences were released from detention, so that at the end of the year some five hundred persons were still deprived of their liberty in connexion with national security matters. 84/

110. In its report covering 1976, the Ad Hoc Working Group on Chile found that arrests in connexion with national security matters in Chile were generally carried out without compliance with the requisite legal safeguards; no arrest warrants were produced; relatives were not informed of the places of detention; and the five-day limit on detention was not observed. Attempts were also made to arrest persons in such circumstances that there were no witnesses to the occurrence and

81/ Decree-Law No. 1,181 of 11 September 1975; Decree-Law No. 1,369 of 9 March 1976; Decree-Law No. 1,550 of 6 September 1976.

82/ A/31/253, paras. 120-132.

83/ E/CN.4/1221, paras. 98-99.

84/ E/CN.4/1221, paras. 104-129.

an increasing percentage of detainees remained missing after long periods had passed. 85/ In connexion with its concern over detainees who remained missing for long periods of time, the Group reported the discovery in Chile of a number of badly decomposed bodies, some exhibiting bullet wounds, wires binding their limbs, and with the faces disfigured and fingers severed. The bodies had generally been found near the ocean or by lakes or rivers, with evidence that heavy stones had been tied to them to make them sink. 86/

111. The Vicaría de la Solidaridad has reported 111 well documented cases of missing detainees in 1976. 87/ Members of the Communist Party were the focus of these disappearances. The following cases have been selected as illustrating the cases of missing persons which occurred during this period.

1. Arrest of five persons at 1587 Calle Conferencia

112. Mario Zamorano Donoso, Jorge Onofre Muñoz Poutays, Jaime Patricio Donato Avendaño, Uldarico Donaire Cortez and Elisa del Carmen Escobar Cepeda were arrested in May 1976 and are still missing.

(a) Mario Zamorano Donoso, 88/ a member of the Central Committee of the Communist Party, was arrested by DINA agents at about 7.30 p.m. on 4 May 1976 at the house of Juan Becerra Barrera, 1587 Calle Conferencia, Santiago where, on occasion, meetings were held. He was wounded by a gunshot at the time of his arrest and according to reports was subsequently taken to the Central Emergency Hospital, where he was registered by his initials.

(b) Jorge Onofre Muñoz Poutays, 89/ a member of the Central Committee of the Communist Party, was arrested by DINA agents at about 8.30 p.m. on 4 May 1976 at the residence of Juan Becerra Barrera, 1587 Calle Conferencia, Santiago.

(c) Jaime Patricio Donato Avendaño 90/, a national leader of the Communist Party, was arrested by DINA agents between 9 a.m. and noon on 5 May 1976 at the residence of Juan Becerra Barrera, 1587 Calle Conferencia, Santiago.

(d) Uldarico Donaire Cortez, 91/ a member of the Central Committee of the Communist Party, was arrested by DINA agents on 5 May 1976 at the residence of Juan Becerra Barrera, 1587 Calle Conferencia, Santiago.

85/ E/CN.4/1221, paras. 89-101.

86/ E/CN.4/1221, paras. 141-146.

87/ E/CN.4/1310, para. 107.

88/ Dónde Están?, case No. 66, vol. 2, p. 317.

89/ Ibid., case No. 67, vol. 2, p. 330.

90/ Ibid., case No. 68, vol. 2, p. 333.

91/ Ibid., vol. 2, case No. 69, p. 336.

(e) Elisa del Carmen Escobar Cepeda, 92/ a leader of the Communist Party, was arrested at about 1.30 p.m. on 6 May 1976 at the residence of Juan Becerra Barrera, 1587 Calle Conferencia, Santiago.

Juan Becerra Barrera, his wife María Angélica Gutierrez Gómez and his sister-in-law María Teresa Zuñiga Guajardo, were held at Juan Becerra Barrera's house by DINA agents from 30 April to 6 May 1976 and were thus able to witness some or all of the above-mentioned arrests. María Teresa Zuñiga, the sister-in-law of Juan Becerra, had been arrested by persons who identified themselves as DINA agents at about 8 p.m. on 29 April 1976, taken to an unknown place and questioned about Mario Zamorano. At about 3.30 a.m. on 30 April, Juan Becerra was arrested and also questioned about Mario Zamorano and at 6.15 a.m. on the same day his wife was also arrested. All three were beaten and subjected to electric shocks and threats were made to the members of their families. As a result, Juan Becerra admitted knowing Mario Zamorano and that a meeting was scheduled to take place at his house on 4 or 5 May 1976. Also on 30 April, the house of Juan Becerra's mother located at 5113 Alejandro Fierro was occupied by persons who identified themselves as DINA agents and kept the occupants of the house under arrest until 6 May 1976. Juan Becerra's mother is the owner of Juan's residence at Calle Conferencia. On 1 May 1976 Bishop Enrique Urrutía was detained at the house on Alejandro Fierro by persons identifying themselves as DINA agents and was subsequently released. The presence of DINA agents at that house was confirmed in a statement submitted to the General Assembly by the Government of Chile. 93/

113. The Government of Chile's National Directorate of Communications, DINACOS, announced on 14 and 17 July 1976 that several members of the Communist Party were arrested at houses used as clandestine meeting places (casas buzones). No names were given in that communication but an article in the magazine "Qué Pasa" of 12 August 1976 reported the arrest of Communist Party members Uldarico Donaire and Víctor Díaz.

114. An application for amparo filed on 12 May 1976 on behalf of Mario Zamorano was rejected on 5 June 1976 and an application for amparo of 5 August 1976 on behalf of Jaime Donato and Jorge Muñoz was rejected after the Minister of the Interior reported having no information about them. Although the Court had been requested to ask DINA for information, no such request was made. In a criminal complaint in which Juan Becerra and Bishop Alvear submitted testimony, the Court at the request of the parties, summoned the Director of DINA, Col. Manuel Contreras Sepúlveda, to inform the Court of the facts relating to the complaint and the names of the DINA agents who had occupied the house at Calle Conferencia. In an appeal to the Supreme Court, the Director of DINA accused the judge of "being overbearing and insolent" and the Supreme Court ordered the judge to limit his decision to concrete facts in the case. This case is still pending. On 30 August 1976 the Government of Chile informed the Ad Hoc Working Group on Chile that Mario Zamorano and Jorge Muñoz had left Chile from Pudahuel airport for Argentina on 13 May 1976. The Government also submitted to the General Assembly

92/ Dónde Están?, vols 2, No. 5, No. 70, p. 338.

93/ A/C.3/31/6/Add.1, p. 46-47.

at its thirty-first session copies of reports stating that the files of the International Frontier Control Section showed that Mario Zamorano and Jorge Muñoz had left Chile. 94/ No further information has been received on these cases.

2. Carlos Humberto Contreras Maluje 95/

115. Mr. Contreras Maluje, a member of the Central Committee of the Communist Party and a former city councilman of Concepción, was arrested by DINA agents at about 11.30 a.m. on 3 November 1976 in Calle Nataniel Cox between Avenidas Coquinto and Aconcaqua, shortly after having been struck and injured by a bus. Carabineros Captain Clemente Nicolás Burgos Valenzuela, who arrived on the scene just after the accident, testified that he had turned Contreras Maluje over to persons who had identified themselves as DINA agents by showing him a DINA identity card. Captain Burgos reported that Contreras was placed in a blue Fiat 125 bearing licence plates EG-388, subsequently identified as the official car of General Jorge Ruiz Bunge, the Chief of the Air Force Intelligence Service. Before being forced into the motor car, Contreras had shouted out his name and had asked to be protected from DINA and that his parents in Concepción should be informed. Other persons, including the driver of the bus, testified to the arrest of Contreras Maluje.

116. On 15 November 1976 an application for amparo was filed with the Santiago Court of Appeals and on 16 November the Court requested information from the Carabineros and the Ministry of the Interior. On 23 November 1976 the Minister of the Interior informed the Court that Contreras Maluje had not been arrested by order of that Ministry. On 6 December 1976 the Court asked for another report from the Minister of the Interior, demanding categorically whether Contreras Maluje was on any premises operated by DINA or other security agencies. On 21 December 1976 the Minister replied that the Ministry's card index contained no record of the person under investigation and that there was no reliable evidence of his having been arrested by any security agency. On 31 January 1977 the Court of Appeals found that the facts led to the fundamental conclusion that DINA agents had detained Contreras Maluje and it ordered the Ministry of the Interior to release him. On 4 February 1977 the Minister of the Interior informed the Court that "it is impossible to comply" with the order, since Contreras Maluje was not being, and had not been detained by order of the Minister of the Interior or by any government security service. The Court of Appeals, as a result of the Minister's failure to comply with its order, referred the case to the Supreme Court, which, instead of addressing itself to the President of the Republic in order to have the Court of Appeals' order acted upon, referred the case back to the Court of Appeals for exhaustion of measures to secure compliance. In testimony before the Expert on the question of the fate of missing persons in Chile, Mr. Contreras Aburto, a lawyer and the father of Contreras Maluje, stated that, under the Chilean legal system, the Supreme Court had an obligation to ensure the "rule of law", an obligation which in this case should have required the Court officially to inform the President of the Republic of the failure of the Minister of the Interior to comply with the order of the Court of Appeals.

117. Three criminal complaints were filed in connexion with the arrest of Contreras Maluje and combined in a single procedure before the Air Force Court,

94/ A/C.3/31/6/Add.1, annex 19.

95/ Dónde Están?, case No. 250, vol. 5, p. 990.

which ordered temporary suspension of the case on 5 July 1978 because the commission of the reported crime was not sufficiently proved. An appeal was made to the Supreme Court contesting this decision but it is reported that the Supreme Court refused to consider the merits of the case because a financial bond had not been paid. It was also reported that the payment of such bonds is not normally required in Chile when questions of individual liberty are involved.

118. In information submitted to the Commission on Human Rights in February 1977, the Government of Chile completely denied that Carlos Contreras Maluje had been detained on 3 November 1976 and stated that the problem was pending in the Chilean Courts of Justice 96/. In September 1978 the Government of Chile informed the Ad Hoc Working Group that:

"The proceedings before the Military Court are still pending, since after the Court Martial judge had ordered the case to be postponed, he revoked that decision and ordered that new proceedings should be instituted in the form of the statement to be made by officials of the Armed Forces. When that statement had been made, the case was again postponed; the inquiry by the Court Martial and the Supreme Court's review of that Court's decision are pending". 97/.

3. Víctor Manuel Díaz López 98/

119. Mr. Víctor Díaz López, Deputy Secretary-General of the Communist Party, was arrested by DINA agents at about 2.10 a.m. on 12 May 1976 at the home of Jorge Ernesto Canto Fuenzalida, 979 Bello Horizonte, Las Condes, Santiago. Mr. Canto Fuenzalida and his wife witnessed the arrests and were given a DINA form acknowledging the arrest of José Santos Garrido Retamal, which was the name used at that time by Víctor Díaz. The sworn statement by Mr. Canto Fuenzalida indicates that the agents making the arrest knew Garrido Retamal was Víctor Díaz and that the arrest was announced in a telephone conversation with a "Contreras" who was referred to as "Chief" (Jefe). Mrs. Víctor Díaz reports receiving on 6 October 1976 from persons identifying themselves as DINA agents a handwritten letter from her husband asking that steps on his behalf should be stopped. Víctor Díaz's daughter, Victoria, reports that her father made the same request in a telephone conversation on 7 October 1976 and Mrs. Víctor Díaz reports speaking by telephone with her husband again on 20 November 1976. Furthermore, former detainee Pedro Jara Alegría declared that while he was detained at Villa Grimaldi he was told by Marta Ugarte that Víctor Díaz was also being held there. The Government of Chile's National Directorate of Communications, DINACOS, announced on 14 and 17 July 1976 that several members of the Communist Party were arrested at houses used as clandestine meeting places. No names were given in that communication but an article in the magazine "Qué Pasa" of 12 August 1976 reported the arrest of Communist Party Members Uldarico Donaire and Víctor Díaz. On 23 March 1977 the Minister of the Interior informed the Santiago Court of Appeals that Garrido Retamal had been arrested under Exempt Decree No. 2,052 of 12 May 1976 and released under Exempt Decree No. 2,054 of 13 May 1976.

96/ E/CN.4/1247/Add.1, part II, chap. V.

97/ A/33/331, para. 400.

98/ Dónde Están?, case No. 74, vol. 2, p. 357.

120. Four applications for amparo were filed with the Santiago Court of Appeals (14 May 1976; 19 August 1976; 28 February 1977; 21 March 1977) and were rejected. In the third application, the statement by Canto Fuenzalida, the hand-written letter of Díaz to his wife and the statement by Pedro Jara were submitted to the Court. A criminal complaint for kidnapping is being processed and another criminal complaint has been suspended. No further information on this case has been received.

4. Marta Lidia Ugarte Roman 99/

121. Marta Ugarte, a member of the Communist Party, disappeared on or about Monday, 9 August 1976. On that day she informed her sisters by telephone that she was going to see Dr. Iván Insunja, but they learned on 10 August that she had not returned home the previous night and that Dr. Insunja had been arrested by DINA agents a few days before. Marta Ugarte's sister, Hilda Ugarte Román, reports seeing her travelling in a car with other persons, wearing dark glasses and looking as though she had been hypnotized or drugged. In testimony before the Ad Hoc Working Group on Chile, Pedro Rolando Jara Alegría stated that he had been detained at Villa Grimaldi with Marta Ugarte. An application for amparo submitted on 16 August 1976 was rejected on 11 September 1976 on the basis of the report of the Minister of the Interior that Marta Ugarte had not been arrested.

122. Concerned about newspaper reports regarding the discovery of a woman's body on a beach, Marta Ugarte's sisters visited the Institute of Forensic Medicine on 23 September 1976, where they were informed that the Institute did have a corpse displaying characteristics similar to those of Marta Ugarte. They were allowed to see it on the following day but were able to recognize only certain features, since the face of the body had been disfigured. Finally, on 27 September 1976, by means of a dental examination, the family dentist was able to identify the body beyond doubt as being that of Marta Ugarte Román. Her body had been found on 12 September at La Ballena, on a beach close to Los Molles, 182 km from Santiago. All the ribs were broken, there were injuries to the spine and a piece of wire was wound around the neck.

123. In a letter dated 3 December 1976 addressed to the Secretary-General, the Government of Chile stated in regard to this case:

- "1. On 12 September 1976 the Carabineros of the locality of La Ligua discovered the body of Marta Ugarte Román.
2. On 14 September, by order of the Judge of the Criminal Court of La Ligua a preliminary investigation was begun and recorded in dossier 15 027 of that court.
3. The information obtained from the autopsy carried out by order of the competent court and the state in which the body was found make it possible to infer that Marta Lidia Ugarte Román had been struck on the lower jaw with blunt instruments which caused it to fracture and which brought about an encephalo-cranial traumatism and subsequent death.

4. On the basis of this information the Court of Appeals of Valparaíso appointed the Judge of that Court, Mr. Rafael Mera, as Investigating Judge to conduct the proceedings.

5. At the present time, the appropriate legal proceedings are still under way, in pursuance of the orders of the Court". 100/

No further information has been received on this case.

5. The cases of thirteen persons who disappeared in November-December 1976

124. Thirteen people were reported to have been arrested and to have disappeared in November-December 1976. Their names are Lincoyán Yalú Berríos Cataldo, S Santiago Edmundo Araya Cabrera, Edras de las Mercedes Pinto Arroyo, Armando Portilla Portilla, Horacio Cepeda Merinkovic, Lizandro Tucapel Cruz Díaz, Juan Fernando Ortiz Letelier, Luis Segundo Lazo Santander, Carlos Patricio Durán González, Alfredo Fernando Navarro Allende, Héctor Velíz Ramírez, Reinalda del Carmen Pereira Plaza and Waldo Ulises Pizarro Molina. The majority were publicly known to be long-standing members of the Communist Party and one of them, Fernando Ortiz Letelier, was a member of the Central Committee. Because of their similarities these cases have been treated as a group and ten of them have been the subject of joint actions by the courts. A description of these cases follows.

(a) Santiago Edmundo Araya Cabrera. 101/ He was a travel agent and belonged to the Communist Party. He disappeared on 29 November 1976. The Government of Chile informed the Commission on Human Rights in 1977 that records showed he had left Chile on foot on 22 December 1976. 102/

(b) Armando Portilla Portilla. 103/ Mr. Portilla Portilla was a Manager of Industrial Relations of El Salvador Copper Mine during the administration of President Allende. In addition, he was a trade union leader of the National Electrical Company between 1963 and 1968 and a member of the Communist Party. On 9 December 1976 he left home on his way to work. He has not been seen again. The Government of Chile informed the Commission on Human Rights in 1977 that records showed he had left Chile for Mendoza on 11 January 1977. 104/

(c) Fernando Alfredo Navarro Allende. 105/ Mr. Navarro Allende was a union leader of the Federation of Railway Workers and a member of the Communist Party. He had been sought by the State Security Police since 11 September 1973 for his trade union activities and political affiliation. His name w

100/ E/CN.4/1221, para. 157.

101/ A/32/227, paras. 118-120 and annex XXXIV.

102/ E/CN.4/1247/Add.1, part II, chap. IV.

103/ Dónde Están?, case No. 475, vol. 7, p. 1877.

104/ E/CN.4/1247/Add.1, part II, chap. IV.

105/ A/32/227, paras. 118-120 and annex XXXIV.

His name appeared in the military announcements published in the Valparaíso press, in which he was instructed to turn himself in to the authorities. His home was searched on several occasions and his wife was arrested and taken to a Navy prison, where she was subjected to 15 days of abuse and torture. in an effort by the authorities to learn the whereabouts of her husband. According to the testimony of eye witnesses, Navarro Allende was arrested on 13 December 1976 at a bus stop by five armed men dressed in civilian clothes who got out of two cars. Navarro resisted, shouted out his name and denounced his captors as agents of DINA. Beaten by his captors, he was placed unconscious in one of the cars (a light blue Peugeot), which left the scene rapidly followed by the second car.

(d) Lincoyán Yalú Berríos Cataldo. 106/ Mr. Berríos Cataldo was a former President of the National Association of Municipal Workers and a member of the Communist Party. On 15 December 1976, after having breakfast with his wife, Mr. Berríos Cataldo met Mr. Cepeda Merinkovic on the street. Shortly afterwards, four individuals got out of a car and arrested them. A fight took place between the victims and the captors. Once they were overpowered, the two men were placed in the car, which quickly left the scene. The Government of Chile informed the Commission on Human Rights in February 1977 that its records showed Mr. Berríos Cataldo had left Chile on foot (hitch-hiking) on 21 December 1976 and the Government also transmitted information from the Argentine authorities that records showed he had entered Argentina on foot on 21 December 1976. 107/

(e) Horacio Cepeda Merinkovic. 108/ Mr. Cepeda Merinkovic, a member of the Communist Party, was a Director of the State Public Transport System during 1971-1972. He left his home on 15 December 1976 at 7 a.m. and shortly thereafter he met his friend Mr. Berríos Cataldo. They were both accosted on the street by four individuals in civilian clothes who had got out of a car. During the arrest a fight took place between the victims and their captors. Once they were overpowered, the two men were placed in the car, which quickly left the scene. The Government of Chile informed the Commission on Human Rights in February 1977 that records showed Horacio Zepeda Merinkovic (sic) had left Chile on 6 January 1977 and the Government also transmitted information from the Argentine Ministry of the Interior that records showed Horacio Zepeda Merinkovic (sic) had entered Argentina on 6 January 1977, together with three other persons reported missing, Edras Pinto Arroyo, Luis Lazo Santander and Héctor Veliz (see below), in a motorcar bearing Chilean licence plates HG-19. 109/

106/ Donde Están?, case No. 470, vol. 7, p. 1841.

107/ E/CN.4/1247/Add.1, part II, chap. IV.

108/ A/32/227, paras. 118-120 and annex XXXIV.

109/ E/CN.4/1247/Add.1, part II, chap. IV.

(f) Reinalda Del Carmen Pereira Plaza. 110/ She was a member of the Communist Party and a trade union leader. On 15 December 1976 she left home at 3.30 p.m. for a regular medical check-up, as she was 6 months pregnant. According to information provided by several neighbours, when she returned home that same day Reinalda Pereira was arrested by several armed individuals in civilian clothes who grabbed her from behind and drove her away in a vehicle, a blue Peugeot, bearing licence plates HLN-55. The Government of Chile informed the Commission on Human Rights in February 1977 that Reinalda Pereira Plaza was recorded as having left Chile on foot (hitch-hiking) on 21 December 1976. It also transmitted information at that time from the Argentine authorities that she was recorded as having entered Argentina on foot on 21 December 1976. 111/

(g) Waldo Ulises Pizarro Molina. 112/ Mr. Pizarro Molina was a former leader of the Federation of Textile Workers and a Communist Party candidate for councilman in 1965. He was arrested on 15 December 1976 as he was walking on the street with Mr. Juan Fernando Ortiz Letelier. They were both beaten by their captors and placed unconscious in a car which left the scene rapidly, followed by a second car. Since September 1973 he had been sought by the State security agencies.

(h) Juan Fernando Ortiz Letelier. 113/ Mr. Ortiz Letelier was a member of the Central Committee of the Communist Party and former General Secretary of the Communist Youth. He was also an historian and a University Professor. He was arrested on 15 December 1976. He was walking on the street with Mr. Pizarro Molina. They were both beaten by their captors and placed unconscious in a car which left the scene rapidly, followed by a second car. Since September 1973, Mr. Ortiz Letelier had been sought by the Chilean authorities and, in this connexion, his daughter's house was searched on 24 November 1976.

(i) Luis Segundo Lazo Santander. 114/ Mr. Lazo Santander was a former trade union leader of the CUT (Central Unica de Trabajadores) and a member of the Communist Party. He was arrested on 15 December 1976 on the street a few metres away from his home by civilian personnel who placed him in an off-white station wagon and drove away. The Government of Chile informed the Commission on Human Rights in February 1977 that its records showed Mr. Lazo Santander had left Chile on 6 January 1977. It also transmitted information from the Argentine authorities that their records showed he had entered Argentina on 6 January 1977 with three other persons, now missing, in a motor car bearing Chilean licence plates HG-19. 115/

110/ Dónde Están?, case No. 473, vol. 7, p. 1860.

111/ E/CN.4/1247/Add.1, part II, chap. IV.

112/ Dónde Están?, case No. 474, vol. 7, p. 1870.

113/ A/32/227, paras. 118-120 and annex XXXIV.

114/ A/32/227, paras. 118-120 and annex XXXIV.

115/ E/CN.4/1247/Add.1, part II, chap. IV.

(j) Héctor Veliz Ramírez. 116/ Mr. Veliz Ramírez, a member of the Communist Party and a trade union leader, served as Secretary from 1970 to 1972 to former Minister of Labour Mireya Baltra. On 15 December 1976 he was arrested on the street by DINA agents. The Government of Chile transmitted to the Commission on Human Rights in February 1977 information from the Argentine authorities that their records showed he had entered Argentina on 6 January 1977 together with three other persons, now missing, in a motor car bearing Chilean licence plates HG-19. 117/

(k) Lizandro Tucapel Cruz Díaz. 118/ Mr. Cruz Díaz, was a former trade union leader and a member of the Communist Party. He was arrested in the street, in front of a pharmacy, at about 8.45 a.m. on 18 December 1976. The Government of Chile informed the Commission on Human Rights in February 1977 that records showed Lizandro Cruz Díaz had left Chile on 11 January 1977. 119/

(l) Carlos Patricio Durán González. 120/ Mr. Durán González belonged to the Communist Party. He was arrested by DINA agents at about 9 a.m. on 18 December 1976 as he was walking on the street.

(m) Edras de las Mercedes Pinto Arroyo. 121/ He was a trade union leader and a member of the Communist Party. His arrest took place on 20 December 1976 as he was walking into his mother's house. He was beaten by several captors, handcuffed and placed in a white pick-up that left the scene immediately. He had been sought by the Chilean security agencies since 11 September 1973. The Government of Chile informed the Commission on Human Rights in February 1977 that records showed Edras Pinto had left Chile on 6 January 1977 in a motor car bearing licence plates M (Mendoza) 124961. At that same time, the Government transmitted to the Commission information from the Argentine authorities that he entered Argentina on 6 January 1977 with three other persons, now missing, in a motor car bearing Chilean licence plates HG-19. 122/

125. Applications for amparo were submitted to the courts in Santiago and criminal complaints of kidnapping were filed immediately after each arrest. Finally, on 27 January 1977 the families of the victims requested the Supreme Court to order the appointment of a special investigating judge. The request was granted on 31 January 1977 for eight of the thirteen persons listed above: Santiago Edmundo Araya Cabrera; Armando Portilla Portilla; Lincoyán Yalú Berríos Cataldo; Horacio Depeda Merinkovic; Reinalda del Carmen Pereira Plaza; Luis Segundo Lazo Santander; Lizandro Tucapel Cruz Díaz; and Edras de las Mercedes Pinto Arroyo. Judge Aldo Guastavinos of the Santiago Court of Appeals ~~appointed a special investigating judge~~ began his investigation on 2 February 1977 and closed it on 7 February 1977. His decision was based on the information provided by the Minister of the Interior that the Department of Immigration had records indicating that ~~these eight persons~~ had left Chile for Argentina through the Los Libertadores border station on specific days between 21 December 1976 and 11 January 1977. They were registered as having left in motor cars or on foot (hitch-hiking).

116/ A/32/227, paras. 118-120 and annex XXXIV.

117/ E/CN.4/1247/Add.1, part II, chap. IV.

118/ A/32/227, paras. 118-120 and annex XXXIV.

119/ E/CN.4/1247/Add.1, part II, chap. III.

120/ A/32/227, paras. 118-120, and annex XXXIV.

121/ A/32/227, paras. 118-120 and annex XXXIV.

122/ E/CN.4/1247/Add.1, part II, chap. IV.

126. The decision to close the investigation was objected to by the relatives of the missing persons, who argued that the special investigating judge's activities were notarial rather than investigative and that, in fact, no real investigation had taken place. Several inconsistencies were pointed out in connexion with the reports that the eight persons forming the subject of the special investigation had left Chile. It is impossible for a person to leave the country, either on foot or in a motor car, without complying with many requirements that were not fulfilled in these cases. Only doubtful "exit permits" are to be found - extremely incomplete and not even listing a home address for the travellers. Moreover, it has been established that the car in which some of them reportedly left Chile was registered in Chile and not in Argentina, as was stated by the Directorate of Investigations, and the licence plates HG-19 had not been issued to any private vehicle in 1976 and were no longer valid in 1977. Presumably, they could only have been used by institutions or persons with enough authority to obtain them from the respective Municipality. In addition, it was pointed out that in the case of Reinalda Pereira, a woman who was six months pregnant, or in the case of persons who were fifty years of age (Cruz Díaz and Cepeda Merinkovic), it was difficult to believe that they would be able to cross into Argentina through a high mountain pass on foot or hitch-hiking. Furthermore, in three of the eight cases, the Government of Argentina had not recorded the person's entry into that country.

127. Relatives of the eight missing persons appealed to the Supreme Court against the closure of the investigation by the special investigating judge and requested the Court to order a full investigation into the following points:

- (a) The circumstances of the arrest of the missing persons, which would include taking the testimony of witnesses;
- (b) The whereabouts of the missing persons between their arrest and supposed departure from Chile; and
- (c) The circumstances surrounding their departure.

On 21 March 1977 the Supreme Court ordered the investigation to be continued and, some time later, broadened the investigation to include the disappearances of Fernando Ortiz Letelier and Waldo Ulises Pizarro Molina. During the course of the reopened investigation, the records of the border station through which eight of the missing persons reportedly left the country were found to have been carefully altered to show their departure. A sworn statement by the recording officer, Guillermo Raúl Bahamondes Grellena from the La Avanzada post, confirms the evidence that the names of the missing persons were added to the names on the register of departures at a later date by somebody other than the officer responsible for that list. 123/ According to reliable sources, the investigation into these cases continues to focus on the records showing the departure from Chile of eight of the ten missing persons. Information gathered in this investigation, including information supplied by the Argentine authorities, is reported to have revealed many serious contradictions and inconsistencies in the information supplied by the Chilean Government.

123/ A/33/331, annex XLV. With regard to the cases of Mr. Durán González, Mr. Veliz Ramírez and Mr. Navarro Allende, the Minister of the Interior informed the Court that they had never been detained and the cases were not submitted to the special investigating judge for investigation.

E. January to December 1977

128. During 1977 Chile was still under a state of siege as a result of decree-laws promulgated by the Military Junta 124/ and the special powers of the President of the Republic to arrest and transfer people thus remained in force. Furthermore, Decree No. 899 of the Ministry of National Defence, published in the Diario Oficial of 10 September 1977, declared the entire country to be under a state of emergency, something which, as a result of Decree-Law No. 1,877 of 12 August 1977, empowered the President of the Republic to arrest and detain persons for up to five days. 125/ In August 1977 the National Intelligence Directorate (DINA) was dissolved by Decree-Law No. 1,876 and a new intelligence organization, the National Information Agency (CNI), was established by Decree-Law No. 1,878. As was reported above, the secret articles of the Decree-Law establishing DINA had conferred powers of arrest and detention upon that body, but the Decree-Law establishing the CNI made no explicit reference to such powers. However, in its report to the Commission on Human Rights at its thirty-fourth session, in February 1978, the Ad Hoc Working Group on Chile concluded that "since the dissolution of the DINA there has been no fundamental change in the methods of arrest, search and interrogation ... ". 126/

129. Decree-Law No. 1,775 of 20 May 1977 was promulgated before the dissolution of DINA and it seriously limited the authority of the Courts to investigate allegations concerning missing persons. Prior to 20 May 1977, if a judge wished to carry out inquiries concerning places under military jurisdiction or wished to visit military premises to carry out his investigations, he was empowered to do so but was required to notify the military authorities. Decree-Law No. 1,775 removed this authority and required that all investigations concerning military premises or military jurisdictions be carried out exclusively by military judges. The notion of military premises covers the Carabineros and DINA. Thus the President of the Supreme Court informed the Ad Hoc Working Group on Chile that, if the person forming the subject of an application for amparo was being held on military premises, a civilian judge had no right of entry. 127/ The President of the Supreme Court of Chile reportedly criticized this limitation on the powers of the civilian courts in his address at the opening of the 1979 Judicial Year. 128/

130. The Ad Hoc Working Group on Chile reported that, in 1977, 346 arrests in connexion with political or national security matters had taken place in Chile. 129/ In a report to the Commission on Human Rights covering 1977, the Group noted in particular that it continued to receive information both on arrests and detentions which were officially recognized by the Chilean authorities and on arrests and

124/ Decree-Law Nos. 1,688 of 9 March 1977 and 1,889 of 2 September 1977.

125/ E/CN.4/1266, paras. 24-29.

126/ E/CN.4/1266, para. 85.

127/ A/33/331, para. 205 and annexes XXII and XXIII.

128/ Hoy, issue of 19 to 25 September 1979, p. 16.

129/ A/33/331, para. 310.

detentions which were never officially recognized. In arrests which were not officially recognized, the person was detained, questioned at one or more unknown places and then he was either released with no official record kept of his detention or he disappeared. 130/ In other cases the person might be taken direct to an official detention centre, Tres Alamos or Cuatro Alamos, or he might first be taken to unknown interrogation centres before turning up at official detention centres as officially under arrest. Of the persons arrested in 1977, the Vicaría de la Solidaridad reports that 12 are still missing. 131/ Church sources report that persons who disappeared in 1977 were generally linked with the Socialist or Communist Parties. 132/ The two cases described below have been selected as illustrating the cases of missing persons that occurred in 1977.

1. Vicente Israel García Ramírez 133/

131. Vicente García, a member of the Socialist Party, was arrested together with his wife, Karen Olma Reiner Carrasco (they had been married the day before) at about 8.30 a.m. on 30 April 1977 at the home of a relative of Karen Reiner in the town of San Fernando. The persons making the arrests were armed, dressed in civilian clothes and stated that they were from the Bureau of Investigations. Vicente García and Karen Reiner were placed in a motor car and taken to an unknown place of detention. Earlier that same day, at 3.30 a.m., Viola Olma Carrasco Rodríguez and Kathia Reiner Carrasco, respectively the mother-in-law and sister-in-law of García Ramírez, had been arrested at their home in Santiago by armed men who identified themselves as agents of the Bureau of Investigations. They were taken to an unknown place of detention. At the time of her arrest Viola Carrasco was questioned by the agents and informed then where García Ramírez was staying in San Fernando. Vicente Israel García Ramírez had been using the name Jorge Luis Aldana Contreras during that period. Vicente Israel García Ramírez, Karen Olma Reiner Carrasco, Viola Olma Carrasco Rodríguez and Kathia Reiner Carrasco were all held at the same unknown place of detention. Karen Olma Reiner and Kathia Reiner were released on 6 May 1977. All three report being with Vicente García during their detention. Juan Carlos Villar Ehijo testified to the Ad Hoc Working Group on Chile that during his own detention at an unknown place between 13 and 23 May 1977 he heard Vicente García being questioned. In a signed statement, Jaime Troncosco Valdez testifies to having been arrested on 2 May 1977 and held at an unknown place of detention and that, on several occasions, between 2 and 22 May 1977, he heard Vicente García being questioned.

132. Two applications for amparo filed with the Santiago Court of Appeals on 4 and 12 May 1977 respectively, were referred to the Court of Appeals of Rancagua, since the Santiago Court decided it did not have jurisdiction. The

130/ E/CN.4/1266, para. 55.

131/ E/CN.4/1310, para. 107.

132/ E/CN.4/1310, annex VIII, para. 8.

133/ Dónde Están?, Case No. 477, vol. 7, p. 1889.

Court of Rancagua also declared itself without jurisdiction and referred the case to the Supreme Court for settlement of the jurisdiction issue. On 22 May 1977 a criminal complaint (denuncia) was filed with the Second Criminal Court of the Department of Pedro Aguirre Cerda and is still at the investigation stage. On 20 May 1977 the Minister of the Interior reported that no record existed of any police record or of judicial proceedings against Vincente Israel García Ramírez. The Government of Chile informed the General Assembly on 4 November 1977 that Vincente Israel García Ramírez had disappeared after his marriage, under a false name, and that he was under indictment by the Fifth Superior Court of Santiago. 134/ No further information has been received in regard to this case.

2. Jorge Andrés Troncoso Aguirre 135/

133. Jorge Andrés Troncoso was arrested in Santiago on 11 May 1977 at the intersection of Calle General Velasquez and Calle Santa Teresita and was forced at gunpoint into a cream-coloured Fiat 125 bearing licence plate TH 287 of the city of Quinta Normal. Two persons arrested by DINA in May 1977 testified that they had been with Jorge Troncoso Aguirre at an unknown place of detention. Osvaldo Figueroa stated that he saw Jorge Troncoso at about 11 p.m. on 11 May 1977 and Eduardo de la Fuente that he was with Jorge Troncoso while the latter was being tortured. The testimony by de la Fuente indicates that Troncoso died as a result of that torture, more particularly the application of electric shocks. Osvaldo Figueroa and Eduardo de la Fuente were subsequently transferred to Cuatro Alamos and detained under the President's special powers of arrest during the state of siege.

134. The disappearance of Jorge Andrés Troncoso Aguirre is part of the arrests surrounding the kidnapping of sixteen year old Carlos Veloso Reidenbach. 136/ Carlos Veloso was detained on 2 May 1977 by unknown persons, one of whom he subsequently identified as a DINA agent, was taken to an unknown place and tortured. He was released and his detention was reported in the press as a kidnapping. Osvaldo Figueroa and Eduardo de la Fuente, along with others, were subsequently arrested and accused of the kidnapping. Carlos Veloso was again detained and forced by threats to identify Figueroa and de la Fuente as his kidnappers. Subsequently, in a statement to the Supreme Court, Carlos Veloso reported that, while he had been in the custody of DINA, he had been compelled to make false accusations against Figueroa and de la Fuente. Press reports in Chile stated that Jorge Troncoso, a watchmaker, which in fact he is, was the head of the group which kidnapped Carlos Veloso and was involved in making and planting bombs.

135. On 14 May 1977 an application for amparo on behalf of Jorge Troncoso was filed with the Santiago Court of Appeals and was rejected on 13 June 1977 on the basis of a report from the Minister of the Interior that Troncoso was not being detained by order of that Ministry. On 24 May 1977 a criminal complaint was filed with the Seventh Criminal Court for kidnapping and, on 27 July 1977, was made to include homicide. The Minister of the Interior informed the brother of Jorge Troncoso on 20 June 1977 that the Ministry had no record of Jorge Troncoso and that no arrest warrant had been issued against him. In November 1977 the

134/ A/C.3/32/6, chap. III B.

135/ Dónde Están?, case No. 144, vol. 3, p. 630.

136/ A/32/227, paras. 88-90 and E/CN.4/1266, para. 57.

Government of Chile informed the General Assembly that Jorge Troncoso Aguirre had been indicted by the Fifth Superior Court of Santiago and that he was being sought under an arrest warrant issued by the Prosecutor from the Office of the Second Military Prosecutor of Santiago investigating the Carlos Veloso kidnapping. 137/ No further information has been received in regard to this case.

F. Evaluation of the cases analysed

136. The three and a half months following the change of regimes on 11 September 1973 saw a large number of persons held under the special powers of arrest during the state of siege. In addition, in the days immediately following 11 September armed confrontations were reported to have taken place and many persons were killed, 138/ although no record of armed confrontations for the period September to December 1973 is available from the Government. 139/ A number of persons were executed during this period, 140/ and the Vicaría de la Solidaridad reports 247 well documented cases of persons who remain missing after having been detained. Information on some 50 persons who disappeared during this period has been analysed above.

137. Undoubtedly, a number of the persons who were killed in armed confrontations and were unidentified or whose relatives did not learn of their deaths were reported as missing and were therefore included in early estimates of missing persons for 1973. However, it must remain clear that in none of the cases in 1973 analysed above did the information indicate that the persons disappeared during an armed clash. Rather, in each case the evidence indicates that the person who remains missing passed into the effective custody of government agents, in most cases *carabineros*, either subsequent to an armed confrontation, as in the Jorge Klein Pipper case, or in circumstances of arrest not linked to armed clashes. It must be emphasized that, regardless of the circumstances preceding an arrest, once a person has passed into the effective custody of government agents he enjoys a certain number of basic human rights and the Government has an obligation to ensure respect for those rights.

138. In the individual cases and the group cases for 1973 that have been analysed, weighty evidence reliably attests to the arrest of the persons concerned, but the Government and judicial investigations in those cases, with the recent exception of the Lonquén case, have not focused on the evidence of the arrest. In the Jorge Klein Pipper case the investigation did not identify the military unit which had arrested him and, in the Fernando Olivares Mori case, the Government, five years after the arrest, still had not identified the officers who had made the arrest, although they had been clearly identified from the beginning by officials of the United Nations.

137/ A/C.3/32/6, chap. III B.

138/ It has been estimated that 1,500 were killed, 80 from the military services; Report on the Status of Human Rights in Chile by the Organization of American States (E/CN.4/1166/Add.3, chap. X).

139/ Ad Hoc Working Group on Chile, Minutes of the meeting with the Minister of the Interior on 20 July 1978.

140/ E/CN.4/1166/Add.3, chap. X; and Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile, (OEA/SER.L/V/II.37, doc. 19 corr.1, chap. II C).

139. During 1974, numerous persons were arrested and detained in connexion with the state of siege and such arrests began to be carried out by security agents dressed in civilian clothes, particularly members of DINA, rather than uniformed carabineros or military personnel. Few armed clashes were reported during that period. In its report to the General Assembly, the Government of Chile included only four acts in 1974 that could be considered as violent confrontations, but these acts do not appear to be connected with reported cases of missing persons. 141/ The Vicaría de la Solidaridad reports that 223 persons arrested during 1974 remain missing and almost half of these are among the "119" reported in the press as having died outside Chile.

140. In the cases of persons missing in 1974 analysed above, strong evidence again reliably attests to the arrest of the persons involved and to their detention for a period of time. In some of these cases, official written acknowledgements attest to the person's arrest. Nevertheless, the Minister of the Interior and the National Executive Secretariat for Detainees (SENDET) began during this period to respond to requests for information on arrests with the formula "is not being detained by an order from this Ministry" ("no se encuentra detenido por orden emanada de este Ministerio") or that there was no record of the arrest. However, as was explained to the Ad Hoc Working Group on Chile by the Chilean Minister of the Interior, since DINA had independent powers of arrest which did not require prior issue by the Ministry of the Interior of a decree for arrest, the answers by the Ministry that a person "is not being detained by an order from this Ministry" did not necessarily mean that a person was not deprived of his liberty. As the Ministry of the Interior refused to respond to the fact of the arrest of persons by the security agencies, the Courts likewise refused to investigate the evidence showing arrest and detention, either in applications for amparo or in criminal complaints. In the cases of applications for amparo, the Ministry of the Interior's denial of any record of arrest or of the issue of a warrant of arrest was sufficient to justify rejection of the application, even in the face of testimony and other strong evidence of the arrest and detention. Also, investigations into these cases were suspended without adequate steps having been taken to inquire into the fact of the arrest. In cases of criminal complaints, the investigations were suspended even when the persons making the arrest had been clearly identified.

141. The situation for the years 1975-1977 was essentially similar to that for 1974. The country remained under a state of siege throughout that period and arrests for political or national security reasons continued to be made. However, the number of persons who were detained in each of those years and remain missing dropped from over 200 in 1974 to 76 in 1975, 111 in 1976 and only 12 in 1977. The arrests and detentions in the cases analysed for the period 1975-1977 are reliably attested by strong evidence, with the exception of certain cases in 1976 where, even if the arrests are proved either by direct or indirect evidence, little proof is available concerning the continuing detention of the

141/ A/C.3/639, Part Two, chap. II, para. 3, D.

missing persons. This may be due to the reduction in the number of detainees being held at the end of 1976, which brought down the number of potential witnesses. During this period the Ministry of the Interior, and during its existence SENDET, responded to requests for information on arrests with the above-mentioned formula to the effect that there was no record of an arrest or of the issue of a decree for arrest. The courts continued to reject applications for amparo on the basis of such statements, even when strong evidence of arrest existed and investigations of criminal complaints were suspended without adequate steps having been taken to inquire into the fact of arrest.

142. The information analysed in the cases described above leads to one conclusion of a general nature, a conclusion already reached both by the Ad Hoc Working Group on Chile and by representatives of the Catholic Church in Chile. In the month or two following the events of 11 September 1973 disappearances appear to have been the result of indiscriminate actions by the military authorities, but towards the end of 1973 and the beginning of 1974 a system was set up in Chile whereby, in the words of the Ad Hoc Working Group, "individuals believed to oppose the present régime, including persons active in the labour movement, are arrested by Chilean authorities and detained in various unknown locations while the responsible authorities deny their arrest or detention and, after having been interrogated under torture, most of these individuals are never seen alive again". 142/ Similarly, the Episcopal Vicars of the Archbishopric of Santiago stated in their petition to the Supreme Court of Chile on 3 November 1978 that "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". Furthermore, the Episcopal Vicars stated "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". 143/

143. If the general conclusion is clear, much needs to be done to determine the whereabouts and fate of each individual missing person and thus respond to their relatives' "right to know".

142/ A/32/227, para. 101.

143/ E/CN.4/1310, annex VIII.

G. Role of individuals, private organizations, the press, the Government and the judiciary in the disappearance of persons in Chile

1. Role of individuals and private organizations

144. In the efforts made on behalf of missing persons, more particularly to obtain their release, determine their whereabouts or discover their fate, the immediate relatives often played an important role. In many cases the relatives tried personally to locate missing persons by going to various detention camps and visiting government officials. They also addressed themselves to the courts with individual applications for amparo and criminal complaints. It was, on the other hand, a Church-related organization, the Comité Pro-Paz, which made the first collective effort on behalf of missing persons by filing in March 1974 an application for amparo on behalf of 131 missing persons. Subsequently, organizations related to the Catholic Church and officials of the Church presented petitions to the courts and to the Government on behalf of an increasingly large number of missing persons: 163 and later 181 persons in 1975; 383 persons in 1976 (petitions accompanied by four volumes of evidence) and 501 persons in 1977. In 1978 a list of over 600 missing persons was published by the Vicaría de la Solidaridad, which also presented to the Government summaries of the evidence in files of the courts and the Vicaría on 477 persons on that list. The Association of Relatives of Missing Detainees made continuous efforts to obtain information on the fate of missing persons and organized hunger strikes and sit-ins in July 1977, May 1978 and September 1979. 144/ The efforts and civic courage of private individuals, the Church and the Association of Relatives of Missing Detainees finally led to public recognition of the fact that persons were missing. 145/

2. Role of the press

145. During the visit of the Ad Hoc Working Group to Chile in 1978, the Association of Relatives of Missing Detainees informed the Group of the difficulties they encountered in bringing the problem of the missing persons to the attention of the general public through the mass media. They stated that it had been impossible to secure publication in Chilean newspapers of the list of missing persons and that it was only through the hunger strike of 1977 that the public at large had even been acquainted and confronted with the problem of missing persons by the press. 146/ The press in Chile in the years following September 1973 did treat the subject of the missing persons by, in the words of the Episcopal Vicars of the Archbishopric of Santiago, "describing it as a fabrication and a political device designed to discredit the Government". 147/ The Ad Hoc Working Group on Chile reported cases in which the press carried inaccurate or false reports in which alleged missing persons had been

144/ See above, chapters II and III, and A/33/331, paras. 405-406.

145/ E/CN.4/1310, annex VIII.

146/ Ad Hoc Working Group on Chile. Minutes of the Meeting with the Association of Relatives of Missing Detainees on 14 July 1978.

147/ Petition to the Supreme Court by the Episcopal Vicars of the Archbishopric of Santiago requesting the appointment of investigating judges (3 November 1978); E/CN.4/1310, annex VIII.

reported not to be missing. 148/ The Episcopal Vicars of the Archbishopric of Santiago, in the statement quoted above, reported that the attitude of the Chilean press had changed and, in 1978, the press admitted that the problem of the missing detainees was "a dramatic reality which requires clarification". 149/ Nevertheless, in a recent communication to the Expert on the question of the fate of missing persons in Chile, the Association of the Relatives of Missing Detainees reports that although press conferences have been held recently with the attendance of representatives from all of the media, the content of the press conferences has not been published. This must be seen in light of the inherent duty of the press to publish objective information. Reliable evidence of the disappearance of detainees in Chile has existed since September 1973. The failure of the Chilean mass media to reflect this evidence was certainly a factor which permitted the disappearance of detainees to continue.

3. Role of the Government

146. The Government of Chile has placed all legislative, ~~constituent~~ and executive powers in the hands of the Junta since 1973 and its role in the disappearance of detainees can be looked at in terms of two periods: the months following September 1973, and the period starting with the establishment of DINA.

147. In the period following the change of regime, the authority to arrest and transfer persons under the state of siege, a power constitutionally reserved for the President, was exercised independently by diverse administrative authorities and government agencies, each of which kept its own list of detainees. This is shown by Decree-Law No. 288 and the explanations of the Minister of the Interior concerning the establishment of SENDET (see chapter IV B above). The examination of the cases of missing persons for 1973 shows that the legal formalities, such as obtaining arrest warrants from courts or detention decrees from the Ministry of the Interior, were generally disregarded. This situation made possible the arrest and subsequent disappearance of persons, as in the Lonquén case.

148. During the period beginning with the establishment of DINA (June 1974), the involvement of the Government of Chile in the disappearance of persons is to be found at both the law-making and the law enforcement levels. At the time of the establishment of DINA, an organ reporting direct to the Government Junta and not to any ministry, powers of arrest under the state of siege were secretly conferred upon it. In exercising these powers DINA was independent of the Ministry of the Interior or any government department. It was responsible only to the Government Junta. As the Minister of the Interior informed the Ad Hoc Working Group on Chile, DINA had had the authority to arrest individuals and then ask the Ministry of the Interior for decrees, those decrees being the only measures by which detention had been officially authorized. DINA's powers of arrest were also free from judicial control, since DINA agents were immune from questioning by the courts. In innumerable cases DINA ~~REFUSED~~ ~~TO~~ provide information on arrests, stating that all requests must be directed to the Ministry of the Interior or to SENDET. In this regard an excerpt from an article entitled "The lesson of DINA" from "Mensaje", a Jesuit magazine published in

148/ A/32/227, paras. 130-133.

149/ E/CN.4/1310, annex VIII.

Chile is instructive. 150/ Referring to the refusal of the Director of DINA to appear before the courts, this article reads:

"For instance, when told by the Court of Appeal that 'whatever authority the Director is subject to, he is legally bound to inform the Court ~~about~~ the above-mentioned circumstances', he replied: 'I must again state my position, namely, that I have to comply strictly with the orders of the President of the Republic and inform you that any information about detainees must be supplied to the courts of justice, no matter which, by the Minister of the Interior or by the National Service for Detainees'. (Application for amparo No. 772-74, Santiago Court of Appeal)".

Further on, the article states

"The same Director, this time before a military tribunal, said that it was necessary 'not to specify or reveal the names of the men and women who took part in the action because, as intelligence agents, their identity has to be kept secret' (Proceedings against APA and others, Ad Hoc Military Court of Santiago)". 151/

According to the article, the then Minister of the Interior agreed with the Director of DINA, since he repeatedly stated that:

"To provide the courts of justice with information on DINA's activity and agents would be a violation of their 'vulnerability as intelligence agents' (Case No. 100,262, Fourth Criminal Court of San Miguel) and would pose a threat to 'the conditions of absolute secrecy in which the security services operate' (Case No. 2,680, Eleventh Departmental Criminal Court of Santiago)". 152/

In short, the courts were unable to compel the organs having independent powers of arrest to provide information. They had to address themselves to the Ministry of the Interior or SENDET, which only recorded the information supplied by DINA and, in cases where DINA supplied no information, replied to the Courts by stating that the person "is not being detained by an order from this Ministry".

149. Within DINA itself, activities were so organized that the identity of the persons carrying out arrests was concealed, thus making it difficult to establish their responsibility. The testimony of René Alfaro Hernández, an ex-DINA agent, concerning the arrest of Horacio Carabantes Olivares - one of the Valparaíso Eight - reads in part as follows:

"The leader of the group, the one who gave the instructions and was in charge of the operation, was Mario. In reply to the Court's question, I have to admit that I do not know the full names of these persons or

150/ Mensaje, issue No. 270, July 1978.

151/ Ibid., issue No. 270, July 1978.

152/ Ibid.

whether the first names I knew them by had anything to do with their real names. I had never seen them before and I think they were together only during that operation. I have never seen them again. I should inform the Court that, because of the nature of security work, the members of groups carrying out specific operations are chosen at random, depending on who is available, and are given fictitious names for each assignment. In this case, I think that the ones chosen came from other groups in the Intelligence Directorate since, as I said, I do not know their real identities or what rank they held. I also wish to inform the Court that many members of what used to be DINA came from the four branches of the armed forces, as well as from the Investigation Bureau, so it was very difficult to get to know the members of a group during an assignment". 153/

In this same case, the Director of DINA testified:

"With regard to the identity of the DINA personnel who took part in the Valparaíso operation, I can tell you that it is not possible to establish the names of the agents who went to that city because of the amount of time that has elapsed and the nature of intelligence activities is such that the men are chosen at random from those who happen to be available. Orders for activities of that kind are given orally and no written records are kept, so there is no way of knowing the name of the person in charge of the operation; because of the compartmentalization, he selects the members of his team at random, as was explained before". 154/

Numerous rules at both the constitutional and the legislative levels govern the arrest and transfer of persons during the state of siege. These concern the requirements relating to written orders for arrest, limitations on the places where prisoners may be detained, notification to relatives of the fact and the place of detention within 48 hours, and the time-limits during which a person must be freed or turned over to the courts or the Minister of the Interior. The overwhelming evidence collected by organizations within Chile and international organizations such as the United Nations and the Organization of American States has shown that the Government has failed to insist on respect even for these legal rules, which are of national origin, some of them decreed by the Government Junta.

150. Another factor in the operation of the system of arrest and detention in Chile which resulted in the disappearance of detainees was the state of siege. The above-mentioned article from Mensaje regarding the subject reads:

"Moreover, DINA required a proper public legal structure in order to be able to do its work effectively. It obtained this through the continuation of the state of siege, the natural medium for its activities. The state of siege placed thousands of persons at its disposal, the country was dotted with political prison camps, the curfew enabled it to move about as a dreaded group in the night, individual guarantees were suspended, judicial powers were eroded and exceptional powers were

153/ Dónde Están?, vol. 6, case No. 325, pp. 1265-1267.

154/ Ibid., pp. 1281-1282.

granted to an Executive which, in practice, delegated them to DINA, for the President of the Republic himself recognized, when dissolving it, that it had been exercising "executive" powers. Protected by all those circumstances, DINA was able to proceed with its work". 155/

151. Until 1978, in the information that it submitted to the United Nations and other international organizations in response to their growing expressions of concern about the disappearance of detainees, the Government of Chile denied, in substance, that the problem existed. It explained that the list of supposed missing persons contained duplications of names and the names of persons who did not legally exist, who had died, were in detention, had left the country, had gone into hiding or had been killed abroad. In response to individual cases discussed in international reports, the Government generally denied that the person had been detained or stated that there was no record of his having been arrested or of a detention decree having been issued. In some cases where weighty evidence showed arrest, it reported that the persons had been arrested but had been released immediately or stated that the matter was being investigated by the courts. The Government of Chile rarely faced up to the evidence in international reports which showed that missing persons had been arrested and detained by government agents. In a statement before the Ad Hoc Working Group during its visit to Chile, the Minister of the Interior even minimized the gravity of the problem of missing persons.

152. In certain cases, such as the missing persons of Lonquén, those under investigation by the special judge for Rancagua or the persons who disappeared in November-December 1976, the Government of Chile submitted to the United Nations contradictory information or information which has proved false. With regard to the reports submitted to the United Nations that the missing persons found buried at Lonquén had been registered by the Institute of Forensic Medicine as having died, reliable reports of the investigation into that case suggest that the information submitted to the United Nations may have been deliberately fabricated. This is particularly disturbing and requires the most thorough investigation in the light of the pledge of Member States of the United Nations under Articles 55 and 56 of the Charter to co-operate with the Organization in the promotion of universal respect for, and observance of, human rights and fundamental freedoms. A more positive approach by the Government of Chile to the substance of international concern about missing persons might well have contributed to the elimination of the problem at an early stage.

153. Although the discovery of the bodies buried at Lonquén appears to have made the Chilean Government aware of the problem of missing persons, in the investigations of missing persons now under way in Chile some continuing difficulties are encountered by reason of decisions of the Government or other authorities. The limitations placed on investigations by civilian judges by Decree-Law No. 1,775, which prohibits them from carrying out investigations on military premises, have been described above. 156/ Furthermore, reliable information on the investigations by the special judge for Rancagua indicates that military authorities did not provide information

155/ Mensaje, issue no. 270, July 1978.

156/ See chapter IV E.

requested on the identity of military personnel and that the judge was refused access to the files of a closed case in the military courts relevant to his investigation. In addition, it is reliably reported that, in the investigation into the disappearance of Claudio Enrique Contreras Hernández 157/ the military investigating judge charged with the case received a report from the Ministry of the Interior that the registers of the Tres Alamos detention camp were in the hands of the Carabineros and that the registers for Cuatro Alamos had been burned for reasons of security. 158/

154. The Ad Hoc Working Group reported that officials of the Catholic Church in Chile and the Association of Relatives of Missing Detainees had found that the investigations carried out by the Ministry of the Interior into the cases of missing persons presented to him by the Church were unsatisfactory. The Minister of the Interior stated at the time that he would continue his investigations. 159/ The Permanent Representative of Chile to the United Nations informed the Expert on the question of the fate of missing persons in Chile in a letter dated 24 July 1979 that the information gathered by the Ministry of the Interior's investigation into presumed missing persons had been turned over to the courts. No information has been made public on the results of the investigation carried out by the Ministry of the Interior.

155. Decree-Law No. 2,191 of 18 April 1978, which granted a broad amnesty to persons who, as principals or accessories, had committed a wide range of criminal offences between 11 September 1973 and 10 March 1978, has been dealt with in detail by the Ad Hoc Working Group on Chile. The Group also reported that the investigation of a number of cases of missing persons had been closed as a result of the amnesty law. In the Group's view, the principal adverse effect of that law was the removal of the criminal responsibility of persons who had committed acts such as torture of detainees and acts resulting in their deaths. 160/ Recently, as reported above, the carabineros responsible for killing 15 detainees at Lonquén were released and charges against them were dropped because of the amnesty. 161/ The Ad Hoc Working Group also reported on the international human rights instruments, such as the International Covenant on Civil and Political Rights, the European and American conventions on human rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that prohibit torture under any circumstances. In addition, the Group noted that the Geneva Conventions of 1949 required States parties to establish penal sanctions for grave breaches of the Conventions which include torture and wilful killing of protected persons. The Group concluded 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". 162/ In March 1979 the Vicar-General of Santiago and Vicar of the Vicaría de la Solidaridad petitioned the

157/ Dónde Están? vol. 1, case No. 17; and A/32/227, annex LV, No. 207.

158/ Case No. 91,841, Office of the Second Military Prosecutor.

159/ E/CN.4/1310, paras. 109, 116-118.

160/ A/33/331, paras. 248-300, 779 and E/CN.4/1310, paras. 53-54.

161/ See chapter IV, A 4.

162/ E/CN.4/1310, paras. 53-57.

Supreme Court in this same sense, arguing that the amnesty of April 1978 could not be applied to crimes such as those committed at Lonquén because of Chile's international legal responsibilities. 163/

156. The Chilean Minister of Justice, in a meeting with the Ad Hoc Working Group on 24 July 1978, stated that the aim of the amnesty had not been to ensure that offences such as torture should remain unpunished. The Minister said that, where torture was proven, those responsible would not be immune from administrative penalties, which were distinct from criminal penalties. 164/

157. During its visit to Chile in July 1978, the Ad Hoc Working Group was informed of proposals then being examined by the Government whereby the period required before a missing person was declared dead would be reduced from the normal five years to two years. The Minister of the Interior informed the Group that the Government was considering facilities for solving legal and inheritance problems concerning presumed missing persons and was ready to consider applications for ex gratia pensions in cases where the missing person had been the family breadwinner. 165/ In October 1978 the Association of Relatives of Missing Detainees wrote to the Minister of the Interior asking that the proposed decree-law on presumed death should not be promulgated. In connexion with that proposed decree-law, this letter said:

"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". 166/

158. The above statement by the Association of Relatives of Missing Detainees is also relevant to the question of compensation, since compensation in cases of missing persons depends on a determination of their fate and the responsibilities for that fate. When that is established, then the legal and the moral responsibilities of the State come into operation in order to make good the harm caused by illicit acts attributable to the State. This is clearly the case in relation to the families of the missing persons buried at Lonquén.

163/ For details see the Report of the Special Rapporteur on the Situation of Human Rights in Chile to the General Assembly at its thirty-fourth session (A/34/583).

164/ Ad Hoc Working Group on Chile, Minutes of the meeting with the Minister of Justice on 24 July 1978.

165/ Ad Hoc Working Group on Chile, Minutes of the meeting with the Ministers of the Interior on 25 July 1978.

166/ E/CN.4/1310 para. 109.

4. Role of the judiciary

159. Article 16 of the Chilean Constitution provides for the remedy of amparo (habeas corpus), which, if properly applied, would afford an effective means of preventing arbitrary arrests and detentions and consequently the disappearance of detainees. Article 16 provides that, in cases of detention in violation of constitutional guarantees, the judge may order the person to be brought before him and that order shall be obeyed by all persons in charge of places of detention. The judge may order the person's release and the procedure shall be carried out expeditiously (breve y sumariamente). The Code of Criminal Procedure provides that, in amparo proceedings, the judge may visit the person at the place of detention and it fixes a limit of 24 hours, with exceptions for certain cases within which a judgement must be rendered. 167/ As the Ad Hoc Working Group on Chile reported, the Chilean authorities have expressed conflicting views on whether the remedy of amparo is applicable in cases of detentions under the President's special powers of arrest during states of siege. 168/ The lawyers of the Vicaría de la Solidaridad have given the following interpretations of the remedy of amparo:

"The remedy of amparo has been so established in our legislation as to be fully capable of constituting an effective safeguard for liberty and security of person. Its applicability both in situations of legal normality and under exceptional régimes, its preferential and urgent application, the analysis which it requires judges to make of matters of form and substance pertaining to the detention of an individual, the specific mechanism of habeas corpus which it places in their hands and which enables them either to have the detainee brought before them or to remove the court to the place where he is, and the power which it confers on magistrates to pursue the question of the possible criminal liability of those who made the arrest for any abuses they committed, demonstrate the exceptional importance which the law attributes to this remedy". 169/

The Inter-American Commission on Human Rights has given a similar interpretation of the role which the remedy of amparo should play in protecting liberty and security of person. 170/

160. Unfortunately, as the reports of the Ad Hoc Working Group on Chile and the reports of the Inter-American Commission on Human Rights have made clear, the Chilean courts have not applied the remedy of amparo in a way which effectively protects the liberty and security of persons arrested by government agents. 171/ In a recent petition to the Supreme Court, 32 Chilean lawyers stated that:

167/ Articles 306-309.

168/ A/33/331, paras. 186-188.

169/ A/33/331, para. 191.

170/ A/31/253, para. 405.

171/ See A/10285, paras. 99, 120, 150; E/CN.4/1188, paras. 44-50, 97, 101; A/31/253, paras. 373-406; E/CN.4/1221, paras. 76-88, 175; E/CN.4/1266, paras. 66, 76-77; A/33/331, paras. 182-212; E/CN.4/1310, paras. 104-105; Report on the Status of Human Rights in Chile by the Organization of American States and Observations on the Report by the Government of Chile (1974), (E/CN.4/1166/Add.3); Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile (1976) (OEA/SER.L/V/II.37, doc. 19, corr.1) and Third Report on the Situation of Human Rights in Chile (1977) (OEA/SER.L/V/II.40 doc. 10).

"Applications for amparo have become a cruel parody and are usually rejected. Of the more than 5,000 applications for amparo made to the courts in the last six years, four were granted and one of them (the application on behalf of Carlos Humberto Contreras Maluje) still has not been put into effect. 172/

One of the reasons for the ineffectiveness of the remedy of amparo is the agreement between the President of the Supreme Court and the Director of DINA that requests by the courts for information on arrests by security agencies should be made not to the agency making the arrests but to the Minister of the Interior. As shown above, DINA refused to provide the courts with information on arrests even when the courts addressed themselves direct to DINA. It has also been reported that it was agreed that security agents could not be ordered to appear in court but simply questioned on the premises belonging to their agencies. 173/ It is also relevant to note that in 1976 the Santiago Court of Appeals ruled that the President's special powers of arrest and transfer did not authorize the holding of detainees incommunicado but the Supreme Court overturned that ruling, which, had it been upheld, would have permitted better control over the treatment and the fate of detainees. 174/ Several reports have also been received of judges refusing to visit secret places of detention, even when a former detainee or a detainee's family was ready to indicate the exact place. 175/

161. When presented with an application for amparo, the Chilean courts request information direct from the Ministry of the Interior and not from the security agency which made the arrest. The Ministry does not always reply rapidly. 176/ If the Ministry replies that the person "is not detained by an order from this Ministry" or "no record exists of his detention" or "no record exists of the issue of an order for his arrest", then the application for amparo is rejected even in the face of strong evidence of arrest. For example, in the Contreras Maluje case, dealt with in detail above, the Ministry of the Interior answered seven days after the court had requested information. Two and a half months after the filing of the application, the court decided to order the Ministry of the Interior to release Contreras Maluje. The Court did not address itself to DINA, which had made the arrest. 177/ In cases where the Ministry of the Interior acknowledges that the person is detained, the application for amparo is rejected without the person having been brought before the court and no check is made of the detainee's physical condition, the conditions of detention or even the formal legality of the order for arrest. Applications for amparo are rejected when the Ministry acknowledges detention even in cases where there is clear evidence that the arrest was illegal. 178/

172/ Hoy, issue of 19 to 25 September 1979, p. 16.

173/ Ibid., and A/33/331, para. 207.

174/ A/31/253, paras. 383-385; A/33/331, para. 194.

175/ See for example A/33/331, annex XXIV, application for amparo No. 246,77.

176/ A/33/331, annex XXIV.

177/ See above, chapter IV, D 2; and E/CN.4/1266, para. 66.

178/ A/31/253, paras. 398-406; E/CN.4/1266, paras. 76-77; A/33/331, paras. 182-198; E/CN.4/1310, paras. 58-69, 104-105.

Several examples of the actual operation of the remedy of amparo in Chile are given in annex XXIV to the Report of the Ad Hoc Working Group on Chile to the General Assembly at its thirty-third session (A/33/331). The failure of the Chilean judiciary to exercise its powers through the remedy of amparo in order to protect the life, liberty and security of detainees clearly contributed to the situation which made for the disappearance of detainees.

162. Effective criminal investigations into cases of illegal arrest and detention through the identification and punishment of the individuals responsible is another means of preventing the disappearance of detainees. 179/ Unfortunately, the Chilean courts, until just recently, refused to investigate adequately the criminal complaints filed in connexion with the disappearance of detainees. This is due to the failure of judges to exercise their lawful powers of investigation, to the refusal of DINA and other security agencies to appear before the courts to give testimony and to limitations on the investigative powers of the courts such as Decree-Law No. 1775, which forbids civilian judges to carry out investigations on military premises. In 1976 the Vicaría de la Solidaridad informed the Supreme Court, with regard to cases of missing persons brought to the Court's attention, that:

"In most of the 254 cases examined, the judges have been unable to continue the investigation of the crimes because, when the intelligence services, in particular the National Intelligence Directorate (DINA), are asked for reports concerning the conduct of their officials on the occasion of the arrest of persons, they refuse to reply or to comply with Court summonses. The investigations are thus paralysed and the judges hesitate to impose penalties in respect of the act of contempt represented by the systematic disregard of their summonses". 180/

Two years later, in a 1978 submission to the Supreme Court, the Vicaría reported that in 500 cases brought before the ordinary criminal courts, "none of the inquiries made have reliably clarified the fate of any missing persons nor has there been any punishment of those responsible". 181/ Thus, the Ad Hoc Working Group stated in 1978 after its visit to Chile that

"The Chilean courts have been inclined to close possible avenues for the investigation of offences alleged to have been committed by the security forces, sheltering behind the intricate network of legislation promulgated by the Junta and its ministers, making use of procedural devices or simply setting aside the legal rules and procedures in force". 182/

163. A comparison of the investigations by two special investigating judges into the missing persons from the Lonquén area is illustrative of the results that can be achieved when a judge fully exercises his powers of investigation. The special investigating judge appointed in 1975 halted his investigation and turned the case over to the military courts as a result of reports from the Carabineros that the persons arrested had been delivered to the National Stadium and of SENDET's failure to answer whether the detainees had or had not been received at the National

179/ See A/33/331, paras. 199-212.

180/ E/CN.4/1221, para. 175.

181/ A/33/331, para. 208.

182/ A/33/331, para. 210.

Stadium. The second investigating judge appointed in 1978 carried out a full investigation and turned the case over to the military courts only after the persons responsible had been fully identified. Similarly, the investigation carried out by the special investigating judge concerning the 20 missing persons at Laja has led to the discovery of the burial of 18 bodies reported to be the bodies of missing persons. Earlier criminal investigations initiated in some of these cases had produced no such result.

164. The failure of the Chilean courts up to 1979 to conduct adequate investigations into criminal complaints filed in connexion with the disappearance of detainees was certainly an important factor in the continued disappearance of detainees in Chile throughout 1977. This failure to investigate prevented the trial and punishment of those responsible for the disappearance of detainees and the amnesty law of April 1978 is now applied to prevent punishment.

V. THE RESPONSIBILITY OF THE GOVERNMENT OF CHILE UNDER
INTERNATIONAL LAW

A. General observations on State responsibility

165. There can be no doubt that the phenomenon of missing persons in Chile described in this report amounts to a real situation of gross violations of human rights and it is not a question of a few, individual cases. There is also evidence, as regards missing persons in Chile, of "administrative practices" within the meaning given to that term by the European Commission on Human Rights, inasmuch as the present report shows that there was a repetition of acts throughout the country by government agents and that such acts were officially tolerated or sanctioned. In connexion with application No. 5310/71 (Ireland v. United Kingdom), the European Commission on Human Rights cited its jurisprudence in earlier cases and elucidated the meaning of a situation, an administrative practice or official tolerance, in the sense that these terms are being used here, as follows:

"By repetition of acts is meant a substantial number of acts ... which are the expression of a general situation ... A constituent element of an administrative practice is that the acts complained of form a pattern or system in the sense that some link or connection exists in the circumstances surrounding the particular acts, e.g. time and place where the acts occur and the attitude of the persons involved and that they are not simply a number of isolated acts".

Furthermore,

"By official tolerance is meant that ... [the acts] are tolerated in the sense that the superiors of those immediately responsible ... take no action to punish them or prevent their repetition; or that higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings, a fair hearing of such complaints is denied".

166. Where a serious situation of missing persons exists, as in Chile, there are firm international obligations upon the State in question, which is responsible for the fulfilment of those obligations. In so far as the acts leading to the disappearance of persons also violate specific obligations under nationality or internationally established human rights, the State is likewise responsible for those violations of human rights. The International Law Commission, in its work on State responsibility, 1/ has elaborated some fundamental principles of the law in this field. In Article 3 of its current draft articles on State responsibility, 2/ the Commission stated that:

1/ See, Yearbook of the International Law Commission, vol. II (1956); vol. II (1973); vol. II (1976).

2/ A/34/194, chap. IIIA.

"There is an internationally wrongful act of a State when:

- (a) Conduct consisting of an action or omission is attributable to the State under international law; and
- (b) That conduct constitutes a breach of an international obligation of the State."

Article 4 provides that "An act of a State may only be characterized as internationally wrongful by international law". Article 5 speaks about the attribution of the conduct of State organs to the State and says "... conduct of any State organ having that status under the internal law of that State shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question". Article 17 of the same draft articles deals with the irrelevance of the origin of the international obligation breached and specifies that: "The origin of the international obligation breached by a State does not affect the international responsibility arising from the internationally wrongful act of that State".

167. The International Court of Justice has, in its judgment of 5 February 1970, in the Case concerning the Barcelona Traction, Light and Power Company, Limited, expressed the opinion that "an essential distinction should be drawn between the obligation of a State towards the international community as a whole, and those arising vis-à-vis another State ... By their very nature the former are the concern of all States. In view of the importance of rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes". The International Court of Justice cites as examples obligations deriving "from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law ...; others are conferred by international instruments of a universal or quasi-universal character". 3/

168. In its work on State responsibility, the International Law Commission, adhering to the position of the International Court of Justice, has said that a State may be considered responsible under international law for respecting certain obligations towards the international community as a whole. Indeed, the Commission has said that a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being constitutes an international crime. Furthermore, when there are international conventions binding upon a State, as in the case of Chile, which has acceded to a series of international human rights instruments, the responsibility of the State is even more pronounced. The judgement that Chile is internationally responsible for the disappearance of detainees which has occurred in that country

3/ International Court of Justice, Reports of Judgments, Case concerning the Barcelona Traction, Light and Power Company, Limited, Judgment of 5 February 1970, p. 32.

is reflected in the views expressed by members of the Human Rights Committee during that Committee's examination of the report submitted to it by Chile in accordance with article 40 of the International Covenant on Civil and Political Rights. In this regard, the Committee's report to the General Assembly at its thirty-fourth session reads in part:

"Many of the members stated that the disappearance of hundreds of persons who had been arrested by the security services continued to be one of the main concerns of the international community and they asked whether serious and effective efforts had been made to discover the whereabouts of the missing persons. Some members considered that the disappearance of a person in whatever circumstances involved State responsibility, and questioned the propriety of the immunity granted by the amnesty of 18 April 1978 to persons who could otherwise have been charged with serious violations of human rights". 4/

169. One or a few cases of missing persons may not necessarily engage international responsibility. One or a few cases of missing persons could raise the problem of responsibility within the domestic jurisdiction or could engage the principle of diplomatic protection if the victim concerned is a foreign national. However, when the scale of missing persons, as confirmed by reliable sources, show gross violations of human rights, these instances of missing persons undoubtedly constitute a "situation" within the meaning of Economic and Social Council resolution 1503 (XLVIII), or within the above-mentioned meaning defined by the European Commission on Human Rights. In such a "situation", a term which has a firm basis in general international law, or where the disappearance of persons can be dealt with under specific human rights norms, State responsibility under international law arises. The responsibility of the State under general international law arises from the moment when the situation in question amounts to a consistent pattern of gross and reliably attested violations of human rights.

170. Taking into account Chile's undeniable responsibility towards the international community, it may be pertinent to review the specific international obligations which are binding on Chile, and have been violated in the situation of missing persons. It would also be pertinent to demonstrate how far the actions which lead to the disappearances of persons are imputable to the Chilean Government and to point out the consequences as regards the responsibility of the State that might be drawn under international law from the present situation of missing persons in Chile.

B. The specific human rights obligations of the Chilean Government involved in the situation of missing persons

171. The fact that numerous cases of missing persons are reported on a wide scale is as such not only a humanitarian problem but also a problem of the violation of specific human rights. This is confirmed by General Assembly resolution 33/173 of 20 December 1978. The situation of missing persons involves complex problems. When the elements of the problem are analysed in relation to human rights provisions of

4/ A/34/40, para. 81.

of an international character, it is clear that the cases of missing persons involve violations of human rights which give rise to the responsibility of the State as a result of its obligations under international law. The following rules of the International Covenant on Civil and Political Rights might be specifically involved in a situation of missing persons: the right to life (art. 6), freedom from torture (art. 7), the right not to be held in slavery or servitude (art. 8), the right to liberty and security of person (art. 9) and the right not to be subjected to arbitrary or unlawful interference with one's privacy and family life (art. 17). These are the rights which are mainly and directly affected in the case of missing persons, bearing in mind, however, that the whole complex of human rights may be concerned if a human being is missing because of acts of State or other authorities.

The right to life is involved because a missing person may have been arbitrarily killed. The evidence proves - particularly in the Chilean situation - that this may often have been the case. The mass graves at Lonquén and in Cuesta Barriga and the discovery of the bodies of persons reported to have been arrested at Laja are only some examples which show that persons reported to have disappeared were victims of violations of their right to life.

Freedom from torture may be involved because missing persons are kept in prolonged custody at unknown places or die as a result of torture inflicted upon them or are subjected to various forms of torture. There is no doubt that, in the Chilean situation, torture and ill-treatment constituted an administrative practice throughout the years after September 1973.

The right to liberty and security of person may be involved inasmuch as persons who disappeared were often seen when they were detained by State authorities; this proves that the fact of being missing is intimately linked to liberty and security of person, in particular when the State is unable to clarify the whereabouts of missing persons, as is the case shown by the behaviour of the Chilean authorities.

Another direct consequence of the disappearance of a person is unlawful interference with the privacy and the family life of the persons in question. The situation of missing persons therefore involves both the legal obligations of the State towards the international community and a wide range of human rights. Non-violation of these rights must be established by those alleged to be responsible for disappearances when the disappearances are reliably attested.

C. Imputability of disappearances to the State

172. State responsibility is involved when it is established that the acts producing disappearances are attributable to the State in question, or that it has acquiesced in those acts or that the State has otherwise failed to discharge its obligations. This may arise in various ways, for example:

If it is reliably attested that a person who subsequently disappears has been arrested or detained by a State authority;

If the State tolerates reported behaviour by organs or branches of the government which leads to the disappearance of persons or the State acquiesces in such activities by other persons;

If the State authorities do not react promptly to reliable reports of disappearances;

If the legal remedies for ascertaining the whereabouts of disappeared persons are non-existent or ineffective;

If the State in question itself, in the face of reliable evidence of disappearances, does not create ways and means to clarify the fate of missing persons or to make existing remedies more effective;

If the State takes no action in order to establish responsibility within the national framework (i.e. penal or disciplinary measures) for acts leading to the disappearance of persons but, on the contrary, covers the actions taken by the national authorities through amnesty laws.

173. There is no doubt that the Chilean Government bears international responsibility in connexion with human rights in general and with the specific human rights involved in the situation of missing persons. The responsibility of the Chilean Government to respect human rights in general derives not only from general international law, including the Charter of the United Nations, but also from particular instruments such as the International Covenant on Civil and Political Rights. Chile has been a party to the International Covenant on Civil and Political Rights since 1972. ^{5/} The Ad Hoc Working Group on Chile has repeatedly emphasized the international binding force that the Covenants have in respect of Chile and the representatives of Chile have not denied their obligations under international law or under the Covenants. They participate in the work of the Human Rights Committee. ^{6/} Of the rights particularly involved in the situation of missing persons, the right to life is paramount. Chile is unquestionably bound to respect the right to life. The American Declaration on the Rights and Duties of Man, proclaimed in April 1948, provides in Article I that everybody has "the right to life, liberty and security of his person"; the American Convention on Human Rights of 22 November 1969, proclaims the right to life in Article 4, which reads as follows: "Every person has the right to have his life respected. This right shall be protected by law ... No one shall be arbitrarily deprived of his life". Article 4 of the International Covenant on Civil and Political Rights states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Furthermore, Articles 27 and 147 of the Fourth Geneva Convention of 12 August 1949 contain provisions regarding respect for the right to life from which no derogations are allowed. All the provisions mentioned are binding on Chile under international law fully in force.

174. Although the Chilean Government refers to the particular circumstances and the situation of civil war which it claimed prevailed in the country, ^{7/} it cannot assert that it should not respect the right to life. Chile is a party

^{5/} See A/33/40, annex I.

^{6/} CCPR/C/SR.127-130.

^{7/} See chapter II above.

to the Geneva Conventions 8/ and, therefore, is always bound by Article 3 of the Conventions, which extends the applicability of some of the principles of the Conventions, particularly the right to life, to non-international armed conflicts.^{9/} As has been pointed out by one author, 10/ "As a result of the inclusion of Article 3, the law of Geneva imposes restrictions upon States in the exercise of their sovereignty over their subjects, restrictions which were meant to serve the interests of those subjects". Article 29 of the Fourth Geneva Convention clearly states the responsibility of Member States as to "protected persons": "The party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred". The commentary to this provision says that the responsibility is a dual one: on the one side a personal responsibility of the agent and, on the other side, the responsibility of the State to which the agent belongs. The term "agent" must be understood as embracing everyone who is in the service of a Contracting Party, no matter in what way or in what capacity. It includes civil servants, judges, members of the armed forces, members of paramilitary police organizations etc., and so covers a wider circle than the definition in the Fourth Hague Convention, according to which the responsibility of the State could only be involved by "persons forming part of its armed forces". 11/

8/ Chile ratified the Geneva Conventions in 1950.

9/ Article 3 reads, in part as follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

- (2) The wounded and sick shall be collected and cared for. ..."

10/ See J.S. Pictet, Commentary, the Geneva Conventions of August 1949, pp. 209 et seq.

11/ Ibid., p. 211.

175. The legal obligation imposed by current international law on the States parties to the above-mentioned instruments, which include all the rights that may be infringed in a situation of missing persons, is therefore firmly established. Since Chile subscribes to all those instruments, its Government is not only under obligations imposed by international law to protect the human being, as pointed out above, but is under precisely defined obligations imposed by the above-mentioned instruments. The question therefore arises whether the Government of Chile is responsible for the situation of missing persons, bearing in mind the elements of attributability and the criteria mentioned earlier. It can readily be stated that all the conditions for establishing the responsibility of the Chilean Government as to the situation of missing persons seem to be fulfilled:

(a) The present report, the reports of the Ad Hoc Working Group on Chile, the published volumes of the Vicaría de la Solidaridad and the reports of the International Committee of the Red Cross show beyond any reasonable doubt that, at present, at least 600 cases of missing persons have still not been clarified; in the said 600 cases the information is so reliable that there can be no doubt that the persons in question have been arrested by State authorities, either by the army or by DINA. Some of the persons arrested were reported to have been seen later in government custody. Furthermore, there is no sign that the fate of these missing persons will be clarified by the existing means and methods used by the Government.

(b) Under international law, restrictions on personal liberty and security provided for by law must be foreseeable and accessible. 12/ Only by fulfilling this condition can a restriction of personal liberty be considered lawful. Even if the Chilean decree-laws permitting the arrest of persons without further safeguards of personal liberty might be considered as a "law" within the meaning of international law, the decree-law governing DINA and its functions 13/ was never lawful within the meaning of international law. The decree-laws in question were not of such a nature as to arrange for the detention of persons in an objective and foreseeable way. 14/ The reliably attested cases of arrest by DINA agents, 227 cases out of the 477 cases examined (see annex), were patently unlawful within the meaning of international law.

(c) The available remedies used by the relatives of the missing persons were in almost all instances ineffective. Only four of the applications for amparo in cases of missing persons yielded a positive result. 15/ However, the other applications for amparo submitted in hundreds of cases were in no instance effective. Either the judiciary stopped the investigation, claiming that it was not competent or it rejected the application because it was satisfied, without further investigation, with the information from the Minister of the Interior that the person was not detained in pursuance of an order of that Ministry. The judiciary considered DINA as a body with complete immunity from any responsibility.

12/ See the Judgement of the European Court of Human Rights in the Sunday Times Case (26 April 1979), p.22.

13/ See above, chapter IV, G,3.

14/ See above, chapter IV.

15/ See above, chapter IV, G,1.

(d) Notwithstanding the knowledge of the complete ineffectiveness of the remedy of amparo and the methods of the investigating judges, as has been proved in many cases of missing persons, the Government, in spite of its legislative power to govern the country by decree-laws, has in no way contributed to strengthening the system for investigating the cases of missing persons. It was five years after the first reports about missing persons were publicly revealed, and only because of public pressure resulting from the discoveries at Lonquén, that some government police officers allegedly responsible for the disappearance of the persons whose bodies were found at Lonquén were indicted. However, the amnesty decree-law was used to exempt the Chilean officials from responsibility. 16/ It seems that, as regards the DINA system, even the Comptroller-General failed to take any action regarding the uncontrolled, unforeseeable, inaccessible and unlawful power of the DINA personnel responsible for the arrest of the majority of the 600 reliably attested cases. This shows that the Government of Chile has, up to now, tolerated the reported behaviour of the government organs responsible for the disappearance of persons. The State took no action to establish responsibilities for missing persons within its national framework; on the contrary, by the amnesty decree-law the Government waived the responsibility of the guilty persons and authorities within the national system. 17/

(e) The Government of Chile has not been willing to co-operate fully with the United Nations and other international organizations in the process of clarifying the fate of missing persons. It was ready to discuss the problem with the Ad Hoc Working Group on Chile in July 1978 and permitted the Ad Hoc Working Group to look into the Ministry of the Interior's documentation on the cases of missing persons. The Government also arranged interviews with responsible members of the judiciary, but it was not willing to accept any further co-operation with the United Nations with regard to this matter. In this respect the Government referred to its constitutional order, to the balance and the separation of powers. The Government overlooks, however, its general international obligations as regards a "situation" which involves a consistent pattern of violations of human rights created by the problem of missing persons.

175. The fact that at least 600 persons remain missing following acts of the State security system shows that in Chile there has continuously existed a "situation" of massive and systematic violation of human rights, including the right to life and other rights connected with the fact of missing persons. 18/ This "situation" is of a continuous nature. As long as the Government cannot show that it has taken effective action to clarify the fate of the missing persons, the Government continues to be responsible for the fate of missing persons. Mere reference to the separation of powers and the impossibility of interfering with the methods of the judiciary is, from the international point of view, without any relevance to the problem of Government responsibility. It also overlooks the fact that under international law a State cannot escape its international obligations by pleading difficulties within its internal order.

16/ See above, chapter IV, A, 4.

17/ See above, chapter IV, G, 3.

18/ See above, chapter V, B.

177. The Expert therefore comes to the conclusion that the Chilean Government is responsible under international law for the fate of at least 600 cases of missing persons whose basic rights as human being have been infringed and violated as indicated in the present report. The Government is also responsible for those missing persons who met their deaths in suspicious circumstances imputable to agencies of the Government. The Chilean Government owes it to the international community to explain and clarify the fate of these missing persons, to punish those responsible for the disappearances, to compensate the relatives of the victims and to take measures to prevent such acts from recurring in the future.

VI. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

A. The disappearance of detainees in Chile

178. Since the Military Government came to power in Chile on 11 September 1973, between 1,000 and 2,000 persons are reported to have disappeared as a result of actions by the Chilean authorities. Some 680 of these cases, in which reliable evidence showed that prior to the disappearance the person had been arrested or detained by Government agents, were presented by the Chilean Catholic Church in a humanitarian spirit and without political motivations to the Chilean Government and courts for investigation. Only in a few cases has the location or fate of the missing persons been clarified up to now. In some cases the person reported missing has been found alive and at liberty. On the other hand, in the case of 15 missing persons from the town of Isla de Maipo, their bodies were discovered buried at Lonquén and their deaths were found to be the responsibility of carabineros. Similarly, preliminary reports indicate that the 18 bodies found buried at Yumbel are those of missing persons arrested by carabineros at Iaja in September 1973 and the bodies found buried at Cuesta Barriga may also be those of missing persons from that region. The disappearance of these persons constitutes a continuous situation of violations of human rights and an acute humanitarian problem to their relatives, who wish, and have a right, to know what happened to their family members.

179. The analysis carried out in this report shows that, in almost all of the cases of missing persons examined, there exists substantial evidence of a reliable nature that the missing person was arrested and/or subjected to detention by agents of the Chilean Government prior to his disappearance. The disappearances were not the result of armed conflicts or clashes. The missing persons were brought under the effective control of government agents before they disappeared.

180. The United Nations and the international community cannot remain silent when faced with the phenomenon of missing persons as exemplified by the case of Chile. A State's obligation to respect the basic rights of the human person is an obligation erga omnes and the international community and its Member States have a valid legal and humanitarian interest in assuring respect for human rights by the Member States of the international community. Even though no persons are reported to have disappeared in Chile during 1978 and 1979, the numerous persons who disappeared between September 1973 and the end of 1977 and whose whereabouts are still unknown, present a continuous situation of gross and flagrant violations of human rights.

B. Missing persons in the context of the events of 1973 and from 1974 to 1977

181. The question of missing persons in Chile must be considered within the context of the events which took place in that country and in particular the respect for legal norms governing arrest and detention and the actual practice of the authorities in matters of arrest and detention. During the period from September to December 1973 a situation of acute internal tension prevailed in Chile and military personnel and carabineros arrested many thousands of persons throughout

the country. These arrests focused on persons who had held posts in national or local government or were connected with the previous Government through political parties, labour unions or other organizations or were supporters of that Government, such as journalists, professors, teachers, students and peasants. As the analysis of the cases in the present report shows, the military and the carabineros, in making their arrests, acted in an independent and uncontrolled manner without respecting the established legal rules and the Government failed to require respect for those rules or to investigate and punish abuses. For the period from September to December 1973, 247 strongly documented cases of missing detainees have been reported.

182. During the years 1974 to 1977 a large but varying number of persons were arrested each year in connexion with political or national security matters. After the establishment of DINA in June 1974, these arrests began to be carried out increasingly by persons dressed in civilian clothes using unmarked motor cars without licence plates and in circumstances designed to reduce the possibility of the arrest being witnessed. The legal rules governing arrest and detention were not observed and the arrested person was often taken to secret places of detention. DINA was created as an authority independent of the Government and responsible only to the four-member Military Junta. DINA enjoyed its own powers of arrest and detention beyond the control of the Government and the courts. In relation to DINA and the other security agencies, the Government and the Chilean courts refused to require observance of the established legal rules governing arrest and detention and they refused to investigate and punish abuses. During the years 1974 to 1977 some 422 well documented cases of missing persons have been reported. In 1974 and early 1975 the focus of the disappearances was on members of MIR (Revolutionary Left Movement), during the remainder of 1975 on members of the Socialist Party and in 1976 on members of the Communist Party. In 1977, members of the Socialist and the Communist Parties disappeared. A study of the 477 cases of missing persons covering the period 1973 to 1977 presented by the Chilean Catholic Church to the Government of Chile and to the Chilean courts shows that the carabineros were reported responsible for 126 arrests, most of them occurring in the year 1973, that DINA was reported responsible for the arrests in 227 cases, military personnel in 54 cases and military intelligence services in 33 cases. For a detailed breakdown of the Government agencies reportedly responsible for the arrest of persons who subsequently disappeared, see the annex.

C. The judiciary and missing persons

183. During the period following 11 September 1973, the legal remedies in Chile to protect individuals from illegal arrest and detention were inoperative. In 1973 the Government allowed arrests to be carried out by various authorities not legally empowered to make arrests and neither the Government nor the courts sought to control such illegal activities. In June 1974, with the establishment of DINA, and by reason of the decisions of the Military Junta, the Government and the courts themselves, a de facto system of arrest and detention operating outside the control of the Government and the courts was introduced.

184. The remedy of amparo in Chile, had it operated in accordance with its traditional functions under Chilean law, in which it is comparable to habeas corpus, would have been an important protection for the human rights of detainees.

However, of 5,000 applications for amparo presented in the six years following September 1973, only four were granted and one of them still has not been put into effect. The courts, accepting the immunity of DINA, did not carry out serious investigations in connexion with applications for amparo. They agreed not to seek information directly from the agencies making the arrests, such as DINA; rather, they requested information from the Ministry of the Interior or SENDET, which had no authority over the activities of DINA. If the Ministry of the Interior replied that a person was in fact being detained under the state of siege, the courts rejected the application for amparo. If the Ministry replied that the person "was not being held by an order from this Ministry" or a similar formula, the court also rejected the application for amparo, even though this answer was irrelevant to the fact of whether a person had or had not been deprived of his liberty by government agents, since the DINA enjoyed independent powers of arrest. The courts based their rejection of application for amparo on such answers from the Ministry even when strong evidence showed that a person had been arrested by government agents. In the case of Contreras Maluje, when an application for amparo was granted and the person ordered released, the Supreme Court refused to address itself to the President of the Republic, who had the authority over DINA to order the person's release. Instead the Supreme Court left the matter up to the Ministry of the Interior, which had no such authority. In this way the remedy of amparo was turned into a facade behind which the phenomenon of missing persons materialized.

185. As to criminal complaints made in connexion with missing persons, the courts, by accepting the immunity of DINA, the military and the carabineros and by not exercising fully their legitimate powers of investigation, deprived the people of Chile of the protection that effective criminal sanctions can afford in relation to human rights. Although more than 500 criminal cases concerning missing persons were filed between 1973 and 1978, no missing person's fate was clarified and no person was punished for actions leading to the disappearance of a detainee.

186. It is therefore clear that the phenomenon of missing persons in Chile is the result of the peculiar circumstances produced by the system of government installed on 11 September 1973 and the failure of the courts to control the independent actions of government agents.

187. The pressure brought to bear by the relatives of missing persons, the Catholic Church and the concern expressed by the international community concerning the disappearance of detainees in Chile, together with the discovery of bodies buried at Lonquén, appear to have encouraged the courts to take a more positive attitude in investigating cases of missing persons. In particular, the Supreme Court ordered the appointment of a number of special investigating judges and in at least two cases the special judges appear to have been willing to undertake thorough investigations. The special investigating judge for Lonquén has given an example of the results which can be achieved when the judiciary makes full use of its legitimate powers of investigation; in addition, as a result of the investigation by the special judge for Concepción, the secret burial of 18 bodies has been discovered.

D. The Government and missing persons

188. The present report has clearly shown that during the period from 1973 to 1977 the Government of Chile tolerated and then established a system or practice which resulted in the disappearance of detainees. In so doing, Chile failed to fulfil its international obligations under conventional and general international law. The Government's international obligations were also breached by its ratification of the acts which led to the disappearance of detainees, because the Government adopted the amnesty decree-law of April 1978, which sought to pardon the criminal acts involved in the disappearance of detainees. The amnesty decree-law has been applied, inter alia, to protect government agents found responsible for the deaths of detainees. In this regard it may be noted that the rank of a government agent is irrelevant to the responsibility of the State, since the agent's acts are imputed to the State.

189. The amnesty decree-law does not remove Chile's responsibility for the tolerance or establishment of the system or practice which led to the disappearance of detainees in that country after 1973. Even in situations of emergency amounting to a non-international armed conflict, as the Chilean Minister of the Interior has stated was the case with regard to the missing persons, the Government of Chile is bound by the Fourth Geneva Convention of 1949, which in its article 29 establishes the State's international responsibility for the treatment of protected persons. Moreover, article 146 of that Convention lays down a State's obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons ... before its own courts". Grave breaches of the Convention include wilful killing, torture and unlawful confinement of protected persons.

190. Under general and conventional international law the Government of Chile has an obligation erga omnes, in particular to the international community, to respect the basic rights of the human person and the Government is responsible, inter alia, to the international community for breaches of its obligations. This obligation to respect the basic rights of the human person clearly includes, in cases where the breach of the obligation takes the form of the disappearance of detainees, the duty to provide reliable and adequate answers in each case of a person reported missing.

191. The international responsibility of a State in cases where its breach of international law takes the form of the establishment or tolerance of a system or practice that leads to the disappearance of detainees cannot be removed by the simple device of shortening the period required before a missing person can be presumed to be dead. Nor can a State's responsibility be avoided by establishing a system under which a judge is empowered to declare a person dead if the person does not respond within a fixed period to a published order to present himself to the authorities. In cases where persons disappear after detention by government agents, the proper and fully legally adequate approach is to determine what happened in each case and to identify the individuals responsible. After that the State has a moral and legal responsibility to pay damages for the injuries caused by its agents. The establishment of criminal responsibility for any wrongdoing in connexion with missing persons is certainly part of the justice to be done to the missing persons and their relatives. In addition, it is hoped that

the attitude of the Government of Chile towards violations of basic human rights will be reflected in the administrative and disciplinary sanctions imposed in cases such as that of Lonquén, as the Minister of Justice informed the Ad Hoc Working Group on Chile would be the case.

192. With regard to the case of Chile, the Government has two specific types of international responsibilities: a responsibility to the Government of another State when a missing person has the nationality of that State and a responsibility to the United Nations when the missing person is an employee of that organization, like Olivares Mori. This latter principle was clearly demonstrated in the Bernadotte case. It is up to the States or the international organization concerned to claim fulfilment of these specific obligations.

Recommendations

193. The international community has a legal and moral obligation to take steps in connexion with the phenomenon of the disappearance of persons that is reported to occur in many parts of the world. The concerns expressed and the avenues of action proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 5 B (XXXIII) should be given careful consideration. As the present study has shown, in order to prevent the disappearance of detainees it is of the utmost importance that the rule of law should be safeguarded regardless of the situation in the country and that all organs and agents of the State should be required to obey the law and be held responsible for their actions. Measures should be taken so that emergency situations or states of siege are not used to exempt State organs or agents from the obligation to obey the law or to remove their responsibility for acts committed in violation of human rights. It is also important that the revised draft body of principles for the protection of all persons under any form of detention or imprisonment, now before the General Assembly in document A/34/146, should be approved and implemented as soon as possible.

194. In order to prevent the disappearance of detainees, the law governing arrest and detention should be accessible to all and its provisions must be drafted with sufficient clarity to make it foreseeable which State organs or agents have the power to make arrests and in what circumstances. Written arrest orders should be required in all cases except that of flagrante delicto, and a central register of arrest should be maintained, as well as a register of persons entering and leaving each place of detention. No secret places of detention should be permitted to exist. The Government and the courts should be responsible for ensuring that the laws on arrest and detention are obeyed.

195. The civilian courts should be empowered to make full use of the remedy of habeas corpus, irrespective of whether a state of emergency exists or whether arrests are made by military or security services. Civilian judges should be empowered, in particular, to have detainees brought before them and the civilian judges should be able to visit all places of detention.

196. In cases where allegations of the disappearance of persons on a large scale are made, government action to ensure a speedy and thorough investigation should be guaranteed. Careful consideration should be given to establishing particular measures at the United Nations level to respond rapidly and effectively to reports of large-scale disappearances of persons.

197. The Chilean Government should use its legislative power to concentrate and centralize the search for missing persons and provide the investigating authorities with all the necessary powers of investigation, in particular with regard to the military and security services. It would be advisable if the Government would co-operate with the United Nations in this matter with a view to preparing a comprehensive report on the situation of missing persons in Chile, particularly with reference to the lists of missing persons prepared by the Vicaría de la Solidaridad, the cases dealt with in the present report, and in the reports of the Ad Hoc Working Group on Chile. The Government's comprehensive report might be submitted to the General Assembly at its thirty-sixth session. With regard to each particular case of missing persons, the Government should give to each family complete information on the location or the fate of each missing person. The identities of the persons responsible should be established and the relatives should be given fair compensation. The Government may wish to call upon the co-operation of the United Nations in responding to the "right to know" of the relatives of missing persons. A system of presumed death should not be established and the amnesty decree-law should not be applied in such a way as to run counter to Chile's international responsibilities, especially in regard to the Geneva Convention.

198. In concluding this report to the General Assembly I would like to associate myself with the following words of Cardinal Paulo Evaristo Arns concerning the disappearance of detainees in another country and which apply equally well to Chile:

"These disappearances, planned and cold-blooded, are legally unacceptable, morally reprehensible and intolerable to mankind." 1/

1/ Le Monde, 12 October 1979.

ANNEX

Table showing the number of arrests each year by the various security or similar agencies of persons who later disappeared ^{1/}

YEAR	CARABINEROS	MILITARY PERSONNEL	MILITARY INTEL. SERV.	DINA	INVESTIGATION (POLICE)	INTEL. SERV.	UNKNOWN OR VOLUNTARY	TOTAL
1973	126	43	7	-	6	-	1	183
1974	12	10	20	94	-	-	1	137
1975	3	2	4	48	-	-	-	57
1976	2	-	2	83	-	-	2	89
1977	-	1	-	2	-	6	1	10
	143 pers.	56 pers.	33 pers.	227 pers.	6 pers.	6 pers.	5 pers.	476 persons

^{1/} Based on an analysis of the 477 cases reported in "Dónde Están?" published by the Vicaría de la Solidaridad.