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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by Professor Fernando Volio Jiménez (Costa Rica), Special Rapporteur on the situation of human rights in Chile, in accordance with paragraph 12 of Commission on Human Rights resolution 1988/78 of 10 March 1988.

ANNEX

Report on the situation of human rights in Chile, prepared by
the Special Rapporteur of the Commission on Human Rights

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I. INTRODUCTION

1. The United Nations has been examining the situation of human rights in Chile since 1974 in the Commission on Human Rights and the General Assembly. This item has been taken up also by the Economic and Social Council and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. In accordance with its resolution 11 (XXXV) of 6 March 1979, the Commission on Human Rights appointed a Special Rapporteur to inquire into the situation of human rights in Chile. Subsequently, in its resolution 21 (XXXVI) of 29 February 1980, the Commission requested the Special Rapporteur to include in his reports the problem of disappeared persons in Chile.

3. The Special Rapporteurs on this question have been, successively, Judge Abdoulaye Diéye (Senegal), Judge Rajsoomer Lallah (Mauritius) and, currently, Professor Fernando Volio Jiménez (Costa Rica), who assumed his mandate on 1 February 1985.

4. At its forty-second session, after considering the preliminary report of the Special Rapporteur, the General Assembly adopted resolution 42/147 of 7 December 1987, entitled "Situation of human rights and fundamental freedoms in Chile". In paragraph 11, the General Assembly:

"Invites the Commission on Human Rights to consider, as a matter of high priority, the report of the Special Rapporteur, taking account of the relevant information at its disposal; to take the most appropriate steps for the effective restoration of human rights and fundamental freedoms in Chile, including extending the mandate of the Special Rapporteur; and to report to the General Assembly at its forty-third session, through the Economic and Social Council, with a view to examining the human rights situation in Chile."

5. The Commission on Human Rights, at its forty-fourth session, had before it the sixth report of the Special Rapporteur (E/CN.4/1988/7) on the situation of human rights in Chile. By paragraph 12 of resolution 1988/78 of 10 March 1988, the Commission:

"Decides to extend the mandate of the Special Rapporteur for one year and to request him to report on the situation of human rights in Chile to the General Assembly at its forty-third session and to the Commission on Human Rights at its forty-fifth session."

This resolution was subsequently endorsed by the Economic and Social Council (decision 1988/140 of 27 May 1988).

6. Pursuant to the above-mentioned resolutions, the Special Rapporteur has the honour to submit herewith, for consideration by the General Assembly at its forty-third session, his provisional report on the situation of human rights in Chile in 1988, which is at the same time the seventh report prepared by him. On this occasion, he had the continued co-operation of the Government and other

interested parties, who provided him with testimony and documents on the human rights situation in Chile. This information was analysed in the light of the norms set forth in international instruments ratified by Chile and other norms of international human rights law recognized as universally applicable.

7. The report deals mainly with the first half of 1988 (January to June). However, in cases where this was particularly warranted, information received before or after these dates was taken into account.

8. Furthermore, for technical reasons relating to the translation and printing of the present report, the Special Rapporteur was compelled to complete it at the beginning of September 1988. As a result, it is not possible to refer to the most important political event of 1988, namely, the holding of the Presidential plebiscite, which has just been announced for 5 October 1988. Although he will deal fully with this subject in his next report to the Commission on Human Rights at its forty-fifth session, the Special Rapporteur will make every effort to give the General Assembly a preliminary account of what will be his fourth visit to Chile. He plans to begin this visit, at the invitation of the Chilean Government, on 30 September 1988.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

9. At the end of the discussion of the item on Chile in the Commission on Human Rights and following the adoption of its resolution 1988/78 of 10 March 1988, the Chilean representative, Ambassador Mario Calderón Vargas, on seeing the resolution and deeming it contrary to his country's interests, told the Commission on behalf of his Government, *inter alia*, that Chile was regaining its freedom of action with regard to continuing its co-operation and would be reconsidering its position in that connection, since it obviously made no sense for the Commission to appoint a Rapporteur for a country and then disregard his reports. Chile had gained nothing by its unrestricted co-operation; on the contrary, the discrimination against it had only increased.

10. From 10 March 1988 until 6 May 1988, neither the Special Rapporteur nor the Centre for Human Rights at Geneva received any news or communication from either the Chilean Government or the opposition. The Special Rapporteur did not want it to be either he or the Centre that ended the stalemate. In his opinion, it was better to know for certain what the Government's final decision would be.

11. Ambassador Calderón Vargas finally announced that he would visit the Special Rapporteur at San José. The meeting between the two representatives of the Chilean Government and the Special Rapporteur took place at the residence of Ambassador Alegria on 6 May 1988.

12. The first topic to be discussed was the announcement that the Chilean Government had decided to continue its co-operation with the Commission on Human Rights because of the confidence it placed in the Special Rapporteur, and that the Chilean representative to the United Nations would make a statement to that effect in New York. Professor Volio asked whether it was necessary, for the purposes

of his work, to wait until Ambassador Daza had made that statement. Ambassador Calderón replied that it was not, that co-operation was resumed as of that moment. Next, the Special Rapporteur raised certain problems relating to his mandate and, in particular, to the holding of the plebiscite for instance, he reiterated what he had said in earlier reports about the situation of the press, which he considered precarious since the Government could and did take repressive measures against news media when, in its judgement, the activities of the press went beyond what it considered appropriate. He also referred to the situation of the State-run television, which might serve as a medium for discussion or political debate with the opposition. Ambassador Calderón replied essentially as follows: concerning the precarious situation of the press cited by the Special Rapporteur, until recently action had been taken against the press only on the basis of the administrative powers deriving from the states of emergency and the transitional powers conferred by the Constitution, which allowed the Government to act in the manner referred to by Professor Volio. Henceforth, action would be taken against the press judicially, thereby reducing the scope for subjective or discretionary Government action. Concerning political debates on television, such debates were already being held successfully. Concerning freedom of speech in general, there were 42 opposition radio stations as compared to only one Government station; there were also 12 opposition publications. The Special Rapporteur asked about the process for promulgating the act regulating Congress and Ambassador Calderón gave him a report by the Commission for the Study of Constitutional Fundamental Acts on the preliminary draft constitutional fundamental act relating to Congress of 23 September 1986. In his opinion, that showed that the act was about to be issued in its final form. Ambassador Calderón also gave him to read a decision by the Director-General of the Policía de Investigaciones, issued under the powers conferred on him by the fundamental act of 12 April 1988 relating to that police force. The decision, which was in the form of a memorandum, was addressed to the entire staff of the Policía de Investigaciones. Its basic purpose was to urge that every precaution be taken to prevent the possibility of any unlawful coercion being used against anyone detained by members of the Policía de Investigaciones or handed over to them by the National Information Agency (CNI). The memorandum had been transmitted to all units of the Policía de Investigaciones throughout Chile. The decision provides for criminal and administrative penalties in the event of non-compliance. It also strengthens the agreements signed by the Policía de Investigaciones with the International Committee of the Red Cross (ICRC) and the Advisory Commission on Human Rights of the Ministry of the Interior since, according to Ambassador Calderón, under those agreements both bodies will be notified of daily lists of names of detainees. The Special Rapporteur wishes to explain that the decision in question was not handed over to him because, in Ambassador Calderón's words, it was "internal and confidential", but that the above is a summary of what it said. This summary was read out to Ambassadors Calderón and Alegría, who agreed that it covered all the main points. Ambassador Calderón said that the Government had agreed to hold monthly meetings to evaluate the agreements with ICRC and the Advisory Commission on Human Rights of the Ministry of the Interior, in co-ordination with the Ministry of Foreign Affairs, which meant, as a practice, under the co-ordination of Ambassador Calderón himself; the first such meeting had already taken place on 2 April 1988. The Special Rapporteur then raised the question of his making another visit to Chile, especially in view of the holding of the plebiscite, having first emphasised that he would do so not as an

observer, as Ambassador Calderón had suggested on one occasion in December, but rather in his capacity as Special Rapporteur and pursuant to his mandate. Ambassador Calderón acquiesced and said that, while he could not give an answer at that time, he believed that permission would be given. The Special Rapporteur also said that it would be appropriate for his visit to take place shortly before and during the plebiscite, to which Ambassador Calderón responded positively, subject to the decision on the date of the plebiscite, which would have to be taken by the Government. The Special Rapporteur reiterated his recommendation that the plebiscite must take place in a climate in which public freedoms and human rights were effectively guaranteed. The two states of emergency must therefore be lifted before the plebiscite, so that the atmosphere would be conducive to the freest possible participation by citizens before, during and after the plebiscite.

13. On 16 May 1988, Ambassadors Calderón and Escobar paid a visit to the Under-Secretary-General for Human Rights, Mr. Jan Martenson, and informed him of the decision which had been made known to the Special Rapporteur and which Ambassador Pedro Daza had made official on 13 May 1988 in a letter to the Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar. Ambassadors Calderón and Escobar reiterated the terms on which Chile was resuming its co-operation with the Special Rapporteur and the Commission on Human Rights.

14. Official contacts between the Special Rapporteur and the Centre were accordingly resumed as of the dates mentioned above. The contacts served chiefly, as they do now and did up to the date of this report, to enable the Special Rapporteur to continue his role of recognized intermediary between individual Chileans and the Government, with the aim of pleading on humanitarian grounds, on behalf of a number of people who are in need of a favourable decision by the Government.

15. In addition, the Government, at San José and Geneva, notified the Special Rapporteur of significant events such as the reduction of the list of exiles, political events affecting the security of Chileans and the results of the Special Rapporteur's activities among other important matters.

16. On 24 June 1988, on the occasion of his visit in the discharge of his duties, the Special Rapporteur sent Ambassador Luis Escobar a request to make a fourth visit to Chile in fulfilment of his mandate. In introducing the request, the letter stated:

"Inasmuch as I have to continue to report to the General Assembly and the Commission on Human Rights of the human rights situation in Chile, I must formally request the permission of Your Excellency's Government to visit Chile for a fourth time in order to be able to study the situation there at first hand, in direct contact with the interested parties. As I already had occasion to point out to Ambassador Mario Calderón at our meeting on 6 May 1988, since this latest visit would take special account of the holding of the plebiscite, it would be appropriate for it to take place shortly before and during the plebiscite. I wish to emphasize, however, that I would visit Chile at that time not as an 'observer of the plebiscite', but rather, as is logical, in my capacity as Special Rapporteur and pursuant to my mandate."

17. From Geneva on that same occasion, the Special Rapporteur informed a number of Chilean personalities, such as His Eminence Cardinal Juan Francisco Fresno, of his decision to continue as Special Rapporteur for Chile.

18. For the purposes of the present report, the Special Rapporteur also requested information on the situation of human rights in Chile from reliable individuals and organisations not belonging to official circles.

19. The Special Rapporteur travelled to Geneva on 26 August 1988 for a week of work, consultations and interviews, and to finish writing this report. On 29-31 August 1988, the Special Rapporteur received Special Ambassador Mario Calderón Vargas, accompanied by the First Secretary of the Permanent Mission of Chile to the United Nations. During these meetings, Ambassador Calderón delivered to the Special Rapporteur a letter from the Ministry of Foreign Affairs giving him permission to visit Chile again pursuant to his mandate. Other topics reviewed were the prior guarantees for the holding of the presidential plebiscite, which is to take place on 5 October 1988; complaints of new human rights violations, including acts of torture committed in alleged secret detention centres; the progress of ongoing judicial investigations into serious human rights violations; the situation of the Chilean press and of a number of journalists against whom proceedings have been brought for alleged insults to the armed forces; the official programme for the Special Rapporteur's forthcoming visit to Chile; and, lastly, the lifting of administrative bans on entry to Chile, announced on 2 September 1988, which will virtually put an end to the exile of Chilean citizens.

20. On 30-31 August 1988, the Special Rapporteur also received a lawyer representing a Chilean human rights organization, who informed him of the latest developments which, in his organization's judgement, had characterized the human rights situation in Chile in the first half of 1988. He pointed out that, in that period, six new secret acts (Nos. 18,683, 18,684, 18,685, 18,686, 18,710 and 18,715) had been promulgated. With regard to the incorporation of international human rights norms into Chilean law, he recalled that the International Covenant on Civil and Political Rights had still not been published in the Diario Oficial; nor had the United Nations and Organization of American States conventions on torture. The American Convention on Human Rights (Pact of San José) had also not been ratified. Concerning the right to life, he reported that 21 violent deaths had occurred during the first half of 1988, with eight cases being attributed to members of the armed forces or carabineros. The judicial investigations into cases in which people had been killed for alleged political reasons had not produced any positive results in terms of the identification and punishment of the culprits. With respect to the five cases of arrest and disappearance reported in September 1987, he reaffirmed that such disappearances had really taken place and that no practical results had been obtained from the legal actions undertaken. With respect to allegations of torture, he said that 42 new cases attributable to members of the National Information Agency (CNI), the Policía de Investigaciones and the carabineros had occurred in that same period. Sixty-four judicial complaints of unnecessary violence resulting in injury, above all in the context of public demonstrations, had also been submitted. In the period in question, 1,780 people had been arrested but proceedings had been brought against only 149 of them. With respect to threats and intimidation, his organization had received 294 new

cases of intimidation in the same period, notably the messages sent by the clandestine organisation "Hussars of Death Commando" to artists, trade union leaders and members of Vivería de la Solidaridad and other human rights organisations. With respect to the operation of justice, he emphasized that military prosecutors were continuing to impose prolonged periods of incommunicado detention and that lawyers were encountering numerous obstacles in defending their clients. Lastly, with respect to freedom of speech, he expressed his organization's concern at what appeared to be an abusive application of article 284 of the Code of Military Justice (insults against the armed forces). Forty actions brought by the authorities on that ground against opposition journalists and news media were pending before the military courts.

21. Finally, on 2 September 1988 the Special Rapporteur received two representatives of the Mapuche organisation AD MAPU, who complained to him about further police raids which had occurred in August 1988 in the communities of Miquihue and Choque (Arauco) and Purrume (Cautín). Those raids had stemmed from the implementation of Decree-Law 2568 on the division of Indian lands, to which Indian organizations were opposed since they consider the preservation of their land to be of vital importance for protecting the cultural identity of the Mapuche people.

22. That same day, the Special Rapporteur also received a representative of the organization Chile Democrático, who gave his organization's views on the prior guarantees for the holding of the presidential plebiscite. In particular, he said that the opposition was at a disadvantage, for the 16 existing political parties had access to only .3 per cent of the media space allotted to electoral propaganda. He also requested guarantees from the Government that it would be possible to state the opposition's political views publicly and express them freely during the campaign leading up to the plebiscite.

III. COMPLAINTS OF NEW VIOLATIONS OF HUMAN RIGHTS

23. The information contained in this section should not necessarily be taken as facts established by courts of law, nor as reflecting the opinion of the Special Rapporteur. Furthermore, it should be borne in mind that, on 2 September 1988, as on previous occasions, the Special Rapporteur transmitted these complaints to the Government for comment, at the same time expressing his great concern. The Special Rapporteur will, however, give his opinion on another occasion, once he has been able to reach conclusions which he considers well-founded. In any event, the conclusions and recommendations contained in this report are not based on the complaints reproduced below.

24. The complaints are set forth below, grouped as follows and subject to the reservations stated above:

- A. Right to life;
- B. Right to physical and moral integrity;

- C. Right to liberty;
- D. Right to security;
- E. Right to a proper trial and to procedural guarantees;
- F. Right to freedom of expression and information;
- G. Right to enter and leave the national territory.

A. Right to life

A.1 Hernán Elise Chamorro Monades. In a criminal complaint of homicide filed on 28 June 1988 with the Criminal Court of San Bernardo, Marta Maldonado Vera states that her husband was arrested on 28 September 1973 by troops from the San Bernardo Infantry School and died of a bullet wound on 6 October 1973 while in the hands of his captors.

A.2 Alberto Recaredo Gallardo Pacheco, Catalina Ester Gallardo Moreno, Roberto Gallardo Moreno and Mónica del Carmen Pacheco Sánchez. In a criminal complaint filed on 10 June 1988 with the Second Criminal Court of Santiago, Ofelia Moreno Aguirre reported the murders of her husband Alberto, her children Catalina Ester and Roberto and her daughter-in-law Mónica del Carmen, which took place in November 1975. Moreno Aguirre claims that she was arrested on 18 November 1975 together with her husband, her son Guillermo and her granddaughter Viviana Gallardo Magallanes. Other members of her family, including her daughter Catalina Ester and her daughter-in-law Mónica del Carmen, were arrested the same day. They were all taken in cars belonging to the Policía de Investigaciones to the police barracks in calle General Mackenna. During their stay there, they were all interrogated and subjected to cruel treatment. The day after their arrest, the complainant and some members of the family were released. The complainant was told that Roberto Gallardo Moreno had died on 17 November 1975 in a clash at School No. 51 and that her husband, daughter and daughter-in-law would be handed over to the Directorate of National Intelligence (DINA). Hours later, DINA issued a press release stating that the complainant's husband, daughter and daughter-in-law had died in a clash between "extremists" and DINA and the Policía de Investigaciones. According to Moreno Aguirre, the official version is not credible because only a matter of hours before their death the deceased were being held by the Policía de Investigaciones without any possibility of escape and also because none of the three was in any physical condition to take part in an armed clash. Her husband was 65 years of age at the time, her daughter-in-law was pregnant and her daughter was nursing her three-month-old grandson.

A.3 Roberto Eliacer Valdebenito Vera. On 29 March 1988, a criminal complaint was filed with the Criminal Court of Caranilahue against the persons responsible for the death of Valdebenito Vera as a result of unnecessary violence. The complaint states that at approximately 12.30 a.m. on 9 March, the victim was returning to his home in Javierra Carrera shantytown when he saw a barricade and decided to approach it. A demonstration was being held to commemorate International Women's Day. A

few minutes later, a vanload of carabineros drove up, shooting at the shantytown residents and wounding Roberto Valdebenito in the head. Oliverio Montes was beaten and arrested at the same time. The carabineros then drove off without helping the wounded man, who was first taken to Caranilahue Hospital and then transferred to Concepción where he died on 10 March 1988.

A.4 Francisco Villalón Pérez, Claudio Paredes Tapia and Nelson Garrido Cabrera. On 11 February 1988, a large number of people requested the Santiago Court of Appeals to appoint a special investigating judge to investigate the deaths of these young students. The young men died on 31 January 1988 in an explosion which occurred in an apartment at Villa Portales in Estación Central commune, Santiago. According to the initial version of the events given by the Policía de Investigaciones, three "extremists" had been killed while handling explosives. The three "extremists" were reported to be Waldo Ramírez Venegas, Claudio Paredes and Humberto Durán. At the same time, the "Nationalist Combat Front" claimed responsibility for the killings.

A witness said that prior to the explosion he had seen unknown individuals wearing civilian clothes and red bands on their sleeves who had asked him and others to identify themselves and then ordered them threateningly to leave the area. According to the same witness, one of the individuals stayed on the ground floor of the building where the explosion occurred. The applicants claim that there are other circumstances which would indicate that this was a case of homicide and not an accident. First, the speed with which the security forces arrived at the scene of the incident. Second, the attempt to make a connection between this incident and the death of Carabiniro Major Benimellis, which had occurred a few days earlier. Third, the fact that, in addition to weapons, flags of the Revolutionary Left Movement (MIR) were found intact in the apartment, which had been completely destroyed. The landlord of the apartment said that he had never seen either flags or weapons in the building. Fourth, the fact that it was possible to identify the deceased because their hands were intact when, according to the official version, the explosion had occurred while the "extremists" were handling explosives. Fifth, two people who witnessed the incident, and who lived in Villa Portales and were friends of one of the victims, have disappeared.

A.5 Martín Alejandro Oyarce Guarda. His father filed a complaint with the Military Prosecutor against the carabineros responsible for the crime of unnecessary violence resulting in death. Martín Alejandro, his brother and two friends were standing talking on the street at 3 a.m. on 23 July 1988. When they saw a carabineros van appear, the Oyarce Guarda brothers ran off. While they were being pursued, a shot was heard, after which Martín Alejandro was picked up by the carabineros and put in the van. The death certificate gives the cause of death as "an abdominal and chest wound".

B. Right to physical and moral integrity

B.6 Enriqueta Yao Moreno. On 22 January 1988, Yao Moreno filed a criminal complaint with the Third Criminal Court of Santiago against members of the Assault Investigation Squad of the Policía de Investigaciones, responsible for the unlawful

coercion to which she had been subjected during her detention in August 1987. The complainant maintains that her house was raided on 3 August 1987 by four armed individuals who said they were from the Policía de Investigaciones. They did not produce any warrant from a competent authority when the complainant asked to see one. She claims that she was then taken, together with two of her children and a friend of one of them (Ingrid Garcés), to the police headquarters in calle General Mackenna, where a hood was placed over her head and she was interrogated while being violently beaten in the head and stomach.

B.7 Horacio Díaz Trujillo. On 26 January 1988, Díaz Trujillo, who is currently a prisoner in Santiago Public Prison, filed a criminal complaint with the Ninth Criminal Court of Santiago against the persons responsible for the offences of arbitrary arrest, unlawful coercion and bodily injury against his person. He claims that he was arrested in the street by heavily armed civilians who, hitting and insulting him, forced him into a utility van. He was then taken to a private house, apparently unfurnished, where they interrogated him, threatening that his family would be tortured and he would be killed if he did not co-operate. He says that during his detention he was stripped naked and his head forced repeatedly into a tub filled with urine and other substances, until they almost drowned him. This happened to him several times. He also says that they gave him electric shocks and that he was subjected to a mock execution. After holding him incommunicado for 10 days, they took him to a military prosecutor's office where the clerk who took down his statements threatened reprisals against his family if he did not co-operate.

B.8 Cecilia de las Mercedes Cid Espina. In February 1988, Cid Espina filed a criminal complaint with the President Aguirre Cerda Ninth Criminal Court against members of the Policía de Investigaciones responsible for the unlawful coercion and harassment to which she had been subjected during her detention in early February 1988. The complainant says on 1 February 1988, she and her brother Oscar were arrested by members of the Policía de Investigaciones and, after being beaten and insulted, were taken to a police barracks located at bus stop No. 11 on the Gran Avenida. She was interrogated there for two days and subjected to repeated beatings and threats while her face was kept covered. Apparently, on two occasions she was forced to remove her clothing and subjected to sexual abuse. While she was naked, electric shocks were applied to her breasts and feet. Lastly, she says that she was made to sign a document which she was not allowed to read.

B.9 Mauricio Alejandro Bello Cortés (Case No. 66-88). In a remedy of protection filed on his own behalf with the President Aguirre Cerda Court of Appeals, he claims that he was subjected to unlawful coercion by unknown persons who abducted him on 11 February 1988 in front of La Pintana town hall. After being detained for about half an hour, he was released.

B.10 Miguel Silva Acuña and Patricio Oros Gallardo. On 10 March 1988, Silva Acuña and Oros Gallardo filed a complaint with the President Aguirre Cerda First Criminal Court against members of the Policía de Investigaciones guilty of the crimes envisaged and punishable under article 19 of Decree-Law 2,460 of 1979. They claim in their complaint that on 2 March 1988 they were taken to make a statement by officials of the Policía de Investigaciones who came to their place of work. These

officials took them in a vehicle belonging to the Policía de Investigaciones to the police barracks situated at bus stop No. 11 1/2 on the Gran Avenida, where they were stripped of their clothing and their captors gave them electric shocks. Subsequently, under the threat of further torture, they signed self-incriminating statements.

B.11 Virginia Yolanda Muñoz Matamoros. On 22 April 1988, she filed a criminal complaint with the President Aguirre Cerda Fourth Criminal Court against persons responsible for the crimes of abduction, unlawful arrest and torture. The complainant claims that on 1 April 1988 a large number of armed civilians entered her home without identifying themselves or showing a search warrant. She was then taken from her house with her five-year-old daughter, from whom she was separated. Her daughter was returned home the next day. During her abduction, Muñoz Matamoros was interrogated while being subjected to all kinds of threats and blows and was forced to sign a statement which she was unable to read.

B.12 Ernesto Jeria Salinas. On 11 April 1988, he filed a criminal complaint of torture, unlawful entry and damage to property with the Second Military Prosecutor's Office in Santiago against carabineros from the Twelfth Police Station. The complainant claims that on 2 April 1988 he and his brother Juan were arrested by carabineros who were inspecting a minibus. They forced their way into his house and searched it unlawfully, and then interrogated him at the Twelfth Police Station. During the interrogation, they gave him electric shocks for several hours. He claims that his brother Juan was also tortured.

B.13 Manuel Antonio Ortiz Lecaros. On 22 April 1988, he filed a complaint for injuries with the President Aguirre Cerda First Criminal Court. He claims that on 8 April he was arrested in his home by armed civilians who did not identify themselves or show an warrant. He was taken to the Twelfth Police Station where he was kept for seven days before being placed at the disposal of the Second Military Prosecutor's Office, which released him for lack of evidence. During his stay at the Police Station he was subjected to coercion and ill-treatment involving the application of electric shocks to various parts of his body, blows to the ears and blows to his body with blunt instruments. He says that his body still shows the effects of the blows. In a criminal complaint which Ortiz Lecaros filed on 2 May 1988 with the First Criminal Court, he reiterated his statement and added that, during his time in detention, his mother had been denied any information as to his whereabouts, prompting her to file an application for amparo on his behalf which had not produced any positive results.

B.14 Rosa Estela Correa Herrera. In a criminal complaint filed on 5 May 1988 with the Seventeenth Criminal Court of Santiago, she states that her home was searched and she herself arrested on 13 April 1988 by persons in plain clothes and carabineros from the Thirty-sixth Station at La Florida. The complainant - a 77-year-old woman suffering from hypertension, rheumatoid arthritis and diabetes - was subjected to intense questioning and forced to spend the night sitting on a chair. Once released, she was placed under house arrest for a week. Both the raid on her home and her arrest and subsequent house arrest were carried out without those who arrested her showing any warrant for such actions issued by a competent authority.

B.15 Rosa María Olivier Manríquez. On 4 May 1988, she filed a criminal complaint with the Twenty-fifth Criminal Court of Santiago against an as yet unidentified person dressed in civilian clothes, in which she claims serious injury to her person. According to the complainant, on 20 April 1988, while she was walking down the Alameda Bernardo O'Higgins, she saw a person aged around 30 and dressed in civilian clothes grab a teen-aged youth by the neck. Onlookers began shouting at the man to let the youth go, at which the man took out a handgun and started shooting at them. The complainant, who was very near the attacker, felt a sharp blow to her left hand, which began to bleed profusely. The wound had been caused by a bullet, which fractured her left arm. Subsequently, the complainant learned that the attacker might have been Carlos Poblete C., a carabinero from the Alessandri local Carabineros Station. On 22 April she was summoned to the Twenty-first Carabineros Station, where she was questioned about the incident and told that an internal investigation was being conducted.

B.16 Marcos Villanueva Vinett. On 7 July 1988, he filed a complaint of maltreatment with the President Aguirre Cerda First Court. He claims that at around 4 a.m. on 26 April 1988, carabineros from the Twelfth Carabineros Station surrounded and raided the La Victoria shantytown, where he lives. He was arrested and taken with other shantytown residents to the Twelfth Carabineros Station, where he was interrogated while electric shocks were applied to his body; he also claims to have been subjected to a mock execution by firing squad. Lastly, he was required to sign a statement that he was not allowed to read.

B.17 Roberto Marcelino Jerez Campusano (Case No. 1041-88). On 13 May 1988, he charged carabineros before the First Military Prosecutor's Office of Santiago with unnecessary violence resulting in serious injury. He claims that on 11 May 1988, while returning home at approximately 10.30 p.m., he was stopped and placed under arrest by members of the carabineros special forces travelling in a bus. He maintains that the arrest took place even though the neighbourhood was calm and he himself had given no provocation whatsoever. He was beaten severely on all parts of his body. He was taken with other people who had been arrested to the Juanita Aguirre local Carabinero Station, where he was informed that he was being detained for having created a public disturbance. He was subsequently released. As a result of the beating he had received, he visited a clinic where, he says, Dr. Hernán Varela Jeraldo recommended complete bed rest owing to multiple contusions and a possible dorsal fracture.

B.18 Jaime Antonio Cubillos Soto, Yachyn Cubillos Soto and Rodrigo Jabalquinto Ramírez (Case No. 655-88). On 7 June 1988, Jaime Antonio filed a complaint with the Santiago Court of Appeals under the application for amparo submitted by Godoy, Nelson and others. In his complaint, Cubillos Soto maintains that on Saturday, 28 May, he was arrested with his brother Yachyn and their friend Rodrigo Jabalquinto Ramírez by carabineros, who showed no arrest warrant issued by a competent authority. They were taken to the Twenty-sixth Carabineros Station, where the complainant was confined until the following Wednesday. Both at the time of his unlawful arrest and upon his arrival at the Station, Cubillos Soto maintains he was beaten on various parts of his body. The complainant states that he was subsequently blindfolded and handcuffed and forced to remain seated in that state for 24 hours. He asserts that on Monday, 30 June, during interrogation by plain-clothes officers, electric shocks were applied to his hands.

B.19 José Armando Muñoz Ramírez. On 16 June 1988 he filed a complaint with the Eighth Criminal Court of Santiago accusing members of the Policía de Investigaciones of unlawful and arbitrary arrest, use of torture resulting in injury and unlawful search of his home. In his complaint he maintains that on the morning of 10 June 1988 three armed individuals in civilian clothes forced their way into his home, saying they were from the Policía de Investigaciones. Muñoz Ramírez was taken to the Policía de Investigaciones Station located at 5254 Gran Avenida José Miguel Carrera, where he was several times forced to undress and was interrogated in this state while electric shocks were applied to his hands and temples. This last occurred twice, for periods lasting from 15 to 20 minutes. He also claims to have been beaten, threatened, humiliated and, lastly, burned on various parts of his body. Upon his release, Muñoz Ramírez went to the Barros Luco Hospital, where it was found that he had suffered injuries of some seriousness, contusions of the chest and burns on his body.

B.20 Gerardo Alberto Díaz Sepúlveda. On 11 July 1988, he filed a complaint of unnecessary violence with the Fifth Military Prosecutor's Office of Santiago. The complainant - a commercial painter - maintains that at 7.45 p.m. on 30 June 1988, while he was walking down the calle Santa Mónica, he was beaten brutally in the face with a kind of rubber truncheon by a member of the carabineros special forces. The carabiniro was chasing several youths who had been taking part in a demonstration. The victim says that he was not a member of the group and had in fact taken care not to run so that he would not be mistaken for one. However, he was unexpectedly grabbed by the shoulder and beaten so hard that he was left semi-conscious. While in this state he lost all his identity papers. He was taken to the Emergency Unit of San Juan de Dios Hospital where his head wound from the blows he had received was stitched.

B.21 Carlos Patricio Cid Báez. On 20 July 1988, his mother filed a complaint of unnecessary violence resulting in serious injury with the Sixth Military Prosecutor's Office of Santiago against the carabineros responsible for the violence. The complaint states that at approximately 11.30 p.m. on 8 July 1988, Carlos Patricio was talking and drinking with his brother and four friends in front of the house of one of the friends in the Santa Olga shantytown. At this point, two carabiniro patrol cars bearing licence plates Nos. RP-379 and RP-297 drove up. Seeing them, Carlos Patricio left the group and hid in a neighbouring house, from which he was taken violently by carabineros. With the rest of the group, who were also arrested, he was taken to the Santa Adriana Local Station, where he was severely beaten in the presence of his brother and friends. They were released at approximately 1.30 a.m. The police report of the incident accused all six men of consuming alcohol on the public thoroughfare. As a result of the pain caused by his beating, Carlos Patricio had to be taken to Barros Luco Hospital, where he underwent an emergency operation for an internal haemorrhage caused by ruptured arteries. The diagnosis was "abdominal contusion with complications".

C. Right to liberty

C.22 José Agustín Fuentes Vidal (Case No. 34-88). The application for amparo filed on his behalf with the Santiago Court of Appeals states that Fuentes Vidal

was arrested on 11 January 1988 at the Policía de Investigaciones Station in Quinta Normal commune when he presented himself there in compliance with a summons received earlier. He was not brought before the judge within the period prescribed by law, and when his wife came to inquire about him, she was told that he was not at that Station.

C.23 Patricia Roxana Depueto Sáez, Américo Depueto Sáez and Américo Depueto Ordenes. The application for preventive amparo filed on 3 February 1988 with the President Aguirre Cerda Court of Appeals by the mother of Patricia Roxana and Américo Depueto Sáez and the wife of Américo Depueto Ordenes states that Patricia Roxana was arrested on 3 February by members of the Policía de Investigaciones and the National Information Agency dressed in civilian clothes who forced their way into the home of the Depueto Sáez family in search of her father and older brother. During the raid, the police took identity papers and 28,000 pesos belonging to the family. They also caused property damage. At no time did they show any search or arrest warrant.

C.24 Sergio González Torres. On 29 February 1988, Victor Hugo Troncoso Vargas filed an application for amparo with the Santiago Court of Appeals on behalf of González Torres, a member of the Human Rights Committee of Dávila shantytown. The application states that on 28 February, the applicant was arrested on the public thoroughfare by carabineros for no reason whatsoever since he was not engaged in any activity that warranted depriving him of his liberty.

C.25 Liliana del Carmen Montenegro Rebolledo. In her criminal complaint against those responsible for the offences of arbitrary arrest, unlawful entry and maltreatment, Montenegro Rebolledo maintains that individuals in civilian clothes carrying handguns and machineguns and wearing red arm bands entered her home at 6 a.m. on 31 March 1988. The persons in question caused material damage and placed the applicant under arrest. They produced neither a search warrant nor an arrest warrant. Montenegro Rebolledo maintains that she was taken away and interrogated, threatened and beaten.

C.26 Víctor Herrera García. On 31 May 1988, he filed a complaint with the Eighteenth Criminal Court of Santiago against those responsible for the crimes of arbitrary arrest and illegal search. The applicant maintains that at approximately 12.30 p.m. on 12 April 1988, his house was surrounded by members of the carabineros special forces and armed persons in civilian clothes. A group of seven persons forced their way into his house without identifying themselves or showing any kind of warrant. After his entire house had been searched, during which time the applicant was forced to lie face down at gunpoint, he was taken to the Seventh Carabineros Station where he was informed that he was to be held on suspicion. At approximately 2 p.m. he was released without being charged. The applicant concludes by maintaining that shortly before his arrest, when he was returning home from work, he was watched by his neighbour, Osvaldo Celis, a carabinero who lives in the neighbourhood and had earlier threatened to report him for offences he had not committed. He states that he had previously had personal problems with Celis.

C.27 Julio Peralta Barahona, Horacio Zea Escobar and six others (Case No. 500-88). On 2 May 1988, an application for amparo against carabineros was filed with the Santiago Court of Appeals on behalf of eight citizens. The application states that the applicants were arrested on 1 May after having attended an event organized by the National Labour Command to celebrate International Workers' Day. The event had been duly authorized. The arrests took place even though the applicants had not committed any offence or misdemeanour. The persons who arrested them produced no document, decree or warrant for their arrest, nor did they explain the reasons for the arrest. The persons arrested were severely beaten both at the time of their arrest and in the Twelfth Station, where they remained before being transferred to the Third Station. Three of the persons arrested suffered injuries, as indicated in the reports of Dr. Víctor Velásquez Villalobos of the Forensic Service of the Ministry of Justice.

C.28 Claudio Antonio Aravena Baesa and Manuel Castañeda Martínez (Case No. 507-88). On 3 May 1988, relatives of the above filed an application for amparo with the Santiago Court of Appeals against carabineros, charging unlawful arrest. Both citizens were arrested on 1 May 1988 following an event marking International Workers' Day. The applicants had not committed any misdemeanour or offence and were arrested without a warrant from a competent authority; they were also beaten at the time of their arrest and upon arriving at the Twelfth Carabineros Station. After the application was filed, it was learned that the applicants were being detained for violating the Security of the State Act, under Exempt Decree No. 6708 of 1 May 1988 of the Ministry of the Interior. Castañeda Martínez was kept incommunicado for the five days of his detention.

C.29 Raúl Hernán and Miguel Angel Cárdenas Alvarez (Case No. 142-88), Ruth Cabrera Hinostroza (Case No. 159-88 and Military Appeal Court Case No. 578-88), Virginia Yolanda Muñoz Matamoros (Case No. 347-88), Cecilia de las Nieves Novoa Carrasco (Case No. 354-88), Raúl Armando Figueroa Guajardo and Marcos Guajardo Morales (Case No. 361-88 and Military Appeal Court Case No. 678-88). The above-mentioned citizens, all of whom were arrested during the first few months of 1988, were held in secret detention areas, according to written statements dated 16 May 1988 submitted by the Vicaría de la Solidaridad to the Santiago and President Aguirre Cerda Courts of Appeals and the Military Appeal Court. The Vicaría de la Solidaridad maintains that this practice constitutes a serious violation of the provisions of article 19 (7) (d) of the Constitution and a move away from respect for human rights, since it had been established that periods of detention were to be served only in the home of the person concerned or in a prison or public detention area to which arrested persons were to be brought immediately. The reappearance of secret detention areas is allegedly encouraging the use of torture.

C.30 Miguel Arriagada Ramirez and 46 others (Case No. 306-88). On 26 May 1988, an application for amparo was filed with the President Aguirre Cerda Court of Appeals on behalf of 47 residents of Villa Venezuela shantytown against the Policía de Investigaciones, carabineros and National Information Agency. The application states that the arrests took place in the early morning of the same day, when virtually the entire Villa Venezuela shantytown was raided. The operation was carried out by civilians who did not identify themselves or show any arrest

warrants and were assisted by members of the military. Those arrested were released that afternoon.

C.31 Corina del Carmen Vélez Ramírez, Orlando Francisco Vázquez Ramírez and others (Case No. 302-88). On 26 May 1988, Corina del Carmen filed an application for amparo with the President Aguirre Cerda Court of Appeals against the Policía de Investigaciones and the National Information Agency (CNI) on behalf of herself and members of her family. One of these, Orlando Francisco, had been arrested in the early morning of 26 May by the Policía de Investigaciones under Exempt Decree No. 6751-88 of the Ministry of the Interior. Corina del Carmen maintains in her application for amparo that her home was searched for weapons by members of the Policía de Investigaciones and CNI, who destroyed everything in their path, including doors, windows and mattresses. The intruders went so far as to fondle the women and take away clothes. In addition, her brother Humberto, who is mentally retarded, was thrown down the stairs from the second floor.

C.32 Mauricio Acuña Durán, Marta Aranis Aranis, Sergio Aranis Contreras, Erika Arce Pavez, Matilde Arce Pavez and 16 others (Case No. 661-88). An application for amparo filed with the Santiago Court of Appeals states that the applicants were all arrested by carabineros around 2 p.m. on 28 May 1988, in the area where General Velásquez intersects with the railway line, while they were staging a peaceful cultural event on the theme of human rights. The participants were painting a mural on the subject of human rights when heavily armed carabineros arrived on the scene and arrested both them and onlookers. They were first taken to Lo Espejo Police Station, where they were interrogated by carabineros and members of the National Information Agency, and then transferred to the Twenty-first Police Station. They were finally detained at the Third Police Station by order of the Ministry of the Interior, which issued Exempt Decree 6759. They were released on 2 June.

C.33 Cecilia Reyes Rodríguez (Case No. 309-88). In an application for amparo filed on 30 May 1988 with the President Aguirre Cerda Court of Appeals, the applicant maintains that she was arrested without any judicial warrant by some 20 individuals in plain clothes wearing green armbands with the national coat of arms in the middle. The applicant maintains that the individuals in question were using private cars and cars belonging to the Policía de Investigaciones. They forced their way into her home and, once inside, proceeded to destroy windows, doors, arm chairs, mattresses and the attic space. They then blindfolded her and took her to Policía de Investigaciones headquarters where she underwent successive interrogations during which she was hit and threatened.

C.34 Alberto Chiang Muñoz and Eduardo Francisco Montecinos Fierro (Case No. 736-88). An application for amparo was filed on their behalf on 16 June 1988 with the Santiago Court of Appeals, stating that the applicants, both students at the University of Chile, had been arrested on 15 June 1988 for having taken part in a peaceful demonstration called by student organizations in support of their demands. In a written statement dated 22 June 1988, Mr. Chiang Muñoz maintains that they were arrested by carabineros and beaten severely. According to the Ministry of the Interior, the arrests were made under Exempt Decree 6794 of 15 June 1988. The detainees were released on 20 June.

C.35 Carlos Humberto Rojas Albornoz and Pablo Esteban Aguilera Inostroza (Case No. 751-88). On 20 June 1988, the wives of Mr. Rojas and Mr. Aguilera filed an application for amparo with the Santiago Court of Appeals against the carabineros, in connection with the arrest of their husbands. The latter had been arrested on 19 June by carabineros from the Thirteenth Police Station at San Gregorio and detained at the Third Carabineros Station in Santiago. They had been arrested while walking down the street, without committing any misdemeanour or offence, and the carabineros who had arrested them had not shown any arrest order or warrant. Both detainees had been interrogated and one of them had been beaten and threatened.

C.36 Mario Campónico Susarte, Gustavo Cubillos Rojas, Paulino Díaz Rivera, Guillermo Gómez Tapia, Juan Laven Pino and 12 other students (Case No. 756-88). An application for amparo filed with the Santiago Court of Appeals states that the 17 students, all of them from the Blas Cañas Vocational Training Institute, were arrested by carabineros on 21 June 1988 as they left the Institute after staging a strike in support of their demands. They were all taken to the Third Police Station and the only woman among them was then taken to the Dávila Sub-Station.

C.37 Marco Antonio Lagos Casas-Cordero, Paulina Nova Contreras, Claudia Lagos Nova and Silvia Llantén Saavedra. Lagos filed a complaint with the Fifth Military Court of Santiago against members of the carabineros for the offences of unlawful entry, unlawful arrest, damage and theft. He maintains that on 22 June 1988 Sylvia Llantén Saavedra, the maid who works in his home, was arrested along with his daughter Claudia, a minor, whom she was taking to school, by civilians identified as belonging to the carabineros. The complainant's wife was arrested minutes after the arrest of Sylvia Llantén and of his daughter Claudia Lagos. The complainant himself was arrested an hour later. In none of these cases was any arrest warrant shown or any reason given for the arrests. Lagos' house was searched, and all kinds of damage was done: the trapdoor to the attic space was broken, tiles were ripped off the bathroom and kitchen walls, the cover of the sewage system was destroyed and the backyard paving was smashed. Some of the individuals who participated in the raid also took Lagos' tools away with them. The complainant was released the next day, after intensive interrogation. His wife, his young daughter Claudia and the maid Silvia Llantén Saavedra had been released the previous day, only hours after their unlawful arrest.

C.38 Marcelo Abrigo Parra, Marcela Acevedo Medina, Eduardo Acuña Cataldo, Alvaro Acuña Vercelli, Daniela Ahumada Araya and 190 other students (Case No. 790-88). An application for amparo filed with the Santiago Court of Appeals states that on 27 June 1988, 190 students from the Santiago Vocational Training Institute were arrested when the authorities of the Institute called in the carabineros to put an end to a peaceful student demonstration. The purpose of the demonstration had been to call the attention of the school authorities and the educational authorities to the reduction in the government loan, infrastructure problems, the lack of libraries, insanitary facilities and the suspension of medical care which had until then been provided through the medical service of the University of Chile. The men were taken to the Third Police Station and the women to the San Cristóbal Sub-Station. Twenty-four of the detainees were released by 30 June, 154 were detained for five days and on 2 July 1988 the remaining 12 were

accused of violating the Security of the State Act. One of the applicants was unconditionally released that day and the remaining 11 applicants were released three days later.

D. Right to security

D.39 René Miranda Barrales. An application for amparo filed by his mother states that he is wanted by the police because a university identity card for 1986 bearing his name was found in the apartment at Villa Portales where an explosion killed three young people. The applicant's mother says that this is very odd because her son was expelled from the University of Chile in 1985.

D.40 Reinaldo Oscar Flores Morales. On 28 February 1988, the applicant filed for preventive amparo with the Santiago Court of Appeals. He had been Chairman of the union of the Hogar del Cristo Housing Construction Company, from which he had been fired in March 1987. Reinstated shortly afterwards, he had been threatened by his employer because of his alleged links with left-wing political parties. On 30 April 1987, an attempt had been made to abduct him. He had finally left his job, but the threats had continued, prompting him to leave first Santiago and then the country. On returning to Chile in November 1987, he had again received threats and had once more had to leave Santiago. Tired of this situation, he had decided to seek guarantees that the threats against his personal safety would end.

D.41 Guillermo Antonio Pavez Guerra (Case No. 27-88). The application for amparo filed on his behalf on 26 January 1988 with the President Aguirre Cerda Court of Appeals states that Pavez Guerra was arrested on 24 January 1988 by unidentified individuals who got out of a utility vehicle with no licence plates. The arrest, which was made without the individuals showing any warrant authorizing it occurred minutes after the applicant had rebuked persons unknown to him who were painting over a mural on the facade of Madre de Dios parish church which had been painted there as a tribute to the priest André Jarlán. In an application to the Court, the applicant maintains that he was interrogated during his detention and that in the course of the interrogation he was hit and had his hands tied with wire. His captors also threatened to kill him.

D.42 Saul Barzilla and Elgueta Matamala. An application for preventive amparo filed on 10 February 1988 with the Concepción Court of Appeals maintains that, coinciding with the arrival of Military Prosecutor Fernando Torres Silva in the city of Concepción, of which the applicant is a resident, on 27 January 1988 members of the National Information Agency began to follow him systematically. These individuals would drive around armed in a total of six vehicles, normally stationing themselves near his place of work and his private residence.

D.43 Carlos Valencia García, Jeanette Valencia García, Mauricio Andrés Valencia García, Osvaldo René Gallardo and Mario Valenzuela Martínez. An application for preventive amparo was filed on 12 February 1988 with the Santiago Court of Appeals by the Chairwoman of the Fourth Sector Women's Union at La Bandera shantytown, in La Granja commune, on behalf of the above-mentioned residents of the shantytown, two of whom are minor. The application states that in late January and early

February 1988, residents of La Bandera were persecuted and intimidated and some of them arrested. In this connection, unidentified individuals had appeared on two occasions asking about the applicants and their activities, arousing fears for their safety.

D.44 Francisco Marcelo Alea, Nelson Soza, Gonzalo Ode and Owana Madera. On 7 March 1988, they filed an application for preventive amparo with the Santiago Court of Appeals on behalf of all young people residing in the metropolitan area, who number some 1,800,000. The applicants are, respectively, the national head of the CODEPU Youth Commission, the human rights officer of the Santiago Federation of Secondary School Students, the President of the Santiago University Student Federation and the Vice-Chairwoman of the Committee for the Defence of Youth Rights. Their application was based on the fact that in recent months young Chileans in the metropolitan area had been the victims of various kinds of repression at the hands both of State security bodies and private gangs acting illegally and with impunity. According to the application, the purpose of this repression against young people is to neutralize an important sector of Chilean society which is one of those hardest hit by the ravages of the political, social and economic model imposed by the present Government. They point out that between August 1987 and February 1988, there were 32 unlawful arrests and 27 abductions of young people and 173 cases in which young people were intimidated.

D.45 The priests Luis Baeza Torrealba and Raúl Hogervoet von Vliet. On 23 March 1988, a remedy of protection was filed with the Valparaíso Court of Appeals on behalf of the above priests of San Lorenzo parish church in the city of La Ligua. Both had been the target of acts of intimidation. In January 1988, slogans insulting them had been painted on the church walls. In February, an unknown individual identifying himself as a member of "ACHA" (Chilean Anti-Communist Action) had made threatening telephone calls. On 15 March, an envelope containing a letter threatening the priests and signed by "ACHA" had been found. The applicants claimed that the group in question had made countless threats in the area against well-known local leaders and personalities, one of the latest threats having been made against 200 political and social leaders in Valparaíso.

D.46. Lorena de los Angeles Nazal Saglie, Gabriela Medina, René Roa, Carla Cristi and Nadia Loyola. On 4 March 1988, the actress Lorena de los Angeles filed a remedy of protection on their behalf with the Santiago Court of Appeals. In it she claims that on 1 March she was kidnapped by four individuals who took her to a private house where they questioned her about her artistic activities and her links with the theatre world. The interrogation was accompanied by blows, threats and insults. She was released a few hours later. She maintains that what happened to her was not an isolated incident but part of a campaign of threats and intimidation against people working in the arts. She recalls that on 3 November 1987 a large number of actors received death threats which prompted them to file a remedy of protection (Case No. 338-87). Filing that remedy had not put a stop to the campaign of intimidation, however. On the contrary, there had been an increase in the threatening telephone calls and letters and in the number of cases in which actors had been followed or their houses painted with slogans - as in the case of the actress Gabriela Medina. In the last week of December, threats were received

by René Roa, director of Casa Constitución which houses the El Clavo theatre group whose members had been threatened on 3 November. On 24 January 1988, stones were thrown at the house of the actress Carla Cristi and on 18 February a pigeon with its throat cut was found, together with a threatening letter, in the garden of the actress Nadia Loyola. All the threats were probably from the same source, although the authors adopt different names such as "Commando 135 Trisano" or "ACHA".

D.47 Juan Manuel Muñoz Gatica (Case No. 295-88). An application for preventive amparo filed with the Santiago Court of Appeals states that at about 4.30 p.m. on 22 March 1988 the applicant received an anonymous threatening phone call. An unknown person, speaking on behalf of the "Yakarta Commando", allegedly said to him "you worm, working against the Government, take care or something might happen to your son". The applicant is a businessman who does editorial work for a number of social organizations and institutions connected with the Catholic Church.

D.48 Juan Rafael Alfaro Fuentes (Case No. 546-88). In an application for preventive amparo filed on 11 May 1988 with the Santiago Court of Appeals against the Department of Recruitment and the National Information Agency, the applicant maintains that when he presented himself at the Quinta Normal recruiting office on 9 May 1988 to comply with his military service obligations, he was extensively interrogated by civilian and military personnel. The latter claimed that he was trying to infiltrate the Chilean army, basing their claims on an alleged link with Claudio Paredes, one of the young men killed in the Villa Portales explosion. The applicant was not only interrogated but also beaten and threatened.

D.49 Rosa Elvira Riquero Nuñez. On 13 May 1988, she filed with the Fifteenth Criminal Court of Santiago a complaint alleging the offences of unlawful entry and search. She says that at about 5.40 a.m. on 11 May 1988, a group of approximately 25 people forced their way into her home saying that they were police and were looking for weapons. However, they neither identified themselves nor showed any warrant. She adds that four adjacent houses were also raided.

D.50 Hector René Miranda Luengo (Case No. 277-88). On 30 May 1988, an application for amparo was filed on his behalf with the President Aguirre Cerda Court of Appeals, stating that he had been arrested at his home by civilians armed with machine guns belonging to the Policía de Investigaciones. There had been a total of 20 such individuals and they had been using vehicles belonging to the police. They had shown no warrants, and other raids and arrests had apparently taken place at the same time in the same neighbourhood. In a written statement submitted on 16 May 1988, the applicant maintains that he was released at 7.00 p.m. on the day of his arrest. He adds that he was severely beaten both in the van which took him to the place of detention and in the place of detention itself, where he was kept blindfold the whole time.

D.51 Bernardo Arroyo Garabito. On 13 June 1988, he filed an application for amparo with the Temuco Court of Appeals stating that on 8 June he had received by ordinary mail a threat from the group called "ACHA". Arroya Garabito is a member of the Regional Command for the No and the Institute of Education and Social Action, and founded the Temuco branch of the Peace and Justice Service (SERPAJ). He states in his application that the threat against him is part of a campaign of

intimidation against opponents of the Government and people connected with human rights organizations.

D.52 Roberto Ignacio Ramírez Valle. He filed a criminal complaint of abduction and unlawful association in connection with the incident which happened to him on 28 June 1988. On the day in question, while carrying out bank transactions for his employer, he was approached by two individuals who told him in a threatening manner to follow them. Once inside their vehicle, they interrogated him in detail about his employer's activities. During the interrogation, he was punched repeatedly in the ribs. An hour and a half after his abduction, his captors released him with the threat that he would soon receive another visit.

D.53 Pedro Segundo Ortiz Navarrete. In a criminal complaint filed on 22 July 1988 with the Twenty-second Criminal Court of Santiago, he states that his home was entered unlawfully on 1 and 11 July 1988 by individuals who identified themselves respectively as carabineros from unit OS-7 and members of the Policía de Investigaciones. Since Carabineros unit OS-7 denies having conducted any inquiries with regard to either the person or the domicile of the complainant, the latter fears that the second raid was also carried out without a judicial warrant.

D.54 Isaias Libertario Dugue Jorquera. In a remedy of protection against the Mayor of La Cisterna, filed on 29 January 1988 with the President Aguirre Cerda Court of Appeals, Dugue Jorquera maintains that on 14 September 1987 he was fired from the Occupational Programme for Heads of Household for reasons that had nothing to do with his abilities or suitability and that his request for reinstatement, presented on 22 January 1988, was turned down for the same reasons. He maintains that this arbitrary employment discrimination against him violates not only the Constitution but also his right and that of his family to physical and psychological integrity, since he is unemployed and has no means of supporting his family.

D.55 Mónica Emilia Alvarado Hinostroza. On 26 February 1988, she filed an application for preventive amparo with the Santiago Court of Appeals because of the harassment she says she has suffered since she returned to Chile from exile on 24 November 1987. She claims that although she re-entered the country legally, the police took her handbag away from her at the airport. Among other things, the handbag contained \$US 1,005 given her by the Office of the United Nations High Commissioner for Refugees to cover her repatriation expenses and those of her children. Although she lodged an official complaint, no police body has claimed responsibility for the unlawful appropriation. She also says that, since 6 January 1988, she has been followed repeatedly by a vehicle, which makes her fear for her safety.

E. Right to a proper trial and to procedural guarantees

E.56 Nelson Donato Guzmán, Manuel Rodríguez Fuentealba, Lindor Ruiz Barriga and Florisondo Trocoso Puente (Case No. 16,374-2); Luis Walter Valdes Pulgar (Case No. 14,901-2) and Luis Enrique Silva Rojas (Case No. 16,358-2). They each filed complaints against the National Information Agency (CNI) officials responsible for

the unlawful coercion to which they were subjected after their arrest. In response to the application disputing competence filed by the Second Military Court with the Twentieth Criminal Court which is handling these cases, asserting that they should be reviewed by the military court, the lawyer in all three cases argued as follows: firstly, under article 7 of the Code of Penal Procedure, the civil court was competent to hear the cases since the offences had been committed within the area of its jurisdiction. The civil court was competent, at the least, to conduct preliminary inquiries in order to establish, among other things, whether or not CNI officials were responsible for the alleged offences and, if so, who they were. So far, this had not been possible because of lack of co-operation on the part of the carabineros and the CNI, who had refused to appear before the civil court. Secondly, even if the identity of the perpetrators had been established and they had been found to belong to the CNI, the military court would have no jurisdiction to hear the case because, according to the Constitution and Chilean law, the CNI is not part of the armed forces. Lastly, the request to have the civil court declared incompetent was based on the claim that the alleged military personnel had acted in the course of duty. Pursuant to article 421 of the Code of Military Justice, in connection with article 5 (3) and (7) thereof, the alleged offences could not be considered actions performed in the course of duty.

E.57 Mario Vega Varas. On 17 May 1988, his lawyer filed on his behalf an application for amparo with the Military Appeal Court against Military Prosecutor Fernando Torres Silva, who is handling Case No. 1,797-86. In the application he stated that his client had been kept incommunicado for 40 days in succession, a clear contravention of the procedural laws in force.

E.58 Godoy, Nelson and others (Case No. 655-88). They had been arrested and were being held in normal detention pursuant to Exempt Decree No. 6067 of the Ministry of the Interior. However, in a written statement to the Santiago Court of Appeals, dated 31 May 1988, their lawyer claimed that they were being held incommunicado and were not being allowed to receive visits.

E.59 José Galiano, Carmen Hertz, Sebastián Hamal, Alberto Espinoza, Carlos Margotta and others. These lawyers and 11 colleagues applied to the Supreme Court, in exercise of the right of petition laid down in the Constitution, requesting it to correct and regulate the exercise of certain powers of the Second Military Court, and official and ad hoc military prosecutors' offices under its authority, which undermine the rights of parties and the functions of lawyers. The petitioners say that the three official military prosecutor's offices created by Supreme Decree No. 42 of the Ministry of Defence, published in the Diario Oficial of 30 April 1988 and the three already in existence, all of which come under the Second Military Court, have been set up and operate in the Army Telecommunications School at Antonio Varas 1562, Providencia. Likewise, the office of Ad Hoc Military Prosecutor Colonel Fernando Torres Silva is still in operation at Zenteno 102.

According to the petition, military compounds are closely guarded by heavily armed personnel, so that a visit to the military prosecutor's office is inevitably attended by the feelings of fear and insecurity engendered by such a show of force. The blatant display of firearms and the way they are handled by some officials also cause concern. Furthermore, the public and lawyers are allowed

access to the offices for only one hour a day. The military prosecutors refuse to hear lawyers or they postpone hearings indefinitely, claiming to be otherwise engaged. The official opening hours are not waived for emergencies or for exceptional circumstances, a situation which does irreparable damage to parties' rights. The military prosecutor's offices will also not accept documents outside these opening hours.

The petition also points to numerous irregularities in complying with the time-limits for handing down judicial decisions and giving notification thereof. In most cases, lawyers must be present in order for decisions to be handed down and notified to them in person. Prisoners, defendants, witnesses, relatives and lawyers are also apparently being treated with less and less respect. Some clerks of the court apparently assume judicial functions unlawfully, conducting interrogations using disrespectful and sometimes offensive language. Detainees and prisoners are shackled and chained, even though there are soldiers present. Witnesses are said to be treated according to a double standard: if they belong to the security forces they are summoned without any great urgency and allowed all kinds of concessions; "suspect" witnesses, on the other hand, have to submit to an endless round of court appearances without ever being sure of the extent of their involvement in the proceedings. Public appearances in the media by military prosecutors, in which they insult defendants and refer to them as members of terrorist groups, amount to ill-treatment and to lack of respect both for defendants and for the guarantees of a fair trial.

The petitioners also note a number of irregularities in applying the laws in force. They suggest that the Supreme Court should draw attention to the fact that, under article 109 of the Code of Penal Procedure and article 135 of the Code of Military Justice, courts must investigate not only facts and circumstances establishing the guilt of defendants, but also exonerating or extenuating factors or those establishing innocence. They also point out that if, as article 19 (3) (6) of the Constitution indicates, the law cannot make an irrebuttable presumption of criminal responsibility, still less can judicial officials show bias against prisoners and defendants and treat them with contempt.

In a written statement presented to the Supreme Court on 8 August 1988, the Judge of the Second Military Court rejects each of the allegations made by the petitioning lawyers, pointing out that the military courts act in strict accordance with the laws in force. He says: "Presuming to question powers established by law amounts, in the opinion of this military judge, to excessive zeal on the part of the lawyers signing the statement". He goes on: "To insist upon that would mean presuming to alter the legislation in force, which is something that those lawyers are not qualified to do". Lastly, he says: "To claim so fallaciously that the Military Court and the military prosecutor's offices under its authority, in exercising their legal powers clearly laid down in the aforementioned legal texts, 'violate legal norms and undermine the rights of the parties in a case' unquestionably amounts to making a serious, irresponsible allegation which could have legal consequences and which, in any case, in no way suggests any intention on the part of the lawyers signing the petition of 'co-operating with the system of justice'".

The allegations made were substantiated, however, by an investigation carried out by Dr. Alberto Coddou and Dr. Sergio García at the request of the Chilean Bar Association. In a letter of 2 August 1988, the President of the Association presented to the President of the Supreme Court the report compiled by the two lawyers on the basis of a visit that day to the military courts located on the premises of the Telecommunications Regiment at Antonio Varo 1562, together with reports by other colleagues and evidence given by some senior members of the Bar Association. The letter also contained a number of recommendations. It pointed out that it was "inappropriate" for the military courts to be located on the premises of a regiment since "lawyers, defendants and witnesses are treated according to rules and customs governing a military compound and such treatment differs from and is inconsistent with what is required in a court of law". The way lawyers are treated, said the Bar Association letter, "is utterly inappropriate for members of their profession, in view of the deference due to their rank".

The investigation by Dr. Coddou and Dr. García found the following procedural irregularities. At the First Military Prosecutor's Office, the preliminary investigation in Case No. 630-83 had been concluded on 21 December 1987 and notification to that effect was recorded as having been sent that day, yet the lawyer handling the case said that he had not received any such notification. A request to see the postal register in the registry was turned down on grounds that it was for internal use only. At the Second Military Prosecutor's Office, a request for an audience with the Prosecutor to discuss Case No. 2300-86 was turned down. At the same Office, 17 documents submitted in connection with Case No. 1363-85, by the lawyer, Raquel Mejías, and stamped by the Office had not been added to the dossier, nor a decision taken on them. At the Third Military Prosecutor's Office, the dossiers on Cases Nos. 1296-87, 1297-87 and 2048-86 were requested. When it was observed that those cases had not been assigned to any clerk of the court, no satisfactory explanation was given.

The Bar Association made a number of suggestions to the Supreme Court with regard to the operation of military courts. Among other things, there should be fixed hours when lawyers can be heard, the existing hours should be extended and lawyers should be able to see prosecutors when they ask to do so; lawyers should be treated with the respect due to their profession; there should be an office which receives documents outside the hours set for hearings; clerks of the court should be assigned immediately to cases brought before the Prosecutor's Office; lawyers should have access to the postal register; lawyers and other authorized persons should have ready access to dossiers and the place where such dossiers are filed should be kept under strict supervision.

E.60 José Galiano, Consuelo Gil Bessolo, Carlos Margotta, Alfonso Insunza Bascuñán, Roberto Garretón Mexino and others. These lawyers and nine others, in an application filed with the Supreme Court in connection with the disciplinary complaint lodged by a military judge against the Judge of the Twentieth Criminal Court of Santiago, René García Villegas (Administrative Case PR 4691), agreed with Judge García's ruling that "investigations by the military courts into crimes of torture attributed to members of the National Information Agency (CNI) lead nowhere". This statement was part of a ruling by Judge García which prompted the disciplinary complaint filed against him by a

military judge. The lawyers supported his statement, referring to 48 cases of alleged crimes of torture by CNI officials investigated by the military courts. Several years after these cases were first brought, some are still at the preliminary investigation stage and no useful inquiries have been made or results achieved, while others have been dismissed without any one being indicted. These cases are the following:

<u>Name of injured party</u>	<u>Case</u>	<u>Prosecutor's Office</u>
Aguirre Tobar, Paulina Alejandra	346-85	Second
Allende Bravo, José Miguel	1445-86	Second
Blanchet Muñoz, Raúl	17-85	Second
Contreras Grandón, Rubén Alejandro	1324-86	Second
Delgado Tapia, Ana Alicia	932-84	Third
Drago Camus, Claudia Elena	--	First
Escobar Cabranza, Ernesto Eduardo	1398-84	Second
Flores Castillo, Raúl Enrique	369-83	First
Flores Durán, Manuel	263-83	Second
Flores Ramírez, Sergio	928-84	First
Fonseca Vidal, Ignacio	287-85	Second
Galanakis Tapia, Andrés Nicolás	85-84	Third
Guerrero González, Pablo Yuri	1276-86	Third
Iribarren González, Fernando E.	86-83	First
Leal San Martín, Rolando Daniel	1078-85	Third
Martín Martínez, Jorge Alejandro	2740-86	Third
Mellado Reyes, Carlos Custodio	287-85	Second
Osorio Pérez, Germán	263-83	Third
Osorno Badilla, Valentín	629-83	Ad Hoc
Reyes Susarte, Raúl	987-81	Second
Riveros Jara, Sergio Gabriel	287-85	Second
Rodríguez Herrera, Horacio Raúl	1287-85	Second
Rodríguez Herrera, Marcelo Javier	1287-85	Second
Ruis MoscateJli, Rafael Hernán	85-84	Third
Sepúlveda Toro, Mónica	1398-84	Second
Urbano García, Adán Jesús	2320-86	Second
Vega Posa, Leonardo	1538-85	Second
Zepeda Camillieri, Gustavo F.	85-84	Third
Alvarez Santibañez, Federico	482-80	Second
Arancibia Ordenes, Armando	1881-84	First
Bravo González, Teobaldo	502-81	Second
Carvajal Belmar, Máximo Gorki	2149-84	First
Cottet Villalobos, Eduardo	1038-83	Second
Farias Ogaz, Rosa	1455-83	Second
Guajardo Pena, Vladimir	925-84	Second
Guzmán Robinson, Luis	--	First
Herrera Illanes, Hector Luis	1882-84	First
Inostroza Marques, Sergio	--	First
Manquien Fuentes, Osvaldo del C.	1185-84	First
Muñoz Altamira, Fernando Antonio	2053-84	First
Rojas Alvarez, Eduardo René	1899-85	First

<u>Name of injured party</u>	<u>Case</u>	<u>Prosecutor's Office</u>
Rojas Zúñiga, Heriberto	925-84	Second
Rosales Chávez, Omar	502-81	Second
Rosales Chávez, Omar	374-83	Third
Salas Montes, Verónica	622-83	First
Sierralta Jara, Luz María	706-84	First
Tapia González, Roberto Eugenio	1185-84	First
Viveros Lagos, Fexi Marcela	1996-84	First

F. Right to freedom of expression and information

F.61 Manuel Casanova Azagra. On 8 April 1988, the general manager of the magazine APSI filed a remedy of protection with the Santiago Court of Appeals on behalf of APSI and of Manuel Casanova Azagra, who is employed by the magazine. He claims that on 8 April, Casanova Azagra was arrested by unknown individuals dressed as civilians, who threatened him and suggested that he stop working for APSI since, otherwise, "something unpleasant" would happen to him. They also took away from him a photograph which was going to be used as the cover page of the next issue of the magazine.

F.62 Isabel Hermosilla Pérez, Eduardo Garretón Suazo and Ivonne Constancio Rojas (Case No. 757-88). On 22 June 1988, an application for amparo was filed on their behalf with the Santiago Court of Appeals. The three were arrested on the night of 20 June when, according to the carabineros, they were distributing in a public place political propaganda advocating a "no" vote in the plebiscite. This is recorded in a report of the Carabineros Metropolitan Area Headquarters dated 23 June 1988.

F.63 Journalists and opponents of the régime against whom proceedings have been brought before the military courts for crimes of opinion. In recent years, proceedings have been brought against over 50 people before the military courts in Santiago for insults against the armed forces and carabineros. The defendants include journalists, lawyers, priests and political leaders, who have become involved in criminal proceedings brought before the military courts for having expressed their views, usually in writing. Strictly speaking, such people have already been accused, tried and even sentenced by the military courts.

(1) Fernando Paulsen (Case No. 1090-86), a journalist on Análisis, was arrested and indicted by the First Military Prosecutor's Office on 26 February 1986 for insulting the carabineros. The case is at the preliminary investigation stage, with Paulsen still under indictment.

(2) Enrique Silva Cimma, Chairman of the Radical Party, was indicted by the First Military Prosecutor's Office on 27 February 1986 for insulting the armed forces. On 9 June 1987, the Supreme Court revoked the indictment.

(3) Roberto Garretón and Mariana Allendes (Case No. 455-87), lawyers working for the Vicaría de la Solidaridad. On 6 May 1987, they were summoned to the Second Military Prosecutor's Office following publication of an article on the human rights situation in Chile. In June of that year, Garretón had to appear at the First Military Prosecutor's Office because of another article. On 4 May 1988, the Military Appeal Court confirmed the indictment. The case is at the preliminary investigation stage.

(4) Abraham Santibáñez, Genaro Arriagada and Alejandro Guillier, respectively the editor of Hoy, a leader of the Christian Democratic Party and a journalist. The first was served with a summons by the First Military Prosecutor's Office on 12 May 1987. The other two were served with summonses by the same Prosecutor's Office a month later. On 27 January 1988, the three were indicted for insulting the armed forces. On 13 May 1988, the Military Appeal Court overruled the indictment against Genaro Arriagada. The case was referred back to the Military Prosecutor's Office for continuation of the preliminary investigation against Santibáñez and Guillier, who are still under indictment.

(5) Felipe Pozo and Gilberto Palacios (Case No. 1173-87), respectively editor of and a journalist for Fortín Mapocho, were indicted by the First Military Prosecutor's Office on 29 May 1987. Recently, a court of first instance gave them a suspended sentence of three years in prison.

(6) Alejandro Ríos Valdivia, Víctor Vaccaro and Francisco Herrera. The first, a history teacher and former Minister of Defence under President Salvador Allende, was summoned to testify on 24 June 1987 by the First Military Prosecutor's Office. The two others, in their respective capacities as a journalist for and Editor of Cauce, also had to testify before the Prosecutor's Office in connection with their responsibility for publishing an interview with Ríos Valdivia in which the latter spoke in unflattering terms about the President of the Republic. On 4 September 1987, Ríos Valdivia was brought to trial for insulting the armed forces.

(7) Juan Pablo Cárdenas, Esteban Silva, Jaime Escobar and Jaime Martínez (Case No. 562-87). All were called to testify before the Second Military Prosecutor's Office in connection with an article published in Análisis on 7 March 1987 and signed by Silva, Escobar and Martínez, leaders of the Christian Left Party. The first to testify was Juan Pablo Cárdenas who on 27 June 1987 did so as editor of the publication in question.

(8) Alfredo Montecinos, Lautaro Campusano, Pedro Barría, Pamela Pereira, Sergio Corvalán, Raquel Mejías, Carmen Hertz, Hernán Quezada and Alejandro González (Case No. 2111-85), all lawyers working with the Vicaría de la Solidaridad, were summoned to testify before the Second Military Prosecutor's Office for having signed a letter allegedly insulting the carabineros. The proceedings are at the preliminary investigation stage.

(9) Patricia Collyer, a journalist for Análisis, was served with a summons on 9 July 1987 for an article she wrote about those who might be responsible for 11 shootings that occurred between October and December 1973 at San Felipe.

(10) Marcelo Contreras, Sergio Marras and Fernando Villagrán (Case No. 1434-87), respectively editor, associate editor and business manager of APSI, were called to testify before the Second Military Prosecutor's Office in connection with a special issue of APSI which was confiscated on 19 August 1987. On 10 September 1987, the Military Appeal Court upheld the indictment of Contreras and Marras. The two were released after two months of detention, when they filed a complaint with the Supreme Court.

(11) Sergio Marras (Case No. 214-87), associate editor of APSI. In another case being brought against Marras, the First Military Prosecutor's Office indicted him on 14 April 1988.

(12) Manuel Bustos, Chairman of the National Workers Command, had to appear on 4 September 1987 before the Second Military Prosecutor's Office to provide explanations about an article written in Análisis and a speech he had made calling for a general strike.

(13) Emilio Filippi and Alberto Gamboa, respectively the editor of La Epoca and the author of a book entitled Un viaje al infierno, that was published in facsimile in Hoy and dealing with the events that occurred at the National Stadium and the Chacabuco concentration camp following the 1973 coup. In November 1987, the Military Appeal Court upheld the indictments against both men. In May 1988, the Supreme Court upheld the indictment against Gamboa and revoked the one against Filippi.

(14) Pablo Azócar and Carmen Hertz, respectively a journalist for APSI and a lawyer. In November 1987, proceedings were brought against Azócar before the Second Military Prosecutor's Office for articles of his which had appeared in the above-mentioned weekly. The lawyer Carmen Hertz, who had been interviewed in both articles, was also summoned to testify and, on 16 August 1988, was indicted by the Fourth Military Prosecutor's Office.

(15) Patricio Arévalo, Humberto Lagos and Arturo Chacón (Case No. 157-88). The first, a journalist for Cauce, was summoned to testify before the Third Military Prosecutor's Office on 22 January 1988 in connection with an article in which he had reviewed a book by Lagos and Chacón entitled La religión de las Fuerzas Armadas y de Orden. Lagos (a lawyer for the Vicaría de la Solidaridad) and Chacón were also summoned to testify that day. The proceedings are at the preliminary investigation stage.

(16) Mónica González, a journalist for Análisis, was summoned before the Third Military Prosecutor's Office on 16 February 1988 in connection with an interview she had conducted with Karin Eitel. González had earlier been convicted of insulting the President of the Republic.

(17) Francisco Herreros, editor of Cauce, was arrested and brought to testify on 29 January 1988. Herreros was released after having testified, but on 22 March 1988 the Prosecutor's Office indicted him for the offence of insulting the armed forces and detained him in Santiago Penitentiary, from which he was released on bail a few days later.

(18) Jorge Donoso, former editor of Fortín Mapocho. On 22 March 1988 he was given a suspended sentence of 60 days in prison by the Third Military Prosecutor's Office, in proceedings brought against him for insulting the armed forces at the time when he was editor of the magazine.

(19) Tomás Moulián (Case No. 267-88) writer, teacher, sociologist and researcher for FLACSO. On 5 April 1988, he was summoned to testify before the First Military Prosecutor's Office in connection with an article published in Análisis in December 1987.

(20) The priests Eugenio Pizarro, José Aldunate, Roberto Bolton and Oscar Jiménez (Case No. 646-88). On 23 May 1988, they were summoned before the Second Military Prosecutor's Office for alleged insults to the armed forces contained in an open letter to the public in which they criticized, among other things, violations of human rights in Chile.

(21) Juan Pablo Cárdenas, Iván Badilla, Fernando Paulsen, Raúl Sohr. On 26 May 1988, Cárdenas, the editor of Análisis, was arrested as he entered the centre where he was serving his sentence of night imprisonment. He was held incommunicado in Valparaíso prison until 28 May and then released. That same day, Iván Badilla, a journalist for Análisis, was arrested and held incommunicado, and a summons was served on Fernando Paulsen, who had been acting as editor of Análisis on 18 April when one of his own articles had appeared in the weekly. On 4 June 1988, Badilla and Paulsen were indicted. On 6 June 1988, Raúl Sohr, a journalist on La Época, was summoned before the Naval Prosecutor's Office and released after having testified about an article on arms purchases.

(22) Juan Luis Zegers Terrazas (Case No. 154-88), a lawyer. On 12 July 1988, he was arrested at Concepción and transferred to Santiago, where he appeared before the Second Military Prosecutor's Office in connection with the proceedings brought against him for an alleged offence against the armed forces because of an article that had appeared in Análisis on 25 January 1988.

(23) Alberto Gamboa and María Inés LLambias, journalists. On 14 July 1988, they were summoned to appear before the First Military Prosecutor's Office for alleged insults to the carabineros contained in an article published in Fortín Mapocho on 28 April 1988.

(24) Gastón Holzappel (Case No. 2090-87), a lawyer. On 19 July 1988, the Second Military Prosecutor's Office indicted him for insults to the armed forces. The insults consisted in the fact that, in a written submission made in Case No. 1797-86 on 27 October 1987, the lawyer had asserted that two of his clients had been tortured.

(25) Jaimé Hales (Case No. 1-88), a lawyer. On 20 July 1988, he too was served with a summons to appear before the Second Military Prosecutor's Office in connection with alleged insults to the armed forces contained in an article published in Análisis on 21 December 1987.

(26) Filma Canales, a film critic for Mensaje. In July 1988, the Third Military Prosecutor's Office gave her a suspended sentence of 541 days in prison because of her review of the film "Furyo" by Japanese director Nagisa Oshima.

(27) Carmen Hertz, a lawyer. On 16 August 1988, she was indicted by the Fourth Military Prosecutor's Office.

(28) Felipe Sandoval (Case No. 1114-88). On 17 August 1988, he was indicted by the Fourth Military Prosecutor's Office in the proceedings brought against him for insults to the carabineros allegedly broadcast in a television programme. On 25 August, the Military Appeal Court upheld the indictment.

(29) Mario Papi, a leader of the Social Democratic Party. A summons was issued against him on 24 August 1988 for alleged insults to the armed forces which had appeared in Ultimas Noticias, where he had criticized the decision by the Third Military Prosecutor's Office not to release the editor of the magazine APSI on bail.

(30) Francisco Herreros, editor of Cauce. On 25 August 1988, he was arrested at his home by order of the Fourth Military Prosecutor's Office. He is now in normal detention at Santiago Penitentiary.

G. Right to enter and leave the national territory

G.64 Sergio Poblete Garcés, Efraín Jaña Girón, Ernesto Gálvez Guzmán, Alamiro Castillo Aliaga, Otto Becerra Schwart and 21 other former members of the armed forces. An application for amparo was filed on their behalf on 18 August 1988 with the Santiago Court of Appeals. The application maintains that the ban on their entering the country, decreed and kept in force by the Minister of the Interior "by order of the President of the Republic" pursuant to transitional provision 24 (c) of the Constitution and on the grounds that they constitute a "threat to law and order", is arbitrary, improper and illegal. The applicants, former members of the armed forces, were expelled from the country by Supreme Judicial Decree No. 504 of 1975, after having been court-martialled. The application contends that the measure prohibiting them from entering the country is unlawful in that it contravenes Decree-Law No. 2191 of 19 April 1978, article 2 of which grants amnesty to persons convicted by military courts between 11 September 1973 and the date of issuance of that Decree-Law. All the applicants fulfil this condition. It is therefore surprising that the Government should be using administrative means to thwart the purposes of Decree-Law No. 2191. Even if the amnesty in question did not exist, all the applicants have more than served the sentences of exile imposed on them after the original sentences of deprivation of liberty were commuted.

IV. CONCLUSIONS

25. In this report prepared for the forty-third session of the General Assembly, the Special Rapporteur considers it appropriate to recall some of the more salient factors that were undermining the exercise of human rights in Chile when, in February 1985, the United Nations Commission on Human Rights appointed him to

report on the situation of human rights in that country. From the standpoint of a number of groups which in February 1985 were promoting at Geneva the cause of freedom in Chile, the Special Rapporteur can vividly recall the state of siege, the mass internal banishments, the great number of people exiled, the problems of the Mapuche Indians, the disappearances that had occurred when the present political régime first came to power, and the bans on political parties.

26. The Special Rapporteur paid special attention to cases of this kind when he began to carry out his mandate, without receiving any official co-operation from the Chilean Government for a long time. Nevertheless, as soon as he had been given his mandate, the Special Rapporteur lost no time in initiating informal talks with senior Chilean Government officials at Geneva, and later at San José and Montevideo. He used those occasions to bring up the issues referred to in the preceding paragraph, and others relating to the mandate itself, in order to obtain the recognition and official co-operation of the Government, a development which occurred in July 1985 at Montevideo, where the Special Rapporteur had gone in order more easily to obtain trustworthy information from Chileans.

27. Shortly after the San José meetings, the state of siege was lifted on 17 June 1985. As for the 4,348 exiled Chileans who in February 1985 were barred from entering their country, their number had been reduced to 518 by 30 August 1988 and on 1 September 1988 the Government announced an end to the exile of all Chileans except the few who are serving judicial sentences of expulsion. The Special Rapporteur considers this a very positive step in the area of respect for human rights which, at the same time, puts into effect one of the recommendations he had been most persistent in making to the Government ever since his appointment.

28. The administrative internal banishments under which a great many people were living in generally deplorable conditions came to an end in October 1986. The case of former Foreign Minister Clodomiro Almeyda, in March 1987, was a notable exception to the rule.

29. The problem of disappeared persons achieved special notoriety when Investigating Judge Carlos Cerda, whom the Special Rapporteur met and about whom he spoke very favourably, carried out in-depth investigations that resulted in significant findings implicating members of the régime, thereby giving the matter an importance and a topicality that it did not have in 1985.

30. Political parties are being set up legally under the protection of the new Constitutional Fundamental Act on Political Parties. Both this Act and other constitutional fundamental acts had been a source of constant concern to the Special Rapporteur. In his informal talks with Government figures, the Special Rapporteur had insisted on the need for the early adoption of such acts as a prerequisite for a new political structure which might help safeguard human rights. The only one of this group of acts not yet promulgated is the fundamental act relating to the National Congress. Those already in force are the Constitutional Fundamental Act on the Electoral Tribunal, the Constitutional Fundamental Act on the Voter Registration System and the Electoral Service, and the Fundamental Act on Regional Electoral Tribunals.

31. The Government has co-operated constantly, openly and fruitfully with the Commission on Human Rights, chiefly because of the confidence it places in the Special Rapporteur. In its note of 22 August 1988 authorizing the Special Rapporteur's fourth visit to Chile, scheduled to coincide with the 5 October 1988 plebiscite, the Government had the following to say about the Special Rapporteur: "This decision has been taken in keeping with Chile's traditional attitude of co-operation with international bodies and particularly, out of regard for him personally".

32. The Special Rapporteur, for his part, is and has been grateful for such co-operation, which has not been without its problems - some of them serious - each of which the Special Rapporteur has tackled with the frankness and energy they warranted. At all times, he has sought to preserve his independence of judgement, which he guards jealously out of self-respect and out of the respect he owes to the Commission and the General Assembly - in other words, out of respect for the cause of human rights.

33. Of course, this co-operation has met with obstacles and experienced tense moments which have placed it in an unnecessarily precarious position. This is because of what the Government deems to be an incongruous attitude on the part of both the Commission on Human Rights and the General Assembly in paying little heed to the reports of the Special Rapporteur (six to date, not counting this one). In these circumstances, the Government of Chile wonders whether it makes any difference if it co-operates or not since, in the end, the result is the same - its co-operation is neither taken into account nor valued by the General Assembly and the Commission. The same note of 22 August mentioned above states: "My Government has decided to continue its unrestricted co-operation on the same terms as in the past, notwithstanding the disappointing results observed in this connection in the United Nations system" (the underlining is the Special Rapporteur's).

34. The Special Rapporteur finds it disturbing that both the Government of Chile and sectors of Chile's public opposition should make comments of the kind quoted above, which even contain an unnecessary note of irony. However, he does realize that there is some basis for these remarks. On the one hand, the Special Rapporteur finds it contradictory and counter-productive that he should be assigned a delicate and complex investigative task, when his observations are not given the attention they deserve in the bodies which are supposed to be looking to him for guidance as they attempt to assess what is taking place in Chile. Although the Special Rapporteur is aware of his limitations and never expects his opinion to be the only one to hold any weight or be considered authoritative, he is at least entitled to reasonably expect his work to be regarded as the product of a profound respect for the cause of human rights, a keen desire to co-operate wholeheartedly with the men and women of Chile, and a dedication to a complex problem of which he has made a serious and firsthand study.

35. Moreover, from the standpoint of the General Assembly and, particularly, the Commission on Human Rights, Special Rapporteurs are useful in helping them to perform their function of protecting human rights and, hence, complying with one of the foremost purposes and principles of the United Nations Charter. It is therefore in the interest of the cause of human rights to avoid having Special

Rapporteurs lose credibility and effectiveness not for what they do not do but, ironically, because they are not given adequate support in what they do do. The blame here lies with interests which are, in fact, opposed to the cause of human rights, although those who manipulate them may well believe that they are acting with the best of intentions and may not notice that, in so doing, they are tainting the image of the United Nations, in the eyes of the common man of the family of nations.

36. In any case, as the Special Rapporteur has pointed out to the Chilean Government and to Chileans, what matters in the end is that the Chilean people are benefiting from the co-operation he asks for and receives, and from his insistence that his recommendations be implemented. The relationship with the Special Rapporteur is worth maintaining because it affords, among other things, in the person of the Special Rapporteur, an impartial intermediary between the Government and opposition sectors who can help co-ordinate efforts to ensure respect for human rights, as in fact occurs, and who can attempt to resolve individual cases by using his good offices with the Government, as is also frequently the case. The rest - the disappointments, the disillusionment, and even the trouble caused on all sides - is amply compensated by the positive results which have been and can be achieved in terms of respect for the dignity of every Chilean. That is what matters. As Shakespeare said, "The end crowns all ..." (Twelfth Night).

37. Despite the Government's understandable initial resistance to maintaining a productive relationship with the United Nations system and notwithstanding the failure of a sector of Chilean public opinion to comprehend his role, the Special Rapporteur can, in addition to the progress described at the beginning of these conclusions, point to the following: (a) His abiding interest in the serious problem of unlawful coercion, which goes to such extremes as torture, has been a positive factor in the adoption of measures to combat this abhorrent practice. Such measures include the bilateral agreements between the International Committee of the Red Cross and the carabineros, the Policía de Investigaciones and the Advisory Commission on Human Rights of the Ministry of the Interior, whose powers were extended, on the Special Rapporteur's recommendation, to the consideration of this and other matters. The purpose of all three agreements is to help the International Committee of the Red Cross take action to protect the physical and psychological integrity of persons subjected to interrogation and incommunicado detention. These agreements, revised and improved in the light of experience, have yielded positive results. (b) The decision by General Rodolfo Stange, Director-General of the Carabineros to deal personally with complaints submitted to him by the Special Rapporteur or Chilean individuals or groups about the actions of officers under his command and to carry out the necessary investigations and impose the necessary penalties, is a positive one. (c) A similar procedure has been instituted by General Fernando Paredes for dealing with complaints about actions of the Policía de Investigaciones. (d) The carabineros are gradually resuming their traditional role of safeguarding public order, thanks to the perseverance of their Director-General, and this has had a positive impact on respect for human rights. (e) The Special Rapporteur has received no further complaints of frequent kidnappings and intimidation in broad daylight of persons involved in religious activities. (f) Neither have there been any more crimes as atrocious as the abduction and throat-slitting of three AGECH members, the burning of Rodrigo Rojas

and Carmen Quintana, the murders on the night of 5-6 September 1987 or the so-called "Corpus Christi killings" or "Operation Albania". It is, none the less, deplorable that no light has been shed on what are, sadly, causes célèbres that have aroused Chilean and international public opinion, and rightly so.

(g) However, the wave of intimidation continues against citizens newly returned from exile or involved in opposition activities and who are in prison for activities contrary to State security and related offences. The perpetrators of this new kind of intimidation are hiding under a mantle of cowardly anonymity, although a court of law has been able to identify one private gang of the several which engage in this hateful practice contrary to human rights. When specific cases of this kind are brought to the attention of the Special Rapporteur, he transmits them to the Government with the request that action be taken. So far, this has been done chiefly through the Director-General of the Carabineros who has taken prompt action to provide protection and whom the Special Rapporteur has even put in direct contact with the complainants. (h) Terrorism's aberrant, criminal actions continue unabated. Its preferred victims are members of the carabineros, although its ravages extend to other people. Terrorism, in all its cruel and reprehensible manifestations, neither has nor can have any altruistic justification, for its action is indiscriminate and profoundly disruptive of social peace. It heightens the conflicts faced by any civilized community, instead of helping to settle them, and yet terrorists and those who make use of them have the temerity to claim that they are acting legitimately to achieve a political end. Nothing can justify terrorism and all sectors of Chilean society must combat it resolutely, with the appropriate instruments of a Constitutional State which have proved effective in other countries. Otherwise, a reign of anarchy capable of tearing society apart will be imposed through force and terror. Terrorism is, without a doubt a formidable obstacle to the enjoyment of human rights in Chile.

(i) The Chilean system of justice continues to suffer from major institutional limitations, although there are now signs of a reaction on the part of some members of the system of civil justice. Necessary and welcome challenges are being made to the constitutional status quo, which runs counter to the purposes of the judiciary, and, in particular, to the singular and essential role assigned to the judiciary by classical and modern constitutionalism, that of guardian of freedom in keeping with the basic tenets and institutional framework characteristic of a representative democracy, based on and governed by popular consent. However, now that both states of emergency have been lifted, it is to be hoped that the system of civil justice will have a platform from which to challenge anything which limits or undermines it. (j) The system of military justice has changed neither its attitudes nor its procedures, which make a mockery of democratic judicial guarantees and even show a lack of respect for the system of civil justice, which military justice is undermining and ignoring in its excessive and inordinate zeal to accumulate trials, especially in investigating who was responsible for the reprehensible attempt on the life of the President of the Republic and his convoy on 7 December 1986. (k) Defence lawyers have been unable to identify by their respective case numbers the cases which the military courts turned over to the civil courts (see report E/CN.4/1988/7 of the Special Rapporteur). The Special Rapporteur has insisted that the Government make good its promise and the latter has again promised that the cases will be identified. (l) The two states of emergency imposing restrictions on the freedoms of Chileans and in force for 15 years were lifted on 25 August 1988, in anticipation of the October plebiscite. This represents significant progress

for the effective protection of human rights and, of course, for the holding of the plebiscite, since voting rights can be enjoyed only in conjunction with other fundamental rights. They are a singularly important means of exercising freedoms, for they involve consulting the people on whose decisions a representative democratic State is based.

38. The Special Rapporteur had recommended repeatedly that the two states of emergency be lifted, both in his earlier reports and on his visits to Chile, and in remarks made publicly outside the country. Not long ago, in August, the Costa Rican press published a news report from Santiago, according to which Mr. Fernández, the Minister of the Interior, had said that the states of emergency were or might be compatible with the plebiscite. The Special Rapporteur immediately contacted Mr. Juan Bautista Alegría, the Ambassador of Chile to Costa Rica, expressing his surprise and alarm at this news. Subsequently, Ambassador Alegría provided the Special Rapporteur with the text of the Minister's statement, in which Mr. Fernández indeed said that, in theory, the states of emergency "were perfectly compatible with a free plebiscite", but went on to say that that did not mean they would be maintained for the plebiscite. The plebiscite, to which the Special Rapporteur has referred in his most recent reports, will undoubtedly be an event of great importance for the human rights situation in Chile. It will be a test of the system adopted by the present political régime to make the transition to representative democracy and, above all, it will be a test of the political will of the Government and the opposition to establish a set of basic legal norms defining and guaranteeing democratic freedoms as bastions of the essential dignity of each person against any attack by the forces of dictatorship.

39. Of course, even if - as it must - the plebiscite proves to be the genuine expression of the people's will, it will not be the normal, completely satisfactory method of consulting the governed as to the best way to move the country towards a tranquil, dynamic and reform-oriented representative democracy. The Special Rapporteur has already stated in other reports his preference for direct general elections, in which political parties would compete on equal or comparable terms. However, it is a question of participating in what is viable, given prevailing circumstances and taking into account the ultimate goal which would start to become attainable. In this connection, it should be stressed that human activity, when rationally motivated, is distinguished by its constant striving for perfection, never by conformism. It always seeks, in all spheres, to take things as it finds them and improve them, putting the finishing touches to them for the benefit of society. This represents the most demanding challenge to man's inexhaustible creative imagination and is particularly true of his efforts in the sphere of freedoms and their guarantees.

40. Furthermore, with regard to the choice between general elections or a plebiscite, at this crucial time for Chileans it is worth recalling that Abraham Lincoln said that the real test of whether to accept or reject something is not whether there is something bad about it but whether there is more bad than good, and that few things are completely bad or completely good.

41. In the complex Chilean human rights situation, much remains to be done despite the positive results noted by the Special Rapporteur in this and previous reports.

Besides the problems already mentioned, there are some unresolved issues that must be clarified and some situations that must urgently be changed in order to provide adequate protection for all the freedoms of the Chilean people. In a certain sense the plebiscite, no matter what its outcome and assuming, as we must, that the will of the voters is respected, will be, or should be, a new and auspicious beginning in the struggle for human rights.

42. There are some ordinary penal laws which are a source of repressive measures that are extremely harsh and counter-productive from the democratic standpoint. The Special Rapporteur feels that they should be studied in the light of apparent indications of a major political opening, because these special penal laws stand in marked contrast to this new and hopeful situation of possible political change. Indeed, even without this new situation, these laws in and of themselves require urgent, albeit careful, reform. The laws in question are the Anti-Terrorism Act, the Firearms and Explosives Control Act, the Internal Security of the State Act, the Code of Military Justice and the Act supplementing article 8 of the Constitution. Similarly, the Code of Penal Procedure is an obstacle to the exercise of the judicial guarantees inherent in a constitutional, democratic State.

43. Now that the states of emergency have been lifted, a development which represents an effective step towards adequate protection of human rights and which a spokesman for a well-respected Chilean organization devoted to the legal defence of those accused by the political régime described to the Special Rapporteur as "very significant and very welcome", the task must be continued by reforming these ordinary laws in order to give effect to the judicial guarantees set forth in the Chilean Constitution, the American Convention on Human Rights (Pact of San José), the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

44. Moreover, since the states of emergency are no longer in effect, both the civil and the military courts may order the incommunicado detention of people who have been accused and arrested, thereby impeding the work of the International Committee of the Red Cross under the agreements signed with the administrative authorities. Of course, the Special Rapporteur is not saying that the State should be left without appropriate legal means of defending itself against subversive activities or the Government left helpless in the face of actions which threaten public freedoms or, in general, disrupt public order. Rather, he is saying that these penal laws should be humanized, taking advantage of the special circumstances offered by the lifting of the two states of emergency which had given the Government very broad administrative powers to curtail public freedoms.

45. In particular, the Special Rapporteur is very concerned, for example, at the possible consequences of a sentence based on the Act supplementing article 8 of the Constitution, because the penalties envisaged are very severe and go to the reprehensible extreme of barring a person for ten years from holding not only public office but also civilian appointments, such as purely academic ones like being a university professor or a primary or secondary school teacher. This far exceeds society's rational punitive reaction to serious acts against it and therefore violates the principles and practice of liberal penal law, which is a product of representative democracy, so corrupting it that it becomes the evil progeny of dictatorial régimes.

46. The Code of Military Justice also exceeds the reasonable limits established in democratic societies to protect the armed forces as an institution without infringing public freedoms. In Chile, this protective power is being abused, for it places the military and police forces in a privileged and discriminatory position, and therefore one that is odious, harmful and anti-democratic. For example, journalists and the press in general are harassed, when senior military officials consider something they have said to be offensive and insulting to the armed forces. In so doing, such officials take a very narrow point of view or react with exaggerated sensitivity, not realizing that this excessive reaction could actually raise questions as to just how secure they consider the institution they so over-zealously defend.

47. The Special Rapporteur is increasingly concerned at the situation described in the previous paragraph, which he has discussed in earlier reports and statements to the press, because the proceedings against editors of news media and journalists working for them have not stopped. On the contrary, the Special Rapporteur has received reliable information that press harassment is on the increase again, with the courts, generally the military courts, being asked to bring proceedings against journalists accused of alleged insults to the armed forces.

48. On 25 August 1988, according to one opposition source, there were 24 journalists indicted for a wide variety of such offences. According to a statement issued by the Government on 5 August 1988, proceedings had been brought against 24 journalists on the above-mentioned grounds, of whom eight had been indicted (one of them twice) and another had been sentenced to a year and a half of night imprisonment.

49. With regard to these proceedings against journalists, the Special Rapporteur wishes to point out that, while some articles or comments by the press could in any country be regarded as particularly harsh criticisms and even as exceeding certain reasonable limits on the freedom of expression recognized in a representative democracy, at least the articles he has seen which have resulted in proceedings being brought against journalists should not have been grounds for such trials, especially on the eve of such an important political event as the plebiscite, when the right to vote is being put into practice, in sui generis conditions, in order to find a way of moving towards a fully democratic society.

50. In the Special Rapporteur's view, the following example illustrates the point. In an interview published in a weekly magazine in 1987 concerning a hunger strike by 11 prisoners which had so far lasted 26 days, the interviewee, a lawyer for one of the prisoners, said among other things that "the Vasili case is just one more example of what Special Prosecutor Torres is capable of doing ... Torres does as he pleases ... Public opinion must understand that the system of military justice has become the legal tool of repression ... There can be no question that, if anyone here dies or comes to harm, Special Prosecutor Torres will be most to blame ..." The Special Rapporteur does not feel that the statements cited could, logically and democratically, have been grounds for bringing proceedings against the journalist who conducted the interview. However, what actually happened was that both he and the lawyer who expressed the above opinions were put on trial.

51. This precarious situation of the Chilean press is of great concern to the Special Rapporteur, even though there are a great many news media in the country, some of them in opposition hands, that express themselves with exceptional vigour. He is repeating in this report what he said in his fifth and sixth reports, but he now feels it necessary to place special emphasis on this issue, since not even the imminence of the plebiscite has put a stop to the harassment of journalists. In fact, according to a reliable source, between January and June 1988 there were 64 cases in which proceedings were sought against members of the press. Proceedings were even requested long after the event, something which the Special Rapporteur not only finds inexplicable but also sees as impinging on freedom of expression and the freedom to criticize the functioning of State institutions, both of which are essential to citizens' exercise of their right to monitor the behaviour of those who govern them.

52. The Special Rapporteur has been voicing his concern about the trials of journalists to the Chilean Government since May 1988, and he even expressed his views in a letter to Ambassador Luis Escobar on 24 June 1988. One of the paragraphs of that letter reads as follows:

"Except in cases of slander, libel or defamation against persons belonging to the Government or the armed forces - where an accusation would be understandable - strong and even immoderate criticism of those public institutions could and should be viewed with a greater sense of tolerance and more in keeping with democratic practices. This, Sir, seems to me to be even more important in view of the plebiscite and, in general, the transition to representative democracy. Now more than ever, the Government must generally show restraint. A climate of freedom must prevail in the country so that the plebiscite can be discussed from every point of view, as well as any other issue relating to the necessary changes required by the democratization process."

53. The Special Rapporteur therefore trusts that his words will be heeded and that the problem which so concerns him will be solved. As that eminent United States intellectual, diplomat and politician, Adlai Stevenson, put it, freedom of the press is the mother of all freedoms, and the means of promoting human progress.

54. Another part of these conclusions describes a change for the better in the serious problem of unlawful coercion (a change which the Special Rapporteur had already noted in his previous report). During his visit to Geneva in late August 1988, however, the Special Rapporteur received some very disturbing information from a reliable source to the effect that between January and June 1988 complaints had been filed concerning 22 cases of ill-treatment of various kinds, including torture, which are summarized in section III of this report. That they are included in that summary does not mean that these complaints have been substantiated by courts of law, nor that the Special Rapporteur necessarily believes them, but he is most concerned that they be verified. Another better-informed, non-governmental source later told the Special Rapporteur that the system for monitoring and protecting detainees, referred to in this report and the previous one, is still in operation. However, according to that source, the number of cases of unlawful coercion is greater than the number reported and the number

given by the Special Rapporteur in this paragraph. The same source added that torture is no longer used systematically but is still being used selectively, in an attempt to extract information and confessions from persons detained for alleged crimes against State security and related offences, especially while they are being held incommunicado, and to whom article 11 of the Anti-Terrorism Act is being applied. The Government maintains that such cases, which it describes as "accidental", do not have official approval. On his next visit to Chile in October 1988, as on earlier occasions, the Special Rapporteur will devote particular attention to this problem.

55. Cases of forcible disappearance, both old and new, are also of great concern to the Special Rapporteur. With regard to the older cases, he has already given his views in earlier reports, even accompanied by criticisms of the amnesty decree issued by the Government when the investigation by Judge Carlos Cerda resulted in important revelations and conclusions, and of the behaviour of the Supreme Court of Justice in relation to the actions of the Investigating Judge. The Special Rapporteur reiterates here his profound concern about this serious matter.

56. The Special Rapporteur has received recent, reliable information about the five new cases of forcible disappearance reported in September 1987. According to this information, two of the cases, which had earlier seemed unsubstantiated, are now supported by new evidence and it is felt that, together with the other three, they should be treated as alleged cases of new forcible disappearances attributable to the actions of the police authorities. The Special Rapporteur therefore feels that the Government should give this matter the utmost attention since, as he said in his previous report, this is an especially serious situation and there are even fears for the lives of the five victims (see E/CN.4/1988/7, paras. 114-115).

57. The Special Rapporteur is very pleased that the decision of the Military Appeal Court, commuting the death sentence against three persons, was upheld as a result of the wise intervention of the Supreme Court of Justice; the latter rejected the remedy of complaint brought by the Government against the decision of the Military Appeal Court, a complaint which the Special Rapporteur had considered excessive (see E/CN.4/1988/7, para. 116).

58. The situation of prisoners being tried for crimes against the security of the State and other related offences has not improved. Those whose cases are or will be handled by Ad Hoc Military Prosecutor Colonel Fernando Torres are in the worst position, because the latter does not conduct his proceedings in accordance with the rules of due legal process. For example, he orders detainees to be held incommunicado for long periods - one detainee, Mario Vega Varas was held incommunicado for 46 days - and he tends to handle the vast majority of cases involving detainees allegedly connected with the Manuel Rodríguez Patriotic Front. The Special Rapporteur has been told that some of these detainees, after being held incommunicado by order of Special Prosecutor Torres, are then referred to another court which is the one that is "really competent", meaning, further periods of incommunicado detention.

59. Cases also continue to arise of persons held incommunicado for prolonged periods and then released for lack of evidence.

60. There are also new prison regulations which have exacerbated the situation of detainees. Detainees' relatives have informed the Special Rapporteur that, in their experience, no correspondence, foreign publications or photographs are allowed into the prisons where the detainees are being held. Moreover, in August 1988, all visiting cards, which allowed family members to make orderly visits to their detained relatives on visiting days, were withdrawn. As a result, huge crowds now gather, creating a tense situation for prisoners and their visitors, and the latter often have to wait a long time, even in the rain.

61. The Special Rapporteur was told during his December 1987 visit to Chile - and this has been repeated to him since - that he should request that doctors and other professionals be allowed to visit prisoners who are in the situation described in the previous paragraph on days other than general visiting days, so that they can give them better individual attention. The Rapporteur finds this request reasonable and feasible and has already transmitted it to the Government.

62. Although the Special Rapporteur has made recommendations to the Government concerning the situation of the Mapuches, the fact is that, according to one of the largest organizations working to protect the rights of the Mapuche people, the situation is not what he would have hoped. Decree-Law No. 2568 continues to be applied "in all its force", violating the integrity of Mapuche land since the latter is being divided up into individual parcels against the wishes and desires of the indigenous community. Since the occupants of the land are too poor to pay the land tax, the land is being auctioned off and its occupants forced to move, triggering a situation of confrontation with the police forces and dangerous tensions. Thus, as the Special Rapporteur was told by the Mapuche leaders who visited him at Geneva, "Nothing has changed. Everything goes on as before". This worries the Special Rapporteur, who had recommended to the Government that "official policy concerning the Mapuche population should be changed, especially with regard to legislation on land division" (see E/CN.4/1988/7, para. 145).

63. It is urgent that the instruments of ratification of the conventions against torture adopted by the Organization of American States and the United Nations be published, so that the conventions can enter into force in the country. It would also be desirable for the Government to consider ratifying the American Convention on Human Rights (Pact of San José).

64. The same is true of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Despite repeated appeals by the Special Rapporteur, and despite the fact that they have been ratified and promulgated, the Covenants have still not been published in the Diario Oficial, and yet there is no obstacle whatsoever to publishing the Conventions and Covenants in that record.

65. Although the Chilean economy is flourishing, workers' wages are distressingly low. This is an unjust and exasperating contradiction and is contrary to human rights.

66. The Government has told the Special Rapporteur that, under its economic plan and given all the difficulties in implementing it, especially the crushing external

debt, greater priority has been given to the unemployment problem than to wage increases, although the Government is aware of the wage problem and is trying to solve it.

67. The Special Rapporteur feels that this is a serious matter and one which has an adverse effect on the enjoyment of social and economic rights by the working people of Chile. The latter should not go on being excluded from the economic well-being of the nation, to which they make a decisive contribution, and the Government should put into practice plans to distribute the country's wealth more equitably.

68. The situation of shantytown residents, particularly in Santiago, continues to be a source of special concern for the Special Rapporteur for he is aware of their situation and is determined to promote their cause with renewed vigour, as a particularly important way of fulfilling his mandate. Moreover, the Special Rapporteur has so far worked tirelessly to convey to the Government his concern about this issue.

V. RECOMMENDATIONS

69. The fight against unlawful coercion, and against torture in particular, must be vigorously pursued until this odious affront to the fundamental dignity of each and every individual has been eliminated and there is respect for the due legal process essential for safeguarding the inherent freedom of every individual, particularly when he has lost such freedom temporarily or is in danger of losing it.

70. For the foregoing to come about, the Government must redouble its efforts, with ever greater dedication, determination and effectiveness, to bring to the attention of lesser authorities responsible for interrogations and for holding persons incommunicado the official attitude of opposition to such practices as stated in a Government instruction that the Special Rapporteur has been able to read.

71. Likewise, the agreements signed with the International Committee of the Red Cross must be adhered to faithfully and revised in the light of experience in order to make them increasingly effective.

72. In this same connection, the Government and Chilean society as a whole must co-operate fully with the International Committee of the Red Cross, which has done and continues to do extraordinary, essential and laudable humanitarian work.

73. The Special Rapporteur considers it essential to the democratic life of the country that the Government ensure, as an essential and fundamental priority, that its police authorities co-operate in the investigation of the infamous cases of the persons whose throats were cut, those who were murdered on the night of 5-6 September 1987, those who were burned, and those who died in "Operation Albania" or the "Corpus Cristi Killings". These extremely grave cases seriously jeopardize the situation of human rights in Chile since the corresponding complaints before the courts implicate members of the armed forces. For the

Government to make good its promises to improve the human rights situation, it must make the necessary effort to shed light on these sinister events, which are obviously linked to the country's political situation and, in particular, to the strong undercurrent of bitterness and violence that is sapping Chilean society, although some Chileans seem unaware of this element that is tearing Chilean society apart and preventing it from living in harmony.

74. The Government must make a similar effort to find out who the people are who engage in the cowardly and irresponsible intimidation of those who do not support Government policy. This practice seriously undermines the enjoyment of freedom by many Chileans and casts a dark shadow over the situation of human rights in Chile.

75. The Government must also act vigorously and in accordance with the rule of law against those who, in armed gangs, attack official figures.

76. The constitutional fundamental act relating to the National Congress must be completed without further delay, so that citizens can participate in its discussion as part of the process of establishing the necessary representative democracy that will protect human rights.

77. There must also be an end to the system of enacting so-called "secret laws" which undermine the right of individuals to be protected by the principle and practice of democratic legality.

78. The Government must, as a matter of urgency, undertake a careful reform of the Anti-Terrorism Act, the Firearms and Explosives Control Act, the Internal Security of the State Act, the Code of Military Justice and the Act supplementing article 8 of the Constitution. These laws contain excessively harsh provisions which are contrary to liberal and democratic penal law and to the goal of achieving social harmony, in view of which it is inappropriate to further arouse the feelings of persons who are subject to draconian provisions, or their relatives.

79. Similarly, both the Government and the armed forces must change their attitude to the press and to journalists in particular, in order to end a situation in which the latter are frequently required to face legal proceedings for having criticized the armed forces or the Government in exercising freedom of expression and the right of the governed to monitor the activities of those who govern them. This necessary degree of self-control can be achieved without sacrificing the possibility of penalizing actions which under proper legal doctrine constitute libel, slander or defamation. If the Government and the armed forces show moderation in this sensitive area of freedom of the press, they will not only highlight the fact that there are many diverse news media in Chile but also lend weight to official statements about the transition to democracy. "Brute force without wisdom falls by its own weight" (Odes, Horace).

80. Likewise, in keeping with other initiatives that would accord with the recommendations made in the preceding paragraphs, and on strictly humanitarian grounds, the Special Rapporteur recommends the pardoning of Mr. Clodomiro Almeyda Merino, former Minister for Foreign Affairs of Chile, and of journalist Juan Pablo Cárdenas, editor of the magazine *Análisis*.

Mr. Almeyda Merino should also be able to benefit from a pardon, in accordance with the principle of clemency under liberal and democratic penal law, as a result of the Government's laudable decision to put an end to the penalty of administrative exile. The Special Rapporteur therefore reiterates the plea he made on behalf of both individuals in a letter to Ambassador Mario Calderón Vargas on 2 September 1988.

81. In order to relax the present climate in Chile and promote the cause of human rights, and also for humanitarian reasons, the Government and the armed forces should drop the proceedings now being brought against journalists. For the same humanitarian reasons, the Special Rapporteur recommends that the Government pardon anyone sentenced in the current proceedings against journalists.

82. Both the Government and sectors of Chilean society allied with or opposed to it must make a special effort to combat violence, whatever its source, and to lessen the destructive impact of the bitterness aroused by recent or distant causes. Radicalism deepens divisions and prevents societies from voicing their differences democratically in the quest for reasonable solutions to the political problems that assail any country. "A radical is a man with both feet firmly planted in the air", Franklin D. Roosevelt said in 1939. Reckless radicalism or extremism, twins that detest the word tolerance, are natural and powerful adversaries of the cause of human rights.

83. The above is, without question, particularly and tragically true of terrorism, and society as a whole, distancing itself from the teachings of radicals or extremists of any kind, must condemn and combat terrorism with the appropriate weapons of democracy, but never with the reprehensible and counter-productive weapons of the doctrine of national security so beloved of dictatorships.

84. The Government and the different sectors of Chilean society must endeavour to co-operate effectively with the victims of terrorism and their relatives, as well as with the victims of torture and disappearance and their relatives, in order to alleviate their suffering and contribute to the process of rehabilitation.

85. The Government must redouble its efforts to prevent violent deaths attributable to members of the police force, even if this should prove to the latter's detriment. Although official violence was not widespread during the period covered by this report, as it had been in other periods, according to a reliable non-governmental source the cases reported for which there is solid supporting evidence seem to indicate that an attitude persists that is manifestly inappropriate. For the benefit of those thought to have been the victims of violent deaths and for the benefit also of social harmony, the Special Rapporteur hopes that the Government or the courts will be able to demonstrate that the complaints in question are groundless.

86. More recently, when the name of the candidate designated for the plebiscite by the Board of Commanders-in-Chief was announced, three people were allegedly killed by carabineros during public demonstrations in Santiago.

87. The Special Rapporteur trusts that the complaints of alleged human rights violations that he has received, and which are recorded in section III of this report under the heading "Complaints of new violations of human rights" without the Special Rapporteur having as yet admitted them, will be dealt with promptly and effectively by the Government, to which the Special Rapporteur gave an opportunity for comment. With regard to the complaints of unlawful coercion of different kinds and intensity, including torture, the Government, by express decision and in response to a suggestion by the Special Rapporteur, even undertook to give an early reply to the memorandum on new complaints, which it considers exaggerated and not based on fact.

88. The Government's reply is contained in another part of this report. The Special Rapporteur has not had time to assess it, however, since it was received after this report was completed (see appendix I).

89. The Government must launch an investigation into the long-standing cases of forcible disappearance not covered by Judge Cerda's investigation. The relatives of the victims continue to suffer the devastating consequences of this cruel disregard for human rights and their cases should never be forgotten.

90. The Government and all sectors of Chilean society must also vigorously seek a means of reviving the cases investigated by Investigating Judge Cerda and abruptly and unjustly closed by the granting of amnesty to those who were beginning to emerge from anonymity as the alleged perpetrators in more than 10 cases entrusted to Judge Cerda. The latter made a laudable attempt to return to the rule of Chilean civil justice, at present severely limited and even crushed by the country's legal order although a Chilean Government politician has made every effort to convince the Special Rapporteur of the contrary, with his dogmatic assertions that contradict the harsh reality experienced daily by lawyers, defendants and even judges. According to that politician, Chilean justice is the best in the world. In the face of such an unrealistic assertion, designed to obstruct any investigation of what really goes on and must be corrected, those who hold such views should be reminded of Jonathan Swift's words in Voyage to Laputa: "there is nothing so extravagant and irrational which some philosophers have not maintained for truth". That could, indeed, be surpassed only by those who engage in activities far removed from philosophy and yet usually pass for academics.

91. The Special Rapporteur is aware of the difficulties of acting on the recommendation made in the preceding paragraph. This issue warrants an imaginative and pragmatic effort, however. For instance, Investigating Judge Cerda or some other judge could be appointed to at least complete the investigation, without prejudice to the amnesty but with the advantage of perhaps learning the truth about what happened to the many people who were the victims of forcible disappearances in the early days of the present political régime. The rest could be dealt with later and viable solutions might emerge in the light of new circumstances. The worst thing would be not to attempt a solution, for then social tensions would persist, along with the anguish of those directly affected by the disappearances.

92. Since prisoners may be held incommunicado only by order of a judge (civil or military), it is essential that, in order to avoid unlawful coercion and on the

basis of the above-mentioned agreements with the International Committee of the Red Cross, the Government and Chilean non-governmental organizations concerned with this important question get together to find a legal means of applying the agreements with ICRC to persons subjected to such judicial incommunicado detention. The Special Rapporteur would like to be of use in this connection.

93. The Special Rapporteur hopes that his other recommendations, contained in earlier reports and not commented on in this report, will be implemented. These include the recommendation, now more necessary than ever, that the Government, the Office of the United Nations High Commissioner for Refugees (UNHCR) (the latter acting on the basis of its experience, for humanitarian reasons and in accordance with the agreement that exists for this purpose with the Government) and organizations concerned with promoting respect for human rights undertake, as a matter of priority, to co-operate with Chileans returning to their country in the difficult task of reconciliation that their return entails.

94. It is essential that the decision of the Director-General of the Policía de Investigaciones, concerning the need to take every precaution to avoid and prevent the use of unlawful coercion, be properly publicized. This would make the decision more effective because, among other things, it would enable citizens to participate effectively in ensuring that the decision is enforced (see para. 12 of this report).

95. Lastly, the Special Rapporteur recommends that this report be read in its entirety, since it is meant to constitute a harmonious whole.

APPENDICES

Appendix I

Reply of the Government of Chile to the complaints contained in section III of this report

The following is the reply of the Government of Chile to the complaints of new human rights violations received by the Special Rapporteur and reproduced in section III of this report. The Special Rapporteur was unable to comment on this reply because it was received at the end of his visit to Chile and after the report had been completed. As a result, the Special Rapporteur's observations and recommendations do not take this reply from the Government into account, and the latter will be considered in his next report to the Commission on Human Rights.

"During his meeting with the representative of the Government of Chile, Ambassador Mario Calderón Vargas, the Special Rapporteur handed over to him a number of complaints of alleged human rights violations which had been brought to his knowledge in the first half of this year.

The Special Rapporteur said that the complaints were being handed over for information purposes and that he would not express an opinion on them until he had received a reply from the Government of Chile, a fact that he would note in his report.

The complaints were brought to the attention of the heads of the services against which the complaints were directed, who immediately ordered that, without prejudice to the judicial investigations undertaken in most of the cases, administrative investigations should be carried out to determine as accurately as possible whether the charges were true.

On his fourth visit to Chile, the Special Rapporteur was received in person by the Director-General of Carabineros, the Director-General of the Policía de Investigaciones and the Director-General of the National Investigation Agency, who handed over to him the information they had thus far compiled.

Without prejudice to the foregoing, the Special Rapporteur was told that any relevant additional information would continue to be transmitted to him through Ambassador Calderón.

On the occasions mentioned, the Special Rapporteur was given files with background information and summary of the investigations carried out, with the request that these be reproduced in the report to the General Assembly. a/

The primary conclusion that can be drawn from all these investigations is that, with some exceptions that are mentioned in the summary in question, the allegations against the carabineros are either groundless or are under judicial investigation.

The complaints against the Policía de Investigaciones were also handed over in the same way, together with a bulky file containing more detailed background information for the Special Rapporteur. a/ The information shows that, in each case, a thorough administrative investigation has been carried out, without prejudice to the judicial action brought (not in all cases) by the complainants.

Thus, in the cases concerning Alberto Recaredo Gallardo Pacheco, Catalina Ester Gallardo Moreno, Roberto Gallardo Moreno and Mónica del Carmen Pacheco Sánchez, all members of the extremist movement MIR, these individuals were never arrested nor even wanted by the Policía de Investigaciones.

According to the findings of the investigation thus far carried out, Francisco Villalón Pérez, Claudio Paredes Tapia and Nelson Garrido Cabrera died when a bomb they were making exploded.

Enriqueta Yao Moreno, a member of the Manuel Rodríguez Revolutionary Front, was arrested pursuant to a judicial warrant for a number of extremely serious criminal offences and placed at the disposal of the competent court.

Horacio Díaz Trujillo was arrested in connection with the attempt on the life of the President of the Republic. He was kept incommunicado for 10 days by order of the court and on 18 December 1987 was placed at the disposal of the competent Military Prosecutor's Office.

Manuel Antonio Ortíz Lecaros, Rosa María Olivier Manriquez, José Armando Muñoz Ramírez, Liliana del Carmen Montenegro Rebolledo, Víctor Herrera García, Ruth Cabrera Hinostroza, Cecilia de la Nieves Novoa Carrasco, Raúl Armando Figueroa Guajardo, Marcos Guajardo Morales, Miguel Arriagada Ramírez, Corina del Carmen Vásquez Ramírez, Cecilia Reyes Rodríguez, René Miranda Barrales, Guillermo Antonio Pavéz Guerra, Carlos Valencia García, Jeanette Valencia García, Mauricio Andrés Valencia García, Osvaldo René Gallardo, Mario Valenzuela Martínez, Lorena de los Angeles Nazal Sagle, Héctor René Miranda Luengo, Roberto Ignacio Ramírez Valle and Manuel Casanova Azagra were neither arrested nor wanted by the Policía de Investigaciones.

Other complaints refer to alleged threats or intimidation which so far have not materialized. It should be recalled in this connection that, as the Director of the Policía de Investigaciones told the Special Rapporteur at their meeting last December, that police force extends protection, without even waiting for a judicial application, to anyone who requests it because he or she has been threatened or intimidated. The effectiveness of this protection is demonstrated by the fact that so far none of these threats has materialized.

The complaints concerning the National Information Agency are also answered by the Agency in the attached documentation." a/

Notes

2/ The documents mentioned are available to Member States in the archives of the Centre for Human Rights.

Appendix II

Comments by the Special Rapporteur on the 5 October 1988 plebiscite

The Special Rapporteur on the situation of human rights in Chile considers it his duty to refer, albeit briefly, to the 5 October 1988 plebiscite held in that country. This will, he believes, enable his seventh report, submitted to the United Nations General Assembly, to be read in the light of that event which is of extraordinary importance for the cause of human rights. The plebiscite will nevertheless be the subject of detailed consideration in the Special Rapporteur's report to the Commission on Human Rights at its forty-fifth session in February and March 1989, a report which will also contain his conclusions and recommendations concerning his fourth visit to Chile from 2 to 10 October 1988.

The plebiscite was a public referendum held in accordance with the Constitution as part of the process set forth in that Constitution for a return to representative democracy. In this case, the purpose of the referendum was to decide, by vote, whether the person designated by the Board of Commanders-in-Chief of the Armed Forces and the Carabineros as the sole candidate to fill the office of President of the Republic until 1998 was accepted or not by the people. In other words, the people had the choice to say in the plebiscite whether or not they accepted the candidate designated by the Board. If they accepted him, the sole candidate, who happened to be the current President of the Republic, would fill that office until the date indicated. Moreover, a year after the plebiscite, general elections would have to be called, with a plurality of parties and candidates, to set up a bicameral National Congress.

If the people voted against the candidate, the current President would remain in office for one more year and elections to designate a new President of the Republic would be held, together with the general elections just mentioned, before March 1990, with the participation of different political parties and candidates.

The plebiscite was held on 5 October 1988, in accordance with legal rules and procedures which offered assurances that the votes of registered electors, who on this occasion totalled the exceptionally high number of over 7,400,000, would be honestly and verifiably recorded.

Citizens turned out in large numbers and behaved with infectious enthusiasm, orderliness and respect for each other's views. The people who worked in the Electoral Service and at the voting tables performed their functions in the proper manner, as did the armed forces and the forces of law and order who were responsible for maintaining public order during the referendum process.

Throughout the day of 5 October, the Special Rapporteur visited a number of voting centres and tables at Viña del Mar, Valparaíso and Santiago. All in all, the Special Rapporteur was able to see in person how the plebiscite was being conducted in places where different social sectors were voting, including a poor shantytown. Everywhere he went, he witnessed the same civic maturity, order and massive and enthusiastic participation, as well as absolute respect for the wishes of the voter, reflected in appropriate voting locations and the respectful and

impartial behaviour of the armed forces and the forces of law and order. Everyone treated him cordially and extended him their full co-operation; voters, the authorities in charge of the electoral process and members of the Government.

The voter turnout for the plebiscite was very high and the abstention rate was minimal.

When the votes were counted it was found that the No vote had won, and spokesmen for the Yes vote and the President of the Republic himself and his Government respected the popular will.

The Special Rapporteur considers it his duty to emphasize in this appendix II that a human right as important as that of political participation so that a people can decide its own destiny peacefully, by means of a secret, universal ballot, was exercised in accordance with generally accepted norms. As a result, the plebiscite enhanced the situation of human rights in Chile not just because it took place at all but also because, among other things, it was responsible for the fact that an end was put to the exile of Chilean citizens and for the lifting of the two states of emergency which had imposed major limitations on the enjoyment of fundamental rights.

The Special Rapporteur also believes that the plebiscite has opened the way for completing the transition to a representative democracy which will safeguard freedoms, and that it has created a state of mind and provided a new starting point for solving the serious problems which, despite the considerable progress already made, still persist in the area of respect for human rights in Chile. Mention of those problems and that progress are made not only here but in the body of this report, especially in the conclusions and recommendations.
