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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Algeria, Australia, Austria, Cuba, Denmark, France, Greece, Italy,
Luxembourg, Mexico, Netherlands, Norway, Portugal, Spain, Sweden
and Yugoslavia: draft resolution

Situation of human rights and fundamental freedoms in Chile

The General Assembly,

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

Noting the obligation of the Government of Chile to respect and protect human rights in accordance with the international instruments to which Chile is a party,

Bearing in mind that the concern of the international community at the situation of human rights in Chile was expressed by the General Assembly in a number of resolutions, particularly resolution 33/173 of 20 December 1978 on disappeared persons and resolution 41/161 of 4 December 1986 in which the General Assembly invited the Commission on Human Rights to adopt the most appropriate measures for the effective restoration of human rights and fundamental freedoms in that country, including the extension of the mandate of the Special Rapporteur,

Considering that the Special Rapporteur proposes to submit to the Commission on Human Rights at its forty-fourth session a final report on the situation of human rights in Chile,

Recalling the pertinent resolutions of the Commission on Human Rights, particularly resolution 1987/60 of 12 March 1987, 1/ in which the Commission decided, inter alia, to extend the mandate of the Special Rapporteur for one year and to consider this subject, as a matter of high priority, in view of the persistence of serious violations of human rights in Chile,

Deploring once again the fact that the repeated appeals of the General Assembly, the Commission on Human Rights and other international organs to re-establish human rights and fundamental freedoms have been ignored by the Chilean authorities,

Considering the reports prepared by various non-governmental organizations which have made public the serious violations of human rights in Chile,

Observing that the maintenance of states of emergency constitutes a source of frequent violations of human rights and gives rise to the arbitrary intervention of the public authorities in the free exercise of democratic activities,

Noting that, although opposition publications have in some cases been authorized, these are frequently subjected to arbitrary restrictions and limitations, including the detention and prosecution of their editors,

Regretting that measures taken by the Government of Chile, such as signing international instruments against torture and authorizing the International Committee of the Red Cross to visit places of detention in some cases, have not put an end to the practice of torture and arbitrary detention,

Noting that, in the absence of an institutional framework for holding free elections, the adoption of laws on political parties and electoral registration do not constitute an expression of the people's sovereignty or meet the basic requirements of a democratic rule of law nor comply with the principle of non-discrimination on grounds of political or other opinions recognized in the International Covenant on Civil and Political Rights, 2/

1. Takes note with interest of the provisional report of the Special Rapporteur on the situation of human rights in Chile, 3/ submitted in accordance with Commission on Human Rights resolution 1987/60;

2. Welcomes the positive fact that the Government of Chile permitted the Special Rapporteur to visit the country again in March 1987, providing him with its continuing co-operation and free access to the facilities for conducting his

1/ See Official Records of the Economic and Social Council, 1987, Supplement No. 5 (E/1987/18 and Corr.1 and 2), chap. II, sect. A.

2/ Resolution 2200 A (XXI), annex.

3/ A/42/556 and Corr.1.

investigation and expresses its confidence that a further visit will be authorized on the same conditions in the immediate future. At the same time, it regrets that this co-operation of the Government of Chile with the efforts of the United Nations has not led to a substantial improvement in human rights and fundamental freedoms;

3. Expresses its deep distress at the absence of a legal and political structure which protects the unrestricted exercise of human rights and fundamental freedoms, a basic condition for the free expression of the people's sovereignty;

4. Again expresses its conviction that a legal and political order based on the expression of the people's will through an electoral process open, on an equal footing, to all citizens and on free elections, is fundamental for full respect for human rights in Chile as it is in any other country;

5. Expresses its deep concern at the seriousness of the significant and well-documented complaints of serious violations of human rights in Chile, as described in the report of the Special Rapporteur, which refers to violations of the rights to life, physical and moral integrity, liberty, security, due process and procedural guarantees, the right to enter and leave the country freely, freedom of movement and freedom of speech and information;

6. Expresses its distress at the denial of fundamental rights and freedoms through the maintenance of arbitrary executive powers during the prolonged period in which states of emergency have been in force, at the climate of insecurity, the use of unlawful coercion, torture and ill-treatment by the security forces, the renewal of administrative banishments and the practice of forced disappearances, as well as the existence of bands and ps, whether private or connected with the security forces, that engage with pun in actions ranging from intimidation to assassination;

7. Expresses its concern at the denial by the Chilean authorities of the exercise of the rights of free expression, assembly and association, through the use of repressive methods and violent responses to social and political opposition demonstrations, in particular, military searches of marginal settlements and university premises and acts of intimidation against journalists and religious and lay human rights bodies;

8. Expresses its grave concern at the ineffectiveness of the government authorities in preventing the ill-treatment of individuals by the military, police and security forces and expresses particular concern that the judiciary has often failed to act independently and that the competent authorities have failed to take the necessary steps to conduct full investigations and prosecute those responsible for the numerous unsolved cases of abduction, torture, disappearance and murder;

9. Urges the Chilean Government to respond to the requests of various social and political sectors for the early, unconditional re-establishment of a pluralist democracy;

10. Emphasizes the need for the Government of Chile to restore and respect human rights in conformity with the principles of the Universal Declaration of Human Rights and to comply with the obligations it has assumed under various

international instruments, so that the principle of legality, democratic institutions and the effective enjoyment and exercise of human rights and fundamental freedoms may be restored, and, in particular:

(a) Immediately put an end to the application of articles 8 and 9 of the Constitution, and supplementary legislation, under which serious and continuing violations of human rights, in particular the rights to life and freedom of thought, are being committed in the country;

(b) Likewise put an immediate end to the state of emergency and to the arbitrary practice of declaring "constitutional states of emergency", and amend legislation, including the laws permitting the arbitrary use of such states of emergency, so as to bring it into line with guarantees of human rights, as defined in international instruments;

(c) Immediately put an end to all forms of physical and psychological torture and effectively respect the right to life and to physical and moral integrity, and desist furthermore from intimidation and persecution, abductions, arbitrary arrests, detention in secret locations, as well as the practices of incomunicado detention and assassination;

(d) Proceed as a matter of urgency, through judicial and administrative action, to investigate all reports of deaths, torture, abductions and other human rights violations by the military, police and security forces, as well as by bands and groups, whether private or connected with the security forces, and punish those found guilty of such violations;

(e) Investigate and clarify the fate of persons who have been arrested and subsequently disappeared, without, however, allowing the application of amnesty law 2191 of 18 April 1978 to obstruct the identification and prosecution of those responsible;

(f) Ensure the independence of the judiciary and the maximum effectiveness of judicial remedies, particularly amparo and habeas corpus, and prevent the intimidation of judges, defence lawyers and witnesses;

(g) Reorganize the police and security forces so as to help put an end to persistent human rights violations;

(h) Re-establish the jurisdiction of the civilian courts over matters within their competence which have been delegated to the military courts and put an end to the appointment of ad hoc prosecutors by military judges, as well as to arbitrary procedural measures and death sentences imposed for political reasons;

(i) Guarantee that anti-terrorist legislation shall not be used against persons who have not committed terrorist acts, that persons accused of acts of violence or terrorism shall be accorded due process of law and respect for their rights, and that the accusation of terrorism shall not be adduced as justification for any abuse of authority, torture or inhumane treatment;

(j) Respect fully the right of nationals to live in and freely enter and leave their country, and put a definite end to the practice of administrative banishment or internal exile and to forced exile;

(k) Restore the full enjoyment and exercise of economic, social and cultural rights, particularly labour and trade union rights and freedom of speech and information, and preserve the socio-cultural identity of the indigenous population;

(l) Respect the activities of institutions, non-governmental organizations and persons related to the protection and promotion of human rights;

11. 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.
