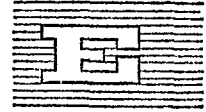


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QUESTION OF HUMAN RIGHTS IN CHILE

Note by the Secretariat

The Special Rapporteur on the situation of human rights in Chile has prepared the present report in accordance with resolution 1983/38 of the Commission on Human Rights, of 8 March 1983. This report supplements the reports presented to the General Assembly at its thirty-eighth session (A/38/385 and A/38/385/Add.1) in accordance with the same resolution.

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INTRODUCTION

1. In paragraph 11 of resolution 1903/11 of 8 March 1983, the Commission on Human Rights decided to extend the mandate of the Special Rapporteur for a year and requested him to report on the subsequent development of the situation of human rights in Chile to the General Assembly at its thirty-eighth session and to the Commission on Human Rights at its fortieth session. The Economic and Social Council endorsed this resolution in its decision 1983/149 of 27 May 1983.
2. Because of the untimely death of the then Special Rapporteur, this mandate, the present Special Rapporteur, was appointed on 1 June 1983 by the Chairman of the Commission on Human Rights at its thirty-ninth session. He submitted his report to the General Assembly in documents A/38/385 of 17 October 1983 and A/38/385/Add.1 of 22 November 1983, entitled "Protection of human rights in Chile".
3. On 16 December 1983 the General Assembly, by 89 votes in favour, 17 against and 38 abstentions, adopted resolution 38/102, on the situation of human rights and fundamental freedoms in Chile. Paragraph 14 of the resolution "invites the Commission on Human Rights to study in depth the report of the Special Rapporteur at its fortieth session and to take the most appropriate steps for the effective restoration of human rights and fundamental freedoms in Chile, including the extension of the mandate of the Special Rapporteur for one more year, and requests the Commission to report, through the Economic and Social Council, to the General Assembly at its thirty-ninth session".
4. The Special Rapporteur sought to obtain the co-operation of the Government of Chile in the context of the implementation of Commission on Human Rights resolution 1983/38, but he was unsuccessful in his efforts. 1/ Further on 8 December 1983, the Permanent Representative of Chile to the United Nations (New York) reiterated the position of his Government that "Chile **would** refuse to become involved with any procedure stemming from the Commission on Human Rights or the General Assembly as long as it continued to be the victim of discriminatory treatment". 2/ However, the Special Rapporteur must recall that the Government of Chile sent two memoranda to the Secretary-General concerning developments in the situation of human rights in Chile and these were taken into account in this supplementary report to the General Assembly. The Special Rapporteur expresses the hope that this gesture of the Government of Chile will be the first step in the establishment of co-operation between the Government and the Special Rapporteur in the fulfilment of his mandate. 3/
5. For his part, the Special Rapporteur has commented on the continuing refusal of the Government of Chile to accept his competence and recalls that similar special procedures established by the Commission on Human Rights "have not required the express consent of the State concerned, since those procedures have been established on the basis of the general and implicit powers of the Commission and not on the basis of Economic and Social Council resolution 1503". 4/

1/ A/38/385, paras. 5 to 8.

2/ A/C.3/38/SR.69, para. 51.

3/ A/38/385/Add.1, paragraphs 3 and 4.

4/ A/38/385, paragraph 10.

6. On its side, the General Assembly deplored once again the fact that "the repeated appeals of the General Assembly, the Commission on Human Rights and other international organs to re-establish human rights and fundamental freedoms have been ignored by the Chilean authorities, which continue to refuse to co-operate with the Commission on Human Rights and its Special Rapporteur". 5/ It also "calls again upon the Chilean authorities to co-operate with the Special Rapporteur and to submit their comments on his report to the Commission on Human Rights at its fortieth session". 6/

7. In preparing this document, the Special Rapporteur has adopted the method used in his main report to the General Assembly. 7/ The lack of co-operation by the Government has rendered the Special Rapporteur's task more difficult in determining later developments in the human rights situation in Chile. Moreover, unlike the procedure followed for the addendum to the report to the General Assembly, 8/ the Government has not provided the Secretary-General with subsequent information or comments.

8. With regard to the period covered, the present document constitutes an updating of the development of the human rights situation in Chile during the months of September, October and November 1983. Consequently, it should be read in conjunction with the report submitted to the General Assembly in documents A/38/385 and A/38/385/Add.1. A number of data relating to the month of December 1983 have been incorporated in the present report, to the extent possible and in the interests of greater accuracy.

I. THE LEGAL FRAMEWORK GOVERNING HUMAN RIGHTS

A. The Constitution and emergency measures

1. The Political Constitution of 1980

9. The General Assembly once again expressed its concern at the "disruption of the traditional democratic legal order and its institutions, through ... the existence of a Constitution which does not reflect a freely expressed popular will and the provisions of which not only fail to guarantee the enjoyment of human rights and fundamental freedoms but also suppress, suspend or restrict the exercise of those rights and freedoms". 9/ Accordingly, it once again requested the Chilean authorities "to restore the principle of legality, democratic institutions and the effective enjoyment and exercise of civil and political rights and fundamental freedoms without any discrimination". 10/

5/ Preambular paragraph 5 of General Assembly resolution 38/102 of 16 December 1983.

6/ Operative paragraph 13 of resolution 38/102.

7/ A/38/385, paras. 11 and 12.

8/ A/38/385/Add.1, paras. 3 and 5.

9/ Operative paragraph 3 of General Assembly resolution 38/102, adopted on 16 December 1983.

10/ Operative paragraph 5 of the same resolution.

10. The Special Rapporteur has already referred to the establishment of a Commission for the Study of Constitutional Organic Laws and to the study initiated by the Council of State on the constitutional organic laws relating specifically to the exercise of political rights, inter alia, the formation of political parties, the electoral system, the functioning of a National Congress, etc. 11/ On 19 November 1983, the national press reported on a preliminary draft Organic Law on Political Parties, which had been prepared by a two-man sub-committee appointed by the Council of State and the Commission on Constitutional Organic Laws. According to the text of the preliminary draft, political parties will be "voluntary associations of citizens possessing legal personality which contribute to the functioning of the constitutional democratic regime" (article 1). An enrolment of at least 20,000 persons will be required to set up a political party (article 4). Parties can be disbanded, inter alia, if "the Constitutional Court allows a public claim of unconstitutionality in respect of political organizations and movements or parties on the ground that they propagate doctrines detrimental to the family or advocate violence or a conception of society, the State or the legal order which is of a totalitarian nature or is based on the class struggle" (article 32 of the preliminary draft, in relation to article 8 of the Constitution). Moreover, under article 48 of the preliminary draft it is regarded as a punishable offence for "an association or organization or groups of persons to engage in party political activities without being constituted as political parties under the provisions of the law". The mere fact of so associating the fact of conducting such activities constitutes this offence.

11. With regard to constitutional development, the President of the Republic stated, on 19 October 1983, that "the Government's intention, once the constitutional organic law on political parties is adopted and these parties elect their leaders, is to move ahead with the study and enactment of other political legislation and subsequently establish the National Congress before the date envisaged in the Constitution, if the population gives its approval in a referendum".

12. The Special Rapporteur has noted that, so far, none of the constitutional organic laws announced has been promulgated, with the result that the "political recess" continues to apply and no legal channels exist to facilitate the participation of the people in national public life. 12/ Against this background, the de facto participation of the population in public life continued to manifest itself during September, October and November 1983, in the "days of national protest" and other public demonstrations the consequences of which will be analysed further on. 13/ With regard to these "protests", the General Assembly expressed its concern "at the violent suppression of the ever larger and more widespread popular protests in the face of the incapacity of the authorities to restore human rights and fundamental freedoms ... which have resulted in serious, flagrant and systematic violation of human rights, including mass detentions and numerous deaths". 14/

11/ A/38/385/Add.1, para. 7.

12/ A/38/385, paras. 17 and 18; A/38/385/Add.1, para. 8.

13/ See chap. III, A, 1 (a): Arrests at public gatherings.

14/ Operative paragraph 8 of General Assembly resolution 38/102, adopted on 16 December 1983.

13. The Special Rapporteur has also referred to a constitutional public action brought before the Constitutional Court on 12 September 1983 by a group of seven lawyers with a view to having the present Minister of the Interior declared legally incompetent to carry out his duties on the grounds that, on 6 September 1983, the Minister had publicly stated that "citizens should ... form neighbourhood units with mutual support groups and block committees to protect what we have". ^{15/} On 27 October 1983, the Constitutional Court rejected this constitutional public action on the basis that none of the allegations against the Minister of the Interior represented "a ground of incompetence preventing him from remaining in his post, for which reason the complaint against him must be dismissed in accordance with the provisions of article 82 (10) of the Constitution". It also ruled that "it is not for the Constitutional Court to determine the responsibilities and penalties arising from violation of article 6 of the Constitution" (article 6 states: "the actions of the organs of the State must be subject to the Constitution and the norms established in conformity therewith"). With regard to the appeal of the Minister of the Interior to the people to organize themselves in order to quell disturbances and protect themselves from unlawful aggression, as a contribution to and not a substitute for the activities of the law enforcement authorities, the Constitutional Court ruled that this "does not violate any of the constitutional and legal rules mentioned in the application but merely constitutes the expression of the basic right of individuals to self-defence and the constitutional duty of Chileans to help maintain internal order. Thus, in the opinion of the Constitutional Court, the statements of the Minister of the Interior are consistent with article 22 of the Constitution, which provides that "Chileans have the fundamental duty to honour their fatherland, defend its sovereignty and contribute to the preservation of national security and the essential values of the Chilean tradition". For these various reasons, the Constitutional Court dismissed the complaint against the Minister of the Interior.

2. Institutionalization of the state of emergency

14. The General Assembly once again expressed its concern at the "institutionalization of various states of emergency" and requested the Chilean authorities "to lift the regime of exception and especially the practice of declaring states of emergency, under which serious and continuing violations of human rights are committed". ^{16/}

15. The Special Rapporteur has already reported on the ending of one of the two states of emergency on 28 August 1983 but which was followed by the extension of the declaration of the "state of emergency due to threats to internal peace" under Decree No. 1043 of 7 September 1983. ^{17/} It will be recalled that the President of the Republic is responsible for declaring the latter state of emergency when "acts of violence designed to disrupt public order occur or when there is a danger that internal peace might be disturbed" (twenty-fourth transitional provision of the Constitution). This provision affects the right to freedom, the right of assembly and the freedom of information and movement. In addition, mention must be made of the application of Decree No. 147, of 8 September 1983, of the Ministry for National Defence, under which the same military commanders who had previously acted as

^{15/} For background, see A/38/385/Add.1, para. 12.

^{16/} Operative paragraphs 3 and 5, respectively, of General Assembly resolution 38/102, adopted on 16 December 1983.

^{17/} A/38/385/Add.1, paras. 14 and 15.

"Commanders of Emergency Zones" were appointed "Garrison Commanders". 18/ Under this Decree, the Garrison Commanders are responsible for "ensuring the co-operation of the authorities of the forces placed under their orders and keeping those authorities informed of any matter which may affect the performance of their obligations". It should be noted that this Decree does not stipulate how long the "Garrison Commanders" will remain in office, although article 1 of the Decree describes them as "temporary". Under this procedure, Garrison Commanders have been appointed in every region of the country. Those measures plainly have the effect of keeping the whole of Chile militarized.

16. Consequently, the Special Rapporteur maintains his conclusion that "there has been no substantial change in the process of institutionalization of the state of emergency, given the maintenance of the transitional provisions of the Constitution and the existence of other secondary legal provisions". 19/ Among such provisions, mention should also be made of Act No. 18,015 of 14 July 1981 20/ which imposes severe penalties on persons violating or infringing "the measures adopted by the President of the Republic in exercise of the powers conferred on him by the twenty-fourth transitional provision of the Political Constitution of the Republic". This situation would appear to be incompatible with the provisions of the International Covenant on Civil and Political Rights, and its continuation for 10 years already is difficult to justify in the light of article 4 (1) of the Covenant. 21/

B. Procedural guarantees

1. Nature, availability and effectiveness of remedies

17. The General Assembly reiterated "its serious concern at the inefficacy of the recourses of habeas corpus or amparo in view of the fact that the judiciary in Chile does not exercise its functions fully in this respect, except with considerable restrictions". 22/

18. The Special Rapporteur has already reported that the limitation imposed by article 41 (3) of the Constitution (suspension of the remedy of protection in respect of measures taken in accordance with the provisions governing the state of emergency) has been repealed. Still in force, however, are the limitations on the remedy of amparo in respect of persons subject to measures adopted in conformity with the twenty-fourth transitional provision of the Constitution, since in this case the only valid remedy is an application to set aside addressed to the President of the Republic through the Minister of the Interior. In these circumstances, the courts do not, generally speaking, consider themselves competent to characterize the acts which gave rise to such measures, and limit their action to "ascertaining" whether the procedures provided for in the Constitution itself and the other laws have been followed. In this connection, the Special Rapporteur must maintain his earlier opinion that "the remedy of habeas corpus and similar remedies should not be suspended when the protection of human life and freedom is involved, since these are rights which do not admit of derogation, even during the period when a state of emergency is in effect, as stipulated in article 4 of the International Covenant on Civil and Political Rights". 23/

18/ A/38/385/Add.1, para. 16 (c).

19/ A/38/385/Add.1, para. 18.

20/ Diario Oficial of 27 July 1981.

21/ A/38/385/Add.1, para. 18.

22/ Operative paragraph 4 of General Assembly resolution 38/102, adopted on 16 December 1983.

23/ A/38/385/Add.1, para. 19.

19. Table 1 below shows a steady increase in the number of applications for amparo filed in the city of Santiago during the first 10 months of 1983. This table is based on data communicated to the Special Rapporteur by a number of Chilean organizations concerned with the defence of human rights:

Table 1
Applications for amparo
City of Santiago, 1983

Month	On behalf of prisoners		Early applications		On behalf of exiles		Total
January	10	(22)	5	(5)	3	(3)	18 (30)
February	12	(32)	6	(8)	-	(-)	18 (40)
March	64	(138)	8	(8)	1	(1)	73 (147)
April	24	(32)	4	(5)	-	(-)	28 (37)
May	88	(321)	6	(9)	-	(-)	94 (330)
June	76	(149)	8	(8)	-	(-)	84 (157)
July	54	(126)	17	(19)	-	(-)	71 (145)
August	73	(222)	10	(13)	2	(2)	85 (237)
September	91	(158)	13	(18)	2	(2)	106 (178)
October	24	(37)	10	(11)	11	(11)	45 (59)
Total	516	(1 207)	87	(104)	19	(19)	622 (1 361)
Totals for the same period:							
1981	223	(369)	77	(124)	14	(14)	314 (513)
1982	178	(315)	32	(77)	11	(15)	221 (407)

Note: The figures in parentheses indicate the number of persons covered by the applications.

20. During the first 10 months of 1983, a total of 622 applications for amparo were filed on behalf of 1,369 persons; this is substantially higher than in the same period in 1982 (221 applications) and 1981 (314 applications). Most of the applications filed were dismissed by the courts, whose decisions contained the same features already described by the Special Rapporteur in connection with the procedural defects in the processing of applications and the appointment of "associate judges" to the Chilean higher courts. ^{24/} In this connection, mention must be made of the special characteristics of military jurisdiction (described in the following section), which does not constitute a genuine and regular judicial process.

^{24/} A/38/385, paras. 43 and 44.

21. Against this negative background, the Special Rapporteur has noted some judicial decisions which, despite their exceptional nature, would appear to confirm his hope that the Chilean courts may yet recover their traditional competence in the proper handling of such applications. One of them was the decision rendered on 22 November 1983 by the Santiago Court of Appeal, allowing an early application for amparo filed on behalf of José Santos Tamayo Velasquez, a leader in a working-class community. In its decision, the court stated that "CNI is not empowered to enforce an arrest warrant, since such authority is not provided for in Decree-Law No. 1868, which established it". The court further ruled that CNI detention centres are not "public places". Secondly, in relation to the powers of CNI officials, the Talca Court of Appeal handed down a judgement on 18 October 1983 in which it declared that statements by such officials "can be challenged and can only constitute a legal presumption" and therefore lack full value as evidence. Thirdly, the Court of Appeal of Pedro Aguirre Cerda, in a decision rendered on 18 October 1983, applied the doctrine of a state of necessity in order to reduce the penalty in respect of an offence against the internal security of the State involving a disturbance of the peace allegedly committed by five persons who had participated in a land seizure. In its judgement, the court decided that "given the housing conditions which had been proved to be extremely prejudicial to the development of personal and family life consistent with human dignity", the defendants had, at the time of the commission of the offence, been in a situation such that, in order to avoid imminent harm, they committed an act which produced harm to the property of others. In this situation, there was a concurrence of two circumstances, that is to say, first the reality and imminence of the harm which was sought to be avoided and, secondly, its more serious character when compared with the harm that was in fact caused thereby.

22. Fourthly, in a decision of 7 December 1983, the Santiago Court of Appeal allowed an application for amparo filed on behalf of Tomás Fernando Inostroza Catalán, who had requested that his right to live in Chile and to enter and leave the country freely should be recognized. In this case, the court pronounced on its competence to give a ruling on the merits of an administrative decision to continue to prohibit a person from entering the country. The original decision had been taken during the existence of the state of emergency when it was still in force. Basing itself on its jurisdiction to exercise supreme judicial functions, as a concept inherent in the rule of law, the court declared that one element of this jurisdiction was "the fact that acts of the authorities, whatever their rank, are subject to judicial review in order to ascertain the conformity of those acts with the law". In this specific case, the question that arose was whether the courts were competent to pronounce upon the merits of an administrative act which concerned nothing less than a primary right of the human being... to freely enter his country. The court observed that such a relinquishment of jurisdiction would be repugnant to the "ideals of those who have built up our nation over so many years and shakes the very foundations of the concept of public law". The court also observed that "an application for amparo in respect of measures adopted by virtue of the state of alert and the state is inadmissible only ... when such measures derive from a competent authority and conform to the rules laid down by the Constitution and the law, matters which require the prior opinion of a judicial organ". Consequently, "the ban ... on judicial review of the factual basis for the precautionary measures ordered by the authorities is not absolute either, since ... it applies only if the authorities have adopted such measures in exercise of their powers, a matter which it is for the courts to pronounce upon". The court therefore concludes that there is "no constitutional impediment of any kind to the performance of this court's responsibilities with regard to the application addressed to it". In the specific case, the court observed that the Constitution "places no limitations whatsoever on the powers of a court called upon to rule on an application for amparo resulting from a decree prohibiting entry into the country which was issued during a state of emergency that has been terminated". Commenting on the scope of

article 41 (3) and (7) of the Constitution, the court decided that it was competent to consider whether the administrative measure prohibiting Mr. Inostroza from entering the country was "really necessary". Such a "necessity" would be established "only if the measure is essential to avoid a disturbance of the peace or to prevent national security from being impaired or endangered", which would have to be proved "for the continued infliction of the punishment to be constitutionally legitimate". It was for the administrative authorities to provide such proof and the court found that they had not done so. The Court of Appeal, therefore, allowed the application for amparo and declared that Tomás Inostroza had a right to enter the national territory.

23. The Supreme Court, however, has reversed the decision of the Court of Appeal endorsing the arguments of the Minister of the Interior regarding the inadmissibility of judicial review of the merits of functions imposed by the Executive under a state of emergency pursuant to article 41 (3) of the Constitution. In the opinion of the President of the Chilean Commission on Human Rights, the Supreme Court's decision will have the practical effect of maintaining the ban on the entry of the person concerned "notwithstanding the termination of the state of emergency under which the measure was adopted, and although the sanction is not justified - in other words, although none of the requirements stipulated by the Constitution is met". ^{25/} It therefore seems clear that the Chilean exiles who are affected by administrative measures prohibiting their entry into the country are deprived of any judicial remedy.

24. In these circumstances, the Special Rapporteur reiterates his concern over the existence of emergency legislation (particularly, the twenty-fourth transitional provision and article 41 (3) and (7) of the Constitution) which imposes considerable restrictions on the traditional competence of the courts. For these reasons, the isolated judicial decisions which the Special Rapporteur has been pleased to highlight are exceptional and do not constitute adequate judicial precedents for finding that the remedies of amparo, early amparo and protection, which constitute the right to an effective remedy, have recovered their effectiveness.

2. Military jurisdiction

25. In his report to the General Assembly, the Special Rapporteur analysed the disturbing extension of Chilean military jurisdiction which began on 11 September 1973 and culminated on 17 March 1981 in Decree-Law No. 3655, as supplemented by Decree-Law No. 2882 of 22 October 1979 (Diario Oficial of 9 November 1979). ^{26/} The Special Rapporteur also commented on the effect of this development on procedural guarantees, especially where political dissidents are involved. ^{27/}

26. Particular mention should be made of the war-time military courts the jurisdiction of which was restored by Decree-Law No. 3655 of 17 March 1981. The sole article of this decree provides that any offence, whatever its nature, which directly or indirectly results in the death or serious injury of members of the armed forces or the law enforcement authorities - in addition to certain public authorities - "and which, because of its nature or the circumstances in which it was committed, cannot fail to suggest that such persons were the targets because of their official capacity, shall be dealt with by the war-time military courts" under the procedure

^{25/} Solidarida, No. 170, second half of December 1983.

^{26/} A/38/385, para. 50.

^{27/} Ibid., paras. 51 and 52.

and subject to the penalties specifically prescribed for in time of war. The Special Rapporteur has already described how these courts are constituted, their summary procedure and their extraordinarily destructive effect on basic rights such as equality before the law, equal protection in the exercise of rights and the right to a defence, 28/ all of which are provided for in article 14 of the International Covenant on Civil and Political Rights which, it must be recalled, has been ratified by Chile.

27. A court martial of this kind was convened on 25 November 1983 to try five persons (three men and two women) accused of involvement in an attack planned by a commando unit which on 30 August 1983 is alleged to have murdered Major-General (Retired) Carol Urzúa Ibáñez, Intendant for the Santiago Metropolitan Region, his bodyguard Carlos Rivera and his driver Jorge Aguayo. A Special Military Prosecutor requested the death sentence for the three male defendants (Jorge Palma Donoso, Hugo Marchant Moya and Carlos Araneda Miranda) and custodial penalties for the two women (Marta Soto González and Susana Capriles Rojas). They had been arrested on 7 September 1983, together with a further four persons, by CNI officials. According to complaints lodged with the Fifth Criminal Court on 2 November 1983, the three men had been tortured during their fortnight's detention at secret CNI premises situated at 1470 Borgoño Street, Santiago. On 22 September 1983 an order was issued for six of the prisoners to be detained incommunicado. On 3 October 1983 the incommunicado regime was lifted and on 6 October 1983 an application for protection was filed with the Santiago Court of Appeal on behalf of seven of the original prisoners, alleging that since 22 September 1983 the persons concerned had been under trial "without a committal decision" and "under the war-time procedure", according to Decree-Law No. 3655 of 1981. The application claims that the war-time procedure is contrary to the principle of equality before the law, provided for in article 19 (2) of the Constitution, because there do not exist "either in fact or in law, the prerequisites for the operation of such (military) jurisdiction". These prerequisites are said to be the existence of "situations of external or internal war, with declaration of the respective states of alert and siege". Consequently, "arbitrary distinctions are being made in order to try various persons who, in other circumstances, should be brought before an ordinary court or a peace-time military court with the corresponding procedural guarantees and safeguards". Secondly, this application also maintains that the war-time procedure is contrary to the principle of equal protection of the law in the exercise of rights, since under article 19 (3), fourth paragraph, of the Constitution, "nobody can be tried by special commissions, but only by the court prescribed by law and established beforehand by the law", which, according to the application, is not the case with the procedure challenged, as no war-time situation exists and there has been no declaration of a "state of alert" or a "state of siege".

28. On 2 November 1983 an action of unconstitutionality was brought before the Supreme Court on behalf of the seven persons charged under the war-time procedure. The aim of the action is to have the court declare Decree-Law No. 3655 of 1981 inapplicable, both to the war-time proceedings and to the action for protection brought before the Court of Appeal. Counsel for the applicants base their pleadings on the fact that Decree-Law No. 3655 is "unconstitutional in form and in substance". With regard to form, it is mentioned that the Decree concerned entered into force on 17 March 1981 (the date of its publication in the Diario Oficial), i.e., six days after the entry into force of the Constitution, when the Constitution would require a norm having the status of a law and not that of a Decree-Law, as provided for in its thirteenth, fourteenth, eighteenth and nineteenth transitional articles. Moreover, the contested Decree irregularly amends the Code of Military Justice, which has the

28/ A/38/385, paras. 54-58.

character of a constitutional organic law under article 74 and the fifth transitional article of the Constitution. With regard to substance, the action goes on to state, Decree-Law No. 3655 is contrary to article 39 of the Constitution ("the rights and guarantees ensured by the Constitution to all persons may only be affected in the following exceptional situations: external or internal war, internal disturbances, emergency, and public disaster"), since "given the existing institutional arrangement and the fact that the situation merely involves a state of emergency or a state of danger of disturbance of internal peace, it is inadmissible to restrict those rights, to the same extent as in a war-time situation".

29. The Supreme Court has not yet taken a decision on the substance of the action of unconstitutionality, but it has ordered a stay of the "war-time" proceedings; consequently the Council of War scheduled for 25 November 1983 has not so far been convened.

PART ONE

CIVIL AND POLITICAL RIGHTS

II. RIGHT TO LIFE. RIGHT TO PHYSICAL AND MORAL INTEGRITY

A. Right to life

30. The Special Rapporteur has already described the right to life as "a fundamental right in any society, irrespective of its degree of development or the type of culture which characterizes it, since this right forms part of the norms of jus cogens in international human rights law". 29/ A significant number of violations of this right has taken place in the course of this year. The victims have included, though in a lesser number, some officials who are reported to have met their death as a result of action by extremist groups. The killing of Major-General Carol Urzúa Ibáñez (retired), Intendant of the Metropolitan Region of Santiago, and that of his escort, Carlos Rivera, and his chauffeur, Jorge Aguayo has already been referred to and proceedings in relation to those killings are pending. 30/ In the course of 1983, the national press has reported the deaths of a total of eight members of the Corps of Carabineros: José Cofré, Manuel Valenzuela, Enrique Sandoval, Pedro Efraín Salas, Juan Cáceres, Héctor Fuentealba, José Miguel Jorquera and Francisco Pérez. 31/ The organizations concerned with the protection of human rights, together with a number of political groups have publicly expressed regret at these violations of the right to life.

31. The death of Sebastián Acevedo Becerra on 11 November 1983 in the city of Concepción underlines the growing social tension among the Chilean population in recent months: his two sons had been arrested by CNI agents on 8 November 1983 near Coronel and were reported to be held incommunicado in a secret camp and to be subjected to torture. Sebastián Acevedo, fearing for their physical integrity, unsuccessfully contacted various organizations in an attempt to obtain information about their place of detention and state of health. Finally, on 11 November 1983, in desperation and apparently in an attempt to draw attention to his plight, he stood in front of Concepción Cathedral, sprinkled paraffin over his body and threatened to set himself alight if anyone came near him. A Carabineros lieutenant tried to intervene and Sebastián Acevedo carried out his threat and died of his burns (over 90 per cent of his body) a few hours later in Concepción Hospital.

1. Complaints of abuse of authority or misuse of weapons

32. The Special Rapporteur has informed the General Assembly of 40 cases of killings in alleged clashes as a result of either abuse of authority or misuse of weapons by the security agencies during the period between January and August 1983. 32/ Most of the victims were killed as a result of the misuse of weapons by the security agencies during their interventions in the course of the "days of national protest". These cases would appear to constitute violations of the right to life directly attributable to the conduct of State security agencies. During the period September-November 1983 the Special Rapporteur has received further reports of a similar nature. A brief account of these follows:

29/ A/38/385, para. 62.

30/ See Supra, chapter I-B-2, Military jurisdiction.

31/ Hoy, 4-10 January 1984.

32/ A/38/385, paras. 63-86, and A/39/385/Add.1, paras. 28-34.

33. Ramírez González, Oscar Julio;
Zavala Gallegos, Miguel Angel (la Victoria);
Marín Novoa, Pedro Manuel (Pudahuel);
Gómez Espinoza, Nelson Fernando (la Granja);
Alegría Arriagada, Sergio Segundo (la Cisterna);
Iturra Contreras, Carlos (Concepción).

These six persons died between 8 and 11 September 1983 during the fifth "day of national protest". They are alleged to have been fatally wounded by bullets fired by members of various security services. In the six cases judicial complaints have been filed against the security services for unnecessary violence resulting in death.

34. Ramírez Rubio, Robinsón (Conchalí);
Arellano Muñoz, Jorge Sebastián (Santa Adriana);
Romero Reyes, Roberto Romualdo;
Rodríguez Rodríguez, María Elena (Valparaíso);
Villanueva Ramírez, Sigfrido (Osorno).

According to information from the Chilean Commission on Human Rights, these five persons were also killed during the fifth "day of national protest" by bullets fired by the security services in circumstances similar to those of the persons in the previous group. 33/

35. Acuña Ballesteros, Reinaldo;
Barraza Enríquez, Eduardo Octavio;

Both men died as a result of abuse of authority by carabineros. Reinaldo Acuña died on 3 September 1983 after being shot in the back. According to his father, the carabinero "shot him at point-blank range, from a distance of less than one metre, in a situation in which he could have arrested him". 34/ Eduardo Barraza died on 20 September 1983 as a result of being badly beaten up by two carabineros. According to the Chilean Commission on Human Rights, he was taken to the detainees' section of the Gendarmería, where "he made a statement placing on record the fact that he had been beaten by carabineros". 35/

36. Vergara Valenquela, Lucía Orfilia;
Peña Díaz, Sergio;
Villavela Araujo, Jorge Arturo;
Ratier Noguera, Hugo Norberto;
Salgado Froquián, Alejandro.

These five persons died on 7 September 1983 in two clashes with the security agencies which are alleged to have occurred simultaneously in the commune of Las Condes and the commune of Quinta Normal, both in Santiago. According to the CNI agents who took part in these events, the five victims were involved in the assassination of the Regional Intendant of Santiago and his two escorts on 30 August 1983. However, evidence from various sources, together with the reconstruction of the events, provide grounds for suspecting that the alleged "clashes" were used as a cover for "executions". 36/

33/ Chilean Commission on Human Rights, Informe del mes de septiembre de 1983, pp. 12-14.

34/ Ibid., p. 77.

35/ Ibid.

36/ Ibid., pp. 14 and 15.

37. Durán Torres, Oscar Omar (17 years, Conchalí).

He was seriously injured on 9 September 1983 and died in hospital on 9 October 1983. The security forces fired at him, hitting vital organs, during the fifth "day of national protest". 37/

38. Zamora Castillo, Pedro Germán (17 years, Vicuña Makenna);
Pávez Pino, René Enrique (18 years, Vicuña Makenna);
Gálvez Díaz, Raúl Fernando;
Orellana Pino, Silvia (Pudahuel);
Zabala Barra, Rubén Federico (17 years, Concepción).

These five persons died while taking part in various demonstrations on 11, 12 and 13 October 1983 on the occasion of the sixth "day of national protest". In the case of Raúl Gálvez, on 19 October 1983 his relatives lodged a "complaint for unnecessary violence causing death" with the Office of the Military Prosecutor. 38/

39. Farías Naranjo, José Carlos (Melipilla).

On 27 October 1983 he was intercepted by a Carabineros patrol which, without explanation or reason, savagely beat him up and left him in the street. He was helped by friends but on 12 November 1983 his mother found him dying in bed; he died before reaching hospital.

40. Hugo Beiza, Victor Hugo (Concepción).

He died on 3 November 1983 as a result of an "exchange of fire with the security services", according to the official version. However, in a complaint for homicide lodged on 9 November 1983, his wife stated that "the body of the deceased had a fractured arm, burns and haematomas, from which it is apparent that he was subjected to unlawful maltreatment immediately prior to his death by shooting".

41. Mansilla Martínez, Ricardo (18 years, Nuñoa).

On 18 November 1983 a mass political demonstration against the Government was held in the Parque O'Higgins. As it was ending, incidents occurred in which carabineros threw tear-gas grenades and used water cannons. According to the Chilean Commission on Human Rights, "some witnesses stated that Mansilla was struck on the head" while others said that "he was hit by a man-made object". The official version was that "his death was due to cardiac arrest". 39/

42. Opazo Lara, Luis Humberto (Talcahuano, Concepción).

According to the versions reported in the Concepción press, Luis Opazo was wounded on 3 November 1983 in the village of Las Higueras de Talcahuano, when he was hit in the spine by a bullet fired by a member of the Talcahuano Carabineros in civilian clothes. He died on 5 November 1983, the death certificate stating

37/ Ibid., Informe del mes de octubre de 1983, p. 6.

38/ Ibid., p. 7.

39/ Chilean Commission on Human Rights, Informe del mes de noviembre de 1983.

as the immediate cause of death "bilateral bronchopneumonia" resulting from mediastinal bruising by a bullet" as the original cause. According to his brother, "the carabineros left my brother lying bleeding, without attempting to take him to hospital right away", and tried to give the impression that "they found him wounded, having been shot by persons unknown". 40/

43. The foregoing 28 cases of violations of the right to life, together with the 40 cases to which the Special Rapporteur has already referred in his report to the General Assembly, represent 68 cases of death through unnecessary violence, abuse of authority, misuse of weapons or alleged clashes with the security agencies during 1983. This figure is distinctly higher than in previous years; the Special Rapporteur accordingly considers this to be a matter of serious concern and endorses the General Assembly's appeal to the Chilean authorities to "respect the right of persons to life and physical integrity". 41/

44. With regard to judicial investigations of complaints lodged with the courts against security agency officials for abuse of authority, misuse of weapons or unnecessary violence resulting in death, in 1983 most such investigations have not yielded judicial decisions which clarify the facts and punish those responsible.

45. Nevertheless, the Special Rapporteur wishes to draw attention to a judicial investigation which, exceptionally, has succeeded in identifying and bringing to trial the persons presumed to be responsible for the death of young Pedro Manuel Marín Novoa on 11 September 1983. In an official communication dated 18 August 1983, Carol Urzúa Ibáñez, then Intendant of Santiago, informed all mayors of the Santiago region that on 11 September 1983 attendance would be compulsory at the ceremonial reading of the "Presidential message" on the occasion of the anniversary of the coup d'état. The communication went on to state that "the participation of the municipalities in this function is compulsory, under the direct supervision of the mayors", that "every municipality must promote attendance by a maximum number of citizens of the commune in question", and that "activity will be limited to attending and enlivening the journey to the ceremony by His Excellency the President of the Republic". Thus the municipality of Pudahuel ordered workers on the Minimum Employment Programme (PEM) and the Vocational Programme for Heads of Households (POJH) to attend and assembled some 6,000 workers, including Pedro Marín. According to a criminal complaint lodged by his mother with the local criminal court on 12 September 1983, "all the buses had been crammed full and thousands of people were milling around with no means of transport when a loudspeaker van arrived informing people that it was not compulsory to attend the procession"; "people began to cheer and get out of the buses quickly": "suddenly carabineros began to arrive in a van and a bus, and then a red Suzuki jeep. They began to fire tear-gas grenades into the crowd ... and buckshot". Three persons in civilian dress got out of the red jeep and one of them "walked towards the place where my son had taken shelter ... he took aim and shot him in cold blood; my son fell mortally wounded in the neck". In the same action 20 other persons suffered bullet wounds, five of them serious.

40/ Sec, 7 November 1983.

41/ General Assembly resolution 38/102, paragraph 7, adopted on 16 December 1983.

46. Later, the judicial investigation found that security personnel from the Municipality of Pudahuel were involved in the homicide of Pedro Marín and the infliction of injuries to the other persons, four of the security agents were committed for trial by the Judge of the Criminal Court. In a decision dated 27 October 1983, the Santiago Court of Appeal confirmed that Enrique Bajut Aguirre, Mayor of Pudahuel, "participated in the events" as "accessory in the crimes of homicide in the case of Pedro Marín and causing grievous bodily harm in the case of Víctor Hernán Núñez". The same Court also confirmed the committal decision concerning the four other municipality officials, two of them as presumed perpetrators of the crimes of homicide and causing grievous bodily harm, as well as illegal possession of weapons, the third as an accessory and the fourth as an accessory after the fact.

47. The lengthy judicial investigations against security agencies for alleged murders of a political character have continued during the period covered by this report. There is, first, the judicial investigation of the "Avengers of Martyrs Command" (COVEMA) concerning the abduction, torture and interrogation during July and August 1980 of a group of persons and the death, as a result of the torture to which he was subjected while in captivity, of Eduardo Jara Lavena - a student of journalism. ^{42/} According to the Chilean Commission on Human Rights, the examining magistrate recently issued committal decisions in respect of six members of the Police Department and two inspectors. ^{43/} In these proceedings statements had been made by the persons who at that time held the offices of Minister of the Interior, Director of CNI and the Commander of the Santiago Army Garrison. However, in the opinion of the victims' lawyer, "practically no progress has been made in the investigation of the homicide of the student Jara". ^{44/}

48. With regard to the second case, the Special Rapporteur has already referred to the judicial investigation being undertaken concerning the murder of the trade-union leader Tucapel Jiménez Alfaro on 25 February 1982. ^{45/} On 10 July 1983 the body of Juan Alberto Alegría Mandaca, a workman, was found; he was alleged to have committed suicide and beside him was a letter in which he stated that he had killed Tucapel Jiménez. The lawyer of the trade-union leader's family expressed doubts about the truth of this version, stating that "a group of eight persons in vehicles, which were more or less identified, were involved in the killing of the trade-union leader". ^{46/} In addition, as a result of a statement made in response to a letter rogatory by Galvarino Ancavil Hernández, former official of the Ministry of National Defence, the lawyer Enrique Silva Cimma stated publicly on 9 November 1983 that the homicide of Tucapel Jiménez would be cleared up, that "National Information Agency (CNI) personnel had been involved in it", and that they formed a command known as "Delta" which had allegedly "planned a series of political homicides". On 11 November 1983 a complaint for defamation was lodged against the above-mentioned lawyer with the Office of the First

^{42/} See background to the case in E/CN.4/1983/9, para. 33, and A/38/385, para. 87.

^{43/} Chilean Commission on Human Rights, Informe del mes de octubre de 1983, p. 51.

^{44/} Ibid.

^{45/} See background to the case in A/37/564, para. 30, E/CN.4/1983/9, paras. 31 and 32, and A/38/385, para. 88.

^{46/} Chilean Commission on Human Rights, Informe del mes de julio de 1983, p. 17.

Military Prosecutor of Santiago, and the CNI published a statement in which it dismissed as false the allegations made by the lawyer against the CNI and its officials in connection with the death of Tucapel Jiménez. The statement says that "there has never been a plan of any kind to destroy and liquidate trade-union leaders", and that, furthermore, the examining magistrate has not issued "a committal decision in respect of any person".

2. The death penalty

49. The Special Rapporteur has already made comments on the regulations extending the death penalty to a number of offences in his report to the General Assembly. 47/

50. Once again a military prosecutor has called for the death penalty against Jorge Palma Donoso, Hugo Marchant Moya and Carlos Araneda Miranda, charged in the proceedings concerning case No. 1-1983, which "in wartime" is being investigated by the Command of the Second Army Division in connection with the death of Major-General Carol Urzúa Ibáñez (retired), Intendant of Santiago. 48/ The Court Martial, which had been convened on 25 November 1983, was provisionally suspended by the Supreme Court. In this connection, the Special Rapporteur recalls his observations concerning the application of the death penalty in Chile, especially in respect of political crimes. 49/

B. Right to physical and moral integrity

1. Torture and other cruel, inhuman or degrading treatment or punishment

51. The General Assembly reiterated its appeal to the Chilean authorities to put an end to "the practice of torture and other forms of cruel, inhuman or degrading treatment ...". 50/

52. The Special Rapporteur expresses his concern at the continued violations of the right to physical and moral integrity by the security agencies from September to November 1983. This type of violation involves, first, torture and other cruel, inhuman or degrading treatment or punishment; secondly, the firing of bullets or steel pellets at demonstrators participating peacefully in the "days of national protest" in September and October 1983, with consequent serious injuries; and, thirdly, blows and beatings meted out to demonstrators by the security agencies in circumstances similar to those described above.

53. With regard to torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur has previously reported to the General Assembly a total of 87 complaints received between January and August 1983. 51/ 52/ In addition to those 87 cases there are 60 other similar ones

47/ A/38/385, paras. 90-94.

48/ See above, chap. I-B.2: Military jurisdiction.

49/ A/38/385, para. 93

50/ Paragraph 7 of General Assembly resolution 38/102, of 16 December 1983.

51-52/ A/38/385, paragraph 97 and annex I; A/38/385/Add.1, paragraph 38 and annex I.

which the Special Rapporteur has listed in annex I to this report and which occurred during the period September - November 1983. In all, therefore, 147 acts of torture or other ill-treatment occurred during 1983, a considerable increase over previous years. The methods of torture used were similar to those used in previous months. ^{53/} Use is made of brutal physical methods such as asphyxia produced by immersion in sewage water, blows with sharp implements, infliction of burns, the application of electric current to the most sensitive parts of the body. It was also noted that torture had become a general practice even in Carabineros stations, in addition to the cases occurring regularly in the secret detention centres of the National Information Agency (CNI), which have personnel, including medical personnel, specializing in torture. Cases of torture were not limited solely to the city of Santiago, but occurred also in such towns as Temuco, Aysén, Chiloé, Iquique, Arica, Valparaíso, Viña del Mar and Concepción. According to a report communicated to the Special Rapporteur by the Medical Commission of the Committee for the Defense of the People's Rights (CODEPU), the torture produced such after-effects as severe headaches, insomnia, depression, feelings of anxiety or persecution and other pseudopscho-organic syndromes, not only in the victims themselves, but also in the members of their immediate family.

54. In view of the gravity of the situation, many human rights organizations and other bodies have publicly condemned the spread and continued occurrence of acts of torture. For example, in a public statement made on 12 November 1983, the Archbishop of Concepción said that "persons who have now been released have testified to having been subjected to various types of physical and mental torture, a fact which has been confirmed by subsequent medical examination ... In the light of this evidence, we must condemn once again the use of torture ..., demand an end to this type of inhuman and anti-Christian situation, insist that those suspected of being responsible, whoever they may be, should be placed in the hands of the courts to enable culpability to be determined, and call for the dissolution of CNI."

The disbanding of the National Information Agency (CNI) has been called for in many public statements and acts as a prerequisite for halting the acts of torture. In a statement on 14 November 1983, the President of the Republic said that the CNI "will not be disbanded because it is an organization which keeps terrorist activity under control and ensures the security of all citizens". He went on to say that those calling for the abolition of the CNI "are those whose positions could be adversely affected" by its continued existence, such as "communists, marxist-socialists, and others involved in all such activities". On 15 November 1983, a total of 25 human and social rights organizations reacted by issuing a public statement in the town of Concepción, deploring the events which had led to the sacrifice of Sebastián Acevedo Becerra and demanding "an immediate end to arbitrary arrests, secret imprisonment and acts of torture", "absolute respect for the dignity and fundamental rights of individuals and their organizations" and "the immediate disbandment of the National Information Agency".

55. The Special Rapporteur must also express his concern at the increase in reports of persons with bullet wounds inflicted by the various security services. Annex II of this report contains a list of 80 persons who received bullet or steel-pellet wounds, almost invariably as a result of the action of members of the security services during the "days of national protest" in September and October 1983. The number of reports of this type is also substantially higher

^{53/} A/38/385, paragraphs 99-100 and table 2.

than in previous months or years. For example, one human rights organization, acting on behalf of the individuals concerned, submitted to the courts a total of 463 complaints of unnecessary acts of violence resulting in serious injury in the city of Santiago, between May and November 1983. According to a report communicated to the Special Rapporteur by the medical service of one human rights organization, the action taken by members of the Carabineros and other security agencies in the course of the protest demonstrations usually involved attacks by Carabineros and military personnel against townspeople, brutal beatings and even volleys of large-calibre gunfire aimed at houses, all in an atmosphere of violence and fear which produced serious effects on the psychological state of the people. Between May and November 1983, the above-mentioned medical service treated a total of 1,079 patients, 985 of whom had suffered physical and mental harm as a result of the violence of the armed forces and security agencies. Of these 985 cases, 101 involved wounds inflicted by bullets or steel projectiles (pellets) on various parts of the body. This demonstrates the widespread use of firearms and even of unconventional weapons by members of the Carabineros. In addition, reckless use was made of tear-gas grenades causing injuries, and even one death, in the town of Concepción, as well as damage to houses and the asphyxiation of the residents. The action of the Carabineros occurred in the course of the "days of national protest" and other types of political demonstration, during large-scale checks carried out in towns and outlying settlements, or as the result of other incidents without any political origin. All of which has created a growing lawlessness in the conduct of the Carabineros towards the population with unforeseeable social consequences quite apart from grave violations of the right to moral and physical integrity.

56. Finally, the Special Rapporteur has received a large number of reports of demonstrators being struck and beaten with clubs and sustaining serious injuries. According to information provided by the medical service of one human rights organization, groups of eight to 10 Carabineros had brutally attacked unarmed persons with clubs, shouting insults, threatening to kill them and generally showing a complete lack of self-control. These attacks were directed even at women, children and others unable to defend themselves. Of 985 cases examined by the above-mentioned medical service, 493 involved multiple contusions on all parts of the body inflicted by savage blows with blunt instruments such as sticks, clubs, the butts of firearms, and so on. A further 110 cases involved injuries to various parts of the body caused by blows with blunt instruments; another 88 cases involved encephalo-cranial traumatisms caused by blows to the head region; another 25 involved bone fractures caused by blows; another 38 involved cruel, inhuman and degrading treatment, including the use of electricity and repeated blows to the soles of the feet of persons who had been stripped, and were then thrown from police buses and left in the street; further 8 cases involved burns on various parts of the body caused by burning objects having been extinguished on the skin; another 7 cases involved wounds inflicted by sharp objects; there were 5 cases of bites inflicted by police dogs; 3 cases of eyes having been put out by projectiles (steel pellets); one case of renal contusions; and finally, one case of fracture of the tympanum.

2. Extent of judicial protection of the right to physical and moral integrity

57. In a public statement made on 17 November 1983, the Concepción Provincial Council of the Law Association drew attention to the fact that "the repeated serious charges made recently regarding the existence of secret places of detention ... and the numerous obstacles continually encountered by lawyers in the exercise of their professional duties ... and the subjection of many detainees

to unlawful physical and psychological pressures are all clear evidence of the continued existence of blatantly unconstitutional practices highly detrimental to the integrity of the individual, to the rule of law and to the legal traditions on which our country has always prided itself". Accordingly, the Law Association condemned "the very serious acts of torture which have been a matter of concern to the whole country in recent days, and the repeated violations of basic legal and ethical norms". It was also pointed out that "any act of torture entails the commission of ordinary crimes" specified in the Criminal Code, so that it "is the duty of the courts to exercise diligence in considering specific charges made in this regard, to investigate them meticulously and to impose the appropriate penalties on persons found guilty of such offences". The statement also noted that "the forces of order and public safety consist solely of the Carabineros and the Investigatory Police" and that, under the Constitution, "no person or group of persons may, even on the grounds of exceptional circumstances, assume any authority or rights other than those expressly conferred on them under the Constitution or by the law". Consequently, "the existence of groups or bodies which assume or exercise powers devolving exclusively" on the forces of public order and safety is contrary to prevailing legislation, "and the authorities should take immediate steps to disband" such illegal groups. The authorities were also requested to put an end to "the existence of secret detention centres or camps".

58. In view of the disturbing increase in the number of violations of the right to physical and moral integrity during the period September-November 1983, the Special Rapporteur is compelled to note that the situation is compounded by the failure of the courts to facilitate the investigation of complaints lodged regarding such violations. One exception to this general pattern, however, occurred when, on 28 October 1983, following a submission made by the Archbishop of Santiago on 19 July 1983 to the President of the Supreme Court in connection with the ill-treatment received by a group of persons who had been arrested and banished under the twenty-fourth transitional provision of the Constitution, 54/ the Supreme Court, sitting in full bench, decided to appoint "an Ad Hoc Military Examining Magistrate to take charge of the investigation and handling of the respective pre-trial proceedings", in view of the nature and gravity of the complaints filed. The Supreme Court also agreed that the Military Examining Magistrate should report to it every 30 days on the status of the pre-trial proceedings.

59. In addition, in a statement made on 15 December 1983, the Episcopal Conference requested the urgent "substantive reform of the security agencies, in particular the CNI, to ensure that they act in accordance with the moral standards and just laws to which a country must be subject. Only in this way can torture, intimidation, denunciations and degrading treatment be prevented".

60. The Special Rapporteur is also gratified to note that, for the first time in recent years, a judge visited a secret CNI detention centre located at 476, calle La Habana, Viña del Mar. The visit took place on 28 October 1983, in accordance with article 317 of the Code of Criminal Procedure, following a series of applications for amparo submitted on behalf of 11 students who had been abducted from their places of residence in various quarters of the city of Valparaíso, early on the morning of 27 October 1983. In the case in question,

54/ A/38/385/Add.1, paragraph 44.

Judge Haroldo Brito, of Viñadel Mar, was obliged to make two visits to the premises in question, accompanied by members of the forces of law and order, in order to be able to establish that they were used as a secret place of detention and that the university students whose release was requested were being held there. An official identifying himself as the head of a unit of the National Information Agency expressly acknowledged that the students in question were being held there and stated that some of them would be released and the remainder brought before the courts for offences under the Firearms Control Act. However, the Judge was not permitted to see or communicate with the detainees. As a result of Judge Brito's action, the Regional Intendent lodged a disciplinary complaint against him with the Valparaíso Court of Appeal on the grounds that he had exceeded his powers, since a National Information Agency detention centre qualified as a military establishment.

61. On 11 November 1983, the lawyers of the students in question requested the Court of Appeal to allow them to appear as parties in connection with the above-mentioned disciplinary complaint, in view of the fact that the substance of the matter in question involved their clients and was of particular importance. In this submission, it was pointed out that the youths released following the visit by Judge Brito to the centre had stated that they had been subjected to "cruel and humiliating treatment". Those who had remained in the secret centre and had subsequently been brought before the Naval Prosecutor on charges of possession of explosive devices "bore signs of having been subjected to torture". With regard to the disciplinary complaint itself, it was noted in the submission that Judge Brito's visit to the secret detention centre had represented an attempt on his part to conduct "preliminary inquiries", with a view to "protecting the fundamental rights of the persons concerned" which falls within "the scope of the practice of the lawyer's profession and [determines] the effectiveness of the defence of his clients against unlawful arrest, detention and torture". There was also the question of "the continued existence in the country of secret places of detention where torture was carried out habitually and systematically", and of "the prestige of the armed forces and the forces of law and order, which, under article 90 of the Constitution, are called upon to safeguard the institutional order of the Republic (and to which the personnel of the National Information Agency are answerable)". Accordingly, the lawyers of the victims believed that they had legitimate grounds for appearing as parties in the proceedings regarding the disciplinary complaint, in view of the considerable public importance of the case, as far as "the effective practice of the legal profession in ensuring the proper application of constitutional guarantees" was concerned, and in view of "the defencelessness of our clients who are overwhelmed by the absolute control exercised by the Armed Forces over the Executive, the Legislature and the Judiciary - through the military courts - and whose rights to a legal defence are diminished".

III. RIGHT TO LIBERTY AND SECURITY

A. Right to liberty

1. Arrest or detention

62. The Special Rapporteur continued to receive a considerable volume of evidence of arbitrary and illegal arrests made by the various State security agencies during the period from September to November 1983.

63. From the quantitative point of view, table 2 below reveals a substantial increase in the number of arrests in the period from January to November 1983 by comparison with the corresponding period in 1982 and 1981. The table has been prepared on the basis of information transmitted to the Special Rapporteur by a number of Chilean non-governmental organizations concerned with the protection of human rights.

Table 2. Total arrests

Month	1981	1982	1983
January	61	121	33
February	53	58	144
March	115	236	376
April	61	41	168
May	289	74	646
June	35	27	575
July	61	54	264
August	27	58	652
September	33	102	774
October	40	174	420
November	96	31	254
Total	871	976	4 306

64. It will be seen that the number of arrests in the first 11 months of 1983 (4,306) was nearly five times higher than in the corresponding period in 1982 (976) and 1981 (871). It should also be borne in mind that the totals reported in table 2 are minimum figures based on information substantiated by the above-mentioned human rights organizations.

65. In qualitative terms, individual arrests of a selective nature (651 cases in 1983) also continued to be made in the period from September to November 1983. As in previous months, the Special Rapporteur draws particular attention to the arrest of persons engaged in the protection and promotion of human rights, trade-union leaders, persons detained for their opinions and persons in the service of the Catholic Church. 55/

(a) Arrests at public gatherings

66. In the period from September to November 1983, there continued to be an increase in the number of arrests of groups of persons at public gatherings and demonstrations, particularly during "days of national protest" held in October and November, both in the city of Santiago and in the provinces. Table 3 shows that most of the arrests from January to November 1983 were made at public gatherings (3,655 of 4,306 cases). The figures were provided by a number of Chilean human rights organizations.

Table 3. Arrests at public gatherings and individual arrests
in the first 11 months of the last three years

Month	Individual			At public gatherings			Total number of arrests		
	1981	1982	1983	1981	1982	1983	1981	1982	1983
January	61	30	31	-	91	2	61	121	33
February	53	23	14	-	35	130	53	58	144
March	115	38	74	-	198	302	115	236	376
April	61	39	77	-	2	91	61	41	168
May	50	32	41	239	42	605	289	74	646
June	35	27	49	-	-	526	35	27	575
July	46	16	44	15	38	220	61	54	264
August	27	17	19	-	41	633	27	58	652
September	33	34	131	-	68	643	33	102	774
October	31	11	76	9	163	344	40	174	420
November	96	19	95	-	12	159	96	31	254
Total	608	286	651	263	690	3 655	871	976	4 306

67. The Special Rapporteur recalls that the General Assembly expressed its concern "at the violent suppression of the ever larger and more widespread popular protests in the face of the incapacity of the authorities to restore human rights and fundamental freedoms ... which have resulted in serious, flagrant and systematic violations of human rights, including mass detentions and numerous deaths". ^{56/} In this connection, the Special Rapporteur indicated that "the serious political and economic crisis in the country is the reason for growing popular discontent"; ^{57/} it thus appears that the measures announced by the Government in relation to the apertura política were not such as to have met with success in dealing with the situation, particularly if it is borne in mind that mass protests continued to be held from September to November 1983.

^{56/} Operative paragraph 8 of General Assembly resolution 38/102, adopted on 16 December 1983.

^{57/} A/38/385, paragraph 118.

68. For the sake of brevity, the Special Rapporteur will refer below only to some of the most significant mass demonstrations which took place in the period from September to November 1983.

69. On 3, 4, 6 and 7 September 1983, a number of peaceful demonstrations, which were convened by political dissidents and included a "hunger march" and student demonstrations, were held in Santiago. Some 163 persons were arrested by carabineros, but they were released without charge in the next few hours or days.

70. The "fifth day of national protest" was held throughout the country from 8 to 11 September 1983. Many incidents occurred in Santiago and a very large number of persons were arrested in incidents and demonstrations that were mostly of a peaceful nature. Thus, on 8 September 1983 alone, 183 persons were arrested and taken to the First Carabineros Station. The "fifth day of national protest" was also held in cities such as Iquique, where there were 23 arrests; Copiapó, 8; Linares, 40; Temuco, 92; Concepción, 41; and Valdivia, where the press reported 206 arrests whereas human rights organizations recorded 123 arrests. On 13 September 1983, a mass raid on the Corbi people in the city of Valdivia resulted in another 38 arrests.

71. On 22 September 1983, 30,000 "homeless" persons occupied vacant lots in La Granja commune (Santiago) and set up camp sites; this incident created considerable tension between the settlers and the forces of law and order and resulted in the arrest of 40 persons who were involved in activities in various settlements and who were placed under restricted residence in late September and early October 1983. In other land takeovers that occurred later, the police force evicted the occupants and made mass arrests. Thus, a land takeover by 150 families in the Santa Anita settlement on 30 September 1983 led to the arrest of 20 persons by carabineros; in the land takeover in Villa Yungay, Ñuñoa commune, on 9 October 1983, carabineros arrested seven persons; and, in the takeover on 7 November 1983 in El Pozo de la Cisterna, the 49 families involved were evicted by carabineros and three persons were arrested and ill-treated.

72. Many public demonstrations also took place in October 1983. For example, the march by El Teniente copper workers on 4 October 1983 resulted in 40 arrests. On 4 October 1983, a demonstration was held in Conchalí commune to protest against "unemployment and police repression"; the 26 persons arrested were all released the following day after being summoned to appear in the police court on charges of causing a public disturbance and stoning police officers. On 6 October 1983, secondary and university students held a nationwide strike to further their claims; during the demonstrations, carabineros made 24 arrests.

73. From 11 to 13 October 1983, public demonstrations similar to those held during earlier protest days took place in connection with the "sixth day of national protest". Most of the estimated 300 persons arrested in the city of Valparaíso were taken to police stations in Valparaíso and Viña del Mar, while 80 others were taken to the Valparaíso prison. Eleven persons were placed at the disposal of the Valparaíso Military Prosecutor's Office on charges of alleged assault on carabineros. There were eight arrests in the city of Osorno and 8 in Punta Arenas. In Santiago, carabineros broke up a protest demonstration on 13 October 1983 and arrested 18 persons. A human rights organization reported that most of them were beaten with blunt objects and ill-treated in the police stations; 15 of them were released within a few hours, while three others were held in custody for five days at the First Carabineros Station. On 14 October 1983, nine persons were arrested during a settlers' protest demonstration in the commune of Pudahuel. In Valdivia, 70 persons were arrested on 13 October 1983 during a demonstration convened by student groups. In the city of Concepción, 13 arrests were made on the same day; there were 12 arrests in Iquique, 11 in Copiapó, etc.

74. The "seventh day of national protest" was convened on 27 October 1983 by the "National Workers' Commando", with the support of "Democratic Alliance" and the "Popular Democratic Movement". In the city of Santiago, the press reported the arrest of 145 persons; 67 of those arrests were also reported by human rights organizations. There were 20 arrests in the city of Concepción; five in Puerto Montt; nine in Valparaíso; and 36 in Valdivia.

75. Mention must be made of the demonstration held on 16 November 1983 in front of the National Information Agency (CNI); the aim was to demand the CNI's dissolution. Carabineros arrested 50 demonstrators who were later summoned to appear in the police court, charged with "causing a public disturbance". On 18 November 1983, a large demonstration which had been convened by the "Democratic Alliance" and in which all dissident political groups took part was held in O'Higgins Park in Santiago. As the demonstrators were leaving, carabineros set upon them, throwing tear gas bombs and firing their guns. Fifty persons were arrested, but most of them were released the following day. On 22 November 1983, a fire broke out accidentally in a lumber yard in Conchalí commune. Clashes occurred between the carabineros and the settlers who were helping the firemen put out the fire when "one carabinero's submachine gun accidentally went off and another carabinero was shot. The clashes led to a violent police round-up involving special carabineros forces who violently attacked the settlers". 58/ As a result, 47 settlers were arrested and 26 of them were subsequently placed under restricted residence. A student demonstration held in the city of Antofagasta on 17 November 1983 resulted in 10 arrests. In Coquimbo, another demonstration on 11 November 1983 led to two arrests. Similar student demonstrations held in the city of Valparaíso on 9 November 1983 led to 14 arrests and, in the city of Talca on 18 November 1983, to 18 arrests. At that time, there were also three arrests in Osorno, 12 in Valdivia and one in Puerto Montt. On 23 November 1983, relatives of detainees chained themselves to a gate in Plaza Victoria in Valparaíso to draw attention to arrests by the CNI. Carabineros intervened and arrested seven persons.

76. The Special Rapporteur wishes to refer to a series of raids by the security forces in various settlements in the Santiago region during the month of November 1983. Such police raids are regarded by the authorities as "crime checks" that are designed to "protect the population in trouble-spots". Other non-governmental sources describe them as raids to prevent political protests. For example, the raids carried out on 12 November 1983 in the Violeta Parra, Herminda de la Victoria and Ñuñoa settlements resulted in 100 arrests. On 15 November 1983, a similar raid was carried out in Puente Alto, where 112 arrests were made; on 16 November 1983, another raid in La Quincoya led to 97 arrests. On 23 November 1983, 110 other persons were also arrested in the Renca settlement. The persons arrested are subsequently released without charges and no compensation is awarded to them for the damages they have suffered.

(b) Arbitrary nature of arrests

77. Most of the individual arrests and those carried out at group demonstrations were arbitrary arrests for which there were no adequate legal grounds. The Special Rapporteur maintains his conclusion that "there is still a tendency to make arrests in order to discourage discontent and peaceful protest", 59/ as is clearly shown in table 4, which was prepared on the basis of information transmitted to the Special Rapporteur by a number of Chilean human rights organizations.

58/ Chilean Commission on Human Rights, Report for November 1983, p. 19.

59/ A/38/385/Add.1, paragraph 62.

Table 4. Number of persons arrested in the first 10 months of 1983, brought before a court and accused of terrorist offences

Month	Persons arrested	Persons brought before the courts	Persons accused of terrorist offences
January	33	4	-
February	144	11	1
March	376	14	-
April	168	32	-
May	646	88	-
June	575	58	-
July	264	18	-
August	652	49	-
September	773	94	3
October	420	35	-
Total	4 052	403	4
Percentage	100	9.95	0.01

78. Table 4 shows that 4,052 arrests were made in the first 10 months of 1983. Only 403 of those arrested were brought to trial - 9.95 per cent of all arrests. This means that all the other persons arrested were released by the security services without being formally charged or indicted. It is therefore obvious that 90.05 per cent of the persons arrested during this period were arrested arbitrarily. Moreover, only four of the 403 persons brought before the courts of justice were charged by the authorities before a court for committing an alleged terrorist offence - 0.01 per cent of all arrests.

79. The Special Rapporteur, therefore, reiterates his conclusion that "the broad powers of the Executive with regard to arrests (twenty-fourth transitional provision of the Constitution and legislation on public order and internal security) are used mainly to persecute dissidents who have committed no terrorist act of any kind; the real objective is to create an over-all climate of fear among the population in violation of the principles of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights". 60/

80. Table 5 below gives a more detailed breakdown of the arrests made. It was prepared on the basis of data supplied to the Special Rapporteur by various Chilean human rights organizations.

60/ A/38/385/Add.1, paragraph 63.

Table 5. Breakdown of arrests resulting from a purely administrative decision without the intervention of a court

(Comprises arrests within the country)

1983	January	February	March	April	May	June	July	August	September	October	Total
1. Total number of persons arrested in month	33	144	376	168	646	575	264	654	774	420	4 052
2. Released without charge	16	15	288	85	210	99	57	215	85	47	1 115
3. Placed under restricted residence pursuant to a purely administrative decision	1	-	34	-	-	10	13	-	40	-	98
4. Expelled pursuant to a purely administrative decision	-	-	-	-	-	-	-	-	-	-	-
5. Subtotal of persons arrested and released without being charged in court	17	15	322	85	210	109	70	215	125	47	1 214
Percentage	51.52%	10.42%	85.64%	50.50%	32.51%	18.36%	26.52%	32.87%	16.10%	11.19%	29.9%
6. Charged in court and released without any formal indictment	5	30	13	24	205	209	67	113	166	101	933
7. Charged in court for a minor, non-criminal offence	7	88	27	27	143	199	109	277	379	236	1 492
8. Subtotal (6 + 7)	12	118	40	51	348	408	176	390	545	337	2 425
9. Subtotal of persons released without charge or charged only with minor offences (2 + 3 + 4 + 6 + 7)	29	133	362	136	558	517	246	605	670	384	3 640
Percentage	87.88%	92.36%	96.28%	80.95%	86.38%	89.91%	33.18%	92.51%	86.56%	91.43%	89.78%
10. Charged in court and committed for trial	4	11	14	32	88	58	18	49	94	35	403
Percentage	12.12%	7.64%	3.72%	19.15%	13.62%	10.99%	6.82%	7.49%	12.10%	8.33%	9.95%
11. Cases outstanding at the end of the period covered by the report	-	-	-	-	-	-	-	-	10	1	11
Percentage	-	-	-	-	-	-	-	-	1.29%	0.24%	0.29%
Total number of persons arrested in month	33	144	376	168	646	575	264	654	774	420	4 052

81. Table 5 shows that, of the 4,052 persons arrested in the first 10 months of 1983, 1,214 were subsequently released by the Executive without charge (29.9 per cent). Another 933 persons were brought before the courts of justice, but they were released without charge. A further 1,492 persons were also charged before the courts for alleged minor, non-criminal offences. If the figures for the three categories are added up, it may be seen that 3,640 detainees (89.78 per cent) were released without any charge or were charged with the commission of non-criminal offences; this shows that they were arrested arbitrarily. Only 403 of all detainees (9.95 per cent) were charged before the courts and committed for trial for the alleged commission of some kind of offence. These figures themselves reveal the clear disparity between the arrest operations carried out by the security forces and the existence of any adequate or reasonable grounds for such arrests.

82. These conclusions are supported by another report transmitted to the Special Rapporteur by a group of lawyers engaged in the field of human rights in the city of Santiago. According to that report, the Executive charged 532 persons in the Santiago Court of Appeal for alleged offences under the Internal Security of the State Act between May and October 1983. The Court of Appeal either acquitted, or dismissed the proceedings against, 518 of the accused; 10 were committed for trial, but the proceedings are still in progress; and only 4 were convicted of offences under the Internal Security of the State Act.

(c) Illegal nature of arrests

83. Arrests are, in many cases, not only arbitrary, but also illegal, both by international standards and in terms of applicable national standards. In this connection, illegal arrests include those carried out by security services which, under article 19 of the Political Constitution, are not legally empowered to do so, as in the case of the CNI, which arrested 175 persons and held them incommunicado in secret premises in the first 10 months of 1983. In the period from September to November 1983, there continued to be other irregularities which resulted in illegal arrests, such as the non-existence of a warrant issued by the competent Government official, arrests accompanied by an illegal search of the home of the persons concerned and arrests accompanied by ill-treatment and unnecessary violence on the part of security officials. The Special Rapporteur commented on these points in his report to the General Assembly. 61/

2. Extent of judicial supervision over arbitrary and illegal arrests

84. In his report to the General Assembly, the Special Rapporteur pointed out that judicial supervision over illegal and arbitrary arrests was particularly deficient. 62/ Thus, in the period from January to November 1983, 141 complaints were filed with the Courts of Appeal of Santiago for violations of article 317 of the Code of Penal Procedure, the persons concerned having been detained illegally in secret premises prohibited by law. Only one such complaint proved

61/ A/38/385, paragraphs 125-131.

62/ A/38/385, paragraph 132, and A/38/385/Add.1, paragraph 68.

successful on 22 November 1983, the Santiago Court of Appeal accepted an early application for amparo on behalf of José Santos Tamayo Velásquez on the grounds that "he has been deprived of his freedom since September 1983". ^{63/} The court held that Exempt Decree No. 4352 of the Ministry of the Interior, which ordered the person concerned to be detained in accordance with the special powers granted to the Executive by the twenty-fourth transitional provision of the Constitution, "does not specify the public place in which arrests must be made". For the first time, a court of law has upheld the claim that the places of detention operated by the CNI are secret. The judgement also indicated that the arrest warrant did not specify by whom it should be executed but stated only that the person in question must be detained in Carabineros, Police Department or CNI premises. This omission was held to be important because "CNI is not empowered to enforce an arrest warrant, since such authority is not provided for in Decree-Law No. 1878, which established it" and because the place of detention must be "public", in accordance with article 19, paragraph 7 (d), of the Constitution. This is an important judicial decision because, for the first time in 10 years, a court has found that the CNI does not have the legal right to arrest people and still less, detain them in secret premises. The Special Rapporteur feels bound to highlight this decision as an encouraging precedent in an area with such direct bearing on the protection of the rights of Chileans to freedom and physical and moral integrity.

85. Another positive judicial decision relating to protection against arbitrary arrest was rendered by the Santiago Court of Appeal on 14 December 1983. It concerned the arrest of 10 relatives of missing detainees who went on a hunger strike at the Faculty of Sciences of the University of Santiago. The arrests, which were carried out by carabineros, were ordered by the Dean of the Faculty. The Court of Appeal ruled that the arrests were arbitrary because the Dean had no legal authority to do so. The decision further stated that a person may be held in custody for alleged offences under the Internal Security of the State Act only in accordance with "the relevant order or warrant or on the basis of evidence of offences under that Act", in which case the Ministry of the Interior "has to file an application for the purpose". The detention order or arrest warrant must therefore be issued before detention takes place, but this is reportedly never the case in practice because, in many instances, detainees are held for up to five days before the required legal formalities are completed and are then released without any kind of compensation or are placed under restricted residence, with no possibility of appealing to any judicial organ. The decision is equally important in that it ensures some measure of judicial supervision over arbitrary and illegal arrests.

^{63/} See above chapter I, B.1: Nature, availability and effectiveness of remedies.

B. Right to security of the person

1. Complaints of persecution and acts of intimidation

86. The General Assembly reiterated its appeal to the Chilean authorities, inter alia, "to put an end to intimidation and persecution". ^{64/} In this connection, the Special Rapporteur has found that acts of persecution and intimidation continued to be committed during the period from September to November 1983, as shown in table 6 below, which was prepared on the basis of information provided by various human rights organizations in Chile.

Table 6. Santiago: persecution and acts of intimidation

Month	1981	1982	1983
January	21	4	4
February	5	8	15
March	7	14	13
April	13	6	8
May	20	5	17
June	6	16	19
July	19	5	22
August	5	5	67
September	8	15	5
October	6	19	10
November	23	4	15
Total	133	101	195

87. From the quantitative point of view, table 6 reveals a substantial increase in the number of complaints of persecution and intimidation in the first 11 months of 1983 (195) by comparison with the same period in 1982 (101) and in 1981 (133).

88. In qualitative terms, the complaints filed in the courts in connection with these acts of persecution and intimidation show that such acts are of a serious nature, that they are organized and planned and "directed against pre-selected individuals linked with organizations for the protection of human rights". ^{65/} The Special Rapporteur maintains his conclusion that such acts of persecution and intimidation "clearly have a political aim", since they are designed to discourage those who, whatever their shades of political opinion or philosophy, disagree with the present political autocratic system. ^{66/}

^{64/} Operative paragraph 7 of General Assembly resolution 38/102 of 16 December 1983.

^{65/} A/38/385/Add.1, paragraph 71.

^{66/} A/38/385, paragraph 138.

89. By way of example, the Special Rapporteur wishes to refer to the early application for amparo which was filed on 5 September 1983 on behalf of Claudio Enrique Molina Donoso and which claimed that his relatives had been arrested a few days earlier and subjected to torture to make them disclose his whereabouts. The Police Department admitted to the Court that the arrests had been made under a general warrant to investigate the murder of the Regional Intendant, Carol Urzúa, and that the accused was reputed to be an extremist who might have connections with the case under investigation. Another early application for amparo which was filed on 28 September 1983 in the Santiago Court of Appeal on behalf of Adriana del Carmen Espinoza Cid claimed that CNI agents had been searching for her because, in their view, she was a dangerous person who organized community soup kitchens.

90. Another relevant case is that of Hugo Edison Flores Zapata, who, on 30 September 1983 and 10 October 1983, filed two early applications for amparo in the Santiago Court of Appeal. He was a settlement leader who was involved in the La Granja land takeover; his home was illegally searched three times by police officers and his wife was questioned as to his whereabouts. In view of the situation, he deliberately went to the Carabineros station and the Police Department, where he was told that there was no warrant for his arrest. In his applications, he nevertheless stated that his freedom was being restricted, since individuals who did not identify themselves, who had no warrant and who were apparently CNI agents kept looking for him and putting unbearable pressure on his family.

91. Héctor Alejandro Riquelme Lizana also filed an early application for amparo because he was afraid of being arrested by CNI agents who had been making persistent inquiries about him in Aníbal Pinto settlement, where his home was under surveillance. He stated in his application that, "after the repressive round-up of Santiago settlers in the last few days, I have good reason to fear for my liberty and security. In view of the way these individuals act, there is little doubt that they belong to the police or to an agency such as the CNI, which has assumed police functions".

92. The Special Rapporteur was also informed that Dr. Mario Insunza Bécquer, who works with the Vicaría de la Solidaridad, was attacked on the morning of 16 December 1983, when high-calibre bullets were fired from a car at his house and his car, which was also damaged by incendiary bombs. The victim was in his house with his wife and two of their children at the time. He filed a complaint of an "attempt on his life, physical integrity and property" in the Santiago Thirteenth Departmental Criminal Court. According to his wife, the attack may have been committed because "my husband signed a document calling for the dissolution of CNI". The next day, a press release by the CNI Public Relations Department referred to "a smear campaign against the CNI by which they are deludedly trying to bring about its dissolution"; it stated that "Dr. Mario Insunza, who claims to be the victim of a terrorist attack and blames CNI for it", was taking part in the "campaign to discredit the CNI".

2. Conditions of detention in prison establishments

93. Information received from a number of Chilean human rights organizations indicates that some 150 persons were being detained for crimes of opinion in the various prison establishments in Chile at the end of October 1983. The International Committee of the Red Cross reported that, during the second half of July 1983, ICRC delegates visited a total of 169 persons detained for security reasons in 25 prison establishments located in the central and southern parts of the country. ^{67/} The Special Rapporteur has already pointed out that what these detainees have in common is that they are being prosecuted for or have been convicted of "offences defined by Chilean emergency legislation (in particular, the Internal Security of the State Act and the Control of Fire Arms and Explosive Act), most of which would not be regarded as crimes or even as minor offences under the legal system of a democratic society". ^{68/}

94. Moreover, Act No. 18249, which was promulgated on 26 September 1983, ^{69/} grants a general pardon involving a one-year reduction in penalties for the commission of various offences. The pardon does not, however, apply to certain categories of offences, such as aggravated homicide, aggravated theft and drug traffic. It also does not apply to persons convicted of offences under the Internal Security of the State Act, the Control of Fire Arms and Explosives Act and Decree-Law No. 2621 (unlawful association). It therefore does not apply to persons detained for crimes of opinion.

95. According to a report transmitted to the Special Rapporteur by the Committee for the Defence of the People's Rights (CODEPU), conditions of detention in prison establishments in Chile, particularly for prisoners of opinion, continue to be inadequate: prisoners are crowded into damp, cold and narrow cells, receive inadequate medical attention and are often verbally and, sometimes, physically abused by Gendarmería prison staff. There also appears to have been no change in the situation regarding the failure to implement the Agreement of 24 July 1978 between the Ad Hoc Working Group and the national authorities concerning the separation of persons detained for crimes "of opinion" from "ordinary" prisoners.

96. Other specific cases which have been reported include that of Oswaldo Bustos Saavedra, who was held incommunicado in a cell, according to the application for amparo filed on his behalf on 23 September 1983 in the Santiago Court of Appeal. A punishment of two additional weeks in solitary confinement was imposed on Jorge Martínez Muñoz, on whose behalf an application for amparo was filed on 2 November 1983 in the Santiago Court of Appeal. In that connection, a judge of the Court officially visited the prison to verify the conditions in which the person concerned was being held. Ultimately, however, his application was rejected.

^{67/} International Review of the Red Cross, September-October 1983, p. 267.

^{68/} A/38/385, paragraph 139.

^{69/} Diario Oficial, 1 October 1983.

97. In November 1983, several ordinary prisoners escaped from Santiago Prison. According to the newspaper La Tercera, several prisoners of opinion were involved in the escape of the ordinary prisoners, citing the fact that some of the prisoners of opinion were "dangerous" as proof that they had organized and planned the escape. Two other prisoners of opinion were harassed and physically assaulted for alleged involvement in another escape supposedly discovered in the prison. Attention is also drawn to the situation of the women prisoners of opinion who are being held in San Miguel prison, even though it is a men's prison. Conditions in that prison are reported to be harsh and the women prisoners organized a hunger strike, as a result of which they were visited by a delegation from the Ministry of Justice, which agreed to make some changes in order to improve prison conditions.

C. Enforced or involuntary disappearances

98. The General Assembly once more urged the Chilean authorities "to investigate and clarify the fate of persons who have disappeared for political reasons, to inform their families of the results of such investigation and to bring to trial and punish those responsible for their disappearance". 70/

99. The Special Rapporteur has already reported that little progress has been made in the judicial investigations that have been pending for years in connection with cases involving missing detainees. 71/ With regard to the proceedings relating to 18 persons who disappeared in the town of Mulchén in October 1973, 72/ the Special Rapporteur reported that the inspecting magistrate, in his decision of 29 December 1980, declared that he lacked jurisdiction and withdrew in favour of the Third Military Court of Concepción, since members of the army, carabineros and civilians were implicated in the case. The Military Court of Concepción appointed a Military Prosecutor to investigate the case (No. 446-81). The Military Judge dismissed the proceedings under the Amnesty Act, stating that "there is no evidence permitting identification of the possible offenders, accessories or accessories after the fact" (paragraph 3). Contrary to that finding, however, the amnesty was applied to military and civilian persons as alleged offenders, accessories or accessories after the fact. An appeal against the decision taken on 7 January 1983 to dismiss the proceedings was submitted to the Military Appeal Court, which, in its decision of 8 November 1983, decided that, although it had been proved that offences had been committed, it was not possible to determine that specific individuals were implicated. The Military Appeal Court therefore ruled that the amnesty could not be applied and that the proceedings should be stayed until fuller information could be obtained on the persons responsible.

70/ Operative paragraph 6 of General Assembly resolution 38/102 of 16 December 1983.

71/ See A/38/385/Add.1, paragraphs 79-82, and A/38/385, paragraphs 150-160.

72/ See A/38/385, paragraphs 155-156.

100. Another case, No. 2-77, which was investigated by the inspecting magistrate, relates to the disappearance of 10 persons between 29 November and 20 December 1976. According to travel documents supplied by the Minister of the Interior, the names of nine of the missing persons appeared on a list of persons leaving the country for the city of Mendoza in Argentina. Their departure thus took place after their arrest. The judicial investigation revealed that the departure or travel documents had been "forged", since they were taken from "travel warrants" that had also been forged. In March 1983, a new inspecting magistrate reviewed the case and, on 20 September 1983, committed two Interpol officials, Jorge Moncada and Federico Infante, for trial on charges of committing the offences of unlawful deprivation of liberty and forgery of public documents. The Magistrate also found that forgery was used as "a manoeuvre or alibi to cover up the offence of deprivation of liberty, which is of a continuing nature because its consequences remain unknown accordingly, the 1978 Amnesty Act is not applicable thereto". The decision was an important one because, for the first time, two persons have been charged in a case of disappearance. Following an appeal by the defence counsel for the accused, the Court of Appeal, however, decided on 18 November 1983 to reverse the inspecting magistrate's ruling of 20 September 1983, on the grounds that there was no proof of the offence of deprivation of liberty and that "travel warrants" are not public documents within the meaning of the Penal Code. The matter was taken to the Supreme Court a few days later, but no decision has yet been given.

101. Another suit brought in 1978 before the Tenth Departmental Criminal Court of Santiago on behalf of 70 persons who were arrested and disappeared in the metropolitan area in 1973-1976 is still in progress. The complaint is against General (Ret.) Manuel Contreras Sepúlveda and other DINA officials and agents. When the ordinary courts declared themselves incompetent and withdrew in favour of the military courts, a special military prosecutor was appointed to hear the case at the request of the defence counsel for the missing persons. The military prosecutor made summary inquiries and, on 17 March 1983, dismissed the proceedings. The Military Appeal Court, on appeal, reversed the dismissal on 5 October 1983, ordered that the case should be re-opened, that the principal offender, General Contreras, should immediately be questioned and that further inquiries should be conducted as part of a more serious investigation; to date, however, no such investigation has been carried out.

102. The Special Rapporteur has also received information concerning the disappearance of 24 peasants in the Paine area. The case is before the Military Appeal Court, which is hearing an appeal against the partial dismissal order issued by the Military Judge of Santiago on 24 May 1982. The 24 peasants were arrested in October 1973 by patrols from the San Bernardo Infantry School and the Paine carabineros sub-station. The Office of the Military Prosecutor made only two inquiries, which consisted of written communications to the Institute of Forensic Medicine, closed the investigation on 12 February 1982, and, as indicated above, partially dismissed it on 24 May 1982. The Inspecting Magistrate who originally heard the case was satisfied that the 24 missing peasants had been arrested and found that it was necessary only to determine their whereabouts. It was also revealed that some of the entries in the lists "alleged missing persons found in the records of the Institute of Forensic Medicine" which were reportedly transmitted by the Chilean Minister for Foreign Affairs to international organizations and which included 10 of the peasants who disappeared in Paine were complete fabrications.

103. In conclusion, the Special Rapporteur wishes to point out that members of the Association of Relatives of Missing Detainees continue to be subjected to harassment. For example, in a public statement on 12 December 1983, the Association declared that 10 members of the Association took part in a hunger strike at the Faculty of Sciences of the University of Santiago. The hunger strike was organized in protest against the activities of CNI and the existence of secret prisons and in order to shed light on the fate of the missing detainees. Ten persons, all relatives of missing persons, were arrested by carabineros. The Special Rapporteur has already indicated earlier in this chapter that on 14 December 1983, the Santiago Court of Appeal ruled that their arrest, which was ordered by the Dean of the Faculty, who "has no such authority", was arbitrary. 73/

73/ See above chapter III, A.2: Extent of judicial supervision over arbitrary and illegal arrests.

IV. RIGHT TO FREEDOM OF MOVEMENT

A. Right to enter and leave a country freely

104. The General Assembly, "observing that the Chilean authorities have permitted a limited number of Chilean nationals to return to the country, but noting that the measures taken to that effect have been arbitrary and restrictive," ^{74/} "once again urges the Chilean authorities to respect the right of Chileans to live in and freely enter and leave their country, without restrictions or conditions". ^{75/}

105. The Special Rapporteur has already pointed out that the declaration of a "state of danger of disturbance of internal peace" (twenty-fourth transitional provision of the Constitution) is still in effect. Under this provision, the President of the Republic has the exceptional power to "refuse entry into the national territory, or expel from it, any persons propagating the doctrines referred to in article 8 of the Constitution, who are accused, or have the reputation, of being active supporters of such doctrines or who commit acts contrary to the interests of Chile or constitute a threat to internal peace" (para. 1 (c) of the above-mentioned provision). Furthermore, the twenty-fourth transitional provision states in its final paragraph that the "measures adopted pursuant to this provision shall not be subject to any recourse other than an application for reconsideration to the authority which ordered them". In other words, there can be no judicial remedy against such administrative measures. It should be remembered that article 8 of the Constitution refers to "doctrines which are antagonistic to the family, advocate violence or a concept of society, the State or the legal order that is of a totalitarian character or based on class struggle". Finally, it should also be borne in mind that, despite the fact that the period of validity of the declaration of the "state of emergency" expired on 31 August 1983, the declaration remains effective in regard to the provisions of article 41, paragraph 7, of the Constitution, which states that measures relating to expulsion from the territory of the Republic and to the prohibition of returning to the country, adopted during the state of emergency, "shall remain in force" after the termination of the state of emergency which gave rise to them "as long as the authority which took them has not expressly revoked them".

106. In these circumstances, the power of the Judiciary to restore the right to enter the country is extremely limited. For example, the Santiago Court of Appeal handed down a decision on 2 November 1983 in connection with an application for amparo submitted on behalf of the trade union leader, Héctor Hugo Cuevas Sandoval, who had been expelled from the country by a Government decision of 3 December 1982. Subsequently, the Government prohibited his return, in application of the twenty-fourth transitional provision, and article 41, paragraphs 4 and 7, of the Constitution. The Court of Appeal points out in its decision that, under article 41, paragraph 7, of the Constitution, measures relating to expulsion from the territory of the Republic and to the prohibition on entering the country "shall remain in force even after the termination of the state of emergency which gave rise to them as long as the authority which took them has not expressly revoked them". The decision goes on to say that "this is not a case where, under our

^{74/} Sixth preambular paragraph of General Assembly resolution 38/102 of 16 December 1983.

^{75/} Paragraph 9 of General Assembly resolution 38/102.

Constitution, it is necessary to establish a real need for the application of the aforementioned restrictive measures, since prohibition on entering the national territory is precisely one of the measures which does not admit of such analysis so long as these measures have not expressly been revoked. Consequently, the Court of Appeal rejected the application for amparo.

107. The Special Rapporteur has already referred to another decision of the Santiago Court of Appeal on 7 December 1983 (subsequently reversed by the Supreme Court) which, conversely, admitted a similar application for amparo on behalf of Tomás Fernando Inostrosa Catalán. ^{76/} In this case, the Court pronounced itself competent to examine the merits of an administrative decision prohibiting entry into the country adopted during the state of emergency.

108. Between 24 September 1982 and 4 October 1983, the Government, under its discretionary powers, published a total of 11 lists containing the names of 3,562 persons who, it was announced, would be authorized to return to the country. Various human rights organizations noted that these names included those of children, deceased persons, persons who had never been exiled, foreigners, or persons normally residing in the country. ^{77/} Later, on 28 October 1983, the Government announced that it would not publish any more lists of persons authorized to return to the country, and stated that, altogether, 3,421 persons would definitely be allowed to return. Thus, any person wishing to find out whether or not his return was definitely authorized was obliged to submit a written inquiry through an office of the Ministry of the Interior. As regards the difference between the two above-mentioned figures, the Government finally published a further list on 16 November 1983 containing the names of 66 of the 141 persons in question, whose return had ultimately been disallowed or deferred "due to the Government being in possession of new facts requiring study". ^{78/} Lastly, all those exiles whose names had not appeared on the 11 earlier lists must "indicate to the appropriate Embassy or Consulate their desire to return. The Embassy or Consulate will transmit the request to Santiago by telex, and a reply will be sent promptly, also by telex". Thus, the inclusion of a name in the lists of persons authorized to return to the country did not constitute a definitive authorization for his return, since it was subject to further administrative clearance which might or might not be given.

109. In an application for amparo submitted to the Santiago Court of Appeal on 2 November 1983 by the Committee for the Return of Exiles on behalf of the 3,549 persons named in the 11 published lists, the conduct of the Minister of the Interior was condemned, since, "whereas the lists of persons authorized to return are announced and published ... the names of persons excluded from the lists are kept secret", so that "secret documents would appear to be more valid than the lists published for propaganda purposes". The said application for amparo requests that "any decree prohibiting entry into the country must necessarily be notified to the persons concerned, either personally ... or through publication in the Diario Oficial".

^{76/} See Chapter I - B.1: Nature, availability and effectiveness of remedies.

^{77/} See the petition addressed to the Secretary-General of the United Nations in September 1983 by the Committee for the Return of Exiles.

^{78/} Chilean Commission on Human Rights, report for November 1983, p. 28.

110. In these circumstances, the Special Rapporteur must reiterate his previous conclusions regarding the obligation assumed by the State of Chile under article 12, paragraph 4 of the International Covenant on Civil and Political Rights, which prohibits it from imposing arbitrary or discretionary restrictions on the exercise of the right of any Chilean freely to enter his country. 79/ Furthermore, the Government should make public the names of persons who, according to its own lists, are forbidden to enter their country. 80/ Lastly, the Special Rapporteur stresses that the problem of Chilean exiles will not be solved until the emergency legislation - which is the legal framework invoked by the authorities in order to maintain the prohibitions on entry or to carry out administrative expulsions - has been abolished 81/ (twenty-fourth transitional provision and also Article 41 (7) of the Constitution to the extent that measures taken under the latter Article have not been expressly revoked).

B. Freedom of movement and freedom to choose one's residence

111. It has also been reported that, in conformity with the twenty-fourth transitional provision of the Constitution (declaration of a "state of danger of disturbance of the internal peace" of the State), the President of the Republic may "order particular persons to reside in a specific urban locality within the country for a period not exceeding three months". In this connection, it should also be noted that the General Assembly has once again urged the Chilean authorities to "cease the practice of 'relegation' (assignment of forced residence)". 82/ The power of the Executive is typically judicial (sentence of restricted residence or internal exile), and the courts have no control over administrative measures of this kind because of the provision in the final paragraph of the twenty-fourth transitional provision of the Constitution.

112. Table 7 below gives the numbers of persons who were assigned to restricted residence through administrative measures in the first 11 months of 1983, compared with the corresponding figures for 1981 and 1982. As usual, it has been compiled from data supplied to the Special Rapporteur by a number of human rights organizations:

79/ A/38/385, paragraph 183.

80/ A/38/385, paragraph 184.

81/ A/38/385/Add.1, paragraph 93.

82/ Paragraph 9 of General Assembly resolution 38/102 of 16 December 1983.

Table 7
Cases of restricted residence

Month	1981	1982	1983
January	11	3	1
February	11	5	-
March	5	5	34
April	7	-	-
May	15	2	-
June	1	2	10
July	1	2	13
August	-	2	-
September	1	11	38
October	5	3	2
November	2	6	29
Total	59	41	127

113. The above table shows that the use of restricted-residence tripled (127 cases) in the period January-November 1983, compared with the same period in 1982 (41 cases) and 1981 (59 cases). It was used most frequently in September, March and November 1983.

114. Moreover, the conditions of restricted residence to which the persons concerned are subjected for 90 days are reported to be particularly harsh. They are forced to reside in towns situated from 1,400 km to 2,600 km from the capital, in inhospitable areas, which creates for them problems of mental and physical health, food supplies, housing, lack of work, etc. They are also subject to strict control by the carabineros and have considerable difficulty in integrating with the inhabitants of the towns concerned.

115. On 23 December 1983, the Government announced that the administrative sanctions of "relegation" would be lifted at the end of the year, for the end-of-year holidays. 83/

V. RIGHT TO PRIVACY, RIGHT TO FREEDOM OF THOUGHT, OPINION AND EXPRESSION

A. Right to privacy

116. The right to privacy is sometimes adversely affected by violations linked with arbitrary or unlawful detention, generally practised in applying the twenty-fourth transitional provision of the Constitution, under which a "state of danger of disturbance of internal peace" has been declared and remains in force. In this connection, the Special Rapporteur has observed that "Unlawful arrests are in fact frequent, accompanied also by unlawful raids on people's homes, threats against and intimidation of the family of the person concerned and arbitrary attacks on the honour and reputation of the person and of his family." ^{84/} The raids made by CNI agents or by carabineros are unlawful in the absence of appropriate warrants of entry, search or seizure which, under the law, can be issued only by the appropriate court.

117. With regard to unlawful entry into private homes, 99 complaints of unnecessary violence used by security personnel and resulting in material damage during such unlawful entry were presented by one human rights organization between May and October 1983. A case in point was the complaint by Guadalupe Fernández Melo that "a group of helmeted carabineros, armed with submachine guns and clubs, burst into my house" on 8 September 1983. One of them "stayed at the entrance with his submachine gun trained on us, while the other nine carabineros proceeded, amid the grossest insults, to break everything in their path". Similarly, a priest, David James Murphy Collins, complained that on 8 September 1983 an attempt to set fire to his house was made by "three young men who came up to my house, which was unoccupied at the time, and tried to set it alight, throwing benzine or some such substance over it". When he returned home "they started to stone the house, using catapults".

118. Another group of persons lodged a complaint stating that, on 9 September 1983, "some 15 to 20 helmeted and masked carabineros arrived at our homes ... and began to force doors and windows and to enter all the houses, firing right and left without caring whether or not the people living there were hit, in a frenzied desire to destroy everything in their path - all this against a background of violent verbal abuse and extremely coarse remarks, causing panic among the many women and children in our houses". They added that "The carabineros were drunk, their breath smelt strongly of alcohol." Lastly, Juana de la Cruz Albornoz Cuevas submitted a complaint stating that, on 11 September 1983, a group of uniformed carabineros "wearing helmets and Balaclavas, and with scarves covering their faces except for their eyes, came to my home". According to the complaint, "they tried to carry off one of the children ... anyway, they clubbed him over the head". "My 17-year-old daughter" was also beaten "brutally on her legs, leaving visible bruises", and another of her sons was also beaten. The complaint states that the carabineros "smashed windows" and that "on leaving, they threw a tear-gas bomb into the house, causing panic in the household and among the large group of children living there". The incident constituted "illegal entry, since the carabineros forced their way into our house without our consent". A complaint is also made of "damage to property, since they broke window panes ... and threw stones from outside the house". It was further claimed that an "offence of unnecessary violence" had been committed, since "three of my children, one of them a girl, were beaten".

^{84/} A/38/385, para. 199.

119. Offences against personal honour are also frequent. Two of the nine persons arrested on 7 September 1983 in connection with police inquiries into the killing of General Carol Urzúa on 30 August 1983 were publicly accused, amid a blare of publicity, but were later released for lack of evidence. Similarly, press reports concerning persons subject to restricted residence orders are suspiciously similar in nature, denigrating the person concerned without giving them any opportunity to defend themselves. In connection with the banishment of 38 persons on 29 September 1983, the Secretary-General for Government Affairs asserted in statements to the press that "these persons have taken part in violent acts ... and it has been reliably established that they were the instigators of these barbarous acts". Similarly, in connection with the restricted residence orders issued on 26 November 1983, the Government stated that "these persons took part in the disturbances". The press presented the news in such terms as: "The Government has banished 26 thugs for their participation in various acts of violence, especially the attack on volunteer firemen who were helping to put out a blaze at Conchalí." ^{85/}

120. The right to personal honour and moral integrity is also affected by the fact that the communication media are frequently united in disregarding the legal principle of presumption of innocence of the accused. This was the case with Claudio Gallardo Torres, who was arrested by carabineros on 25 October 1983. The press carried extensive reports stating that the person concerned "shot at carabineros" and that he was a "member of the group that was planning armed attacks", such as "the murder of policemen in order to take their weapons and uniforms". It was also reported that the person concerned was a "subversive criminal" and that he had "confessed to being a member of the Communist Party". The press went so far as to publish a photograph of the accused person, "with the weapon used by his extremist colleague". It also reported statements by Captain Patricio Valenzuela that "during questioning, the prisoner stated that the purpose of the action was to finish off the carabineros, steal their automatic weapons and use them to attack various service stations". A public statement by the National Directorate for Information Media, also reproduced in the press, indicated that "the prisoner was involved in an elaborate plan of agitation, devised, directed and executed by the Communist Party". On 10 November 1983, Claudio Gallardo was released for lack of evidence, and he alleged that, during his 15 days of detention, he had been subjected to torture and other ill-treatment.

121. In a similar context, the National Directorate for Information Media denounced as "high treason" alleged political activities by Andrés Zaldívar and Gabriel Valdés, two well-known leaders of the banned Christian Democratic Party. On 16 November 1983, the two persons concerned lodged a complaint in this regard against the Director of the official body in question, on the ground that they feared that measures were being contemplated against them which might have some kind of adverse consequences for them possibly including physical assault.

122. Lastly, the Special Rapporteur has already referred to the circumstances surrounding the suicide of Sebastián Acevedo Becerra in Concepción on 11 November 1983. ^{86/} In this connection, the Government authorities suggested that

^{85/} La Nación, 27 November 1983. Regarding these events, see chapter III, A.1(a) above: Arrests at public gatherings.

^{86/} See chapter II.A above: Right to life.

the suicide might have been due to some mental abnormalities. The Directorate of the Chilean Psychologists' Association, on the other hand, issued a public statement affirming that "It is wrong and cruel to attribute the decision of a desperate father solely to alleged mental problems"; any such decision should be analysed in its context, in which "it is likely that prior stresses have built up", such as "anxiety at not knowing the fate of his sons and a feeling of helplessness at receiving no reply or explanation of any kind from those who have the power and the obligation to give such information. The apathy and indifference of the people around him drove him to a desperate act to call attention to a situation that has too often left us unmoved". The statement refers to the unlawful arrest of the victim's two sons, and their detention in a secret place, by CNI officials.

B. Right to freedom of thought, opinion and expression

123. With respect to freedom of thought and opinion, the Special Rapporteur has already indicated that these rights must be considered as being implicitly restricted with regard to the propagation of doctrines mentioned in article 8 of the Constitution and to persons who "act contrary to the interests of Chile or constitute a danger for internal peace" (twenty-fourth transitional provision of the Constitution). Moreover, the "political recess" which has been imposed under the tenth transitional provision of the Constitution would not appear to be justified "as a permissible derogation under article 4 of the Covenant in times of a public emergency since, first, an emergency has to be limited strictly to the exigencies of the situation and cannot, therefore, be justified by a policy which aims at the suspension, for a prolonged period, of one of the central rights proclaimed by the Universal Declaration of Human Rights and guaranteed under article 25 of the Covenant, that is to say, the right to take part in the conduct of the political life of one's country together with all the civil liberties, whether of thought, behaviour or association, which are the means by which that central right can properly be exercised. Secondly, the 'political recess', in conjunction with the unconstitutional assumption of power of the Junta, appears to be the fundamental cause of, or itself to be, the emergency". 87/

124. With respect to the exercise of freedom of expression and information, the Special Rapporteur has also referred to the fact that the twenty-fourth transitional provision of the Constitution makes possible the imposition by the Executive of substantial limitations on these rights "as regards the founding, issuance or dissemination of new publications" which, under subsequent regulations, are subject to prior authorization by the Ministry of the Interior, although, as already stated, technical publications from the universities and the publication of books have been excluded from the administrative authorization requirement. 88/ Attention is also drawn to the continuance in force of Act No. 18,015 of 27 July 1981, which prescribes various penalties for anyone contravening prohibitions or requirements concerning the founding, issuance or dissemination of new publications (such as newspapers or magazines) or infringing the restrictions on freedom of information and opinion imposed under the twenty-fourth transitional provision of the Constitution.

87/ A/38/385, para. 211.

88/ A/38/385/Add.1, para. 106.

125. The Special Rapporteur has already referred to the proceedings instituted against Dr. Fanny Pollarolo Villa, who works for the Chilean Commission on Human Rights and other human rights bodies, on 30 August 1983. ^{89/} During the days prior to institution of the proceedings, Dr. Pollarolo had taken a direct part in tending persons injured as a result of the actions of the security services during the observance of the day of national protest in August 1983, and had made statements, reported by the magazine Hoy, concerning the responsibility of the Armed Forces in the incidents. The Ministry of Defence considered that those statements contained "disparaging expressions and allegations prejudicial to military dignity", and therefore lodged a criminal complaint with the Government Attorney. Following a routine, unilateral investigation, the appropriate Military Prosecutor committed Dr. Pollarolo for trial for "affront to the armed forces", a punishable offence under article 284 of the Code of Military Justice. The Prosecutor took no account of the many complaints which were presented to him regarding the violence used by the Armed Forces to quell the protest in question. The proceedings were referred to a Court Martial, and this court, composed of two civilian judges and two judges from the Armed Forces, held a hearing on 11 November 1983 and ordered a "review of the case" which, presumably, means a new trial. In fact, the two civilian judges of the court were in favour of revoking the committal decision, while the other two judges (from the Armed Forces) were in favour of upholding it. Dr. Pollarolo's defence counsel submitted an application to the same court to set aside the decision, and further submitted a complaint to the Supreme Court, considering that a norm of civil procedure had been wrongfully applied in what was clearly a criminal matter, since the case was being dealt with by way of criminal proceedings, and that, since the judges were equally divided, the principle of in dubio pro reo should apply - which, in the case in question, meant revoking the committal decision. The National Commission against Torture stated on 20 October 1983 that "a public reference to disturbing questions concerning the behaviour of uniformed officials can never constitute an offence, still less an affront to the Armed Forces. On the contrary, it helps the Armed Forces to avoid discrediting themselves with the public". In connection with Dr. Pollarolo's statement, the National Commission against Torture confirms that "dozens of complaints of unnecessary violence have been made against carabineros and army personnel ... by victims and their families". These facts would tend to bear out Dr. Pollarolo's statements.

126. The Special Rapporteur has also been informed of many attacks on freedom of expression during the period September-November 1983. For example, the Journalists' Association had submitted an application for protection to the Santiago Court of Appeal, arguing that the instructions given by the authorities to the directors of the communication media on 18 June 1983, banning the reporting of acts of protest, work stoppages and statements by bodies lacking legal personality, were attacks against freedom of expression. On 5 September 1983, the Court of Appeal rejected the application on the ground that there was no "ban", but only a "recommendation". Other allegations relate to the arrest of accredited journalists or photographers during the days of national protest, and to police aggression against various journalists in similar circumstances.

^{89/} A/38/385/Add.1, para. 108.

127. With respect to freedom of information, it should be recalled that the de facto organization "Democratic Alliance" sought permission from the Government on 29 September 1983 for "equality of access to the communication media, especially national television". 90/ The Director of the National Television rejected the application, arguing that: "This type of expression (political party expression) is specifically prohibited by the legislation in force ... The tenth transitional provision of our Constitution provides for such prohibition."

128. In September 1983, the Ministry of the Interior submitted a complaint to the Santiago Court of Appeal against the Director of the magazine Análisis (Juan Pablo Cárdenas) and against the leader of the illegal "Christian Left", Pedro Felipe Ramírez, who was one of the people interviewed by the magazine. The complaint referred to offences under the Internal Security of the State Act (No. 12,927), and specifically to the violation of article 4 (a) ("persons instigating or inducing subversion, resistance or the overthrow of the Government"), article 6 (b) ("persons insulting the President of the Republic or other high authorities of the State"), and article 11 (2) ("persons instigating work stoppages"). In the opinion of the Ministry of the Interior, those offences were committed in the editorial of issue No. 64 of the magazine (September 1983), signed by its Director, and in an interview with Pedro Felipe Ramírez, which appeared in the same issue. On 25 September 1983, the enquiring Judge committed Pedro Felipe Ramírez for trial for offences under articles 4 (a), 6 (b) and 11 (2) of Act No. 12,927 and also committed Juan Pablo Cárdenas as a co-perpetrator of the last two of those offences, and both were arrested. The committal decision was upheld by the Appeal Court, although the charge of incitement to a work stoppage was dropped in the case of Juan Pablo Cárdenas. The two defendants were finally released on bail by decision of the Court of Appeal on 17 October 1983. The magazine editorial had stated that "the obstinacy and wilfulness of the rulers will once again be solely responsible for anything that might happen" in Chile. Pedro Felipe Ramírez - the person interviewed - expressed his opinions on the political situation in the country, stating that there could be no peaceful transition without General Pinochet's departure from power. The present indictment against the two persons concerned accuses Pedro Felipe Ramírez of the offences mentioned in article 4 (a) and article 6 (b) of Act No. 12,927, while the dismissal of the charges against Juan Pablo Cárdenas is being requested because he is the subject of another committal decision, taken by a Military Prosecutor, for "affronts to the Armed Forces". At the time of completion of this report, the Special Rapporteur had received no information regarding the outcome of these proceedings.

90/ A/38/385/Add.1, para. 108.

VI. RIGHT TO PUBLIC FREEDOMS

A. Right of peaceful assembly

129. The Special Rapporteur has already referred to the positive effects of the non-renewal of the declaration of one of the two states of emergency on the exercise of the right of peaceful assembly. Since 31 August 1983 the Executive no longer has the legal power to "suspend" the exercise of this right. Decree No. 1086 of 15 September 1983 for the first time recognizes and regulates this right but subjects its exercise to authorization. It should be noted that a number of mass meetings or demonstrations have subsequently been authorized. Nevertheless, it should also be recalled that the "declaration of a state of danger of disturbance of the internal peace of the State" (twenty-fourth transitional provision of the Constitution) remains in force and enables the President of the Republic "to restrict the right of assembly" (para. 1 (b) of this provision). Further, the Special Rapporteur has already referred to the combined implementation of article 8 of the Constitution together with the tenth transitional provision establishing the political clamp-down, which has resulted in broad restrictions of the exercise of the right to public freedoms. 91/

130. In addition, the Special Rapporteur has taken note of the promulgation of Act No. 18,256 of 26 October 1983, the provisions of which adversely affect Decree No. 1086 and the Constitution itself. Act No. 18,256 introduces an amendment to Act No. 12,927 relating to the internal security of the State. It provides that persons who "without authorization encourage or convene collective public acts in the streets, squares and other places for public use and those who promote or incite to demonstrations of any kind or permit or facilitate disturbance of the peace" shall be liable to "the penalties of medium-term rigorous imprisonment, restricted residence or exile". If these offences are committed "in time of war", the penalties are "long-term rigorous imprisonment, restricted residence or exile in any of the degrees thereof". Act No. 18,256 further renders the organizers of public meetings jointly liable for any damage caused in the course of demonstrations regardless of the liability of the actual perpetrators of the damage and regardless of any causal relation between the acts of the organizers and also the damage. 92/ This Act accordingly greatly limits and, in practice, nullifies the provisions of article 19 (13) of the Constitution, which guarantees to all persons "the right to assemble peacefully without prior authorization and without weapons".

131. Moreover, under Act No. 18,256 the exercise of the right of peaceful assembly may arbitrarily be considered to be likely to endanger the internal security of the State. Conduct such as "causing disorder or any other act of violence intended to disturb the peace", "publicly dishonouring the flag", "poisoning food or water", "defending or conducting propaganda for certain doctrines, incitement to commit crimes or violence", and so on are now placed on an equal footing with the "crime" of convening a public gathering without prior authorization.

132. Act No. 18,256 is also inconsistent with Decree No. 1086, which governs public gatherings, and furthermore represents an improper application of the twenty-fourth transitional provision of the Constitution under which the Executive may restrict but not suspend the exercise of the right of assembly. To the extent

91/ A/38/385/Add.1, paras. 111 and 112.

92/ A/38/385/Add.1, para. 114.

that Act No. 18,256 establishes an obligation to request prior authorization for the holding of a public meeting, the situation is, in practice, no different from that which obtained before one of the two states of emergency was lifted. Lastly, in October 1983, the Offices of the Intendants of the Fifth and Metropolitan Regions ordered a fee to be paid per square metre occupied for the conduct of a public gathering. A newspaper that can hardly be suspected of opposing the Government stated in an editorial that these provisions may be transformed "into an effective means of banning mass meetings through the expedient of disproportionately increasing the amount charged for the relevant authorization; this would represent an encroachment on the right of assembly, a fundamental guarantee in a genuine democracy". 93/

133. In addition, it should be noted that the penalties introduced by Act No. 18,256 (rigorous imprisonment, restricted residence or exile) may be imposed on persons convening a specific public gathering, because of the conduct of persons who have nothing to do with them and who are in effect "agents provocateurs". In this connection, it should be borne in mind that, on the various "days of peaceful protest" organized in recent months, persons have been killed, wounded or hurt and that so far the judicial investigations have not clarified what actually happened and who were the offenders except in one case (Pedro Manuel Marín Movoa) where public officials have been charged with causing his death and have been committed to trial. 94/ There is some speculation as to whether or not an attempt is being made to attach criminal responsibility to third persons having nothing to do with the events in question, with the aim of diverting responsibility from the police forces entrusted with the protection of public order.

134. The Special Rapporteur has closely followed developments concerning the exercise of the right of peaceful assembly in recent months. It would appear that the necessity of obtaining prior authorization has operated as a general rule, the Government having authorized some public meetings, including a young people's meeting on 6 October 1983, the mass meeting of the Democratic Alliance on 18 November 1983 at a place specified by the Government, and the mass meeting on 1 December 1983 in the city of Valparaíso, also at a place specified by the Government. However, there have also been refusals to issue prior authorization for peaceful assemblies. This was the case with the application to hold a journalists' meeting on 29 September 1983, with the consequent protest by the Association of Journalists. Prior authorization was also withheld on 20 October 1983 in the case of an application to hold a public meeting by the National Workers' Command. On 29 October 1983, the Intendant of Santiago refused authorization for an act of homage to President Pedro Aguirre Cerda at his monument. On 23 November 1983, authorization was refused for an opposition meeting in Valparaíso.

135. There have also been cases of general bans on the exercise of the right of peaceful assembly. Thus, in the Eighth Region, the Regional Intendant prohibited any march in any street or public thoroughfare throughout the region on the grounds of the need to safeguard "order, the peace and healthy co-existence". On 10 November 1983, this ban on marches was extended to all types of mass meetings,

93/ El Mercurio, 31 October 1983.

94/ See chap. II-A.1 above: Complaints of abuse of authority or misuse of weapons.

the Office of the Regional Intendant arguing that this action had been taken "in view of a series of acts by groups and individuals intended to propagate doctrines advocating violence and disturbance of the peace and, eventually, to establish a totalitarian legal order by this means".

136. Lastly, it should be recalled that many arrests have been made for the purpose of preventing the exercise of the right of peaceful assembly. ^{95/} Paradoxically, attendance at public gatherings convened by the Government is sometime made compulsory. This was the case with the circular of 7 September 1983 from the Provincial Governor of Iquique addressed to public officials, in which he ordered them to "attend the public celebration of the tenth anniversary of national liberation, which will be held on 10 September" and at the same time warned that "responsibility for attendance" will lie with supervisors, "who will be in charge of those attending this event and will, themselves or through a person nominated by them, check attendance by personnel subordinate to them, for which purpose they will draw up the respective attendance lists". The supervisors were required to report "on attendance at this event, specifically mentioning absentees and stating the reasons for their absence". After publication of this order, the Intendant of Iquique rescinded the order made by the Provincial Governor. On the other hand, a similar order by the Regional Intendant of Santiago was not rescinded. That order was contained in an official communication dated 18 August 1983 informing all mayors of the Santiago Region that attendance at the ceremonial reading of the "Presidential message" on 11 September 1983 would be compulsory. ^{96/}

B. Right of association

137. The Special Rapporteur has already had occasion to observe that the Constitution recognizes in article 19 (15) the right of association "without prior authorization"; associations must be established in conformity with the law "in order to enjoy legal personality". However, for the purpose of the exercise of this right, the Constitution refers to a fundamental law which has not yet been promulgated. In this connection, it should be noted that on 19 November 1983 the national press published the "preliminary text of a Political Parties Organization Bill", which was said to have been prepared by a governmental commission. ^{97/} According to this text, the political parties will be "voluntary associations of citizens, endowed with legal personality, which contribute to the functioning of the constitutional democratic regime". The Bill establishes as a ground for dissolving parties a declaration by the Constitutional Court that those parties are unconstitutional because they propagated doctrines which, under article 8 of the Constitution, are likely "to undermine the family or advocate violence or a conception of society, the State or the legal order of a totalitarian nature or based on class struggle". The Bill also characterizes as an offence the fact that "an association, organization or group of persons pursues activities characteristic of political parties, without being legally established as such".

138. On the other hand, a non-governmental group (the "Constitutional Studies Group" or the "Group of 24") disseminated in September 1983 another draft "Statute of the political parties", in which it emphasizes the statement that "every

^{95/} See chap. III-A.1 (a) above: Arrests at public gatherings.

^{96/} See chap. II-A.1 above: Complaints of abuse of authority for misuse of weapons.

^{97/} See chap. I-A.1 above: The Political Constitution of 1980.

political party must place on permanent record in its declaration of principles its explicit adherence to the Universal Declaration of Human Rights and other international covenants entered into by Chile ..., its undertaking to promote their effective observance and its respect for the democratic system". In addition, a party may be dissolved by decision of the Constitutional Court for violating the provisions on "anti-democratic conduct", such conduct being considered to include the undermining of the constitutional regime, acts likely to jeopardize human rights, or the use of, or incitement to, armed violence.

139. In any event, it should be borne in mind that, until such time as the fundamental law is enacted, the tenth transitional provision of the Constitution, prohibiting all political party activity and establishing the "political recess", remains in force. Similarly, it has already been pointed out that article 8 of the Constitution introduces discriminatory restrictions on the ground of political opinion and that the twenty-fourth transitional provision of the Constitution confers on the President of the Republic the absolute discretion to prohibit entry into the country, or to exile persons who propagate the doctrines referred to in article 8 of the Constitution or persons who commit acts contrary to the interests of Chile or constitute a danger to internal peace.

140. In the result, the right of political association has remained proscribed in Chile since 11 September 1973, and the 1980 Constitution itself provides that this ban will remain in force until 1989 or until the relevant fundamental law is enacted. Other special legislation remaining in force includes Decree-Law No. 77 of 1973 concerning the proscription of political parties, Decree-Law No. 78 of 1973 concerning the suspension of the activities of all political parties and Decree-Law No. 1697 of 1977 which dissolves all parties, entities, groups or movements of a political character. Consequently, the various associations or groups of a political character and the numerous associations or groups of a trade-union character continue to have a de facto existence, outside the law. Since they do not enjoy legal personality, their existence is very precarious, their de facto recognition by the public authorities is arbitrary and they are subjected to frequent harassment, especially when they try to participate in any political, social or trade-union activities in Chile.

C. Right of participation in the conduct of public affairs

141. The Special Rapporteur has not noted during the period September-November 1983 any legislative, judicial or administrative changes concerning the exercise of this right. It has already been observed that the rights involved in participation in the conduct of public affairs have been suspended since 11 September 1973 and that, in accordance with the 1980 Constitution, they will remain suspended until 1989 or until the end of the "political recess". In addition, article 8 of the Constitution introduces, as a constitutional principle, discrimination on political grounds in connection with various philosophies and doctrines. Consequently, this situation remains incompatible with the objective of article 25 of the International Covenant on Civil and Political Rights and with article 21 (3) of the Universal Declaration of Human Rights, in accordance with which "the will of the people shall be the basis of the authority of government". 98/

98/ A/38/385, para. 239.

D. Right of petition

142. This right is recognized in article 19 (14) of the Constitution and its scope and purpose has already been commented upon. 99/ It would appear that this is a right the exercise of which is, to say the least, not encouraged by the Authorities in Chile as appears from what follows.

On 5 December 1983, workers enrolled on the Minimum Employment Plan (PEM) and the Occupational Plan for Heads of Households (POJH) presented petitions for the economic and social improvement of their situation in the various municipalities of the Metropolitan Area (Santiago). They were seeking a wage increase from 4,000 to 12,000 pesos a month, the incorporation of the PEM within the POJH, a Christmas gratuity, the cancellation of their lighting and water debts, better treatment of women and workers in general, productive work, the right to social security and health, and free education for their children. When delivering these petitions in different municipalities (Pudahuel, La Cisterna and La Granja), the workers were attacked by the police, who used tear-gas grenades, pellets and truncheons and fired shots in the air. As a result, several persons were wounded by bullets, one was wounded by a tear-gas grenade and died a few days later, and an undetermined number of men, women and children were beaten. The Intendant of the Metropolitan Region announced on 6 December 1983 the abolition of the PEM, which left 63,000 persons unemployed. He also announced the cutback of an unspecified number of POJH projects as a reaction to what he described as a "plan of agitation ... which is completely and utterly provoked and co-ordinated". 100/

99/ A/38/385, paragraphs 242-245.

100/ Solidaridad, first fortnight of December 1983.

PART TWO

ECONOMIC AND SOCIAL RIGHTS

VII. ECONOMIC AND SOCIAL RIGHTS

143. During the period September–November 1983 the Special Rapporteur has not observed any development that might suggest the need for any change in the analyses he made in the report to the General Assembly (A/38/385). He accordingly confirms his initial conclusions, which may be consulted in the following paragraphs of the above-mentioned report:

- A. Right to work. Equal access to employment: paragraphs 246–256;
- B. Conditions of work: paragraphs 257–261;
- C. Right of children and young people to special protection: paragraphs 262–267.

VIII. TRADE UNION RIGHTS

A. Right of trade union association

144. The General Assembly renewed its appeal to the Chilean authorities to "restore the full enjoyment and exercise of trade union rights, in particular the right to organize trade unions, the right to collective bargaining and the right to strike". 101/

145. The Special Rapporteur has already studied the legal framework governing the right of trade-union association in his report to the General Assembly. 102/ As these provisions have remained unchanged during the period September–November 1983, reference should be made to his report to the General Assembly.

146. Within the International Labour Organisation (ILO), the Governing Body's Committee on Freedom of Association has examined a series of complaints of violations of trade union rights in Chile. One complaint related to the annulment of the legal personality of the Professional Association of Chilean Teachers (AGECH), which was provided for in Order No. 21 of the Ministry of Economic Affairs dated 21 January 1983 on the grounds that the Association had "engaged in political activities". 103/ On 10 May 1983, a Judge of the Santiago Court of Appeal ordered legal personality to be restored to the Association on the ground that the accusation by the Ministry of Economic Affairs had not been substantiated in the proceedings. In this case, the Committee on Freedom of Association adopted as final the recommendations addressed to the ILO Governing Body, which in turn approved them. In the recommendations, regret was expressed that "the Government violated freedom of association in revoking the legal personality of the AGECH by administrative action pursuant to legislation in force". 104/ The Committee recalled "the principle of freedom of association according to which workers' organisations shall not be liable to dissolution by administrative action" and consequently requested

101/ General Assembly resolution 38/102, para. 10, of 16 December 1983.

102/ A/38/385, paras. 268–282.

103/ See background to this case in A/38/385, paras. 310 and 311.

104/ Committee on Freedom of Association, case No. 1194, G.B. 224/9/17. 224th meeting of the ILO Governing Body, 15–18 November 1983, para. 293.

the Government "to take measures to amend its legislation so that revocation of the legal personality of occupational associations can be effected only by the courts". It further requested the Government to remove the "general prohibition of political activities of occupational associations so that they may, if they wish, engage in political activities relating to the promotion of their trade union objectives". 105/

147. The Special Rapporteur has already referred to the demonstrations that were held in a number of Chilean cities on 24 March 1983 in protest against the economic crisis and human rights problems. 106/ In the city of Santiago, 227 persons were arrested by the Carabineros; subsequently, 16 of those arrested, together with another 18 persons arrested previously, were placed under restricted residence by administrative order and sent to Pisagua. The Committee on Freedom of Association received a complaint about these developments and, after examining them, transmitted the following recommendations to the ILO Governing Body with the request that it should be kept informed on this matter. Concerning the arrest and banishment of the 34 persons, including a number of trade unionists and trade union leaders, the Committee pointed out to the Government that "measures depriving persons of their freedom and imposing sanctions such as banishment for trade union reasons constitute violations of the principles of freedom of association" and considered it "unacceptable that sanctions of this nature are imposed by administrative action". 107/ As regards the other persons arrested, the Committee regretted that "the Government did not supply information as to the reasons for their arrest" and deplored the arrests because "there is no evidence to show that the judicial authorities upheld any charges whatsoever against those concerned". Lastly, in connection with allegations of ill-treatment, injuries and torture inflicted in particular, on trade union leaders, the Committee expressed its grave concern and requested the Government to carry out an "independent judicial investigation of the alleged cases of torture with a view to elucidating the facts in full, to identifying the persons responsible and taking proceedings against them". It further asked to be kept informed of the outcome of the investigations.

148. Another complaint lodged with the Committee referred to the arrest on 18 March 1983 of Ricardo Lecaros González, President of the Trade Union Confederation of Metalworkers (CONSTRAMET), and the forcible entry by the police into the Confederation's headquarters. The Government informed the Committee that Ricardo Lecaros had been arrested because of "the discovery at Confederation headquarters of packages containing thousands of pamphlets with texts contrary to public order and security". 108/ The Committee adopted an interim report on the case, expressing regret that "the trade union leader, Mr. Lecaros, now released, was held in custody for several days". The Committee recalled that "measures of preventive detention taken against trade union leaders constitute inadmissible interference in trade union activities" and requested the Government "to reply to the allegations regarding the forcible entry and the confiscation of equipment and documents at CONSTRAMET headquarters". 109/

105/ Ibid.

106/ See background in A/38/385, para. 119 (12).

107/ The Committee on Freedom of Association, case No. 1191, G.B. 224/9/17, 224th meeting of the Governing Body, op.cit., para. 446.

108/ Committee on Freedom of Association, case No. 1186, G.B. 24/9/17, 224th meeting of the Governing Body, op.cit. para. 584.

109/ Ibid., para. 591.

149. Another complaint transmitted to the Committee on Freedom of Association referred to the raid on the headquarters of the National Trade Union of Independent Craftsmen and the arrest of 15 members on 30 April 1983, when they were meeting in connection with International Labour Day. On this matter the Committee adopted an interim report, stating that "the right of the inviolability of union premises necessarily implies that the public authorities cannot enter such premises without having obtained a corresponding legal warrant". 110/ It recalled that "the arrest of trade union leaders and trade unionists for taking part in trade union activities, even for a short period, constitutes an infringement of the principles of freedom of association". 111/

150. A second allegation referred to the fact that the authorities did not permit public meetings of a trade-union character, which had been convened by the National Trade Union Co-ordinating Body on 1 May 1983 in the Plaza de los Artesanos in Santiago. 112/ In this connection, the Committee considered that "by not allowing the public demonstration" on 1 May, "the Government infringed trade union rights" and deplored that "the exercise of the right to demonstrate was repressed on 1 May in the Plaza de los Artesanos, by means of wide-scale arrests and physical assaults on the workers and trade union leaders". The Committee expressed its concern at these events, observing that "according to the complainants, a group of civilians were involved in violent action and co-ordinated with the police in breaking up a public meeting in the Plaza de los Artesanos", and requested the Government to "send it the judgements of the trial being held in relation to the activities" of this group in civilian clothes. 113/

151. A third allegation submitted to the Committee in the same case referred to the trial of a number of leaders of the Confederation of Copper Workers (CTC) for having organized and taken part in the national protest day of 11 May 1983 and to police action in the course of the demonstrations that were held on that day. 114/ In connection with the trial of CTC leaders, the Committee, in its interim report, noted "the Government's statements" and that "on 23 September 1983, the Government withdrew the action brought against them." 115/ The Committee deplored "the death of two persons during the National Protest Day as a result of shots fired by the Chilean Security Services" and requested the Government "to inform it of the judgement in the case being conducted at present". 116/ It further deplored the fact "the Government did not reply to the allegation that police repression on the National Protest Day of 11 May 1983 resulted in hundreds of arrests and dozens of wounded", and requested the Government to "send its comments on this matter". 117/

110/ Committee on Freedom of Association, case No. 1200, G.B. 224/917, op.cit., para. 618 (a).

111/ Ibid.

112/ See background to the case in A/38/385, para. 119 (20).

113/ Committee on Freedom of Association, case No. 1200, op.cit., para. 618 (b) and (c).

114/ See background in A/38/385, para. 119 (25).

115/ Committee on Freedom of Association, case No. 1200, op.cit., para. 618 (e).

116/ Ibid., para. 618 (f).

117/ Ibid., para 618 (g).

152. A further series of complaints were submitted against the Government of Chile in case No. 1212 before the ILO Committee on Freedom of Association. First, the complainants reported the death of four persons, an indeterminate number of wounded and the arrest of 600 workers by the security agencies during the second day of national protest on 14 June 1983. 118/ The Committee noted that, according to the Government, the deaths and injuries "occurred as a result of the extreme violence unleashed by groups who took advantage of the demonstration to carry out attacks on individuals and private property". 119/ The Committee, in its interim report, deeply deplored "the four deaths and physical assaults which occurred on 14 June 1983". 120/ It further regretted the arrest of 16 trade unionists and the banishment, by administrative action, of 8 of them, recalling that "such measures, taken for trade union reasons, constitute a violation of the principles of freedom of association", and considered it "unacceptable that sanctions of this nature should be imposed by administrative action". It therefore asked the Government "to send it the findings of the investigations carried out by the normal legal channels into the four deaths and physical assaults which occurred on 14 June 1983", and "to send its observations on the trial and/or arrest of the 12 trade union leaders and 5 trade unionists" whom it mentioned by name. 121/

153. Secondly, case No. 1212 refers to the forcible entry into the premises of the National Trade Union Co-ordinating Body (CNS) on 7 July 1983, the theft of furniture and equipment, and the detention of five CNS leaders. These persons were brought before the courts for having violated the Internal Security of the State Act and remained in detention until 16 July 1983, when the Magistrate examining the case ordered that they should be unconditionally released for lack of evidence. 122/ In these circumstances, the Committee requested the Government "to send its observations on the allegation that the premises of the National Trade Union Co-ordinating Body were broken into and that furniture and equipment were stolen". 123/

154. Thirdly, the Committee received allegations that trade union leaders María Razas and Sergio Troncoso and trade unionist José Anselmo Navarrete had been "brutally tortured". 124/ In this connection the Committee, in its interim report, expressed "its grave concern at the detailed allegations of torture submitted by the complainants" and requested the Government to undertake an "independent judicial investigation". 125/ It also asked the Government "to inform it of the results of the judicial investigations under way into the alleged cases of torture" mentioned above. 126/ In connection with the allegations of "abduction, torture and death threats to which Raúl Montecinos, CTC leader, was subjected on 7 October 1983", 127/ the Committee requested the Government to send its comments.

118/ See background to the above-mentioned "protest day" in A/38/385, para. 119 (34).

119/ Committee on Freedom of Association, case No. 1212, document G.B. 224/917, op.cit., para. 641.

120/ Ibid., para. 659 (a).

121/ Ibid., para. 659 (b) and (f) (i) and (ii).

122/ Ibid., para. 646.

123/ Ibid., para. 659 (f) (iii).

124/ Ibid., para. 648. See also A/38/385, annex I, and A/38/385/Add.1, annex I.

125/ Committee on Freedom of Association, case No. 1212, op.cit., para. 659 (c).

126/ Ibid., para. 659 (f) (v).

127/ Ibid., para. 651.

155. Fourthly, the Committee received allegations concerning the dismissal of a large number of trade union leaders and thousands of workers in the copper sector.^{128/} In this connection the Committee requested the Government "to take all measures necessary to ensure that the dismissed trade union leaders (34 according to the complainants) be reinstated as soon as possible in their jobs", that the firm concerned "abandon the legal proceedings it has instituted to disqualify trade union leaders from holding office and that it reinstates all those workers who have been dismissed for trade union reasons".^{129/} The Committee also asked the Government to "inform it of the measures taken to put an end to the acts of anti-union discrimination taken against trade union leaders and workers".^{130/}

156. Lastly, the Committee received allegations concerning the legal actions against, and dismissal and detention of, Mr. Rodolfo Seguel Molina, President of the CTC, in May, June and August 1983.^{131/} In this connection, the Committee in its interim report noted "that the Government has waived the three legal actions it brought" against Mr. Seguel, but regretted that he "was preventively detained for more than one month for having taken part in the second National Protest Day". The Committee was of the opinion that Mr. Seguel, "one of the leading trade union leaders in the country, has been the subject of a serious case of anti-trade union discrimination".^{132/}

B. Right of collective bargaining

157. There have been no significant changes with regard to the exercise of this right. The Special Rapporteur accordingly maintains the analysis of the law governing this right and the conclusions he drew in his report to the General Assembly (A/38/385, paras. 290-294).

C. Right to strike

158. There has also been no change in the law governing the exercise of the right to strike, as described by the Special Rapporteur in his report to the General Assembly.^{133/}

159. As to the practice followed in this area, it should be borne in mind that the Committee on Freedom of Association examined a complaint relating to the strike called by the construction union at the Colbún-Machicura hydroelectric complex as from 7 January 1983.^{134/} In this case, it was alleged before the Committee that three trade union leaders had been arrested at the complex on 21 February 1983 "while soliciting trade union support for the strike of the workers".^{135/} On 24 February 1983 the three men were released on bail and the examining Magistrate

^{128/} Ibid., paras. 652-654.

^{129/} Ibid., para. 659 (d).

^{130/} Ibid., para. 659 (f) (vi).

^{131/} Ibid., paras. 655-658.

^{132/} Ibid., para. 659 (e).

^{133/} A/38/385, paras. 295-300.

^{134/} See background in A/38/385, para. 302.

^{135/} Committee on Freedom of Association, case No. 1184, G.B. 224/9/17, op.cit., para. 279.

committed them to trial on the ground that the existence of "crimes in violation of Act No. 12,927 on State security" had been disclosed. 136/ On 14 July 1983 the men were unconditionally discharged as the Supreme Court found that there was no proof of the existence of the crimes with which they had been charged. The Committee observed that "Act No. 12,927, the basis for the charges, contains penal provisions relating to acts such as paralysing electrical, water and similar services, or unlawful work stoppages and strikes in public services or utilities which upset public order or disrupt public utilities or services the functioning of which is required by law or damage any essential industries". 137/ In these circumstances, the Committee submitted the following two final conclusions to the Governing Body: first, that the law on which the charges against the three trade union leaders were based "imposes penal sanctions for the carrying-out of certain trade union activities, which is incompatible with the principles of freedom of association"; 138/ and secondly, the Committee drew the Government's attention to the fact that "no one should be deprived of liberty or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike". 139/

136/ Ibid., para. 280.

137/ Ibid., para. 281.

138/ Ibid., para. 283 (a).

139/ Ibid., para. 283 (b)

IX. CULTURAL RIGHTS. RIGHTS OF MINORITIES

A. Right to education and cultureB. Rights of the indigenous minorities

160. The Special Rapporteur has considered the above two subjects in his report to the General Assembly 140/ on the basis of material which was then available. Since then, there has been very little information indicating any change in the situation as described in the report to the General Assembly. The conclusions drawn in that report therefore still remain valid. 141/

161. It should be recalled that, in relation to the subject matter of this Chapter, the General Assembly has once more urged "the Chilean authorities to protect and restore the economic, social and cultural rights of the population and, in particular, to respect the rights intended to preserve the cultural identity and improve the social status of the indigenous population". 142/

X. CONCLUSIONS AND RECOMMENDATIONS

162. The General Assembly expressed once again its concern "at the disruption of the traditional democratic legal order and its institutions, through the maintenance of exceptional legislation, the institutionalization of various states of emergency and the existence of a Constitution in Chile which does not reflect a freely expressed popular will and the provisions of which not only fail to guarantee the enjoyment of human rights and fundamental freedoms but also suppress, suspend or restrict the exercise of those rights and freedoms". 143/ The exceptional powers held by the military, through the President of the Republic, extend to the executive, administrative, legislative, judicial and enforcement functions, and acquire particular importance during the period (up to 1989) of transition from military to civilian rule under a representative system of Government. 144/ On 10 August 1983 the Minister of the Interior announced, as governmental objectives, "the imitation of a dialogue with the opposition parties", and reiterated the intention of achieving a "full and open democracy". Thus, an announcement was made concerning the study by the Council of State of the Constitutional fundamental laws governing political issues and the possibility that the political parties and the National Congress would assume their functions before 1990, the date prescribed in the 1980 Constitution. 145/ Nevertheless, this does not signify to date any changes in the rules of the 1980 Constitution, as a result of which there are still no legal channels to enable the citizens to exercise this right to participate in the political life of the country. As a consequence and in order to vindicate that right, virtually all sectors of activity and opinion in the country have, over the period May-November 1983, taken part in "days of national protest" and all

140/ A/38/385, paragraphs 307 to 321 and paragraphs 322 to 334 respectively.

141/ Ibid. Paragraphs 363 to 366 and paragraphs 367 and 369 respectively.

142/ Operative paragraph 11 of the General Assembly resolution 38/102, adopted on 16 December 1983.

143/ Operative paragraph 3 of the General Assembly resolution 38/102, adopted on 16 December 1983.

144/ A/38/385, para. 335.

145/ A/38/385/Add.1, para. 120.

kinds of popular demonstrations, with their train of victims, injured, tortured and arrested. This situation itself continues to provoke, in return, countermeasures resulting in systematic violations of human rights, thus seriously engaging the international responsibility of Chile as a member of the international community. 146/

163. As for the institutionalization of the emergency regime, it should be noted that one of the two states of emergency that had so far obtained in Chile has not been renewed since 28 August 1983. On the other hand, on 7 September 1983, the other state of emergency, that is to say, the "state of danger due to threats of internal peace" was extended for another six months, under the twenty-fourth transitional provision of the Constitution. As a consequence, freedom of information is still subjected to restrictions, but solely with respect to the establishment, publication or distribution of new publications other than books and technical publications emanating from universities; the Government can no longer prohibit specific persons from leaving the national territory; the exercise of the right of assembly, though incapable of suspension, remains subject to restrictions; censorship of correspondence and communications is no longer permissible. The positive effects arising from the non-renewal of one of the two states of emergency are limited as far as the general corpus of human rights is concerned and have not resulted in any substantial change in the process of institutionalization of the emergency regime, particularly in view of the fact that the transitional provisions of the Constitution, and especially the twenty-fourth (declaration of the "state of danger due to threats to internal peace"), remain in force. Furthermore it should be recalled that "the state of emergency was the creation of the Government Junta itself when it unconstitutionally assumed power in 1973", and that "the maintenance of a state of emergency over such a prolonged period does indeed result in the de facto breakdown of the traditional democratic constitutional order". 147/ In that context the General Assembly requested the Chilean authorities "to lift the regime of exception and especially the practice of declaring states of emergency, under which serious and continuing violations of human rights are committed, and to restore the principle of legality, democratic institutions and the effective enjoyment and exercise of civil and political rights and fundamental freedoms. without any discrimination". 148/

164. As regards procedural guarantees, the non-renewal of one of the two states of emergency has produced the positive effect that the remedy of protection is no longer suspended in the case of measures adopted by the Executive in accordance with the provisions of Article 41 (3) and (7) of the Constitution governing the "state of emergency". On the other hand, limitations on the remedy of amparo with respect to persons subjected to executive action in accordance with the twenty-fourth transitional provision of the Constitution, still remain in force. In fact, during the first ten months of 1983, 622 applications for amparo were presented and related to 1,361 persons suffering from arbitrary or illegal detention, persecution and acts of intimidation, or exile. The majority of these applications were rejected by the courts, but seven of them were accepted. The General Assembly reiterated its serious concern

146/ A/38/385, end of para. 335.

147/ A/38/385, para. 336.

148/ Operative paragraph 5 of General Assembly resolution 38/102, adopted on 16 December 1983.

"at the inefficacy of the recourses of habeas corpus or amparo and of protection in view of the fact that the judiciary in Chile does not exercise its functions fully in this respect, except with considerable restrictions". 149/ The Special Rapporteur once again emphasises that "provisions relating to due process and detention procedures are basic and should always remain available", and that the remedy of habeas corpus and similar remedies should not be automatically suspended particularly when what is at issue is the protection of life and physical security and integrity, since these are among the rights from which, under article 4 of the Covenant on Civil and Political Rights, no derogations are possible even in times of public emergency. 150/ In that context, a meaningful restoration of the right to an effective remedy in Chile will depend upon the urgent suspension of the declaration of the "state of danger due to threats to internal peace" and "upon a return to the democratic traditions to which Chile has historically laid claim and in which the rule of law prevails". 151/

165. Procedural guarantees normally available in ordinary courts continue to be seriously curtailed by the substantial extension of the jurisdiction of military courts exercisable both in time of peace and in time of war, "with grave consequences for political dissidents and any citizen merely suspected of being a dissident". 152/ In wartime military courts the penalties provided for in time of war become applicable. However, "the objective conditions specified in the Code of Military Justice do not exist, since the Code requires that the State should be in time of war". 153/ Decree-Law No. 3655 of 17 March 1981, which dispenses with the existence of a state of war as a sine qua non for the exercise of this jurisdiction, would also appear to be inconsistent with the 1980 Constitution, since "it restricts individual rights and guarantees in a way which transcends the limits and cases provided for in the Constitution". 154/

166. With respect to the right to life, the Special Rapporteur took note of 11 cases of death (3 military men and 8 policemen) during 1983, some of them in terrorist attacks and one case of suicide for political reasons. He also noted 68 cases of death due to unnecessary violence, alleged clashes with, or as a result of the abuse of authority or misuse of arms by members of State security agencies in 1983. Most of them concerned persons who died in the course of the "days of national protest" which were convened on 12 July, 11 August, 8-11 September, and 11-13 October 1983. The Special Rapporteur expresses his concern at the increase in the number of victims and recalled the General Assembly appeal to the Chilean authorities "to respect the right of persons to life and physical integrity". 155/ As regards judicial inquiries into violations of the right to life, there appears to be no intention on the part of the Government to shed any light on the deaths that occurred on the occasion of the "days of protest", and it has refused to allow a special commission of inquiry to be established. The ordinary judicial inquiries have not shown any positive results to date, except the inquiry concerning the death of Pedro Manuel Marín Novoa. In connection with the application of the death penalty, the Special Rapporteur maintains his view that

149/ Operative paragraph 4 of General Assembly resolution 38/102, adopted on 16 December 1983.

150/ A/38/385, para. 337.

151/ *Ibidem*.

152/ A/38/385, para. 338.

153/ *Ibidem*.

154/ *Ibidem*.

155/ Operative paragraph 7 of General Assembly resolution 38/102, adopted on 16 December 1983.

"the objective to be aimed at is the progressive restriction on the number of offences for which the death penalty may be imposed with a view to its total abolition and that, in the meantime, it should be immediately abolished for offences of a political nature". 156/ In this connection, it should be remembered that Act No. 18,222 of 20 May 1983 "provides legislatively for a mandatory sentence of death when the sentence ought, at least, properly to have been left to the appreciation of the Courts". 157/

167. The General Assembly reiterated its appeal to the Chilean authorities to put an end to "the practice of torture and other forms of cruel, inhuman or degrading treatment". 158/ The Special Rapporteur received information on 147 acts of torture and other cruel, inhuman or degrading treatment. 159/ They relate to as many persons who have filed complaints before the courts against agents of the security services, particularly the National Information Agency (CNI). The steady increase in the number of complaints and the consistency in the methods of torture lead the Special Rapporteur to reiterate the conclusion that "torture and inhuman treatment continue to be a habitual practice within an important sector of the very forces which are charged with the responsibility for the maintenance of law and order and the protection of citizens. They benefit from the tolerance of the authorities". 160/ It has also been reported that 161 persons were shot and wounded by members of security services 161/, particularly during the holding of "days of protest" in July-October 1983. The Special Rapporteur has also noted that a significant number of persons have been the victims of assaults by agents of the security services, resulting in injuries of various kinds, also in the context of the "days of protest" in July-October 1983. It should be remembered that "even in times of emergency, no derogation is permissible under article 4 of the Covenant on Civil and Political Rights from the prohibition of torture and other inhuman treatment ... as a consequence, States must at all times take measures to protect their citizens from such treatment". 162/

168. Judicial protection of the right to physical and moral integrity continues to be inadequate, despite the increase in the number of complaints of unlawful maltreatment and other types of unnecessary violence. However on 21 October 1983 the Supreme Court appointed an ad hoc Military Prosecutor to study a number of allegations of torture, and, for the first time, a civil judge visited the secret place of detention held by the CNI in 476 La Habana Street in Viña del Mar, where 11 students were reported to have been tortured. In this context, the Special Rapporteur has already observed that "the impunity enjoyed by the security organs is a fact which must be deplored and denounced because it is the cause, and an undoubted encouragement in the commission, of multiple violations of fundamental human rights which frequently take the form of unjustifiable homicide; violations of physical security and integrity; unlawful arrests; the emergence of illicit squads spreading terror; persecution; abductions; and violations of home and property, among other rights". 163/

156/ A/38/385, para. 339

157/ Ibidem.

158/ Operative paragraph 7 of General Assembly resolution 38/102, adopted on 16 December 1983.

159/ See Annex I of documents A/38/385, A/38/385/Add.1, and of this report.

160/ A/38/385, para. 340.

161/ See Annex II of documents A/38/385, A/38/385/Add.1 and of this report.

162/ A/38/385, para. 340.

163/ A/38/385, para. 341.

169. The right to liberty is also a constant concern of the international community. The General Assembly reiterated its appeal to the Chilean authorities to put an end to "arbitrary detentions and imprisonment in secret places". ^{164/} The number of such detentions showed a substantial increase in January-November 1983 (4,306 cases) by comparison with the corresponding period in 1982 (976 cases) and 1981 (871 cases). These are minimum figures relating to clearly established cases of detention. Qualitatively speaking the arrests continue to reflect "the tendency towards selectivity, being focussed on those who dissent or are suspected or dissenting from the established political, social or economic system; those who engage in promoting or protecting human rights; trade union leaders; ...". ^{165/} However, the substantial increase in arrests was at public gatherings (3,655 cases of a total of 4,306 for the first 11 months of 1983). The Special Rapporteur recalls that "the serious economic crisis is a factor but it is closely associated with the grave political crisis resulting from the disruption of the traditional democratic order" ^{166/} which has already lasted 10 years. In addition, the majority of the arrests were not based on proper legal grounds, but rather to stifle and discourage ever increasing and widespread popular peaceful protest. Of the 4,052 persons arrested (January-October 1983), only 403 (9.95 per cent) were brought to the courts and only four persons (0.01 per cent) were charged with committing a terrorist offence. As a consequence, the Special Rapporteur recalls that the exceptional powers of the Government "are used to persecute dissidents who have committed no terrorist act of any kind and to create an over-all climate of fear among the population so as to discourage protest". ^{167/} This situation becomes evident since of the 4,052 persons arrested (January-October 1983, 3,640 (89.78 per cent) were released without charge or merely charged with a minor offence (arbitrary detention). Moreover, some of these arrests, in addition to being arbitrary, were also illegal in that they were carried out by persons who were not authorized by law to make them (CNI agents in 175 cases in January-October 1983) or, in the cases of officials who are so authorized, they act frequently without a warrant issued by an official expressly empowered by law to do so. Lastly, judicial supervision over arbitrary and illegal arrests would appear to continue to be deficient, particularly in the case of ill-treatment of detainees. During the period January to November 1983, 141 complaints were lodged in the Courts of Santiago because people were detained in secret places and held incommunicado without the authorization of a Court; only one complaint (the case of José Santos Tamayo Velázquez) was accepted by the Court of Appeal of Santiago (decision of 22 November 1983). None of the complaints filed in 1983 has given rise to any compensation whatsoever for the benefit of persons arbitrarily and illegally detained for alleged political offences, and the victims "do not appear to have sought any remedy, it is thought, either because they were too afraid or were satisfied enough with having recovered their freedom". ^{168/}

^{164/} Operative paragraph 7 of General Assembly resolution 38/102, adopted on 16 December 1983.

^{165/} A/38/385, para. 342.

^{166/} A/38/385, para. 343.

^{167/} A/38/385, para. 343.

^{168/} A/38/385, para. 344.

170. The right to security of the person is also a constant concern of the international community. The General Assembly reiterated its appeal to the Chilean authorities "to put an end of intimidation and persecution". 169/ The number of acts of persecution and intimidation reported in Santiago during January-November 1983 (195 cases) is considerably higher than the number reported during the same period in 1982 (101 cases) or 1981 (133 cases). The Special Rapporteur recalls that "these acts do not appear to be isolated events, but the result of a systematic policy aimed at persecuting and discouraging those who disagree, or are thought to disagree, with the present political autocratic system and those who are prepared to defend human rights which are violated. Those acts clearly appear to have a political aim". 170/

171. Conditions of detention in prison establishments threaten the right to security and health of persons in prison. At the end of October 1983 there were 150 persons being detained for "crimes of opinion" in the various prison establishments of Chile. They have been prosecuted or convicted for offences, most of which would not be regarded as crimes or even minor offences under the legal system of a democratic society. Despite the Agreement of 24 July 1978, concluded between the ad hoc Working Group of the Commission on Human Rights and the Chilean authorities concerning the granting of a special category to persons detained for crimes of opinion, the Government continues to group together "political" prisoners and ordinary prisoners. In addition, the general principles governing the classification and treatment of prisoners "do not seem to be properly respected, perhaps because of the inadequacy of resources allocated for the purpose and growth in the size of the prison population as a direct result of the present political system". 171/

172. The fate of the 635 persons who disappeared between 1973 and 1977 has not yet been cleared up by the Government, despite the appeals of the international community. The General Assembly urged once more the Chilean authorities "to investigate and clarify the fate of persons who have disappeared for political reasons, to inform their families of the results of such investigation and to bring to trial and punish those responsible for their disappearance". 172/ The Government has not indicated a single case in which the judicial inquiries that were completed or that were in progress have succeeded in clarifying the facts or in the identification and punishment of those guilty. The Special Rapporteur recalls his conclusions that "only a relatively small number of cases have been the subject of inquiry" and that "the kind of 'judicial' inquiries undertaken are formal, most inadequate and apparently designed to ensure that the complaints are rejected and disposed of that way". 173/ Lastly, "those who are bent on demanding that the authorities discharge their responsibility are subjected to harassment". 174/ In 1983, the Special Rapporteur has received information concerning further actions against the relatives of missing detainees, including arrests of such persons and action to prevent them for holding peaceful demonstrations.

169/ Operative paragraph 7 of General Assembly resolution 38/102, adopted on 16 December 1983.

170/ A/38/385, para. 346.

171/ A/38/385, para. 346.

172/ Operative paragraph 6 of General Assembly resolution 38/102, adopted on 16 December 1983.

173/ A/38/385, para. 165.

174/ Ibidem.

173. The right to freedom of movement has always been one of the major concerns of the international community. The General Assembly urged once again the Chilean authorities "to respect the right of Chileans to live in and freely enter and leave their country, without restrictions or conditions, and to cease the practice of 'relegation' (assignment of forced residence) and forced exile". 175/ As regards the right to enter and to leave the country freely, the non-renewal of one of the two states of emergency as from 28 August 1983 means that the Executive no longer has the discretionary power to prevent Chilean citizens from leaving the national territory. But the maintenance of the other state of emergency (the "state of danger due to threats to internal peace") means that the Executive retains the power to refuse entry into, or expel from, the national territory those who propagate the doctrines alluded to in article 8 of the Constitution, those accused of being or reputed to be activists for such doctrines, and those who act contrary to the interests of Chile or constitute a threat to internal peace (twenty-fourth transitional provision of the Constitution). In addition, according with article 41, paragraph 7 of the Constitution, the measures adopted in these matters in application of exceptional powers accorded to the Executive under a "state of emergency", will remain in force after its expiration. Consequently, the Executive continues to have powers to prohibit entry into and to expel from the national territory. This has a direct effect upon the continued existence of the problem of Chilean exiles. In these circumstances, the re-establishment of the rule of law in this area is not possible, since administrative discretion is not subject to judicial control and supervision. The Government did publish between 24 December 1982 and 4 October 1983, 11 lists of persons authorized to return to the country. But on 28 October 1983 the Government announced the end of this procedure and published a consolidated list of 3,421 persons authorized to return. This is, of course, a positive measure and it is to be hoped that experience proves that the list is viable as a humanitarian measure. Nevertheless, the Special Rapporteur must reiterate his previous conclusions that article 12, paragraph 4 of the Covenant "prohibits the imposition of arbitrary restrictions on the exercise of the right of every one of its citizens freely to enter his country". 176/ Further, the absence of the publication of a list of the persons who are forbidden to enter their country prevents "first, the establishment of a modicum of legal security for the persons concerned and, secondly, the creation of favourable conditions for a proper assessment of the situation". 177/ Lastly, the solution of the Chilean exile problem most undoubtedly lies in the urgent abolition of the emergency legislation (both twenty-fourth transitional provision and the effects of article 41, paragraph 7, of the Constitution), "because that is the legal framework invoked in order to maintain the prohibitions concerning entry at the administrative level or to resort to administrative expulsion, both of which constitute strictly political exile". 178/

175/ Operative paragraph 9 of General Assembly resolution 38/102, adopted on 16 December 1983.

176/ A/38/385, para. 349.

177/ Ibidem.

178/ Ibidem.

174. The freedom of movement within the country and the freedom to choose one's residence continue to be restricted by the fact that the President of the Republic is empowered to restrict residence (internal banishment) without the courts of justice being able to investigate this type of administrative action (twenty-fourth transitional provision of the Constitution). During the first 11 months of 1983, the number of cases of administrative relegations (127) tripled as compared with the same period in 1982 (41) and doubled that of the same period in 1981 (59). In addition, this measure was imposed in 1983 on trade union leaders and shanty town dwellers.

175. The Special Rapporteur also expressed his concern regarding the protection of the right to privacy. In the period May-October 1983, a human rights organization sponsored, in Santiago, 99 complaints to the courts about unnecessary violence resulting in damage to property, carried out by members of the armed forces and Carabineros in the course of illegal searches of the homes of shanty town dwellers. Because of the official capacity of the persons accused the complaints had to be submitted to the military courts. No significant result has yet emerged. The right to honour character and moral integrity of a number of persons has been also affected.

176. Freedom of thought and opinion in political matters is still subject to the "political recess" provided for in the transitional provisions of the Constitution. In fact, freedom of opinion has constitutionally been removed from those who propagate the doctrines alluded to in article 8 of the Constitution from those who act "contrary to the interests of Chile" or from those who "constitute a threat to internal peace" (twenty-fourth transitional provision). The Special Rapporteur recalls that the "political recess" cannot be justified in terms of article 4 of the Covenant, since "an emergency has strictly to be limited to the exigences of the situation" and cannot, therefore, "be justified by a policy which aims at the suspension, for a prolonged period, of one of the central rights proclaimed by the Universal Declaration of Human Rights and guaranteed under article 25 of the Covenant, that is to say, the right to take part in the conduct of the political life of one's country together with all the civil liberties, whether of thought, behaviour or association, which are the means by which that central right can properly be exercised". 179/ Moreover, the "political recess" in conjunction with "the unconstitutional assumption of power by the Junta, appears to be the fundamental cause of, or itself to be, the emergency". 180/

177. The exercise of freedom of expression and information should, in principle, have benefited from the non-renewal of the declaration of one of the two states of emergency, because of the abrogation of Supreme Decree No. 37, on 24 January 1983 which prevented the communication media from reporting "terrorist acts or behaviour". Nevertheless, under the twenty-fourth transitional provision of the Constitution, Decree No. 376 of 9 September 1983 extended the obligation to

179/ A/38/385, para. 352.

180/ Ibidem.

submit for previous authorization by the Minister of the Interior "the establishment, publication and circulation of any new publication". This measure, however, does not apply to the publication of books nor does it apply to the technical publications of the Universities but this remains subject to the authority of the Military rectors. While in the case of the publication of books, this is a step forward, nevertheless, the twenty-fourth transitional provision "is potentially applicable to writers publishing works on subjects which could arbitrarily be considered as constituting a threat to the social peace, the 'political recess' or the International Security of the State Act". 181/ It is precisely in this connection that the Special Rapporteur received a number of complaints in the Second half of 1983, concerning violations of the right to freedom of opinion, expression and information.

178. The General Assembly requested once again the Chilean authorities "to restore the effective enjoyment and exercise of civil and political rights and fundamental freedoms without any discrimination". 182/ The Special Rapporteur recalls that "the right to public freedoms and their exercise, as it is understood in international instruments and norms, has been virtually suspended or at least, very greatly restricted, by the combined application of article 8 of the Constitution and the tenth and twenty-fourth transitional provisions of the Constitution, in conjunction with special legislation adopted for the various sectors". 183/ As regards the right to peaceful assembly, however, the non-renewal as from 28 August 1983 of one of the two states of emergency would in principle, have meant that the exercise of this right would no longer be capable of suspension. Decree No. 1086 of 15 September 1983 recognized and regulated, for the first time in 10 years, the recognition and exercise of the right of assembly. Nevertheless, the fact that the other state of emergency (the "state of danger due to threats to internal peace" under the twenty-fourth transitional provision) remains in force, means that the President of the Republic is still permitted to "restrict the right of assembly". In addition to article 8 of the Constitution and the tenth transitional provision ("political recess"), Act No. 18,256 of 26 October 1983 established a major question mark with regard to the future viability of Decree No. 1086, since it amends the Internal Security of the State Act by introducing a new type of offence for those who "without authorization encourage or convene for public collective actions ... and those who promote or incite to demonstrations ... The penalties provided are rigorous imprisonment, restricted residence or medium-term exile. As a result, Act No. 18,256 appears to be inconsistent with article 19 paragraph 13 of the Constitution, as well as Decree No. 1086, since it prohibits the exercise of the right to peaceful assembly without previous authorization. Subsequent to the entry into force of the Decree No. 1086, and the adverse consequences upon it of the Act. No. 18,256, the Special Rapporteur has noted a number of the general prohibitions of the exercise of the right to peaceful assembly, as well as the fact that the necessity of obtaining previous authorization is the general rule.

181/ A/38/385, para. 353.

182/ Operative paragraph 5 of General Assembly resolution 38/102 adopted on 16 December 1983.

183/ A/38/385, para. 354.

179. With respect to the exercise of the other public freedoms (right of association, right of participation in the conduct of public affairs and right of petition), no legislative amendments or changes in judicial or administrative practice have occurred during the second half of 1983. Consequently, the Special Rapporteur maintains the conclusions he drew in his Report to the General Assembly. 184/

180. As for economic and social rights, trade union rights, cultural rights and rights of minorities, in the absence of any significant changes during the second half of 1983, the Special Rapporteur reiterates his conclusions as contained in his Report to the General Assembly. 185/

181. In conclusion, the Special Rapporteur welcomes the fact that the Government of Chile has supplied what it considers to be suitable information to the Secretary-General of the United Nations, and expresses the hope that this attitude constitutes the first step towards the close co-operation that the situation calls for between the Government of Chile and the United Nations competent organs in respect of human rights, particularly the Commission on Human Rights and its Special Rapporteur. And "it is the hope of the Special Rapporteur that the government will consider its response to the international community's concern in the light of its own inherent responsibility in the promotion and protection of human rights in such a way as to afford the co-operation that appears to be required". 186/

182. It appears from the material considered in this report that prospects for the protection of basic human rights and freedoms have continued to be bleak throughout this year. This situation has provoked ever increasing discontent and widespread protest from virtually all sectors of the population. These protests have in turn given rise to systematic counter measures by the Government with increased adverse consequences on human rights. It is the considered view of the Special Rapporteur that the central and basic problem is still the continuing denial by the present Government in Chile of the right of the people to take part in the political life of their country and in choosing the kind of democratic system in which they wish to live, in accordance with the norms recognized in articles 21 and 2 of the Universal Declaration of Human Rights and the specific obligations which Chile as a State has undertaken under articles 25, 26 and 2 of the Covenant on Civil and Political Rights. The Government of Chile has devised an integrated system of legislative, executive and administrative measures which it has used with rigour to enforce the denial of this central political right and to restrict all other rights and freedoms designed to give effect to that central right. In August 1983, however, there was a gleam of hope in the policy of "apertura política" which the Government had announced, culminating in the opening of a dialogue with some political parties, the lifting of one of the two states of emergency, some relaxation in freedom of assembly and

184/ See A/38/385, paras. 355-357.

185/ A/38/385, paras. 358-369.

186/ A/38/385, para. 370.

expression and the return of a number of exiles. The untimely breakdown of the political talks, however, together with a tightening of measures to nullify the positive consequences of the lifting of one of the two states of emergency have brought into question the avowed commitment of the Government of Chile to achieve the objective of re-establishing a democratic order in the near future.

183. It is the hope of the Special Rapporteur that the Government of Chile will take new and meaningful measures to demonstrate and implement urgently its commitment to re-establish a democratic order and to do so without the constitutional restrictions adversely affecting the protection and promotion of human rights, especially the discriminatory elements at the political level envisaged under article 8 of the Constitution.

184. It is, therefore, recommended that the Government of Chile be urged to extend to the Commission on Human Rights and its Special Rapporteur the co-operation that is required for the promotion and protection of human rights that the Government of Chile should put an immediate end to the state of emergency due to threats to internal peace and take more urgent steps for the re-establishment of the traditional democratic order; that the jurisdiction of the Judiciary should be re-established by restricting the jurisdiction of Military Courts to such cases as are permissible under a democratic system which guarantees basic human rights; that the independence of the Judiciary be fully re-established through the abolition of the new method of appointment of Associate Judges (Abogados Integrantes) to the Branch and, specially, through the Executive refraining from taking any action, whether by way of purported disciplinary measures against members of the Judiciary in the exercise of their functions (as in the case of Judge Brito) or otherwise, which may jeopardise that independence; that adequate measures be taken to ensure that the right to life, the physical and moral integrity of the person, the right to liberty and security, the right to privacy, freedom of thought, opinion and expression be fully respected by everyone, including law enforcement officials and the armed forces and that, where breaches occur, measures are taken to investigate the occurrences fully so that remedies may be available to the victims; that thorough measures be taken to investigate disappearances which have occurred and that the relatives of the disappeared are given every facility possible in the investigations; that measures are taken to prosecute and punish those responsible for the disappearances; that measures are taken forthwith to prevent CNI agents and all other personnel not belonging to the regular Police from arresting and detaining persons; that immediate measures be taken to ensure that officials discontinue the practice of torture and, where complaints are made, thorough investigations are conducted so as to provide remedies to the victims; that all secret places of detention be immediately banned; that the right to live in the country at a residence of one's own choice, the right to enter or leave the country be immediately restored and that the practice of internal banishment be stopped forthwith; that the right to work and to appropriate conditions of employment without discrimination on political or other illegitimate grounds be restored, children and young persons be specially protected in the industrial domain, and trade unions recover their complete freedom of association and all the rights that this freedom comprises; that the State assume its full responsibility in the field of education and allots sufficient resources for the purpose; that the right to education and culture be no longer subject to discriminatory practices and that decision making in education and cultural policy be subject to the participation of the people affected; that the autonomy of Universities be restored and, lastly, that the rights of indigenous minorities be implemented in accordance with the obligations of Chile under the Covenants and the norms that are generally applicable.

Annex I

List of 60 persons subjected to acts of torture and other cruel,
inhuman or degrading treatment (September-November 1983)

1. Abarca González, Juan de Dios
2. Acevedo Saez, Galo Fernando
3. Acevedo Saez, María Candelaria
4. Aedo Sepúlveda, Silvia Eliana
5. Araneda Miranda, Carlos Alberto
6. Astudillo Hernandez, Carlos
7. Barahona Vega, Oscar Fernando
8. Borquez Arredondo, Lázaro
9. Borquez Arredondo, Olmer Galvarido
10. Briceño Azócar, Gunther Andrés (15 years old)
11. Capriles Rojas, Susana Alejandra
12. Carre Tornatore, Raúl
13. Castillo Soto, René Osvaldo
14. Cea Torres, Ethel Paz
15. Concha Sandoval, Luis Roberto
16. Contreras Henry, Oscar
17. Cotroneo Insunza, Patricia
18. Crisosto Muñoz, René Osvaldo
19. Díaz Alarcón, Ximena
20. Donoso Henn, Ana Luisa
21. Ferias Ogaz, Rosa Juana
22. Fernandez Cuevas, Mario Ernesto
23. Fierro Saez, Enriqueta
24. Fuentes Millares, Héctor Ramón
25. Grau Mascayano, Juan Pablo
26. Henriquez Reyes, Andrés Ruperto
27. Jofré Waghorn, Jeanette
28. Jones Lavin, Cristian Belisario
29. Lira Trujillo, José Luis
30. López Tejo, José Luis
31. Marchant Moya, Hugo Jorge
32. Méndez González, Alejandro
33. Mix Jiménez, Patricia Eliana
34. Molina Donoso, Rodolfo Orlando
35. Milina Mardones, Raúl Orlando
36. Molina Molina, Rodolfo José
37. Morales Riquelme, Juan Carlos
38. Muñoz Bustos, Abraham
39. Muñoz Bustos, Fernando Rubén
40. Muñoz Bustos, José Albino
41. Muñoz Bustos, José Luis
42. Muñoz Herrera, Margarita Jeanette
43. Navarro Díaz, Patricia Carolina
44. Ortiz Correa, Adriano Santiago
45. Palma Donoso, Jaime
46. Palma Luna, Antonio Vicente
47. Parra Mora, Iván
48. Pazó Flores, Ana María
49. Peña Salazar, María Eugenia
50. Pérez Moreno, Ramón Belisario
51. Pizarro Riquelme, Edgardo Arturo

52. Ramos Muñoz, Marco Antonio Fabriciano
53. Riquelme Brantes, José Antonio (17 years old)
54. Rodríguez Torrent, Juan Carlos
55. Rojas Toledo, Vilma Cecilia
56. Sanhueza Debelli, Fabiola Cristina
57. Sepúlveda Reyes, Margarita
58. Soto González, Marta Silvia
59. Valeria Sales, Helia Irene
60. Zepeda Cañete, Gustavo

Annex II

List of 80 persons wounded by gunfire by the security services
(September-November 1983)

1. Aguilar Gamboa, José Luis
2. Aguilera Tapia, Juan Carlos
3. Alegría Millaqueo, Manuel (tear gas)
4. Allendes Pinto, Gustavo Washington
5. Araya Aranedá, Alejandro (16 years old, lead shot)
6. Arenas León, Alejandro (lead shot)
7. Arredondo Solís, Jorge Armando
8. Astorga Bustos, Eduardo Alejandro (15 years old)
9. Baeza Castillo, Emelina del Carmen
10. Bizama Loyola, Humberto
11. Bustos Rivera, Eduardo Iván (lead shot)
12. Cáceres Pérez, Carlos Orlando (17 years old)
13. Cáceres Salinas, Wladimir Fernando (17 years old)
14. Cádiz Soto, Anselmo Urbano (lead shot)
15. Cairel González, Alejandro Arnoldo (lead shot)
16. Cerda Navarrete, Eduardo Enrique (tear gas)
17. Cofré Morán, Omar Raúl
18. Colileo Melín, Juan Antonio
19. Cortés Salazar, Roberto
20. Cruz Arellano, Guillermo
21. Chanco Figueroa, Ruth
22. Duarte Muñoz, Manuel (lead shot)
23. Escobar Martínez, Sergio
24. Fuentes Campo, Fernando
25. Fuentes Campo, Pedro Juan
26. Garrido Velasquez, Margarita del Carmen
27. Godoy Zamora, Jorge Diógenes
28. González Caro, Héctor
29. González Valenzuela, Carlos Eduardo
30. Heredia Villablanca, Ovidio (disabled)
31. Hernández Llanquilef, Víctor Manuel (lead shot)
32. Herrera Pérez, Jaime Eduardo (lead shot)
33. Hervia Afifiir, Norma Eliana (lead shot)
34. Hinojosa Retes, Jessica (13 years old)
35. Leiva Contreras, Juan
36. Leiva Contreras, Luis Antonio
37. Lillo González, Julio César (lead shot)
38. Lizana Sepúlveda, Jaime Humberto (lead shot)
39. López Pino, Enriqueta del Carmen (13 years old)
40. Llamini Ortiz, José Miguel
41. Mazaeda Monsalve, José Adolfo (lead shot)
42. Méndez Avello, Leontina del Carmen (lead shot)
43. Merino Moreno, Cristián (lead shot)
44. Millal Sandoval, Juana
45. Montecinos Díaz, Dámaso Ulises
46. Muñoz Bravo, Guscolda del Carmen
47. Naranjo Daza, Aurora
48. Norambuena Carrasco, Esmeralda Rosa
49. Núñez Alvarado, Víctor Hernán
50. Núñez Olea, Olga Mercedes

51. Osorio Arévalo, María Elena (12 years old, lead shot)
52. Palacios Sotelo, Claudio
53. Palacios Sotelo, Robinson
54. Pereira Villegas, Roberto Armando
55. Picón Díaz, Orlando Javier (17 years old)
56. Pino Ruiz, Jaime Hernán
57. Pizarro Iturriaga, Luis Roberto
58. Puga Salinas, José Alejandro (lead shot)
59. Rivas Muñoz, Juan Octavio
60. Riveras Silva, Margarita Olga
61. Rodríguez Neira, Gerardo
62. Rodríguez Olivares, Pablo (lead shot)
63. Salinas Rivera, Jorge
64. Sandoval Placencio, Iván Jorge
65. Segura Hidalgo, Edgardo (18 years old)
66. Sepúlveda Santibañez, Richard Antonio
67. Sierra Sánchez, Salvador (18 years old)
68. Silva Gutiérrez, Tomás Oscar (lead shot)
69. Soriano Ducau, Rodrigo Andrés (14 years old)
70. Soto Astete, Elías Ernesto
71. Tapia Lastra, Luis Alberto
72. Toledo Godoy, Marco Antonio
73. Torres Rubilar, Héctor Antonio (18 years old)
74. Urrutia Padilla, Benito Ignacio
75. Varas Villablanca, Rubén (lead shot)
76. Vilches Núñez, Ramón Luis (lead shot)
77. Villablanca Rivas, Lenin Juan (lead shot)
78. Villalobos Briones, Lucía (lead shot)
79. Villatura Retamal, José
80. Yáñez Ribera, Luis Heriberto (19 years old)