CHILE

CCPR A/34/40 (1979)

70. At its 127th to 130th meetings, held on 11 and 12 April 1979 (CCPR/C/SR.127-130), the Committee considered the initial report (CCPR/C/1/Add.25 and 40) submitted by the Government of Chile.

71. The report was introduced by the representatives of Chile who referred to the history of Chilean institutions from the emergence of Chile as an independent State and emphasized the evolutive nature of the system. They also described some aspects of the events that had taken place before and after 11 September 1973, and the new legislation enacted by the military Junta after that date, notably Decree Law No. 527 of 1974, under which the Junta assumed the constituent and legislative powers while the President of the Junta exercised executive authority. This Decree, which had constitutional force, expressly reaffirmed the fact that the judiciary was established and would exercise its functions in the manner and with the independence and powers prescribed by the Constitution and the laws of the Republic. The representatives of Chile further stated that to assist it in the exercise of its legislative and constitutional powers the Junta had set up four legislative committees with a secretariat of Legislation to co-ordinate their work and that a commission of jurists had prepared a preliminary draft constitutional reform which, after thorough discussion at all levels, would be submitted to the country for consideration by means of a plebiscite. They also emphasized that individual rights were traditionally safeguarded in Chile by the various constitutional texts which had succeeded one another during the historical development of the country from its independence to the present day, and mentioned as an example that the legal status of women was being progressively equalized with that of men.

72. Several members of Committee stated that the situation of human rights in Chile had been a source of concern to the international community since September 1973, and that in the last few years the United Nations had noted the existence of flagrant and systematic violations of human rights and had adopted numerous resolutions calling for the restoration of human rights and fundamental freedoms in Chile. It was pointed out by some members that there had been favourable developments in the last two or three years but there were still violations. However, the relations between the Government of Chile and the United Nations and in particular the establishment of the Ad Hoc Working Group of the Commission on Human Rights and its visit to that country, should be a source of inspiration to the international community and constituted a very important precedent. Some members noted that the mandate of the Committee was limited, since it was confined to ascertaining on the basis of the information provided in the report of the State party concerned what the situation of civil and political rights in that country was in view of the fact that rules of procedure did not establish any machinery for verifying the information received. In this connection, one member expressed the view that the Committee was not a fact-finding body. Others expressed the view that the task of the Committee was to review the implementation of the Covenant and make such comments as it found appropriate, and that in so doing the Committee should draw on whatever additional information it deemed useful, particularly when the information was drawn from competent United Nations bodies which had investigated and confirmed the existence of the

violations of human rights.

73. All members agreed that the report of the Government of Chile did not give any account of the problems affecting civil and political rights to which the Ad Hoc Working Group of the Commission on Human Rights and resolutions of the United Nations have repeatedly referred. 7/ Some members also drew attention to the fact that the report had been submitted by an authority which owed its very existence to the elimination of the political rights of the Chilean people although the Government had attempted to create the impression that legal continuity had been maintained with the Chilean Constitution of 1925. Other members stated that the report failed to meet the requirements of article 40, paragraph 2, of the Covenant since it merely provided an idealized and abstract picture of the legal framework which should ensure the protection of civil and political rights in Chile and that the description itself contained contradictions in reasoning and ambiguous legal formulations and made no reference to the practical enforcement of the legal norms for the protection of fundamental rights. They considered that the report which had been submitted ignored the true situation in the country and did not make for proper examination of that situation. Consequently it was necessary to ask the Government of Chile to submit a further report in which an analysis would be made of the manner in which each Covenant right is in practice implemented, the rights which have been derogated from, the justification for and the extent of the derogation.

74. Some members referred to certain concepts which were regarded as justifying restrictions on human rights in Chile, such as those of "national security" and "latent subversion", and pointed out that the Covenant did not authorize any derogation from its obligations on the grounds of "latent subversion". They inquired whether the concept of "national security" was defined in terms of the stability of the regime or the stability of the State and whether it was invoked when the Government feared for its stability or when its interests had been threatened. They also asked how the term "latent subversion" should, in the view of the Government of Chile, be defined since, in those countries of Latin America where illiteracy, poverty and disease were rife, there could be said to exist a state of latent subversion that would last as long as social and political rights had not been substantially implemented.

75. It was observed that the fact that supreme legislative and constituent powers were currently vested in the Junta and executive powers in the President of the Junta resulted in a situation which was in itself a denial of some of the basic political rights set forth, particularly in article 25 of the Covenant. One member of the Committee pointed out that the President of the Junta had stated in April 1978 that the draft constitution would be prepared during that year and would be submitted to a plebiscite, yet only recently he had stated that there would be no elections or plebiscites in Chile for the next 10 years. Other members asked when the new constitution was to be presented to the

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7/ See the report of the Ad Hoc Working Group to inquire into the situation of human rights in Chile of the Commission on Human Right (A/33/331) and the report of the Ad-Hoc Working Group submitted to the Commission on Human Rights at its thirty-fifth session (E/CN.4/1310).

people and how and when a referendum was to be held on it, whether new electoral rolls would be prepared and how they would be checked, whether political parties or their equivalents would be allowed to monitor in the preparation, supervision and vote-counting in the referendum and whether there would be any opportunity to consider alternative proposals or of giving public voice to criticism or opposing views. They also asked how soon after such a constitution was adopted and, on the assumption that it would provide for an elected Parliament, the elections would take place. One member asked when the Government considered that the principle of popular sovereignty could be re-established and who was to judge whether "the corrupt political practices, which undermined law and order ..." had been finally eradicated since the Government of Chile had referred in its report to those practices as the cause of the restrictions imposed on the right of citizens to vote or to be elected.

76. With regard to the present constitutional situation, it was pointed out that the Junta itself was based on a violent breach of the Constitution in which the constitutionally elected President of the Chilean people had been killed and all elected organs and political parties had been dissolved, that the Constitutional Acts had modified the Constitution and that the remedy of inapplicability on grounds of unconstitutionality, which had been provided for in the Constitution, was not applicable to them. It was also asked whether the necessary laws had been enacted to bring the provisions of Constitutional Act No. 3 into force, and more information was requested on article 11 which dealt very fully with the protection of the present regime. With reference to Decree Law No. 788, it was also noted that it seemed possible for a body that had not been elected to change the Constitution.

77. Several members wished to know to what extent the provisions of the International Covenant on Civil and Political Rights were in force under the Chilean legal order. One of them asked whether the Covenant could be invoked in defence of a Chilean citizen in a Chilean court and in the military courts in particular and what remedies were available to people to assert their rights under the Covenant. Another member inquired whether the Government had considered the possibility of exercising its constituent powers and according the provisions of the Covenant the status of constitutional law. One member asked whether the text of the Covenant had been published and disseminated in Chile so that the entire population could be made aware of the rights to which they were entitled as a result of the ratification of that instrument.

78. Several members referred to article 4 of the Covenant in relation to the suspension of a number of rights under the states of siege and emergency. It was pointed out that it was the Junta itself that constituted the real state of emergency for the Chilean people and that article 4 of the Covenant had not been intended to justify the acts of persons who themselves created the emergency. They inquired whether, as stated in the report of the Ad Hoc Working Group, the Government was continuing, without any objective justification, to apply measures intended for exceptional conditions of internal unrest, and they referred in particular to the President's powers to order preventive arrests by the security forces and to expel Chilean citizens or prevent them from re-entering Chile. They also referred to the powers granted to the Commanders of Emergency Zones to restrict the rights of assembly, association, opinion and information. They inquired whether the communication of August 1976 from the Government of Chile to the Secretary-General of the United Nations, reporting on the restrictions imposed on the rights enunciated in articles 9, 12, 15, 19 and 25 (b) of the Covenant under the state of siege, were also applicable to the state of emergency, which was still in force, and asked for further information on the restrictions placed on

the rights prescribed in the Covenant as a result of the state of emergency, which, although intended to be limited in space and time, had been transformed into institutional restrictions in force throughout the country for an indefinite period. Another member asked whether the notification of termination of the state of siege also signified the end of the derogations of rights, notified in accordance what article 4 of the Covenant.

79. Several members stated that the report of the Ad Hoc Working Group gave no assurance that the right to life and to liberty and security of person (arts. 6, 7 and 9 of the Covenant) were properly protected. They pointed out that the number of arrests made for political reasons or on grounds of national security had been higher in 1987 than in 1977 and also affected persons who took part in the humanitarian work of the churches. They added that the remedy of amparo appeared to have been inapplicable during the state of siege and had proved ineffectual during the state of emergency.

80. They asked for information on the real possibilities of availing of this protection, and whether the remedy of amparo covered all cases in which a person had been deprived of his freedom by a governmental agency, including the security services and subordinate organs of the Executive, and particularly during the state of emergency. They also asked why a person was allowed to be detained for five days by the President of the Junta or the security services and at the end of that time placed at the disposal of the Ministry of the Interior, and whether that situation could last indefinitely. They also wished to know if it was possible to lodge an action against security forces that violated a person's privacy, home correspondence, which were protected by article 17 of the Covenant. Citing the report of the Ad Hoc Working Group in relation to cases of torture and ill-treatment and the provisions of the Covenant, which did not provide for derogations from the principles of article 7, some members asked for information on the measures that had been taken to investigate and punish violations of human rights in such cases and whether, when cases of the kind had been proven, the victims had obtained redress and the guilty persons had been punished. They also asked in how many cases formal charges of torture and ill-treatment had been made and what the results had been.

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

82. Some members raised questions on the text of Law No. 11,625 which established security measures for persons designated as "anti-social" but did not give a clear and precise definition of the type of conduct or personality that would be considered "anti-social". They asked what authority decided which were the cases to which the description was applicable. They also asked whether there were any judicial or administrative remedies against that measure.

83. One member referred to article 14 of the Covenant in relation to the repeated charges that arrests were carried out by persons who did not identify themselves, and asked whether the Government of Chile could give assurances that no one would be arrested except under the legal procedures in

force which specified that the arrested person was to be informed of the reasons for his arrest and the charges against him, while his family was to be informed of his place of detention and his particular status as a detainee. An explanation was requested as to why an accused person had so short a time (six days) in which to prepare his defence against the charges he faced. Other members inquired as to the remedies which could be invoked if there were unjustified delays in legal proceeding and referred to delays in the processing of petitions for habeas corpus which could jeopardize the security of the persons concerned and weaken the effectiveness of the remedy. They also asked whether the requirements of due process laid down in article 14 of the Covenant were being complied with by the military tribunals. Given the special importance of judicial institutions, some members asked how the independence of the judiciary was guaranteed in view of the fact that its members were appointed and liable to be dismissed by the Junta, that there was no right of appeal to a higher court and that the administrative power intervened, through the Ministry of the Interior, in the administration of justice.

84. In relation to article 12 of the Covenant, reference was made to the fact that the Government of Chile itself had stated that the Ministry of the Interior was entitled to expel an alien or a national from the country. One member asked whether the courts were entitled to review the substantive reasons adduced to justify such a decision or whether they confined themselves to a formal examination only. In the latter case, the provisions of article 2, paragraph 3 (a), of the Covenant were no being complied with. Some members viewed that fact that no one had been expelled or deprived of nationality in 1978, according to the information given by the Government, as an encouraging sign of a return to normality, but said that would like to know whether it was possible for persons to be deprived of their nationality for political reasons and what legal remedies were available to a citizen deprived of his nationality to safeguard his rights.

85. With regard to the situation of exiles and other persons outside Chile who wished to return to that country, some members said that entry was being denied on the grounds of "national sovereignty, internal security or the public order", or because the persons concerned were a "danger to the State". Those reasons covered a very wide field and were not clear enough for the Committee to assess the criteria on which the restrictions were based. They asked for information on the remedies available to persons who were victims of the prohibition. They also asked whether the Government intended to explain in which cases exiles would be allowed to return, whether the amnesty would be extended to the restoration of their former rights to all citizens, what were the reasons for prohibiting the return of a number of people who had been expelled or who had left the country earlier and how many people had thus been denied the right to live in their own country.

86. In relation to article 18 of the Covenant, one member asked whether the religious instruction which was to be included in the syllabus in Chile would be compulsory, what religious faith would be taught and who would determine which it was to be.

87. Another member stated that any democratic process the was compatible with article 25of the Covenant presupposed freedom of opinion supported by freedom from discrimination with respect to opinions expressed in public. While certain limitations were permissible under article 19, paragraph 3, of the Covenant, that should not be taken to mean that freedom of opinion could be restricted merely because the Government considered it to be a threat to its stability. Any restriction on that right required convincing proof of the existence of a danger which could not be overcome

in any other way. In the light of the report by the Government of Chile which, recognized that freedom of expression was limited "when its abuse may create unjustified alarm", one member asked for clarification of the legal significance of the expression "unjustified alarm" and inquired as to the remedies available to a person whose rights were restricted under the Act on Abuses of Publicity. Another member asked whether all social groups were equitably represented in the structure of the mass media, or whether they were monopolized by the Government.

88. Referring to articles 21 and 22 of the Covenant, several members stated that the rights of association and assembly did not seem to be respected in Chile since a number of trade unions had been dissolved, the right to strike and the right of collective bargaining had been suspended and the decree-laws recently enacted on labour questions contained such an array of restrictions that they aroused serious doubts as to their compatibility with the provisions of the Covenant. They referred in theat connection to the compulsory oath which elected union officials had to take and the restrictions as regards the persons who could stand for election, and requested further information on the possibilities open to workers of improving their economic situation in those circumstances. One member also asked whether Decree-Law No.198, which restricted the unions' right of assembly, was still in force.

89. One member referred to the obligation imposed on wives, under Chilean law, to obey their husbands and follow them wherever they took up residence, and considered that such obligations were not in line with article 23 of the Covenant.

90. Several members of the Committee expressed doubts regarding the application in Chile of the principle of non-discrimination established in articles 2, 25 and 26 of the Covenant, which had not been fully dealt with in the report submitted by the Government of Chile. It was pointed out that with the enactment of Constitutional Act No. 3 political discrimination had been made into a constitutional principle. Special importance was attached to the question of non-discrimination for political reasons, since violation of that principle was liable to affect the whole institutional structure of the country and in particular the rights set forth in article 25 of the Covenant, notably the right to take part in the conduct of public affairs, to vote and to be elected and to have access, on general terms of equality, to public service. They pointed out in that connection that all the political parties had been dissolved and asked for an explanation of the term "reasons of unity" for which it was claimed that steps had been taken and of how those reasons justified the disbanding of every party without exception. They also queried the meaning of the concept of political parties "as currents of opinion" and asked what their status or function would be.

91. One member stated that both the right of opinion and the right of association appeared to be subject to political discrimination. He referred to the restrictions placed on the right of students' and workers' associations to engage in political activities, and asked how such organizations were expected to discharge their functions efficiently with out speaking out in public on all matters relating to their objectives. He quoted, as an example, the ban on the election, as a representative of the workers, of any person who had been engaged in certain political activities during the previous 10 years, which lessened the workers' possibilities of being represented by experienced leaders.

92. Some members asked why the Government of Chile, according to its report, did not seem to

think that there were any ethnic or linguistic minorities in the country. There were numerous indigenous groups in Chile which retained their own special characteristics and were therefore entitled to enjoy the rights established by article 27 of the Covenant. Concern was expressed as to why they seemed to be unable to exercise their economic, social and cultural rights - a situation which was in breach of the principle of equality and of the rights of minorities.

93. The representatives of the Government of Chile began their exposition by making some general observations on the views expressed and questions put by many of the members, which they considered to be politicized and to reflect and attitude that prevailed in various United Nations bodies in which Chile had fallen victim in recent years to ideological persecution and differential and discriminatory treatment. They referred to their Government's reply concerning resolution 11 (XXXV) of the Commission on Human Rights, which rejected that resolution and stated that Chile might not continue to offer its co-operation if it was treated in a way that was not consonant with objective and universally valid standards.

94. Referring to the questions which had been asked concerning the juridical status of the relevant international instruments in Chilean legislation, the representatives stated that the Covenant could not be invoked directly in the Chilean courts but that the State had to enact the necessary legislation to apply it. Extensive legislation enacted in accordance with the different criteria followed by the succession of Governments in Chile had incorporated the principles of the Covenant into positive Chilean law.

95. They acknowledged that restrictions had been imposed under article 4 of the Covenant, but claimed that, although the present Government had not come to power in a manner consistent with article 25 of the Covenant, it had been recognized as a State party to it and was consequently entitled to restrict its application. The representatives described the situation which had prevailed before the present Government took power as unconstitutional and they referred to a resolution adopted by the Chilean Congress in August 1973 declaring the Government to be unconstitutional and requesting the armed forces to take measures. Chaos had reigned at the time owing to the fact that certain institutions were unable to function and to the existence of economic problems and social unrest. The Government had consequently been forced to adopt emergency measures derogating from its obligations under the Covenant, and such measures were still needed because of the existence of terrorist elements. They added that the state of siege was provided for in the 1925 Constitution while the state of emergency had been established by the Congress in Act No. 12,927 of 1958. They explained the limitations which the respective states imposed on the exercise of certain rights under Chilean law and pointed out that the state of siege was no longer in force in any part of the country, having lapsed in February 1979 in the last remaining province in which it had been in force. They also explained that during a state of emergency persons could be detained for five days, after which they either had to be released or brought before a court, and remedies existed such as that of the right of appeal to the military courts, whose decisions could be reviewed by the Supreme Court. They went on to state that the remedy of amparo or habeas corpus was fully applied under the state of emergency. It covered all acts of deprivation or threat of deprivation of fundamental freedoms and could be freely exercised. Constitutional Act No. 3 had instituted the remedy of protection, which covered a number of rights that were embodied in the Covenant and had been incorporated into Chilean legislation through that constitutional instrument.

96. With regard to the questions which had been raised regarding the independence of the judiciary, they asserted that it was completely independent. Appointments to the Bench, which were for life, were made by means of a procedure which guaranteed the independence of the judiciary, since the courts submitted lists of persons from among whom the appointments had to be made. No judge could be removed by the Executive. They explained that the law invested the Executive with certain powers as, for instance, during a state of siege and that the role of the courts was then merely to establish whether the rules in force for that state of emergency were being observed and not to pronounce on the reasons for ordering arrests to be made. Referring to a question put by one of the members on the short six-day time-limit which was allowed to accused persons to prepare their defence, they explained that that period corresponded to the plenary (plenario) stage. Before that stage of criminal proceedings was reached, the defendant would have had an opportunity to appoint a lawyer, summon witnesses and present any written evidence he considered necessary for his defence.

97. With regard to the question of military jurisdiction, the representatives explained that it was exercised in peacetime by courts which were essentially different from those which functioned in wartime. Wartime military courts functioned when there was a state of assembly or state of siege, and in the latter case, only in special circumstances such as when organized rebel forces were operating in the country. The peacetime military courts were special courts, subordinate to the Supreme Court, and dealt with military offences covered by the Code of Military Justice, offences placed before them under special laws, and ordinary offences committed by military personnel in wartime in the exercise of their duties. They added that the procedures laid down in the Military Code were substantially similar to those of the Chilean Code of Penal Procedure. The military courts were courts of second instance and the recourse of amparo was available to anyone who had been arrested under military jurisdiction. Sentences passed by military courts could be the subject of appeal to the Supreme Court. The uniformed police forces were also subject to military jurisdiction. In addition, the military courts dealt with the case of members of the military or police forces who, in the exercise of their functions, used unnecessary violence. Such cases were judged with regard to both the reason for and the extent of the violence used. A victim of undue force by the police had access to the full range of legal remedies, including the possibility of appealing to the Supreme Courts. Many members of the police forces had been penalized by the courts for committing abuses of that kind, and the Government of Chile was prepared to send to the Committee copies of the decisions rendered in those cases. With regard to the charges relating to missing persons, the representatives stated that the Supreme Court had recently appointed appeal court judges to look into the charges made.

98. With respect to the concept of latent subversion, they explained that it was given effect to only during a state of siege and then solely to determine whether certain cases should be tried by the peacetime or wartime military courts.

99. In response to a question on the number of political prisoners in Chile at the present time, they said that there were no political prisoners held in gaol or elsewhere, and that no one who had been detained as a result of the events of 1973 was still in prison.

100. Concerning loss of nationality, they stated that measure was no longer applicable since the state of siege had been raised, and that, while it was in force, it could be appealed to the Supreme

Court.

101. With regard to article 12, paragraph 4, and articles 22 and 27 of the Covenant, they recalled that the Government of Chile had informed the Committee of the temporary suspension and limitation of the right of certain Chileans to return to their country. Freedom of movement was related to the right of return. They added that the Government of Chile had honored the right of asylum in embassies and the right to leave the country and had commuted prison sentences to exile but that many of the persons who had requested permission to return had committed terrorist acts or had contravened the laws on the control of arms and explosives, while others wished to return in order to engage in open opposition to the Government. The Government, while provisionally refusing permission, was examining each case very carefully in the light of the persons' activities abroad. Persons who had been denied permission te re-enter the country could request reconsideration of their cases. The representatives pointed out that, to judge by the number of persons who had expressed a wish to return, the situation in Chile could not be as serious as it was described.

102. In reply to the questions which had been asked concerning the amnesty granted to persons who could have been indicted for serious violations of human rights, they stated that an amnesty had to be general and could not be applied on a piecemeal basis. It would be unjust for a police officer, for instance, who had exceeded his authority in apprehending a terrorist to be punished while the terrorist was allowed to go free under the amnesty. Amnesty did not mean, they explained, that offences should not be investigated to a certain criminal responsibility. The person benefitting from amnesty would still have to face up to his social responsibilities and a holder of government office would be subject to administrative sanctions.

103. The representatives of Chile stated, with respect to the Committee's questions concerning political parties, that parties were not referred to in the Covenant. They explained that the Marxist parties had been dissolved because they had been involved in revolutionary activities, and that all the parties had constituted a divisive force which had led Chile to the brink of civil war and had therefore made it necessary to adopt a policy of national unity. As the corruption in political life had brought about the collapse of the old standards and threatened life, property and freedom of opinion, fundamental changes had to be made in the institutional fabric of the country. It was necessary for constitutional reform to take place before elections could be held in Chile.

104. Replying to the questions which had been raised concerning freedom of information, they assured the Committee that there was wide freedom of the press and information in Chile and that in general the media were not under government control. Freedom of the press was the best possible proof of the exercise of human rights in Chile.

105. With regard to the right of persons to form and join trade unions, as provided for in article 22 of the Covenant, they informed the Committee that new labour legislation was being prepared for promulgation before 30 June 1979. It would provide for free, democratic, self-financing, autonomous and apolitical trade unions. Collective bargaining would take place on the basis of individual enterprises. The right to strike would be recognized unless it affected the public services, was a threat to health or interfered with the public's access to essential supplies. Unions which had elected new officials under the legislation temporarily in force could hold new elections in

conformity with the regulations that would be laid down. The provisions suspending the right of assembly in the case of trade union meetings had been waived, and union meetings could be held at union headquarters outside working hours provided that they dealt with matters of common interest to members. The representatives of Chile explained that Decree-Laws No. 2345, which empowered the Minister of the Interior to dismiss officials; No. 2346 which authorized him to dissolve trade unions or trade union federations; and No. 2347, which was to be superseded by the new laws that would come into force in July 1979, had never been applied.

106. Turning to the question of ethnic, religious or other minorities, they said that the statement made in the report of Chile that there were no such minorities within the meaning of article 27 of the Covenant reflected the desire to integrate all ethnic groups into the national community since, in the opinion of the Government, the existence of different standards of treatment would be tantamount to discrimination. They also stated that a law had been passed to settle some of the problems of citizens of Mapuche origin.

107. Commenting on their Government's point of view concerning the competence of the Committee, they pointed out that the Government had not made the declaration provided for in article 41 of the Covenant nor was it a party to the Optional Protocol. Consequently, it was not for the Committee or any of its members to express opinions on whether Chile was or was not complying with the Covenant. Consideration of the report of Chile should be confined to the terms of article 40 of the Covenant and it was inadmissible that allegations should have been made on the basis of information obtained from sources other than those provided for in the Covenant. They hoped that their country would be treated on an equal footing with other countries, and pointed out that the position of their Government was clearly set out in annex LXXXII to the report of the Ad Hoc Working Group (A/33/331), which the members of the Committee should read if they wished to learn about the situation of human rights in Chile.

108. At the 149th meeting of the Committee, held on 26 April 1979, the Chairman of the Committee read out the following statement on behalf of the Committee:

> "The Human Rights Committee, having studied the two reports presented by the Government of Chile (CCPR/C/1/Adds.25 and 40) and having heard the answers given by their representatives during the examination of these documents, taking into account the reports of the Ad Hoc Working Group and the resolutions of the General Assembly of the United Nations on the human rights situation in Chile, finds that the information provided on the enjoyment of human rights set forth in the Covenant and the impact of the state of emergency is still insufficient.
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> "The Committee invites the Government of Chile to submit a report in accordance with article 40 of the Covenant and to furnish specific information on restrictions applicable to the right and freedoms under the Covenant during the present period of the state of emergency."

109. The representatives of Chile stated that their Government considered that it had complied with its obligations under the Covenant and that, although their Government could not accept the preambular part of the first paragraph of the statement made by the Chairman of the Committee, it

was nevertheless prepared to submit a new report as requested (see para. 66 above).

435. In accordance with paragraph (i) of the statement on its duties under article 40 of the Covenant, adopted at its eleventh session (CCPR/C/18) 14/ and its further consideration of the method to be followed in examining new reports (see paras. 57-59), the Committee before its twenty-second session entrusted a working group to review the information so far submitted by the Government of Chile in order to identify those matters which would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the Chilean representatives. The list, as subsequently supplemented by the Committee, was transmitted to the Chilean representatives prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members of the Committee could raise other matters, whether within the various sections of the list or outside them. The representatives of Chile would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

436. The Committee considered the report of Chile (CCPR/C/32/Add.1 and 2) at its 527th to 531st meetings, held on 16, 17 and 18 July 1984 (CCPR/C/SR.527 to 531).

437. The Chairman of the Committee made a preliminary statement in which he recalled that on 26 April 1979, after the examination by the Committee of the initial report submitted by the Government of Chile (CCPR/C/1/Add.25 and 40), the Committee requested that Government to submit a report in accordance with article 40 of the Covenant and to furnish specific information on restrictions applicable to the rights and freedoms under the Covenant during the period of the state of emergency, since the Committee had found that the information provided by the Government of Chile on the enjoyment of human rights set forth in the Covenant and the impact of the state of emergency was still insufficient. The Government of Chile, despite the initial acceptance by its representatives, did not comply with that request, a failure which the Committee very much regretted. The Chairman of the Committee also recalled that the Committee could only function effectively and successfully discharge its difficult task if it had the full co-operation of States parties and he stressed that the request for a supplementary report was still valid and should be complied with. The committee wished to continue its dialogue with Chile with a view to ensuring observance of the provisions of the Covenant in Chile.

438. In introducing the reports of his Government, the representative of Chile referred to the new Political Constitution which had been approved by plebiscite in 1980. In that connection, he noted that the framers of the Constitution had provided for a transition period during which constitutional guarantees could, exceptionally, be limited and the exercise of human rights could be restricted if the social situation so required, but that Chile was nevertheless pursuing its efforts with a view to

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14/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40) annex IV

restoring democracy. As stated in the additional report, the original report was prepared in circumstances which differed from the ones now prevailing in the country, inasmuch as the Government had again been obliged to declare a state of emergency.

Measures adopted to give effect to the rights recognized in the Covenant and progress made in the enjoyment of those rights

439. Following the list of issues to be taken up in connection with the report of Chile, the members of the Committee, under the first item, asked, inter alia, what response there had been to the Committee's consideration of Chile's initial report, whether the body responsible for drawing up the new Chilean Constitution had been familiar with the proceedings of the Committee during its examination of that report in 1979 and, if so, whether that body had taken account of the Government's international commitments. The members of the Committee also asked what activities had been undertaken to promote knowledge of the Covenant among the Chilean population and what factors and difficulties were particularly affecting the implementation of the Covenant in Chile. The members of the Committee also expressed a wish for fuller information on progress made towards the establishment of a democratic system of government in Chile and on the legislation adopted and the further steps envisaged for that purpose, such as popular participation in the constitutional process and the consultation of democratic forces.

440. In that connection, it was noted that concept of a transition period during which restrictions on democracy were applied in Chile should be clarified. It was also observed that, while the new Political Constitution of Chile furnished guarantees similar to those set out in the Covenant, unfortunately the transitional provisions of that Constitution, numbering 29, cancelled out those guarantees, and it was asked how progress could be made towards democracy when the country was governed on the basis of transitional provisions restricting the fundamental rights embodied in the Covenant rather than on the basis of permanent principles. One member again emphasized the unique situation obtaining in Chile, which was ruled by authorities whose very existence rested on the elimination of the democratic and political rights of the Chilean people.

441. Members of the Committee referred to article 8 of the Constitution concerning the prohibition of certain so-called "totalitarian" parties and the statements of the representative of Chile to the effect that the non-totalitarian sectors in the country's political life were consulted by the Government; they pointed out that it was, in fact, democratic political parties conforming to article 8 of the Constitution and the Church that were accusing the authorities of repression. They requested further information on the steps taken by the Government to ensure the success of the dialogue called for by the Chilean bishops and on the reasons for which even parties conforming to article 8 of the Constitution were officially banned and the new organic law on political parties envisaged in the Constitution had not yet been adopted. Members of the Committee also referred to article XXIV of the transitional provisions concerning the penalties, and particularly expulsion without appeal, applicable to persons acting contrary to the interests of Chile or accused of promoting totalitarian doctrines; they observed that those provisions created a discriminatory situation regarding the enjoyment of rights by Chileans and, in particular, were contrary to the provisions of article 13 of the Covenant, which provided for an appeal in that kind of situation. Other members asked whether the individuals who had participated in the violent overthrow of the Government in 1973 had been punished under the 1958 State Security Act and whether the victims

of that violent disruption of public order, or their relatives, had been compensated; whether, in general, proceedings could be brought against persons responsible for violations of human rights in Chile; why the Chilean regime, which had been in power since 1973, had seven years later thought it necessary to introduce transitional provisions into the new Constitution and what rights or possibilities provided for in that Constitution it had deemed it necessary to suspend; why the constitutional provisions concerning the democratic system were not applicable before 1989; and whether one or other of the provisions of article 8 of the Constitution which, inter alia, involved an element of retroactivity to the detriment of the accused, contrary to article 15 of the Covenant, could be declared by judicial decision to be a violation of human rights. It was also asked whether freedom of association existed in Chile and whether the Government had ratified the Conventions of the International Labour Organization on that matter.

442. Questions were also asked concerning the composition, mandate and activities of the Chilean Council of State which, according to the report, was engaged in consideration of legislation designed to enable a democratic system to operate. In particular, it was asked what time-limit had been established for completion of the task entrusted to the Council of State and what progress it had made in its work.

443. In addition, members of the Committee requested information on judicial decisions and administrative practices related to the implementation of the Covenant. In that connection, they asked whether the legislation needed for the Covenant to be invoked before the Chilean courts had been adopted, what exactly was the status of the Covenant and of other international instruments under Chile's domestic law, and whether the judicial decisions adopted by the Supreme Court in April 1982 whereby the remedies of protection and amparo were not suspended during the state of emergency could be made available to the Committee.

444. Replying to the questions raised by the members of the Committee, the representatives of Chile expressed regret at the misunderstanding which had occurred between the Committee and the Government of Chile concerning the submission of reports under article 40 of the Covenant, and said that they were prepared to provide the Committee with all necessary supplementary information. They further stated that the Covenant, like all international human rights instruments ratified by Chile, was brought to the knowledge of lawyers and studied in secondary schools. As for difficulties experienced in implementing the Covenant in Chile, the representatives said that they were due to the terrorist acts and attacks perpetrated by certain groups which did not wish to strengthen democracy but sought to destabilize the Government. In addition, the world economic situation was having an effect on the country, and the Government sometimes had to resort to emergency measures and restrict the exercise of certain rights. Despite difficulties, however, steady progress was being made towards the restoration of a democratic system in Chile; in particular, the method of direct universal suffrage had been instituted for the election of the President of the Republic, 70 per cent of the membership of the Senate and the entire membership of the Chamber of Deputies. Ideological pluralism was also recognized under the regime, even though, in the interests of preserving the integrity of the community, any doctrine prejudicial to the rights of the family, fostering violence or justifying totalitarianism had been debarred.

445. Political parties were still carrying out activities because the Chilean authorities had refrained from implementing the transitional provisions of the Constitution banning political activities. There

was open criticism of the Government and its members published in newspapers and magazines. Certain political parties and the Church had their own radio stations and broadcast the news as they saw it. The absolute powers of the President were only exercised in cases of acts of violence and terrorism. In addition, there had been consultations between various parties and the Government. The Minister of the Interior had met all types of political groupings, but the opposition had broken off the dialogue by imposing conditions such as that the President must resign. The Government nevertheless had expressed its willingness to continue the dialogue and to considering amending parts of the Constitution. The participation of the people did take place not only through political parties, but through such bodies as neighborhood organizations, professional bodies, and trade unions and there were no restrictions on them. The Act on the Status of Political Parties was being considered by the legislature and should be ready for implementation by September 1984.

446. As regards labour relations and trade unions, the representatives stated that the International Labour Organization had recently recognized in connection with Chile's most recent reports that progress had been made. The right to join - or not to join - trade unions existed and collective bargaining had been fully restored. The Labour Relations Court, which had been temporarily disbanded, was to be restored and recently trade unions had held elections for officials and more would be held.

447. The representatives also explained that the Council of State was a transitional organ which would disappear as soon as Congress began to function. It acted as a review body for the Executive and was composed of former Presidents of the Republic, former Presidents of the Supreme Court, former Ministers of State, representatives of trade union organizations and a former Commander-in-Chief of the Army and the Air Force. The Council consulted all citizens to ensure that legislation reflected general opinion in the country. It had promulgated a law for the establishment of a Constitutional Court and law regulating mining concessions, which constituted an important sphere of economic activity in Chile. The electoral system had also been revised, and a law on the powers of Congress had been drawn up.

448. The representatives stated that the provisions of the Covenant could be invoked before the courts in Chile once domestic remedies had been exhausted and that they had frequently been invoked, particularly in amparo proceedings, but so far the higher judicial bodies such as the Court of Appeal or the Supreme Court had not specifically had the occasion to pronounce on the application of the provisions of the Covenant. It could be invoked when all legal formalities had been completed. The Supreme Court would than make a pronouncement on this issue. They also stated that the text of the decisions adopted by the Supreme Court in 1982 concerning the remedies of protection and amparo had been made available to the Committee.

State of emergency

449. With regard to the second issue, the state of emergency, members of the Committee wished to receive information on the occasions in recent years when that situation or a similar situation had been declared in Chile, the duration of such situations and the measures as a result of them. It was observed in this connection that since 1973 not one day had passed in Chile without a state of emergency being in force and that that situation could not be justified. It was also asked what the position of the Government was with regard to the conclusions concerning measures of exception

in Chile contained in the report on the situation of human rights in that country submitted to the General Assemble at its thirty-eight session (A/38/385 and Add.1).

450. Information was requested on the extent to which a state of emergency implied suspension of the normally applicable provisions of the Covenant. Concern was particularly expressed with regard to the suspension of remedies for the duration of the state of emergency which continued to be effective. Attention was drawn, in this connection, to transitory provision XXIV of the Constitution under which, inter alia, a person could be arrested and held for 20 days without trial by an administrative decision and without the possibility of invoking any remedies except "reconsideration" and in virtue of a decision taken by the President of the Republic. It was also observed that the suspension of certain rights provided for by the Covenant could only be justified under its article 4 and it was asked whether the Government of Chile claimed the existence of a "public emergency" within the meaning of that article and, in the affirmative, why the Government had not notified any derogation in accordance with paragraph 3 of the same article. It was observed also that what was called an emergency in Chile had nothing to do with what was intended by the same term in article 4 of the Covenant and that the so-called emergency was being used to justify the discriminatory measures provided for in article 8 of the 1980 Constitution.

451. In addition, members of the Committee wished to received further clarification on whether the remedies of amparo, habeas corpus and protection for alleged deprivation of liberty of person and of other human rights were available for actions taken by the Government of Chile in a state of emergency or whether all three remedies were suspended under transitory provision XXIV of the Constitution. It was also asked what places of detention were referred to under article 41 of the Constitution by which the President of the Republic could order the detention of persons "at places which are neither prisons nor centres of detention or imprisonment of common criminals".

452. The representatives of Chile stated that the state of emergency had been terminated in 1983; however, on 24 March 1984, the Government had again been obliged to declare a state of national emergency following an increase in acts of violence. That situation, nevertheless, did not involve any suspension of the provisions of the Covenant. As regards the notification of derogations under article 4, paragraph 3, of the Covenant, they undertook to obtain a detailed response at a late stage. The representatives also affirmed that the remedy of amparo was fully applied in Chile even under emergency legislation and a detained person had the right of appeal to the Supreme Court which could reverse the decision. With regard to places of detention in connection with article 41 of the Constitution, they stated that Decree No. 594 specifically mentioned the places of detention as being located one per region.

Right of self-determination

453. As regards the right of self-determination, members of the Committee wished to know what was the position taken by the Government of Chile on the right of self-determination of the people of Palestine, to what extent it had been able to promote the realization of that right and how it saw the principle of self-determination applying to Central American countries, in particular to El Salvador and Nicaragua.

454. The representatives of Chile stated that their Government supported without reservation the

right of self-determination of the people of Palestine. They also pointed out that, although their Government did not have full relations with the Palestine Liberation Organization, it supported its aims. However, Chile was too small a country to give more than diplomatic support to promoting the cause of the self-determination of the Palestinian people. In addition they expressed the hope that also El Salvador and Nicaragua would achieve self-determination.

Equality of men and women in the enjoyment of all the civil and political rights set forth in the Covenant

455. With reference to this issue members of the Committee wished to receive information on the situation of Chile in practice. They asked, in particular, what was the proportion of women in schools, colleges, university, administration at the director and deputy-director level, what was the participation of women in the cultural and social fields and in the liberal professions, such as lawyers, doctors and engineers, what kind of participation women had in the political life of Chile, how many ministers and senators were women and, with regard to the family, who was regarded as the head of the household, how the women was protected in the event of the dissolution of marriage and who was awarded custody of the children. They also wished to know what action had been taken by the Government of Chile for the effective realization of the objectives of the United Nations Decade for Women, particularly with regard to their integration and development and decision-making.

456. The representatives of Chile informed the Committee that in the judiciary about 40 per cent of the magistrates of higher courts of appeal were women. In education, about 40 per cent of the administrative positions were held by women. With regard to the social sector, women were occupying an increasingly greater proportion of social welfare positions. As to access to higher education, there was full equality. In the armed forces and auxiliary elements, women could become high-level officers such as colonels and majors. Furthermore, they stated that Chile had been one of the first countries to extend the vote to women. Women had been elected to public office for many years; there were a number of women in Parliament and there were quite a few women mayors in the country. Legally, the head of the household was a man. However, women's rights were protected and the question of the custody of children was decided by magistrates. A wife who worked could request the separation of property. In that case it would be for the magistrates to make the relevant decision. Moreover, in accordance with the recommendations of the various international organizations, their Government was trying to ensure the maximum equality between the sexes.

Right to life

457. With regard to the various aspects of the right to life, the members of the Committee said that they would welcome precise information on the application of the death penalty in Chile. In particular, they asked for which offences the death penalty could be imposed, whether the death penalty had been introduced for new offences and whether the Government of Chile was considering the possibility of abolishing the death penalty. The members of the Committee also requested information on the number of cases so far established of persons who had disappeared in Chile and the measures taken by the authorities to investigate those cases and the results. In that connection, it was observed that the examining magistrates seemed to lack the means of investigating cases of

disappearance, since their investigations could not relate to a specific suspect, and it was asked whether it would not have been more effective to establish a special commission of inquiry. Reference was also made to the investigation into the discovery of a common grave at Longuen in 1979, when the bodies of persons declared to have disappeared had been found, and information was requested on the results of the investigation. The members of the Committee also asked for information on measures taken to investigate deaths resulting from the action of the Chilean security forces and measures taken to control the use of firearms by those forces. In that connection, information was requested on the number of deaths resulting from the recent national days of protest in Chile, on the judicial inquires instituted in that regard and the reasons for their slowness, on the application of the amnesty law to the few culprits identified, and on the right to compensation of the victims or their relatives. Clarification was also requested on the links between the public authorities and non-official organizations of armed citizens who claimed to be assisting the police to maintain order, as well as on the number of persons prosecuted for clandestine executions, on investigating authorities other than the courts and on possible compensation entitlements of the victims' families. In addition, it was asked whether the murderers of Mr. Letelier, former Minister for Foreign Affairs of Chile, had been prosecuted and punished. The members of the Committee also requested information on health protection, infant mortality, Chilean legislation expressly protecting the health and lives of mine workers, and the measures taken by the Government to reduce unemployment.

458. The representatives replied that under article 21 of the Penal Code, the crimes punishable by the death sentence were those of exceptional seriousness, such as aggravated homicide, treason in wartime and terrorist acts which resulted in death. The death penalty was difficult to apply because in no case was it envisaged as the sole penalty. The court had the power to apply one of a range of penalties, depending on the seriousness of the offence and any aggravating or mitigating circumstances. Furthermore, article 77 of the Chilean Penal Code stated that under certain conditions the alternative of life imprisonment should be imposed. In addition, the death penalty could not be passed in the second instance except by a unanimous vote of the Court. The file relating to the case had to go to the President of the Republic for decision, with the Court's opinion as to whether or not there were grounds for commuting the sentence or for pardon. In the past 10 years, the death penalty had been imposed in only one instance, where two security officers who had committed abuses had been sentenced to death and executed. Abolition of the death penalty was not so far envisaged in Chile, however several Chilean jurists were in favor of its abolition.

459. Referring to the questions on disappeared persons, the representatives stated that as a result of the excellent work of investigation done in Chile by the Committee of the International Red Cross at the request of the Government in 1978, there were only about 500 persons whose whereabouts had not been determined and they observed that in some cases several identity cards might have been issued to a single person. Several legal procedures had been devised to determine the whereabouts of persons alleged to have disappeared and the Government was continuing its efforts to solve those cases. As a result, 60 per cent of the cases had been clarified. Although the establishment of a special commission of inquiry on disappeared persons could be useful, the conduct of investigations was always entrusted to the courts since they alone had the means to enforce decision taken. Culprits who had been identified were brought to court and given a sentence according to the seriousness of the offence. The representatives of Chile also stated that they could possibly inform the Committee of the names of persons already convicted.

460. Furthermore, the representatives stated that in the event of death resulting from the action of the security forces, a judicial procedure was always instituted in which the persons responsible were identified. However, they pointed out that in some cases it was difficult to achieve speedy results. They also explained that cases involving members of the armed forces and security bodies came under the jurisdiction of the military courts, which were responsible to the Ministry of Justice and that there were in Chile, at present, 53 trials under way involving police officials charged with having used unnecessary force in the exercise of their functions. Under Chilean law fire-arms could be used by the security forces only when there was a rational need for such use and in proportion to the gravity of the situation.

461. The representatives then informed the Committee that the demonstration of December 1983 had led to 71 investigations into deaths caused by police violence and 31 investigations into the deaths of law enforcement officials. The latest demonstration had occurred in March 1984, and in neither case had judicial inquiries been completed. The victims of abuses by the police enjoyed all the rights granted to them by the Constitution, notably the right to choose a lawyer, to appeal against decisions as far as the Supreme Court and to exercise any remedy to expedite proceedings. The amnesty law promulgated in 1978 related to acts committed prior to that date. Consequently, it was not applicable to the cases to which they had just referred. Moreover, according to the general rules in force, the families of the victims were entitled to apply to the criminal courts for compensation, not only in cases involving political offences, but also in cases concerning offences of any other kind. As to the murderers of the former Minister for Foreign Affairs of Chile, the Government was following the rules of international law regarding extradition.

462. The representatives then informed the Committee that a considerable proportion of the national budget was devoted to protection and improvement of health. Social expenditure had grown by 80 per cent in real terms between 1974 and 1982 and there had been a substantial reduction in infant mortality and in maternal mortality. Chile also had special provisions enabling workers whose health deteriorated to retire when they wished, and a law on preventative medicine. The legislation in force could be made available to the Committee at a later stage. The representatives added that, in order to alleviate the problem of unemployment, the Government had decided in August 1983 to allocate an amount of 15 thousand million pesos from the 1983 budget for the creation of jobs and the construction of housing and that it was also in the process of drawing up plans for resolving the problem of debts.

Treatment of persons deprived of their liberty

463. The members of the Committee referred to the numerous allegations of torture or ill-treatment of detained persons and requested information on the steps taken to ensure that those allegations were duly investigated and on the results of those investigations, on the steps taken to ensure that such methods were not used and that all detained persons were treated with humanity, and on the penalties imposed on persons responsible for torture or ill-treatment. In particular, they asked how many complaints of torture had been lodged, before which courts they had been brought, what had been the decisions of the courts up to the present date and, in cases in which there had been a conviction, what was the rank of the culprits in the police or the military, whether they had pleaded that they were obeying orders, whether the amnesty laws had affected those prosecutions or convictions and whether, in the absence of criminal proceedings, disciplinary measures had been

taken against certain members of the police and the army, and what rank such persons held. They also asked whether prison staff had been informed of the Standard Minimum Rules for the Treatment of Prisoners prepared by the United Nations and were familiar with the Code of Conduct of Law Enforcement Officials and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment. It was also observed that, if victims of abuses and torture often preferred not to apply to the courts, it was perhaps because regular procedures were not followed, the credibility of the complaints was impugned and the press and the media were manipulated to their detriment. It was then asked what the Government was doing to bring about the social rehabilitation of prisoners and whether it had considered inviting international organizations of its choosing to visit the country's prisons.

464. The representatives stated that persons found guilty in proceedings concerning cases of torture or ill-treatment were always punished, and the death sentence could sometimes be imposed. In many cases, proceedings were extremely slow and the trial could last for years, but the courts scrupulously respected procedure, which had recently been improved in Chile. A law on terrorist acts had been promulgated which also comprised guarantees for the protection of prisoners. The amnesty law was not applicable to persons convicted of abuse of authority or torture. They also informed the Committee that 47 complaints of torture had been recorded since the beginning of 1984. The majority of the complaints had been brought before the military courts and the others before the ordinary courts of justice. In 7 of the 47 cases, sentence was to be handed down and the others were still under investigation. In 1983, two lieutenants and some sub-officers had been involved in cases of torture and prosecuted and the question of their duty to obey had not been invoked. The representatives pointed out that if a police officer was convicted, he had to leave the institution. They then gave information on conditions in places of detention in Chile - places which were all included in a list published by the Government and were visited periodically by the International Red Cross - and stated that the Government had endeavoured to eliminate torture and to promote the social rehabilitation of prisoners, for which purpose it had earmarked substantial resources throughout the prison system. In their opinion, the fear of reprisals was not something the prevented people from lodging complaints of torture, since almost all towns in Chile had organizations of lawyers acting with complete freedom and the Vicaria de la Solidaridad also had legal offices.

Liberty and security of persons

465. Members of the Committee wished to receive information on the total number of arrests in 1980, 1981, 1982 and 1983, the total number of arrests at public meetings in 1980, 1981, 1982 and 1983, the powers of arrest and detention of the CNI (National Information Centre), the remedies available to persons and to their relatives who believed that they were detained wrongfully, in particular, the Recurso de amparo, and the recurso de habeas corpus, the effectiveness of these remedies and the extent to which the requirements of article 9, paragraphs 2 and 3, of the Covenant were observed. They also wished to receive information on prisoners incommunicado, the applicable rules, the contact between an arrested person and his lawyer; in particular, the time when first such contact was taking place and the time when his family was informed of his arrest. In addition, they observed that there were allegations about secret places of detention and they requested information on the subject, as well as on steps taken to prevent the CNI from holding

persons in places of detention that were not legally declared detention centres. It was noted in this connection that according to Decree-law 18315 of 17 may 1984, detention centres run by the CNI were legalized and it was asked who controlled and inspected such centres of detention. It was noted also that in the first 11 months of 1983 there had been nearly five times as many arrests as in the same period of 1982 and 1981. Yet, according to Chile's report, there was no state of emergency in force between August 1983 and March 1984. Thus, those arrests had taken place during a period when the transitory provisions were not in effect and it was observed that those arrests did not conform to article 9, paragraph 1, of the Covenant. It was also asked why there had been so many allegations that persons had been arrested because they were trade-union leaders, persons were detained for their opinions or for their engagements in the promotion of human rights and in the service of the Catholic Church, whether there was a selectivity in making arrests and, if so, how it was justified, on what grounds persons were arrested at public gatherings and released later without being formally charged and whether measures existed to prevent the police from arbitrarily arresting the same kind of people time and again. Furthermore, explanation was requested in particular on 175 persons held incommunicado in secret premises in the first 10 months of 1983 against what was established in Transitory Provision XXIV of the Constitution. In addition, it was asked what were the functions of the Jefes de Plaza established under Decree No. 147 of 8 September 1983 and Law No. 18015 of 14 July 1981, how often the President had used his power under Transitory Provision XXIV of the Constitution to arrest persons and whether all the arrests in the past year had been made under the provision, whether in the application by an individual for a remedy such as amparo, a court, in addition to considering the formal legality of detention, could enquire into the factual correctness of the administrative or executive action, in the case of a decision purported to have been made but not factually and correctly made under the law or by Presidential decree, and whether the right to compensation of all victims of unlawful arrest or detention was enforceable.

466. The representatives explained that in Chile, as in most countries, whenever there were disturbances at public gatherings, some people were arrested but solely for the purpose of verifying their identity and they were released either immediately or after a few hours. The CNI did not have the specific power of detention. It had to act on the basis of a written order of a competent authority, except in the case of in flagrante delicto, and must place the person concerned at the disposal of the responsible authority. In carrying out an investigation, the CNI could search the premises of the person concerned. If the authorities caused any person to be arrested or detained, they should, within the following 48 hours, notify the competent judge and place the person concerned at his disposal. The judge might, by an order accompanied by a statement of reasons, extend that time-limit by up to five days and by up to 10 days in the event that the acts under investigation were classified by the law as terrorist acts. Furthermore no one could be arrested or detained, or held in custody or committed to prison pending trial, except in his home or in public places intended for that purpose. The representatives then made reference to article 21 of the Constitution dealing with remedies for persons arrested, detained or imprisoned in violation of the provisions of the Constitution or the laws, they provided detailed information on those remedies, including the remedy of amparo, and they stated that the remedy of amparo had not been suspended during the state of emergency.

467. The representatives explained that no person was being held incommunicado in Chile, and that there was a wide range of freedom for a prisoner to seek the advice of a lawyer. The only restriction was that, when a defendant had been indicted, he could be declared incommunicado by the decision

of the judge and could then be visited by the prison warden and, if the judge so authorized, by his lawyer. As regards political prisoners during a state of emergency, the detention had to be duly authorized and it was obligatory to notify that detention to the immediate members of the person's family within 48 hours. Prisoners should be taken to public places of detention and the possibility of secret places of detention had disappeared in the country. Detention centres were subject to visits and inspections by inspecting magistrates.

468. The representatives pointed out the most persons arrested in the first 10 months of 1983 had been released or fined. While it was true that trade union leaders had been detained, it had not been on a selective basis. They were often involved in the demonstrations and when so many arrests were made it was inevitable that some trade union leaders had been included. They had generally been released after a fine. The representatives explained that the purpose of the Jefes de Plaza was to take military command of the area if the situation required and that their appointment was a temporary one with a maximum of 90 days. They also clarified the difference between an administrative provision and a provision coming within the competence of the law courts in Chile and stated that illegal arrest was an offence for which victims were entitled to compensation.

Right to a fair trial and equality before the law

469. Members of the Committee requested information on the guarantees of the independence of the judiciary, the guarantees of the free and effective exercise of the responsibilities of members of the legal profession towards their clients, the competence of military or special courts to try civilians, and on whether theses courts observed all the requirements set our in articles 14 and 15 of the Covenant. They asked, in particular, whether Transitory Provision XVIII, paragraph (h), of the Constitution, affected the independence and authority of the judiciary, and whether it qualified in any way the provisions of article 73 of the Constitution. They noted that associate judges (abogados integrantes) were effectively nominees of the Government and they observed that such a system would seem to have certain dangers for the necessary independence of the judiciary in a country with political problems of the kind existing in Chile. Furthermore, reference was made to article 19, paragraph 3, of the Constitution and it was asked whether peace-time military courts dealt with offences related to fraud and to unlawful association. With reference to article 14, paragraph 2, of the Covenant clarification was requested on article 9 of the anti-terrorist law which imposed a punishment on persons suspected of committing an offence. Moreover, it was observed that the statement in the anti-terrorist law concerning the secrecy of statements and identity of witnesses did not appear to be in conformity with article 14, paragraph 3, of the Covenant.

470. The representatives stated that the judiciary was completely independent in Chile. They explained that peace-time military courts were part of the normal legal system in Chile and were subordinate to the Supreme Court. Wartime military courts, which had functioned for a period during the state of siege, had been disbanded since the anti-terrorist law came into effect. Peace-time military courts were concerned with certain offences such as espionage, with offences committed against military personnel by civilians and with the violations of arms control regulations, including the organizing and training of armed groups. All the investigations conducted by the military courts were subject to the rules of the civil justice penal code and sentences must comply with those rules and could be the subject of appeal to the Supreme Courts.

471. The representatives further stated that, in general, the special courts did not administer justice. Thus, the Constitutional Court pronounced on the constitutionality of pending legislation but, although it was composed of magistrates of the Supreme Court of Justice and was called a "Court", did not administer justice. The same was true of the court responsible for supervising elections, which ruled on possible disputes concerning election results. In addition, the special wartime court sat only during wartime and for practical reasons, since it was very difficult for the Supreme Court to hear appeals concerning events which had occurred in the theater of war.

472. The representatives then provided clarification regarding the application of Transitional Provision XVIII of the Constitution, which gave the Government responsibility for dealing with conflicts of competence between courts. As to the question raised concerning associate judges (abogados integrantes), they stated that, in their country, the number of judges was limited and it might therefore be necessary to apply either to the prosecutor attached to the particular court or to associate judges appointed each year for that purpose. They emphasized, however, that all magistrates could be challenge and, in the event that a magistrate in that situation refused to accept the objection, it was the court that decided.

473. With regard to the anti-terrorists law, the representatives stated that the power to request the interception or recording of documents or communications in the event of terrorist acts lay with the courts responsible for the investigation. Similarly, the court could provisionally decide to keep statements by witnesses or complainants secret (although those statements nevertheless remained at the disposal of the accused for preparing his defense) in order to protect witnesses from possible assault during investigations.

474. The remaining issues on the list to be discussed with the representatives of Chile concerned: IX. Freedom of movement; X. Interference with privacy; XI. Freedom of expression; XII. Right of peaceful assembly; XIII. Political activities. The Committee heard observations by the representatives of Chile on the points raised under the first of these issues, namely: (a) Restrictions on freedom of movement currently in force; (b) Current practice as regards the external and internal exiling of persons; (c) Number of individuals and their dependants who are at present denied permission to return to their homes from exile abroad or within Chile; (d) Steps being taken to review these cases and alleviate the situation of the persons concerned. 15/ (see para. 478.) Before members of the Committee could proceed to ask individual questions on these or any other matters,

15/ These observations (CCPR/C/SR.531) will be summarized in the next report of the Committee together with further questions and replies on the remaining issues concerning Chile.

it had become clear that for reasons of time the examination could not without considerable difficulty be completed during the twenty-second session.

General observations and further procedure

475. Some members of the Committee expressed the view that, despite the goodwill shown by the Committee in preparing a list of issues to be taken up and precise questions designed to elicit comprehensive information on the situation of civil and political rights in Chile, the representatives of the Government of Chile had given evasive replies or provided inadequate information in the

discussion thus far. Moreover, as in 1979, the Committee had before it reports which did not give a true picture of the exceptional circumstances of daily life in Chile and provided no specific information on the restrictions imposed on human rights during the state of emergency still in force in the country, notwithstanding the large amount of information on restrictions which was in the international community's possession and which had aroused its indignation and led to the adoption of several decisions by the General Assembly.

476. The members of the Committee emphasized that, even if the new Chilean Constitution were regarded as legitimate, the transitional provisions being applied, which would remain in force for a very long time to
come, made many constitutional provisions inoperative, particularly those regarding human rights, and prevented the human rights provisions laid down in the Covenant from being satisfactorily applied. Consequently, the dialogue which had so far taken place between the Committee and the Chilean Government had been extremely difficult and it was to be hoped that better results could be obtained in the future.

477. In order to achieve those results, the Committee intended to ask many more questions and looked forward to receiving detailed replies accompanied by concrete information.

478. In that connection, several members of the Committee noted that it would be difficult to find the necessary time at the present session to complete consideration of the report of Chile. On the proposal of the Chairman of the Committee and with the consent of the representatives of the Government of Chile, the Committee therefore decided to defer consideration of the remaining questions concerning that report until its twenty-third session.

54. The Committee resumed and completed its consideration of the report of Chile (CCPR/C/32/Add.1 and 2) at its 546th to 548th meetings, held on 23 and 24 October 1984 (CCPR/C/SR.546 to 548). 12/ The Committee pursued its consideration of the report on the basis of the list of issues transmitted to the Chilean representatives prior to their first appearance before the Committee on 16 July 1984. 13/

Right to a fair trial and equality before the law

55. Although that issue had already been discussed by the Committee at its twenty-second session, 14/ members of the Committee felt that certain points had still to be clarified by the Chilean representatives, especially with regard to respect for the obligations set forth in articles 14 and 15 of the Covenant under the state of emergency in Chile. One member stated that since last July nothing had change. In that connection, members of the Committee wished to receive further information regarding the guarantees of judicial independence in Chile, and which of articles 6 to 14 of the Covenant were observed without derogations. In particular, they wondered how the independence of the judiciary could be effective when, under the twenty-fourth transitional provision of the Chilean Constitution, remedies against certain special measures adopted by the executive could not be sought from judicial authorities but only from the executive itself. It was observed that such a provision appeared to be incompatible with the requirement of article 14 of the Covenant. It was also asked whether the new Constitutional Court established under article 81 of the Chilean Constitution was already in operation and, if so, how many decisions it had already delivered; whether, during the transitional period, the Constitutional Court was competent to rule on legislative acts promulgated by the President of the Republic under the eighteenth transitional provision of the Constitution and, if so, whether any past enactment had been declared unconstitutional; and what powers had been removed from the Supreme Court of Justice by the Constitutional Court and how that had affected the independence of the judiciary.

56. Members of the Committee expressed concern about the use of military tribunals to try civilians and wished to receive further information on how those tribunals in Chile exercised their jurisdiction. They asked, in that respect, whether lawyers were permitted by military courts, whether they were able to carry out their duties normally, and whether the accused could really enjoy the rights set forth in article 14, paragraphs 3 (b) and (e), of the Covenant with regard to their defence. They also wished to know whether the members of the armed forces who served on military courts

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12/ For the first part of the consideration by the Committee of the report of Chile, see: Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr. 1 and 2), paras. 435-478.

13/ Ibid., para. 435

14/ Ibid., paras. 469-473.

had adequate legal training and the necessary qualifications to carry out their duties properly, and whether the right of appeal against judgements of military tribunals to the Supreme Court was

limited to review of the law that had been applied or whether it also include a review of both the facts of the case and the sentence.

57. In addition, members of the Committee wondered whether persons charged under the Terrorism Act could have a fair trial if, as it appeared from the Act, the accused were not entitled to be apprised of statements by witnesses or even to know their names, except in the case of witnesses for the prosecution. Noting that it was possible to be declared a war criminal in peacetime in Chile, it was asked how such a measure could be justified in law, and what the exact position of examining magistrates was in that connection in the judicial system. Reference was also made to recent protest demonstrations in Chile which had caused the death of several people and it was asked who those people were, which courts had tried the persons arrested and what sentence convicted persons had received. In connection with the arrest of political party leaders ordered on 8 October 1984 by a judge "vested with full powers", it was asked what those "full powers" were and whether the judge had acted on his own initiative or whether he had been following instructions.

58. Replying to questions raised by members of the Committee, the representatives gave some examples of the independence of the judiciary in Chile. Regarding the matter of appeals against special measures taken by the executive under the twenty-fourth transitional provision of the Chilean Constitution, they noted that it was possible to seek an administrative remedy, consisting of an application for review (recurso de reconsideration), and to appeal against a measure on the ground that it was not in conformity with the twenty-fourth transitional provision (recurso de amparo). The representatives also informed the Committee about the respective powers of the Constitutional Court, the Supreme Court and the Office of Controller General of the Republic in ruling upon the constitutionality and the legality of laws. They noted that the Constitutional Court had not yet had occasion to rule on the legality of supreme decrees - to which the executive usually resorted - since it was for the Office of the Controller to do so first. In fact, the Office of the Controller had already formulated about possibly illegal measures to the Office. Under article 82 of the Constitution, all laws which the President might propose for adoption during the transitional period could, as a general rule, be submitted for review to the Constitutional Court.

59. The representatives explained the system of military courts in Chile in some detail, referring to the existence of courts of first instance, composed of a military judge and a professional prosecutor, and courts of second instance - or courts martial - composed of general assessors who were civilian judges. Above the military courts of first and second instance was the Supreme Court, which was a civil court. The courts martial heard applications for review, appeals and complaints. The Supreme Court heard complaints, as well as appeals on the merits and on the ground of material irregularity. The officials of military courts were professionals and the prosecutors were lawyers. Military courts had jurisdiction for offences in which members of the armed forces were implicated as alleged perpetrators, as victims or as participants, and military law was applicable to both military and civilian offenders when they were involved in the same offence. The regulations governing procedural guarantees were the same as for civilian trials. The only practical difference between military courts and civilian courts was that the military procedure was faster. The application of wartime procedure in peacetime had been decided upon because it had the advantage of speed in the case of terrorist acts involving the deaths of many people. With respect to the right of appeal against judgements of military tribunals, there were three kinds of possible recourse: appeal against the decision of a military tribunal to a court martial; complaint against the court martial itself on

procedural grounds; and appeal on the merits. In the two latter cases the Supreme Court had jurisdiction.

60. Referring to the procedure concerning testimony by witnesses under the Terrorism Act, the representatives stated that testimony favorable to the accused way placed on record, whereas the accused had to be informed immediately of adverse testimony and of the names of his accusers. However, in the case of terrorist crimes, additional precautions had to be taken to avoid possible reprisals by terrorists against persons taking part in the trial. No legal remedies had been sought in connection with the application or the violation of the provisions of the Terrorism Act within the first six months after its promulgation.

61. The representatives also referred to the protest demonstration in Chile that had been mentioned. They said that legal action against the organizers had been taken by ordinary courts in accordance with the State Security Act of 1958. The magistrate had only the powers vested in him by law and his decisions were appealable. Nearly all the persons arrested during the demonstration had been released on the spot or after a few hours and those accused of minor infractions had been brought before a justice of the peace.

Freedom of movement

62. Members of the Committee noted that the report of Chile made no reference to problems affecting the enjoyment of freedom of movement and referred, in particular, to information in that regard available from the reports of the Special Rapporteur on the situation of human rights in Chile appointed by the Commission on Human Rights.

63. According to that information, it appeared that a national list of persons denied the right to return to Chile was still in existence while, on the other hand, the Government had been publishing monthly lists of persons authorized to return to Chile. It was observed that the criteria used in the preparation of the national list were tantamount to the arbitrary restrictions prohibited by article 12, paragraph 4, of the Covenant. With regard to the national list published on 10 September 1984 containing the names of 4,800 persons who were not entitled to disembark in Chile, it was asked whether persons whose names did not appear on that list were free to return. Since no monthly list of persons authorized to return to Chile had apparently been published in 1984, it was also asked what the position was in regard to those who had applied to return; what the general policy was in the absence of monthly lists; whether any fundamental change in the matter could be expected; and whether the courts in Chile had any power to examine decisions prohibiting certain persons from entering Chile even where those persons claimed that they had been arbitrarily deprived of their rights.

64. Members of the Committee also wished to know the criteria used in categorizing a person as an activist within the meaning of article 8 of the Chilean Constitution; what the grounds were for the expulsion of persons or the deprivation of their right of entry into Chile; whether the Terrorism Act contained any provisions on freedom of movement and in what specific cases banishment was applied and by what authority. A number of further questions were raised concerning banishment, including the nature of the "specific offences", cited in the Chilean report, for which banishment could be imposed; the number of persons banned and the length of their banishment; whether

banishment and expulsion were based on judicial decisions; whether such decisions could be appealed and, if so, in what court; how many orders for restricted residence, banishment or internal exile had been issued in 1984 and whether banished persons had been authorized to return to Chile or were entitled to retain their passports and to have them renewed.

65. The representatives of Chile stated that their Government had long questioned the powers of the Special Rapporteur appointed by the Commission on Human Rights and that, while it was resuming its co-operation with United Nations bodies that applied a normal and universal procedure, it continued to object to the discriminatory procedure adopted by the Special Rapporteur.

66. The representatives stated that the Government of Chile supplied airline companies with a list of persons who required permission before returning to the country. The number of such persons had dropped by more than 55 per cent since October 1983. Between 30 August 1983 and 30 September 1984, 5,107 persons had been authorized to return to Chile, including a large number of former political leaders. The list in question would eventually be abolished. Every month the Chilean Government transmitted to the various Chilean consulates a list of persons authorized to return to Chile. It was also possible for affected persons to lodge a legal appeal through the amparo procedure and favorable decisions had been taken in 25 such cases since May 1984. There was also a procedure for the re-examination of cases still pending.

67. The representatives stated that re-entry into Chile under article 8 of the Constitution could only be prohibited by prior decision of a competent court. Internal banishment to a restricted area (relegacion) was an exceptional administrative measure applicable only as prescribed in the Constitution and implemented pursuant to the twenty-fourth transitional provision. Internal banishment orders were normally issued against persons who caused repeated public disturbances, engaged in subversive activities or committed certain less serious offences, but only after the offender had received two warnings. Twenty-three orders had been issued during 1983 and none had yet been issued in 1984. Persons affected by internal banishment orders were entitled to recourse to the courts, and could invoke the amparo procedure to find out why they had been banished. With regard to expulsions, the representatives noted that in 1984 the Chilean authorities had sought the expulsion of two people but that the procedure had been stopped by the courts. All Chilean passports were now identical and bore no distinctive marks. In no case was an expulsion permanent and judicial remedies were available, in particular, the remedy of amparo which had been allowed by the Supreme Court in 10 cases in 1984. The persons concerned lost neither their Chilean nationality nor their social security and retirement pension rights.

Interference with privacy

68. Members of the Committee wised to know whether the powers of the National Information Agency of Chile (CNI) had ever been legally defined; whether there was any system of supervision over the actions of the CNI; whether measures such as telephone tapping were employed in Chile only connection with terrorist offences or also in cases of other serious crimes; whether security forces that had committed abuses and violations; especially during the state of emergency, were being prosecuted and punished; whether there had been any requests for compensation and, if so, whether it had been granted.

69. The representatives replied that security forces acted strictly in accordance with court decisions. In administrative cases, they were answerable to the Ministry of the interior; in criminal cases, they were answerable to the courts of justice. Telephone tapping could be used in cases involving terrorism, but only with authorization from the competent court. Members of the security forces who had exceeded their authority were prosecuted and punished, even with the death penalty for serious crimes.

Freedom of expression

70. Members of the committee welcomed the fact that a number of publications representing opposition views were permitted to appear in Chile and expressed the hope that human rights. Organizations such as the Chilean Commission on Human Rights and the legal departments of the Church would be able to continue their work despite the reprisals which had occurred in the country. However, it was noted that article 8 of the Constitution prohibited individuals from propagating doctrines based on the idea of class struggle and it was asked whether such a provision was not in itself a restriction of freedom of expression in that it discriminated against a specific opinion. Clarification was also requested on the restrictive measures set out in Act no. 18,313 concerning the abuse of public information. In addition, members wished to know how many prosecution had been brought against persons for insulting, defaming or abusing the State; whether the new legislation relating to the press which had recently been under consideration in Chile had been adopted; whether it was possible for indigenous minorities to express their traditional cultural values and whether there was any restriction on the use by such minorities of their own language or on their access to the information media.

71. The representatives stated that freedom of the press and the broadcasting media was guaranteed in Chile by the judiciary. In view of the increasing number of attempts by the media to defame individuals, however Act No. 16,643 had been amended in May 1984 by Act No. 18,313, to make it an offence to engage in actions which were, or might be injurious to the reputations of individuals, their spouses or members of their families, or which falsely attributed to them acts which could cause material or moral injury. Since many people felt that the Act itself was unjust and could lend itself to abuse, amendments to it were currently under consideration by a commission of the Press Association.

72. With regard to indigenous minorities in Chile, the representatives referred to a number of problems affecting the Mapuche Indian population and stated that every effort was currently being made to incorporate them into Chilean society with the same status and rights as all other Chilean citizens.

Right of peaceful assembly

73. Members of the Committee wished to know what measures the Government was taking to guarantee the right of peaceful assembly, particularly with regard to the demonstrations planned in support of a return to democracy; whether the concept of "public order" was clearly defined in the law and the Constitution; how the courts established the intent to provoke violence and how they interpreted the term "disturbance of the public peace". With reference to Act No. 18,256 of 26 October 1983, it was asked whether there were any safeguards to ensure that authorization to hold

a peaceful assembly was not denied arbitrarily or delayed for so long that the planned assembly had to be cancelled; why the organizers were made liable for any damage caused regardless of any causal relation; whether the behaviour of the security forces might be responsible for peaceful protests degenerating into violence; and whether any member of the security forces had ever been accused of acts committed to that end.

74. The representatives stated that the legislation governing public assemblies remained the same as under the Constitution of 1925. Under normal circumstances, it was necessary only to notify the competent authorities of the intention to organize an assembly. If a request for authorization to hold an assembly was refused, the applicant was entitled to put his case before the appeals court with a recourse of amparo which was dealt with by the court within 24 hours. Problems had arisen in cases of so-called "peaceful protests" during which offences and acts of terrorism had been committed. Under a recent amendment to the law., persons who organized such protests knowing what the consequences would be incurred criminal responsibility for any illegal acts committed. It was the responsibility of the courts to decide whether or not offences had been committed.

Political activities

75. Members of the Committee observed that provisions of the Chilean Constitution relating to the right to exercise political activities appeared to be restrictive and manifestly contrary to the provisions of article 25 of the Covenant. They referred, in particular, to article 8 of the Constitution, which made any action antagonistic to the family or intended to propagate doctrines advocating a totalitarian concept of society, the State or the judicial order illegal, and which was applicable retroactively. They asked whether that article did not introduce the idea of discrimination based on ideology or philosophy and how the term "totalitarian character" was interpreted in Chile. With regard to article 17 of the Constitution, it was asked whether violators were deprived in fact not only of their right to vote or to be elected but also of other rights normally guaranteed to them by law or by the Constitution. With regard to article 19, paragraph 15, of the Constitution, which stipulated that political parties did not have a privileged position or a monopoly with respect to civic participation. It was observed that political parties needed to win the broadest support of the population - if they were to be effective - and that the aforementioned constitutional provision seemed to make political pluralism and legitimate ideological competition between parties impossible. Reference was also made, in that connection, to a number of arrests of Chilean political opponents.

76. It was further observed that the provisions of article 23 of the Constitution, preventing trade-union leaders from taking part in the activities of political parties, were contrary to the provisions of article 25 of the Covenant and that the tenth transitional provision of the Constitution also constituted an obstacle to the exercise of political activity in Chile.

77. Further information was requested on the progress made in preparing the draft laws concerning the electoral system, on the date of their entry into force and on the status of political parties in Chile. It was asked whether the Chilean Government had given any thought to setting up, in advance of free elections, a body representing the country's major political tendencies that could monitor the Executive with a view to avoiding political and legal problems that could arise from the monopolization of power by single individual. Information was also requested on the use of

intimidation by certain organizations and on the situation regarding the enjoyment of the right of association and the rights of indigenous people in Chile.

78. The representatives replied that article 8 of the Chilean Constitution referred to both totalitarianism of the left and totalitarianism of the right. Its application was to be governed by a law subject to judicial review and the authorities could not be arbitrary in the implementation of the article. They pointed out that paragraph 15 of article 19 of the Constitution derived from article 8 and its purpose was to avoid a monopoly in participation that implied the possibility of a single party taking over. The tenth transitional provision of the Constitution had never been implemented in practice and political activity in Chile had never stopped. The only political party which had been dissolved was the Partido Nacional.

79. The representatives stated further that a law on political parties was to be enacted in November 1984 and that a copy of that law would be transmitted to the Committee. They also provided some information regarding the draft legislation on elections and the composition of the National Congress which, it was hoped, would be passed in 1985. As to the establishment of a body representing the country's major political tendencies, the representatives pointed out that the Constitution provided for two types of body with precisely that objective: the councils for communal development and the regional development councils referred to in articles 109 and 101 of the Constitution.

80. The representatives also stated that various criminal acts committed by both extreme left and extreme right groups had all been investigated. Regarding the right of association and the rights of minorities, the representatives referred to relevant information transmitted to the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization and the Committee on the Elimination of Racial Discrimination.

General observations

81. Members of the Committee thanked the representatives of Chile for their co-operation during the consideration of their country's report. They observed, however, that while the representatives had endeavoured to reply to many questions raised by the Committee, some important questions had remained unanswered. Similarly, the report of Chile failed to deal with a number of basic issues, particularly the extent to which the application of the Covenant was affected by the emergency legislation, and provided no explanation or justification for the many violations of the Covenant that had occurred.

82. Members of the Committee pointed out that the situation of human rights in Chile, despite some encouraging signs, remained serious. The state of emergency persisted and was accompanied by restrictions on human rights. A new Constitution had been adopted in 1980, but it had been accompanied by transitional provisions under which many of the human rights guarantees set out in the Constitution had been restricted or suspended. Thousands of people had been arrested following public demonstrations and military courts continued to exercise jurisdiction over civilians. Furthermore, members of the Committee still found it difficult to understand why the application of measures to restore a democratic government in Chile must wait until 1989. They observed that the underlying cause of the problems of the country seemed to be the discontent aroused by the existing regime among the people, who were prevented from exercising their political rights in

accordance with the Covenant. Members of the Committee expressed the hope that the situation of human rights in Chile would improve in the near future and that the Committee would be provided with a comprehensive report that genuinely reflected the situation.

83. The representatives of Chile stated that all the observations made by members of the Committee would be brought to the attention of their Government and competent authorities and would receive due consideration.

CCPR A/45/40 (1990)

170. The Committee considered the third periodic report of Chile (CCPR/C/58/Add.2 and Add.4) at its 942nd to 945th meetings, held on 6 and 7 November 1989 (CCPR/C/SR.942-SR.945).

171. The report was introduced by the representative of the State party, who said that the approval of the Constitution in 1980 had marked the beginning of a period of transition towards full democracy and towards the modernizing of many aspects of political, economic and social life in Chile. Virtually all the Constitutional Fundamental Acts had now been drawn up and brought into force. He also drew attention to a number of developments of great political significance that had taken place in his country, notably the holding of a plebiscite in October 1988 that had set the stage for competitive presidential and congressional elections to be held on 14 December 1989 and of an additional plebiscite by which sweeping constitutional reforms, including major amendments to Chilean legislation to bring in into line with the provisions of the Covenant, had been approved. All states of emergency had been terminated and there were now no restrictions on rights guaranteed under the Constitution.

Constitutional and legal framework within which the Covenant is implemented

172. With reference to that issue, members of the Committee requested an explanation of the consequences of the publication of the Covenant in the Diario Oficial of 29 April 1989, particularly regarding its direct applicability by courts and other agencies. In addition, information was requested on how the courts would decide on inconsistencies between the Covenant and the Constitution; whether legislation could be challenged if it was at variance with the Covenant; whether an authority had been established to consider the conformity of internal legislation with the Covenant; and whether any legal conclusions had been drawn from its invocation in judicial proceedings.

173. Members also wished to know whether the Constitutional Court had conducted a constitutionality review of the Covenant prior to its publication; whether its constitutionality could now be questioned before that Court; and whether the right of appeal existed in Chile, in particular for people who considered they had been unjustly accused of acts of terrorism. Noting that President Pinochet was to remain in office as head of the armed forces until 1998, members requested clarification of the implications of the Government's statement that if the opposition won the forthcoming election and repealed the Amnesty Law serious consequences would ensue.

174. In response to questions raised by members of the Committee, the representative of the State party said that the Covenant had been considered as being in force and applicable ever since its ratification by Chile in March 1976 and that the delay in its publication in the Diario Oficial was attributed to procedural factors. Although certain provisions of the Constitution had previously been at variance with the Covenant that situation had now been remedied through the introduction of constitutional amendments. The Constitution was now fully in line with the Covenant, which had acquired the force of internal law since its publication but had not been invoked before the courts during 1989. In the event of a discrepancy between the Constitution and an international instrument ratified by Chile, the relevant Constitutional provision prevailed, in principle, until it had been

amended. The Constitutional Court ruled on the constitutionality of fundamental laws and on legislation whose constitutionality was in doubt. The Covenant's constitutionality had not been questioned and had not been raised before the Court. Since there was no conflict between the Constitution and the Covenant the Courts were obliged, particularly since its official promulgation, to implement its provisions.

175. With reference to the right of appeal, the representative said that the appeals procedure, which had been limited under the states of emergency, was now being fully observed. The amended Constitution provided that such observance would continue in the future, even in times of public emergency, and both the de jure and de facto aspects would henceforth be the responsibility of the courts and not of the executive. The Amnesty Law applied without discrimination to all those who had committed offences during the period 1973-1978. The courts had had to decide whether such offences should be investigated and those responsible identified even though they could not be punished. The matter had eventually been brought before the Supreme Court which had decided that no legal action whatsoever could be taken in respect of such cases and that, in effect, such offences were deemed not to have occurred. While that decision was not binding on other courts, it was certain to influence them.

State of emergency

176. In connection with that issue, members of the Committee requested clarification of the practical consequences of the lifting of the states of emergency asking, in particular, whether any restrictions had been placed on the rights of persons returning from exile, particularly on their freedom of movement; whether the Constitutional provisions covering states of emergency that were in conflict with the Covenant would be modified now that it had been published; whether measures covered by the twenty-fourth transitional provision of the Constitution would remain in force until March 1990; whether the cases of persons expelled from the country would be reviewed; whether, under article 40 of the Constitution, the National Security Council could veto the declaration of a state of emergency but not its termination; whether the remedy of amparo was applicable under states of emergency and disaster; and whether under the amended Constitution a court could decide if a declaration of a state of siege was improper.

177. In his reply, the representative of the State party explained that expulsion measures no longer applied after the lifting of the states of emergency and any exiled person now had the right to return to Chile. Indeed 41.2 per cent of those expelled had done so, a commission had been established to help those returning to the country, and many returned exiles were now standing as candidates in the forthcoming elections. The twenty-fourth transitional provision could only be applied during a state of emergency. As the state of emergency had ended, the measures under that provision were no longer in force although the provision would not officially be terminated until March 1990. Measures affecting expelled persons were contained in the Constitution itself and did not expire with the lifting of the state of emergency; however, the relevant constitutional provision had now been repealed. The approval of the National Security Council was needed to declare a state of emergency and of Parliament to declare a state of siege. The President needed authorization from these bodies for the adoption of such exceptional measures but not for their repeal once the situation had returned to normal. Restrictions on the remedy of amparo resulting from a state of emergency would be ended by the constitutional reforms. Individuals could appeal to courts concerning measures

adopted during a state of siege.

Right to life and prohibition of torture

178. With regard to that issue, members asked whether there had been any complaints of alleged torture or inhuman treatment since the submission of Chile's second periodic report, whether such allegations had been investigated; and what steps had been taken to prevent the recurrence of such acts. Confirmation was also sought as to whether there had been any complaints of alleged disappearances during the period under review and whether such complaints had been investigated. Referring to the latest report by the Special Rapporteur of the Commission on Human Rights, members wished to know how many people had been found responsible for the complaints of torture referred to in the report what penalties had been applied to them, and what measures the Government had taken to provide compensation to the Victims. Concerning the functions of the Advisory Commission of the Ministry of the Interior, it was asked whether the Commission was truly independent and whether it could refer matters to the courts or was merely an advisory body.

179. With reference to the agreements between the Government and the International Committee of the Red Cross (ICRC), members asked whether the Government was ready to authorize ICRC representatives to visit detainees held incommunicado during the 10-day period provided for in the Anti-Terrorist Act whether it was prepared to reduce the length of such incommunicado detention; whether the right of access to detainees by the ICRC applied to cases of detention ordered by the military courts; and whether the agreements with the ICRC and its reports would be published.

180. Noting that the powers of the National Information Agency (CNI) to maintain detention centres had been terminated by Act 18,623, members wished to know what other powers the Agency possessed and whether their officials could function in detention centres other than those permitted prior to the promulgation of the Act in June 1987.

181. In addition, members wished to know whether, since the lifting of the states of emergency, there had been any changes in the regulations governing the use of firearms by the police and security forces; whether there had been any allegations of official involvement in paramilitary groups and, if so, whether such allegations had been investigated; whether the death penalty had been lifted for crimes connected with the state of emergency; whether the number of executions had been reduced; and whether Chile was moving towards the total abolition of capital punishment. They also asked whether abortion was considered a criminal offence in Chile and punished in all cases and how many abortions were carried out each year.

182. Responding to questions raised by members, the representative noted that the 18 complaints of torture or ill-treatment which had been received since 1984 had all been reported in the media. The agreements with the ICRC were concluded partly with the aim of preventing the recurrence of such acts. The relevant recommendations in the report of the Special Rapporteur had been noted and steps had been taken to remedy the situation, particularly by empowering the uniformed police (carabineros) to receive complaints of alleged torture.

183. Under the agreements with the ICRC, representatives of the Red Cross received a daily list of all detainees and were free to arrange medical examinations for them, including those being held

incommunicado. The ICRC reports submitted to the Government were confidential, in accordance with the ICRC rule applicable in all countries. The representatives held regular co-ordination meetings with police authorities to study the reports, assess the problems, and suggest measures to prevent illicit practices. The Anti-Terrorist Act provided for an extended period of incommunicado detention for terrorists, but this could be amended by the new Parliament following the elections. A proposal was currently before the Ministry of Justice to change the length of incommunicado detention.

184. Since the submission of the second periodic report, seven cases of alleged disappearances had been brought to court, four of which had been settled with three remaining under investigation. If convicted in court of such offences the persons responsible would not be entitled to lodge an appeal under the Amnesty Law. Paramilitary groups were illegal but there had been some complaints following the death of three persons abducted by such a group in September 1987. The President of the Court of Appeal was investigating the case.

185. The Advisory Commission of the Ministry of the Interior was established in 1986, following a recommendation by the Special Rapporteur that the creation of an independent body with powers to guarantee full enjoyment of human rights was essential. The Commission was composed of former members of the Supreme Court, trade-union leaders, doctors and jurists. It had no executive power but could inspect and report on all places of detention.

186. The use of firearms was subject to the provisions of the Penal Code, which had not changed under the state of emergency and included penalties for the unjustified use of firearms. The death penalty had not been applied since 1982, when one member of the CNI and a member of the carabineros had been executed for torture and abuse of authority. Chilean legislation protected the life of an unborn child from the moment of conception and abortion was an offence even for therapeutic purposes, although in some cases the doctor was not held responsible. Punishment was not directed at the pregnant woman, who was generally considered as a victim, but rather at the persons who practised abortion.

Liberty and security of the person and treatment of prisoners and other detainees

187. In connection with that issue, members wished to know what the maximum time-limits were for remand in custody and pre-trial detention; whether all victims of unlawful arrest or detention had an enforceable right to compensation; whether prison staff and prisoners were informed of the United Nations rules for the treatment of prisoners and conduct of law enforcement officials and doctors; what procedures had been established for receiving and investigating complaints concerning prison conditions; and what would be the consequences of the dismantlement of the CNI.

188. In his response, the representative of the State party explained that prison establishments and police stations were the only places of detention in Chile. All cases of pre-trial detention had to be immediately presented to the courts, which had five days in which to decide if a trail was necessary. Where this was not the case the detainee had to be released immediately. Under the Anti-Terrorist Act, however, pre-trial detention could be extended by up to 10 days in certain cases. Article 19 of the Constitution ensured compensation to persons unlawfully arrested for material damage suffered, the amount of which was to be determined by the courts. In addition to this constitutional guarantee,

the right to compensation was also provided for in the Code of Civil Procedure. Prison staff and police Officials had been informed of the international standards covering the treatment of prisoners. Such standards were also included in the curriculum of the law faculties and prisoners could learn of them through their lawyers. The rules of international law on the subject were also part of the curriculum of medical faculties. Agreements had been set up with the ICRC to look into prison conditions, and their representatives submitted regular and detailed reports to the Government for transmission to the competent ministries. It was true, however, that the ICRC representative in Santiago had claimed that the recommendations in the reports were not always put into effect.

189. The CNI had not yet been officially dissolved but the legislature was currently contemplating a bill for its dissolution. Under Act 18,623, the CNI had been deprived of its powers to maintain detention centres. When the Agency was officially dissolved its functions would be transferred to the Police Department.

Right to a fair trial

190. With reference to that issue, members of the Committee asked a number of questions concerning the military courts, in particular whether they were independent, in the sense of article 14 of the Covenant; why so many civilians were still being tried by such courts; why periods of detention were so lengthy; why the jurisdiction depended on the status of the alleged victim rather than, as in most legal systems, on that of the alleged offender; how often, and against whom article 284 of the Code of Military Justice was applied; whether the trial by military courts of civilians alleged to have injured members of the security forces was compatible with article 14 of the Covenant; and whether military jurisdiction also applied to members of the armed forces who, while of duty, were injured in an altercation with a civilian.

191. Members also wished to know what was the constitutional status of the judiciary; how many Supreme Court judges there were and what were their qualifications; what action had been taken on the recommendations for the establishment of a judicial police force to help protect magistrates investigating human rights violations; whether judges investigating human rights violations were being penalized and lawyers harassed for defending opponents of the Government; whether there were adequate guarantees to ensure that lawyers could assist their clients effectively, in accordance with article 14 of the Covenant; and what steps had been taken by the Government to investigate alleged human rights violations in the long-established Colonia Dignidad and whether they had resulted in corrective measures being taken.

192. Clarification was also sought concerning the appeals procedures under the current legal system and why appeals were so frequently rejected; on the scope of Act 18,667, which seemed to permit the Commander-in-Chief of the armed forces to withhold evidence from the courts for security reasons; and on the relationship of the National Security Council to the Constitutional Court.

193. Responding to the questions raised, the representative of the State party explained that the military courts administered justice pursuant to the procedural and material standards of the ordinary law ans subject to the individual guarantees set out in the Constitution. Such courts formed part of the legal system, were subject to supervision, guidance and correction by the Supreme Court, and were independent both administratively and in the dispensation of justice. While it was true that a

high percentage of offences by civilians were tried in these courts, many involved only minor infringements of law falling within military jurisdiction. The length of some of the investigations was indeed excessive but this was because some of the cases were of great complexity. Under the Anti-Terrorist Act, a civilian could be tried by the military courts only if the victim was a member of the armed forces or uniformed police, or if there had been an attack on a military or police establishment. An offence by a member of the armed forces or uniformed police while off duty against a civilian would be regarded as having been committed in a private rather than a military capacity and would not be tried by the military courts. The practice of subjecting civilians to military jurisdiction had been strongly criticized within the country in recent years and draft legislation was currently under consideration aimed, inter alia, at restricting the jurisdiction of the military courts to members of the armed forces. The Government recognized that there still some abuses in the legal system and was doing its best to overcome them.

194. The qualifications of all judges and legal officers were set out in the Courts Organization Act, which had been in force for 50 years and had the status of a fundamental law. The 19 judges of the Supreme Court were all fully-trained lawyers appointed by the president from among senior officials of the judicial system recommended by the Supreme Court. The question of a special police force to protect the judiciary had been under discussion for some years but it was hoped that with the end of military rule such a force would not be necessary. As to the question concerning the penalization of certain judges, those involved had not been punished for investigating crimes but for attempting to publicize cases or for refusing to accept a Supreme Court decision. Defence lawyers who encountered obstacles in seeking to assist their clients could protest and those responsible would be punished.

195. Concerning the appeals procedures, it was important to distinguish between appeals lodged before 1988, largely relating to measures in force under the state of emergency and which were often rejected, and those lodged following the Constitutional reforms, which were much more likely to be met with a positive response. Act 18,667 had nothing to do with the withholding of evidence but was designed to strike a balance between the protection of documentary evidence that was secret and the legitimate need for information. If required, a Commander-in Chief could be compelled by the Supreme Court to provide evidence. There was no relationship between the National Security Council and the Constitutional Court and the latter was not part of the judicial system. That Court was completely independent and had as its basic function the ascertainment of the constitutionality of proposed laws. Pursuant to a constitutional amendment, the composition of the Constitutional Court had been modified to include two members nominated by the National Security Council. The questions of alleged human rights violations in Colonia Dignidad appeared to involve a problem between the Federal Republic of Germany and certain of its citizens living in an agricultural settlement in Chile. No attempt had been made to pursue the matter through the Chilean courts.

Freedom of movement

196. In connection with that issue, members of the Committee wished to know whether all persons sentenced to exile had benefitted from the lifting of the ban on re-entry and whether all those who had wished to do so had actually returned to the country. They also requested clarification of the measure of banishment under the State Security Law.

197. In his response, the representative of the State party said that as a result of the latest constitutional reforms the Government could no longer exile citizens, even during a state of emergency, and that any exiles who wished to return to Chile were free to do so. A special commission, working with the Office of the United Nations High Commissioner for Refugees, had been set up to help individuals with any problems they might have on their return. Internal banishment had been an exceptional measure used during the state of emergency: individuals had been confined to one place and had been obliged to report regularly to local police stations but were otherwise free to do and to say what they liked. The law was still in force but was very rarely resorted to.

Right to privacy

198. Concerning that issue, members of the Committee wished to know what practical measures had been taken by the Government to prevent censorship of correspondence and communications; whether legislation existed to protect information contained in computer data files; and whether CNI was active in that field. In addition, they requested information concerning freedom of correspondence and the law and policy relating to court orders for the surrender of medical records in criminal cases.

199. In his reply, the representative of the State party said that a new bill was being drawn up to protect the confidentiality of personal data files. Lawyers and doctors were obliged by law to maintain absolute confidentiality on matters relating to their profession. However, they could be ordered to make certain information known where the superior interests of justice so required.

Freedom of opinion and expression

200. With reference to that issue, members wished to know whether the amendments to Act 18,313, recommended by the Commission of the Press Association, had been acted upon; whether the charges brought against journalists by the armed forces in the military courts had been withdrawn; how article 284 of the Code of Military Justice had been interpreted by the courts; whether unconstitutional parties could be deprived of freedoms provided for in article 19 of the Covenant; and whether Act 18,662, which prohibited the dissemination of information about the Communist Party and one of the socialist parties in Chile, had been repealed; whether the private sector had any role in television, which appeared to be a virtual State monopoly, and whether opponents of the Government were allowed air-time on televison.

201. In his reply, the representative of the State party said that following criticism of the amendments to Act 18,313 by various media associations a new draft Press Act had been elaborated and would soon be submitted to the legislature. The interpretation by the Chilean courts of article 284 of the Code of Military Justice was that the intent to insult had to be demonstrated and proved before an offence could be considered to have been committed. Charges against journalists in the ordinary courts had been dropped and the proceedings dismissed but accusations brought before military courts by individuals could not be withdrawn. However, the journalists involved had been released on bail and proceedings against them would probably be dismissed. The concepts of complaint and plaintiff did not exist in military justice and individuals could not lodge complaints, but they could intervene in the proceedings as the injured party.

202. While unconstitutional political parties could not exercise the rights in article 12 of the Constitution, their individual members enjoyed all constitutional rights and freedoms. Parties that had been refused registration could appeal to the Constitutional Court. The ban on the Communist Party and one of the socialist parties was still in force, but their leaders had formed other parties and were even standing for Parliament. The Communist Party had been banned because its programme authorized the use of every possible means to gain power and affirmed other principles incompatible with democracy, but if another communist party submitted a programme that was in conformity with democratic principles there should be no problem in obtaining registration. The Government controlled only one television channel, the seventh. The other channels belonged to national and provincial universities that were private entities. Access to television by political parties was banned except during the 30 days preceding polling, when all candidates were entitled to free air-time. State monopoly of communication was excluded by law and article 19 of the revised Constitution guaranteed uncensored freedom of information, except for certain restrictions designed to prevent their wrongful use.

Freedom of assembly

203. With regard to that issue, members of the Committee asked whether there had been any allegations of violence against peaceful and unarmed demonstrators in Chile and, if so, whether such allegations had been investigated, and with what result.

204. In his reply, the representative of the State party said that freedom of assembly was exercised in Chile without any limitations. Any person wishing to hold a meeting could do so by informing the authorities where it would take place and obtaining the relevant authorization. If illegitimate acts occurred during a meeting, it could be dissolved by resort to water cannon, tear gas and, it case of serious crimes or armed aggression being committed, by resort to the use of firearms. No specific complaints had been made in this regard, except for one case in August 1989 where three policemen used threatening behaviour to a crowd without justification. They were subsequently arrested, tried and sentenced.

Right to participate in the conduct of public affairs

205. With reference to that issue, members of the Committee wished to receive information on the impact of the repeal of article 8 of the Constitution on persons affected by decisions that had been taken pursuant to that article and about the provisions of the Political Parties Act, prohibiting parties from giving instructions to their representatives in Congress. They also wished to know whether there were any restrictions in law and in fact on the right of persons to be elected and of all political parties to take part in elections; how the presidential election campaign was proceeding in terms of equal opportunities for the Government and the opposition; and whether the options in the recent plebiscite had been given equal media coverage.

206. In his response to the questions raised, the representative of the State party said that the only person affected by article 8 of the Constitution had been the leader of one of the socialist parties, which had advocated violence as a legitimate means of obtaining power, and had been declared unconstitutional. That individual had been tried and convicted after a year-long public trial. All penalties provided for under article 8 had been halved and a rehabilitation procedure had been

established that was open to anyone who had been affected by the application of article 8. The provision of the Political Parties Act in question related to the fact that in earlier years congressional representatives had largely acted on the basis of immediate directives from their parties, often without regard to the wishes of their electors; the provision was designed simply to remind parliamentarians that they owed loyalty both to their electors and to their party. The media had complete freedom to report on the campaign in the same free and open manner as for the plebiscite of October 1988. In the final month of the presidential campaign, all political parties would be allocated free air-time on an equitable basis and in proportion to their size.

Rights of persons belonging to minorities

207. In connection with that issue, members of the Committee wished to know whether there were any indigenous groups that were not fully integrated into Chilean society and, if so, what measures had been adopted to ensure that such groups enjoyed the rights guaranteed under the Covenant.

208. In his response, the representative of the State party said that the only minority group still in the process of integration was the Mapuche, the indigenous people from the south of the country. This process had been a difficult one and the Mapuche, as a community, had been the victims of abuse. The Government's aim was to integrate them into society and to respect their customs and traditions, to which end a series of measures had been taken. Article 8 of the Constitution, as amended, now provided specific legislation prohibiting any incitement to racism and racial or other social discrimination. Copies of the report recently presented by Chile to the Committee on the Elimination of Racial Discrimination gave a highly detailed analysis of the situation of Mapuche.

General observations

209. Members of the Committee expressed appreciation to the delegation of the State party for its candour and competence in responding to the Committee's questions and for having engaged in a dialogue with the Committee that had been constructive and interesting. Members were unanimous in expressing satisfaction with the significant progress that had been made in restoring the democratic process in Chile, notably through such steps as the recent plebiscite, the forthcoming presidential elections, the adoption of constitutional reforms, the lifting of the states of emergency and allowing the return of many exiles. They were equally unanimous, however, in expressing deep concern and anxiety about many problems in law and practice that still remained. One important source of concern was the persistence of the roll of military courts in trying civilians, which was an anomaly and something utterly negative. The excessive length of pre-trial periods of detention and, in particular, the continuing allegations of torture were also sources of deep disquiet. Other areas of serious concern included the lack of full independence of the judiciary, insufficient respect for the rights to freedom of opinion, association, expression and information; and the role of the armed forces, whose powers derived from the provisions of a Constitution that had not been put to a vote. The 12-year delay in publishing the Covenant, which had prevented Chilean citizens from invoking its provisions before the Courts, was also criticized and members urged that both the Covenant and the Committee's observations at the present meeting should be widely disseminated to the Government as well as to the public at large. In view of the virtual unanimity within the Committee in respect of the foregoing concerns, members expressed the hope that the Government of Chile would draw the necessary conclusions and would regard the comments that had been made as a

useful contribution to the commendable efforts it had already initiated.

210. The representative of the State party said that the meeting had been profitable and useful. His country was coming to the end of a long and painful process during which mistakes had undoubtedly been made. However, its ultimate goals - which were a return to a democratic system, the restoration of the primacy of law, and the rebuilding of the economy - had never been forgotten and Chile would try to make additional progress toward full respect of the provisions of the Covenant. All the comments that had been made during the debate would be transmitted to the Government of Chile.

211. In concluding the consideration of the third periodic report of Chile, the Chairman expressed the conviction that the dialogue that had occurred would help the Chilean authorities in giving full effect to the human rights established in the Covenant and noted that the rejections of the military regime in the recent plebiscite encouraged optimism about future developments in that regard.

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197. The Committee considered the fourth periodic report of Chile (CCPR/C/95/Add.11) at its 1733rd and 1734th meetings (CCPR/C/SR.1733-1734), held on 24 March 1999, and adopted the following concluding observations at its 1740th meeting (CCPR/C/SR.1740), held on 30 March 1999.

1. Introduction

198. The Committee welcomes the State party's comprehensive fourth periodic report, covering the important changes that have taken place in the country since 1990. The Committee takes note of the useful information contained in the report concerning draft legislative proposals. However, it regrets the lateness of the submission of the report and of the core document.

199. It appreciates the additional information provided by the delegation in its dialogue with the Committee.

2. Positive aspects

200. The Committee welcomes the progress made since considering the State party's third periodic report in re-establishing democracy in Chile after the military dictatorship, as well as the initiatives for reform of legislation that is incompatible with the State party's obligations under the Covenant.

201. The establishment of the National Women's Service (SERNAM) and of the National Commission for the Family and the adoption of the Domestic Violence Act, the National Committee on the Eradication of Child Labour and the Judicial Academy are all positive developments.

3. Factors and difficulties affecting implementation of the Covenant

202. The constitutional arrangements made as part of the political agreement that facilitated the transition from the military dictatorship to democracy hinder full implementation of the Covenant by the State party. While appreciating the political background and dimensions of these arrangements, the Committee stresses that internal political constraints cannot serve as a justification for non-compliance by the State party with its international obligations under the Covenant.

4. Principal areas of concern and recommendations

203. The Amnesty Decree Law, under which persons who committed offences between 11 September 1973 and 10 March 1978 are granted amnesty, prevents the State party from complying with its obligation under article 2, paragraph 3, to ensure an effective remedy to anyone whose rights and freedoms under the Covenant have been violated. The Committee reiterates the view, expressed in its general comment No. 20, that amnesty laws covering human rights violations are generally incompatible with the duty of the State party to investigate human rights violations, to guarantee freedom from such violations within its jurisdiction and to ensure that similar violations do not occur in the future.

204. The Committee is deeply concerned by the enclaves of power retained by members of the former military regime. The powers accorded to the Senate to block initiatives adopted by the Congress and the powers exercised by the National Security Council, which exists alongside the Government, are incompatible with article 25 of the Covenant. The composition of the Senate also impedes legal reforms that would enable the State party to comply more fully with its Covenant obligations.

205. The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that began in the civilian courts contribute to the impunity which such personnel enjoy from punishment for serious human rights violations. Furthermore, that Chilean military courts continue to have the power to try civilians violates article 14 of the Covenant. Therefore:

> The Committee recommends that the law be amended so as to restrict the jurisdiction of the military courts to trials only of military personnel charged with offences of an exclusively military nature.

206. The Committee is deeply concerned at persistent complaints of torture and excessive use of force by police and other security personnel, some of which were confirmed in the State party's report, as well as at the lack of independent mechanisms to investigate such complaints. The sole possibility of resort to court action cannot serve as a substitute for such mechanisms. Therefore:

> The Committee recommends that the State party establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police and other security forces.

207. While the Committee welcomes the reform of the Criminal Procedure Code, it is deeply concerned that many of the provisions, some of which will strengthen compliance with the fair trial guarantees provided under article 14 of the Covenant, will not come into force for a long period of time. Therefore:

> The State party should consider shortening the period before the new Criminal Procedure Code comes into force in all parts of the country.

208. The law and practice of pre-trial detention, under which large numbers of persons accused of offences are held in preventive detention pending completion of the criminal process, raises issues of compliance with articles 9, paragraph 3, and 14, paragraph 2, of the Covenant. In this regard:

> The Committee recommends that the law be amended immediately so as to ensure that pre-trial detention will be the exception and not the rule, and will be used only when necessary to protect compelling interests, such as public safety and ensuring the appearance of the accused at their trials.

209. The power to hold detainees incommunicado, while limited by recent legislative reforms, remains a matter of serious concern. Therefore:

The State party should reconsider its law on this issue with a view to eliminating incommunicado detention altogether.

210. The Committee is concerned by the conditions in Chilean prisons and places of detention and by reports of discrimination between inmates. Therefore:

The Committee recommends the establishment of institutionalized mechanisms for monitoring conditions in prisons, so as to ensure compliance with article 10 of the Covenant, and for investigating complaints by inmates.

211. The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions which pose a threat to their lives. The legal duty imposed upon health personnel to report cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party has a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. In this regard:

The Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions and to protect the confidentiality of medical information.

212. The Committee is seriously concerned by the existing legal provisions that discriminate against women in marriage. Legal reforms under which married couples may opt out of discriminatory provisions, such as the provisions regarding control over property and authority over children, do not abolish the discrimination in the primary legal arrangements, which may only be changed with the consent of the husband. Therefore:

All legal provisions that discriminate between men and women in marriage must be abolished.

213. The absence of divorce under Chilean law may amount to a violation of article 23, paragraph 2, of the Covenant, according to which men and women of marriageable age have the right to marry and found a family. It leaves married women permanently subject to discriminatory property laws, as mentioned in paragraph 16 above, even when a marriage has broken down irretrievably.

214. The Committee is concerned that there are a large number of instances of sexual harassment in the workplace. Therefore:

The Committee recommends that a law be enacted making sexual harassment in the workplace an offence punishable by law.

215. The Committee is concerned that the participation of women in political life, public service and the judiciary is quite inadequate. Therefore:

The Committee recommends that steps be taken by the State party to improve the participation of women, if necessary by adopting affirmative action programmes.

216. The continuation in force of legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Therefore:

> The law should be amended so as to abolish the crime of sodomy between adults.

217. The minimum age for marriage, 12 years for girls and 14 years for boys, raises issues of compliance by the State party with its duty under article 24, paragraph 1, to offer protection to minors. Furthermore, marriage at such a young age would generally mean that the persons involved do not have the mental maturity to ensure that the marriage is entered into with free and full consent, as required under article 23, paragraph 3, of the Covenant. Therefore:

> The State party should amend the law so as to introduce a uniform minimum age for marriage of males and females, which will ensure the maturity required in order for the marriage to comply with the requirements of article 23, paragraph 3, of the Covenant.

218. The Committee takes note of the various legislative and administrative measures taken to respect and ensure the rights of persons belonging to indigenous communities in Chile to enjoy their own culture. Nevertheless, the Committee is concerned that hydroelectric and other development projects might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. Therefore:

> When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.

219. The Committee is concerned at the lack of comprehensive legislation that would prohibit discrimination in the public and private spheres, such as employment and housing. Under article 2, paragraph 3, and article 26 of the Covenant, the State party is under a duty to protect persons against such discrimination. Therefore:

> Legislation should be enacted to prohibit discrimination and provide an effective remedy to those whose right not to be discriminated against is violated. The Committee also recommends the establishment of a national defender of human rights or other effective agency to monitor the implementation of anti-discrimination legislation.

220. The special status granted in public law to the Roman Catholic and Orthodox Churches involves discrimination between persons on account of their religion and may impede freedom of religion. Therefore:

> The State party should amend the law so as to give equal status to all religious communities that exist in Chile.

221. The general prohibition imposed on the right of civil servants to organize a trade union and

bargain collectively, as well as their right to strike, raises serious concerns under article 22 of the Covenant. Therefore:

> The State party should review the relevant provisions of laws and decrees in order to guarantee to civil servants the rights to join a trade union and to bargain collectively, guaranteed under article 22 of the Covenant.

222. The Committee sets the date for the submission of Chile's fifth periodic report at April 2002. It requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated within Chile and that the next periodic report be disseminated among non-governmental organizations operating in Chile.