

CHILE  
EXTERNAL (For general Distribution)

AI Index: AMR 22/19/80  
Distr: NS/CO

Amnesty International  
International Secretariat  
10 Southampton Street  
London WC2E 7HF  
England.

July 1980

NEW LEGISLATION RESTRICTING HUMAN RIGHTS IN CHILE

DECREE LAWS 2621, 3168 AND 3177

During 1979 and 1980, the military junta has continued to promulgate decree laws further restricting human rights in Chile.

On 7 February 1980, the state of emergency was yet again renewed for a further period of six months. This means that by 11 September 1980, Chile will have been under a state of emergency for 84 months without interruption. The state of emergency or state of siege have given wide powers to the Executive, particularly to the President, Minister of the Interior and the Military Chiefs of the Emergency Zones, to take repressive measures out of the control of the judiciary. The regional military commanders responsible for the enforcement of the emergency legislation in each of the administrative regions of Chile have discretionary power to authorise or ban publications, books and radio broadcasts. In 1979, the influential Christian Democrat oriented weekly magazine "Hoy" was banned for a period of two months for attempting to publish an interview with the Secretary General of the banned Socialist Party, and an article on the finding of the Special Investigating Judge who instructed the case of the disappeared prisoners whose bodies were found in Lonquén at the end of 1978. A new magazine "Gente Actual" has not been authorized by the military commander despite the fact that it has been cleared by all other necessary authorities.

The rights of assembly and association, right to justice and due process, freedom of expression, thought and information, have been further restricted by the new decree laws.

DECREE LAW 2621 : THE 'ANTI-TERRORIST LAW' - 28 APRIL 1979

Decree Law 2621 amends Article 5 of the State Security Act as well as certain articles in the penal code and the Code of Penal Procedure dealing with illegal organizations. The government states that the law was promulgated to prevent more effectively "acts of terrorism and the organization of groups pursuing terrorist aims" and to punish "the commission of such acts more severely".

On the day the decree law was published, the Minister of Justice made an official, public statement in which she clarified to some extent how the government intended the law to be interpreted.

The main stipulations of the law are as follows:

1. An association can be presumed to be unlawful if one or more of its members have "committed an attack on the social order, morality, persons or property". These terms are not clearly defined in the penal code or in this decree law, although the latter does stipulate that certain offences or crimes specified in the State Security Act, the Weapons Control Act and some articles of the penal code relating to terrorist acts are to be covered by this decree law.

One of the offences specified by the new decree law is described in an amendment to the State Security Act given in Decree Law No. 1009 as follows: "Any person who is found carrying leaflets, pamphlets or brochures constituting incitement to commit (any act of terrorism) shall be presumed to have committed these offences if the circumstances of the action or the personal background of the perpetrator permit such a presumption to be made."

2. Any person providing the "means and instruments" to a member of an illegal organization to facilitate the committing of an offence or crime is liable to imprisonment. This amends previous wording in the penal code which refers to "horses, arms, ammunition and instruments".
3. Any person who has "plausible" information about the plans or activities of a member of an illegal organization is now obliged, under threat of imprisonment, to report this information to the authorities. In certain cases, this condition is applicable even to those who are close relatives of the member of the organization. This applies to the activities of anyone who is a member of an organization whether or not it is legal at the time of denunciation.
4. There is no conditional remission of sentence and no provisional release from prison for people accused or guilty of certain offences covered by this law.

#### What the law means

The law has been widely criticized in Chile both on legal and moral grounds. The Permanent Committee of the Episcopal Conference of Chile, while supporting genuine attempts to control terrorism, declared that Decree Law 2621 "... contains defects calculated to transform it into an instrument of excessive repression if interpreted correctly. That is particularly evident in the light of some of the frankly intimidatory comments made by the Minister of Justice."

One of the principal criticisms of the law made by members of the legal profession is that it assumes an organization is illegal if one or more of its members - even if they were not acting in their capacity as members of the organization - commits an offence or crime (an attack on the social order, morality, people or property).

The law, and its interpretation by the Minister of Justice, places the onus on all members of an organization to prove their innocence if a single member has committed such an offence or crime. The Minister stated:

"Organizations of all kinds will, therefore, have to take care not to admit to membership people performing such acts, since all their members will be brought to trial as constituting an illegal organization, an offence which exists by the mere fact of having formed such an organization, and will be required to prove whether or not they are innocent."

This directly contravenes Article 11 of the Universal Declaration of Human Rights, which provides that a person is to be presumed innocent until proved guilty. The law and this interpretation is considered to be a warning against forming any kind of organization, however peaceful and legal as all its members are now held criminally liable for the actions of any individual member.

An organization can be almost any sort of group. It can be a corporation or commercial company, a social club, neighbourhood association, a religious group, sports or cultural group or a trade union. Thus any group of this type is threatened by this law.

Another serious criticism to be made of this law is that it is conducive to spying on one's neighbour and groundlessly denouncing innocent people. Many may feel obliged, in self-protection, to denounce any activity of a neighbour, colleague or acquaintance, which seems to be in the least suspicious in order to protect him or herself. The church has commented as follows on this danger if the law is assumed to create a general obligation to inform on anyone who is planning to commit an offence:

"Naturally, such an interpretation, which is not implicit in a legal text, is bound to induce a sense of fear and insecurity among the population and might even tempt many members of organizations to engage in the immoral practice of spying on the actions of their fellow members and informing on them if their conduct seems in any way unlawful."

The law provides the government with an instrument to destroy any kind of group by arresting all of its members (it could be the committee of relatives of the disappeared, a church study-group, a trade union ....) which it regards as opposing "the social order", which means the policies and existence of the government and its institutions. Broadly interpreted, the law is not limited to punishing "terrorists" and their associates, but could be used to dissolve and even imprison any group that the government regards as opposing the status quo: a trade union planning an illegal strike, a committee of relatives planning a demonstration, a journalist (member of a professional association) publishing a critical article in a national or foreign newspaper.

As far as Amnesty International knows, the law has not yet been used; however it constitutes a serious threat to any type of political opposition to or criticism of the military régime.

The United Nations, in the report on the Protection of Human Rights in Chile published on 21 November 1979 (A/34/583), concluded its examination of decree law 2621 as follows:

"Decree Law 2621, which was apparently promulgated in order to combat terrorism, contains elements which may transform it into an instrument for violating human rights. In particular, it affects the right of persons to be presumed innocent until they are proved guilty, the right of association, and the right of a person not to be subjected to arbitrary interference with his privacy, or to unlawful attacks on his honour and reputation. The possible social implications of this legislation for community life in Chile are particularly serious in view of the intimidating nature of its provisions as they were explained to the population by the Minister of Justice."

DECREE LAW 3168 OF 6 FEBRUARY 1980

On 6 February 1980, Decree Law 3168 was promulgated, giving the Minister of the Interior power to order the detention of persons for up to five days and to assign them to residence in remote areas (relegación) for disturbing public order or attempting to disturb public order, without any rights to defence, trial or appeal. This decree converts the present state of emergency into a de facto state of siege. To avoid any possibility of the Supreme Court finding this decree law unconstitutional, the junta invoked legislative powers which it gave itself after the coup d'etat of 1973. Furthermore, arrests under Decree Law 3168 are not under the control of the Contraloría General de la República, the public body that oversees state administrative procedures.

Decree Law 3168 was applied to people who demonstrated peacefully on 8 March 1980, International Women's Day. Hundreds of demonstrators took to the streets for a rally organized by the women's section of the Coordinadora Nacional Sindical (CNS) the National Trade Union Coordinating Body. The CNS had requested permission for the march from the government but had been refused because of the "political intention" of the rally. Peaceful demonstrations took place in Chile's main cities, Santiago, Concepción and Valparaíso. The police detained more than a hundred people in Santiago and 26 in Valparaíso. Detainees were reportedly subjected to interrogation by the Central Nacional de Informaciones (CNI) the National Centre of Information, and kept incommunicado for five days.

On 13 March, the Minister of the Interior announced that 12 of the detainees were to be banished by order of President Pinochet, each for a period of three months, to remote villages mostly in the far north or south of Chile. The other detainees were released "under observation". They, too, may be banished if they are detained again as a result of participating in any sort of protest; the people who were banished were referred to as "repeated offenders".

Towards the end of March 1980, the Minister of the Interior stated that a further five people who had been arrested on 8 March were to be banished. The five concerned had been freed "under observation" but "new evidence" made it necessary to banish them.

DECREE LAW 3177 OF 9 FEBRUARY 1980

Decree Law 3177, published on 9 February 1980, modified Decree Law 1697 of 1977 which dissolved all political parties, associations or movements. Article 4 of Decree Law 1697 now reads: "gives to the ordinary tribunals the power to instruct trials against those charged with political activities".

Decree Law 3177 is only the latest of many legal measures taken by the military junta since 11 September 1973 in order to ban gradually and definitely all organized political activity within the country and even outside the country. Exiles suspected of carrying out "campaigns against Chile" are not allowed to return. For instance, participation in rallies organized by human rights groups or providing information to Non-governmental Organizations and Inter-governmental Organizations denouncing human rights violations in Chile are considered to constitute anti-Chilean activity.

The following are some of the decrees which aim to ban political activity:

- Decree Law 27      Parliament is dissolved.  
(21 Sept. 1973)
- Decree Law 77      Forbids and declares illegal the Communist Party,  
(8 Oct. 1973)      Socialist Party, Unión Socialista Popular (Popular  
Socialist Union), Movimiento de Acción Popular  
Unitario (MAPU, Movement for United Popular Action),  
Partido Radical (Radical Party), Izquierda Cristiana  
(Christian Left), Acción Popular Independiente (Independent  
Popular Action), and "all parties, entities or movements  
of Marxist orientation or of an orientation that coincides  
with that doctrine."
- Decree Law 78      Suspends the activities of all parties not included in  
(11 Oct. 1973)      Decree Law 77 (namely the Christian Democrat Party and  
right wing parties).
- Decree Law 128      The military junta takes over the constituent, legislative  
(12 Nov. 1973)      and executive powers by means of decree laws signed by all  
its members.
- Decree Law 130      Declares the electoral registers to be out of date and  
(19 Nov. 1973)      orders them to be destroyed.
- Decree Law 1697      Dissolves all remaining political parties whose  
(1977)      functioning had been suspended by Decree Law 78 of 1973.

Since 1973 many thousands of people have been detained and accused of belonging to the banned parties. Only recently, in May 1980, 15 people were detained in Talca, accused of possessing "subversive literature" and of belonging to the MAPU and Socialist Parties. Four other people were also arrested in May and charged with publishing Communist Party propaganda under the Law of Internal State Security, and of violating Decree Law 77 which declared all Marxist groups illegal. They are: José Maldawsky, a journalist from "Hoy" magazine; Jorge Mario Soza, journalist; Jaime Tarifeño Urra, a printworker, and María Inés González Figueroa.

