

ORIGINAL

INTERNAL (for AI members only)

AI Index: AMR 22/50/81
Distr: NS/CO/AD/PG

Amnesty International
International Secretariat
10 Southampton Street
London WC2 7HF
England

TO: National Sections
Chile Coordination Groups
Adoption groups with prisoners in Chile
Lawyers Groups

FROM: Americas Research Department 3rd August 1981

CHILE GROUP LEVEL SPECIAL ACTION

CIRCULAR No 5 - THE 1981 CONSTITUTION

SUMMARY

Attached is the third background paper to be sent out in connection with the Group Level Special Action to take place in September 1981, as described in MAR 22/44/81 (Chile Group Level Special Action Circular No 1).

DISTRIBUTION

This circular is being sent out to national sections, Chile coordination groups, Chile adoption groups, and AI lawyers' groups.

AI CONCERN

AI is concerned that people are being detained, banished and expelled from the country under Transitory Provision 24 of the 1981 Constitution for peacefully exercising their human rights.

RECOMMENDED ACTIONS

- 1) Send letters to the Supreme Court, the Minister of Interior and Minister of Justice expressing concern about the apparent contradictions between the new Constitution and the International Covenant on Civil and Political Rights ratified by Chile in 1972.
- 2) Express concern that the Constitution was adopted by means of a referendum which did not allow independent lawyers to make their criticisms known.
- 3) In your letters you should express concern about prisoners of conscience who have been ordered into internal exile for three months, without the possibility of appealing before a judge, under transitory provision No 24 of the new Constitution. You could quote the relevant provisions of the Covenant, which such arbitrary action contradicts. Examples can be found in circular No 3 on banishment (AMR 22/47/81).

- 4) Try to involve local Bar Associations or lawyers to write in their professional capacity to the Chilean authorities on points of international law, or on parts they may find of interest.
- 5) As a minimum action, national sections are requested to translate the attached circular and distribute it as widely as possible.
- 6) Further background information on the new Constitution may be found in AMR 22/02/81.

EXTERNAL (for general distribution)

AI Index: AMR 22/50/81
Distr: NS/CO/AD/PG

July 1981

Amnesty International
International Secretariat
10 Southhampton Street
London WC2E 7HF
England

CHILE

THE 1981 CONSTITUTION

On 11th March 1981 a new constitution came into force. It replaced the 1925 Constitution which had already been largely eroded by the numerous decree-laws and four Constitutional Acts since 1973, when the Military Junta presided by General Pinochet took power.

The new Constitution was prepared by a special Commission appointed by the Junta without the participation of independent lawyers. It was adopted by a referendum which took place in September 1980 under the state of emergency, without electoral registers - these were destroyed by the Junta after the coup - with all political parties banned, and under the supervision of returning officers appointed by the Government.

The new Constitution consists of 115 Articles and 29 transitory provisions and will not fully come into force until 1997. Transitory provision No 14 appoints General Pinochet as President of the Republic for the first presidential period of 8 years. The 1981 Constitution incorporates many of the provisions contained in previous decree laws and constitutional Acts and severely restricts freedom of association, thought and expression.

Transitory provision 24

Shortly after the coming into force of the new Constitution General Pinochet declared that because acts of violence aimed at disturbing public order had occurred, internal peace was in danger of being disturbed. Thus, according to transitory provision 24, since March 1981 the Government now enjoys the following powers which are renewable every 6 months:

- a) to arrest people for up to five days, in their own homes or in places that are not prisons. If terrorist acts with serious consequences occur, this period can be extended for a further fifteen days (the individual arrested may not necessarily have any specific link with the terrorist acts);
- b) to limit the right of assembly and freedom of information, the latter being only as far as the founding, publishing and circulation of new publications is concerned;
- c) to prohibit the entry into national territory, or to expel from it, those who propagate the doctrines mentioned in Article 8 of the Constitution, those who are suspected or have a reputation of being followers of

those doctrines, and those who carry out acts contrary to the interests of Chile or which constitute a danger for internal peace; and

d) to order individuals to forcibly remain in an urban locality within the national territory for a period of up to three months.

The measures adopted by virtue of this provision are not subject to any kind of appeal, except reconsideration by the authority that ordered them."

In March 1981, General Pinochet declared a State of Emergency under Article 41 of the Constitution.

Under the state of emergency it is not possible to appeal against arbitrary decisions taken by the authorities affecting human rights that are in theory protected by Article 19 of the Constitution. That means that those whose human rights are violated by the state cannot ask the courts to take appropriate decisions in order to re-establish the rule of law and their rights.

The Chilean Government has actively used the powers mentioned in transitory provision 24. Between 11 March 1981 and 31 May 1981, according to the Vicaría de la Solidaridad, a Chilean human rights group, 158 persons were detained. Gerardo Espinoza Carrillo, an ex-member of the late President Allende's Popular Unity Government, was arrested and expelled from the country for 'criticizing the government' and 'propagating totalitarian doctrines' during a speech he gave at the grave of ex-Popular Unity Minister José Tohá González.

More than 20 persons, mostly young people or students, have been sent into internal exile to remote villages for three months by the Minister of the Interior. In one case, 5 students were sent to internal exile on 14th April by the Minister of the Interior because they were 'caught trying to disturb public order' and because of 'their well-known participation in political agitation'. In fact one of the five students, Jorge Pesce, aged 24, studying philosophy, had been an active leader of the students of the University of Chile and had participated in several peaceful rallies to protest against political repression in Chile. In June 1980 he organized rallies in support of Professor Malva Hernández who had been made redundant by the university authorities, allegedly because of her activities in connection with her search for her son who is one of the 1500 political prisoners "disappeared" since 1973.

Jorge Pesce had been detained in 1980 by unidentified civilians and warned to give up his work as student leader. He was banished for three months to a small village some 1000 km from Santiago.

The new Constitution and the International Covenant on Civil and Political Rights

Independent lawyers in Chile have pointed out that the new Constitution in many of its provisions contradicts international human rights instruments, in particular the International Covenant on Civil and Political Rights signed by Chile in 1972 and which came into force on 23 March 1976.

Art.9 of the Covenant establishes that:

"1) Everybody has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Transitory provision 24 (see above) contradicts Art.9 of the Covenant. In fact some two hundred people have been arrested and/or banished, without being informed at the time of (or even after) the event of the reasons for his/her arrest. People banished by administrative decision do not have the right to bring proceedings before a court, in contradiction of Art.9 (4) of the International Covenant.

Art.18 of the Covenant says:

"1) Everyone shall have the right of freedom of thought, conscience and religion."

But: Art.8 of the Constitution prohibits all groups or parties 'based on the class struggle'.

"Any act by a person or group aimed at spreading doctrines against the family, which advocates violence or a concept of society, state or judicial order, of a totalitarian nature or based on the class struggle is illegal and contrary to the institutional norms of the Republic.

Organizations and movements or political parties whose aims or member's activities are intended to fulfill the above objectives are unconstitutional. . ."

Art. 22 of the Covenant states that;

"1) Everyone shall have the right to freedom of association with others including the right to form and join trade unions for the protection of his interests", but Art. 23 of the Constitution says that trade union leaders cannot belong to a political party and transitory provision 10 prohibits all political activity until an 'organic law' related to political associations is promulgated. It is unknown how long that will take. No deadline is given in the text either of the Constitution itself or in the transitory provisions.

Transitory provision 24 is again in contradiction with this article of the Covenant.