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Title/Style of Cause:	Luis Corvalán, Solange Bassos da Silva, Manuel Messias da Silva, Mariano Rodríguez and Arthur Jader Cunha and others v. Chile
Doc. Type:	Report
Dated:	1974
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[1] Case 1774. September 14, 1973, from Amnesty International and the International Commission of Jurists, represented by their respective Secretary Generals, reporting serious concern about mass arrests and summary executions of political opponents in the Republic of Chile as well as of political refugees from other countries, in Chile. In this cablegram, after emphasizing the urgency of the case, they requested the intervention of the OAS in reaching an agreement with other American countries to grant asylum to members of the opposition and to persuade the Chilean authorities to permit the refugees to leave that country for the countries that wished to receive them. In addition, it requested action by the OAS to ensure that the Government of Chile would respect the human rights embodied in the Universal Declaration as well as the tradition of asylum and would act in a just and humanitarian manner towards the members of the opposition in the country.

[2] On September 17, 1973, the Commission requested the Government of Chile, in accordance with Articles 42 and 44 of its Rules of Procedure, to provide the pertinent information.

[3] In view of new reports that expressed serious concern that the Chilean authorities would take severe repressive measures against members of the opposition and political refugees, the Commission again addressed the Government of Chile in a cablegram in the same month and year, recommending to it, (in accordance with the powers provided for in Article 9 b of its Statute) that such measures be in accordance with respect for the human rights embodied in the American Declaration of the Rights and Duties of Man. In addition, in the same communication, it urged the above-mentioned Government to provide information on the measures it was adopting with respect to human rights, pursuant to Article 9 c of its Statute.

[4] These communications were repeated on December 26, requesting the consent of the Government of Chile for the Executive Secretary of the CIDH, Dr. Luis Reque, to visit Chile in order to gather information concerning the status of human rights.

[5] In a cablegram dated September 26, 1973, the Government of Chile assured the Commission that it will continue to fulfill its obligations arising from Inter-American commitments with respect to human rights and added that the persons arrested, who were receiving humanitarian treatment, would only be convicted, after trial, if they were implicated in criminal matters. Also, in a note dated October 5, 1973, it authorized the Executive Secretary to visit Chile. This visit took place from October 12 to 17, 1973. As a

result thereof, the Executive Secretary made a report to the Commission.

[6] On the basis of the reports received, the replies of the Government of Chile, and the report of the Executive Secretary, the Commission considered the status of human rights in Chile, File 1774, in the course of its thirty-third session (October 1973) and decided:

- i) to transmit to the Government of Chile, in request for information, the pertinent parts of the specific reports received prior to the thirty-first session;
- ii) to request the Government of Chile to provide information on the specified cases of persons who had allegedly disappeared, been executed, tortured or arrested, which appear in the report of the Executive Secretary of the Commission (doc. 31-31, rev.), made as a result of his visit to Chile in October 1973;
- iii) to request the Government of Chile to provide information on the measures it had adopted or intended to adopt that affected human rights; and
- iv) to authorize the Chairman of the Commission to request the Government of Chile for its consent to allow the CIDH to visit Chile and to carry out an investigation in loco of the reports, if it was considered advisable in accordance with the turn taken by the status of human rights and the replies of the Government of Chile to the requests for information.

[7] In implementation of these decisions, the Commission sent three notes to the Government of Chile, namely:

1. Note of October 24, 1973, requesting, in accordance with Articles 42 and 44 of its Rules of Procedure, the pertinent information about the status of the following persons: Luis Corvalán, Solange Bassos da Silva, Manuel Messias da Silva, Mariano Rodríguez and Arthur Jader Cunha.

The Government of Chile, in a note dated December 14, 1973, sent information according to which Messrs. Da Silva, Rodríguez and Jader Cunha had left the country after having been tried. With respect to Mr. Corvalán, it stated that he would be tried for the charges made against him and that, in that trial, he would enjoy all the guarantees of due process established in Chilean legislation.

2. Note of October 24, 1973, requesting information about several specific cases reported during the visit of the Executive Secretary of the CIDH to Chile (October 12-17, 1973), and other facts contained in the report presented by him to the Commission at its thirty-first session (doc. 31-31, res.). This note covers the following cases:

a. Disappearance of 16 Persons (mentioned in the note) as a result of the events that occurred on September 11 et. seq.;

b. Information about their whereabouts; their state of health; whether or not they have been deprived of their liberty and, if so, where they are held; whether they have been tried and the court and place of the trial; whether they had legal resources for their defense; name of their attorney and postal address;

Information about the alleged death by execution and/or torture of 12 persons (mentioned in the note) as a result of the events that occurred in September 1973;

c. Whether these persons are actually dead; where their remains have been buried; whether their death was the result of an act of the public authorities; whether execution was preceded by legal formalities (ordinary or emergency or under Article 3 of the Geneva Convention of August 12, 1949, which the CIDH understands has been ratified by Chile).

d. Whether it has been possible to confirm the torture or harassment of these persons;

e. Whether, in the case of torture, harassment or arbitrary execution, measures have been taken to prevent the repetition of such events;

f. Information about whether the following persons, in addition to those whose names are included in the list mentioned in item a), have been tortured; Margarita Echeverría (arrested on the night of October 14 and taken to the National Stadium); Dr. Ricardo Elena (Uruguayan, cardiologist, professor at the University of Concepción); Flora Espinosa Díaz (arrested on October 2 and allegedly beaten during

the interrogation that took place on October 8); Feline Iñigas (Bolivian, arrested and tortured); Delbo Ignacio da Silva (Uruguayan, arrested and tortured); Dr. Claudio Weder Ubilla (resident at Ramón Díaz No. 1061, Apt. 34, arrested on September 27 and taken to the La Puntilla Police Station, Transferred to the National Stadium on October 4).

h. Information about 9 Persons arrested (mentioned in the note) with regard to whom it has been reported that they have not been informed why they had been arrested. In each case, the date of the arrest and the place in which they are held is given information is requested about the actual place of detained, whether they are still detained, the authority that has jurisdiction over the case which has been presented, and whether these persons have been assisted by counsel for the defense.

In a note dated March 27, 1974 (No. 4958), transmitted through the Delegation of Chile to the OAS, the Government of Chile provided the following information:

a. That, with respect to the 16 persons stated to have disappeared, 13 of them "had left the territory of the Republic, either voluntarily or on expulsion from the country because their presence, in accordance with the legal rules in force, was a serious threat to national security since several of these individuals were involved in activities aimed at disturbing public tranquility and threatened the security of the State". (The names are given).

b. With respect to two of the persons who had allegedly disappeared, the whereabouts of one of them, an Uruguayan, was not known, and with respect to the other, whose name was included in the same list of 16 persons who had disappeared, he had been found shot to death on the public highway on the morning of September 18, 1974, and it had not been possible to establish "whether his death was caused by a military patrol enforcing the curfew and obliged to fire if this person did not obey an order to halt or whether his death was caused by extremists who, under the cover of the night, fired at members of the Armed Forces and of the police as well as at the civilian population in desperate and suicidal attempts".

c. That, with respect to the alleged death by execution and/or torture of 12 persons, information was not available, in the case of one of them, about the cause of his death; another (a former official of the disposed Government) had been killed by habitual criminals, and the third had been killed by snipers. With respect to the other nine (9), no information was available because of lack of data or because the investigations of the Chilean authorities were still not complete with respect to those nine persons (the names are mentioned) although "as soon as possible, the facts establishing the status of those persons" would be sent to the Commission.

d. That, with respect to the list of six (6) persons, in addition to the 12 mentioned above, concerning on it was alleged that they had been tortured (the names are given), three were free and three were no longer in the country.

e. That, with respect to nine persons concerning on it was reported that they did not know the reason for their arrest, three of them were no longer in the country; information was lacking concerning two of them; one was detained in the Women's Prison and would be prosecuted in the ordinary courts (a Judge of the Appeals Court of Santiago is in charge of the proceedings), and the other two (both women) had sought asylum.

f. Finally, the Government of Chile stated that "with regard to the Inter-American Commission on Human Rights, it has fully cooperated in the solution of the problems which might possibly affect them, but it could not under any pretext accept the claim that it has condoned offenses against decency, harassment or torture. Our Government most emphatically rejects any report to that effect, considers it baseless, and is in a position to state categorically that, since September 10, there have been no acts offensive to human dignity. Any violation of the basic rights of man is, in our opinion, incompatible with civilized life. Furthermore, from the first instant, the new Government instructed the Armed Forces to act at all times in accordance with the Christian and humanist principles that inspired and inspire the action of the new Government of Chile and to do everything possible to safeguard human rights."

3. Note of October 25, 1973, which requested the Government of Chile to report on the measures it

had adopted or proposed to adopt in the matter of human rights. Specifically, it included, in the form of a questionnaire, the following points:

Complete text of the decree-laws and other provisions promulgated by the Government that affect or may affect human rights; whether all or any of the guarantees of human rights referred to in the above-mentioned decree - laws have been suspended; the status of public communications media and the status in generals of persons deprived or their liberty as a result of the events that occurred in the country beginning on September 11, 1973, as well as concerning the penitentiary system, status of women arrested, system of autopsies, etc.

In a note dated January 10, 1974 (JLE/mic No. 1977), the Government of Chile replied to the questionnaire contained in the note of October 25 and sent with in a copy of the pertinent decrees issued by the Military Junta of Government with respect to human rights.

In summary this information and documentation covers the following points:

- a. Texts of Decree-Laws Nos. 1, 3, 4, 5, 6, 12, 13, 23, 25, 27, 50, 76, 77, 78, 81, 98, 105, 111, 112, 128, 130, 133 and 139 and of the Military Edicts issued up to September 26, 1973, as they appear in the edition of "El Mercurio" of that date.
- b. Provisions applicable in accordance with Chilean legislation on the "state of siege" and "emergency situation". In summary, it contains the following information:
 - i. That, according to Article 72, 17 a, of the Constitutions by the declaration of the state of siege "only the President of the Republic is empowered to transfer persons from one department to another and to arrest them in their own homes and in places that are not prisons or places intended for the detention or imprisonment of common criminals".
 - ii. That, with respect to the state of emergency, Law No. 12,927 of August 6, 1958, in Article 33 states that "When a state of emergency has been declared in the area concerned, it shall be under the immediate authority of the Chief of the National Defense the Government designates, who will assume military command with the powers and duties specified in this law. For the performance of his functions, in the different areas in which the state of emergency prevails, he may delegate his powers to officers of any of the three branches of the National Defense that are under his Jurisdiction."
 - iii. That, with respect to cases instituted in the ordinary courts, the right of Habeas corpus is fully in effect but does not apply to cases instituted in military courts.
 - iv. That the appeal of "Amparo" is not in order before military courts in accordance with Article 72, paragraph 17, of the Constitution.
 - v. That proceedings against civilians may be instituted in military courts, in accordance with Law No. 5 of September 12, 1973.
 - vi. That, as long as the state of siege exists, there is no limit on the time of detention before proceedings are instituted in the ordinary courts.
 - vii. That both those subject to ordinary courts and those subject to military courts must have a defending counsel and their case must be in accordance with "due process".
 - viii. That the ordinary courts do not have jurisdiction over appeals lodged against judgments by military courts "since, the country being in a state of war, they are under the authority of the General in Chief of the territory concerned, who has full powers to execute, revoke or modify their decisions in accordance with Article 74 of the Code of Military Justice".
 - ix. That, in state of siege, Article 72 of the Constitution grants the Executive the power to transfer persons from one department to another, to arrest them in their own homes and in places that are not prisons or other places intended for the detention or imprisonment of common criminals.
- c. With respect to the status of Public communication media: there is a system of censorship, suspension or closure in the case of those that were "recognized propagandists of Marxism or did not comply with the instructions of the Supreme Government", and "it is the desire of the Junta to gradually

reduce these controls as the circumstances of the national activity so permits; at present all the organs of the press publish without prior censorship, and several radio stations have been authorized to issue their own information bulletins, independently, subject to the general rules concerning responsibility for abuses of publicity".

d. Status of Persons deprived of their liberty: in Chile "persons are not arrested for their political ideas but because of the commission or presumption of ordinary offenses. In any event, those persons that have been arrested for ordinary offenses related to the political activity that was taking place up to September 11 (illegal possession of arms, economic offenses, etc.) and those that have been arrested for reasons of public security are subject to living and disciplinary conditions different from those for common criminals."

It also states in relation to this point that — "special provisions have been adopted to ensure the correct treatment of women deprived of liberty and that the observance of these instructions is periodically checked by means of inspections made of places of detention by various authorities. In addition, strict instructions have been issued with a view to preventing the mistreatment of persons detained and, during the periodical inspections, the fulfillment of these orders is verified", and that persons arrested receive visits from their relatives approximately every 15 days; that the correct treatment of women deprived of their liberty is guaranteed and persons arrested receive medical attention from the Red Cross and Social Workers.

[8] With this information, the CIDH continued its examination of Case 1774 at its thirty-second session (April 1972) and appointed a Subcommittee to study the voluminous dossier and to make pertinent recommendations.

In accordance with the recommendations of the Subcommittee, the Commission decided at that session:

a. To request the Government of Chile, in accordance with Article 11 c of its Statute and Article 50 of its Rules of Procedure, to consent to the Commission visiting that country in order to carry out in situ an investigation on the status of human rights.

b. To send a note to the Government of Chile requesting it to provide further information on the specific cases included in the report of the Executive Secretary of the Commission (doc. 31-31 res.).

[9] In implementation of these decisions, the Committee addressed the Government of Chile in notes dated 18 April and June 3, 1974 respectively.

[10] After an exchange of communications between the CIDH and the Government of Chile and of a visit to that country by the Executive Secretary of the CIDH, the Commission, in accordance with the consent granted by that Government, visited Chile from July 22 to August 2, 1974, in order to make an investigation in situ of the status of human rights.

[11] During its stay in Chile, the CIDH received 576 reports on specific cases of alleged violations of human rights in that country. For the purposes of the statutory processing of such reports and as explained on page 37 of this report, these reports were classified into the following categories:

a. Persons arrested with respect to whom the place in which they had been imprisoned was unknown;

b. Persons arrested without charge or in virtue of the state of siege;

c. Persons arrested and charged or who were possibly subject to trial by the military authorities;

d. Persons serving sentences following trials in which, according to the report, the requirements of due process had not been complied with;

e. Persons shot without previous trial or after trials in which, according to the reports, the right to due process, embodied in Article XXVI of the American Declaration of the Rights and Duties of Man and

been violated; and

f. Juveniles detained in prisons or other places together with adults and subject to the same conditions as adults.

[12] In accordance with its Rules of Procedure, the Commission transmitted to the Government of Chile, in request for information, the pertinent parts of the 576 reports received in Chile (from July 22 to August 2), classified into the above-mentioned four categories. These reports were transmitted under notes dated October 11, 1974. A copy of these notes was transmitted to the Delegation of Chile to the OAS on November 30.

[13] As of the end of the period covered by this report (December 31, 1974), the Government of Chile has not replied.