

PART FOUR

Chapter One: Proposals for reparation

A. Introduction

Previous chapters have enabled readers to come to an understanding of the truth about the grave human rights violations that have taken place and the injury borne by the victims' relatives. Following our mandate, we will present in this chapter the measures we regard as just for reparation and the restoration of the good name of the victims.

Obviously, there can be no correlation between the pain, frustration, and hopes of the victims' families and the measures to be suggested here. The disappearance or death of a loved one is an irreparable loss. Nevertheless, moral and material reparation seem to be utterly essential to the transition toward a fuller democracy. Thus we understand reparation to mean a series of actions that express acknowledgement and acceptance of the responsibility that falls to the state due to the actions and situations presented in this report. The task of reparation requires conscious and deliberate action on the part of the state.

Furthermore, the whole of Chilean society must respond to the challenge of reparation. Such a process must move toward acknowledging the truth of what has happened, restoring the moral dignity of the victims, and achieving a better quality of life for those families most directly affected. Only in this fashion will we be able to develop a more just form of common life that will enable us to look with hope toward the future.

* Although the specific measures of reparation adopted must be designed to be effective, they will obviously be unable to accomplish anything by themselves. The great ideals-truth, justice, forgiveness, reconciliation-must come first.

* Measures of reparation must aim to bring society together and move toward creating conditions for true reconciliation; they should never cause division.

Only within an atmosphere that encourages respect for human rights will reparation take on vital meaning and shed any accusatory trait that might reopen the wounds of the past. The reparation process means having the courage to face the truth and achieve justice: it requires the generosity to acknowledge one's faults and a forgiving spirit so that Chileans may draw together.

B. Recommendations for restoring the good name of people and making symbolic reparation

1. Publicly repairing the dignity of the victims

For some people the very fact that this Commission was created by the president and exists may constitute an initial gesture of reparation. Out of our own experience we can attest that many of the victims' relatives who attended sessions throughout Chile saw it as such a gesture.

Moreover, there are already a number of spontaneous initiatives and gestures of reparation throughout the country. Each of them is valuable in itself for what it expresses. Such initiatives need not spring from a law. Indeed it would be beneficial if initiatives for reparation were to multiply throughout the country and in every segment of society. Our hope would be that the creativity of such gestures might add to the artistic and moral endowment of our nation. Thus some day we may have symbols of reparation that are national and others that are regional or local in nature.

However, it would seem that these things are not enough: the country needs to publicly restore the good name of those who perished and to keep alive the memory of what happened so that it may never happen again. Hence the state can take the lead in making gestures and creating symbols that can give a national impetus to the reparation process. Today more than ever our country needs gestures and symbols of reparation so as to cultivate new values that may draw us together and unveil to us common perspectives on democracy and development. If we know how to be attentive to details and observe the formalities, we will also know how to overcome the obstacles still dividing us.

It is to be hoped that as soon as it is prudently possible, the government will see fit to provide the means and resources necessary to set in motion cultural and symbolic projects aimed at reclaiming the memory of the victims both individually and collectively. Such projects would lay down new foundations for our common life and for a culture that may show more respect and care for human rights, and so provide us with the assurance that violations so threatening to life will never again be committed.

2. Some suggestions for restoring the good name of people and making symbolic reparation

This Commission has decided to offer some criteria or suggestions

to aid government officials in taking a position on the kind of gesture or creative expression that could best serve the proposed aims of restoring the good name of people and making reparation. We have received many interesting contributions and note that they have certain common features:

1. People are looking for expressions of reparation that will be public and national in scope. At the same time there is a concern that regional and even local aspects be expressed forcefully and independently.

2. People are aspiring to have each victim's good name and dignity restored: future generations should know and perpetuate their full name so that it may serve to teach and reaffirm the value of life.

3. People are longing to see such expressions reflect a consensus and not be a sign of division exalting some and disparaging others. Such expressions could make a contribution to greater unity and social cohesion.

4. People are especially aware of the role played by the mass media in symbolic acts of reparation in view of their impact in creating culture.

Simply by way of example we can report that we have received many suggestions for symbolic reparation. Most frequently they are along the lines of:

- * setting up a commemorative monument that would list all the victims of human rights abuses from both sides;

- * building a public park in memory of those who lost their lives, to serve as a place of commemoration and a lesson, as well as a place for recreation and for bolstering a life-affirming culture.

- * giving the recently created "National Human Rights Day" the importance it deserves so that each December 10 will be observed throughout the country with public observances and ceremonies in the schools and other gestures aimed at symbolic reparation;

- * organizing campaigns, cultural celebrations, and the like, so that we may continue to move toward creating a climate of national reconciliation.

With regard to how to implement these and other possible proposals, this Commission can only urge government officials to

invite the most representative social sectors to design projects that both have artistic value and are intended to help make social reparation. In particular, we would like to suggest that those who work in art and culture be invited to make their own specific contribution. Likewise family members could be consulted in the design phase of the project.

3. Solemnly restoring the good name of the victims

Before ending this section we would like to offer a suggestion we regard as extremely important. This Commission takes the liberty of suggesting that the state-whether represented by his excellency the president of the republic, or by the Congress, or by a law-solemnly and expressly restore the good name of the victims who were accused of crimes which were never proven and who were never given the opportunity or adequate means to defend themselves. It is our hope that such a gesture may initiate an era in our common life as a nation in which a reaffirmation of life may serve to guide us toward the future.

C. Legal and administrative recommendations

1. Unresolved legal issues

The Commission has found that the immediate family members of the victims of the most serious human rights violations are burdened by a whole series of legal and administrative problems. Some of these problems deserve particular attention. We are referring to those problems arising directly from the state of legal uncertainty of people who have disappeared after arrest, due to the lack of proof of what has happened to them.

In addition to the uncertainty and anguish of this situation, family members confront a long list of problems in connection with their civil status, inheritance, ownership of the disappeared person's property, school tuition for the children, wives' legal interest in marital property, and a host of situations that harm the family estate.

There have been two possible approaches to this problem, one provisional and the other more permanent. One is the judicial appointment of a legal caretaker for the missing person's property. The disadvantage of this approach is that it grants only provisional power to administer the victim's property. The other possibility is to ask that the person be declared to be presumed dead in accordance with Article 81ff. of the Civil Code. The problem with this approach has been that the family members have often preferred not to utilize this procedure because it seems to imply that they are somehow

giving up their efforts to discover the truth or to find the person alive, or for some other reason. These reasons should be respected.

We think both of these approaches were designed in another context and for other purposes, and they are not adequate for resolving the present problem. Hence we would like to propose that consideration be given to a special procedure for declaring dead those persons in whose cases we arrived at the conviction that government agents were responsible for their arrest and disappearance.

2. Special procedure for declaring persons arrested and disappeared to be dead

Here we will merely state some criteria for the consideration of those persons authorized to enact laws.

a. Criteria

We propose that a new criterion for declaring a person to be presumed dead be added to those which the law already stipulates. We are referring to those people who have undergone arrest and disappearance at the hands of government agents and are therefore victims of human rights violations and who are listed as such in this report. Since for lack of evidence, this Commission did not come to any conviction in some cases, we suggest that the possibility of applying this criterion to such cases be studied. It would have to be established before the relevant agency designated in the law and within the time limit set by the law that such persons were victims of human rights violations.

b. Proof

We would recommend that the conviction of this Commission should constitute sufficient proof for such a court decision and be the only evidence required. In other words, the only proof needed would be that the person's name appear on the list of victims in this report; no other procedure would be required. Accordingly, we would like to propose that any other kind of evidence in this procedure, such as issuing a public summons for the missing person, be eliminated.

c. Procedure

We believe that this procedure would have to be governed by the general rules of law. Those formulating the law should study changes to make it more accessible, simpler, and free of charge for persons requesting it. To that end we propose:

* that the petitioner be permitted to present the request for a declaration of presumed death to the judge with jurisdiction over

the last domicile of the disappeared person or the judge with jurisdiction over the petitioner's domicile;

* that the presumed date of death be determined to be that of the last information indicating that the person was still alive (this would constitute a clear exception to normal procedure);

* that final possession of property be granted without, passing through a prior provisional possession, in view of the circumstances peculiar to disappearance, which make it more likely that the disappeared person is indeed dead.

In view of the documentation the Commission has obtained, we would recommend that the lawmaking authority consider the possibility that this procedure and legal assistance be free of charge to petitioners.

It has been our intention to recommend a special procedure for clarifying the legal dimension of the problem. We hope that such a procedure might to some degree help alleviate the plight of the relatives of those persons who disappeared after arrest. We hope that measures such as these will enable those affected to have available a legal instrument adapted to the special requirements of such cases, and that the petitioners themselves will be able to use it when they so choose. The social, symbolic, and ethical dimensions of the problem of those persons whom government agents arrested and subjected to forced disappearance leads us to maintain profound respect for the different choices that their relatives may have made or be led to make in the future.

D. Recommendations in the area of social welfare

1. Antecedents

The aim of our recommendations in the area of social welfare is to repair the moral and material harm that the immediate relatives of the victims have suffered. Their plans and hopes have been altered radically by the violations that this Commission has examined.

We believe that by its very nature the state is obligated to undertake measures which support the efforts the affected families have made to seek a better quality of life. Hence we now propose a series of social welfare measures specifically in the areas of social security, health care, education, and housing, as well as other needs and rights. All these areas have been affected and all need mending in order to restore our

common life.

* The support provided should not only help people deal with particular problems concerning their welfare; it should also encourage the participation of the relatives themselves, since it is they who can best determine which of their needs are most urgent and how they may be satisfied.

* We would also suggest that the measures finally adopted aim at providing a quick and effective solution, since these problems have been mounting up over the years and they hinder efforts to reintegrate these families into Chilean society.

Although there are social and economic as well as cultural differences between the victims' family members, we think it would be wise that there be a single set of welfare measures applicable to all so that the reparation made will be permanent rather than momentary. In other words, such measures should support a process in which their quality of life is enhanced. These welfare measures should take into account the irreparable loss of a family member as well as what many years of searching does to a family and its fortunes.

2. Recommendations in the area of pensions

A number of the statements we have received lead us to think that the right of the victims' relatives to social security should be reestablished. This is one of the tasks of reparation that the state should assume.

a. Countless problems and the complexity of solutions

There are countless problems related to pensions, owing to the death, or arrest and disappearance of the victims of human rights violations. Solutions would be very complex, especially due to the changes in the social security system in recent years. The people who were killed or who disappeared after arrest may be regarded as the source of rights to an array of pension benefits that their relatives have never received or have collected only in part. Thus many are owed benefits as survivors (widows, or orphans), from life insurance, and so forth. Remedying this situation would require the removal of legal and administrative obstacles, such as extending the time limits for receiving benefits, certifying or presuming the death of the person who is the source of such a right, bringing the amounts of payments owed in line with increases in the cost of living, and retroactively paying the monthly allotments due.

b. Proposal for a single reparation pension

In accordance with these antecedents and the interesting

suggestions we have received, we think it possible to propose a single reparation pension for the immediate relatives of the victims. The only condition is that the name of the person who is the source of the right must appear on the list in this report. That is, the relatives of those who have disappeared after arrest need not go through the procedure of having the person declared to be presumed dead.

The reason for proposing a single reparation pension is that it would be difficult to resolve quickly and satisfactorily the pension problems we have noted by following the established procedures for providing survivors' pensions. In many of these cases the circumstances of the person's death are not established, and in others their situation vis-à-vis pensions is quite abnormal.

On the basis of our own judgement and many opinions we have received, we would like to recommend that special legislation be drawn up to create a single reparation pension. To that end we would like to present some ideas on the kinds of issues on which the lawmaker or lawmaking body will have to come to a decision.

* There is a convergence of opinion that the single pension should apply to all cases starting on a single date. That date should be at least twelve months prior to the day on which the law goes into effect, and the first payment should be accumulative. The victims' relatives would thus be able to receive a lump sum of money that could serve in part to cover the costs incurred thus far.

* In view of the documentation provided by specialized agencies and taking into account the needs of most of those affected, we suggest that the monthly sum given to each family be not lower than the average income of a family in Chile.

* There is good reason to propose that the people in whose name the single reparation is to be paid be those persons who suffered human rights violations in all the categories laid down in Chapter Three of this report and those who were killed as a result of political violence, as defined there. Their names are listed alphabetically in the final volume of this report [not translated into English].

We suggest that after this Commission is dissolved, those persons over whom it could not come to a conviction may be

able to be defined as victims by an agency designated for that purpose, within a time frame to be established by the lawmaking body.

* Laws should be enacted to determine who the beneficiaries are to be, in what order of priority and in which proportion they are to share in any single pension like the one being proposed. We trust that the lawmaker will give due consideration to the most up-to-date standards for social security and will also take into account special cases that may present themselves.

* We would also like to pass on the suggestions that we have received that this pension be for life. We hope that the lawmaker will take this aspect into account and will also define to whom such lifelong benefits are to accrue.

* The observations we have received indicate that receiving a single reparation pension should be incompatible with any other pension arising from the same cause and provided by the existing social security systems in the country. However, should the beneficiaries have a right to more than one pension, they should be able to choose the one that is most advantageous to them.

* The Commission believes that it is the role of the lawmaker to define whether this pension is compatible with any other legal claim the relatives may make on the basis of the victims' death or disappearance after arrest.

* We believe that in view of the reason for the reparation it would be fitting that the pension be granted quickly, easily, and in a manner that makes it accessible to the victims' relatives; the time period for payment should be established by the lawmaker.

The expenditures required by the single pension are to come from the general funds of the national budget, although the lawmaker may make it possible that funds be received from other sources, especially those donated or collected for that purpose.

3. Recommendations in the area of health care

- a. Consequences from the standpoint of people's health
We have received significant and helpful opinions concerning health care. In general, they focus on the health of the family members of the victims and recommend that these people be

provided special attention in view of the effects human rights violations have had on their health.

* Specialized agencies have declared that the victims and their relatives have particular problems in both physical and mental health. They add that these problems are different from the way illnesses affect that portion of the Chilean population that has been less exposed to such violations.

* The permanent stress to which these people have been subjected has made them more vulnerable. They manifest grave symptoms in the area of mental health. They have had traumatic experiences so intense and so strong that their psychic structure has not been able to process them. All their subsequent efforts at reorganizing their lives will be marked by the damage done unless they receive specialized help.

* In terms of bodily health, although the pathology is not notably different, these people have been observed to differ from others treated in hospitals in being more precocious and in their level of commitment. Many of these persons and families are from the popular sectors and have little money or have gradually become poorer from the time they were victims of human rights violations. In some instances serious nutritional problems have been observed. We are especially concerned for senior citizens and children. All indications are that they are going to be exposed to a biological, psychological, and social deterioration that must be treated directly.

* Such disruption of health is not limited to the immediate family circle of those who were killed or who disappeared after arrest, or the survivors of serious torture or acts of violence committed for political purposes. They also affect social relations, work situations, the neighborhood, and indeed the whole community. The health of individuals, families, and society has been harmed.

* Moreover, such harm is both manifest and still latent in the population. Specialists say it will be difficult to overcome such damage in the short run, since it may extend even to the third generation.

No matter how extensive it may be, the specialists who offered their opinions to this Commission believe that this problem is very serious from a qualitative standpoint and that it involves an extreme degree of trauma. The situation is complex because

these illnesses have themselves become injustices, or may have taken the form of a mute or stigmatizing pain. Some people have experienced their health problems in the form of an obscure or confused punishment, or as a comforting explanation for why they are powerless to express their truth. Sometimes the passage of time has made certain illness chronic and renders a comprehensive solution difficult or impossible. In such cases regaining health is more complex since it also requires that the person revise what he or she expects to achieve in life.

b. Need for specialized health care

These brief observations suggest the need for specialized health care for an unspecified number of families who have suffered very serious violations of their rights. The Commission believes that it is primarily the task of the state to respond to this situation. The Ministry of Health will be best able to develop a program or a number of programs aimed at the most directly affected population.

In accordance with our observations here and with suggestions we have received, we propose that the direct beneficiaries of such health programs be all those persons who have been subjected to extreme physical or mental trauma as the result of a grave violation of their human rights committed by government agents or by private citizens who used violence for obvious political reasons. We have in mind the immediate family members of all the persons listed in this report. We would also like to explicitly recommend that those persons who have been the victims of severe physical and mental torture also be included, along with those who have been seriously injured as a result of politically motivated terrorist actions committed by private citizens.

In the context of social reparation, we want to point to the need to serve the health needs of those persons who have been involved in practicing torture in detention sites and to those who have acknowledged their participation in actions whose grave results we have investigated, as well as to those who may require such care in the future for the same reasons. It would seem that both humanitarian and technical reasons converge to urge that this population be furnished with comprehensive health care. Starting with their recovery and physical and mental rehabilitation, such care should go on to encompass levels of prevention and positive action that may extend to broader sectors of society.

c. Suggestions for organizing health activities

We have received numerous suggestions on how to organize health activities on behalf of this sector of the population that is most in need. We would like to single out some of the more interesting suggestions concerning the manner in which health care is provided:

* Such activities should incorporate the experience people had to undergo. Insofar as necessary, people should be allowed to express the personal and family experience that have given rise to their need for treatment.

* The approach to each person seeking attention should be comprehensive (biological, psychological, and social). Hence it is desirable that the teams be interdisciplinary and be familiar with the various reasons leading them to seek care. Insofar as possible, they should be alert to the needs of the family as a whole, and kindness and understanding should be part of the treatment.

* Activities should be planned so as to involve not only persons affected by human rights violations, but groups of such people, when the representational character and experience of such groups make it appropriate.

* The projected time period for such health care activities should not be too short. However, such activities should ultimately be aimed at integrating those in most need into ordinary health programs.

Necessary services should be provided with no regard for the ability to pay of those most directly affected by human rights violations.

d. Responsibilities of the health care system

Beyond making some suggestions, it is not the role of this Commission to take a position on the most adequate ways to organize and carry out health activities. Health officials will have to devise a special program, and the funding and coordination will have to come from the Ministry of Health. Such a program should seek technical cooperation from non-governmental health organizations, particularly those that have provided health care to this population and have accumulated valuable experience over all these years. It is suggested that the private health care sector be allowed access to these programs and

their funding so as to allow the clientele a variety of alternatives from which to choose.

We think it will be the task of health care providers to determine the existing needs and resources. We are certain that carrying out programs of this nature will require substantial amounts of economic and human resources. The government will have to redouble its efforts to provide the funding and to attain the national coverage that the problem demands. We likewise assume that the contributions that the armed forces and police could make to the overall health care system should not be overlooked. Some of their beneficiaries or potential beneficiaries belong to the population affected by the kinds of problems considered here.

In the spirit of uniting the various segments of our nation, all institutions and care providers in the health care system should be concerned about satisfying the basic needs of such persons.

4. Recommendations in the area of education

a. Need for a vast creative effort to devise ways to make reparation in the realm of education

At first glance it might seem that the educational problems of the immediate relatives of human rights victims have to do with younger children, but that is not the case. Most of the children are adolescents or even adults whose opportunities for attending school or the university can now hardly be recovered. The events that so radically altered people's future plans usually took place years ago. The situation of people who lost their opportunity to receive an education is of special concern to us.

The cases we have examined have shown us how the chances of entering and remaining in the various levels of the educational system were disrupted for children and adolescents who were not especially predisposed to take such a risk. Here again poverty and declining living conditions have aggravated the problem of education for many of these families. In addition such children and young people have had to bear with emotional upheaval and learning problems during their elementary and high school years.

As a result of all these factors combined it has not been easy for them to enter universities and institutes for advanced technical training. Our country needs the contribution of all its youth and particularly these young people who have been excluded from

formal education by the facts and circumstances presented in the earlier chapters of this report. There is no need for a lengthy diagnosis. It is obvious that we need a vast creative and perhaps unprecedented effort in our country to find ways to make reparation in the realm of education before it is too late and the situation is irremediable. At the same time, the tasks of making reparation in the realm of education must be coordinated with the efforts to prevent human rights abuses and forge a culture respectful of human rights that we propose below.

b. Measures to take as quickly as possible

In accordance with the nature of the problem and the opinions we have gathered on this issue, it would be desirable to implement measures on behalf of the children of persons whose names are listed in this report in any of its categories as soon as possible. Our recommendations in this regard are directed to the Ministry of Education so that it may study the possibility of devising a program of reparation. The starting point for the program should be a diagnosis of the problem and should involve the participation of those who have suffered, human rights organizations, professional associations, the National Teachers Association, and other relevant bodies.

Among the measures we regard as most interesting we suggest the following:

* A portion of scholarships for higher education should be reserved for the children of human rights victims who are ready for such studies.

* Study should be given to the possibility of canceling debts that the children, spouses, or other immediate relatives of such victims have incurred with the state or universities, provided the proper authority approves.

* Young people and adults who did not complete their studies and do not have a trade should be regarded as having a right to enroll in certain institutes and centers for technical training.

* Similar opportunities and incentives should be provided for surviving spouses or partners, or other immediate family members, should they request it.

* We urge that educational measures be organized in the framework of our recommendations for social reparation so that

they may make it as easy as possible for people to acquire a profession or trade, complete their training, or retrain for that purpose. We also urge that the government assume the costs within certain limits and time frames, once the scope of the demand has been assessed. Finally we urge that the aim must always be to reincorporate the relatives of human rights victims into society and that the stigma and risks of isolation that might derive from granting special aid be avoided.

c. Appreciation for the efforts of those teaching outside the government system

Finally, we have come to an appreciation of the various efforts made by nongovernmental agents to aid in the education of the victims' family members. We hope that their contribution will continue to complement the initiatives that the government may undertake in this area and that new study and training opportunities may open up for young people and even older adults who also need them.

5. Recommendations in the area of housing

a. Different problems

Housing issues might seem minor when compared to the serious consequences already described. There is no point in debating the issue, however, since housing is a basic need, and the ability of those affected by human rights violations to satisfy that need has been seriously impaired. Insofar as possible, reparation for that impairment should be made in a social manner.

In many instances the events we have investigated have forced families to move to a different area, leaving their home and even losing it. In other instances, the family did not have a house of their own when these events occurred. Had they not taken place, however, it is quite possible that the now missing head of the house would have been able to obtain a house for his family as the fruit of his work.

This Commission has also learned of land and goods being confiscated, of houses damaged by violence, of debts owed for housing payments, of situations in which insurance policies that should have paid off the mortgage when the person was killed or disappeared did not do so, problems with deeds, and so forth.

b. Special treatment

In view of these factors, we think it would be just for the government to offer special treatment for the housing problems of the relatives of victims of the most serious human rights violations whose names are listed in this report. In connection with the reparation that the state should make, we offer two suggestions by way of example:

* We urge the Ministry of Housing and Urban Planning to give priority to those immediate family members of the victims of human rights violations to participate in social programs, should they apply. The very fact that they can prove they are such family members should entitle them to participate. We have in mind people who have no house of their own, who want to apply for a subsidy, and who fulfill the other requirements. How they can do so is to be established by the proper authorities.

* We likewise urge the ministry to study the possibility of setting aside a certain number of places within special housing programs for the victims' immediate family members who desire to apply for them and who fulfill the other requisites.

As was the case in other areas, it would be interesting to encourage specialized non-governmental agencies, building contractors, and professional associations to become involved and work together with those affected and their organizations to devise new and concrete solutions that may quickly remedy the housing needs of this portion of the population which is spread throughout the cities and rural areas of the whole country.

6. Further recommendations in the realm of social welfare

a. Recommendations for canceling debts

In the general area of reparation, we suggest that study be given to the possibility of canceling some outstanding debts to the government owed by people who were killed or who disappeared after arrest and who are listed in this report. Such debts would include those related to social security, education, housing, taxes, or others that may still exist with government agencies because requirements were not met within prescribed time periods. The aim is to alleviate the burden that the families have had to bear. We are also assuming that the state has a responsibility in the area of reparation.

b. Recommendations concerning obligatory military service

In view of the evidence the Commission has in hand, and following suggestions from eminent moral authorities, we suggest that within the climate of reparation needed if the

various sectors of the nation are to come together, the competent authority should study the possibility of allowing the children of those who suffered the most serious human rights violations the option to accept or reject military service without suffering discrimination in other opportunities for study or employment. The only basis for making this recommendation is the understandable problem of sensitive feelings aroused by this matter. In no way are we motivated by any lack of esteem for military service, which deserves our wholehearted respect.

- c. Recommendations concerning most vulnerable groups
We could not end this chapter without noting a concern shared with other agencies with whom we consulted. That concern is the priority that should be given to serving the needs of certain groups in the population due to their vulnerability and what they represent to society. In this regard we single out older people who have been left alone as a result of the events we have been considering. The children who have also suffered from these events deserve a very special priority, as do a group of Mapuche families who have likewise been significantly affected. We would like to recommend that along with the efforts it organizes on behalf of these more vulnerable groups, the state take into account the experiences of reparation in this area already existing in our country and in other countries as well.

We believe that the obligation to make reparation to future generations falls on the whole society. However, it also benefits the whole society because insofar as we truly become concerned for these people we are doing something to prevent such grave human rights violations from ever recurring in Chile.

E. The most urgent recommendations

In concluding this chapter the Commission would like to note that the information it has gathered and a body of suggestions that it has received would seem to indicate that certain reparation measures deserve more urgent attention from government authorities. These measures have to do primarily with symbols, law and administration, and social welfare.

* There seems to be a need for a symbolic gesture that will meet the requirements outlined above for restoring the good name of the victims and so that Chile may never again endure the kinds of events we have had to bring to light.

* In the area of law and administration, a special procedure for declaring dead those persons who disappeared after arrest would help reestablish

the necessary quality of life for their families.

* The social welfare of those families demands that lost or diminished pension rights be reestablished. The Single Reparation Pension would seem to be the most desirable means for doing so.

In pointing to the urgency of these three measures, it has not been our intention to simplify a situation that is inherently complex for the government. Our aim has been to convey the needs of those affected in order to set in motion the process of social reparation that his excellency, the president, announced when he created this Truth and Reconciliation Commission.

Chapter Two: Prevention of human rights violations

A. Introduction

The human rights violations committed in recent years and the high level of tolerance shown toward such violations strongly suggest that during that period our country failed to have a sufficiently firm national conscience that respect for human rights must be absolute. We believe that education in our society was remiss in not incorporating those principles into our culture.

A country lacking in a fully developed conscience on respect for, and the promotion and defense of, human rights will produce legislation incapable of protecting those rights. Such has been the case in Chile. If we examine the traditional Chilean legal system in the light of the standards contained in international treaties and in the light of the values and principles inspiring human rights doctrine, we are forced to conclude that even though that system formally enshrines the relevant basic principles, it suffers from significant flaws and shortcomings. That is not surprising since the system is made primarily of laws that were drawn up before the development of human rights doctrine. Our main legal codes went into effect at a time when there was no clear and well-developed conception of human rights either nationally or internationally.

By way of example, we may mention three of the many flaws in our traditional system that made human rights violations possible. First, the Military Justice Code violated those rights in a number of its provisions, particularly with regard to due process and human rights even though human rights are enshrined in all codifications of international law. Second, the State Security Law did not define crimes with precision, and it made it possible to assign punishment for so-called "crimes of abstract danger," that is, crimes for which the only illegality of a particular conduct is that it may lead to a violation of another legally protected right. Third, the 1925 Constitution left much to be desired in the area of constitutional states of exception, since it granted too much authority to officials in the executive branch and did not provide for adequate control to be exercised by other government bodies.

Until 1973 a whole series of functioning democratic institutions mitigated our legal system's inability to adequately protect human rights to the point where that inability was scarcely noticed. The most important of those Institutions were freedom of the press and the weight of public opinion. They prevented the human rights violations which were committed during that period from reaching such proportions that the flaws in the system would be noticed and arouse pressure for reform. When democracy was

suddenly suspended in Chile, we had to confront the harsh reality of a legal system that was flawed and defective in the area of human rights and was now applied without the controls normally operative in a democracy.

The protection provided by our traditional legal framework was weak, but it existed. After September 11, 1973, constitutional, legal, and even regulatory safeguards were lowered, repealed, or simply ignored. For example, Decree Law No. 5, published in the *Diario Oficial* on September 22, 1973, declared that the "state of siege due to internal disturbance" was to be understood as a "state or time of war" in matters of sentencing. That decree also declared that "when the security of those attacked so requires, the perpetrator or perpetrators may be killed on the spot." Decree Law No. 51, published in the *Diario Oficial* on October 2, 1973, besides conceding broad authorization for the delegation of the jurisdiction to military courts, repealed paragraph 2 of Article 75 of the Military Justice Code, which prohibited the commander-in-chief (in this case the military junta) from delegating the power to approve death sentences. Yet another example is Decree Law No. 13 (consisting in a single article), published in the *Diario Oficial* on September 20, 1973, which stated that wartime military tribunals were to try all military cases initiated since the appointment of the junta as commander-in-chief of the armed forces. By failing to safeguard the principle of the non-retroactive nature of criminal law enshrined in the Constitution, Decree 13 made it possible for war tribunals to hear cases on events that took place before September 11, 1973, and to apply sanctions established after the acts were allegedly perpetrated.

The result was a legislation that was even further weakened in the area of protecting human rights. That situation is slowly being reversed with the constitutional changes approved by plebiscite in 1989 and the laws that the National Congress is currently studying at the initiative of the president. The institutional and legal reforms proposed below for the sake of strengthening the rule of law in Chile, are intended to move further along the same path.

Such reforms, however, as necessary as they might be, will not by themselves serve to protect society from further human rights violations. As we said above, the true cause of human rights violations is an insufficient respect for those rights in a national culture. Hence we will have to include in our national culture the notion of unrestricted respect for, and adherence to, human rights and democratic rule, for democracy is the only political system that truly protects those rights. Therefore, we believe that the topic of human rights and of respect for each person's dignity must be incorporated into formal education, and that symbolic measures aimed at promoting these values must be adopted. These essential steps must be taken without delay if we are to achieve our purpose. We will return to these important issues after we point to measures that this Commission would

like to recommend in the institutional and legal realm.

The grave human rights violations committed in recent years left a still festering sore in our national conscience. Divisions and conflicts are still at work in our society. Hence we cannot expect to fully achieve the intended aim of preventive measures unless at the same time we advance along the road of reconciliation, which by its nature constitutes the greatest safeguard against the repetition of what has taken place.

B. Suggestions in the institutional and legal area to assure that human rights remain in force

Adequate respect for human rights demands that certain legal conditions, not satisfactorily met in our present framework, must be present together. The following are some of the main topics:

- * bringing our nation's legal framework into line with international human rights law in order that domestic juridical norms may truly respect and protect these rights;

- * a judicial branch that really plays its role of guaranteeing the essential rights of persons;

- * armed forces, security forces, and police committed to exercising their functions in complete accordance with the obligation to respect human rights;

- * the creation of an institution to protect human rights;

- * specific changes in the legal order in constitutional, criminal, and procedural matters in order to better protect human rights.

We now propose a series of suggestions aimed at truly meeting these conditions in our country.

1. Bringing our nation's legal framework into line with international human rights law

In theory the Chilean state is already incorporated into the international system for protecting human rights. That is the case because Chilean law makes international customary law automatically normative for us, and furthermore, because Chile has ratified most international conventions in this area, thus making them part of the Chilean legal system.

In practice, however, Chilean legislation is only partially in line with international law. If our country is to be, truly and not merely in theory,

incorporated into the international system for promoting and protecting human rights, it will at least have to adopt the measures we now propose.

a. Ratifying international human rights treaties

This Commission first recommends that the Chilean government ratify all international agreements that may be adopted or have been adopted in the area of human rights and to which Chile is not yet a signatory. It is often argued that such treaties or conventions are repetitive and simply pile up, and that hence there is no need to ratify all of them. The Commission believes that even if such is the case, it would be a good idea to ratify treaties and conventions, since such a move would be a step toward strengthening international law. Such a strengthening is absolutely necessary for preventing human rights violations in Chile and around the world. In any case, before any proposed treaties were to be signed, it would have to be determined that they are in accord with the ethical principles that are part of our culture.

Because it seems to be an extremely important measure, we urge the ratification and promulgation of the Optional Protocol to the International Covenant on Civil and Political Rights. It also seems necessary to carefully examine the reservations with which Chile has ratified or agreed to such international conventions so that our country may move toward being fully incorporated into the international system for promoting, respecting, and protecting human rights.

- b. Improving our national legislation so as to make it compatible with what is known as international human rights law
- Secondly, bringing our national legal order into line with international human rights law entails that Chile comply strictly with the obligations that flow from international agreements and from customary law in the area of human rights; it should not simply sign human rights treaties but respect the obligations flowing from them. Hence three things must be done: laws contrary to or incompatible with international law must be repealed; those not fully in line with international law must be modified; and those complementary laws required for making such rights a reality and for promoting them must be drafted. In doing so, the condition noted above in section a) is to be met.

From a strictly logical standpoint, the provision in Article 5 of the reformed Constitution stating that "government agencies are bound to respect and promote such rights (the essential rights

flowing from human nature) that are guaranteed by this Constitution, as well as by those international treaties that Chile has ratified and are currently in force" might render superfluous the repeals and changes, or the preparation of complementary legislation proposed in the previous paragraph. Indeed, the essential rights of the human person, being inherent and consubstantial with, that very condition, constitute a limitation on state sovereignty and are superior to all domestic legislation, including other provisions of the Constitution, since they all flow from that sovereignty.

Such is the clear sense of the constitutional clause quoted above. Nevertheless, given the diversity of interpretations that have arisen over this issue, the Commission recommends that a law of constitutional interpretation be issued to confirm that duly ratified international human rights agreements have a higher authority than any norms of domestic law.

While Article 5 of the Constitution clearly resolves any problem arising from a clash between domestic law and international human rights treaties in favor of the latter, this Commission believes that it would be highly desirable to repeal or change existing law and draw up complementary legislation in order to truly bring our national legislation into line with international law. The judiciary would thereby be saved from the problems of interpretation it will often have to face as a result of contradictory legislation unless such measures are enacted. Our lack of a solid culture in the realm of human rights and the tendency of our judicial community to regard national legislation as outweighing international law are further powerful reasons for improving our domestic legislation.

To that end we propose the following measures:

* The issuance of a binding interpretative regulation of constitutional rank declaring both that every juridical norm should be understood in the way that best protects human rights and that a human right acknowledged by the existing order can be restricted only when another and higher ranking right is thereby better safeguarded, in accordance with Article 29 of the American Convention on Human Rights (the "San José Pact").

* A reexamination not only of the Constitution but of all the national legislation that in one way or another affects human rights. It is very important that such a revision include examining whether the permanent constraints that the Constitution and

laws set to human rights fulfill the international requirements that they be established by law, that they be necessary to a democratic society, and that they be adequate and effective for protecting the values denoted in international law. The Chilean Constitution is flawed in this respect.

* Such an examination must also consider whether the temporary suspensions of human rights due to a constitutional state of exception are in line with the norms of international law. Articles 39-41 of our Constitution and the Organic Constitutional Law on States of Exception should be examined in order to determine whether they might not violate, for example, Article 27 of the American Convention. That article provides a complete list of the motives for which some rights may be suspended; it declares that the state may take only such measures as may be necessary for dealing with those reasons, but only insofar as they are necessary and for a time period strictly limited to that particular situation.

* The issuance of domestic complementary laws to assure that the treaties are properly implemented. For example, the Convention on Genocide imposes on signatory governments the obligation to define and establish the crime of genocide and assign penalties in appropriate places in legislation. That step has not yet been taken in Chile.

- c. Establishing effective procedures for defending human rights
Finally, bringing Chilean legislation into line with international law means that there must be effective national procedures for protecting human rights. Recent experience has proven that habeas corpus and the appeal for protection are not adequate for that purpose, and hence they must be improved. When we deal with the reforms needed in the judiciary we will indicate the measures the Commission believes must be adopted in this regard.

- d. Complementary measures
It is also obviously very important that Chile participate in the system for promoting and protecting human rights and help extend it.¹ In this regard we urge that the Chilean government adopt the following criteria for international activity in this field:

* Increasing the trustworthiness of international agencies which oversee the human rights behavior of governments, by exercising vigilance over the composition of such agencies. It seems absolutely necessary that they be composed of

independent experts who are respected for their moral and professional qualifications and are not involved in partisan politics.

* Using the system. For example the Interamerican Human Rights Court has the power to issue advisory opinions in certain areas, and our country should keep in mind the possibility of using them should it be necessary. Another possibility is to use the advisory capacities of many international organizations, such as UNESCO, UNICEF, the ILO [International Labor Organization], and the OAS [Organization of American States], to help provide education in human rights, as the need arises.

* Improving the system. Although the international system has been and still represents a major step forward in the development of human rights, it suffers from flaws that should be rectified. The system must be made accessible to individuals. It must furthermore respond to appeals over human rights violations effectively and in a timely manner. As increasing use of the system makes its limitations more obvious, it will no longer be regarded as trustworthy unless efforts are made to correct the flaws that slow the court processes and decisions on matters subjected to international supervision.

If the system is to be improved it would also be a good idea to review the general and special treaties on human rights in order to make them more consistent with one another and to eliminate possible repetitions. Finally, such an effort entails developing new international treaties on human rights to take up aspects that do not yet fall under international law. One such example is the proposal to define the crime of forced disappearance as a crime against humanity.

2.A judicial branch that really plays its role in safeguarding the essential rights of persons

The historical experience of humankind demonstrates that life, liberty, and the other rights of persons can be safeguarded only when power is held accountable before the law. Merely acknowledging citizens' rights or delineating what the various branches of government or individuals may do will not bring that about. It is essential to establish procedures that can effectively protect such rights.

Society assigns the exercise of that extremely important function to the judiciary, and entrusts to it the defense of the lives and liberty and the other rights of its members. Hence this branch of government requires the greatest vigilance.

Those Chileans whose human rights were violated for political reasons in recent years did not encounter in the courts of justice the protection and support that their constitutional duties and their status as a branch of government required them to provide. The proof is that of the approximately 8,700 writs of habeas corpus presented by the Committee for Peace and the Vicariate of Solidarity from 1973-1988, no more than ten were accepted. During that period many of the people for whom they were being presented were being tortured, humiliated, executed, or subjected to forced disappearance on the property of those institutions named in the writs of habeas corpus and by members of those institutions.

A reversal of this situation so that the judiciary will fulfill its fundamental duty to protect the essential rights of persons and thus safeguard unlimited respect for human rights in Chilean society will require a profound reflection that leads to specific measures to enable our judicial system to be renewed and strengthened. Among such measures the Commission suggests that the following be considered:

a. Measures aimed at assuring an independent and impartial judiciary

The essential aim of any organizational reforms in the judiciary must be to strengthen the independence of the judicial branch. Such independence should be understood to mean not only the power to resolve cases in accordance with the law and independently of other considerations, but also the commitment to resolve them in that fashion. Here lies the very heart of the issue of judicial protection of human rights—that judges have the will and moral force needed to prevent the violation of those rights, no matter who the violator may be. They should not simply hew to the letter of the law if the actual result is its violation.

The judiciary should be organized in such a fashion that the only obligation a judge feels is to the law. In carrying out his or her responsibility a judge must be subject to only those influences that are part of his or her conscience in legal matters. The ultimate basis for the independence of the judiciary as an institution must be the independence of each judge.

We now propose a number of recommendations aimed at accomplishing this objective. Some of them are already contained in legal initiatives currently being studied. The Commission nonetheless believes that it is worthwhile to present them in this report since they have a direct bearing on

the question of human rights. Our recommendations are as follows:

a.1) With regard to legal training

We urge that the law departments in our country's various universities devote particular attention to the question of human rights so that future judges and lawyers will be well-trained in this area.

Adequate training in human rights demands a knowledge that goes beyond current law, the institutions that express and serve it, and their interrelationships. Such a vision of the law is what we find in legal doctrine. Philosophical and sociological approaches to law must also be taken into account. Positive law teaches that first vision; the second and third enable us to subject positive law to criticism in the light of values and also by considering how effective it is and how adequate it is for society. Only by integrating these aspects will future judges and lawyers be able to have full knowledge and responsibility in the decisions they must make for the sake of society in the course of their professional lives. We therefore propose that law school curricula include all these perspectives in the study of the law in order to make the education they offer more comprehensive.

We further recommend that in all law departments in the country there be a chair for the teaching of human rights and related topics. We suggest that such courses put special emphasis on the obligations that human rights impose on lawyers and judges, such as, for example, those arising from the presentation of writs of habeas corpus and appeals for protection.

Experience in the area of human rights in recent years has shown that under the pretext of a supposed obligation to apply the law in a strictly literal manner, institutions for protecting human rights have been emptied of their true meaning. We therefore recommend that in teaching how the law is to be interpreted, law schools place the emphasis on the substantive aspect of the institution enshrined in legislation and that, if necessary, judges should be willing to set aside their role of simply applying the law mechanically, at least in matters connected to human rights.

In the training of judges in law schools and in special programs for initial and advanced training that may be designed

for them, there should be an emphasis on the commitment of judges to the purposes of the law, so that they may always direct their decisions to that end.

If the judiciary is to be a powerful protector of human rights there must be judges and lawyers firmly committed to the rights of persons and to the permanent values underlying those rights, primarily the principles of the dignity of the human being and of the rule of law.

a.2) With regard to judicial career practices

We recommend that the present system of appointments and promotions in the judiciary be improved so as to make it a truly objective system and to provide safeguards for judicial careers.

If we are to have judges who are, and who feel, sufficiently independent to restrain human rights abuses, there must be a judicial promotion system with clear lines that will enable these public servants to have periodic promotions based on merit and thus provide new members to serve on the highest tribunals in the republic.

To that end we suggest setting in motion the constitutional reforms necessary to make it possible to replace the present system in which the president appoints Supreme Court judges and prosecutors from a list of five names drawn up by that court. In the new system such appointments would be the exclusive prerogative of a body composed of persons with a reputation for intellectual and moral integrity so as to assure the independence of their decisions. The Commission believes that there is a pressing need to adopt this measure or one whose effect would be similar.

We also recommend consideration of the possibility of permitting respected lawyers who are not in the judiciary but who meet the requirements that may be established by law to be appointed as judges or prosecutors in the higher tribunals of the judiciary.

a.3) With regard to the evaluations of judicial officials

We urge the improvement of the system of determining the qualifications of public servants inside the judiciary so as to assure its objectivity.

In order to assure that judges be independent we recommend that the law establish the obligation to provide reasons for evaluations of judges and to inform the judges of them. Such a procedure would offer judges the opportunity to correct and improve their performance when appropriate.

We also propose that the judiciary personnel no longer be evaluated by secret vote, since such a procedure only encourages an irresponsible exercise of that delicate and important function. In this regard the president of the Supreme Court said in his speech last March 1, "I do not see why a magistrate of the republic should be denied the right to learn who has judged that his performance as a public official is unsatisfactory." We likewise recommend that any person who for any reason comes from outside the judiciary and is appointed to a higher tribunal be incorporated into the evaluation system.

Finally we recommend that the boards of the National Association of Lawyers and the Corporation for Judicial Assistance be taken into account in the process of evaluating the members of the judiciary. The opinion these institutions may have of the behavior of the public officials who serve in the judiciary can be very enlightening, since it is they who use the system most immediately. We likewise recommend that the law establish the possibility that other bodies or persons might furnish their observations.

a.4) With regard to responsibility for their actions

We recommend that the judiciary be truly incorporated into the system of mutual supervision that the branches of government should exercise under the rule of law.

In a government under the rule of law all institutions must be held accountable and supervised as they carry out their functions. According to Article 76 of the Constitution judges may be dismissed only if they fail to maintain good behavior. Such a broad formulation applies to the whole judiciary. Article 32, No. 14 of the Constitution obliges the president to supervise the conduct of judges in the court and hence he may order the Supreme Court or Public Ministry⁹⁷ to impose disciplinary

⁹⁷ Public Ministry: Articles 350ff. of the Código Orgánico de Tribunales establish that the Supreme Court prosecutor (fiscal) is responsible for the functioning of the Public Ministry-whose role, in principle, is to serve the public interest. One function of the Public Ministry is to supervise judges and all employees of the Chilean judiciary so that they adhere to a certain criteria for conduct

measures or set in motion the appropriate constitutional impeachment for removal from the bench. Finally, Article 48, No. 2c, of the Constitution makes judges of the higher tribunals subject to such constitutional impeachment.

We suggest that whatever complementary legislation may be necessary to assure the full implementation of such a supervisory system be issued, especially with regard to the judicial behavior of the members of our highest court.

a.5) With regard to the membership of the courts

We recommend studying the possibility of replacing the current institution of "member lawyers" [lawyers authorized to serve ad hoc as judges in certain cases] by increasing the number of judges in the higher tribunals of the justice system.

We believe that the fact that the president has the exclusive power to appoint lawyers to temporary terms on high courts, and that they are allowed to continue exercising their profession at the same time, can affect the independence and impartiality required for a mission as delicate and important as that of serving as a judge. We therefore urge that the continuance of this practice be scrutinized, particularly if the idea of increasing the number of judges proposed in the next section be accepted.

a.6) With regard to the number of judges

We urge an increase in the number of judges and prosecutors in the higher courts.

The heavy workload in the higher courts makes it absolutely necessary to take steps to increase the number of judges and prosecutors in those tribunals. Such a measure would be conducive to taking up the above proposal since it would make it possible to replace "member lawyers" with permanent members who, we believe, would be better able to carry out their judicial functions.

b. Procedural and institutional measures aimed at leading the judiciary to better fulfill its fundamental duty to defend the essential rights of persons

which is established in Article 76 of the Chilean Constitution. The Public Ministry must report violations to the corresponding higher court, which then proceeds by imposing disciplinary measures or, if the situation merits, by removing the violator from his/her duties (constitutional accusation or impeachment).

b.1) Reforming the military judiciary so as to assure respect for the constitutional guarantee that persons will be tried by an independent tribunal

The fact that magistrates and prosecutors in military tribunals are also members of the various branches of the armed services and hence are subject to their command structures seriously compromises the independence of these tribunals in carrying out their judicial responsibilities.

We therefore suggest that the competence of military tribunals be restricted to strictly military crimes, that is, to crimes committed by armed forces and police personnel while on duty and against persons who are also members of these institutions. We also propose that all those who serve on such tribunals be lawyers, and that in all circumstances they remain under the supervision of the Supreme Court for purposes of correcting, providing direction, and supervising expenditures, and that the required constitutional or legal reforms be prepared to this end.

b.2) Undertaking an examination of the procedural regulations in the Military Justice Code so as to assure respect for constitutional guarantees and due process

We especially urge that the regulations on procedures during wartime be examined in order to propose that the legislative branch repeal the amendments introduced shortly after September 11, 1973, which sought to legitimize execution without trial and the delegation of authorization to issue death sentences, a power that had previously been the exclusive prerogative of the commander-in-chief.

b.3) Assuring compliance with court orders

The failure of the police and investigative police to truly collaborate with the work of the judiciary has tended to seriously impede a thorough administration of justice. This problem could be resolved by means of a special police whose sole responsibility would be to assure compliance with court decisions. Such a police force would answer to the judiciary branch rather than the executive branch, which often receives orders issued by the courts. We therefore recommend that the possibility and desirability of creating a judicial police be examined. Another way of solving the problem might be to have the judiciary participate in training the police staff responsible for

assuring compliance with court decisions.

b.4) Improving habeas corpus and the appeal for protection so as to enable these procedures to truly protect human rights

To that end we propose setting in motion the following constitutional and legal reforms:

b.4.1) Reforms requiring changes in the Constitution

* A right not supported by effective protective mechanisms is not a guarantee but a mere formal proposal. We therefore recommend a study of the possibility of extending the scope of the rights protected by the "appeal for protection" to all or some of those constitutional rights that do not now enjoy such protection. Since we are aware of the potential problems in such an extension, we nevertheless recommend the enactment of those measures that might be feasible in our country for protecting those rights which for practical reasons it might be advisable not to include in coverage by the appeal for protection.

* Repeal of the constitutional provision (Article 41, No. 3, part one) which prohibits the court that handles appeals for protection or habeas corpus from passing judgement on the factual bases or circumstances invoked by officials for the measures they adopt in exercising the exceptional powers granted them by the Constitution. Repealing it would also comply with Advisory Opinions Nos. 8 and 9 of the Interamerican Court of Justice.

* Repeal of the constitutional provision (Article 41, No. 3, part two) which prohibits the suspension of the effects of the restrictive measures just mentioned while the appeals are in process. Such a repeal would allow the courts to use their discretionary power, for example, to order that the person be transferred to a different location.

b.4.2) Reforms requiring changes in legislation

* It should be made obligatory on the appeals court handling the appeal for protection to carry out one of the following measures: either to order that the person who is imprisoned and on whose behalf the appeal for protection has been submitted be brought before the court, or to commission one of its members to go to where the person is said to be in order to be informed why he or she has been jailed and whether

the legal requirements for arrest have been met. Any person or authority who fails to comply with, or in practice impedes, such a measure should be punished for criminal behavior. In such cases officials should immediately be dismissed if there should be another attempt to carry out the measure and it is still ignored or disobeyed.

* Those agencies against whom an appeal for protection is made should be legally obliged to make known to the court the names of the agents who carried out the detention. Thus there would be proof of which government employees were involved in possible crimes against that person on whose behalf the appeal was introduced while he or she was in detention. The recommendation made at the end of the first paragraph of b.4.2 would apply here as well.

* It should be declared that the time limit for introducing the appeal for protection will not even begin to be counted as long as the constitutional right prompting the appeal is denied, disrupted, or threatened.

* The courts in every regional department should be granted the competency to deal with such initial measures aimed at protecting or preserving the rights safeguarded by the appeal for protection as may be urgently needed, lest making the same kind of appeal to the proper appeals court be a useless exercise. The recommendation made in the first paragraph of b.4.2 would apply here as well.

b.5) Reinstating the recurso de casación en el fondo⁹⁸ as a way of consolidating an interpretation of the law respectful of human rights

In the context of what was stated about interpreting the law so as to adequately respect human rights and to make the teaching about law incorporate this principle and bearing in mind the need to standardize criteria for interpreting the law, the Commission believes it would be desirable to once more facilitate the use of the recurso de casación en el fondo and

⁹⁸ Recurso de casación en el fondo: Articles 764ff. of the Código de Procedimiento Civil-Libro III-Título XIX establish the recurso de casación. Article 767 defines the recurso de casación en el fondo, which permits the Supreme Court to invalidate a lower court's decision for reasons solely pertaining to the application of the law and not to the trial court's finding upon the facts or procedure (the recurso de casación en la forma addresses incorrect trial procedure). Both are a means to invalidate decisions where the law has been incorrectly interpreted or applied. Excessive formalities for presentation and processing of this recurso restrict possibilities for its use.

make it truly feasible, for example, by making it impossible to rule out such appeals on merely formal grounds and by allowing the Supreme Court to rule on such cases in decisions that might be brief but would provide the reasons for the decision and without having to order an alternative sentence.

b.6) Reforms in common criminal procedure with the aim of assuring the constitutional guarantee of due process and respect for human rights

The aim of the suggestions that follow is to move forward in complying with existing international law in this area, including the 1966 International Covenant on Civil and Political Rights, ratified by Chile and published in the Diario Oficial on April 29, 1989, and the American Convention on Human Rights, which Chile has ratified.

b.6.1) With regard to evidentiary weight

Extrajudicial confession obtained after arrest by police or investigative police should be given no evidentiary weight if the person retracts in the presence of the judge. Allowing for such a retraction should be made an obligatory step in criminal proceedings.

b.6.2) Substantial modification in the institution of solitary confinement

Statistical data from international organizations proves that torture usually takes place during periods of solitary confinement. The aim of changes to be made in this institution is to assure that it serve the purpose for which it was created, namely to prevent suspects from engaging in collusion to impede investigation into the facts of the crime and whether and to what extent they may have been criminally involved in it. It is not intended to serve as a kind of torture.

In order that it serve this purpose, we suggest that the judge who orders solitary confinement be obliged to provide at least a brief statement of the grounds for that decision. We also recommend that solitary confinement not prevent the prisoner from receiving care from an independent doctor. Greater control should be exercised over the maximum length of solitary confinement and whatever means may be necessary for assuring that the established maximum length be really observed should be implemented. Finally we urge that the

physical and mental health of those who are held in solitary confinement be safeguarded and that whatever means are necessary for that purpose be made available.

b.6.3) Abolishment of the secret nature of the initial summary investigation⁹⁹ as a general rule in our ordinary criminal procedure

Currently the secret character of the initial investigation in criminal procedures for felony or misdemeanor violates the human right to a hearing and leaves those being investigated practically defenseless as long as the initial investigation is being conducted. The rights at stake during a criminal investigation are so important that establishing the juridical conditions for their exercise should not be relegated to the end of this investigatory stage of the process.

The only way to allow for the right of defense to be really exercised and to exercise control over the progress of judicial investigation is to allow the summary investigation to be made available. This is all the more clearly the case if we reflect that while the investigation is underway, the persons alleged to be involved in the event under investigation are most often deprived of some of their most important rights, such as personal liberty.

It is certainly true that if the parties are aware that an investigation is underway, the success of that investigation may sometimes be jeopardized. Hence some formula for reconciling these two aspects should be sought.

b.6.4) With regard to orders to investigate

We urge complete compliance with the guidelines contained in Article 120, No. 2 of the Code of Criminal Procedure

⁹⁹ Initial summary investigation: The general Chilean criminal trial procedure calls for an "initial summary investigation" stage. This stage begins when a complaint or suit is initiated. The judge is then independently responsible for investigating the evidence and matters relating to the case. If, during the course of the investigation, the judge establishes or has reason to believe that a crime was committed, he/she may preliminarily indict the alleged perpetrator, accomplice, or accessory. From that moment on, the defendant may be released on bail unless the judge decides that his/her freedom poses a threat to the victim or society or jeopardizes the investigation-in which case he/she may be imprisoned as a preventive measure. The judge's investigation is very thorough, and in contrast to the common English understanding of the word "summary," it may be lengthy and quite detailed. In most instances it is conducted in camera. Upon completing the investigation the judge may decide to temporarily or definitively dismiss the case or proceed to the second "plenary" stage of the procedure during which the judge formally makes an accusation. Evidence is then presented by the plaintiff and/or defendant and their legal representatives. Finally a verdict is delivered and a sentence ordered by the same judge.

stating that judges not issue broad authorization to carry out investigations with the power to detain people and carry out raids and searches. The aim is to assure due respect for the constitutional guarantee for the inviolability of the home and for personal liberty.

It should be specified that such powers can only come from a prior judicial decree which should provide authorization only to investigate particular people and places. Otherwise judicial functions are being placed in the hands of the police and subject only to review by the judge; such a procedure is unacceptable. The police have enough powers of their own when they catch people red-handed in criminal actions. In other cases they will describe the progress they are making and will ask the competent judge (or in urgent cases whichever judge is on duty) for the needed warrants.

b.6.5) The establishment of the institution of the Public Ministry of first instance¹⁰⁰ so as to separate the function of prosecution from those of investigation and sentencing

Article 19, No. 3 of the Constitution states that "it is the task of the legislator to establish safeguards for a rational and just procedure." The Commission believes that the suggested reform will contribute significantly to accomplishing the aim by means of the law that has been recently enacted.

b.6.6) The establishment of emergency tribunals in session outside of office hours (nights, Saturdays, Sundays, holidays)

The aim of this measure is to assure that it be a judge who issues orders for urgent arrests and search operations, authorizes conditional release on bail during such periods, as well as the initial steps immediately required in the investigation. Nevertheless, the documentation is then to be sent to the proper court.

b.6.7) With regard to the right to a defense

We recommend fuller compliance with the obligation to

¹⁰⁰ Public Ministry of first instance: Article 356 of the Código Orgánico de Tribunales dictates that one function of the Public Ministry would be to act as "principal party" to represent the interests of the state and Chilean society in criminal cases. This has never been organized in the courts of first instance, and no such function has been performed. The Public Ministry would play a role similar to that of a public prosecutor, and act totally independent of the trial court judge. The Commission is recommending that the institution of Public Ministry be established in the courts of first instance.

provide legal aid and defense to those who do not have it, especially in the area of human rights, in keeping with Article 19, No. 3, paragraphs 2 and 3 of the Constitution.

b.7) Developing measures so that the courts of justice may better comply with their obligations

For a number of reasons including an excessive workload, the judiciary cannot fully comply with some of its obligations. Examples of these obligations include personally exercising their judicial functions rather than delegating them to subordinates, observing the rules for allowing prisoners to be released conditionally, the time periods for the initial investigation, the time periods for issuing the final sentence once the case reaches the phase for a decision, and so forth. The result is that important rights are often violated.

To remedy this situation and thus assure that justice is administered rapidly and completely, a variety of measures must be implemented, such as increasing the number of courts, eliminating judicial red tape, and incorporating modern techniques into the judiciary, including the codification of procedures for disciplining judges.

We therefore recommend the study and implementation of programs that by taking up these and other measures may enable the courts to fulfill all their legal obligations and make it feasible to require that they do so. Once such measures are in place, judges who fail to comply with their obligations should be sanctioned, and such a failure should be counted against them when they are evaluated.

b.8) With regard to resources

We recommend that funding for the judiciary be in keeping with the dignity and importance of their functions and that it be provided with the necessary independence in these matters.

Many of the preceding suggestions will inevitably require increasing the budget for the judiciary. The appropriation of funds for the functioning of the judiciary and to assure the availability of suitable officials is ipso facto entailed in the implementation of such measures as may be approved.

3. Armed forces, security forces, and police committed to exercising their functions in a way that is fully in accord with the obligation to respect

human rights

Under the rule of law the armed forces, security forces, and police are permanent state institutions which are independent of particular interests and struggles. That is why the entire nation has entrusted to these institutions the exclusive use of legitimate force. It has done so precisely so that in addition to their proper role in defense, they may assure that the rule of law is maintained and that all its institutions continue to operate normally.

The historic tradition of our armed institutions proves that in the past they were able to remain faithful to those principles. That fidelity combined with their honesty and high professional standards, which were acknowledged in other countries, earned them the well-deserved respect of our citizens, in whom they inspired a legitimate national pride. A telling example is the fact that very often the individuals who had served in the government overthrown in 1973 voluntarily turned themselves in, completely confident that their essential rights would be respected.

The Commission's investigation into the grave human rights violations that have taken place in recent years has led to the conviction that members of the armed forces, security forces, and police were involved in them. Moreover, in the vast majority of cases investigated no blame has been assigned either by the courts or by those institutions. The picture we have described has led to profound disillusionment, hopelessness, and frustration in major sectors of Chilean society and has thereby undermined the feelings of affection and esteem enjoyed by the armed forces. It is therefore utterly necessary to take steps to reverse this situation; otherwise, it will be impossible to achieve that national reconciliation which itself will be the best guarantee of respect for human rights.

In any case, this Commission believes that the successful implementation of such measures will basically depend on the degree to which they are accepted in the armed institutions themselves. We therefore regard it as an absolute necessity that they issue from a broad discussion that involves both the military and civilians. Hence the Commission offers the following suggestions simply in order to suggest criteria for the proposed debate.

These suggestions fall into the two different but complementary areas of education and institutions.

- a. Recommendations in the area of education
 - A study should be conducted on how to incorporate, to the extent it has not been done already, courses or content on human

rights and international humanitarian law into the curricula of the major military academies and in general into the schools for the initial and advanced training of the armed forces. The emphasis should be placed on the obligations that such rights place on those institutions. To that end it would be desirable to have available documents approved by international human rights agencies, such as the Code of Conduct for Law Enforcement Officials issued by the United Nations for what it says that is relevant to the police and investigative police. Each member of the armed forces and police must be clearly aware of being a person and that awareness itself must be extended. Each must feel that he or she has human rights and must respect those rights in others.

- It would be well that those courses or contents were taught by specialists in the area, if that is not already the case.
 - Teaching on the topic of human rights should omit subjective political and historical assessments.
 - This suggested educational task could be strengthened by specific programs on these topics prepared by military vicariates. Such programs should be jointly planned by the top military command and leaders of the Catholic church as well as those of other religious denominations and secular moral institutions.
 - The armed forces, security forces, and police should be informed about human rights and ongoing developments in the field, especially in matters that could affect them.
 - It would be a good idea to intensify exchange between the armed institutions and civil society in the fields of education and professional training so as to create channels for dialogue and to generate trust between the various actors in society. To that end we propose that military figures be invited to participate in civilian activities. We suggest that the military be encouraged to participate in graduate programs in the universities. We likewise suggest that civilians be invited to study in military academic centers.
- b. Recommendations in the area of institutions
- Study the concept of national security and its impact on respect for the essential rights of citizens, which official forces are called to protect, with the aim of bringing about the constitutional and legal reforms that such studies may show to be advisable.

- Redefine precisely the functions of the intelligence services, limiting them to gathering information and establishing an adequate system for supervising them. A democratic government must have services for gathering information when it is requested by authorized officials; such services must be able to process that information and to communicate it to the officials who request it. However, the intelligence services of the armed forces and the police and the General Bureau of Investigation must limit their activity to the proper field of each institution. These services, moreover, should be in proportion to their own institution and to the tasks entrusted to them, and in compliance with the principles just enunciated. Bringing about such a redefinition will require studying the drafting of adequate legislation, which will have to include adequate procedures for supervision and control.
- Define an anti-terrorism policy that reconciles effective elimination of terrorism with full respect for human rights. To that end it is necessary to adequately regulate the investigatory powers of the police that may be detrimental to citizens' rights, as is the case, for example, when the period for bringing a prisoner to court is extended to ten days.
- Principle of due obedience. This Commission was able to observe how the indiscriminate application of the principle of due obedience was sometimes a major factor in human rights violations. We urge a careful study of both existing legislation regulating the principle of due obedience and the training which official forces should be given on this point. Thus, without ignoring the validity and importance of this principle in carrying out the functions of the armed institutions, there will also be assurances that its application will not serve as an excuse for violating human rights nor hinder respect for them.
- With regard to obligatory military service, we recommend that respectful treatment of draftees be encouraged and that the remaining practices that may be degrading to the dignity of persons be eliminated. Such a step will instill an awareness that military discipline does not require such practices and in fact would gain from their elimination.
- Place the Chilean Police and Investigative Police once more under the authority of the Interior Ministry. Placing the functions of these agencies, namely to safeguard public order and internal security and make the law prevail, under the authority of

the Interior Ministry will make it easier for that ministry to supervise them and specifically to protect the human rights that may be affected by their activity.

- Adopt measures to assure full compliance with the provisions of Article 90 of the Constitution, namely that the functions of safeguarding public order and security fall exclusively to the police and investigative police. Any other state agency that seeks to carry out such functions should be eliminated and none should be created for such a purpose in the future.
- Issue a constitutional regulation to the effect that only the police and investigative police-and the judicial police, should it be created-may carry out arrests for crimes in which people are not caught in the act. They are to do so, obviously, only upon orders from competent authority.
- Encourage members of the armed forces and police and their families to be more integrated into society, by attempting to incorporate them into common social and cultural activities, and insofar as possible not providing separate housing arrangements for them. Knowing one another is a first step on the way to reconciliation.

4. Creating an institution to protect human rights

By virtue of the Universal Declaration of Human Rights adopted by the United Nations General Assembly December 10, 1948, and especially by virtue of the next to last consideration in its preamble, the Chilean state, like other member states has accepted the commitment to "achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms." As an expression of that commitment, many countries-more than sixty thus far-have created an institution usually known as a "defender of the people" or ombudsman, each with distinctive features according to the country's particular circumstances. In that context and in view of the urgent practical need to revitalize our legal system for protecting human rights, this Commission recommends studying the possibility of establishing in Chile an institution for the express purpose of protecting ordinary people from abuses of power and making such an institution a part of our legal system.

Although it is not our role to say specifically how this should be done, we believe it is appropriate to point to some general principles for such an institution, should there be a decision to establish it:

- * Its main function ought to be to assure that every government official

truly respects those human rights that are guaranteed by the Constitution and by the international treaties that Chile has ratified and are in effect. For that purpose this person could act on his or her own authority or take complaints from those affected by human rights violations; investigate those violations in the manner he or she judges most fitting, and accordingly be empowered to seek information from any government employee, who in turn would be obligated to provide it; and inform the proper officials of the human rights violations he or she might have corroborated, so as to correct them.

* An adequate selection method is required so as to assure that the person or persons appointed to hold this responsibility be independent and of high moral character. Such persons should be exempt from prosecution, so that they will remain independent in exercising their functions.

* This institution should have the necessary powers and resources to operate independently of any other authority. Care should be exercised, however, to assure that its functions not interfere with those of the courts and other government institutions.

* The person or persons who assume this responsibility should exercise it for a limited time period.

5. Specific changes in the legal order in constitutional, criminal and procedural matters in order to better protect human rights
Simply fulfilling the conditions indicated thus far will not by itself create in Chile a body of law respectful of human rights. Complementary measures must also be adopted in several other areas. We now indicate some of these measures.

- a. Assuring full respect for human rights during arrest and in confinement and imprisonment

The aim of the suggestions made below is to make further progress in observing international law concerning the treatment of those arrested and imprisoned as found in the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) which was ratified by Chile and published in the Diario Oficial on November 26, 1988; the Interamerican Convention to Prevent and Punish Torture (1985) which was ratified by Chile and published in the Diario Oficial on November 26, 1988; and the United Nations Body of Principles for the Protection of All Persons Arrested or Imprisoned in Any Fashion, and the United Nations Code of Conduct for Law Enforcement Officials.

a.1) Suggestions for laws governing the act of arrest

* Study the desirability of reducing the indiscriminate authority that Articles 288 and 289 of the Code of Criminal Procedure grant police and investigative police to fire their weapons as a legitimate manner to control or subdue the person they are attempting to apprehend (either caught in the act or with a warrant) if he or she attempts to run away.

* Abrogate Article 260, No. 4 of the Code of Criminal Procedure, which authorizes arrest on the basis of suspicion alone, or regulate it so as to assure that people may not be held under this provision for longer than a specific time period.

* Work out such regulatory and educational measures that may be necessary in order to assure that the police and investigative police comply with their obligations concerning arrest and specifically:

- o with regard to the provisions of Article 175 of the Code of Criminal Procedure, inasmuch as these institutions do not have the authority to search the clothing or personal objects (purses, wallets, automobiles) of private citizens unless there is sufficient reason to arrest them;

- o with regard to Articles 156ff. of the Code of Criminal Procedure in connection with Article 288, which govern house searches insofar as that can never be done without a prior specific judicial authorization;

- o some of the measures proposed elsewhere in this chapter, such as involving the judiciary in training those charged with assuring compliance with its decisions or making the need to respect human rights part of the training of the members of the armed forces and police, would also contribute toward that same end.

a.2) Suggestions regarding the treatment of people in prisons and jails

* Any accusation of torture, abusive treatment, disappearance, or extrajudicial execution should be investigated immediately and carefully through administrative procedures. The obligation to do so ought to be clearly established through legislation. If such an investigation indicates that a government official or employee is involved, that

person should be suspended while his or her guilt or innocence is being determined. Should the investigation show that the person is guilty, he or she should be dismissed. These measures are independent of any criminal responsibility of the person, which is to be determined by the courts.

* All persons arrested by government officials ought to have a right to rapid access to their family members and to legal counsel and independent medical attention and should receive shelter, clothing, and food as well. To assure that people really have these rights in practice, the person making the arrest should be obliged to allow the detainee to use the telephone or similar means of communication.

* A permanent data bank should be established and made available to all. It would list the names of all those who have been arrested by government officials, along with the jail or prison in which they are being held. This information ought to be available in all police stations and the offices of the investigative police and in those jails and prisons run by the National Prison Service. As a complement to this measure, every government official empowered to arrest should be obliged to register every arrest he or she makes, so that it may be listed in the data bank.

* Measures should be implemented to assure that uniformed officers will always fulfill their obligation to visibly wear a badge with their number and that non-uniformed personnel will present their credentials; more generally, all such agents should be required to identify themselves as they are making the arrest.

* All police stations and detention sites in the country should display, so that those arrested and their families can see, a catalogue of their rights when arrested as well as the duties of those making arrests and managing such sites.

* End the custom of having prisoners being released sign a statement that they have not been mistreated or tortured while under arrest. In practice that procedure amounts to giving up under duress their right to bring criminal charges for abusive treatment or torture against officials who arrested them or were in charge of the prison facility where they were held.

* Improve the manner in which the officials in charge handle visits to jails and prisons, in order to meet the standards in this

area set by international law, such as the Standard Minimum Rules for the Treatment of Prisoners, prepared by the United Nations. In any case inspection visits should be without notice.

* It should be made mandatory to submit anyone jailed or imprisoned to regular medical examinations made by professional people under the supervision of the Medical Association of Chile or some other independent institution to assure that the examination is objective. In addition, any person in jail or prison should have access, upon request, to medical attention within reason. They or their families may also request medical attention from a particular doctor, at their own expense.

* It should be made mandatory on the state to provide medical care and emotional and mental rehabilitation for those who have suffered torture or abusive treatment from government authorities or officials and for the relatives of those who have died of human rights violations.

* Those who have suffered torture or abusive treatment from government agents or officials and the relatives of those who have disappeared, have been tortured to death, or have been executed without due process by government officials should be enabled to receive compensation in accordance with international standards. Regulations regarding both substance and procedure should be established in a manner compatible with the practical feasibility of actually receiving this compensation, either from the state or from those government officials who were directly responsible.

b. Other changes in the legal system

In addition to the reforms in criminal legislation already mentioned in this report, certain further specific changes must be considered in order to develop a system of criminal law that will be truly respectful of human rights. We now list some of the reforms we suggest for that purpose.

* Raise the punishment for coercion, which our Criminal Code currently treats as a mere misdemeanor (Article 494, No. 16), to the level of a felony. Defining coercion (that is, the punishable offense defined as using violence to impede another from doing what the law does not prohibit or compelling him or her to do something against his or her will without authorization) as a felony and not a simple misdemeanor, in conjunction with the other measures that this Commission suggests, is a legal measure appropriate for

dissuading any individual, whether or not he or she works for the government, from violating the physical integrity of persons in those cases in which the violation does not in itself have the features that would constitute another more serious crime.

* Bring the punishment for crimes committed by public officials against the rights guaranteed by the Constitution in line with the established punishments for analogous actions committed by private citizens. Our Criminal Code sets lower punishments for crimes against constitutional rights committed by public officials than it does for the corresponding common crimes. Such is the case with regard to illegal arrest in comparison to kidnapping, for example. We propose that the level of punishment be basically the same for crimes of an equal nature, whether they be committed by public officials or by private citizens. The punishment meted out to a public official should be more rigorous than that given for the corresponding common crime, for in committing such a crime, the public official is also violating his or her public trust.

* Increase the punishment assigned for the crime of torture. Separating torture from the previous point is fully justified in view of the difference between the specific unlawfulness of torture and that of other crimes committed by public officials against constitutional rights. In the case of these latter crimes, the same action is legitimate when the public official is operating under the pertinent legal assumptions and conditions. In the case of torture, however, public authority can never be exercised mistakenly since it is prohibited under all circumstances. The crime of torture becomes all the more serious than the equivalent action committed by a private citizen, insofar as the one committing it is the very person to whom the state has entrusted vigilance over the juridical good being violated.

* Bring up to date the criminal legislation for safeguarding the inviolability of the home and any kind of private correspondence guaranteed by the Constitution (Article 19, No. 5) by including in it all the new ways of violating those guarantees made possible by modern technology.

* Thoroughly revise our criminal law on political matters leading to a combined text that would systematize and make coherent the whole body of laws, pertaining to both substance and procedure, which are currently scattered throughout a number of legal documents. Indeed the Criminal Code, the

Military Justice Code, the Law of State Security, the Weapons Control Law, the Law on Terrorist Behavior, and others, all have such provisions. Each of these legal codes and laws deals with crimes whose definitions are often flawed. Another problem is the fact that punishments are often imposed cumulatively, thus causing numerous problems with the manner in which crimes are related to one another. Finally these laws differ in punishments and procedures. The result is a very complex situation which lends itself to arbitrary decisions. This situation ought to give way to one in which the right to a fair legal process is properly respected.

- * Make forced disappearance a distinct punishable offense as a crime against humanity. An agent who apprehends a person and does not provide a plausible explanation for the whereabouts of such a person could thus be accused of this crime.

- * Establish that the statutes of limitation for crimes against human rights are suspended during periods when the context prevents or hinders employing the relevant legal actions.

- * Draft laws to prevent crimes from being amnestied without a prior investigation of the actions themselves. Any amnesty issued should be applied to the person who is indicted for the particular crime.

- * Reexamine the requirements for declaring and renewing constitutional states of exception in order to assure that they adequately reconcile the protection of the different rights that are at stake.

- * Legally implement such procedures as may be regarded as useful for adequately supervising the ethical conduct of people exercising a profession, while making certain not to invade the realm of the legitimate exercise of the various professions. This task is particularly important when we take into account the vacuum that has existed in this respect since the moment when professional associations were prohibited from supervising the ethical conduct of their members.

- * Improve existing legislation and regulation on the burial and exhuming of corpses, and likewise the legislation governing the Medical Legal Institute and the Civil Registry. Legislation must be issued to ensure the right of relatives to identify and provide a proper burial for their loved ones and the

corresponding duty of government officials who for any reason play any role in this area. Violation of this obligation ought to be defined as a failure to fulfill the duties of a public official; it could even constitute a crime if the circumstances were serious enough.

* Moreover, the laws governing the Medical Legal Institute, the Civil Registry, and cemeteries must be revised in order to improve and assure proper procedures in burial, autopsies, the requisites for registering names, presentation of data, and issuing certificates, so that these procedures may truly serve the public trust and protect the rights of persons.

C. Suggestions aimed at consolidating a culture truly respectful of human rights

1. Creating a cultural environment capable of respecting human rights
The legal and institutional reforms proposed in the previous section do not in themselves offer sufficient assurance that either government officials or politically motivated private citizens will actually respect human rights. Such an assurance can only be achieved in a society whose culture is truly inspired by unrestricted acknowledgement of the essential rights of the human being. Respect for such rights flows naturally out of such a culture as a part of everyday life and is manifested throughout the whole range of the nation's activity, political and otherwise.

Hence the aim is that each member of our society internalize this principle so that behavior in the home, schools, and work, as well as in partisan political activity, in all exercise of authority, and very broadly in all activity, may be an application of that guiding principle. The exercise of public authority deserves special attention, for it requires respect not only for the human rights of one's political adversary but also the rights of the common citizen. When values clash and require conciliation, a prudent balance must always be sought.

It should likewise be noted that it is absolutely necessary that private citizens involved in partisan political activity respect the rules of peaceful coexistence, that is, that they accept that the legitimate differences that may exist in these areas should not serve as an excuse for attacking the essential rights of those who have authority or who hold different positions. Education, which takes various forms, is called to play a key role in making respect for human life a part of our national culture. Indeed, that is what is required by Article 26, No. 2, of the Universal Declaration of Human Rights, issued by the United Nations General Assembly December 10, 1948, which states that education is to

strengthen respect for human rights and fundamental freedoms.

In order to fulfill this responsibility, society will have to call on all the actors and institutions within it, so that the state and society as a whole will accept the challenge with a commitment that will provide the necessary impetus. To the government falls the task of providing the opportunities for training and education required in order to communicate an idea of human rights that will be shared by people of all conditions. Society should require that the education system add to its traditional functions that of providing values and moral formation in human rights. Society should also open the necessary space so as to allow education to make its real and necessary contribution on the matter.

Hence this endeavor will involve the system of formal education in its various levels and modalities (pre-school, grammar school, high school, higher education; scholarly, scientific and humanistic, as well as technical and professional education; training institutions for professions in civilian life and those training professionals in the military, and so forth) as well as the system of non-formal education connected to community organizations and groups (adult education, popular education, women, labor unions, and so forth); and informal education, whose primary expression is found in the media (television, press, radio, and so forth). As is the case with any other kind of cultural progress, incorporating these various actors and bodies into this endeavor will require a long and consistent effort. We must accordingly strive to assure that the effort to introduce respect for human rights into our culture can function over the long run.

2. Desirability that the institution whose creation is suggested in the next chapter ("Other recommendations") issue proposals for assuring a culture solid in the area of human rights

This Commission recommends that the body proposed in the next chapter ("Other Recommendations") take on the task of urging those who work in the various areas of education (formal, non-formal, and informal) to undertake approaches that may help advance our culture by truly integrating a sense of respect for human rights. Care should be taken, however, to assure that such proposals be made by persons who have a reputation for moral integrity and who may provide assurances that they will treat human rights questions objectively and unaffected by partisan politics, and that such figures represent all sectors of the nation so as to assure that their recommendations will enjoy a high degree of acceptance from those for whom they are intended.

The policies or measures that such a body might formulate or propose should have nothing binding or obligatory about them. In their activity they

should not usurp areas proper to existing bodies or agencies, such as the Ministry of Education, the General Secretariat of the Government, the National Television Council, and others. In addition, the right to freedom to teach guaranteed by Article 19, No. 11 of the Constitution must also be safeguarded.

Hence the power of their proposals will depend exclusively on the moral authority of those making the proposals and on their inherent suitability. This body should be particularly concerned to assure that the issue of human rights be introduced into the various areas of education from a perspective that is above politics—that is, one that regards human rights as the common inheritance of all persons by the very fact of being persons, without regard for race, gender, political position, religion, or any other consideration, as acknowledged in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948.

13. Some suggestions of a conceptual nature that may serve as a framework for teaching human rights

It is commonly accepted that teaching human rights affects three interrelated areas of learning: information and conceptualization, formation of attitudes and values, behavior and actions. We will approach the matter from this angle, without thereby intending to deny the possibility of other approaches.

In the teaching of human rights it is vitally important to prepare a code that of its very nature develops respect for those rights. In this respect it is important that people know, understand, and be able to offer assessments about historical aspects of human rights and on the theories and general observations that have been developed around concepts such as rights, freedom, the human being, civil and political liberties, economic and social freedoms, and so forth.

Second-viewing education as a dynamic relationship that makes possible the development and enhancement of human qualities—we believe that the teaching of human rights entails shaping attitudes of respect and tolerance directly connected to those rights. This area of shaping attitudes and values, however, cannot remain simply a matter of developing benign attitudes toward human rights. It means that and much more. It means developing a consistent overall direction in life in which human rights articulate a kind of ideal aspiration which emerges from a critical posture toward reality; it also means dealing with the contradictions that social and political contexts impose on observing and enforcing such rights. It means not being content to respect human rights oneself, but becoming actively involved in denouncing violations and defending those rights, even when one is not directly the object of a

particular violation.

Third, learning behavior and action emerges as the area in which the ideas, attitudes, and values acquired are put in practice, for they would be meaningless unless they led to behavior in keeping with them. It must be stressed, however, that action requires its own kind of learning; we should not think that it occurs automatically and naturally. It must be developed by creating the conditions for practicing the kinds of behavior associated with human rights. Obviously the many kinds of behavior that must be consciously practiced in the realm of human rights goes beyond the possibilities of any education process. Hence that practice must be connected to everyday life and the daily needs that individuals, their families, and their environment must confront there. Consequently everyday life itself is a basic instance for assuring that human rights are observed in actual behavior. In this connection, special attention should be given to teaching proper use of language so as to avoid a tendency toward harsh language, which often tends to create a climate in which rights are likely to be violated.

14. Some specific suggestions to shed light on human rights education

- a. Suggestions on curriculum
 - a.1) In formal education

The aim should be to assure that curriculum contents and specific points on human rights are present not only in the manifest curriculum of formal education (plans, programs, and textbooks) but also in the hidden curriculum (school culture and the interaction between teacher and student). Efforts should be made not only to make children and young people knowledgeable about international agreements or statements on human rights but, even more importantly, to develop attitudes of respect and encouragement for those rights. Hence such education should involve participation of students, take into account their life experiences, and through a cognitive, sensory, and emotional approach lead them to become practically committed to human rights.

In bringing human rights education into the school system that system must be respected for what it is in order to avoid repeating the well-known experience of educational innovations which have failed because they did not take into account the real nature of the Chilean school system. Thus incorporating human rights education into schools means making reflection on the issue a part of each subject, but within its own proper thrust. Such an approach will also avoid overloading teachers with work, since

they will be able to carry out human rights education in their normal classes. This does not rule out preparing educational materials that will make it possible to incorporate the topic specifically and will make it easier for teachers to bring the issue into their planning, as we will note below.

Specifically, we suggest that in preschool and elementary school, human rights be brought into the whole curriculum and the whole activity of the school, on the basis of the Declaration of the Rights of the Child. Emphasis should be given to bringing the child to internalize values like respect, tolerance, cooperation, proper use of language, being able to express ideas independently, and so forth.

From middle school to the end of high school, human rights should be integrated into all subjects and should be expressed in the problems that arise in the subject matter, as well as in the psychological and social development of young people, and in their confrontation with the historic and social reality in which they find themselves. In this regard education must go beyond Chile's recent experience to incorporate all those elements of learning that shape the individual for civic life and to assure that the rights enshrined in the United Nations Charter are fully in effect.

In higher education, all training for professional careers should create appropriate spaces in which students can be imbued with the duties and rights proper to all persons. To that end we suggest that there be a chair or that there be seminars, workshops, or other forms of academic activity devoted to this area.

On the graduate level, we think it is essential to create a body of knowledge around human rights by encouraging dissertations, papers, and so forth, on the issue.

a.2) In non-formal education

Since efforts at non-formal education are connected to the overall development of grassroots organizations, we suggest that human rights education be linked to meeting the needs that individuals and groups are confronting. Thus they may be able to become aware of those rights, demand their compliance on the part of those responsible, and work together toward solving their problems.

a.3) In informal education

It is the task of the mass media to bring human rights into their message, both by presenting the formal content that is proclaimed in the Constitution and by promoting the values, attitudes, and kinds of behavior that are conducive to true respect for those rights. This latter point entails examining the negative values that the mass media are continually communicating.

b. Suggestions for training personnel

In view of the complexity of human rights issues, it is essential that those who are devoted specifically to educating in and about human rights be motivated to teach human rights in their specific areas, and that they have access to the training that such an endeavor requires. The starting point for such training is to become aware that knowledge of human rights is all-encompassing, complex, and dynamic. That does not mean turning human rights into an elite field but rather that at each level of education there must be people trained to teach about it.

b.1) Formal education

The primary agent of education in the school system is the teacher. Human rights education must be based on the work he or she does in the classroom. If human rights education in the school is to be effective, the teacher must, first, have a profound conviction and, second, be adequately trained. No decree, reform, or regulation will work if the teacher is not convinced. Hence human rights education must begin by motivating teachers to take up the task themselves by incorporating it into their usual work without overloading them.

There is an urgent need that those institutions that train teachers assume the responsibility for providing training in human rights to all teachers. They should suit the teaching to the particular features of each field. For those who are already teachers and administrators, the relevant agencies (such as the Center for In-Service Training, Experimentation, and Educational Research, municipal governments, regional offices of government ministries, non-governmental organizations) should organize courses, training workshops, and study days that will enable the participants to learn the theoretical foundations of human rights and how they relate to education, and to develop teaching methods that will enable them to bring human rights issues into the school.

b.2) Non-formal education

In non-formal education we suggest that occasions for training be developed so as to allow other professional people (doctors, police and military, lawyers, midwives, social workers, psychologists, civil engineers, and so forth) as well as other social actors (parents, leaders of organizations, business people, and so forth) to make the exercise of their profession or their work an occasion for human rights education. Formal education is thus not the only avenue for this kind of work. Likewise community educators should be trained to help communities organize around defending their rights and meeting their needs.

b.3) Informal education

With regard to informal education, those who work in the media by the very nature of their work have a great deal of influence on people and groups. Hence we suggest that such professionals be trained so that they will become conscious of their educational task. The starting point should be university training imparted in courses on professional ethics and should continue to develop throughout one's professional career.

- c. Suggestions for preparing and providing educational materials
We believe that there should be no delay in preparing a wide variety of educational resources as a first step toward implementing new ways of educating. The preparation of textbooks, teaching guides, visual aids, videos, and so forth is essential. Rather than being rigid formulas, these should be aimed at triggering ideas. We would urge that primary emphasis be placed on methodologies which in themselves are bearers of the message of human rights, namely dialogue, identifying problems, participation, working in groups, and so forth.

So as to motivate teachers to become involved in this task we urge efforts to create a Fund for Human Rights Projects, which would award grants to teachers on a competitive basis. Thus it would be possible to finance the elaboration, implementation, evaluation, and spread of innovative approaches. The experience of other countries that have made considerable advances in human rights education should be taken into account. The material they have already prepared should be gathered and stored in a Documentation and Educational Materials Center, which could gather the available national and international material, including the vast accumulation of information, analysis, and studies now held by human rights agencies. The body that we urge be created in the next chapter ("Further

Recommendations") could administer the project fund and gather, adapt, and circulate the available human rights material as well as prepare new material.

The media can also make a valuable contribution to human rights education by producing mass circulation audiovisual and written material to be used in the educational system.

15. Recommendations that occasions to discuss and adopt symbolic preventive measures be provided as soon as possible
It is absolutely necessary that a space for broad public debate on human rights be opened immediately. Hence all the various branches and agencies of government must promote a wide range of initiatives aimed at making the issue known and prompting discussion. They must also adopt symbolic preventive measures which may at the same time aid in making reparation.

From this standpoint the adoption of some of the following measures could be considered:

- * Organizing public forums on different levels of civil society and among the armed forces and police;

- * Carrying out a number of cultural activities on National Human Rights Day emphasizing the values of democracy, tolerance, and respect for human rights, as well as the essential dignity of the human person—all of these aimed at reconciling Chileans and bringing them together;

- * Establishing a National Human Rights and Peace Prize, just like the other national prizes, which would be awarded to the institution or person whose activity in promoting and defending human rights had been outstanding.

- * Eliminating symbols that are divisive for Chileans. It is important to take care that they not be replaced by others that have the same kind of effect.

16. Inclusion of terrorist acts in the category of human rights violations
In all areas of recommendations made in this chapter it should be understood that references to human rights violations are expressly intended to encompass those committed for political purposes and especially terrorist actions. Our intention is that the means suggested in the present chapter may serve to arouse energies to reject and overcome such actions and to completely eliminate such practices.

D. Truth, justice and reconciliation as preventive measures

1. A culture that respects human rights can develop only in an atmosphere of a healthy national common life

We have emphasized that respect for human rights demands that a culture take its inspiration from those rights. We must nonetheless acknowledge that such a cultural atmosphere cannot be expected to flourish in a situation in which there are signs of a failure to come together, as is the case in our society.

Hence it is absolutely necessary that we overcome the level of division still present as a result of our experience in recent decades. In other words, creating the cultural climate that we are urging as a preventive measure requires a society that is reconciled. Thus we are led to insist that for the sake of such preventive measures we must attain the truth and justice that are themselves prerequisites for national reconciliation. We now make some observations on truth and justice.

2. Truth

Establishing the truth is clearly both a preventive measure in itself and is presupposed in any other preventive measure that may ultimately be adopted. In order to fulfill its preventive function, the truth must clearly combine certain minimum requirements. It must be impartial, complete, and objective, so that public awareness may be quite clearly convinced of what the facts are and how the honor and dignity of the victims were wronged.

In this connection we recall that the decree creating the Commission on Truth and Reconciliation indicates that its central purpose is to "clarify in a comprehensive manner the truth about the most serious human rights violations committed in recent years." In order to achieve that purpose we believed we should gather as much evidence as possible about each one of the approximately 3,500 cases on which we received complaints and that insofar as possible we should listen to the family members of each of those killed and to the witnesses that they or the organizations making the complaint brought forward. This Commission trusts that the truth that has been obtained in this fashion may in itself serve the intended purpose of prevention.

3. Justice

We have encountered divided opinions over what justice entails. Some argue that for the sake of both reparation and prevention it is absolutely imperative that the guilty be punished. Others, however, believe that given the amount of time that has passed and the manner in which the events took place and their context, it would not be advisable to open or reopen trial procedures, since the results could be the opposite of those

sought.

The stand people take concerning justice tends to determine how they view the notions of impunity and amnesty. In particular some agree that it is utterly necessary that the courts of justice issue sentences, at least in some high profile cases. From the standpoint of prevention alone, this Commission believes that for the sake of national reconciliation and preventing the recurrence of such events it is absolutely necessary that the government fully exercise its power to mete out punishment. Full protection for human rights is conceivable only within a state that is truly subject to the rule of law. The rule of law means that all citizens are subject to the law and to the courts, and hence that the sanctions contemplated in criminal law, which should be applied to all alike, should thereby be applied to those who transgress the laws safeguarding human rights. The Commission's founding decree says as much in considerations 4 and 7, which state that justice must be administered through the courts.

We make this observation fully cognizant of the whole range of practical obstacles that may hinder the full realization of such an important aim, such as the fact that many of these cases have been suspended or amnestied with either no judicial investigation or only a partial investigation; the emphatic legal position taken by the Supreme Court in its decisions in the sense of declaring that it is inadmissible to delve into the facts in those cases that have fallen under amnesty; the fact that a large portion of cases are in military courts; and other limiting conditions.

4. Reconciliation

Truth and justice-insofar as they can be attained through the courts-are the pillars on which a reconciled society must be built, but in themselves they are not enough. The various sectors of society affected must also be brought back together. In this regard it should be noted that this Commission has heard numerous statements from those who suffered indicating their desire that the nation be brought back together and reflecting their spirit of not seeking revenge.

Hence it is to be hoped that those who are in a position to help advance reconciliation with some gesture or specific act will do so. They could, for example, make available the information they may have on the whereabouts of those who disappeared after arrest or the location of the bodies of people who were executed or tortured to death and have not yet been found.

Only by taking such steps will we advance toward the national reconciliation that is an utter necessity and is also the primary condition for avoiding a repetition of past events.

Notes

Strictly speaking the suggestions made here are not intended to bring Chilean law into line with international human rights law but rather to improve that legislation. The fact that the two points are closely connected has led us to include these observations on improving the law in this section on making it fit international law.

Chapter Three: Further recommendations

A. *Creation of a public law foundation*¹⁰¹

The Commission has also come to the conclusion that it should propose to the president the creation of an institution, which we believe should be a Public Law Foundation directly connected to the president in accordance with Law No. 18.575 (Law on the Foundations of the Administration). We suggest that the ultimate authority in the foundation be a board made up of highly respected people from diverse traditions and from across the political spectrum who hold a variety of views on our history. We further believe that this board should be motivated by a spirit that acknowledges the basic norms of democracy and of the rule of law, and that it should accept the fundamental principle that the human person is to be respected because he or she is a person and because the human person is protected by inalienable rights that must not under any circumstances be violated.

This foundation should take on the functions to be indicated here. Some of them are tasks that remain to be done as we conclude our work, while others reflect needs that may arise in the future. We believe the foundation we propose should have the following functions and purposes.

1. Aid in the search for victims

Article 1 of Supreme Decree No. 355, which created the National Commission on Truth and Reconciliation, stated that one of its purposes was to gather evidence that would make it possible to determine the fate or whereabouts of the victims, since there were so many instances of people who disappeared after arrest or whose remains have not been found even though their death has been registered. Despite the Commission's efforts, it proved impossible to achieve that objective, and the scope of the problem remains practically unchanged from what it was when the president issued the decree.

We believe the state should not give up the task of trying to determine where the victims are, or of providing aid to families who are still searching. This was one of the most basic demands we encountered, and broad segments of any population share in that yearning. It will be very difficult to come to reconciliation and a shared common life in Chile as long as this problem remains unresolved.

¹⁰¹ Public Law Foundation: Chilean Law No. 19.123 created the National Corporation for Reparation and Reconciliation, whose mandate it is to coordinate, execute, and promote the "actions necessary for complying with the recommendations contained in the Report of the National Commission on Truth and Reconciliation." The law was passed by the National Congress and signed by President Patricio Aylwin. It went into effect with its publication in the *Diario Oficial* on February 8, 1992.

Hence one of the functions of the proposed foundation should be to keep searching. To that end it should be authorized to become a plaintiff in judicial investigations that may be carried out for that purpose, and it should have access to the initial summary investigation, and in general it should enjoy such faculties as may facilitate its work.

2. Gathering and assessment of evidence

Even as we finish our work we continue to receive items of evidence on human rights violations. Many of them have never been presented to the courts or to specialized agencies because the relatives live in remote parts of the country or because they have not overcome their fear. However, as the president will note when he examines this report, in a significant number of cases the Commission could not come to a conviction on whether the person whose death or disappearance was presented to us actually suffered a human rights violation. Hence work remains to be done, and there is a need for a government agency to continue that work so as to come to an assessment on the status of these persons after the presentation of the evidence not available thus far for lack of time. When a conviction is reached on those cases presented to the Commission, the relatives could have access to such reparation measures as the president may adopt.

3. Centralization of the information gathered by the Commission

A third area is connected to the research that might be undertaken in the future by academics, university students, non-governmental organizations, Chilean and foreign scholars, or simply the general public interested in learning about or coming to a deeper understanding of matters related to human rights violations in Chile. There seems to be a need for an office to centralize the files and evidence on cases and to maintain a library devoted to this topic. People could have access to this office under conditions to be laid down by law. We believe that it would be reasonable for this task to be entrusted to such a foundation and that indeed such an office would enable the foundation to better carry out its other functions.

4. Assistance for relatives

We also think it necessary that this foundation be a coordinating agency so as to make such measures of reparation as the president may adopt more efficient and prompt. Should the families so wish, it could centralize the bureaucratic procedures they might have to undertake in order to obtain those benefits. It would be preferable if the relatives of those who perished did not have to go around to numerous public offices to learn what they have to do and go through bureaucratic procedures in order to benefit from the reparation measures that might be approved. Instead they could go to a single office where they would

be welcomed with dignity and respect and served efficiently.

To that end such a foundation ought to be able to provide the relatives with the legal aid and social assistance they might need. It also ought to enable them to resolve the everyday needs and concerns they will certainly face in the future as well as make certain that the benefits that may be decided upon are actually disbursed.

5. Elaboration of educational proposals

As was noted in the previous chapter, which dealt with "prevention," education policies must be formulated. Information and training on human rights must be presented through formal education as well as through non-formal and informal education. Given the moral authority of its board, such a foundation would be in a good position to propose programs and assure that they were carried out in coordination with the appropriate officials.

B. Applying sanctions for concealing information on illegal burials and competence in investigating such matters

As we have said, there is still no way to determine the whereabouts of almost all those who disappeared after arrest and of a large number of those who were executed and whose families did not receive their remains. Of course those involved in hiding the bodies know where they are, but our law has no provision obliging people to present such evidence to the courts.

Only for reasons of conscience have some of those who have such information made it available, thus making it possible to locate the mortal remains of the victims and then turn them over to their families to receive a decent burial.

Keeping in mind that this problem is a serious obstacle to Chilean reunification, we believe that hiding this kind of information should become criminal. It should be made a specifically defined crime so that those who do not provide it within a particular time period would be punished. In tandem with such legislation, the law should exempt from prosecution those who furnish such evidence. To provide incentives for their stepping forward, they should not be exposed to the risk of being punished.

Such matters should always be handled in ordinary courts, at least until the bodies have been completely located, identified, and turned over to their families.

Chapter Four: Truth and Reconciliation

In conclusion—the need to reflect

Our task revolved around two fundamental objectives: truth and reconciliation. As defined for us, our work was to come to a comprehensive grasp of the truth of what had happened, for it was utterly necessary to do so in order to bring about reconciliation among Chileans.

We are well aware that the task we undertook goes far beyond the thinking, the interests, and the destiny of individual persons. It is an issue facing our whole society. Each and every one of us citizens must be held accountable before ourselves and before all if we wish to encounter a solution—certainly not a final solution but at least one that is gradual and satisfactory—to the issues before us. We will have to assimilate this truth, find ways to establish the justice that any society needs, make an effort to understand where everyone stood when a human life was destroyed in a manner that overstepped all norms proper to the rule of law. We will have to search for paths to reconciliation. Otherwise, democracy—which is an essential part of our culture—will never be more than a name. For democracy means that realm in which the members of society are able to come together and settle their common problems in peace and freedom.

If this report serves such an aspiration, we can only be grateful. The events documented, evidence gathered, and convictions honestly reached will enable government authorities to adopt measures related to the triad of truth, justice, and reconciliation. Those families and social groups that have suffered in their very soul or who had ties of friendship or solidarity with the victims will now be able to exercise their rights and properly demand that those responsible be brought to account. They will also have the satisfaction that the nation as such has acknowledged and restored to its lost neighbor the full dignity proper to a human being and to a citizen. Our country should never have allowed that dignity to be lost as it did.

If all our people draw together in this fashion through the institutions of a democratic state and the rich array of social organizations, it will be easier at the proper time to take the steps that are needed in our country and that a more harmonious atmosphere may make possible.

It would be a mistake, however, to encourage simplistic illusions. We are well aware that many will find it difficult even to read this report. Clashing feelings are bound to arise. There will be problems over facts and interpretation in all honesty and fairness—and unavoidably so. This report will stand on its own.

Nevertheless we believe there is one thing that no one can deny: Chile has undergone a wrenching tragedy. The report itself says clearly and repeatedly that political situations are not on trial here. That is a matter for our country and history to decide. The report does not make distinctions between victims or perpetrators from

one side or the other. It presents events whose seriousness are beyond discussion-incredible situations, sufferings borne by defenseless human creatures who were abused, tortured, destroyed or whose immediate relatives and friends underwent such treatment.

The depth of this suffering must be made known. We cannot conceal it or leave it to offhand commentary, to being dismissed, or for that matter to being exaggerated. We must collectively acknowledge that all of this happened. Only from that moment on-when each individual has plumbed what it means to suffer and to cause suffering-will some be moved to repentance and others to forgiveness. This is not a matter for mere words or for some sort of sentimental sermon. Anyone who had to go over each of the cases recorded in this report and to enter into contact with the huge number of people who told their very personal and unutterable stories will be well aware of how a human being can be ennobled.

We have witnessed and documented the tragedy. We trust that whoever reads this report will appreciate even more the expression, "Never again!" It must be never again, for we cannot return to a situation in which Chileans will again be facing the vile absurdity of resolving political problems through murder, torture, and hatred. Such a "never again" therefore also means not doing to others what has been done to oneself. Legally and politically, that is tantamount to saying that respect for the rights of every human being must come into play as the basis for our common life.

That conclusion leads us to a point that we cannot overlook in these observations. The report several times observes that the Commission believes that the human rights violations that took place during this period must not and cannot be excused or justified on the grounds of previous actions by those whose rights were violated. That is a basic proposition; it must be maintained.

When people think that the violation of fundamental rights has gone beyond the bounds of a legal or political order (or indeed simply a human order), when ordinary life in common has gone beyond the breaking point, and when matters reach the point where one portion of society believes that radical change is necessary, reactions may be very strong and a nation itself may move in a very different direction. That is a fact of political life, a reality of history on which the Commission takes no position. When matters reach this point, a society that is in crisis and faces internal or external aggression certainly has a right to defend itself.

However, as long as it intends to remain human and to respect basic values, it may never-whether for the sake of change, or self-defense, or in exercising power after a successful revolution-justify further violating human rights on the basis of the errors, excesses, or crimes that may have been committed previously.

On the contrary, we maintain that human rights fully in operation constitute the foundation of the democratic order that is now accepted by the community of nations. They are its foundation in themselves and not in terms of other objectives. That

means upholding the natural dignity of the human being.

We hope that truth will serve as the basis for reconciliation. We believe we have responded to the demands of those who may have hoped either that we would show understanding for the harm that they have suffered, or be fair in judging their actions that have been branded as blameworthy. We have presented all cases, and we have taken into account all explanations. We have also fulfilled our mandate by presenting measures to prevent recurrence of human rights violations and to make reparation insofar as possible for the moral and material harm done to the victims.

Hence in concluding its labors the Commission urges all Chileans, especially those who in some manner have believed or still believe that the major problems facing Chile can be solved by inflicting violence or showing contempt for the lives of others, to turn their souls toward the choice that emerges from this long and profound tragedy. The results of what took place during this period and which to some extent remain with us, cry out in sorrow from every page of this report.