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THE IMPRISONMENT OF PERSONS SEEKING TO LEAVE A COUNTRY OR TO RETURN TO THEIR
OWN COUNTRY

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**THE IMPRISONMENT OF PERSONS SEEKING TO LEAVE A COUNTRY
OR TO RETURN TO THEIR OWN COUNTRY**

1. INTRODUCTION

This paper deals with specific cases falling within the mandate of Amnesty International* of persons detained between 1 January 1983 and March 1986, for attempting to leave any country including their own, or attempting to return to their own country. Relevant law and practice of various countries are summarized. This is not an exhaustive listing of countries where people are detained for trying to leave or return.

Amnesty International adopts as prisoners of conscience persons imprisoned for having tried to exercise their right, as proclaimed by the Universal Declaration of Human Rights, to leave any country including their own, in cases where they had no realistic possibility of doing so with official permission, and where the motives for trying to leave are linked to their political, religious or other conscientiously held beliefs or to their ethnic origin, sex, colour or language, provided that they have not used or advocated violence. In cases where at the time of imprisonment the prisoner's precise motivations for trying to leave cannot be determined, Amnesty International takes into account the established patterns of behaviour of the authorities and of would-be emigrants in the country concerned.

* Under its mandate, Amnesty International:

- seeks the release of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence (these are termed "prisoners of conscience");
- advocates for all political prisoners a fair trial within a reasonable time and according to internationally recognized norms, and works on behalf of such persons detained without charge or without trial; and
- opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

In cases of individuals attempting to exercise the right to return to their own country as provided by the Universal Declaration of Human Rights, Amnesty International would also adopt them as prisoners of conscience if they are detained for their political, religious or other conscientiously held beliefs or their ethnic origin, sex, colour or language, provided they have not used or advocated violence.

Amnesty International regularly receives information about, but its mandate does not extend to, cases where a person's attempt or request to leave a country results in loss of employment or demotion, passport withdrawal or restrictions, or other forms of harassment or discrimination which are not accompanied by imprisonment or ill treatment. The same is true of cases where persons trying to return to their own country, including those who have been subjected to forced exile, suffer loss of citizenship or non-renewal of passport, are refused entry at the border, or are allowed to enter but subjected to harassment or discrimination not accompanied by imprisonment or ill treatment.

This paper has been submitted by Amnesty International to Mr C.L.C. Mubanga-Chipoya, the United Nations Special Rapporteur who is preparing a report on the right to leave any country including one's own, and the right to return to one's own country.

* * * * *

2. INTERNATIONAL STANDARDS

The right to leave any country including one's own and the right to return to one's own country are guaranteed in the Universal Declaration of Human Rights (Article 13), the International Covenant on Civil and Political Rights (Article 12), the European Convention on Human Rights and Fundamental Freedoms (Fourth Protocol, Article 2), the American Convention on Human Rights (Article 22), and the African Charter on Human and Peoples' Rights (Article 12). These provisions are attached as the Appendix.

Under Article 12 of the International Covenant on Civil and Political Rights, the right to leave "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". The Inter-American Commission on Human Rights of the Organization of American States has stated that "no state has the right to prevent an individual from leaving the country, except when that individual is accused of a common crime".*

The Human Rights Committee, in its views issued on individual communications considered under the Optional Protocol to the International Covenant on Civil and Political Rights, has found violations of Article 12(2) of the Covenant ("Everyone shall be free to leave any country, including his own") when a government, without putting forward any justification, revoked the passport of, or refused to issue a new passport to certain of its citizens residing abroad.**

* Inter-American Commission on Human Rights, Sixth Report on the Situation of Political Prisoners in Cuba (1979), OAS Document No. OEA/Ser.L/V/II.48; doc. 7, pg.9.

** Sophie Vidal Martins v. Uruguay (No. 57/1979), Report of the Human Rights Committee, Official Records of the General Assembly, 37th Session, Supplement No. 40 (A/37/40) (1982), Annex XIII, para. 9.

Samuel Lichtensztejn v. Uruguay (No. 77/1980), Report of the Human Rights Committee, Official Records of the General Assembly, 38th Session, Supplement No. 40 (A/38/40) (1983), Annex XIV, para. 9.

Mabel Pereira Montero v. Uruguay (No. 106/1981), Ibid at Annex XVII, para. 10.

Carlos Varela Nuñez v. Uruguay (No. 108/1981), Ibid at Annex XXIII, para. 10.

The guarantee of Article 12 of the International Covenant on Civil and Political Rights that "no one shall be arbitrarily deprived of the right to enter his own country" is not subject to any restrictions. The Inter-American Commission on Human Rights has stated that a domestic law is contrary to Article 22 of the American Convention on Human Rights and Article 12 of the International Covenant on Civil and Political Rights when it empowers a government to exile an individual from the country for national security reasons, or to prohibit certain individuals from entering the country when they perform certain acts or, in the opinion of the government, constitute a danger to the state.*

* * * * *

* Annual Report of the Inter-American Commission on Human Rights to the General Assembly for 1977, pp 86-87 ("Special Report of the Inter-American Commission on Human Rights on the Development of Human Rights in Chile"), OAS Document No. OEA/Ser.P/AG/doc.927/78.

4. IMPRISONMENT OF PERSONS SEEKING TO RETURN TO THEIR OWN COUNTRY

Summary

During the past three years Amnesty International learned of a number of persons being detained upon return to their own country. In many such cases the individuals were returning from exile, often a forced exile. In some cases it appears that a major factor causing detention may have been exercise of the right to return to their country, although this was not always clear.

Some of those arrested when trying to return are detained without charge or trial. Some are charged with political offences. Others are charged under laws which expressly prohibit the return without official permission of persons who in the opinion of the government threaten national security.

This is not a complete list of cases or of countries in which people are detained for trying to return. The following examples are cited to illustrate the nature of Amnesty International's concerns.

Chile

Decree Law No. 81 (1973) provides in Articles 3 and 4:

Article 3.

Those persons who have sought exile outside the country, who have left the country without having complied with the established rules, have been expelled from or obliged to leave the country, or who are serving sentences of deportation, shall not re-enter the country without the permission of the Ministry of the Interior, which must be applied for via the appropriate Consulate.

The Ministry of the Interior may, if there are grounds for doing so, refuse the said permission for reasons of State security.

Article 4.

Any person who enters the country in a clandestine manner, evading by whatever means the control on such entry shall, provided that the circumstances or background to the case give the Court reason to believe that the entry was effected for the purpose of committing a crime against State security, be liable to a penalty of major imprisonment with a maximum sentence of death.

The entry shall be presumed to have been effected for the above purpose where the person left the country without complying with the established rules, was expelled from or obliged to leave the country, committed the offence referred to in Article 1 or re-entered the country in breach of any deportation order passed on them.

Jurisdiction over the offence shall lie with the Military Courts and trial shall be in accordance with the Code of Military Justice.*

Law No. 18.015 (1981) provides in Article 1 paragraph 3:

Article 1.

3. Any person who enters the national territory in breach of the ban on the entry of that person or of an expulsion order passed on him/her under the powers in paragraph c [of the 24th transitory provision of the Political Constitution of the Republic of Chile] [shall be punished] with minor imprisonment (medium grade) or minor deportation (medium to maximum grades).

While Amnesty International does not question the right of a government to charge and bring to trial individuals for alleged acts which are recognizably criminal, it is concerned that Decree Law No. 81 and Law No. 18.015 contain presumptions which may result in imprisonment (and even the death penalty under Decree Law No. 81), without proof of specific criminal offences, for the mere act of entering the country by Chilean citizens who have been previously expelled for political reasons. Amnesty International's concern is heightened by reports of political detainees, including persons charged under Decree Law No. 81, having been subjected to torture in order to compel them to confess to guilt.

Amnesty International has learned of several cases of Chilean returnees being sentenced for offences under the Arms Control Law or State Security Law and separately sentenced to long prison terms for the offence of ingreso clandestino (clandestine entry). For example, Sergio Godoy Fritis, a Chilean citizen who returned to the country clandestinely in 1979, was sentenced in 1983 to 15 years' imprisonment under Decree Law No. 81; he was also convicted of charges under the Arms Control Law for belonging to a paramilitary organization and sentenced to four years' imprisonment. Following his arrest by members of the Central Nacional de Informaciones in 1981, he had reportedly been taken to a secret detention centre in Santiago where he was allegedly tortured, mainly with electric shocks, and then obliged to sign a number of self-incriminatory documents.

In October 1983 the President of the Supreme Court of Chile announced his intention to request that Article 4 of Decree Law No. 81 be repealed or revised so that the penalties would be consistent with Law 18.015, thereby removing the death sentence for ingreso clandestino. However, according to information received by Amnesty International, Decree Law No. 81 remains in force without amendment, for application to cases of those alleged to have entered Chile clandestinely before the Constitution entered into force on 11 March 1981. Persons charged with ingreso clandestino for having entered Chile after that date apparently are prosecuted under Law 18.015.

* Clause added by Decree Law No. 189 of 14 December 1973.

