

Committee has expressed the opinion that if the authorities decide to ban a demonstration in order to avoid disturbances, they should strive to reach an agreement with the organisers of the demonstration in order to allow it to be held in some other place where there would be no fear of disturbances.¹ As there is no evidence that the authorities held a dialogue of this nature with the organisers of the public demonstration (which, according to the complainants, also included trade union organisations independent from the CNS), the Committee considers that by not allowing the public demonstration to be held in the Plaza de los Artesanos on 1 May, the Government restricted trade union rights. Bearing in mind that the Government did not reply to the allegation concerning the refusal to grant the Democratic Union of Workers permission to hold another public meeting on 1 May, the Committee reiterates the above-mentioned principles and considerations.

612. Concerning the repression of the public demonstration on 1 May in the Plaza de los Artesanos, the Committee deplores the serious physical assaults on workers, trade union leaders and journalists, some of whom were seriously injured.

613. The Committee expresses its concern that the Government acknowledges that a group of civilians took part in the violent breaking up of a public meeting on 1 May in the Plaza de los Artesanos, even more so in view of the fact that, according to the complainants, this para-military group acted in co-operation with the police and that members of the same group had already acted in the same way and in the same place on 2 December 1982. The Committee notes that this case has been referred to the courts and requests the Government to send it the results of the trial held on this matter.

614. Although the Committee notes that, according to the Government, the allegation that 300 persons had been arrested is totally devoid of truth, it observes that the Government gave no specific information on the number of arrested. In these circumstances, the Committee can only deplore that the exercise of the right to demonstrate, an essential component of trade union rights,² was repressed by means of wide-scale arrests and serious physical assaults. The Committee requests the Government to inform it if the persons arrested for having taking part in the demonstrations on 1 May have already been released.

¹ See, for example, 204th Report, Case Nos. 930 and 962 (Turkey), para. 255.

² See, for example, 226th Report, Case No. 1170 (Chile), para. 384.

(2) Allegations concerning the National
Protest Day of 11 May 1983

615. With respect to the allegation concerning the trial of the leaders of the Confederation of Copper Workers for having organised and taken part in the National Protest Day on 11 May 1983, the Committee further notes the Government's statements and especially observes that it had released those concerned on bail. The Committee notes that on 23 September 1983, the Government withdrew the suit against them.

616. The Committee deplors the death of two persons during the day of national protest as a result of shots fired by the Chilean security services. The Committee notes that, according to the Government, the 14th Court of Criminal Investigation is looking into the responsibility of the presumed offenders and requests the Government to keep it informed on the results of the proceedings.

617. The Committee regrets that the Government did not reply to the allegation that during the National Protest Day on 11 May 1983, police repression resulted in hundreds of arrests and dozens of wounded. The Committee requests the Government to send its comments on this matter.

The Committee's recommendations

618. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) Concerning the allegation that the headquarters of the National Trade Union of Independent Craftsmen was broken into and that 15 trade union leaders and members had been arrested, the Committee draws the Government's attention to the fact that the right of the inviolability of union premises also necessarily implies that the public authorities cannot enter such premises without having obtained a corresponding legal warrant. The Committee also points out to the Government that the arrest of trade union leaders and trade unionists for taking part in trade union activities, even for a short period, constitutes an infringement of the principles of freedom of association. The Committee asks the Government to inform it whether all the trade union leaders and trade unionists mentioned by the complainants have already been released.

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- (b) The Committee considers that, by not allowing the public demonstration organised by the National Trade Union Co-ordinating Body in the Plaza de los Artesanos on 1 May or the public meeting organised by the Democratic Union of Workers, the Government infringed trade union rights.
- (c) The Committee deplores that the exercise of the right to demonstrate was repressed on 1 May in the Plaza de los Artesanos, by means of wide-scale arrests and physical assaults on the workers and trade union leaders. While regretting that the demonstrators had been physically assaulted, the Committee expresses its concern that, according to the complainants, a group of civilians were involved in violent action and co-ordinated with the police in breaking up a public meeting in the Plaza de los Artesanos. The Committee requests the Government to send it the judgements of the trial being held in relation with this group's activities.
- (d) The Committee requests the Government to inform it whether those persons arrested for having taken part in the demonstrations on 1 May have been released.
- (e) With respect to the allegation concerning the trial of the leaders of the Confederation of Copper Workers for having organised and taken part in a National Protest Day on 11 May 1983, the Committee notes the Government's statements and specifically observes that those concerned were released on bail. The Committee notes nevertheless that on 23 September 1983, the Government withdrew the suit brought against them.
- (f) The Committee deplores the death of two persons during the National Protest Day as a result of shots fired by the Chilean Security Services. In this respect, the Committee requests the Government to inform it of the judgement of the case being conducted at present.
- (g) The Committee deplores the fact that the Government did not reply to the allegation that police repression on the National Protest Day of 11 May 1983 resulted in hundreds of arrests and dozens of wounded. The Committee requests the Government to send its comments on this matter.

Case No. 1212

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE WORLD FEDERATION OF TRADE UNIONS,
THE WORLD CONFEDERATION OF LABOUR AND VARIOUS OTHER
TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF CHILE

619. The complaints received from the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Trade Unions (WFTU), the World Confederation of Labour (WCL), the National Confederation of Workers in the Building, Wood and Building Materials Industries and Allied Activities, and the Trade Unions International of Agricultural, Forestry and Plantation Workers are contained in communications dated 8, 16, 22 and 28 June and 5 July 1983, respectively. The ICFTU sent additional information and new allegations in communications dated 15 and 20 June, 11 July, 23 August and 13 October 1983. The WFTU also sent additional information in communications dated 23 June, 13 July and 20 October 1983, as did the National Confederation of Workers in the Building, Wood and Building Materials Industries and Allied Activities in a communication dated 6 July 1983. The Government replied in communications dated 23 June, 22 July, 14 September and 19 October 1983.

620. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1948 (No. 98).

A. The complainants' allegations

621. The complainants allege that at the beginning of May/June 1983, Rodolfo Seguel, President of the Confederation of Copper Workers, was attacked by individuals in a jeep who repeatedly rammmed the car in which he was travelling, in an attempt to push him off the road.

622. The complainants further add that on 14 June 1983, in response to an appeal from the leading democratic organisations belonging to the Chilean trade union movement, their members demonstrated peacefully in various areas of the country, denouncing the regime's reactionary, social and economic policy and making legitimate economic and social claims. The Chilean authorities' response to the second national day of protest - continue the complainants - was to launch a new wave of arrests, break into trade union premises and deploy forces on a wide scale. The severe measures of repression resulted in four deaths (including the youths Particio Yáñez and Leopoldo Segovia), six injured persons (of whom two

were seriously injured) and 58 arrests, including that of Rodolfo Seguel, President of the Confederation of Copper Workers (CTC), arrested on 15 June 1983 together with his driver in the house of a trade union leader of the Confederation of Copper Workers, after having been assaulted. According to the WFTU, as many as 600 persons were arrested.

623. In communications dated 20, 22 and 23 June 1983, the complainants point out that 20 trade union leaders and trade unionists are in detention and committed to trial; they belong to the CTC, the National Confederation of Building Workers and the Confederation of Agricultural Workers and, apart from Rodolfo Seguel, they include Hugo Estivaldez (Vice-President of the CTC), Carlos Opazo (President of the Agricultural Confederation "El Surco"), Sergio Troncoso (President of the National Confederation of Building Workers), Segundo Cancino, Sergio Villalobos, as well as the trade unionists Manuel Caro, Jorge Oróstica, Hernol Flores, Federico Mujica and Juan Mimitza. Their only crime is to have demanded that trade union and democratic rights be restored in the country. Furthermore, a considerable number of trade union leaders and thousands of workers (4,000 according to the ICFTU and 2,400 according to the WCL) in the copper sector had allegedly arrested and the main copper mines were occupied by the Armed Forces.

624. The complainants further allege that on 7 July 1983, members of the National Information Agency (CNI) broke into the premises of the National Trade Union Co-ordinating Body (CNS), stole furniture and equipment and abducted Marfa Rozas, Anselmo Navarrete, Luis Fuentealba, Patricia Miranda, Muriel Cornejo and Humberto Arcos, all CNS union leaders. Marfa Rozas and Anselmo Navarrete were allegedly brutally tortured and were in a serious physical condition. According to the complainants, Miguel Vega and Arturo Martínez, President and Vice-President of the CNS, respectively, have been in detention since 9 July 1983, as are three labour lawyers: Gabriel Valdez, José de Gregorio and Jorge Lavandero.

625. The complainants also allege the arrest on 21 June 1983 of Héctor Solís, President of the Metropolitan Trade Union of Excavators and Sewage Workers and Valentín Osorno, trade union leader. The latter, who was arrested by members of the CNI, was later banished, as was Sergio Troncoso, to a locality in the extreme south of the country. The complainants enclose written statements from those concerned, testifying that they were subjected to torture, especially beatings and electric shock treatment.

626. With particular respect to the allegations of torture, the ICFTU states that it sent a trade union mission to Chile between 21 and 24 July 1983. According to the ICFTU, this mission was able to prove that the regime's secret police (the National Information Agency) continues to subject prisoners to torture. This mission received first-hand evidence from María Rozas (trade union leader) and

Anselmo Navarrete (trade unionist) - who had just been released - and from Sergio Troncoso (trade union leader), who was still banished at the time. According to this evidence, the methods of torture used range from physical brutality, electric shock treatment, immersion in sewage, sleep deprivation, hypnosis, etc., to "refined" techniques of psychological torture.

627. The complainants allege that the trade union leader Rodolo Seguel had been arrested again upon an order from the Ministry of the Interior, this time in August 1983, for having protested against the social and economic, political and moral crisis reigning in the country. This trade union leader has allegedly gone on hunger strike to protest against his unfair arrest.

628. Furthermore, the ICFTU encloses information on arrests, trials and requests for the disqualification and dismissal of trade union leaders or workers.

629. Finally, the complainants allege in recent communications that on Friday, 7 October, Raúl Montecinos, trade union leader of the Salvador area and member of the National Council of the Confederation of Copper Workers, was abducted from a taxi while on his way to the headquarters of this Confederation in Santiago. The abductors, dressed as civilians but presumably members of the National Information Agency, forcefully pushed the trade unionist into another car in front of many witnesses. After being detained for many hours, he was left dying on a wasteland at the outskirts of Santiago. During his captivity, he had been brutally tortured and interrogated about his trade union activities. He was threatened by death if he continued with these activities. According to the complainants, Mr. Montecinos had also received death threats in the hospital to which he was later taken.

B. The Government's reply

630. With respect to the allegation that Rodolfo Seguel was attacked by persons travelling in a jeep, who repeatedly rammed into his car, the Government states that on 2 June 1983, between 9:30 and 10 a.m., Dr. Sergio Sebastiani, Director of the medical surgery "Confraternidad" (Brotherhood) in the town of San Bernardo, was driving along the north-south highway in a jeep to attend urgently to a sick patient; glancing into his rear-view mirror, he noticed another car flashing its lights at him to overtake. The doctor was unable to give way because there were other cars in the lane into which he would have had to turn. Suddenly, the car behind overtook the jeep and cut in in front of it. The doctor was annoyed by this and at the next traffic lights, he positioned himself behind the car which had overtaken him and, when it was time to go, he sounded his

horn repeatedly. As the car did not move forward, he pushed it 15 metres. The driver of the car then got out and started threatening Dr. Sebastiani. This was merely an incident between two drivers on a highway. Rodolfo Seguel, who at first denounced this incident as an "attack against his person", later retracted his statement and declared to the press that it had merely been "an annoying accident".

631. With respect to the alleged abduction of Rodolfo Seguel and his driver Hernán Garrido on 15 June 1983, the Government states that, as it has already pointed out in Case No. 1200, Rodolfo Seguel Molina was committed for trial for the role he had played in the events of 11 May 1983. In spite of the fact that he had been released on bail by the examining magistrate, Mr. Seguel continued to take an active part in the preparation of the demonstrations which took place on 14 June 1983; these demonstrations became violent at the hands of some apparently uncontrollable individuals, causing the death of four innocent persons and considerable damage to private property. Bearing in mind the nature of the events of 11 May, it was foreseeable that the same would happen on 14 June; however, Mr. Seguel committed the same offence. In view of the fact that release on bail is a favour granted to the accused and that it is annulled if he relapses into the same behaviour which prompted the initial proceedings, the examining magistrate revised his decision to allow Mr. Seguel to be released on bail and ordered that he should go to a pre-trial detention centre. On 19 July, the magistrate, granting a request from the defence counsel, released him on bail for the second time. From a legal point of view, Mr. Seguel's situation was as follows: the examining magistrate brought two indictments against the accused. The first concerned his alleged breach of section 12(2), of the State Security Act, respecting those who cause, incite or encourage the collective suspension or interruption of activities by calling stoppages or strikes in the public services or public utility sectors, as well as in the production, transport or trade sectors. Mr. Seguel was committed to trial on this account for his alleged role in the events which occurred on 11 May 1983. The second indictment, for his alleged role in the events which occurred on 14 June 1983, was brought against him because of his alleged breach of section 4, paragraph (c), of the State Security Act, with respect to those who conspire, agree to or encourage meetings aimed at overthrowing the established Government or plotting against its stability. On 30 August 1983, the examining magistrate ruled that the inquiry was over and declared the pre-trial proceedings closed. The Government points out that there was no question of abduction in this case and that Mr. Seguel's driver was released, hours later, once he had been questioned by members of the Police Department. The Government refers to the information it had given within the framework of Case No. 1200, stating that, as a proof of its good intentions, the Supreme Government, on 23 September 1983, waived the action brought against Mr. Seguel and other members of the Confederation of Copper Workers.

632. The Government points out that a third action was brought against Mr. Seguel for insulting the President of the Republic (section 6(b) of the State Security Act) and that the examining magistrate of the Court of Appeals charged him and ordered his pre-trial detention. Later, on 20 September 1983, the Supreme Government stayed the proceedings. There are therefore no charges or proceedings pending against Mr. Seguel for breach of the State Security Act.

633. Furthermore, the Government states that the incidents which occurred on 14 June 1983, which went beyond a peaceful demonstration, were aimed at subverting public law and order. Trade union leaders as such did not take part in these events, which did not take place for trade union reasons. They degenerated into acts of extreme violence, with physical assaults and serious damages to private property and public services, estimated to have amounted to approximately \$6 million. The allegation that 600 workers were arrested is untrue, since those arrested were hoodlums and delinquents who hurled stones at cars and smashed and looted shops on the outskirts of the town, taking away goods and items which, in one of the districts in question, was estimated by its owners to amount to US\$40,000.

634. The Government further adds that it is untrue that 4,000 workers in the copper mines were arrested, as alleged by the ICFTU or that 2,400 workers in the copper mines in El Salvador, Caletones and El Teniente were arrested, as stated for its part by the WCL. The Government states that the CODELCO firm had cancelled the labour contracts of several workers, dismissed on various grounds within the framework of the law, and these had included several trade union leaders. The Government points out that those dismissed had brought an action against the firm in the ordinary courts, requesting their reinstatement, and that no judgement had yet been made on this matter. Nevertheless, the CODELCO firm, at the request of the Government and trade union leaders, had accepted to set up committees to study the reinstatement of those dismissed. On 26 August, a committee was accordingly set up in the Andina Province and later in the other provinces.

635. The Government also denies the validity of the allegation that the main copper mines had been "occupied" by the Armed Forces. It cannot make out the relationship between freedom of association and a situation of this nature.

636. Concerning the death of several people, including the youths Patricio Yáñez and Leopoldo Segovia, and the injuries sustained by two people, the Government points out that they were not trade union leaders, neither were they involved in trade union activities. These people were victims of the extreme violence unleashed by groups of hoodlums who took advantage of the demonstration to commit all sorts of outrages and attack people and private property. The

above-mentioned events occurred in the evening of 4 June, after an ordinary work-day, in the outlying districts of the city. These tragic events, which the Government deplors and which the police were unable to prevent, do not, in its opinion, constitute in any way a violation of freedom of association. After making investigations, the ordinary criminal courts will be entrusted with identifying those responsible for these actions and applying penalties in accordance with the relevant legislation.

637. With respect to the banishment of trade union leaders and trade unionists to some localities, the Government states that Sergio Troncoso, Carlos Opazo and José Oróstica were arrested on 18 June 1983 for having repeatedly subverted public law and order and disturbing the peace within the country. Applications for amparo (enforcement of constitutional rights) for these three persons were lodged with the Santiago Court of Appeals but were rejected. On 23 June 1983, they were banished to the southern localities of Maullín, Chile Chico and Puerto Cisnes, respectively, for a maximum of 90 days authorised by law. In the case of Valentin Osorno B., Héctor Solís S., Sergio Cancino, Manuel Caro and Sergio de Jesús Villalobos, all were banished to various towns throughout the country, that is: Quellón, Curaco de Vélez, Chonchi, Achao, Quenchi, for the maximum of 90 days authorised by the law, for having subverted public law and order and disrupting peace within the country. Their arrest and subsequent banishment to towns throughout the country was in no way connected to their presumed trade union activities or decided upon because they were allegedly trade unionists.

638. Concerning the alleged arrest of Hernol Flores, Federico Mujica and Antonio Mimitza, the Government states that Hernol Flores was committed for trial for an suspected breach of section 11(2) of the 1958 State Security Act No. 12917), upon a decision by a magistrate of the Santiago Court of Appeal. The above-mentioned provision stipulates that those who cause, incite or encourage the collective interruption or suspension of national activities are liable to be prosecuted. While preparations were being made for his trial, Mr. Flores was released on bail. On 25 August 1983, the magistrate acquitted him, in a judgement of the first instance, of the charge that he had acted in breach of the State Security Act. On 29 August 1983, the Ministry of the Interior waived the application for appeal which it was entitled to do by law, thereby upholding the acquittal and depriving itself of any further appeal. As far as the other trade union leaders are concerned, Mr. Mimitza and Mr. Mujica, they were unconditionally discharged after having been questioned by the magistrate of Cerda.

639. The Government also states that the position of María Rozas Velásquez, José Anselmo Navarrete Pino, Luis Fuentealba Reyes, Patricia Miranda Verdejo and Muriel Cornejo Bustamante is as follows: on 7 July 1983, the above-mentioned were arrested and brought before the courts for breach of section 4, paragraphs (a) and (c), section 6,

paragraph (a) and section 11(2) of the 1958 State Security Act (No. 12927). These clauses stipulate that all those who cause or encourage the suppression of public law and order, conspire against the established Government, foster disturbances or acts of violence which disrupt public peace, as well as those who cause, incite or encourage the collective disruption or suspension of national activities, are liable to prosecution. The examining magistrate ordered that the above-mentioned persons should be detained while the preliminary investigations were being carried out; on Saturday 16 July 1983, he ordered their unconditional release due to lack of evidence. On the morning of 19 July 1983, they held a press conference to thank those who had supported them. The allegation that these persons were in hospital and in serious physical condition is therefore unfounded. After the magistrate had received the report from the prosecutor of the Court of Appeal, he ruled that the case should not be continued in view of the fact that at the end of the preliminary investigations there were no detainees or accused persons and no charges had been brought against anyone.

640. The Government further adds that the position of Miguel Vega, Arturo Martínez, Humberto Arcos, Gabriel Valdez, José de Gregorio and Jorge Lavandero is as follows: Miguel Vega, Arturo Martínez and Humberto Arcos are not in detention. They gave evidence, as witnesses, at the trial against María Rozas, Jose Navarrete, Luis Fuentealba, Patricia Miranda and Muriel Cornejo. As far as Gabriel Valdez, José de Gregorio and Jorge Lavandero are concerned, they are not labour attorneys but well-known leaders of a political party and are free. One of them held a ministerial post in a previous government and another an electoral position. A magistrate of the Court of Appeal had brought charges against them for an alleged breach of the State Security Act. On 13 July 1983, the Court of Appeal accepted an application for amparo for these persons and granted them an unconditional release due to lack of evidence. This ruling by the Court of Appeal was later confirmed by the Supreme Court of Justice, the highest court in the Republic.

C. The Committee's conclusions

(1) Allegations concerning the repression of the demonstrations held on the second National Protest Day on 14 July 1983

641. Concerning the death of four people and the injuries sustained by other persons, the Committee notes that, according to the Government, these occurred as a result of the extreme violence unleashed by groups who took advantage of the demonstration to carry out attacks on individuals and private property. The Committee notes that the investigations into these events will be carried out through

the ordinary legal channels. Whilst deeply deploring these deaths and the physical assaults which took place, the Committee requests the Government to inform it of the findings of the investigation carried out in this respect.

642. With respect to the allegations of arrests, the Committee notes that the Government denies that 600 workers were arrested and maintains that the arrests made concerned hoodlums and delinquents who had thrown stones at vehicles and smashed and looted shops.

643. The Committee notes that, according to the Government, the trade union leaders and trade unionists, Sergio Troncoso, Carlos Opazo, José Oróstica, Valentín Osorno, Héctor Solís, Sergio Cancino, Manuel Caro and Sergio Villalobos, were arrested and subsequently banished to various localities through the country for having subverted public law and order and disrupting peace within the country. As the Government had failed to list the actual deeds allegedly committed by these persons and limited its comments to stating in general terms that the measures taken against them were unrelated to their trade union activities, the Committee must express its regret at such measures and draws the Government's attention to the fact that measures depriving persons of their freedom and imposing sanctions such as banishment by the administrative authorities for trade union reasons constitute a violation of the principles of freedom of association; it also considers it unacceptable that sanctions of this type should be imposed by administrative action.

644. The Committee further notes that, according to the Government, the trade unionist Hernol Flores, prosecuted for breach of section 11(2) of the State Security Act (incitement to disrupt or suspend national activities), was acquitted on 25 August 1983 by the judicial authorities. The Committee also notes that the trade unionists Federico Mujica and Juan Mimitza were granted an unconditional release after being questioned by the judicial authorities. The Committee notes that although the Government declared that Mr. Flores was released on bail, it did not deny that he had been banished in the first place; neither did it deny that Mr. Mujica and Mr. Mimitza had been arrested. As the judicial authorities did not uphold any charges against these trade unionists, the Committee must regret that they were deprived of their freedom and draws the Government's attention to the fact that the arrest of trade union leaders and trade unionists for trade union reasons constitutes a violation of the principles of freedom of association.

645. Furthermore, the Committee asks the Government to send its comments on the trial and/or the arrest of the 12 union leaders and five trade unionists mentioned in Annex 1.

- (2) Allegations concerning the forced entrance into the premises of the National Trade Union Co-ordinating Body (CNS) on 7 July 1983, during which furniture and equipment were stolen and eight CNS leaders and three labour legal advisers were arrested

646. The Committee notes that, according to the Government, Gabriel Valdez, José de Gregorio and José Lavandero are not labour attorneys but leaders of a political party and that the trade union leaders Miguel Vega, Arturo Martínez and Humberto Arcos are not in detention but gave evidence at the trial against other CNS leaders. The Committee further notes that, according to the Government, Marfa Rozas, José Anselmo Navarrete, Luis Fuentealba, Patricia Verdejo and Muriel Cornejo Bustamante were arrested and brought before the courts on 7 July 1983 for violation of the State Security Act and that they remained in detention until 16 July, upon which date the examining magistrate stayed the investigation on the case and granted the accused an unconditional discharge due to lack of evidence. In these circumstances, as the judicial authorities did not uphold any charges, the Committee regrets the arrest of these five trade union leaders and reiterates the principles underlined above.

647. The Committee notes that the Government has not replied to the allegation concerning the forced entrance into the CNS premises and the theft of furniture and equipment and requests it to send its comments on this matter.

- (3) Allegations of torture

648. The complainants allege that María Rozas (trade union leader) and José Anselmo Navarrete (trade unionist) were brutally tortured and were in a serious physical condition. According to the complainants, the trade union leader Sergio Troncoso had also been tortured. The Committee notes these allegations as well as the information provided by the ICFTU mission to Chile concerning the allegations of torture.

649. In this respect, the Committee notes that the Government limited its comments to stating that María Rozas and José Anselmo Navarrete - released on 16 July 1983 - held a press conference on 19 July 1983 to thank those who had supported them and that, consequently, the allegation that these persons were in hospital and in a serious physical condition was devoid of truth.

650. The Committee is of the opinion that the Government has not provided adequate detailed information on the allegations of torture to which María Rozas, José Anselmo Navarrete and Sergio Troncoso were supposedly subjected when in detention. Therefore, as on previous occasions, whilst expressing its serious concern at the detailed

allegations of torture submitted by the complainants, in particular the information communicated by the ICFTU mission to Chile, the Committee requests the Government to undertake a prompt and independent legal investigation of the alleged cases of torture (especially concerning the three persons mentioned above), with a view to elucidating the facts in full, to identifying the persons responsible and to taking proceedings against them, as well as to keep it informed of the outcome of its investigations.¹

651. The Committee also requests the Government to send as soon as possible its comments on the recent allegations of abduction, torture and death threats to which Raúl Montecinos, CTC leader, was subjected on 7 October 1983 and who is presumably in hospital at the moment.

(4) Allegations concerning the arrest of a large number of trade union leaders and thousands of workers in the copper sector

652. The Committee expresses its grave concern that, according to the complainants, the CODELCO firm dismissed 34 trade union leaders in the copper sector, requested on 17 May 1983 the disqualification as trade union leaders of 11 of them (and subsequently that of eight others) and also dismissed thousands of workers (more than 4,000 according to the ICFTU; more than 2,400 according to the WCL). The Government stated that it was untrue that it had dismissed either 4,000 or 2,400 workers. According to the Government, the CODELCO firm had cancelled the labour contracts of several workers, dismissed on various grounds within the framework of the law, amongst whom there had been several trade union leaders. The Government also stated that, upon request from several trade union leaders, the CODELCO firm had agreed to set up committees to study the reinstatement of those dismissed, and that several of these have already been set up. In this respect, the Committee regrets that the Government has not given the exact number of the trade union leaders and workers affected by the measures of anti-union discrimination alleged by the complainants in spite of the fact that the latter had submitted the names of the trade union leaders concerned.

¹ See, for example, 213th Report, Case Nos. 954, 957, 975, 978 and 1026 (Guatemala), para. 56; 207th Report, Case Nos. 997 and 999 (Turkey), para. 304; and 208th Report, Case No. 1007 (Nicaragua), para. 387.

653. The Committee considers that there is substantial evidence to suggest that the alleged dismissals and requests for the disqualification of trade union leaders, as well as the dismissal of thousands of workers, were of an anti-trade union nature. Firstly, this would seem to be supported by the high number of trade union leaders dismissed (34 according to the complainants, a figure which was not expressly refuted by the Government) or those affected by requests for disqualification; secondly, by the extremely high number of workers allegedly dismissed and by the fact that, although the Government had denied that there were 4,000 or 2,400, it had not given exact figures; thirdly, considering that the measures in question were taken during the same period, when there had been many collective protest demonstrations held by the trade union movement.

654. The Committee therefore requests the Government to take all the necessary measures to ensure that the dismissed trade union leaders be reinstated to their jobs as soon as possible, that the CODELCO firm abandons the legal proceedings it has instituted to disqualify the trade union leaders from office and that all those workers who have been dismissed for trade union reasons should be reinstated. The Committee asks the Government to keep it informed on this matter.

(5) Allegations concerning Rodolfo Seguel Molina,
President of the Confederation of Copper
Workers

655. With respect to Mr. Seguel, the complainants presented the following allegations:

- the attack against the car in which Mr. Seguel was driving (2 June 1983);
- his trial in connection with the first National Protest Day (11 May 1983), under the State Security Act (cf. Case No. 1200);
- his trial in connection with the second National Protest Day (14 June 1983) on the basis of the same Act; and his arrest on 15 June 1983, together with his driver, after having been attacked while at the home of a CNS leader;
- his trial and arrest in August 1983, also under the State Security Act, for having protested against the social and economic, political and moral crisis reigning in the country. Because of this, Mr. Seguel began a hunger strike;
- his dismissal by the CODELCO firm which had also instituted legal proceedings for his disqualification from holding office as a trade union leader.

656. The Committee notes that the alleged attack against the vehicle in which Mr. Seguel was driving on 2 June 1983 was a mere incident between drivers, unrelated to freedom of association. The Committee also notes that Mr. Seguel's driver was released on 15 June 1983, hours after having been arrested, once having been questioned. The Committee regrets that the Government did not provide information concerning the ill-treatment to which Mr. Seguel and his driver were allegedly subjected during their detention. With respect to the action brought against Mr. Seguel for having insulted the President of the Republic, the Committee notes that neither the complainants nor the Government provide sufficiently detailed information to enable the Committee to come to a decision on this matter in full knowledge of the facts.

657. The Committee notes that the Government has waived the three actions brought against this trade union leader for breach of the State Security Act. However, the Committee notes that the President of the Confederation of Copper Workers of Chile was held in preventive detention from 15 June to 19 July 1983 on the grounds that, according to the Government, he had played an active part in preparing and inciting the events which occurred on 14 June 1983 (second National Protest Day). The Government also pointed out that Mr. Seguel was tried for his presumed responsibility in the occurrences of 14 June 1983 and, more specifically, for alleged breach of section 4, paragraph (c) of the State Security Act (respecting those who conspire, agree to or encourage meetings aimed at deliberately overthrowing the established Government or plotting against its stability). For their part, the complainants alleged that the second National Protest Day was organised by the main democratic organisations within the trade union movement (a point which was not denied by the Government) and that the aim of this day of protest had been to denounce the Government's economic and social policy.

658. The Committee therefore concludes that the second National Protest Day and, more specifically, Mr. Seguel's actions, correspond to trade union activities. Consequently, the Committee regrets that he was committed to that and held in preventive detention for more than one month. From a more general point of view, the Committee notes that Mr. Seguel was dismissed by the CODELCO firm and that this firm has instituted legal proceedings for his disqualification from holding office as trade union leader (see Annex II of the present report); it also notes that an action was brought against him for his participation in the first National Protest Day (see Case No. 1200). The Committee deduces from all these points that Mr. Seguel, one of the leading trade union leaders in the country, has been the subject of a serious case of anti-trade union discrimination.

The Committee's recommendations

659. In these circumstances, the Committee recommends the Governing Body to approve this interim report, in particular the following conclusions:

- (a) The Committee deeply deplores the four deaths and physical assaults which occurred on 14 June 1983 (second National Protest Day).
- (b) The Committee regrets the arrest of 16 trade union leaders or trade unionists and the banishment, by administrative action, of eight of them. The Committee draws the Government's attention to the fact that such measures, taken for trade union reasons, constitute a violation of the principles of freedom of association; it also considers it unacceptable that sanctions of this nature be imposed by administrative action.
- (c) The Committee expresses its grave concern at the detailed allegations of torture submitted by the complainants and requests the Government to undertake a prompt and independent judicial investigation of the alleged cases of torture (especially with respect to María Rozas, Sergio Troncoso - both trade union leaders - and José Anselmo Navarrete - trade unionist) with a view to elucidating the facts in full, to identifying the persons responsible and to taking proceedings against them.
- (d) The Committee asks the Government to take all the measures necessary to ensure that the dismissed trade union leaders (34 according to the complainants) are reinstated as soon as possible in their jobs, that the CODELCO firm abandons the legal proceedings it has instituted to disqualify trade union leaders from holding office and that it reinstates all those workers who have been dismissed for trade union reasons.
- (e) With respect to the allegations concerning Mr. Seguel, President of the Confederation of Copper Workers, the Committee notes that the Government has waived the three legal actions it brought against him. Nevertheless, the Committee regrets that Mr. Seguel was preventively detained for more than one month for having taken part in the second National Protest Day. From a more general point of view, taking into account all the allegations concerning this trade union leader made within the context of the present case or Case No. 1200, the Committee is of the opinion that Mr. Seguel, one of the leading trade union leaders in the country, has been the subject of a serious case of anti-trade union discrimination.

(f) The Committee asks the Government:

- (i) to send it the findings of the investigations carried out by the normal legal channels into the four deaths and physical assaults which occurred on 14 June 1983 (the second National Protest Day);
- (ii) to send its observations on the trial and/or arrest of the 12 trade union leaders and the five trade unionists mentioned in Annex I;
- (iii) to send its observations on the allegation that the premises of the National Trade Union Co-ordinating Body were broken into and that furniture and equipment were stolen;
- (iv) to send its observations as soon as possible on the recent allegations concerning the abduction, torture and death threats against Paúl Montecinos, CTC union leader, on 7 October 1983, who is presumably in hospital at the moment;
- (v) to inform it of the results of the judicial investigations underway into the alleged cases of torture, in particular, regarding María Rozas, Sergio Troncosco - both trade union leaders - and José Anselmo Navarrete;
- (vi) to inform it of the measures taken to put an end to the acts of anti-union discrimination taken against trade union leaders and workers.

ANNEX I

Information on trade union leaders and trade unionists charged by the Government or brought to trial

Name	Organisation	The Government's charge ¹	Brought to trial for ¹	Situation of trial as at 14 August 1983	Penalty required by the Government	Penalty liable to be given at the moment
Carlos Ogalde	CTC leader	s.11(2), s.4, paras. (a) and (c) and s.6, para. (a)	unconditional release, at present	-	-	-
Leonel Abarca	CTC leader	idem	unconditional release, at present	-	-	-
Luis Morgado	CTC leader	idem	unconditional release, at present	-	-	-
Rubén Rivera	CTC leader	idem	unconditional release, at present	-	-	-
Sergio Barriga	CTC Salvador Area Chairman	s.11(2) s.4, paras. (a) and (c)	s.11(2)	Imprisoned 2 days, now released on bail	5 years	3 years
José Escobar	Industrial trade unionist of the CTC Salvador	idem	s.11(2)	Imprisoned 4 days, now released on bail	5 years	3 years
Egidio Macías	Industrial trade unionist of the Salvador CTC	idem	s.11(2)	Imprisoned 4 days, now released on bail	5 years	3 years
Gustavo Rivera	Industrial trade unionist of the Salvador CTC	idem	s.11(2)	Imprisoned 4 days, now released on bail	5 years	3 years
Sabino Pérez	Occupational trade unionist, Salvador CTC leader	idem	s.11(2)	Imprisoned 6 days now released on bail	5 years	3 years

ANNEX I (contd.)

Name	Organisation	The Government's charge ¹	Brought to trial for ¹	Situation of trial as at 14 August 1983	Penalty required by the Government	Penalty liable to be given at the moment
Nelson Rivera	Trade union leader, Salvador CTC	idem	s.11(2)	Imprisoned 4 days, now released on bail	5 years	3 years
Marcos Aguilera	Worker member of the Salvador Occupational Trade Union	idem	s.11(2)	Imprisoned 6 days, now released on bail	5 years	3 years
Hugo Alamiz	Worker member of the Salvador Occupational Trade Union	idem	s.11(2)	Imprisoned 6 days, now released on bail	5 years	3 years
Eugenio López	El Teniente Area Chairman	s.11(2), s.4, paras. (a) and (c)	Unconditional release	Imprisoned 2 days	-	-
Eduardo Díaz	El Teniente Area Secretary	idem	idem	Imprisoned 2 days	-	-
Juan Meneses	Chairman of Industrial Union, Sewell Mina CTC	idem	idem	Imprisoned 2 days	-	-
Juan Marambio	Industrial Union Leader, Sewell and Mina	idem	idem	Imprisoned 2 days	-	-
Marcos Molina	Secretary of Industrial Union Caletones	idem	idem	Imprisoned 2 days	-	-

¹ Typical actions sanctioned by the State Security Act are the following: encouragement of work stoppages (section 11(2); incitement to revolt to overthrow the Government (section 4, para. (a)); the convening of meetings and conspiring to overthrow the Government (section 4, para. (a)); the causing of disturbances or acts of violence which disrupt public law and order (section 6, para. (a)); bringing into the country, hoarding, distribution or transport of arms, munitions, projectiles, explosives, poison or tear gas, as well as any other similar equipment, to commit any of the crimes sanctioned under the State Security Act (section 6, para. (g)). The penalties laid down for these offences range from 541 days of imprisonment to punishment and life imprisonment.

ANNEX II

1. Legal proceedings instituted by the CODELCO firm on 17 May 1983, for the disqualification from holding office for three years of trade union leaders in the copper sector, following the first national day of protest

(a) In Chuquicamata (Court of Calama)

Carlos Ogalde - Treasurer of the CTC

Ramiro Vargas - Chairman of the Chuquicamata Area

Nicanor Araya - Chairman of the Chuquicamata Industrial Union

Fredy Hinojosa - Leader of the Chuquicamata Industrial Union

(b) In Salvador (Court of El Salvador)

Serio Barriga - Chairman of the Salvador Area

Rubén Rivera - National CTC leader

José Escobar - Leader of the Salvador Industrial Union

Sabino Páez - Leader of the Salvador Occupational Union

Raúl Montecinos - National CTC Union

Nelson Rivera - Leader of the Salvador Occupational Union

(c) In Chañeral (Court of Chañeral)

Roberto Carvajal - Secretary General of the CTC

(d) In Los Andes (Court of Los Andes)

Ricardo Opazo - Treasurer of the Andina Occupational Union

Rafael Gutiérrez - Leader of the Andina Occupational Union

Sergio Neira - Chairman of the Andina Industrial Union

José Pérez - CTC National Leader

(e) In Rancagua (Court of Rancagua)

Rodolfo Seguel - President of the CTC

Manuel Rodríguez - CTC National Leader

Armando Garrido - Leader of the Caletones Industrial Union

Eugenio López - Chairman of the El Teniente Area

2. Leaders in the copper sector dismissed
by the CODELCO firm

Andina Area

(a) Andina Employees' Union

Hugo Estivales Sánchez

Rafael Gutiérrez Briceño

Ricardo Opazo Varetto

(b) Andina Industrial Union

Carlos Valdivia Campos

Sergio Neira Paredes

Nicolás Manque Olivares

José Pérez Ahumada

Clodomiro Vásquez Contreras

El Salvador Area

(a) Potrerrillos Occupational Union

Víctor López Rivera

Luis Pizarro Castillo

Manuel Correa Bravo

(b) Llanta Union (No. 1)

Roberto Carvajal Mieres

(c) El Salvador Industrial Union

José Escobar Rojas

Rubén Rivera Suárez

Gustavo Rivera Suárez

Egidio Masfías Herrera

Raúl Montecinos Rosales

(d) El Salvador Occupational Union

Sergio Barriga Cortez

Nelson Rivera Valderrama

Crostring Yáñez Segovia

Sabino Páez Castillo

Juan Luan Cortés

El Teniente Area

(a) Sewell and Minas Occupational Union

Enés Zepeda Vicencio

Víctor Herrera Acevedo

Arturo Vera Mauro

(b) Sewell and Minas Industrial Union

Juan Meneses Campos

Manuel Ahumada Medina

Eugenio López López

Leonel Abarca Quinteros

(c) Galetones Occupational Union

Eduardo Díaz Solís

Rodolfo Seguel Molina

(d) Galetones Industrial Union

Manuel Rodríguez Echeverri

Rodemil Aranda Flores

Marcos Molina Catalán

Case No. 1187

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION
OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF IRAN

660. By a communication dated 16 March 1983, the International Confederation of Free Trade Unions (ICFTU) presented a complaint of violations of trade union rights in Iran. The Government replied in a communication dated 30 May 1983.

661. Iran has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

662. The ICFTU alleges mass arrests and dismissals of workers in the car factories of Pars/General Motors, Khavar/Mercedes Benz, Zannyad/Japanese cars, Khodrosazan, Volvo, Zaipa, Kaveh lorries and other factories as a result of protests and strikes over a Government circular increasing working hours to 44 per week and declaring Thursday - formerly a day off - as a normal working day.

663. The complainant cites the specific example of the Pars Factory where 1,700 workers held a strike and demonstration on 22 April 1982 also over the issue of the regime's organs of suppression in factories called "Islamic Societies". According to the complainant, five units from the Prosecutor's Office accompanied by armed guards arrived at the site and, while continuously firing into

the air, they wounded, beat and arrested the workers. Also arrested were the factory's production manager and the heads of the administrative, laboratory and inspection units. According to the complainant, arrests continued over the next few days and some of the workers are held in Tehran's Evin Prison, while others are in the Prosecutor's Office section of the Ministry of Labour. The complainant supplies a list of the names of 44 arrested workers (see Annex).

664. The second example cited by the complainant is the strikes in the Telecommunications Office which began on 12 May 1982, starting in one area office and soon spreading to all regions. According to the complainant, on 16 May armed guards raided the offices and arrested a large number of staff who were then sent to Evin Prison.

665. Finally the complainant alleges that the Government dissolved on 28 July 1982, the following seven trade unions of the Greater Teheran Region: Union of Construction Workers, Union of Structural, Central Heating and Air Conditioning Workers, Union of Carpenters, Frame-makers, Wire Drawers and Concrete Workers, Union of Building Painters, Union of Bookshop Employees and Workers in Related Workhouses, Union of Woodworkers and Carpenters and the Union of Professional and Amateur Photographers. Since then a further eight unions have been dissolved: Union of Crystal Workers, Union of Welders and Metalworkers, Union of Confectionery Workers, Union of Drivers and Co-drivers of light and heavy lorries, Union of Workers in the Cereal and Dried Fruits Industry (all these unions operated in the Tehran region), Union of Pipeline, Communications and Structural Workers, Union of Stonecutters, Union of Meat Traders (these three unions operated in the Shakir-e-Rey region).

B. The Government's reply

666. In its communication of 30 May 1983, the Government states that the alleged issue behind the demonstrations and strikes, namely increased working hours, is ill-founded because working hours numbered 48 per week under the former regime and were reduced to 44 by an announcement of the Islamic Revolution Council dated 14 June 1980. In addition, claims the Government, under the Labour Code, Fridays have always been the weekly rest day of workers, in addition to which - depending on agreement between the workers and employers - Thursdays or every other Thursday in a month can also be taken as a holiday. The Government denies that any circular contrary to this state of affairs has been issued.

667. According to the Government, the disturbances in the Pars Factory involved a few so-called workers (not the 1,700 stated by the complainant) and were not related to hours of work. It was rather a

group of terrorists, which intended to close the factory and prevent production by starting a disturbance. The Government stresses that the judiciary of the Islamic Republic of Iran will oppose any groups of opportunists and agencies attached to foreign governments which attempt to cause disturbances and stoppages of work in production, industrial or agricultural units.

668. The Government states that the people listed as Nos. 3, 4, 6, 7, 11, 13, 19, 20, 26, 32, 33, 36, 39, 42 and 44 in the Annex were arrested on charges of backing and participating in disturbances and of relations with "illegal" terrorist groups. After trial and sentencing by the courts, they were expelled from the factory. According to the Government, the remaining 29 persons listed by the complainant are still employed at the factory.

669. Regarding the alleged interference at workplaces by the Government through the "Islamic Associations", the Government states that these bodies were formed after the Revolution to lead and give religious and cultural guidance to the workers. It points out that the "Islamic Councils" were formed to protect the rights of the workers by participating in the decision-making process and co-operation with the management. According to the Government, both bodies developed of and by themselves within the factories and their members are freely elected from among the workers; through these bodies steps have been taken towards the cultural, welfare and professional affairs of the workers. In addition, the Government states that every worker can use the Islamic Councils to enforce his rights or can act individually, and therefore Iran does not need strong security forces as is indicated in the complaint. It claims that the workers themselves will not allow any disturbances, disorder or chaos on the part of elements attached to foreign powers and they themselves take care of any thing or person which tries to prevent production or stops work.

670. As regards the strike in the Telecommunications Office and the consequent arrest of a large number of employees, the Government states that this allegation is without any foundation in fact.

671. The Governments states that the trade unions listed by the complainant were dissolved and the activities of their Executive Boards declared to be illegal because the legal terms of the Executive Boards had expired and no new elections had been held. The Government points out generally that if any trade union violates its legal duties and the laws of the country, its illegal activities will be prevented and it may be dissolved.

C. The Committee's conclusions

672. The Committee notes that this case concerns allegations of arrests and dismissals of workers after strike action in April and May 1982 and the dissolution by administrative authority of 15 named trade unions since July 1982.

673. The Committee also notes the Government's detailed statements describing the actual strike issues - hours of work and days off, and the role of Islamic Societies in factories - which are given as background information to the labour disputes issue which is the subject of specific allegations concerning arrests and dismissals in this case.

674. As regards the arrest by security forces of 44 named workers after strike action in the Pars/General Motors Factory on 22 April 1982, the Committee notes the Government's statement that 15 of them were arrested and tried on charges of leading and participating in disturbances and of relations with illegal terrorist groups and were subsequently dismissed. As this information stands in direct contradiction to the allegation that the arrests were due to strike action, and as neither the complainant nor the Government supply more detailed evidence or information in support of their assertions, the Committee would recall that in cases of work stoppages intervention by security forces should be limited to the maintenance of public order.¹ Furthermore, the Committee has stated in the past² that arrests and dismissals of strikers on a large scale involve serious dangers of abuse and place freedom of association in grave jeopardy.

675. The Committee would point out that it considers the right to strike as being one of the principle means available to workers to defend their economic and social interests, and in this connection, it notes that section 27(c) of the Iran Labour Code, 1959 as amended, lists among the main rights and functions of trade unions, federations and confederations "the defence of the occupational rights and interests of their members".

¹ See, for example, 218th Report, Case No. 958 (Brazil), para. 411.

² See, for example, 211th Report, Case No. 1024 (India), para. 529.

676. The Committee notes that while the other 29 named workers are still employed at the workplace concerned, the Government does not reply to the allegation that these workers were arrested after the strike action in April 1982. The Committee therefore asks the Government to send its observations as soon as possible on this allegation.

677. As regards the dissolution of 15 named trade unions by administrative action, the Committee notes the Government's statement that the activities of their Executive Boards were declared to be illegal and the organisations dissolved for failure to comply with the national laws i.e. failure to hold new elections before the expiry of the legal mandate of the various Boards. The Committee observes, however, that the Labour Code makes no mention of dissolution of workers' organisations for such omissions. It would accordingly draw the Government's attention to the importance of the principle of freedom of association according to which workers' organisations should not be dissolved or suspended by administrative authority.¹ It would request the Government to rescind the dissolution orders and asks it to keep the Committee informed of any steps taken to this end.

The Committee's recommendations

678. In these circumstances, the Committee recommends the Governing Body to approve this interim report, in particular the following conclusions:

- (a) As regards the arrest and dismissals of 15 named workers after strike action in April 1982, the Committee, while noting the contradictory reasons for the arrests given by the Government and the complainant, can only recall that during cases of work stoppages the intervention by security forces should be limited to the maintenance of public order. Furthermore, it recalls that the arrests and dismissals of strikers on a large scale involve serious dangers of abuse and place freedom of association in grave jeopardy.
- (b) As regards the alleged arrest of 29 other named workers as a consequence of the same strike action in April 1982, the Committee notes that the Government does not deny that they were

¹ See, for example, 222nd Report, Case No. 1037 (Sudan), para. 176.

arrested, at that time, but merely states that they are still employed at the workplace concerned. It accordingly asks the Government to supply its observations on this aspect of the case as soon as possible.

- (c) As regards the dissolution by administrative authority of 15 named trade unions since July 1982, the Committee observes that, despite the Government's statement that such action was due to non-compliance with national laws concerning the holding of trade union elections, no such provision appears in the Labour Code. The Committee accordingly draws the Government's attention to the principle that workers' organisations should not be dissolved or suspended by administrative authority; it requests the Government to rescind the dissolution orders and to keep the Committee informed of any steps taken to this end.

ANNEX

List of workers allegedly arrested during
the strike in the Pars Factory on 22 April 1982

1. Hassan Fashtootia - Saloon cars section
2. Mohsen Hefazat - Industrial engineering section
3. Mehdi Arnaghy - Laboratory section
4. Abdolhamid Kamali - Quality control section
5. Hossein Rajabi - Quality control section
6. Mehdi Gharbi - Administrative section
7. Massoud Khosh-Naghsh - Quality control section
8. Noor-Ali Ramezan-Nezhad - Saloon cars section
9. Esmaeel Ghassemi - Trucks section
10. Mohammad Shaikhlor - Truck maintenance
11. Saeed Maali - Engineering section
12. Akbar Khosravi - Filing office
13. Hossein Ranjbar - Quality control section

14. Mohammad Malek-Mohammadi - Security guard
15. Massoud Ebrahimi - Specification department
16. Farrokh Mohammad-Ghardavi - Inspection
17. Mir-Ali Missaghi - Painting section
18. Mohammad-Reza Ghalch - Heavy press section
19. Mohammad Moradi - Production engineer
20. Massoud Sattarian - Accountant
21. Firooz Rezakhani - Transport of raw materials
22. Arayesh - Press section
23. Majid Vossooghifar - Accountant
24. Gholam-Reza Hosseini - Press section
25. Khanagha Soleimani - Discs section
26. Ali-Asghar Shamloo - Cadillac cars
27. Abolghassem Sarem - Trucks section
28. Ghassem Dorsar-Nezhad - Discs section
29. Abdollah Agari - Spare-parts sales department
30. Ali Ghoraeeeloo - Discs chassis section
31. Mohammad-Esmaeel Golbarg - Internal transport
32. Majid Soltanzadeh - Supply section
33. Ebrahim Javanbakht - Discs and truck production
34. Esmaeel Nademinezhad - Discs section
35. Seyyed Jan-Ali Tahmasbi - Trucks section
36. Ali-Asghar (surname unspecified)
37. Sharam (surname unspecified) - Accountant
38. Mohammad-Hassan (surname unspecified) - Press section
39. Massoud Hojjatt-Panah - Production engineer

40. Ghassem Mojarrad - Production engineer
41. Parviz Vadood - Internal transport
42. Mohammad-Ali Shojaii - Discs section
43. Fatemeh (surname specified) - Industrial engineer
44. Shahla (surname unspecified) - Administrative section

Case No. 1189

COMPLAINTS PRESENTED BY THE PUBLIC SERVICES INTERNATIONAL
AND THE ORGANISATION OF AFRICAN TRADE UNION UNITY
AGAINST THE GOVERNMENT OF KENYA

679. A complaint was presented by the Public Services International (PSI) on 22 March 1983. The PSI sent additional information in a letter dated 12 April 1983. On 24 August 1983 the Organisation of African Trade Union Unity (OATUU) also submitted a complaint against the Government of Kenya of violations of trade union rights.

680. The Government in a letter dated 10 June 1983, transmitted certain information in connection with the complaint.

681. Kenya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor has it ratified the Labour Relations (Public Service) Convention, 1978 (No. 151). It has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

682. The complainants point out that the matters raised in this case are a continuation of a previous complaint against the Government of Kenya, Case No. 984, which was examined by the Committee in its 208th and 214th Reports.¹ The previous case referred to the

¹ See, respectively paras. 310 to 323 and paras. 281 to 290.

de-registration of the Union of Kenya Civil Servants and the freeze and seizure of its assets, and the dissolution of the Union of University Workers. Subsequently, another body to represent Kenya civil servants (called the Kenya Civil Servants Association) was registered under the Societies Act, 1962 (as amended). In March 1982, the Governing Body approved the Committee's definitive conclusions. The Committee took note of the registration of the new body to represent Kenya civil servants under the Societies Act, and also of the fact that efforts were being made to create, again under the Societies Act, a similar organisation to represent university workers. The Committee requested the Government to keep it informed of further developments regarding this matter.

683. Meanwhile, these complaints, dated 22 March and 24 August 1983, were presented by the PSI and the OATUU concerning the de-registration of the Kenya Civil Servants Association on 17 February 1983 and the Government's request to the union for a list of all its assets with a view to their disposal. The OATUU further alleges that the Government has not made any statement as to whether workers are allowed to form a union or an association with negotiating powers as stipulated under the Kenya Trade Union Act. In addition, from copies of correspondence supplied by the the OATUU, it would appear that in addition to officially ordering the cancellation of the registration of the organisation of civil servants, the Registrar, in a letter to the organisation, requested a list of all the assets of the organisation with a view to their disposal. The PSI supplies a copy of the notice of dissolution (published in the Government Gazette of 18 March 1983) and stresses, in its further communication, that no official decision has been given for this arbitrary action.

B. The Government's reply

684. In its letter of 10 June 1983, the Government states that following the recent discussions between the Deputy Director-General of the ILO, Mr. Bolin, and the President of Kenya, there was a favourable prospect for the re-registration of the association, subject to minor modifications of the constitution which is currently being worked out. The Government points out that it is making efforts to have this matter resolved in this direction and undertakes to keep the Committee informed of any developments.

C. The Committee's conclusions

685. The Committee observes that the question of the de-registration in 1980 of the Union of Kenya Civil Servants was already examined in Case No. 984 in which definitive conclusions were reached. The present complaints relate to the de-registration in 1983 of the Kenya Civil Servants' Association, the organisation which replaced the Union of Kenya Civil Servants, and the disposal of its assets.

686. The Committee notes the Government's statement that there is a favourable prospect for the re-registration of the association that was recently de-registered, subject to minor modifications of the constitution which is currently being worked out. The Committee also notes the Government's statement that it is making efforts to have this matter resolved in this direction. In this connection, the Committee would point out that the cancellation of registration by the Registrar of Trade Unions of an organisation is tantamount to the suspension or dissolution of that organisation by administrative authority, a measure which is incompatible with the principle that workers' and employers' organisations shall not be liable to be dissolved by administrative action. The Committee hopes that the efforts mentioned by the Government will result in the free establishment by the workers concerned as soon as possible of an organisation to represent their interests. It requests the Government to transmit precise information concerning the re-establishment of the organisation of civil servants.

687. As regards the question of the distribution of the assets of the de-registered association, the Committee considers that steps should be taken to allow the workers concerned to create a new organisation of their own choosing, to to which the assets could eventually be handed over or with which they could remain. The Committee has taken the view that, in the dissolution of an organisation, its property should be transferred to unions which pursue the aims for which the dissolved union was voluntarily established, and which pursue them in the same spirit. The Committee requests the Government to supply information on any measures taken concerning this issue.

The Committee's recommendations

688. In these circumstances, the Committee recommends the Governing Body to approve this interim report, and in particular, the following conclusions:

- (a) the Committee considers that the cancellation by the Registrar of the registration of an organisation is tantamount to suspension or dissolution of an organisation by administrative action, a measure that is incompatible with the principle that the workers' and employers' organisations shall not be liable to be dissolved by administrative authority;
- (b) the Committee expresses the hope that the efforts mentioned by the Government will result in the free establishment by the workers concerned as soon as possible of an organisation to represent these interests; it requests the Government to transmit precise information concerning the re-establishment of the organisation of civil servants;
- (c) as regards the question of the assets of the de-registered organisation, the Committee requests the Government to supply information on any measures taken to distribute these assets to a newly created organisation which pursues in the same spirit, the aims of the dissolved organisation.

Case No. 1195

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS AGAINST THE GOVERNMENT OF GUATEMALA

689. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 18 April 1983. The ICFTU sent supplementary information in communications of 25 April and 15 June and 12 October 1983. The Government replied in a communication of 14 June 1983.

690. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

691. The ICFTU alleges the arrest and disappearance of Mrs. Yolanda Urizar Martínez de Aguilar, legal adviser of the National Workers' Central. According to the ICFTU, on 25 March 1983 persons in civilian clothing, who did not identify themselves, forcibly detained Mrs. Urizar in the Costa Sur region. Her whereabouts are still unknown. According to the complainant, everything indicates that the security forces were responsible for her disappearance.

692. The ICFTU indicates that Mrs. Urizar - who had experienced a long period of imprisonment, persecution and death threats - was living in exile until three years ago and had recently returned to Guatemala under the amnesty announced by the President of the Republic. Her husband and her 7-year-old son were murdered in 1975, and in 1979 her 16-year-old daughter was kidnapped by members of the judicial police and tortured in their custody. The ICFTU attaches a copy of a handwritten letter from the daughter addressed to the United Nations Human Rights Commission corroborating the allegations. The letter indicates the existence of witnesses to the capture and later confinement of Mrs. Urizar in the Santa Ana military base in Berlín, Department of Quetzaltenango. The ICFTU concludes by stating that systematic violation of basic human rights continues in Guatemala and that it fears for the life of Mrs. Urizar.

693. In a further communication of 12 October 1983 the ICFTU sent, within the framework of another case relating to Guatemala, information that it had been informed that the Government had decided to have Mrs. Urizar and other trade unionists executed by firing squad.

B. The Government's reply

694. The Government states that Mrs. Yolanda Urizar Martínez de Aguilar has not been detained by the national security forces and that police will continue their investigation until they establish her whereabouts. The Government indicates that the Minister of National Defence informed Mrs. Urizar's family that a full investigation would be conducted until she was located. Finally, the Government states that as soon as it has any information on the case it will notify the ILO.

C. The Committee's conclusions

695. The Committee takes note of the allegations of the complainant regarding the arrest and disappearance of Mrs. Yolanda Urizar Martínez de Aguilar, legal adviser of the National Workers' Central, and of the Government's reply. The Committee takes note in particular of the Government's statement that Mrs. Urizar was not detained by the national security forces.

696. While the Committee observes that the Government has stated that the police will continue to investigate until they have established her whereabouts, it must express its serious concern, observing that more than seven months after the disappearance of Mrs. Urizar, the investigations undertaken do not appear to have produced

information clarifying the case, and that the copy of a letter written by Mrs. Urizar's daughter and transmitted by the complainant indicates the existence of witnesses to the capture and subsequent confinement of Mrs. Urizar in the Santa Ana military base in Berlín, Department of Quetzaltenango.

697. In these circumstances, the Committee would insist that the inquiry into the disappearance of Mrs. Urizar be completed as a matter of urgency and it draws the Government's attention to the fact that a free and independent trade union movement can only develop in society that respects and guarantees the right to the security of the person and the other fundamental human rights.¹ The Committee requests the Government to keep it informed of the results of the investigations that are in progress.

698. It asks the Government to send as a matter of the utmost urgency its observations on the communication of the ICFTU of 12 October 1983 concerning the decision that is said to have been taken to execute Mrs. Urizar and several trade unionists by firing squad. The Committee urges the Government to rescind this decision, if this is the case.

The Committee's recommendations

699. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) The Committee expresses its serious concern that, seven months after the disappearance of Mrs. Yolanda Urizar Martínez de Aguilar, legal advisor of the National Workers' Central, the investigations undertaken in this regard do not appear to have produced information clarifying the case.
- (b) The Committee would insist that the inquiry into the disappearance of Mrs. Urizar be completed as a matter of urgency and it draws the Government's attention to the fact that a free and independent trade union movement can only develop in a society that respects and guarantees the right to the security of the person and the other fundamental human rights. The Committee requests the Government to inform it of the results of the investigations that are in progress.

¹ See, 213th Report, Cases Nos. 954, 957, 975, 978 and 1026 (Guatemala), para. 55 and 215th Report, Cases Nos. 954, 957, 975, 978 and 1026 (Guatemala), para. 12.

- (c) It asks the Government to send its observations as a matter of the utmost urgency concerning the alleged decision of the Government to have Mrs. Urizar and several trade unionists executed by firing squad. The Committee urges the Government to rescind this decision, if this is the case.

Case No. 1198

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION
OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF CUBA

700. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 29 April 1983. The ICFTU sent further information and new allegations in a communication dated 8 June 1983. The Government replied in letters of 23 May and 28 September 1983.

701. Cuba has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Background to the case

702. The ICFTU, in a telegram dated 18 April 1983 to the Director-General of the ILO, expressed its great concern at the information it had obtained concerning trade union repression in Cuba. The ICFTU reported that some 200 workers had been tried for having attempted to organise a strike in the sugar industry. According to some reports, five of these workers had already been executed, namely: Ezequiel Díaz Rodríguez, José Luis Díaz Romero, Carlos García Díaz, Benito García Olivera and Donato Martínez García. According to other sources of information, however, the sentences on these persons had been commuted to 30 years' imprisonment. In view of the seriousness of this information, the ICFTU requested the Director-General of the ILO to approach the competent authorities of Cuba with a view to obtaining all relevant information on these allegations and ascertaining that trade union rights and freedoms were respected in Cuba.

703. In response to the request of the ICFTU, the Director-General sent a communication dated 21 April 1983 to the Ministry for Foreign Affairs of the Republic of Cuba, in which it attached the telegram from the ICFTU and requested the Government to comment thereon.

704. The Government sent the observations requested by the Director-General in a communication of 3 May 1983 in which it describes the information furnished by the ICFTU as infamous and states that the laws and Constitution of the Republic of Cuba clearly and unequivocally include the right of manual and professional workers freely to establish and join trade union organisations. Likewise, the Constitution guarantees the right of workers, as of the entire Cuban people, to assemble, to hold discussions and to express their opinions freely on all matters affecting them. The Constitution of the Republic not only clearly establishes right of assembly and the right to organise but, furthermore, proclaims that the Cuban State must provide the material means of actually putting these rights into daily practice. As can be seen in the international statistics that are known to the ILO, practically all Cuban workers belong to trade unions which are grouped in the Confederation of Cuban Workers. Furthermore, Cuban penal legislation - which, like the rest of the country's legislation, is scrupulously respected by the Government of the Republic and the law courts of the State - contains no provision whereby citizens could be penalised for activities of a trade union nature. All this should be clear to anyone claiming to be concerned with events in Cuba.

705. The Government adds that what does not and will not exist in Cuba, because the workers would not allow it, is a situation like the alleged one described by the instigators of this campaign. No one has been penalised for the alleged offence of having sought to organise a supposed strike. The persons mentioned in the telegram of the ICFTU were never sentenced to death. They were penalised by the courts of Cuba, in accordance with the law in force, for the offence of continuously sabotaging the national economy by activities which, furthermore, endangered the lives of other citizens. The group in question is an insignificant one, which includes the avowed agents of foreign services and they were discovered and arrested with the collaboration of the workers and citizens of the country. For these reasons, the Government states that it categorically and scornfully refutes the misrepresentation of the facts and the lies that have been spread.

706. Subsequently, in a communication dated 29 April 1983, the ICFTU lodged a formal complaint against the Government of the Republic of Cuba in which it made the following allegations.

B. The complainant's allegations

707. In its communication of 29 April 1983, the ICFTU alleges that according to its information 50 workers were arrested in Havana in October 1982 for having tried, with their comrades, to organise an independent trade union to defend their interests. The group of

workers belongs to the State construction undertaking which has its headquarters in Havana and is engaged in work at the "Lenin Park" recreation centre in the city. The matter was brought before the Cuban courts as case No. 88/1982 and the charges were of "crimes against the security of the State" and "industrial sabotage". The death sentence was passed by the Havana court on five of the workers: Ezequiel Díaz Rodríguez, José Luis Díaz Romero, Carlos García Díaz, Benito García Olivera and Donato Martínez García. Their companions received prison sentences of up to 24 years.

708. The ICFTU adds that an appeal was lodged with the People's Appeal Court but was rejected by the latter at the end of January 1983. A further appeal was lodged with the State Council, presided over by Fidel Castro. The ICFTU also states that sources close to the workers concerned have reported that the death sentences have been commuted to sentences of 30 years' imprisonment. Nevertheless, according to the same sources, the case is still open for the Cuban authorities which means that the risk of the death sentences being applied cannot be totally ruled out.

709. Moreover, the complainant states that the Cuban authorities are known to be exerting moral pressure on workers who were connected closely or even remotely with the attempt to set up an independent trade union, in order to prevent them from spreading information about this matter.

710. In its communication of 8 June 1983, the ICFTU alleges that according to information from reliable sources inside Cuba, four lawyers from a group practice (Mr. Aramias Taboada, aged 57, Mr. Francisco Moura, aged 50, Mr. Israel Tamayo, aged 43 and Mr. Ruben Quinteros, aged 65) were arrested at the end of March simply for having interceded on behalf of the five workers who had been sentenced to death by a court of the first instance and subsequently to long terms of imprisonment. Furthermore, in the same situation and for the same reasons as the other four lawyers, Dr. Nicasio Hernández de Armas, one of the judges of the Havana People's Court, was also arrested.

711. According to the ICFTU, the same sources of information report that no date has yet been set for the hearing of case No. 88/1982.

712. The ICFTU also states that it has learnt of further arrests that have taken place during the year, mainly of workers. The arrests concern the following matters:

- in the province of Sancti Spiritus, formerly known as "Las Villas", some 200 smallholders were arrested for damaging their own crops as a form of protest against the obligation to deliver most of their produce to the food distribution centre known as ACOPIO (which deals with agricultural and other produce), which pays them according to the prices established by the regime;

- two workers from the "Pedro Marrero" brewery, also known by its former name of "Tropical", in Havana, were arrested for suggesting that an independent trade union should be set up; and
- an unspecified number of workers (between 20 and 30) from the "Central Chaparra" sugar refinery in Oriente were arrested when they were found trying to organise an independent trade union comprising the firm's lorry drivers.

713. It should be mentioned, the complainant continues, that trade union membership is compulsory in Cuba and that there is only one union per labour centre which, in turn, belongs to a single confederation; the payment of trade union dues is also compulsory.

714. Finally, the complainant alleges that in addition to trying to establish an independent trade union, the workers who have been under arrest since October 1982 and those mentioned in the cases that have come to light more recently have made various protests, such as statements and short work stoppages, in order to draw the Government's attention to the "voluntary" work on Sundays. This "voluntary" work is actually considered to be compulsory since failure to work on any Sunday in the year without justification earns a black mark for the person concerned who then loses the possibility of obtaining from the Confederation of Cuban Workers the vouchers without which he cannot buy the products considered as luxuries, such as refrigerators, television sets and fans. The "voluntary" Sunday work is mainly agricultural; eight hours' work are involved and workers are obliged to cover considerable distances so that in fact they have to give up their entire Sunday to this activity.

C. The Government's reply

715. The Government sent its observations on the allegations in communications to the Director-General dated 23 May and 28 September 1983. In the first of these communications the Government states that the complaint is calumnious since none of the supposed "trade unionists" ever had the intention of establishing any kind of trade union movement or of creating any type of organisation. The citizens referred to in the communication of the complainant organisation did not even have any labour links at the time of their arrest and trial. Only one of them was working on the family land as a small farmer, the other four being engaged in various illegal activities. The facts which led to their arrest and sentencing in case No. 88/1982 before the Provincial Court, in a trial that was carried out in accordance with the legal provisions in force in the country, are connected with various acts of sabotage, including setting fire to sugar-cane plantations and grazing land, a tobacconist's shop, hayricks, etc. At the time of their arrest they were planning to set

fire to big shops and stores in the capital, collecting arms and other equipment to carry out activities of this kind and were beginning to devise plots to attack government leaders. Moreover, the persons in question, who are the subject of the complaint and whose guilt was proved at the trial, admitted to these activities.

716. The Government points out, moreover, that there are discrepancies between the two communications of the ICFTU. The first one states that it concerns "some 200 workers who were trying to organise a strike in the sugar sector and the death of some of them". The second communication speaks of 50 workers belonging to the State Ministry for Construction, who were working in the "Lenin Park" recreation centre and who were trying to establish an independent trade union to defend their interests. These discrepancies, the Government states, merely demonstrate that an attempt is being made, pointlessly, to undermine the prestige of Cuba by inventing a "case" of infringement of freedom of association for obvious purposes of propaganda.

717. In its communication of 28 September 1983, the Government sends a certified copy of ruling No. 9 of the People's Supreme Court of the Republic of Cuba, dated 6 April 1983, dealing with the actions that were judged and the final sentence passed. According to the Government, this sentence constitutes unequivocal proof of the campaign of calumny and defamation organised against Cuba.

718. Lastly, the Government describes the information provided in the last communication of the ICFTU as calumnious, stating that it is impossible to give a serious reply to such calumny which relates to supposed facts that have no connection whatsoever with case No. 1198 but are merely figments of their inventors' imagination.

D. Conclusions of the Committee

1. Allegation relating to the sentencing of workers to prison

719. The Committee notes that the complainant has alleged that 50 workers were arrested, tried and sentenced to long terms of imprisonment (in the case of five of these persons the death sentence having been commuted by a court of the second instance to sentences of 30 years' imprisonment) for having attempted to organise an independent trade union to defend their interests although the charges against them were of "crimes against the security of the State" and "industrial sabotage". Four lawyers and a judge of the People's Court of Havana are said moreover to have been arrested merely for having interceded on behalf of the five workers referred to. Furthermore, the complainant has alleged that in the Republic of Cuba

trade union membership and the payment of membership dues are compulsory, there being only one union per labour centre which, in turn, belongs to a single confederation.

720. As regards the allegation concerning the sentencing of 50 workers to long terms of imprisonment for having tried to organise an independent trade union, the Committee notes the Government's statements as well as judgement No. 9, dated 6 April 1983, of the People's Supreme Court of the Republic of Cuba. The Committee notes that the judgement describes 26 of the accused persons, including Ezequiel Díaz Rodríguez, José Luis Díaz Romero, Carlos García Díaz, Benito García Olivera and Donato Martínez García, as "counter-revolutionary, anti-communist and anti-social elements, who had been organised for some time and devoted themselves to various counter-revolutionary activities inspired by their own ideology and influenced by North American imperialist propaganda and by broadcasts from the United States of America; in 1978 they set up the organisation known as the 'Zapata Group', belonging to the ultra-reactionary terrorist organisation 'Alpha 66' based in Miami in the state of Florida, whose fundamental task is to destroy the economy of the country and create panic among the population so as to create an atmosphere of insecurity with the aim of overthrowing our socialist State by violent means." The judgement then describes the facts with which the accused persons are charged: "scattering hooks on roads, setting fire to sugar plantations, starting fires in restaurants, setting fire to or damaging vehicles, setting fire to grazing land, attempting to poison cattle so as to cause large-scale deaths, setting fire to a coffee plant nursery and the food store of the undertaking, setting fire to a tobacconist's shop, sabotage of telephone lines, attempting to set fire to the wooden poles of electric cables and to a high-voltage tower, distribution in public places of a large quantity of counter-revolutionary documents containing libellous and offensive comments against the Commander-in-Chief of the Revolution and signed by the "Company for Sabotage against Communism", incitement against the socialist order and the socialist State. The judgement adds that "these offences of a revolutionary and terrorist nature carried out by the accused persons during the period in question amount to more than 160 acts of sabotage of various kinds, all of which involve the direct or group participation of the accused, Ezequiel Díaz Rodríguez, Benito García Olivera, Angel Donato Martínez García, José Luis Díaz Romero and Carlos García Díaz, who played a direct part in almost all the different activities carried out."

721. Furthermore, as is stated in the judgement, two of the accused were recruited to belong to the counter-revolutionary group and although they accepted they did not take part in the activities referred to; 12 others did not belong to the group but knew of the counter-revolutionary activities and did not denounce them to the authorities and a further person co-operated in the criminal activities of the group. There would thus have been a total of 41 persons accused.

722. The judgement of the People's Supreme Court of the Republic of Cuba revokes the death sentence passed on the five persons named above, sentences each of them to 30 years' imprisonment and upholds the rest of the sentences handed down by the Court of First Instance. As regards the allegation according to which four lawyers and a judge of the People's Court of Havana were arrested merely for interceding on behalf of the five workers who were initially sentenced to death, the Committee notes that the Government has furnished no precise information. Consequently, the Committee requests the Government to send its observations thereon.

723. After carefully examining the judgement of the People's Supreme Court of the Republic of Cuba, dated 6 April 1983, the Committee notes that the judgement does not mention activities of a trade union character on the part of the 41 accused. Consequently, the Committee considers that the sentence rendered by the Court was based on acts other than their trade union activities.

724. Nevertheless, the Committee notes that the complainant has reported that the trial and judgement of the persons concerned stemmed from the attempt to organise an independent trade union. In this regard the Committee cannot fail to point out on this question that from the point of view of trade union legislation the Committee of Experts on the Application of Conventions and Recommendations has for several years been objecting to section 3 of Legislative Decree No. 3 of 1977, designed to set up and maintain a single trade union system, and which expressly mentions the Confederation of Cuban Workers. The Committee of Experts has considered that this provision might constitute an obstacle to the creation of another confederation if the workers so wished and has expressed the hope that the Government will adopt the necessary measures to delete the reference in the legislation to a specific trade union organisation. In these circumstances the Committee endorses the comments made by the Committee of Experts.

2. Allegations relating to the arrests
of workers for trade union reasons

725. The Committee notes that the rest of the allegations relate to the arrest of some 200 peasants in the province of Sancti Spiritus for having participated in collective protest actions, to the arrest of two workers of the "Pedro Marrero" brewery at Havana for suggesting that an independent trade union should be set up and to the arrest of between 20 and 30 workers from the "Central Chaperra" sugar refinery in Oriente for trying to organise an independent trade union comprising the firm's lorry drivers. In this regard the Committee notes the Government's statement of 28 September 1983 which describes the allegations of the complainant organisation as calumny and states that it is impossible to reply seriously to supposed events that have no connection with Case No. 1198 and exist only in the imagination of

their inventors. On this point however the Committee notes that the allegations to which the Government has not replied in substance relate to concrete allegations of violations of trade union rights. Consequently, the Committee requests the Government to send, as soon as possible, precise and detailed observations on these allegations.

The Committee's recommendations

726. In these circumstances the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

- (a) As regards the allegation that workers were sentenced to long terms of imprisonment for having attempted to organise an independent trade union, the Committee notes that the sentence rendered by the People's Supreme Court of the Republic of Cuba on 6 April 1983 was based on acts other than their trade union activities.
- (b) The Committee requests the Government to send its observations on the allegations according to which four lawyers and a judge of the People's Court of Havana were arrested merely for interceding on behalf of the five workers who were initially sentenced to death and who subsequently had their sentences commuted.
- (c) The Committee endorses the comments of the Committee of Experts on the Application of Conventions and Recommendations concerning the application by Cuba of Convention No. 87 and wishes to stress that section 3 of Legislative Decree No. 3 of 1977 aims at establishing and maintaining a single trade union system; it requests the Government to take the necessary measures to bring this provision into line with Convention No. 87.
- (d) The Committee requests the Government to send, as soon as possible, the precise and detailed observations which it has not supplied on the allegations concerning:
 - (i) the arrest of two workers of the "Pedero Marrero" brewery for having suggested that an independent trade union should be set up;
 - (ii) the arrest of between 20 and 30 workers in the "Central Chaparra" sugar refinery for having tried to organise an independent trade union;
 - (iii) the arrest of some 200 peasants in the province of Sancti Spiritus for participating in collective protest actions.

Geneva, 11 November 1983.

Roberto Ago,
Chairman.

TWO HUNDRED AND THIRTY-FIRST REPORT¹

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 7, 8 and 11 November 1983 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it various complaints of infringements of trade union rights in Argentina presented by a number of trade union organisations (Case No. 842), and a complaint concerning the non-observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by a number of delegates to the 63rd (1977) Session of the International Labour Conference under article 26 of the Constitution of the ILO.

3. At its 223rd Session (May 1983) the Governing Body adopted the interim conclusions submitted to it by the Committee in its 227th Report.

Case No. 842

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND VARIOUS OTHER WORKERS' ORGANISATIONS AGAINST THE GOVERNMENT OF ARGENTINA

COMPLAINT CONCERNING THE NON-OBSERVANCE BY ARGENTINA OF THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87), PRESENTED BY A NUMBER OF DELEGATES TO THE 63RD (1977) SESSION OF THE INTERNATIONAL LABOUR CONFERENCE UNDER ARTICLE 26 OF THE CONSTITUTION OF THE ILO

4. The Committee has examined this case on several occasions and most recently at its May-June 1983 meeting, when it submitted an

¹ See page 1, note 1.

interim report to the Governing Body.¹

5. Since then, the Government has sent information in communications dated 26 September and 14 and 21 October 1983.

6. The Committee examined this case following the recent elections that took place in Argentina.

7. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

8. In its last examination of the case in May-June 1983, the Committee reached interim conclusions concerning the allegations relating to the provisions of the trade union legislation which were contrary to the freedom of association Conventions, the interference in occupational associations and the arrest and sentencing of trade unionists. In this connection the Committee made the following recommendations:

- "(a) While noting that there have been positive developments in respect of the various allegations, the Committee notes that there still exist serious restrictions on trade union rights, in particular as regards strikes and collective bargaining.
- (b) The Committee considers that the objective which the Government should pursue, namely a return to normal trade union activity, can only be achieved by fulfilling three necessary requirements: the amendment of the trade union legislation so as to bring it into conformity with the freedom of association Conventions, particularly by explicitly recognising the right to strike and the exercise of collective bargaining at all levels without hindrance; the lifting of measures of supervision of the remaining 31 trade union organisations; and the adoption of all measures necessary to ensure the rapid release of the trade unionists who are still in prison on account of their trade union activities. Consequently, the Committee urges the Government to take the necessary measures to this end at an

¹ See 227th Report, paragraphs 5-19, approved by the Governing Body at its 223rd Session (May-June 1983).

early date and requests it to provide information on developments in the situation.

- (c) The Committee would refer the examination of the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations."

9. As regards the arrest or sentencing of trade unionists, while the Committee noted that, according to the Government, José Luis Guaglione and Enrique Peczac were sentenced for unlawful association and Hugo Eduardo Pérez Pérez for participation in organisations using force or fear, it regretted that information had not been supplied on the concrete facts on which the sentences were based but only on the type of crimes which these persons had committed. The Committee also regretted that the Government had not indicated the reasons for the arrest of Hector Hugo Gabrielli, Oscar Paz (both of whom are at the disposal of the National Executive) and Marfa Cristina Lucca, or the facts on which the sentencing of Pedro Pablo Romero had been based.

B. The Government's reply

10. From a general point of view, the Government states that, with a view to bringing about the normalisation of the country's institutions, it has already approved legal standards to ensure full and exact expression of the will of the people, fixing 30 October 1983 as the date for general elections to be held at the national, provincial and municipal levels, to elect the authorities that will be responsible for guiding the destiny of the nation. At the same time, and in accordance with the objective referred to, steps were initiated in July 1982 - the date on which the present authorities assumed office - to effect substantial changes in the situation prevailing in labour and social matters with a view to ensuring conditions which would favour the transition to constitutional normalisation.

11. With regard to the questions raised by the Committee in its last report, the Government states that the draft law to promote the recognition of third-level occupational associations, to which reference was made in its communication of May 1983, has now become law as Act No. 22839, approved on 24 June 1983, the text of which it annexes and in whose preamble express reference is made to the observations formulated by the ILO through the Governing Body's Committee on Freedom of Association. Under this law occupational associations are guaranteed the application of the principle of freedom vis-à-vis their establishment and organisation according to the expressed wishes of their members, who will be able to express themselves freely, whatever the level of the association, under the rules governing its establishment and functioning. In addition, it is left to the will of the members of occupational associations to

elect their executive organs in a manner ensuring that the will of the majority of the members prevails, or to elect delegates (in the case of a higher level association) by a direct and secret ballot of the workers. The above-mentioned Act also lists the measures that need to be taken to re-establish the institutional functioning and regularise the financial situation of the third-level bodies which were abolished under Act No. 22105 and which include the General Confederation of Labour. In application of this, Decree No. 1786 of 18 July 1983 appointed a "Normalising Delegate" to the General Confederation of Labour to carry out the tasks set forth in the relevant law.

12. Furthermore, the Government continues, a draft law has been prepared to supplement and improve Act No. 22839 with a view to giving greater freedom of action in the establishment and organisation of occupational associations, which likewise complies - and this was stated in the message accompanying the Bill when it was tabled - with the requests of the ILO's technical bodies. Hence:

- section 4 of Act No. 22105 relating to the right of association of senior staff has been amended to base this distinction on the exercise of managerial and confidential functions;
- section 5 has been replaced by a section eliminating the geographical jurisdictions pre-established by law and leaving it to the associations themselves to determine their jurisdiction in the light of their representativity and the characteristics of their particular activity;
- the requirement that a person should not have a previous police record in order to belong to an executive board or hold representative office in a workplace has been abolished;
- provision is made for the possibility of promoting the formation and organisation of financial as well as co-operative and mutual benefit associations;
- as regards participation in collective bargaining and the conclusion and amendment of collective covenants and agreements, the restriction established in section 36(b) of Act No. 22105 has been removed;
- in accordance with the modification of section 3 and the repeal of section 75 of Act No. 22105 (by Act No. 22839), it is proposed to modify section 37 in such a way as to include confederations;
- the restriction in force with regard to the grant of benefits relating to social or welfare schemes, i.e. not to receive funds covered by the Act respecting welfare schemes and not to be associated in the operation or administration of any welfare scheme, has been removed; and

- the power granted to the administering authority to suspend the exercise of the rights of registered associations and of collective bargaining, as well as to debar a trade union representative from holding trade union office for up to three years if he fails to comply with the relevant statutory provisions or the by-laws and to appoint a temporary trustee for an occupational association with the object of guaranteeing the exercise of all the rights conferred by Act No. 22105, are cancelled.

13. The Government also points out that the right to strike has been fully restored since the approval, on 3 June 1983, of Act No. 22825 which repealed Acts Nos. 21261 and 21400 temporarily limiting the exercise of that right. Therefore, freedom to exercise that right is not only recognised in practice but also in law since the laws which suspended it are no longer in force.

14. As regards the exercise of the right to bargain collectively, the Government states that in application of the system described in previous communications, wages were adjusted in the period between 1 July and 30 September 1983 to increase those fixed by collective labour agreements by 12 per cent a month, accumulative, on the basis of the values updated to 30 June 1983. In order not to overlook workers with lower incomes, the minimum basic wage was raised to 1,100 Argentine pesos a month, 44 pesos a day and 5.50 pesos an hour. At the same time a special grant was awarded for the month of June 1983, equivalent to the difference between the amount of the proportion of the extra month's pay due that month under the relevant statutory scheme, and half the nominal, normal and customary remuneration for the month of June 1983, calculated in proportion to the time worked. In addition, wage increases for the public service were provided for by various decrees along the same lines as the above.

15. In real terms, the Government adds, the increase in the basic wage fixed by collective agreements for manual industrial workers was 91.3 per cent between July 1982 and July 1983 and, with the recent increases, it amounts to 140 per cent. The same comparison with regard to the basic wage in the collective agreements for non-manual industrial workers shows an increase of 140 per cent. This series of measures was accompanied by a substantial rise in the real value of the minimum basic wage, which rose 80.5 per cent between July 1982 and July 1983, as well as an increase in family allowances. All this has the effect of ensuring complete fulfilment of the already expressed aim of maintaining and improving real wages. Considering the principle underlying the current wage policy, the increase in real wages, i.e. above the rate of inflation and the increases already decided upon for the coming months, clearly demonstrates the Government's constant concern to improve the economic and social situation of the population and that these objectives have been achieved.

16. The Government refers also to a series of measures taken in consultation, inter alia, with representatives of the central workers' organisations and the Industrial Union, which strengthen the purchasing power of wages from September and October 1983: another type of family allowance, an increase in the sliding minimum basic wage scale; pay readjustments; suspension of increases in public services charges; reduction of VAT for certain products, etc.

17. The Government indicates moreover that the full exercise of freedom to bargain collectively will be restored very shortly. In support of this statement, the Government refers to the adoption of Decree No. 1984 of August 1983, which repeals Decree No. 9 of 1976 suspending trade union activities. The adoption of this Decree gives rise to the legally assured possibility of using the procedure provided for in Act No. 14250 to bargain collectively.

18. As regards progress towards trade union normalisation, the Government declares that this is continuing to evolve in a meaningful manner. Accordingly, the number of trade unions placed under supervision has decreased from 31 to 10; it must also be stressed that, compared with the previous situation, elections have been held in another 50 associations, that the number of occupational association by-laws that have been approved has reached 513 and that the total number of associations with trade status is 1184. The Government concludes by pointing out that the question of the trade union normalisation process will be resolved very shortly, perhaps in a matter of weeks.

19. As regards the trade unionists in whom the Committee has taken an interest, the Government points out that Marfa Cristina Lucca has been granted a stay of judgement and has been released; that Hector Hugo Gabrielli was released on 11 July 1983 and that Oscar Paz remains at the disposal of the National Executive and has been released. The Government indicates that there are no workers' leaders in the country who have been gaoled for any trade union activity. Lastly, it points out that Decree No. 2714/83 provides for the termination of the state of arrest of all detainees at the disposal of the National Executive.

20. The Government concludes by declaring that the progress made in labour policy recently will enable it to continue repealing all the provisions that restrict free trade union activity.

C. The Committee's conclusions

21. The Committee notes with satisfaction the major improvements in the trade union situation reported by the Government in its replies and which give grounds for foreseeing a speedy return to greater

normality in trade union life. The Committee notes, in particular, that Act No. 22839 of 24 June 1983 provides for effective recognition of third-level occupational associations (confederations) and introduces a number of improvements on other points, except as regards re-election of leaders; that the right to strike has been fully restored by Act No. 22825 of 3 June 1983; that with the adoption of Decree No. 1984 of 8 August 1983 there is a legally assured possibility of using the procedure provided for in the Act No. 14250 (respecting collective labour agreements) to bargain collectively; and that the number of trade unions under supervision has decreased from 31 to 10 since the Committee's last examination of this case. In this connection the Committee notes that, according to the Government, the question of the process of trade union normalisation will be resolved very shortly, perhaps in a matter of weeks. The Committee expresses the hope, therefore, that the supervision exercised over ten trade union organisations will be lifted shortly and requests the Government to keep it informed in this regard.

22. The Committee also observes with interest that a draft law has been submitted to the competent authorities which takes into account the comments of the ILO's supervisory bodies on the provisions of the legislation which are contrary to Conventions Nos. 87 and 98 as regards the structuring of trade unions on a given geographical basis, the requirement that candidates for trade union office should not have a previous police record, the powers granted to the administering authority to suspend the exercise of the rights of registered associations and of collective bargaining; the power to debar a trade union representative from holding trade union office for up to three years, and the right to appoint a temporary trustee for any authority of an occupational association, etc. The Committee hopes that a law will soon be adopted and that this will take full account of the previous comments of the Committee, and in particular, as regards the re-election of trade union leaders.

23. More particularly, as regards collective bargaining, the Committee notes the measures taken by the Government in consultation with occupational organisations to increase the purchasing power of the workers as well as the continuance of the system of collective bargaining through joint technical committees and advisory technical committees described in previous communications from the Government, in order to update wages, including initial remuneration. In these circumstances, the Committee considers that, since these consultation measures have been taken and the Government has declared that there is now a legal possibility of using the procedure provided for in Act No. 14250 to bargain collectively, the necessary bases have been established for collective bargaining to be conducted effectively at all levels through the conclusion of collective agreements.

24. As regards the arrested trade unionists, the Committee notes that Hector Hugo Gabrielli, María Cristina Lucca and Oscar Paz have been released. As regards the other four trade unionists (José Luis