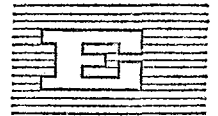


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REPORT OF THE AD HOC WORKING GROUP OF EXPERTS OF THE COMMISSION
ON HUMAN RIGHTS, PREPARED IN ACCORDANCE WITH ECONOMIC AND SOCIAL
COUNCIL DECISION 1981/155

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I. MANDATE AND COMPOSITION OF THE AD HOC WORKING GROUP OF EXPERTS

A. Present mandate of the Ad Hoc Working Group of Experts

1. The Ad Hoc Working Group of Experts, which was established in 1967 under resolution 2 (XXIII) of the Commission on Human Rights to investigate charges of torture and ill-treatment of prisoners in South Africa, was also instructed by the Economic and Social Council, in resolution 1216 (XLII) of 1 June 1967, to investigate allegations regarding infringements of trade-union rights in South Africa. This mandate has been regularly renewed and broadened by several successive Council resolutions authorizing the Group to continue to follow each year the question of infringements of trade-union rights in South Africa.

2. At its thirty-seventh session, the Commission on Human Rights, in its resolution 5 (XXXVII) of 23 February 1981, as approved by the Economic and Social Council in decision 1981/137, decided to renew the mandate of the Ad Hoc Working Group of Experts.

3. In its resolution 1981/41 of 8 May 1981, the Economic and Social Council requested the Ad Hoc Working Group of Experts to continue to study the question of infringements of trade-union rights in South Africa and to report thereon to the Commission on Human Rights and the Council in 1982. In this connection, the Council's attention is drawn to the interim report likewise submitted by the Group to the Commission at its thirty-eighth session (E/CN.4/1485) pursuant to Commission resolution 5 (XXXVII), which deals with violations of trade-union rights in the Republic of South Africa.

4. In addition, by decision 1981/155 of 8 May 1981, the Economic and Social Council transmitted to the Ad Hoc Working Group of Experts of the Commission on Human Rights allegations regarding infringements of trade-union rights in South Africa emanating from the International Confederation of Free Trade Unions (ICFTU), and requested it to consider them and report thereon to the Commission and to the Council in 1982. The communication containing these allegations is reproduced in document E/1981/28.

5. It is in order to give effect to the aforementioned decision that the Ad Hoc Working Group of Experts has prepared the present report in accordance with the procedure it has followed since 1967, 1/ for submission to the Commission at its thirty-eighth session in 1982, and to the Council at its first regular session in 1982.

B. Composition of the Ad Hoc Working Group of Experts

6. At its 1611th meeting on 23 February 1981, the Commission on Human Rights decided, in resolution 5 (XXXVII), that the Ad Hoc Working Group of Experts should be composed of the following members, acting in a personal capacity: Mr. Kéba M'Baye (Senegal), Chairman/Rapporteur; Mr. Branimir Janković (Yugoslavia); Mr. Annan Arkin Cato (Ghana); Mr. Humberto Díaz-Casaneuva (Chile); Mr. Mulka Govinda Reddy (India) and Mr. Felix Ermacora (Austria).

1/ See paragraphs 11 and 12 below.

II. COMMUNICATION CONTAINING ALLEGATIONS OF INFRINGEMENTS OF TRADE-UNION RIGHTS IN THE REPUBLIC OF SOUTH AFRICA

7. On 29 July 1980, ICFTU addressed a communication to the Secretary-General of the United Nations concerning allegations of infringements of trade-union rights in the Republic of South Africa. This communication, which is contained in document E/1981/28, is worded as follows:

"In accordance with the procedure outlined in Economic and Social Council resolutions 277 (X) and 474 A (XV), we hereby submit a formal communication concerning infringements of trade-union rights by the Government of the Republic of South Africa. The communication giving details and background information is attached. A copy has also been sent to the ILO Director-General for information.

In view of the gravity of the situation, we should appreciate it if you could give your urgent consideration to this communication in order to obtain:

- (a) The immediate release of detained trade unionists in South Africa;
- (b) An end to police and State interference in industrial disputes;
- (c) Lifting of the fund-raising ban imposed on the Federation of South African Trade Unions;
- (d) The recognition of the black independent trade union movement's right to full freedom of association and to unimpeded collective bargaining.

(Signed) O. KERSTEN
General Secretary"

In addition, document E/1981/28 contains information concerning: (i) the case of the arrest of members of the Western Province General Workers' Union; (ii) the case of the arrest of members of the Writers' Association of South Africa; (iii) the prohibition of fund-raising by black trade unions; and (iv) police and State interference in industrial disputes.

9. For the purposes of consideration of this communication, the list of persons arrested is reproduced in annex 1 to this report.

10. Since the allegations relate to a State Member of the United Nations which is not a member of ILO, the Secretary-General, in a note dated 29 October 1980, sought the consent of the Government concerned to having the allegations referred to the Fact-Finding and Conciliation Commission on Freedom of Association of ILO, as provided for in Economic and Social Council resolution 277 (X). The Secretary-General requested the Government of the Republic of South Africa to transmit its reply to him by 29 December 1980. As of 10 February 1981, no reply had been received from that Government. 2/

2/ The Republic of South Africa withdrew from ILO on 11 March 1966.

11. It will be recalled that, in its Resolution 277 (X) of 17 February 1950, the Economic and Social Council stipulated the procedure to be followed in the matter of allegations regarding infringements of trade-union rights made against the Government of a State Member of the United Nations which is not a member of ILO.

12. Pursuant to the provisions of the aforementioned Council resolution 277 (X), which stipulates that allegations made against a Member of the United Nations which is not a member of ILO must be referred in the first instance to the Council, and in the absence of the consent of the Government of South Africa, the Council at its first regular session in 1981, having studied the aforementioned allegations, adopted on 8 May 1981 decision 1981/155, by which it transmitted to the Ad Hoc Working Group of Experts of the Commission on Human Rights, for consideration, the aforementioned communication concerning infringements of trade-union rights in South Africa, as contained in document E/1981/28, with the request that the Group should report thereon to the Commission and to the Council in 1982.

III. INTERNATIONAL STANDARDS AND SOUTH AFRICAN LEGISLATION

13. For the purpose of examining appropriately the communication referred to it, the Ad Hoc Working Group of Experts took into consideration the relevant international standards concerning trade-union rights and studied the applicable South African legislation.

A. International standards concerning trade-union rights

14. The international standards concerning trade-union rights, as contained in a number of instruments established under the auspices of the United Nations and ILO, are set forth below:

(a) The Charter of the United Nations

The Ad Hoc Working Group of Experts devoted particular consideration to Article 1, paragraph 3, which states that one of the purposes of the Organization is to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion; Article 55, which states that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and Article 56, in which all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55;

(b) The Universal Declaration of Human Rights

The Ad Hoc Working Group of Experts devoted attention to articles 1, 2 and 7 prohibiting discrimination with regard to the exercise of human rights and, in particular, equality before the law; article 13, concerning freedom of movement and residence within a State; article 20, concerning freedom of peaceful assembly and association; article 23, concerning the right to work, to free choice of employment and to favourable conditions of work, and the right to form and join trade unions; and articles 24 and 30;

(c) The International Covenant on Economic, Social and Cultural Rights (1966)

The Ad Hoc Working Group of Experts paid particular attention to article 8, which guarantees, subject to certain conditions:

(1) The right of everyone to form trade unions and join the trade union of his choice;

(2) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(3) The right of trade unions to function freely; and

(4) The right to strike, provided that it is exercised in conformity with the laws of the particular country;

(d) The International Covenant on Civil and Political Rights (1966)

Article 22, which was mentioned as being particularly relevant, guarantees, subject to certain conditions, "the right [of everyone] to freedom of association with others, including the right to form and join trade unions for the protection of his interests";

(e) The Philadelphia Declaration concerning the Aims and Purposes of the International Labour Organisation

The Ad Hoc Working Group of Experts gave its attention to the fundamental principles to the effect that freedom of expression and of association are essential to sustained progress. It also took into account the provisions of article II (a), affirming that all human beings, without discrimination, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity;

(f) ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948)

The Ad Hoc Working Group of Experts took particular account of the provisions of article 3, which states that workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programmes. The public authorities shall refrain from any interference which would restrict their right or impede the lawful exercise thereof;

(g) ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949), and more

especially the provisions of articles 1-4 to the effect that workers shall enjoy adequate protection against acts of discrimination and benefit from the introduction of measures concerning the right to organize and to bargain collectively;

(h) The Declaration adopted by the International Labour Conference on 8 July 1964 concerning the Policy of Apartheid of the Republic of South Africa;

(i) The International Convention on the Elimination of All Forms of Racial Discrimination (1965)

The Ad Hoc Working Group of Experts took into account, in particular, the provisions of articles 2 and 3, which condemn any practice of racial discrimination against persons, groups of persons or institutions, and especially racial segregation and apartheid; and the provisions of article 6 requiring that everyone within the jurisdiction of States shall be assured effective protection and remedies through national tribunals against any acts of racial discrimination;

It also took into consideration article 5, which specifically refers to the right to form and join trade unions;

(j) The International Convention on the Suppression and Punishment of the Crime of Apartheid (1973);

(k) The Standard Minimum Rules for the Treatment of Prisoners (1957),

which prohibit torture and other forms of cruel, inhuman or degrading punishment or treatment.

15. The Ad Hoc Working Group of Experts also bore in mind Economic and Social Council resolution 2076 (LXII) extending the application of these rules to persons arrested or imprisoned without charge.

16. It likewise took into consideration the provisions of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975 on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

17. Lastly, without prejudice to other relevant provisions, the Ad Hoc Working Group of Experts paid special attention to the various resolutions adopted within the framework of the United Nations, in particular by the General Assembly, and of other governmental organizations.

18. South Africa considers that it is not bound by some of the instruments referred to above, however these instruments mentioned here as general principles are binding on all States in general, and in particular on South Africa, which is, however, promulgating laws that violate these principles.

B. Analysis of the legislation and practice in effect in South Africa concerning trade-union rights and freedoms

19. With the exception of the bill amending the Industrial Conciliation Act of 1956, published in March 1981 and submitted to Parliament for adoption, the principal laws relating to trade-union rights in South Africa taken into consideration by the Ad Hoc Working Group of Experts are those applied in the case of the persons mentioned in the communications brought to its attention. In addition to the Industrial Conciliation Act of 1956 and a summary of the bill submitted to Parliament, which seems to indicate that a number of provisions will be introduced to stiffen control of the trade unions, the Ad Hoc Working Group of Experts took into account the General Law Amendment Act (No. 62 of 1966),

in particular article 22 of the Internal Security Act of 1950, as amended by the Internal Security Amendment Act (No. 79 of 1976), article 29 of the Fund-Raising Act, the Riotous Assemblies Act (No. 17 of 1956), as amended by the Riotous Assemblies Amendment Act (No. 30 of 1974), and the Terrorism Act (No. 83 of 1967).

1. Industrial Conciliation Act (1956)

20. Under the Industrial Conciliation Act of 1956, African trade unions have no legal personality and cannot be represented in conciliation or collective bargaining machinery under the Act. The Act provides for the registration only of unions of "white" and "coloured" persons, and of "mixed" unions consisting of both "whites" and "coloured persons". The same Act contains several provisions designed to discourage the formation and functioning of "mixed" trade unions, i.e. trade unions with a membership including both "white" and "coloured" salaried employees and wage-earners. No legal provision recognizes the existence of African trade unions. African salaried employees and wage-earners have to operate without any of the advantages conferred by registration under the Industrial Conciliation Act. Members of registered trade unions are protected against victimization or discrimination on account of their trade-union membership. Members of African trade unions, however, have no legal protection against victimization for membership of such organizations. The provisions of this Act are strengthened by the existence of a number of statutes and regulations which can be used to harass trade unionists, particularly the members of African unions which do not enjoy the benefits conferred by registration, and thereby to restrict African trade-union activities. These laws used against trade unionists include the General Law Amendment Act, No. 62 of 1966, the Internal Security Act of 1950, as amended by Act No. 79 of 1976, the Fund-Raising Act of 1978, the Riotous Assemblies Act, No. 17 of 1956, and the Terrorism Act, No. 83 of 1967. It is important to note that all these laws have been used at some time or other to impede the activities of African trade-union organizations.

21. A bill based on the recommendations of the Wiehahn Commission amending the Industrial Conciliation Act indicates that several new provisions will be introduced in order to strengthen State control over the activities of trade unions, while giving the impression that legislation is being relaxed.

22. In its previous reports (E/CN.4/1365, paragraphs 185-195 and E/CN.4/1429, paragraphs 50-53), the Ad Hoc Working Group of Experts gave details of the most important recommendations contained in the first part of the Wiehahn Commission's report, and described the repercussions of this bill on industrial conciliation, which for the first time recognized the right of black workers to join trade unions. The Ad Hoc Working Group of Experts has received similar information from other sources. 3/

3/ International Labour Office, Geneva, 1981, Seventeenth special report of the Director-General on the application of the Declaration concerning the Policy of Apartheid of the Republic of South Africa, pp.64-74; document submitted to the International Conference on Sanctions against South Africa, Paris, 20-27 May 1981: "Developments in South Africa since the uprising of 1976" (A/CONF.107/3) pp.30-33; John Gaetsewe (Secretary-General of the South African Congress of Trade Unions), "Life and labour in transnational enterprises in South Africa", Centre Against Apartheid, Notes and documents, 25/80, December 1980.

2. General Law Amendment Act (No. 62 of 1966)

23. The General Law Amendment Act (No. 62 of 1966) makes provision for detaining any persons suspected of being terrorists and certain other persons for interrogation. Under article 22 of this Act, any police officer is authorized to detain a suspect without warrant for 14 days or for any other period a judge of the Supreme Court may from time to time determine following a written application signed by the Commissioner of Police. The period of detention may be extended if the application is not rejected. In its earlier reports, the Ad Hoc Working Group of Experts furnished information indicating that this provision had also been used to authorize the detention of persons in Namibia, where the 90-day and 180-day laws were not applicable.

3. Internal Security Act (1950), as amended by the Internal Security Amendment Act (No. 79 of 1976)

24. Act No. 79 of 1976 (Internal Security Amendment Act, 1976) amends Act No. 44 of 1950 (Suppression of Communism Act, 1950); the title of this Act, inter alia, has been amended: it is now called the Internal Security Act, 1950, and is so described in the present report. 4/ Under the provisions of this Act, the Minister of Justice is empowered to order the detention of any person for an indefinite period, without reference to the courts. An important insertion in the Act concerns the increase in the number of circumstances authorizing unchallengeable ministerial action, so as to include under the broad definition of "communism" activities "which endanger or are calculated to endanger the security of the State or the maintenance of public order". African workers have no legal protection against retaliatory measures taken on account of their trade-union membership because their trade unions, not being registered, have no legal personality.

25. The new Internal Security Act provides for the prohibition of publications, the prohibition of attendance at gatherings and the prohibition of persons from being within or leaving defined areas - in fact, banning - where, in the Minister's opinion, such persons endanger the security of the State. It will be noted that the scope of the Act as amended is more extensive than that of the Act of 1950 since it no longer applies only to cases in which, in the Minister's opinion, the persons concerned are deemed to be "furthering the achievement of any of the objects of communism". There is also provision for the indefinite continuation of the imprisonment of anyone already in custody when the Minister of Justice is satisfied that such person is engaging in activities which are calculated to endanger the security of the State or the maintenance of public order. This provision is in force for 12 months at a time but may be renewed. A clause similar to that in the Criminal Procedure Amendment Act of 1965, 5/ enabling persons to be detained as witnesses for periods of 180 days at a time, was also inserted in the Act. Finally, the Internal Security Act removes any limit on the fines and prison sentences which courts may impose under the Riotous Assemblies Act.

4. Riotous Assemblies Act (No. 17 of 1956), as amended by the Riotous Assemblies Act (No. 30 of 1974)

26. The Ad Hoc Working Group of Experts has already analysed this Act in its previous reports in connection with its consideration of other communications

4/ Government Gazette, 16 June 1976.

5/ This Act was analysed in the 1972 report of the Special Committee against Apartheid (A/8770).

concerning infringements of trade-union rights in South Africa. ^{6/} It should be noted in particular that under section 2, subsections (3) and (4), of the 1956 Act, "the Minister of Justice may, if he deems it necessary or expedient for the maintenance of public peace, prohibit any public gathering or a specified gathering during any period or during a specified period".

27. Section 2 (1) of Act No. 30 of 1974 amending the provisions of the Riotous Assemblies Act of 1956 strengthens the powers of the magistrates. Whenever a magistrate has reason to believe that public peace would be seriously endangered, he may prohibit for a period not exceeding 48 hours any gathering at a particular place or in a particular area or everywhere in his district, and his decision need not be referred to the Minister of Justice as it had to be before the Act was amended. In addition, under the new provisions of Act No. 30 of 1974, section 2, subsection (6), mere attendance at a prohibited gathering is an offence punishable by a fine of R 100 or imprisonment for a period not exceeding six months. This provision is no longer applicable since, as indicated above, the Internal Security Act abolishes any limit on the fines and prison sentences imposed under the Riotous Assemblies Act.

5. Terrorism Act (No. 83 of 1967)

28. This Act creates a crime of "terrorism", with which a person may be charged retroactively, and makes it possible for any person suspected of any link whatsoever with "terrorism" to be held incommunicado for an indefinite period.

29. The essentials of the definition of terrorism are to be found in section 2 of the Act, which provides that a person shall be guilty of terrorism if he "with intent to endanger the maintenance of law and order in the Republic or in any portion thereof, in the Republic or elsewhere commits any act or attempts to commit ... any act". Conspiracy for, incitement to, or instigation of such an act, whether by commanding, aiding, advising, encouraging or procuring any other person to commit such an act, with the requisite intent, also counts as "terrorism".

30. Thus "terrorism" is an undefined act which corresponds to too large and vague an intention. Indeed, participation in a peaceful demonstration which violates the traffic regulations is a crime, according to the definition in article 2.

31. Section 6, subsection (1), of the Act provides that any police officer of or above the rank of Lieutenant-Colonel may, if he has reason to believe that any person who happens to be at any place in the Republic is a "terrorist" or is

^{6/} The provisions of this Act have been analysed by the Ad Hoc Working Group of Experts in document E/5767, paragraphs 32-34.

withholding from the South African police any information relating to "terrorists" or to offences under the Act, arrest such person or cause him to be arrested, without warrant, and detain or cause such person to be detained for interrogation at such place in the Republic and subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention, or until his release is ordered in terms of subsection (4). Subsection (4) authorizes the Minister to order the release of any detainee at any time.

32. Section 6, subsection (5), of the Act debars any court of law from pronouncing upon the validity of any action taken under the section and from ordering the release of any detainee.

33. Subsections (6) and (7) of that section stipulate that no person, other than the Minister or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee (subsection (6)) and that, if circumstances so permit, a detainee should be visited in private by a magistrate at least once a fortnight (subsection (7)).

6. Section 29 of the Fund-Raising Act (1978)

34. The Minister may prohibit any collection of contributions for any purpose or in any manner by, for or on behalf of certain persons or organizations:

(a) If the Minister deems it to be in the public interest, he may, notwithstanding the provisions of this Act, by notice in the official gazette, prohibit the collection of contributions for any purpose or in any manner by, for or on behalf of a person or an organization mentioned in such notice;

(b) No authority, permission, registration certificate, special authority, special permission or temporary authority shall be granted or collected in conflict with such a prohibition;

(c) The Minister may, at any time, by like notice, amend or withdraw the notice referred to in subparagraph (a).

IV. CONSIDERATION OF THE COMMUNICATION

35. During the meetings held in London from 29 June to 3 July 1981 and in Geneva from 4 to 8 January 1982, the Ad Hoc Working Group of Experts considered the communication transmitted to it under Economic and Social Council decision 1981/155.

36. Since the Ad Hoc Working Group of Experts is authorized "to receive communications and hear witnesses as necessary" under Council resolution 1216 (XLII) paragraph 6, it sent a letter on 12 June 1981 to the Secretary-General of ICFTU inviting him to designate a representative of his organization who could furnish to the Group any additional information and any details it might wish to obtain concerning the allegations in question.

37. ICFTU sent the Ad Hoc Working Group of Experts a number of documents containing information on South African legislation and details of the cases of certain persons mentioned in the communication.

38. On 2 July 1981, at its 551st meeting in London, Miss Ilva Mackay, representative of the South African Congress of Trade Unions (SACTU), reported to the Ad Hoc Working Group of Experts on the situation of the persons mentioned in the communication.

39. In addition, the International Labour Office sent the Ad Hoc Working Group of Experts information concerning the question of violations of trade-union rights in the Republic of South Africa.

40. In accordance with previous procedure, a letter dated 12 June 1981 was sent on behalf of the Ad Hoc Working Group of Experts to the Minister for Foreign Affairs of the Republic of South Africa informing him of Economic and Social Council decision 1981/155. The Ad Hoc Working Group of Experts invited the South African Government to send it any observations relevant to consideration of the aforementioned communication. No reply has been received to date. The text of the letter is reproduced in annex II.

41. In order to prepare this report, the Ad Hoc Working Group of Experts made a systematic analysis of the information furnished by ICFTU and by the representative of SACTU, which it studied in the light of the relevant international standards and taking account of existing South African legislation relating to trade-union rights and freedoms. In addition, on the basis of the information which has come to its knowledge, the Group proposes to indicate below the new developments in the four cases mentioned in the communication.

42. In view of the consistency of the information received, the Ad Hoc Working Group of Experts proposed to analyse it by considering in turn: (i) the case of the members of the Western Province General Workers' Union; (ii) the case of the arrest of members of the Writers' Association of South Africa; (iii) the prohibition of fund-raising by black trade unions; and (iv) police and State interference in industrial disputes.

A. Case of the members of the Western Province General Workers' Union

(a) Analysis of information received by the Ad Hoc Working Group of Experts

43. According to the information contained in the communication, members of the Western Province General Workers' Union employed in the meat industry were arrested in May 1980 during a meat industry strike in Cape Town, following a refusal by the management of Table Bay Cold Storage to recognize a democratically-elected workers' committee of six representatives. The management insisted that they would recognize only a liaison committee, which was rejected by the workers on the grounds that this would constitutionally imply a racially-based division and unacceptable controls.

44. It will be recalled that in 1973 amendments to the Industrial Conciliation Act provided for the establishment of liaison committees. In a recent study, Professor Gould ^{7/} noted that the liaison committees were preferred by employers since they are made up of an equal number of white and black representatives and presided over by the employer. The intention of legislation of this type in promoting liaison committees was to set up an alternative to unregistered black trade unions. In this way it was easier for the authorities to supervise any activity by black trade unionists and put a stop to it if necessary by arresting certain leaders under repressive legislation such as the General Law Amendment Act, the Internal Security Act or the Terrorism Act. ^{8/}

45. The six trade unionists arrested in May 1980 were thus detained under various provisions of these acts.

46. It will be recalled that, in a report submitted in 1981 to the Commission on Human Rights and the Economic and Social Council, the Ad Hoc Working Group of Experts referred to the arrest and detention of members of this trade union and other cases of arrests following strikes during 1980. ^{9/}

Case No. 1: Mrs. Diana Cooper

47. Mrs. Cooper, a trade-union member, was arrested by the South African police on 24 May 1980 ^{10/} under section 22 of the General Law Amendment Act (No. 62 of 1966) and detained for 14 days. She was subsequently indicted under section 10 of the Internal Security Act and held in preventive detention without charge. While in solitary confinement in Pollsmoor Prison, she applied to the Cape Town Court for termination of her detention incommunicado. The application was rejected by Judge de Vos. According to the evidence supplied to the Group by Miss Mackay (SACTU), Mrs. Cooper said that since her arrest on 29 May she had not been able to have any contact with the outside world or with other prisoners, and as a result she was suffering from very severe nervous strain. She was examined by a psychiatrist, Dr. T. Zabow on

^{7/} William B. Gould, "Black unions in South Africa: labour law reform and apartheid". Stanford Journal of International Law, volume XVII, issue 1, winter 1981, p. 112.

^{8/} With regard to the use of repressive measures by the South African authorities to control trade-union activities, see also chapter IV, paragraph 58, below.

^{9/} E/CN.4/1429, paras. 270-312.

^{10/} According to a witness, the arrests of Mrs. Diana Cooper and Mr. Michael Morris took place on 29 May 1980.

25 July 1981 but was unable to obtain his report. In a letter dated 16 September 1981, ICFTU informed the Ad Hoc Working Group of Mrs. Cooper's release in September 1980. According to the information contained in this letter, Mrs. Cooper and the other trade unionists arrested had undergone interrogation during their detention but had not been brought to court. No explanation was given for their release. According to consistent reports, all were expelled from Cape Town under police escort. 11/

Case No. 2: Mr. David Lewis

48. Mr. Lewis, a permanent member of the Western Province General Workers' Union, was arrested on 24 May 1980 12/ as he was leaving a meeting of the trade-union committee. He was reported to have frequently taken part in meetings since the beginning of the meat workers' strike at Table Bay Cold Storage on 7 May 1980. He was detained in custody for 14 days under section 22 of the General Law Amendment Act; he was subsequently indicted and held in preventive detention without charge under section 10 of the Internal Security Act. According to the information furnished by SACTU, Mr. Lewis was released on 9 or 10 August 1980. This information was confirmed by the ICFTU and by reports from other sources to the Ad Hoc Working Group of Experts, according to which Mr. Lewis was expelled from Cape Town under police escort. 13/

Case No. 3: Mr. Michael Morris

49. Mr. Morris, a permanent member of the Western Province General Workers' Union, was arrested in Cape Town on 13 June 1980 by the South African police under section 22 of the General Law Amendment Act. Detained in Pollsmoor Prison near Cape Town under this Act for 14 days, during which time he was not interrogated, he was subsequently held in preventive detention without charge under section 10 of the Internal Security Act. Mr. Morris was permitted to receive a weekly visit from his wife. According to the information furnished by SACTU, Mr. Morris was released on 9 or 10 August 1980. This information was confirmed by ICFTU and by reports from other sources to the Ad Hoc Working Group of Experts, according to which Mr. Morris was expelled from Cape Town under police escort. 14/

Case No. 4: Mr. John Frankish

50. Mr. Frankish, a member of the Western Province General Workers' Union, was arrested at Cape Town on 13 June 1980 by the South African police under section 22 of the General Law Amendment Act. According to information furnished by SACTU, Mr. Frankish was released on 9 or 10 August 1980. This information was confirmed by ICFTU and by reports from other sources to the Ad Hoc Working Group of Experts, according to which Mr. Frankish was expelled from Cape Town under police escort. 15/

11/ Focus No. 31 November/December 1980, p. 4; ILO, op.cit., p. 14.

12/ See case No. 1.

13/ Focus No. 31, November/December 1980, p. 4; ILO, op.cit., p. 14.

14/ Ibid.

15/ Ibid.

Case No. 5: Mr. Wilson Sidina

51. Mr. Sidina was arrested at his home on 20 June 1980 by the South African police under section 22 of the General Law Amendment Act. According to the information furnished by SACTU, he was released on 9 or 10 August 1980. This information was confirmed by ICFTU and by reports from other sources to the Ad Hoc Working Group of Experts, according to which Mr. Sidina was expelled from Cape Town under police escort. 16/

Case No. 6: Mrs. Zora Mehlomakhulu

52. Mrs. Mehlomakhulu, a trade-union representative, was arrested at her home by the South African police on 20 June 1980 at the same time as Mr. Sidina. After interrogation, she was released the same day.

Case No. 7: Reverend H. Marawu

53. Mr. Marawu, a permanent trade-union member, was reported to have been arrested on 24 May 1980 under section 22 of the General Law Amendment Act. After being interrogated by the South African police for three hours, he was released for lack of evidence against him.

B. Case of the arrest of members of the Writers' Association of South Africa (WASA)

Analysis of information received by the Ad Hoc Working Group of Experts

54. According to consistent reports available to the Ad Hoc Working Group of Experts from different sources, 17/ the South African authorities arrested a number of members of the Media Workers' Association of South Africa (MWASA) 18/ in April 1980, and penal sanctions were imposed on certain union leaders and journalists, namely, Mr. Thami Mkhwanazai, Mr. Mono Badela, Mr. Molese Matsomela and Mr. Marimuthu Subramoney.

- (i) Mr. Marimuthu Subramoney, Vice-President and Regional Secretary of MWASA for the Natal region, was arrested on 28 May 1980 under section 22 of the General Law Amendment Act following a strike by black journalists. He was a journalist of the Daily News and a correspondent of the BBC and other foreign radio networks. From the latest consistent information, the Ad Hoc Working Group of Experts received confirmation that Mr. Subramoney had been released. 19/ However, on 29 December 1980, banning orders were imposed on him and he was restricted to his home for a period of three years. It will be recalled that in such cases the offender is not allowed to leave

16/ Ibid.

17/ Apart from the information submitted by ICFTU, the group has also received information from ILO, SACTU and various South African and International newspapers.

18/ The Writers' Association of South Africa (black journalists' union) changed its name in August 1980 to the Media Workers' Association of South Africa (MWASA). The Union's constitution was changed to enable black newspaper production workers to become members.

19/ Focus, No. 33, March/April 1981; ILO, op.cit., p. 15.

his home between 7 p.m. and 6 a.m. on weekdays or at any time during weekends and public holidays. He is not allowed to receive visitors except for his parents, parents-in-law and a doctor. He is forbidden to enter any newspaper office, industrial complex or educational establishment. Lastly, he is not entitled to take part in social or political demonstrations. 20/

- (ii) Mr. Mono Badela, MWAASA leader in the Port Elizabeth section, was arrested and subjected to a banning and restricted residence order.
- (iii) Mr. Molose Matsonela, MWAASA leader in the Pretoria section, was arrested on 25 May 1980 under section 22 of the General Law Amendment Act. Consistent reports confirm that he was subsequently released.
- (iv) Mr. Thami Mkhwanazai, a former influential MWAASA personality, was arrested in April 1980. Detained under the Terrorism Act, he was sentenced to seven years' imprisonment. The Group has not received any information concerning Mr. Mkhwanazai's present situation.

55. The Ad Hoc Working Group of Experts was informed of other arrests of members of this trade union, the most recent of which were those of Mr. Zwelakhe Sisulu, former President of MWAASA, and Mr. Thami Mazwai, National-Secretary of the trade union, who were detained under section 22 of the General Law Amendment Act. The terms of their detention were subsequently altered so that the preventive detention provided for in the Terrorism Act, section 6, could be applied. 21/ Following the arrest of other trade-union members and journalists, who were subjected to restricted residence orders in August 1981, Mr. John Allen, President of the Southern Africa Society of Journalists, representing the majority of white journalists working for English-language papers, said that to restrict the representatives of the force of black journalism in South Africa to their homes amounted to an invitation to confrontation and disaster, the effect of which would be to encourage violence as the "only" choice open to those who sought change. 22/

56. According to information brought to the Ad Hoc Working Group of Experts notice, MWAASA was officially "recognized" on 6 August 1981 by the two main English-language press groups in South Africa as the only agent of negotiation and representation for all its members. MWAASA will henceforth be empowered to negotiate the wages and employment of its members. 23/

C. Prohibition of fund-raising by black trade unions

57. The Federation of South African Trade Unions (FOSATU), which was set up in 1978 and comprises the largest number of independent black unions, is a multiracial trade-union whose basic principle is to be open to all workers, without distinction of race or colour, and the prohibition of domination by any racial group, since one

20/ Focus, No. 33, March/April 1981.

21/ Rand Daily Mail, 9 July 1981; ILO, op.cit., p. 15.

22/ The Times, 3 August 1981.

23/ Le Monde, 8 August 1981.

of the major problems which confront the trade unions is racial discrimination with regard to wages. In a recent study, Professor William B. Gould 24/ pointed out that, although the Wiehahn Commission had announced its support for the principle of freedom of association for trade-unions, the South African Parliament had already promulgated the Fund-Raising Act (1978) prohibiting all fund-raising without prior authorization. In addition, in accordance with this legislation, the Government had forbidden FOSATU to raise funds abroad. Trade-Union organizers had then declared that this ban should also be applied to fund-raising in South Africa. It would seem, the author concluded, that the efficacy of FOSATU's action through the strikes in 1980 had caused the Government to act.

58. In its seventeenth special report, 25/ ILO confirms that the Fund-Raising Act of 1978 forbids trade-unions to raise funds and that it has already been used against one union. The report concludes:

"A range of security laws (the Riotous Assemblies Act, 1956, the Internal Security Act, 1956, the Affected Organisations Act, 1974 and the General Law Amendment Acts providing for several systems of detention without trial and for widely defined crimes of 'sabotage' and 'terrorism', which include references to industrial action and its effects) provide the State with wide powers and authorise banning of individuals and prohibition of the publication of documents. Such measures have been widely used against trade unionists, even since the extension of trade-union rights to blacks, and are capable of such use in the future."

D. Police and State interference in industrial disputes

59. The analysis of South African labour legislation and of the information received by the Ad Hoc Working Group of Experts concerning the numerous arrests reveal that the measures taken by the authorities in this respect are aimed at ensuring close surveillance of all black trade-union activity and putting an end to it when necessary by arresting certain unionists under a particular repressive act. This constitutes direct police and State interference in the activities of black trade-unions in South Africa.

60. According to information brought to the Ad Hoc Working Group of Experts attention, the increase in arrests of black trade unionists and the reinforcement of the system of repression have been particularly evident since the events in Soweto in 1976, since when action movements have become more numerous. 26/

61. Following the strike initiated in May 1980 by the Western Province General Workers' Union, another major strike by workers at the FRAM Group mills occurred at Durban in May 1980. The workers went on strike in protest against low wages. According to the information contained in the special report by ILO, 27/ there was

24/ William B. Gould, "Black unions in South Africa: labour law reform and apartheid", Stanford Journal of International Law, vol. XVII, issue 1, winter 1981, pp. 129-130.

25/ ILO, op.cit., p. 66.

26/ Rand Daily Mail, 30 June 1981; ILO, op.cit., pp. 14-15.

27/ ILO, op.cit., p. 13.

considerable police involvement on this occasion and several workers' representatives were arrested. The persons arrested included Mr. Jabulana Givala, President of the National Union of Textile Workers; who was arrested under the Riotous Assemblies Act.

62. The Ad Hoc Working Group of Experts received confirmation that the dispute had been settled and that legal action against the arrested trade unionists had been dropped. However, 179 workers who were dismissed because of the strike were "endorsed out" of the Durban area to their "homelands". 28/

63. According to the information available to the Group 29/ the police made other arrests in different regions of the country during 1980; in particular they arrested: (a) 55 workers of the Rely Precision Company at Johannesburg; (b) striking workers in the automobile industry (Ford, Volkswagen, General Motors ...) and in other industries. 30/

64. With regard to State interference in industrial disputes, the Ad Hoc Working Group of Experts has received information confirming the substance of a statement made by Mr. Jaap Cilliers, Secretary-General of the Department of Manpower Utilization. According to ILO's seventeenth special report, Mr. Cilliers, referring to the various industrial disputes and strikes in May 1980, "had warned that if the wave of strikes continued, his Department might identify people inciting workers and point them out to the Department of Justice and Police. He said that the Department was compiling reports on the strikes and added that employers should put their foot down and refuse to negotiate with unregistered unions". 31/

V. CONCLUSIONS AND RECOMMENDATIONS

65. The Ad Hoc Working Group of Experts is of the opinion that the Republic of South Africa, a non-member of the ILO, but nevertheless bound by the general principles governing trade union rights as set forth in different international instruments, analysed above,

- violates by its legislation the international standards concerning trade union rights; and
- has violated, in each separate case considered by the Ad Hoc Working Group of Experts, the international standards on trade union rights.

66. The Ad Hoc Working Group of Experts concludes that the Government of South Africa has committed by these acts the crime of apartheid, in particular in regard to Art. I, II and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

67. The Ad Hoc Working Group of Experts consequently recommends that the present report and its conclusions be transmitted to the Group established by the Commission on Human Rights under Art. IX of the above mentioned Convention for appropriate considerations.

28/ Ibid., p. 15

29/ Ibid., p. 15

30/ Ibid., pp. 13-15

31/ Ibid., p. 14

68. The Ad Hoc Working Group of Experts further recommends that the Economic and Social Council demand from the Government of South Africa by the most appropriate means:

- recognition of the unimpeded exercise of freedom of association and trade union rights by the entire population, without discrimination of any kind;
- the release of the imprisoned trade unionists;
- lifting of the ban on fund-raising drives by the Federation of South African Trade Unions (FOSATU);
- impartiality of the Government and of the police in labour disputes.

VI. ADOPTION OF THE REPORT

69. The present report has been approved and signed on 8 January 1982 by the members of the Ad Hoc Working Group of Experts, namely:

Mr. Kéba M'Baye, Chairman-Rapporteur

Mr. Branimir Janković, Vice-Chairman

Mr. Annan Arkyin Cato

Mr. Humberto Díaz-Casanueva

Mr. Felix Ermacora

Mr. Mulka Govinda Reddy

Annex I

LIST OF ARRESTED TRADE UNIONISTS

(i) Members of the Western Province General Workers' Union

- (1) Mrs. Diana Cooper
- (2) Mr. David Lewis
- (3) Mr. Michael Morris
- (4) Mr. John Frankish
- (5) Mr. Wilson Sidina
- (6) Mrs. Zora Mchlonakhulu
- (7) Reverend H. Marawu

(ii) Members of the Writers' Association of South Africa

- (8) Mr. Thami Mkhwanazai
- (9) Mr. Mono Badela
- (10) Mr. Molose Matsomela
- (11) Mr. Marimuthu Subramoney

(iii) Member of the National Union of Textile Workers

- (12) Mr. Jabulana Givala

(iv) Other members of the Writers' Association of South Africa arrested during 1981

- (13) Mr. Zwelakhe Sisula
- (14) Mr. Thami Mazwai
- (15) Mr. John Allen

Annex II

LETTER DATED 12 JUNE 1981 FROM THE DIRECTOR OF THE DIVISION OF
HUMAN RIGHTS TO HIS EXCELLENCY MR. ROELOF E. BOTHA, MINISTER
FOR FOREIGN AFFAIRS OF THE REPUBLIC OF SOUTH AFRICA

At the request and on behalf of Mr. Keba M'Baye, First President of the Supreme Court of Senegal, Chairman of the Ad Hoc Working Group of Experts of the Commission on Human Rights, I have the honour to inform you that the Economic and Social Council by its decision 1981/155 of 8 May 1981 (copy attached), has transmitted to the Working Group, for consideration and report to the Commission on Human Rights and to the Council in 1982, certain allegations regarding infringements of trade union rights in South Africa received from the International Confederation of Free Trade Unions. The text of the communication is reproduced in annexes I and II of document E/1981/28 (copy attached).

In connection with the preparation of its report to the Commission on Human Rights and to the Council, the Ad Hoc Working Group of Experts would appreciate receiving from the Government of the Republic of South Africa any observations relevant to the consideration of the above-mentioned communication reproduced in annex II of document E/1981/28 which Your Excellency's Government may wish to bring to the attention of the Working Group.

The Ad Hoc Working Group of Experts will consider the above-mentioned communication during its next series of meetings to be held in London from 29 June to 3 July 1981.