

Research in Peace and Reconciliation

edited by  
Martin Leiner

in co-operation with

Benoît Bourguine (Louvain-la-Neuve),  
François Dermange (Genf), Dennis Doyle (Dayton/Ohio),  
Matthias Gockel (Jena), Makoto Mizutani (Kyoto),  
Arie Nadler (Tel Aviv), and David Tombs (Belfast/Dublin)

Volume 1

Vandenhoeck & Ruprecht

Latin America between Conflict  
and Reconciliation

Edited by  
Martin Leiner and Susan Flämig

Vandenhoeck & Ruprecht

Wells, Harold (1997). "Theology for Reconciliation". In: Baum, Gregory and Wells, Harold ed.: *The Reconciliation of Peoples: Challenge to the Churches*. Maryknoll New York: Orbis . 3.

Willi, Jürg (1978). *La pareja humana: relación y conflicto*. Colección Estudios de Sexología Ediciones. Madrid: Morata S.A. 298.

Hugo Rojas<sup>1</sup>

## The Recognition of Victims of Human Rights Violations in Chile

An Analysis of the Complaints of the Chilean Labor Unions  
Presented to the International Labor Organization  
during Pinochet's Dictatorship

... more important than punishment  
-and even than reparation- it is yet  
the voice of justice that publically es-  
tablishes the responsibilities of every  
actor, and designates the correspond-  
ing place for both the aggressor as well  
as the victim in a relation of fair dis-  
tance

Paul Ricœur<sup>2</sup>

### 1. Introduction

As we all know, during the dictatorship of General Augusto Pinochet the rights of the workers and trade union leaders were violated. This article revisits the subject, exclusively focusing on two aspects: (1) how the Chilean legal system was modified and used by the authorities to avoid that the workers could effectively defend their human rights (*infra* II), and (2) why denouncing human rights violations in international organizations is not only a convenient legal strategy, but also a historical record and evidence that could contribute to obtain reparations once democracy is restored, as it happened in the Chilean case (*infra* III). At the end, I offer some final reflections and remarks that might be useful for other societies in transition (*infra* IV).

This paper is a revised version of my lecture about "The Complaints at International Organizations as Evidence of Human Rights' Violations: The complaints of the Chilean trade union/workers presented at the International

<sup>1</sup> The author would like to acknowledge the contributions made by Martín de la Ravalan, Jorge Donoso, Susan Flämig, María Angélica Garrido, David Gippner, Pedro Irureta, Martin Leñner, Elizabeth Lira, Monika Merrbach, Karen Tapia, and the organizers of the Summer School "Societies in Transition: Latin America Between Conflict and Reconciliation", Friedrich-Schiller-Universität Jena.

<sup>2</sup> Ricœur, Paul (2008): *La memoria, la historia, el olvido*. Fondo de Cultura Económica. 2. Vol. in Spanish, Mexico, F.D. 606.

Labor Organization and Freedom of Association Committee (1973–1990)”, presented at the Summer School *Societies in Transition. Latin America Between Conflict and Reconciliation* (Friedrich-Schiller-Universität Jena, Aug. 2009), complemented with information mentioned in the book *Freedom of Association and Human Rights*, which Elizabeth Lira and I edited in 2009.<sup>3</sup>

## 2. The Use and Abuse of the Legal System on Violations of Workers’ Human Rights between 1973 and 1990

The Armed Forces overthrew President Salvador Allende in a military coup d’état in Sep. 1973. Since then, an authoritarian government was established in Chile, which strongly repressed people with left and center-left political thoughts, including the trade union movement and its leaders. The dictatorship remained until Mar. 11, 1990, when democrats returned to power after a complicated transition to democracy, following the referendum on Oct. 5, 1988, and by winning the presidential elections in Dec. 1989, when President Patricio Aylwin was elected with 54 % of the suffrages.

Between Sep. 1973, and Mar. 1990, the “legal system” –*latu sensu*– was controlled by the Armed Forces and the authorities of the Executive Power. If we carefully revisit the evolution of the legal system within this period, it is interesting to observe how a *de facto* situation gradually became *de iure*, obviously with the complicity of the main legal actors who were related to the dictatorship.

In those seventeen years, the Military Junta exercised the attributions of creating, modifying and derogating the laws of the Republic. In 1973, the Armed Forces dissolved the National Congress, which only restarted to have sessions by 1990. Also, for over a decade, the functioning of political parties was suspended and it was only until 1987 when they were able to legally establish. Intellectuals and supporters of the High Command of the dictatorship took seven years in drafting a new Constitution that was approved in 1980 in a referendum of dubious legitimacy, setting the basis of a new political and economic system in Chile that, significantly, still remains in place, although it has experienced important modifications between 1989 and 2005.

Since the Government controlled and determined the nominations of the judges in the country, it is obvious that the majority of judges of the Courts of Appeals and Supreme Court were supporters of Pinochet’s Government. As it is mentioned in the National Commission on Truth and Reconciliation Report (1991), “the Judicial Power did not react strongly enough against the human

<sup>3</sup> Lira, Elizabeth, Rojas, Hugo ed. (2009). *Libertad Sindical y Derechos Humanos: Análisis de los informes del Comité de Libertad Sindical de la OIT, 1973–1990*. Lom Ediciones. International Labor Organization. Alberto Hurtado University, Santiago.

rights’ violations” and neither exerted an effective job on the protection of people’s essential rights when these were threatened, disturbed or infringed by the authorities or by individuals, in complicity or tolerance of those” (1991: 95). The former was corroborated by the National Commission on Political Imprisonment and Torture (Apr. 2003), which stated that “the Supreme Court not only gave in the field for the discretionary action of the new authorities and their agents but also ignored the abuses perpetrated against the people, by leaving them totally defenseless when facing such governmental arbitrariness... Strictly speaking, the highest tribunal offered the country its decisive support to the military government” (*Report of the National Commission* 2004: 171). In fact, during the dictatorship the judges did not apply any sanctions against those who violated people’s human rights, in spite of being aware of the facts, for instance, through the statements included in the *habeas corpus* petitions presented to the highest courts. As Brian Loveman mentions, of about 2,500 *habeas corpus* petitions presented by human rights organizations between September of 1973 and October of 1975, the courts approved only one, not to mention that the Government responded to the court by issuing a detention order against that person whom the court intended to rescue (cf. 2001: 264).<sup>4</sup>

The situation at universities was also complicated, including the situation of the Law Schools.<sup>5</sup> Since the presidents of the universities were assigned by the Military Junta, many opposing scholars were expelled and an important number of intellectuals had to go into exile, without mentioning those who were disappeared or executed. In the words of Carlos Huneeus:

The Junta decreed the intervention of senior officers of the three branches of the Armed Forces, both in active service as well as retired and assigned delegate-presidents into colleges. These officers received full authority to modify the internal structures inside the institutions, especially through the dismissal of professors and administrative staff and disciplinary measures that could be taken against students. The goal was the political neutralization of the student movement. (Huneeus 2000: 116)

When the authorities that exert power concentrate the executive and legislative functions without any counterbalance and have influence on the

<sup>4</sup> The National Commission on Torture and Political Imprisonment notes: “Only in Santiago, between 1973 and 1989, *Comité Pro Paz* and *Vicaría de la Solidaridad* presented 9,000 *habeas corpus* petitions... which [the courts] rarely accepted. For example, between 1985 and 1989, the courts of Santiago accepted only 28 of 2,357 petitions presented by *Vicaría de la Solidaridad*” (173).

<sup>5</sup> In the 70s, the legal community was small in terms of the size of the population, affecting the access of justice. For example, in 1975 only 3,000 students studied law in Chile (at the University of Chile, the Catholic University of Chile, the Catholic University of Valparaíso, the University of Concepción and the University of Chile in Valparaíso). Now that number can be easily multiplied by ten, in regard to the number of students and law schools.

nomination of judges, control the media and what is taught at colleges, there is no question that the legal system can be revised and modified according to the values and discernment that the political authority considers appropriate for a particular society, because there is no room for dissent, public debate and confrontation of ideas. Thus, the military government was fabricating and articulating a labyrinth of laws, attempting to elude and hide its lack of legitimacy.

Between 1973 and 1990, Pinochet's government approved a whole set of rules that in general restricted workers' rights and labor unions. These norms were used as an instrument for social repression, imposing a punishing vigilance towards those workers who opposed to the military government. In fact, the authorities took measures in order to restrict the activities of labor unions and many of these measures were imposed by force, without any chance to have a *due process* in courts. Right after the coup d'état, the Junta decreed a constitutional regime of exception throughout the country, such as the state of siege or emergency, thereby affecting the constitutional guarantees of citizens (cf. Loveman 2001: 263).

On Sep. 17, 1973, the Junta dismissed the legal personnel of the historically most important labor union *Central Única de Trabajadores* (CUTCH) (Decree Law N° 12). Moreover, the Decree Law N° 32 from Sep. 21, 1973 established that the dismissed workers could only complain before special courts, formed by a labor judge, a representative of the Armed Forces and the *Carabineros* (Police) and a Labor Examiner.<sup>6</sup> It also stated that workers could be dismissed if their actions were aimed against the production process or the national reconstruction, and strikes were forbidden.

It is true that many of the rules approved within the early years of the military dictatorship were afterwards modified, but still the regulation of working relations and labor unions suffered deep modifications during that time, having a strong and negative effect on workers' rights. Not only the labor law was modified, but the legal system was changed in such a way that human rights lost efficacy, including the rights to life, freedom of reunion and association, freedom of expression, personal security and physical integrity. For example, in 1978 the Junta approved the Amnesty Decree Law, forbidding the indictment of almost all human rights violations since 1973 (cf. Hayner 2008: 66), many of which were performed by a new secret police agency, *Dirección de Inteligencia Nacional* or DINA (created by Decree Law N° 521, in 1974), an entity that was subsequently replaced by the *Central Nacional de Informaciones* or CNI.

A very polemic situation for the efficacy of freedom of association was the impossibility to carry out collective bargaining between 1973 and 1979, a

6 In 1981, civil judges got jurisdiction to solve labor conflicts. Labor courts were reopened only in 1986.

situation that was only amended once the *Plan Laboral* (Labor Plan)<sup>7</sup> was approved. The Labor Union's meetings were limited to be merely informative (cf. Brown 1983: 29), affecting, during the entire period, the right to hold peaceful meetings. Moreover, labor organizations and unions were dissolved. I agree with Edmundo Fuenzalida when he argues that labor and social security legislations were dismantled and that the rights achieved by the workers and trade unions in the decades before were cancelled (cf. 2003: 195).

The intervention of authorities was so strong that the messages received by the trade unions leaders in that time were clear: if any trade union had the intention to function, it was preferable that the union leaders were in accordance with Pinochet's government.

These and many other restrictions to freedom allowed the authorities to violate workers' human rights with total impunity, affecting also the normal functioning of trade unions. There is no doubt that between 1973 and 1990 the legal system was used and abused by the military government against the Chilean workers.

### 3. Workers Complaints before the ILO: Legal Strategy, Evidence and Reparation

In the context of the above mentioned adverse scenario, the use of concrete legal mechanisms to register part of the truth and/or provoke reactions by the military government must be evaluated as valuable historical material to be considered within the complicated process of national reconciliation, but also as a solid contribution to the promotion, defense, and protection of human rights, including the possibility to achieve reparations for victims of abuse.

Precisely that has happened with the complaints presented by several labor unions before the Freedom of Association Committee of the International Labor Organization (ILO).<sup>8</sup> The complaints on detentions, exonerations, tortures, forced entries, disappearances, homicides, and other serious human rights violations obligated the *de facto* regime to respond before the ILO with

7 The transformation of the employment, labor and pensions laws during the dictatorship is known as *Plan Laboral*, and it should be understood as a key element in the project of transforming the social-economic model towards the establishment of Neoliberalism in Chilean society.

8 Since its establishment 55 years ago, the Freedom of Association Committee (FAC) has dealt with more than 2,500 complaints of infringement of freedom of association submitted to it either by governments or by organizations of employers or workers. For more information about the proceedings, decisions and principles of the FAC, see ILO: *Freedom of Association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf).

official statements about such complaints. As it is possible to imagine, the authorities denied many of the denounced events at the time.

The formulation of complaints before the ILO can be understood as a legal mechanism used by trade union leaders, with several aims: (1°) to put an end to human rights violations against Chilean workers, (2°) to prevent further repressive actions of the state, (3°) to denounce before the international community the abuses of human rights by the military government.<sup>9</sup> Such accusations also can be useful afterwards, as (4°) a source of historical record of the perpetrated abuses and (5°) as a direct evidence to prove human rights violations, in order to obtain a reparation from the state.

The Freedom of Association Committee, after analyzing either the received claims or the answers of the Government, formulated concrete recommendations to be intended to put an end to the abuses perpetrated against trade unions leaders and Chilean workers.<sup>10</sup> In that sense, the recommendations of the ILO also serve as an invaluable back up of the workers requests in order to see their human and labor rights recognized. The content of these complaints and recommendations deserves to be acknowledged in public, because it is an important contribution to the (fragile) historical memory of Chile, and also because of the creativity of those using international law which, opposed to domestic law, offered them better possibilities to claim their individual and collective rights.

These accusations, formulated since 1973 until the return of democracy in 1990, contributed to an international awareness of the magnitude of the repression in the country, showing the failure of the judicial system and legal actions. The responses given by the Government also provide information of the situation of thousands of workers, even when the Government denied the facts or (hypothetically) adopted certain measures.

The records regarding labor law and violations of workers' individual freedom were provided by labor union leaders to a small group of people in charge of their formulation, most of them lawyers who worked for the Catholic Church at the Vicarage of Pastoral Laborers (*Vicaría de la Pastoral Obrera*) – and before it for the Vicarage of Solidarity (*Vicaría de la Solidaridad*) – or for more specialized entities, such as the *Corporación de Investigación y Asesoría Sindical* (CIASI) and others.

It is possible to classify the claims before the ILO into two larger groups: (1°) on one side, claims referring to the violation of civil liberties, as it happened when the regime performed illegal detentions, arrests, freedom deprivations, banishment, exile, tortures, murders and the loss of citizenship,

<sup>9</sup> See the complaints presented to the Inter American Commission of Human Rights, the Commission of Human Rights of the United Nations Organization, Amnesty International, the World Council of Churches, the jurist International Organization, and other institutions, which provoked an international reaction against Pinochet's dictatorship.

<sup>10</sup> All the cases are available in ILOLEX, database of the International Labor Organization: <http://www.ilo.org/ilolex/english/casframeE.htm>.

and (2°) on the other side, claims that refer to the violation of collective labor rights and freedom of association, which included the prohibition of affiliation of workers and organizations, the dissolution of trade unions, the prohibition of strike and collective bargaining, among others. Indeed, the exercise of freedom of association requires the recognition of civil liberties.

Figure 1: Classification of claims before the ILO (Chile, 1973 - 1990)

Source: Own representation.

Dimension	Type of Complaint
Civil Liberties	1. Unjustified detention of workers and trade union leaders and, in some cases, their subsequent disappearance.
	2. Detentions and interrogations of workers and trade union leaders, including their imprisonment in concentration and torture camps.
	3. Relegation and exile of workers and trade union leaders.
	4. Execution of workers and trade union leaders.
	5. Denial of permits to leave the country, e.g., to trade union leaders refugees in embassies.
	6. Deprivation of Chilean citizenship.
Freedom of Association	1. Limitation and suppression of affiliation, reunion, organization, petition and strike rights.
	2. Dismissal of workers because of their union affiliation or participation in strikes. Destitution of trade union leaders who belong to a political party declared illegal, through administrative ways.
	3. Prohibition of collective bargaining.
	4. Limitations to the finances of trade unions.
	5. Denial to the attainment of legal capacity.
	6. Cancellation of legal personality and confiscation of goods.
	7. No authorization for the celebration of May 1 <sup>st</sup> .
	8. Assault of trade union facilities.
	9. Government intervention into some trade union organizations.

All the claims stated by the labor unions before the ILO, in the period between September 11, 1973 and March 10, 1990, were grouped by the ILO into 35 cases,<sup>11</sup> and the Freedom of Association Committee (FAC) of the ILO gave account of these cases in 123 reports.

It is not possible here to explain every situation acknowledged by the FAC of the ILO, but as an example that demonstrates the legal and strategic meaning and relevance of the mechanism of presenting solid and founded complaints at the international level, I will focus particularly in the main aspects of the *Case 765*, which is about the unjustified detentions of workers and trade union leaders and, in some cases, their subsequent disappearance. The accusation made by the trade unions, the response of the Chilean Government, and the recommendations made by the ILO will be described in the following paragraphs.

In Sep. 17, 1973, the World Trade Union Federation (*Federación Sindical Mundial*, FSM), referred to the detention of several trade union leaders of the *Central Única de Trabajadores* (CUTCH)<sup>12</sup>: Luis Figueroa Mazuela (President of the CUTCH), Ernesto Vogel Ramírez (Vice President of the CUTCH and President of the Industrial Railway Federation), Rolando Calderón, Eduardo Rojas, Octavio González, Luis Guzmán, Fidelma Allende, Manuel Dinamarca, Mario Navarro, Aldo Ramaciotti, Tucapel Jiménez Alfaro (leader of the National Association of Government Workers (ANEF) and first provisional executive Vice President of the National Workers Central Office (*Central Nacional de Trabajadores*, created in Dec. 1973), Jorge Godoy, Juan Ponce, Gilberto García Aravena and leaders of the secretariat of the Permanent Congress for Freedom of Association (*Congreso Permanente de la Unidad Sindical*): Jorge Espinoza, Benedicto Cerqueira de Silva, and Roberto Prieto (Uruguayan trade union leader, Vice President of the International Alimentary, Tobacco, Hotels and Similes Industries Labor Unions).<sup>13</sup>

*Case 765* referred to Lina Benítez, known as Lina Kleovan, a trade union leader of the CUTCH, who was sentenced to death by the Chilean authorities. It

11 Cases 765, 823, 1028, 1046, 1051, 1094, 1095, 1096, 1109, 1117, 1126, 1136, 1137, 1144, 1152, 1156, 1162, 1170, 1183, 1184, 1186, 1191, 1194, 1200, 1205, 1205, 1212, 1229, 1272, 1276, 1278, 1280, 1285, 1297 and 1309 (Chile).

12 The Latin American Association of Workers (*Central Latinoamericana de Trabajadores*, CLAT) reported to the ILO, on Sep. 13, 1973, and Oct. 13, 1973, that the government was violating all the rights of the workers and their associations, organizing a brutal repression against them and also against the Latin American trade union leaders that were in Chile at that time. See Report No. 142 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17, 1973). Final Report. Chile: 227. As it is mentioned in that report, several trade unions claimed that a large number of trade union leaders had been detained or were under surveillance by the military authorities.

13 Report No. 139 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17, 1973). Provisional Report. Chile: 557 and 560. "In his communication of Oct. 4, 1973, the FSM declares that the President of the CUTCH, Mr. Luis Figueroa, is being wanted by the authorities" and promised money to any person who provided information that helped to capture him. See Report No. 142 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17, 1973). Final Report. Chile.

also mentions the execution of David Miranda, Secretary of the Chilean Miners Federation, who was shot to death on Oct. 19, 1973, Iván Gordillo, leader of the CUTCH in Antofagasta, Héctor Rojo, Samuel Yañez, Armando Jiménez, Guillermo Álvarez, trade union leaders of the longshoremen in San Antonio, Isidoro Carrillo, Bernabé Cabrera, Vladimir Araneda, coal workers in Lota, Luis Valdivia and Luis Mamani, trade union leaders in Calama, Ricardo García, worker and director of Cobre-Sal mine and other five trade union leaders, Héctor Martínez, rural leader, Manuel Donoso, teacher and leader. It also mentions the detention and demise of leaders of the National Union of Chemistry and Pharmacy Laboratories and Simile Subjects Workers (SUTRAL) and the Union of the Plastic Industry Workers (cf. Report No. 142 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17, 1973). Final Report. Chile: 244/45/50 and 267).

The Government responded to the ILO by saying that the trade union leaders were neither arrested nor persecuted and the fundamental rights of human beings were never violated (cf. Report No. 139 (1974). Vol. LVII, S. Case 765 (Sept. 17, 1973). Provisional Report. Chile: 564). It was argued that some people had the title of trade union leaders but they were actually *extremists* who performed violent actions: "sabotage, illegal possession of weapons, armed resistance to the forces of order and illegal traffic in the black market with products that, in most of the cases, came from the same companies where they worked" (*ibid.*). Considering this, those people should appear before a court, like other common criminals. The Government stated that some of those people were judged by the courts of justice, in accordance with the procedures and legal dispositions existing in Chile for many years, while others took refuge in foreign countries embassies. For the Government, these actions were equal to the recognition of their participation in felonies. It also said that Chile was in a situation of *internal war* and therefore had to decree certain temporary and exceptional legal restrictions, "even though they will be over once the civil peace is restored by the disarming of the *guerrilla* forces" and the restoration of free elections and democracy (*ibid.*).

Within an appendix to its report, the Government referred to some people hypothetically arrested (cf. *ibid.*: 565). It sustained that Luis Figueroa Mazuela, Fidelma Allende and Benedicto Cerqueira de Silva were refugees at embassies and Rolando Calderón was arrested and processed in Dawson Island (cf. *ibid.*). With respect to the rest of the list and the allegations of detention and/or disappearances, the Government denied the facts by expressing that "every other person mentioned in the claim of the FSM was not under arrest" (*ibid.*).

In the same way, the Government added that allegations about the detention of people were not proven by the accusers, insisted that no trade union leaders were persecuted whatsoever, and that the situation of people under arrest corresponded to the process of due justice and to regular proceedings before the courts (cf. Report No. 142 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17,

1973). Final Report. Chile: 236). Finally, the Government pointed out that "human rights have been respected at all times" (ibid.).

The Government sent to the ILO two new official statements, dated Feb. 8 and 11, 1974. In the second, it responded to several allegations formulated by the denouncers and attached documents as a proof of its position. For instance, it referred to the situation of Ernesto Vogel and Aldo Ramaciotti who were not arrested or interrogated by the new authorities (cf. ibid.: 253). With respect to the well-known national trade union leader Tucapel Jiménez, the Government reported that he declared he was not bothered either in his residence or in his job. Moreover, according to the Government, Gilberto García declared that he was not arrested either interrogated on his tasks at the CUTCH. Ernesto Vogel, Vice President of the CUTCH and President of the Chilean Industrial Railway Federation, continued to work and exercise his official duties, and Tucapel Jiménez was the leader of the *Central Nacional de Trabajadores* (CNT), founded in Dec. 1973. Jorge Godoy, former Secretary of Labor, was a refugee at the Swedish Embassy; Rolando Calderón - wounded by a gunshot inside the facilities of the Swedish Embassy and treated at the Military Hospital -, was not in Dawson Island, but he was a refugee at the Cuban Embassy (which, indeed, was under the direction of the Swedish Embassy). Eduardo Rojas was a refugee at the Finnish Embassy. Luis Guzmán Robinson was a refugee at the Argentinian Embassy and then moved to that country. Fidelma Allende was a refugee at the Finnish Embassy. Roberto Prieto, a Uruguayan, was a refugee at the Swedish Embassy and then expelled to that country. Benedicto Cerqueira de Silva, a Brazilian, was a refugee at the Panamanian Embassy and then traveled to that country. Lina Benítez (Lina Kleovan) was arrested for apparent felonies and afterwards was released. According to the Government, Manuel Dinamarca was not arrested. Juan Ponce was not arrested and traveled to Moscow on June 28, 1973. Luis Figueroa was a refugee at the Swedish Embassy. Finally, Patricio González Verdugo was free (cf. ibid.).

In regard to claims about homicides of union leaders and workers, the Government did not take any responsibility on those actions and provided very little information. For example, it reported that some of the demises were the result of clashes between the armed forces and dangerous extremists, militants of the *Movimiento de Izquierda Revolucionario* (MIR, Leftist Revolutionary Movement) and the Communist Party (PC). No trade union leaders participated in the confrontations (cf. Report No. 159 (1976), Vol. LIX. B. 3. Case 823 (Aug. 12, 1973). Provisional Report. Chile: 67), and press clippings were attached to corroborate the provided explanations. It also explained that some of the demises that took place during the period of military government were caused by demonstrators who left people seriously wounded, and they were not trade union leaders but common criminals. The Government also reported situations in which non-identified people would have performed kidnappings on the streets, in order to weaken the Govern-

ment and to make the normalization of the country difficult; all this would be an international organized campaign. In other cases, the Government expressed to be deeply concerned and also disapproved the actions with energy, just as it happened after the demise of leader Tucapel Jiménez, head of the Chilean trade union movement.

The Government declares that a prospect around the case has arisen, which pointed to the possibility that Tucapel Jiménez would have been "executed" as part of an international conspiracy aimed at putting the Government in trouble (Report No. 217 (1982). Vol. LXV. B. 2. Case 1117 (March 1, 1982). Provisional Report. Chile: 490).

The Freedom of Association Committee understood that the seriousness of the political and social situation in Chile after September 11, 1973, affected the entire trade union movement. Without criticizing the state of siege within the early years right after the military coup, it examined the repercussions of this new political-legal status on labor law. The FAC performed an important task by receiving the announcement of workers' detentions, requesting information from the Government on the conditions of these people, obtaining records about the actions that motivated such measures and by pointing out the rights and guarantees that should protect these workers during their detentions. In the *Case 765*, the FAC consciously took note of the provided information in respect to some of the workers and leaders who seemed to be arrested and others whose situation was unknown.

In this way, the FAC was able to find out information about the situation of several labor union leaders through the reports worded by the Government. These reports pointed out that some people were free, while others had left the country, some had been arrested according to the state of siege, others were prosecuted at military courts, and some were prosecuted for felonies under the Penal Code (Report No. 159 (1976). Vol. LIX, 1976, B, 3. Case 765 (Sept. 17, 1973). Evolutionary Report. Chile: 55).

The FAC expressed its concern in the *Case 765* about the execution (by shooting) and demise of several militants of political parties and trade union leaders and asked the Government for information on those actions. In some cases, however, the insistence of the FAC before the government, in order to investigate the demises of leaders and to have all the attained information at its disposal, was denied based on legal restrictions during the indictment stage of the investigation conducted by criminal judges. As a part of its recommendations, it also pointed out that the level of violence was a serious obstacle for the normality of the trade unions' lives. Besides requesting information, the FAC tried to advocate a restraint of the violence against trade union leaders: "... the cases of murder and other violent actions that involved trade union leaders are serious enough to demand that the authorities take severe measures in order to restore a normal situation" (Report No. 254 (1988). Vol. LXXI. B. 1. Case 1309 (Oct. 3, 1984). Provisional Report. Chile: 340).

As we can see in this example, the existing records at the ILO are a valuable

historical document. They are part of the traces that today allow us to restore a past that for many years remained hidden or silent. If we revise the records of every other case known by the ILO about Chile, we can see that the Chilean Government indeed responded, by officially acknowledging information that has proven to be of great help for more than 800 victims and their relatives.

The strategy of legal resistance by presenting complaints before the FAC of the ILO, alerted the international community. The extended exchange of reports and recommendations of the FAC and its permanent insistence in respect to freedom of association and human rights of the workers helped the trade union movement to stick to their rights and actively participate in the complex process of restoration of democracy in the 80s.<sup>14</sup>

Many years later, in 2004, those documents were useful as an argument to verify the illegal detentions and torture actions perpetrated against more than 800 workers, mainly trade union leaders, whose cases were acknowledged by the National Commission on Torture and Political Imprisonment. I had the honor of assisting its work by coordinating the tasks of searching for evidence, with the help of sixteen law students of Alberto Hurtado University, who voluntarily reviewed, classified and organized documents provided by the Commission during several weeks.<sup>15</sup>

The ILO reports were a valuable supply for the Commission and were useful as a direct evidence to prove human rights violations against specific persons. Law 19.980, approved in 2004, allowed the victims of torture and political

14 One should take into account that the first non-permitted public demonstration against the dictatorship was organized by the workers in the Craftmen Square (*Plaza de los Artesanos*), located near the Mapocho river, on Dec. 2, 1982. The workers involved in it were attacked by police officers and agents from the CNI. Four people were injured and 37 were arrested. The major First Public Demonstration against Pinochet was on May 11, 1983, and it was organized by the workers and trade union leaders. Two people died. In Santiago alone, 350 people were arrested and in the following days 500 more persons. Thousands of students did not go to school that day, and there were demonstrations all over the country. On June 14, 1983, the second National Demonstration took place, which was also strongly repressed by authorities. These demonstrations forced Pinochet and his ministers or secretaries to negotiate. In that way, it was possible to restart political activity and the legal existence of political parties was finally allowed, leaving aside the ones that were connected to Marxism. New leaderships appeared, because the two biggest leaders of the time were killed: former President Eduardo Frei, who ruled between 1964 and 1970, died from poisoning during a hospital procedure on Jan. 22, 1982, and Tucapel Jiménez died on Feb. 25, 1982. The new front row leaders of the 80s were also arrested: Ricardo Lagos, who then became President of Chile between 2000 and 2006, Gabriel Valdés, president of the Senate between 1990 and 1994, union leaders Rodolfo Seguel, Manuel Bustos, and Arturo Martínez, today the president of the National Union Association of Chile (CUT), among others. The repression continued until Mar. 11, 1990, when President Patricio Aylwin took charge as President of the country.

15 I would like to acknowledge the volunteer work of law students Ignacio Alarcón, Carolina Álvarez, Pedro Bello, Carlos Campos, Boris Hau, Luis González, Sergio Lillo, Mónica Osbén, Juan Cristóbal Palma, Cristián Peñaloza, Álvaro Rivera, Aníbal Robles, Rocio Salgado, Sebastián Salazar, Natalia Sánchez, and Francisca Terminel. Some of them were hired afterwards by the Commission to help in the process of reviewing testimonies.

imprisonment to have access to reparation measures provided by the Chilean state.

#### 4. Final Comments

The workers claims before the ILO, the answers of the Chilean government and the recommendations of the ILO against the Chilean government, are a valuable testimony for the defense of workers' human rights. It is necessary to recognize (1°) the spirit of those who dared to speak up and bring forward the claims presented to the ILO against the Chilean government and (2°) the substantial contribution of the ILO, for more than ninety years, towards the standing of workers' human rights, especially in instances when these are violated by authoritarian governments as it happened in Chile between 1973 and 1990. In fact, the documents give a closer look into human rights violations thousands of workers and trade union leaders suffered in that long and dark night of the Chilean history.

During the last years, I had the chance to interview many people who, due to several reasons, feel discriminated, ignored or denied in Chile. Although truth, justice, and reparation were mentioned in this kind of conversations as essential values, I am convinced that the struggle and the attainment of "recognition" is a key element when studying the concept of peoples' dignity and that we have not reflected upon it sufficiently. The suffering of a person who is not recognized or who receives only insincere recognition is tied to the frustration of not feeling integrated into a society in which we wish to belong. For many years in Chile human rights violations were denied and an important percentage of the population preferred to turn the page and not to talk about such a relevant matter. The denial of such an evident reality prolonged the time of sorrow.

It is true that from 1990 to the present, symbolic acts and important signs towards the victims have taken place (cf. *Lira and Loveman 2005*), but real reconciliation will occur when they feel recognized and valued by every other sector of society. As long as this does not occur, Chilean society will live with an open wound. I agree with Pablo Salvat when he states that the aspiration to reunion and reconciliation cannot take place if actions are being denied and particular responsibility for what happened is not assumed (*Salvat 2005: 14*). Therefore, reparation and recognition of the dignity of the victims are key elements in the reconciliation process.

More important than the beatings or the physical tortures, the deepest pain is connected to the dignity of the victims as human beings. Many want to have justice but also want to be asked for forgiveness. President Aylwin asked for forgiveness on behalf of the Chilean state in 1991. The Chief Commander of the Army, Juan Emilio Cheyre said "Never Again" in 2004. Those speeches were very relevant but not sufficient for some of the victims. For example, Pinochet



never recognized anything and this has caused a deep grief in the victims' hearts.

Reconciliation in Chile will not be possible as long as the victims do not recover their dignity. This is not a matter of money. We are not arguing over the question if the pension is high enough, if the scholarships for studying are good enough, or if health programs have improved the quality of the victims' lives; the point rather is that many of the victims still feel excluded and not being considered adequately, as if they were second-class citizens. After so many years, the victims want to be recognized by the rest of society and they want to recover their dignity, that is, the essence of their lives. As long as it does not happen, reconciliation in Chile remains a mere utopia.

#### References

- Brown, C. G. (1983). 10 años de atropellos a los derechos humanos en Chile: Report of the Americas Watch Committee. Mexico: F.D. 29.
- Fuenzalida, Edmundo (2003). "Derecho y Cultura Jurídica en Chile (1974 – 1999)". In: Fix-Fierro, Héctor, Friedman, Lawrence M., Pérez Perdomo, Rogelio ed.: *Culturas Jurídicas Latinas de Europa y América en Tiempos de Globalización*. Universidad Nacional Autónoma de México. Serie Doctrina Jurídica. 39. Mexico: F.D. Available at <http://www.bibliojuridica.org/libros/3/1078/6.pdf> [accessed on May 2010]. 195.
- Hayner, Priscilla (2008). *Verdades innombrables*: Fondo de Cultura Económica. Mexico: F.D. 66.
- Huneus, Carlos (2000). *El Régimen de Pinochet*. Editorial Sudamericana. Santiago. 116.
- ILO: Freedom of Association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Available at [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—normes/documents/publication/wcms_090632.pdf). [accessed on May 2010].
- Lira, Elizabeth, Rojas, Hugo ed. (2009). *Libertad Sindical y Derechos Humanos: Análisis de los informes del Comité de Libertad Sindical de la OIT, 1973–1990*. Lom Ediciones. Internacional Labor Organization. Santiago: Alberto Hurtado University.
- Lira, Elizabeth, Loveman, Brian (2005). *Políticas de Reparación. Chile 1990–2004*. Lom Ediciones. Santiago.
- Loveman, Brian (2001). *Chile: The Legacy of Hispanic Capitalism*. 3th ed. New York: OUP. 263–264.
- Report of the National Commission on Truth and Reconciliation (1991). Santiago. Available at [http://www.ddhh.gov.cl/ddhh\\_rettig.html](http://www.ddhh.gov.cl/ddhh_rettig.html) [accessed on May 2010].
- Report of the National Commission on Torture and Political Imprisonment (2004). Santiago. Available at <http://www.comisionvalech.gov.cl/InformeValech.html> [accessed on May 2010].

- Ricœur, Paul (2008): *La memoria, la historia, el olvido*. Fondo de Cultura Económica. 2th Vol. in Spanish. Mexico: F.D. 606.
- Salvat, Pablo (2005): "Derechos humanos: caminos pendientes". In: Lira, Elizabeth and Morales, Germán ed.: *Derechos humanos y reparación: una discusión pendiente*. Lom Ediciones. Santiago: Alberto Hurtado University. 14.

#### ILO Cases and Reports<sup>16</sup>

- Case 765 (Sep. 17, 1973). Chile.
- Case 823 (Aug. 12, 1975). Chile.
- Case 1117 (Mar. 1, 1982). Chile.
- Case 1309 (Oct. 3, 1984). Chile.
- Report No. 142 (1974). Vol. LVII, S. Chile. Case 765 (Sept. 17, 1973). Final Report. Chile.
- Report No. 139 (1974). Vol. LVII, S. Case 765 (Sept. 17, 1973). Provisional Report. Chile.
- Report No. 159 (1976). Vol. LIX, 1976, B. 3. Case 765 (Sept. 17, 1973). Evolutionary Report. Chile.
- Report No. 159 (1976), Vol. LIX, B. 3. Case 823 (Aug. 12, 1975). Provisional Report. Chile.
- Report No. 217 (1982). Vol. LXV, B. 2. Case 1117 (March 1, 1982). Provisional Report. Chile.
- Report No. 254 (1988). Vol. LXXI, B. 1. Case 1309 (Oct. 3, 1984). Provisional Report. Chile.

<sup>16</sup> See ILOLEX Database of the International Labor Organization, Geneva. URL <http://www.ilo.org/ilolex/english/casframeE.htm> [accessed on May 2010]