

THE NEW SOUTH AFRICA

The Dawn of Democracy



Report of a Mission by
William J. Butler, Esq.
Prof. Bert B. Lockwood, Jr.
Peter O. A. Solbert, Esq.
Dean Joseph P. Tomain

To The American Association for
The International Commission of Jurists, New York
and The International Commission of Jurists, Geneva

PRETORIA
April 1994

**American Association for the
INTERNATIONAL COMMISSION OF JURISTS, Inc.**
777 United Nations Plaza, New York, NY 10017

Eli Whitney Debevoise (1899-1990)
Chairman Emeritus

DIRECTORS

Donald T. Fox, *Chairman of the Board*

William J. Butler, *President*

Harvey J. Goldschmid, *Secretary*

P. Nicholas Kourides, *Treasurer*

Robert P. Bass, Jr.

Richard H. Moore

Andrea Bonime-Blanc

Andre W.G. Newburg

Peter S. Heller

J. Shestack

A. Leon Higginbotham, Jr.

Peter O.A. Solbert

George N. Lindsay

Edward Hallam Tuck

Sheila Avrin McLean

DIRECTORS EMERITI

Dudley B. Bonsal

Whitney North Seymour (1901-1983)

Benjamin R. Shute (1911-1986)

Bethuel M. Webster (1900-1989)

The American Association for the International Commission of Jurists, Inc. is
a non-profit membership corporation. All contributions are tax-deductible.

Members are entitled to receive *The Review* and the ICJ Newsletter,
published, respectively, biannually and quarterly, by the
International Commission of Jurists.

THE
NEW
SOUTH AFRICA

THE NEW SOUTH AFRICA

The Dawn of Democracy

*Report of a Mission on Behalf of
The International Commission of Jurists
and The American Association for the International
Commission of Jurists*

William J. Butler, Esq.

President of the American Association
for The ICJ and Past Chairman of the Executive
Committee of the International Commission
of Jurists from 1975-1990

Prof. Bert B. Lockwood, Jr.

Editor-in-Chief, HUMAN RIGHTS QUARTERLY

Peter O.A. Solbert, Esq.

Member of the Board of Directors of
The American Association for the ICJ;
Former Deputy Assistant Secretary of Defense
for International Security Affairs

ICPR * NEW

Dean Joseph Tomain

Dean, College of Law, University of Cincinnati
Cincinnati, Ohio

PRETORIA

April 1994

International Commission
of Jurists (ICJ)
Geneva, Switzerland

©1994 American Association for the
International Commission of Jurists, Inc.

Library of Congress Cataloging in
Publication Data

The new South Africa : the dawn of democracy :
report of a mission on behalf of the International
Commission of Jurists and the American
Association for the International Commission of
Jurists / William J. Butler . . . [et al.].

p. cm.

"Pretoria, April 1994."

Includes index.

ISBN 0-916265-08-4 : \$20.00

1. Elections — South Africa. 2. South Africa,
Parliament — Elections, 1994. 3. South
Africa — Politics and government —
1994--.
- I. Butler, William J. (William Joseph),
1924--
- II. International Commission of Jurists
1952--
- III. American Association for the International
Commission of Jurists.

JQ1994-N48 1994
324.968'064 — dc20

94-21392
CIP

Contents

I	
PREFACE	<i>Adama Dieng</i> 1
II	
INTRODUCTION	<i>A. Leon Higginbotham</i> 5
III	
TOWARD A FREE AND FAIR ELECTION	8
IV	
THE ELECTORAL PROCESS	12
V	
THE ELECTIONS OF APRIL 26-29, 1994	18
A. The voting stations.	
B. The counting.	
VI	
CONSTITUTIONAL CHANGE IN SOUTH AFRICA	28
VI	
BLACK PARTICIPATION IN THE SOUTH AFRICAN JUDICIARY AND LEGAL PROFESSION	34
VIII	
CONCLUSIONS AND RECOMMENDATIONS	38
IX	
POST ELECTION SOUTH AFRICA— SOME REFLECTIONS	39

APPENDICES 43

- A. Accreditation of ICJ as an International
Observer Organisation
- B. Map of New South Africa
- C. Sample Ballot
- D. Decision on Prisoners Allowed to Vote
- E. Constitutional Principles of New Constitution

I

Preface

To some observers of and active participants in political developments in South Africa the conduct of free and fair elections in the violence ridden country could only be explained in terms of a miracle. Nothing short of a miracle could have led to the substantially free and fair elections and subsequent smooth transfer of political power from the white minority government to the black majority. To others, the result was the outcome of a systematic and sustained determination of ordinary South Africans not to postpone their freedom. Opinions are bound to differ regarding the momentous political developments in South Africa in the past few weeks.

Be that as it may, there is little doubt that the conduct of elections in South Africa and the outcome represented is perhaps, the single most important political achievement in Southern Africa in the last decade of the 20th Century. The International Commission of Jurists (ICJ) welcomes the election results.

As an organisation devoted to the Rule of Law and the legal protection of human rights, the involvement of the ICJ in South African legal affairs spans over four decades. It has followed legal developments in South Africa for many years—sending fact-finding missions—observing important trials and publishing materials on the Rule of Law and human rights in the country.

Following its interest in legal developments in the country, the ICJ did not lose the opportunity to send an eminent

team of lawyers to observe the 27 April 1994 parliamentary elections in South Africa.

The report of the mission presents an objective analysis of the myriad legal and constitutional problems confronting the leaders of the New South Africa. It makes recommendations as to what concrete measures could be implemented to deal with these problems.

The ICJ team was headed by Mr. William J. Butler, former Chairman of the ICJ Executive Committee, and composed of Professor Bert Lockwood, Dean Joseph P. Tomain, and Mr. Peter Solbert, who are members of the ICJ affiliate in the USA, the American Association for the International Commission of Jurists (AAICJ).

The tasks of the observers were to assist the South African Independent Electoral Commission (IEC) in the first multiracial democratic election in the history of the country, and to enquire into the future role of the judiciary including the new Constitutional Court, as well as the appointment of judges and the opening of the legal profession to all qualified South African lawyers. This was done within the framework of the continuing ICJ interest in South Africa.

In the past three years, in light of the outbreak of violence in Natal and other parts of South Africa, and following requests from lawyers, church organisations and other grass roots nongovernmental organisations (NGOs), the ICJ has sent three missions to South Africa. The first two missions, conducted respectively in September 1990 and March 1992, examined closely the root causes of the violence in Natal and other areas and its adverse effect on progressive change in South Africa as a whole. The missions' reports, "Signposts to Peace" (1990) and "Agenda for Peace" (1992) embody findings and recommendations regarding effective measures to take control of the violence.

Against the backdrop of the success of the previous ICJ

missions, the ICJ's experience in monitoring elections in other countries and the proposed election date set for 27 April 1994, various organisations within South Africa have requested that the ICJ send another mission to that country during the period leading to the elections.

Recognising the crucial importance of the pre-election period, the ICJ accepted the invitation to send missions to South Africa. The ICJ mission took place on 22 September to 6 October 1993. The report of this mission, "Voting for Peace" (1993) is an independent assessment of the prospects for free and fair elections in South Africa. The election mission's report bears testimony to the concerns expressed in "Voting for Peace".

The ICJ wishes to extend to the many South African officials who cooperated with the ICJ team and in particular:

- to Dr. Ellen Kornegay, Lucia Matshuli and Francis Wilson for their help in accrediting and deploying the members of the Mission;
- to AVV. Mojanku Gumbi, her assistant Vernon Grigg, Andre Van Zuwen, the Director General of the Association of Law Societies, AVV. Arthur Chaskelson of the Legal Resources Center, Prof. John Dugard, the founder of the Centre for Applied Legal Studies at Witwatersrand University, for their invaluable briefings which were so helpful to the Mission on the subjects of Constitutional Law and Black participation in the South African Judiciary and legal profession;
- to Corrie Van Heerden, George Baloyi, Gloria Masipa and Shirley Moulder, who guided the Mission through the electoral investigations and complaint procedures prior to the elections at the IEC offices in Pretoria;
- to the IEC officials in Pretoria: Prof. Janis Grobbelaar, Silvia Viojoen, and Olga Makhubala Nkondo, all of whom

did so much, as the IEC leaders in Pretoria, to give the Mission access to the entire electoral process in the many areas and polling places the ICJ team visited and finally to Elizabeth Mokotong, Chairwoman of NEON, who assisted International Observers in their tasks.

The ICJ also wishes to acknowledge the significant contribution of the Urban Morgan Institute for Human Rights and the Frederick W. Richmond Foundation for their role in providing the necessary financial support to publish this report and to enable Prof. Lockwood and Dean Joseph Tomain to accept the ICJ invitation to be members of the ICJ South African elections team.

The ICJ endorses the mission's report and commends it to all those committed to the promotion of the Rule of Law and the legal protection of human rights in South Africa.

Geneva, 25 May 1994

Adama Dieng
Secretary General
International Commission of Jurists

II

Introduction

In 1962, as Nelson Mandela was then sentenced to life in prison, in calm defiance he said to Judge Becker:

In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed, a constitution which guarantees democratic rights to all sections of the population, the right to approach the court for protection or relief in the case of the violation of rights guaranteed in the constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law advisers and similar positions.

In the absence of these safeguards the phrase 'equality before the law,' in so far as it is intended to apply to us, is meaningless and misleading. All the rights and privileges to which I have referred are monopolized by whites, and we enjoy none of them.

The white man makes all the laws, he drags us before his courts and accuses us, and he sits in judgment over us.

It is fit and proper to raise the question sharply, what is this rigid colour-bar in the administration of justice? Why is it that in this courtroom I face a white magistrate, am confronted by a white prosecutor, and escorted into the dock by a white orderly? Can anyone honestly and seriously suggest that in this type of atmosphere the scales of justice are evenly balanced?

Thirty-two years after his original imprisonment and impassioned plea, I saw on May 10, 1994, as a member of the

U.S. Presidential delegation in Pretoria, Nelson Mandela take the following oath:

In the presence of those assembled here and in full realisation of the high calling I assume as President in service of the Republic of South Africa, I do hereby swear to be faithful to the Republic of South Africa, and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other Law of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people.

Nelson Mandela's long journey from a prisoner in 1962 to the triumph of the presidency in 1994 was made possible by many interrelated and complex factors: the resolve of Black, coloured, Indian and some Whites to organize, to resist and to be willing to give even their lives if necessary for the abolition of apartheid; the cumulative impact of people of good will from throughout the world who condemned South African racism and supported sanctions and issued declarations that said apartheid was incompatible with all of the international human rights laws, the United Nations Charter and the basic fundamental precepts that assure decency and dignity in a civilized society.

The international human rights community is indeed fortunate that the distinguished authors of this book witnessed in 1994 the election which they prophetically describe as "the Dawn of Democracy." Yet candor requires us to describe the South Africa of 1994 as a very "early dawn." Reality requires us to stress that the forces of good will that were so essential to destroy apartheid are now needed just as urgent-

ly to protect South Africa's new frail democracy, and to make sure that it survives as a constructive model for conflict resolutions for the world. One of South Africa's many challenges will be to assure the permanent existence of a fair, pluralistic and totally independent judiciary that protects the rights of all citizens. Groups such as the International Commission of Jurists must continue with equal vigor to assist South Africa in its new challenges. The rhetoric of a new democracy must be translated so that all of its citizens can see in their daily lives the implementation of a robust and stabilized democracy that assures justice to all. In many ways the mission of I.C.J. has not concluded, but it is merely at a new exciting beginning.

All of us must do what we can to make South Africa a nation which Nelson Mandela plead for in 1962: a nation that, as he then urged, "guarantees democratic rights to all sections of the population, the right to approach the court for protection or relief in the case of the violation of rights guaranteed in the constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law advisers and similar positions."

New York, New York
May 31, 1994

A. Leon Higginbotham, Jr.
Chief Judge Emeritus (Retired)
United States Court of Appeals

Of Counsel to
Paul, Weiss, Rifkind, Wharton & Garrison
Professor, Harvard University

III

Toward a Free and Fair Election

On April 26, 27, 28 and 29, 1994, voters representing nearly thirty million black citizens of South Africa were given, for the first time, an opportunity to exercise their fundamental right of self-determination under an interim constitution adopted by the South African Parliament on December 12, 1993, which permitted the first nonracial election.

This report is by designees of the International Commission of Jurists (ICJ) to act as accredited international observers to this historic election. (See Appendix "A")

It is difficult to say where and when it all began. For years the international community has isolated South Africa with embargoes because of its policy of apartheid - the systematic and state sponsored suppression of over seventy-five percent of its population.

The break probably came sometime in 1989 when Nelson Mandela, a political prisoner at that time of more than twenty-five years, was invited by President Botha for tea at Tuynhuis, the official residence of the President. The following events ensued in rapid order:

1. Mr. Botha has a stroke and retires.
2. F.W. De Klerk continues to hold meetings with Nelson Mandela, who is now living in the warden's residence at Victor Verster prison.
3. Mandela is allowed to have visits with leaders of the United Democratic Front (UDF), Council of South African Trade

Union (COSATU) and other political organizations.

4. The African National Congress (ANC), in the Harare Declaration, sets down terms of negotiations.
5. Late in 1989, the government begins to release political prisoners like Walter Sisulu and seven other political prisoners serving long-term jail sentences.

In 1990 the pace of negotiations quickens. On February 11, 1990, Nelson Mandela is released after twenty-seven years in prison. President De Klerk lifts the bans on the ANC, the Pan African Congress (PAC) and the South African Communist party (SACP).

During 1991 and 1992 several traumatic events occurred while the various interests jockeyed into positions to defend and implement their various agendas. Violence erupted between the ANC and Inkatha Freedom Party (IFP) led by Mangosuthu Buthelezi; a judicial commission inquired into the killing of citizens by the Army and the South African police; right wingers pledge to fight to the death to keep their freedom. But the negotiations somehow go on and in December of 1992, twenty of the political parties meet at the World Trade Center in Kempton Park outside of Johannesburg to launch a Convention for a Democratic South Africa (CODESA).

A constitutional forum was created and the overall majority of the political parties joined. The Conservatives, the PAC and the right wing boycotted the deliberations.

Volumes will be written on the historical happenings and the intense negotiations during 1992 and 1993.

For our purposes we shall point out the essence of the overall agreements.

1. Three years of constitutional negotiations ended with an agreement on constitutional issues.
2. It was decided that South Africa will be divided into nine provinces. (See Appendix "B")

3. The date for the first nonracial election in South African history was set for April 27, 1994 when the South African people would elect a new Parliament consisting of a National Assembly composed of four hundred members, and a Senate elected by the provinces of ninety members (ten from each province) and the election of legislatures of all nine provinces, all through a system of proportional representation.
4. It was agreed that the parliament will be in existence until April of 1999 and will act as a constitutional assembly to finalize a new constitution within two years pursuant to several enumerated principles which were unalterable, such as the Supremacy of Law, the Creation of a Constitutional Court and Basic Human Rights. (See Appendix "E".)
5. Until the new Constitution is adopted, all institutions, legal, etc. will remain in effect during the transition.

On December 12, 1993, the Parliament passed the new interim Constitution. To aid in the transition, the Parliament adopts a bill establishing the TEC (Transitional Executive Council) which would monitor all governmental processes during transition and a bill establishing the IEC (Independent Electoral Commission) which would conduct the electoral process and decide on the fairness of the election in April of 1994.

The TEC would act as the monitoring executive in the intervening months between December, 1993 and the elections in April of 1994. Although it was never intended to have full executive authority, it was a statutorily mandated multi-party authority with unusual powers to direct the government "not to proceed" with any legislation which was not compatible with the transition contemplated by the TEC and the bill establishing the IEC.



The ICJ Observer Team outside the Holiday Inn-Garden Court in Pretoria early in the morning of the first election day, April 26, 1994. From left to right, Peter Solbert, Bert B. Lockwood, Jr., William J. Butler and Joseph Tomain.

IV

The Electoral Process

The enormity of the electoral process is hard to imagine. The IEC was given the Herculean task of setting up, during the few months intervening, approximately nine thousand voting places throughout the country. Four general divisions were created.

1. Election Directorate in charge of creating 9,000 polling places, issuing millions of temporary voting cards and the training and staffing of more than 9,000 presiding officers and their staffs of at least 20 persons per voting station. Also, this directorate would accredit more than 3,000 Foreign Election Observers.
2. Establish a monitoring Directorate to hire and train more than 10,000 independent monitors from the citizenry to monitor the process at all polling places.
3. Establish electoral tribunals, investigation procedures, and mediation procedures to handle all election complaints.
4. To create and implement an extensive voter education program to acquaint all South Africans with their right and duty to vote.

More than two hundred and fifty thousand people were involved in training poll watchers, monitors, receiving electioneering complaints, mediating disputes, negotiating for polling station locations, and issuing regulations. Chaired by a distinguished judge, Johann Kriegler, with a distinguished advocate, Dikgang Moseneke as deputy chairman, the Commission, composed of eleven members and five non-

voting international members, must certify, within ten days after the elections, whether the election was substantially free and fair, a judgment which by law would not be appealable.

In the span of a few months, i.e. from December to April, not only were the polling places established, the presiding officers in place, the security problems attended to and an extensive voter education program conducted, but also ten thousand South African citizens were retained by the Commission to monitor all the voting stations and to report back daily to a central control authority. Add to this the accreditation of more than three thousand observers from international governmental and nongovernmental organizations (NGO), from the UN, the Commonwealth Secretariat, the Organization of African States (OAU), the European Union and NGO's, of which we were four.

We arrived in Johannesburg on Sunday, April 17, 1994 and on the 19th and 20th we were given political briefings and an observer training course consisting of teaching us our role as international observers, what to do in case of an "incident," health recommendations, how to report on a regular basis to the IEC and instructions on the part of the country where we would be deployed.

We were assigned to the Pretoria area in the PWV province, chiefly to towns north of Pretoria, such as Kameeldrift, Mamelodi and other polling stations in the Pretoria Nord area for the main elections on April 27 and 28.

For the special elections on February 26, we would cover the maximum security prison known as Pretoria Central, the Bavianspoort Prison near Cullinan and the Kalafong Hospital in Pretoria.

After our training period, we travelled to Pretoria on Thursday, April 21, and immediately reported to the IEC regional office. It is difficult to describe the scene, hundreds

of people running around tending to their responsibilities, training monitors, establishing voting booths, distributing insignia and posters. After a while, we learned that things were well organized. Each official had a specific responsibility. One had charge of special elections, prisons, hospitals, old age homes, and drug rehabilitation centers, one had charge of setting up the hundreds of polling places in the area, lawyers were charged with receiving electoral complaints, others were charged with mediation of complaints, one handled personnel and monitors, badges, etc.

We were asked to observe the electoral complaint procedures.

We spent four hours on one case which deserves describing here because it illustrates the thoroughness of the IEC processes.

Imagine yourself in a small room at IEC headquarters in Pretoria. There are three desks occupied by three lawyer-investigators who have been designated to receive electoral complaints, issue summonses, and, if necessary, commence legal proceedings to enforce the electoral law.

Enter one Carl Muller, an IEC officer in charge of the placing and staffing of polling places in the area. He relates the following allegations:

1. He has selected, at the request of a Doctor Hart, of the Freedom Front, a voting station in a town called Kameeldrift, twenty kilometers north of Pretoria, in a somewhat remote area of the Transvaal.
2. The owner of a small resort who rents his facilities for weddings and parties, has agreed to allow his place to be used by the IEC. It is known as Edelweiss Holiday Resort. No alternative sites were available.
3. Following the rules, Muller proceeds to carry out an inquiry into security measures to be taken to secure the site. He visits the local police chief, a Captain, who is immediately neg-

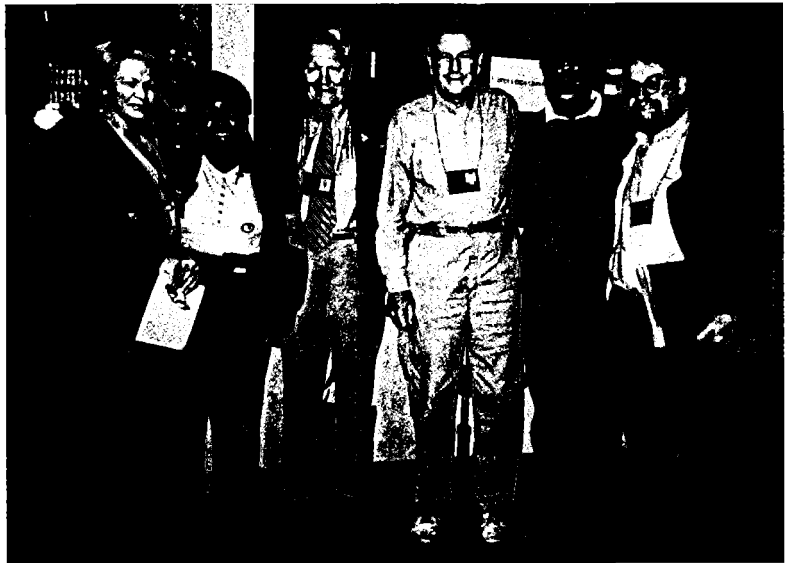
ative and indicates his opposition to Muller's suggestions.

4. Muller presents his arguments:
 - There are 20,000 black people in the area who must have a voting place.
 - The owner of the resort has agreed to all the conditions.
 - An Air Force captain has agreed to be the presiding officer of the polling station with special dispensation from the South African Defense Forces.
5. The police captain refuses to change his mind. An appeal is taken by Muller to the captain's supervisors. He complains that he cannot secure the voting place because of the comment made by the police to the resort owner:
"Twenty thousand black people will overrun your place and the right wing will blow it up."
The owner begins to have second thoughts.
6. The immediate superior, a colonel, agrees and Muller has come to the IEC investigation division for help.
7. The complaint process is initiated — a written complaint is filled out, the case is given a number and the initial formal investigation begins.
8. A decision is made that the allegations, if true, would constitute a *prima facie* case, but first the IEC decides to try mediation. One lawyer, George Baloyi, commented, "I would rather have a voting place than a legal proceeding."
9. An able mediator is brought in named Shirley Moulder. She suggests that the IEC should contact higher authorities in the area. She arranges to have a Vernon Mattyssan, IEC's liaison officer with the South African Police, join the meeting. He agrees to take the matter "to the top" and report back within a few hours.

Later that day it is reported to us that the matter has been resolved. The voting place will be established and the voters representing thousands of black Africans will have the opportunity to vote. We decided to observe at Kameeldrift on April 27.

Election complaints involved such matters as disruption of political rallies, tearing down of campaign signs, intimidation and extortion of voters, and other like complaints. It is remarkable that in the PWV region, with an estimated 4.5 million voters, up to the day of election, just slightly over one hundred complaints had been filed. It is equally remarkable that most of those complaints were based on rumor, were unsubstantiated, or were insignificant. Those of significance appear to have been successfully negotiated for the most part.

We spent the following several days observing the complaint procedures from the beginning to proceedings pending in the electoral courts involving the rights of migrant workers and prisoners to vote. One could find so many similar problems all over the country.



The ICJ Team with lawyer investigators at the IEC headquarters in Pretoria on Thursday, April 21, 1994. From left to right - Shirley Moulder, Senior Mediator, Joseph P. Tomain, Gloria Masipa, attorney-investigator, Bill Butler, Peter Solbert, George Baloyi, Senior investigator-attorney, and Bert Lockwood.

In the Northern Transvaal, NISSAN initially refused to allow part of its property to be used as a voting station. Pressure was developed all the way to the South African Ministry of Foreign Affairs. A solution was found. It was important because there was danger that there would not be a polling station within twenty square kilometers, thereby disenfranchising thousands of voters.

We spent the time before the elections observing not only the "goings on" at the IEC, but also observing electioneering, rallies, the training of monitors for an election where the expected vote could be as high as twenty-two million in a country which had never experienced the right to vote on a nonracial basis. We all agreed that it was truly an important moment of history and one of the defining moments of the Twentieth Century.

V

The Elections

Pursuant to authority granted by the Electoral Act of 1993, election days were set for April 26, 27, 28, 1994 with special voting occurring on April 26 and general voting on April 27 and 28, after 350 years of white domination. In six of the nine provinces, elections were extended to April 29 for both logistical and political reasons. This delay was also partially due to the late participation of the IFP party in the election process. All South Africans eighteen years and over were given the right to vote for the party of their choice in both national and provincial elections. (See Ballot Appendix "C")

In the four months prior to the election, the IEC and its various divisions had recruited not only its personnel, but also tens of thousands of monitors, trainers, mediators, prosecutors, electoral judges and other persons necessary to staff the more than 9,000 polling stations throughout the country. This immense undertaking required the retaining of more than 250,000 people, the printing of more than 50 million ballots, the creation of electoral complaint procedures and Courts to adjudicate electoral disputes.

In addition, the IEC accredited more than 3,000 Foreign Election Observers to lend an "international presence" to help ensure that the voting process would be fair, honest and secret.

All South Africans could vote by identifying themselves by showing an identity card, a voter card, an old passbook or other valid document. Because of a high level of fear and

intimidation, a decision was made not to create a registry of voters. To assure there would be no double voting, each voter's hand would be sprayed with invisible ink which would show itself under ultra-violet light.

Provisions were made for each station to have a presiding officer, at least two IEC monitors and representatives of the political parties, in addition to the staff needed to run the voting.

Electioneering was prohibited near the polling places and every precaution was taken to protect the secrecy of the vote.

On the first day, April 26, special elections were held for the elderly, the prisons, hospitals, the sick and others who could not vote on the last two days.

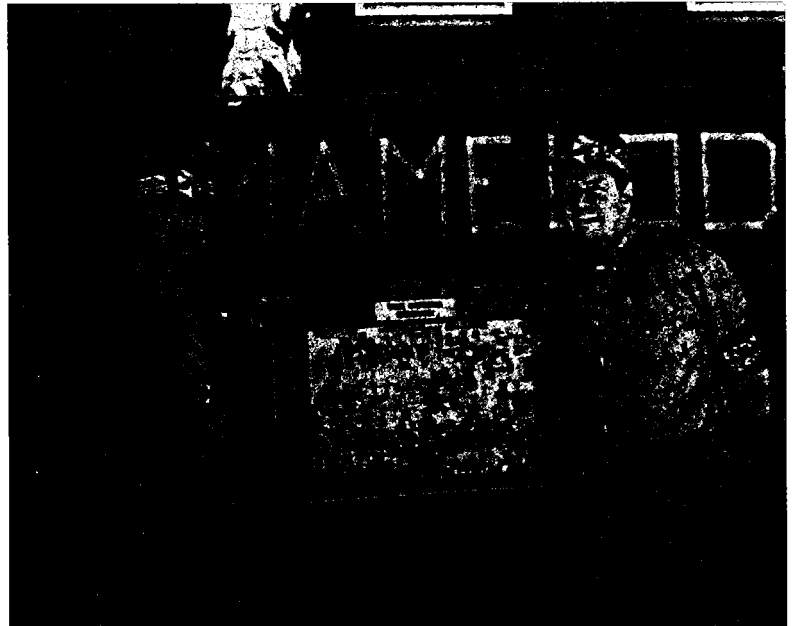
Specific Observations

On April 26, the ICJ delegation decided to observe at the three main prisons, Pretoria Central, Pretoria Local, and Bavianspoort Prison outside of Pretoria, and the Kalafong Hospital. We found that each IEC installation worked well and was staffed by well trained IEC officers with ample supplies. All prisoners were allowed to vote except those convicted of rape, robbery or murder or attempted rape, robbery or murder. In the three prisons we visited more than three thousand prisoners voted without a hitch. The fairness, secrecy and honesty of the process was beyond criticism. (See Ruling on Prisoners Right to Vote Appendix "D")

We observed Kalafong Hospital in a black suburb of Pretoria. The hospital can be described as ramshackle at best, and devoid of any observable, modern medical convenience. The facilities were below any acceptable standard. Nevertheless, as the voting station was set up, the line of patients began to gather. The first patients escorted through the polling station were on stretchers. The second group was wheeled in on wheelchairs. The third rank of voters consisted of those on crutches. Finally, the ambulatory were led

through the polling process before the voting station was taken up to the wards so that the bedridden could vote. Memorable was the scene of women with IV bags balanced on their heads standing in line waiting to vote. Some of those on stretchers were victims of a rightwing bombing the day before, but who were determined to vote. With the occasional assistance of observers to help the presiding officer assist the blind and the lame to mark their ballots, the process moved smoothly and peacefully, with dignity and palpable pride. It was clear that the presiding officer and her staff welcomed the presence of the international observers.

On April 27, we were deployed in areas north of Pretoria (PWV) area. We split up into two teams with two escorts and proceeded in our own transport to observer polling stations in the Transvaal and the townships throughout the area.



Bill Butler and Peter Solbert at Mamelodi on the third Election Day, April 28, 1994.

Messrs. Butler and Solbert visited eight such polling places and Messrs. Tomain and Lockwood visited eleven such places. At each station we interviewed the presiding officer in accordance with a questionnaire provided us by the IEC. We checked for illegal activities, illegal use of campaign materials, illegal interference with voters, speed of voting, and political parties present in the voting hall. These reports were filed with the IEC in Johannesburg to be considered by the IEC when it determines the fairness of the election within ten days after the 28th of April.

We were satisfied that voter secrecy and voter identification were properly carried out.

There were, however, some questions, at a few places, concerning the delivery of materials. In one instance, the station ran out of ballots late in the afternoon on the first day.

Voter Education

One can conclude that the voter education programs were effective.

Over 60% of the black voters were illiterate. Although each party had a picture of its leader on the ballot, many voters were confused by the two-ballot vote, one for the national Parliament and one for the provincial Parliament.

Nevertheless the ICJ team was very impressed with the voter education programs originating from two main sources, the IEC and a South African religious group known as the Ecumenical Trust. Both organizations carried out extensive voter education programs including the publication of materials, production of TV commercials, sponsoring concerts and radio programs and other efforts to acquaint a largely illiterate electorate on the duty to vote. SAFE, South African Free Election Fund, which raised more than 6.5 million dollars for the Ecumenical Trust from U.S. corporations and foundations, was co-chaired by AAICJ Director A. Leon

Higginbotham, Jr., and Anthony J.F. Reilly, chairman of H.J. Heinz Co.

It has been estimated that SAFE programs alone reached more than seven million of the country's twenty-two million eligible voters.

Considering the magnitude of the exercise - more than twenty million voters who had never voted before in their lives - we feel that every possible opportunity was given to allow all qualified citizens to vote.

It was striking to see how orderly the vote proceeded. Long, long lines, sometimes with thousands of people waiting four to five hours in the hot African sun, determined to vote for the first time. Hungry, thirsty and tired, some having walked many miles, they persistently waited in long queues to express their newfound right.

At the end of the first day, many millions had voted, a number could not vote for lack of materials, but the second day, those denied the vote would have their chance again. Polling places would be kept open on both days to insure that nobody was denied the right to vote. At the last minute on the first day, the government announced that the second day would also be a holiday, thereby encouraging a fuller vote.



The long wait North of Pretoria on the main Election Day, April 27, 1994.

At the eleventh hour, the Inkatha Freedom Party agreed to take part in the election, placing an extraordinary burden on the IEC, including the establishment of 700 polling stations in KwaZulu / Natal, and the addition of Inkatha stickers on all existing ballots. (Once the voters got into the polling station, voting proceeded smoothly, guided by well trained IEC personnel.)

The second day of voting was one of the most peaceful in recent months, a great credit to the IEC and to the South African people.

A separate report for each polling place visited was filed with the IEC in Johannesburg. In general each report found that there was:

1. No illegal election activity.
2. That all voting procedures were in accordance with law.
3. That no irregularities existed.

On April 28, the voting places were open for those who could not vote on the 27th. Once again, in separate teams, we monitored many stations. The vote on the second day was extremely light. There were no long lines, no waiting and all stations we visited had adequate materials. It was agreed by all of us that those who might not have voted on the previous days in our areas, had ample opportunity to vote on the third day.

It must be pointed out, however, that, in many parts of the country, especially in Natal, the Ciskei and Venda, complaints were filed that many could not vote on the 27th and 28th because insufficient ballots were distributed to remote areas.

Accordingly, the IEC ordered that voting in certain areas, i.e. Ciskei, Natal, Venda and some other remote areas, would be allowed one more day - the 29th of April. Since these

areas were not within our deployment, we did not observe these voting places.

To give the reader of this report a full view of the voting procedures, we feel it advisable to describe the method of voting and the procedures which were employed on each of the voting days throughout the country.

A. The Voting Station

Each of the over nine thousand polling stations was designed as follows:

- First, a voter enters and places both his or her hands under an ultraviolet light. If there is no indication of invisible ink, the voter is allowed to proceed to vote.
- Second, the voter produces an ID card or a voter card which identifies him or her as a South African citizen, or a permanent resident over the age of eighteen. This document is then stamped with invisible ink.
- Third, the voter is given a national ballot with all the political parties, their symbols and the picture of the party leader. (See example ballot in appendix "C".) The ballot is stamped on the rear with the number of the polling station. The voter's hand is sprayed with invisible ink to show that he or she voted.
- Fourth, the voter goes behind a cardboard screen and places an X or mark next to the party of his or her choice.
- Fifth, the voter places his ballot in a sealed ballot box.
- Sixth, the voter proceeds to vote for the provincial election. Again the voter is given a stamped provincial ballot, exercises his or her choice and places the provincial ballot in a second sealed ballot box. The voter then leaves the polling area

Each polling place has a presiding electoral officer who is in charge. The PEO is assisted by at least two, sometimes

more, electoral monitors paid by the IEC to insure the free-ness and fairness of the process.

Also present there may be one or more international election observers who roam from polling station to polling station during the voting days. These observers from governments, the UN, the Commonwealth Secretariat, the European Union, the Organization of African Unity or from recognized NGO's numbered approximately three thousand with about five hundred from NGO's. All the observers were accredited by the IEC and wore special ID cards, hats and arm bands prominently identifying them to the voting officials. Each observer was asked to report daily to the IEC, on a form provided, a description of the process he or she was observing.

Also present in the voting room were representatives of the political parties and party agents who could object if the rules of voting were not followed.

The invisible ink on the ID and the hand of the voter would last for three days, thereby preventing that voter from voting again.

B. The Counting

At the end of the voting period, the evening of April 29, 1994, the sealed ballot boxes were taken, under guard, to one of seven hundred counting places throughout the country.

In the long and sometimes complicated process, the counting can be described as follows:

- First, the sealed ballot box is opened. In it one finds the ballots cast and a report of the Presiding Election Officer (PEO) on the number of ballots in the box.
- Second, the ballots are counted to insure that no ballots have been added in transit. If there are any problems, the PEO is summoned to explain.

- Third, the ballots are reconciled with the stubs of the book from which the ballot was taken. All ballots had to be accounted for.
- Fourth, each ballot was held up for inspection and examined to be sure it was properly executed and that it had the stamp of the number of the polling place on the reverse side of the ballot paper.
- Fifth, if all is in order, the ballots are counted and the results sent to a central voting area to be tallied nationally and provincially.

In our area, Pretoria, this process took place at the Pretoria Fair Grounds in a huge exhibition building, holding hundreds of counting personnel operating on two shifts commencing on April 30 and ending when all votes were counted, a few days later.

More than twenty million South Africans voted in the four election days for both national and nine provincial legislatures. It was said that more than sixty percent of the black voters were illiterate, yet they persisted in exercising their franchise sometimes waiting five to six hours in a long queue under a hot sun.

At this writing, the results of the counting are roughly as follows:

African National Congress	62.60%	(ANC)
National Party	20.39%	(NP)
Inkatha Freedom Party	10.54%	(IFP)
Pan Africanist Party	1.25%	(PAC)
Freedom Front	2.17%	(FF)
Democratic Party	1.73%	(DP)
African Christian Democratic Party	0.45%	(ACDP)
Minority Front	0.07%	(MF)

On May 10, at the Union Buildings in Pretoria, where apartheid was initiated and enshrined, Nelson Mandela (after organizing a multi-racial, coalition government) was inaugurated, in the presence of world leaders, as the first black President of South Africa pursuant to a new interim constitution guaranteeing all South Africans, for the first time, a free and democratic society.

VI

Constitutional Change In South Africa

With the election of a Government of National Unity and the entering into force of the interim constitution, South Africa has ushered in dramatic change to its legal order. The interim Constitution is 226 Pages long and its shelf life is limited to two years, the period of time within which a new constitution is to be written and adopted. Nevertheless, the design of the new constitution is adumbrated by the entrenchment of 33 principles set out in Schedule 4 of the Interim Constitution which must be incorporated in the new constitution. (See Appendix "E")

To ensure their incorporation, a Constitutional Court is established with the power of judicial review, that is, the power to nullify proposed provisions found by them to be contrary to one or more of the 33 entrenched Constitutional Principles.

The limitations of space do not permit an exhaustive review of the Interim Constitution, but we would like to set out the most significant changes embraced by the new constitutional order in South Africa, with a particular focus on those constitutional principles mandated to be enshrined permanently.

Paramount among the changes is the extension of citizenship to all South Africans, irrespective of race and gender, coupled with a democratic system or representative government. Part and parcel of this new citizenship is the constitutionalization of "all universally accepted fundamental rights, freedoms and civil liberties," which shall be made jus-

ticiable — that is, a person is afforded a legal remedy to challenge a violation of a fundamental right. To move from a system where whites only were citizens and where courts had no real power of judicial review, the fundamentality of these changes is essential. An enforceable Bill of Rights serves a commonality of interests between those who long suffered oppression without legal protections and the new minority in a democratic system.

The constitutional principles “prohibit racial, gender and all other forms of discrimination.” The meaning of “all other forms” may be informed by the delimitation contained in the Interim Constitution that includes “ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.” One of the cardinal tenets of an equal protection provision is the belief that by requiring laws to apply broadly, prophylactic protection is provided against oppressive governmental action. When the burden of laws falls more narrowly, the chances of oppressive laws are greater.

Particularly relevant to the new South Africa is the recognition in both the Interim Constitution and in the constitutional principles of the notion of affirmative action. Consonant with international human rights principles, embraced, for instance, in the widely ratified United Nations Convention on the Elimination of Racial Discrimination, measures designed to ameliorate conditions of disadvantaged groups are permissible and are not deemed to be in conflict with the principle of nondiscrimination. Given campaign promises aimed, for instance, at providing indoor plumbing and electricity to impoverished townships, we may anticipate the passage of laws targeted to benefit certain groups which suffered under the apartheid system.

Another fundamental change in the constitutional order is the recognition of constitutional supremacy. Replacing a

system where parliamentary laws could supersede the constitution, the new order places the legal status of the Constitution higher than ordinary legislative or executive acts. In other words, all legislative and executive acts, whether at the national or provincial level, must be consonant with the Constitution. The newly created Constitutional Court, as well as other courts, are to serve as the watchdogs of this new Constitutional order.

As was recognized by the Founding Fathers of the United States Constitution, the longest lasting written constitution, fundamental rights and freedoms are promoted and protected not only by a Bill of Rights, but also by the diffusion of governmental power. Known as the doctrine of separation of powers, its components are both vertical and horizontal. The vertical component divides between the national level and lower levels of governments, and the horizontal in values powers being further divided in these respective bodies among three branches - the Executive, Legislative and Judicial. This architectural structure does not envision hermetically sealed compartments, but rather promotes an efficient yet fair form of government through a system of checks and balances. Most powers require that more than one branch of government act to give them legal effect. The South African constitutional principle of separation of power announces the goal of ensuring "accountability, responsiveness and openness."

A new role for the South African judiciary is embraced by the new constitutional principles. South African Judges are mandated to be "qualified, independent and impartial," and, as mentioned, possess for the first time the power to nullify unconstitutional acts. The other side of this coin should not be slighted — namely, by passing upon and upholding executive or legislative action, the judicial branch grants constitutional legitimacy to governmental action.

The Interim Constitution implicitly recognizes that the judicial branch of the former government was open to question respecting its independence and impartiality by virtue of the fact that it was an exclusive preserve for the white minority. As part of its requirements for the composition of the new Constitutional Court, the Interim Constitution creates a Judicial Service Commission to recommend appointments and specifically charges it to make its recommendations representative in terms of race and gender. The Judicial Service Commission plays a role in the selection process of other courts, and we would anticipate that they similarly would be sensitive to the need for an impartial, independent and representative judiciary.

While the United States Constitution is silent on the role of political parties, the South African constitutional principles specifically endorse a multi-party democracy with regular elections and universal adult suffrage. They also state a general goal of proportional representation. Provision is also made for the participation of minority political parties in the legislative process.

The rule of law is further promoted by a separate constitutional principle mandating freedom of information and an additional requirement that formal legislative procedures shall be adhered to at all levels of government.

Under the separation of powers doctrine, the constitutional principles endorse the tripartite form of government (Executive, Legislative and Judicial) at the national, provincial and local levels, each required to be democratically representative. A particularly contemporary concern is evident, however, for the protection and promotion of cultural diversity. Concern for preserving the richness of different cultures and languages is evidenced, while at the same time not permitting indigenous laws and traditions to trample fundamental rights and freedoms extended to all persons.

The new constitution will also spell out the powers, boundaries and function of the national and provincial governments, with built-in safeguards to protect provincial governments from an over-powering national government. Concern is equally voiced to ensure that viable institutions are created at all levels, with sufficient financial resources. The constitutional principles set out guidelines for the allocation of powers at the national and provincial levels, attempting to identify areas where the need to speak with one voice dictates that power should be lodged in the national government and further recognizes the desirability of the creation of a common economic market largely through national policy.

To ensure viability of the different governmental units, a new institution, a "Financial and Fiscal Commission," is created, where each province is represented, which will make recommendations on how monies collected nationally shall be allocated to the provincial and local governments.

Perhaps in what might be termed a fourth branch of government, the constitutional principles mandate an "efficient, non-partisan, career-oriented and broadly representative public service." Independence and impartiality also are specified for a "Reserve Bank, Auditor-General and a Public Protector." Along similar lines the security forces (police, military and intelligence) are to exercise their functions and powers in the national interest, and are prohibited from furthering or prejudicing any party political interest.

A separate constitutional principle recognizes the right of employers and employees to join and form employer organizations and labor unions and to engage in collective bargaining. Furthermore, this principle recognizes the right of every person to fair labor practices.

Finally, the new constitution will contain a provision for amendment by a special majority. While provision for

amendment allows for adjustment to changing circumstances and unforeseen problems, care should be taken to ensure that the new Constitutions Bill of Rights ought not allow for a diminishing of the rights included. Our concern is heightened by the recognition that at present South Africa does not have a culture and tradition of a Bill of Rights. Because rights entail limitations on governmental action or impose duties upon government, they are often unpopular with governments. At this stage of the development of a new South Africa, the bulwark of a strong Bill of Rights is fundamental.

VII

Black Participation in the South African Judiciary and Legal Profession

"One must take cognizance, therefore, of the fact that during the years of apartheid, the Black majority was greatly disadvantaged and effectively excluded from playing any meaningful role in the country's legal structure. It is now necessary to redress the balance as soon as possible and to ensure that lawyers from the formerly disadvantaged communities be drawn in to play a significant part."

*"Report of the Commission of Inquiry into the Granting of
Certain Powers to Legal Practitioners and Related Matters,"*
December 8, 1993, by Justice A.J. Milne
(the so-called Milne Report).

Justice Milne's statements are supported by statistics provided to us by the South African Association of Law Societies for South Africa, which has a population of 39 million (of which 33 1/2 million are black, coloured and Indians). There are 8,368 practicing attorneys, of which 1,178 are non-whites. (South Africa has a two-tiered system of legal practitioners along the lines of the British system). On the judicial side, there is one Supreme Court judge of Indian descent in South Africa out of 151 permanent judges and no black or coloured judges. (Supreme Court judges in South Africa are in practice appointed from a pool of senior advocates which includes only six black senior advocates.) The limited participation of non-white practitioners, and particularly black practitioners, in the legal system, is hardly likely to inspire confidence in the fair and impartial admin-

istration of justice in South Africa. This conclusion was reinforced by conversations we had with black legal practitioners during our stay.

Access to counsel in criminal matters in South Africa also raises serious questions for non-whites. In 1993 the Minister of Justice reported that in 1992 a total of 684,266 people were accused in criminal matters in the lower courts without legal representation. Approximately 114,000 of the unrepresented accused were found guilty and imprisoned. Judging from the prison population in the Pretoria and Bavianspoort prisons we visited to observe voting, this burden falls largely on non-whites.

This critical problems have not gone unnoticed in South Africa. Judge Milne, hoping to improve the position of non-whites in the judiciary and the legal profession, recommended permitting qualified attorneys, to be known as attorney-advocates, to practice before the Supreme Court in the same manner as advocates. With respect to the criminal litigation question, some modest efforts have been made over the years with respect to increasing legal aid and providing public defender services, but a great deal more remains to be done.

To make recommendations as to what to do about this serious situation of non-white participation is not easy for those from outside South Africa who are not totally familiar with the intricate rules and practices now in place. We are confident, however, that satisfactory solutions to these critical problems can be found expeditiously if the necessary commitment of the legal profession exists.

Some steps which might be considered in an attempt to improve the position of non-whites are listed below:

- Make appointments to the Supreme Court from a larger pool than the limited one of senior advocates.
- Appoint a substantial number of non-white judges to the new

Constitutional Court.

- Authorize the South African Law Schools to provide the skills and training required to qualify more non-white practitioners to practice before the Supreme Court and other courts.
- Bring about a more effective integration of the South African Law Schools.
- Provide clerkships for non-white practitioners with judges of the Supreme Court.
- Train and deploy paralegals to arbitrate disputes in remote rural areas where no judicial facilities exist.
- Institute massive legal aid and public defender programs, incidentally providing training for more non-white lawyers.
- Review statutory and court requirements for membership at the Bar and admission to the legal profession.

The changes to improve the position of non-whites and women in the legal profession should not await a full review of the structure of South Africa's legal system. One shudders at the length of time that such a learned and thoughtful effort would take. But, at this time, there does seem to be merit in charging a South African Commission, possibly the new Judicial Service Commission, if appropriate, with the explicit task of recommending steps to be taken to improve the position of disadvantaged groups in the South African judiciary and legal system.

Among the disadvantaged groups, in addition to non-whites, are women. Our conversations with women attorneys and advocates in South Africa indicated sufficient discrimination against them to justify their inclusion in the Commission study. Such a commission, if deemed appropriate, should report within a short time frame.

Whether a commission charged with such a specific task should be left to the direction of a predominantly white male

judiciary seems doubtful. The inclusion on the commission of academics, civil rights and educational experts, legislators, members of the business community and, above all, representatives of the disadvantaged groups seems more than appropriate.

A note of hope lies in the fact that President Nelson Mandela, himself a lawyer, has already indicated a clear understanding of these problems and the need to create public confidence in South Africa's judicial and legal systems. Accordingly, it is hoped that the new government will provide a sense of urgency to find the solutions to these problems.

VIII

Conclusions and Recommendations

1. Based on our observations, the South African Elections of April 1994 were substantially free and fair and reflect the political will of the South African people.
2. The new Interim Constitution of December 1993 and the 33 basic principles, as they appear in Appendix E, guarantee to all South Africans the sovereignty of a National Constitution which meets the norms and criteria of a Democratic Government committed to equality between men and women and people of all races.
3. The ICJ should reiterate its basic position that viable Constitutional order and development are interdependent. There can be no viable Constitutional order without Development and no viable development without Constitutional Order.
4. The ICJ urges all governments, domestic and international financial institutions, including the World Bank, the IMF and other regional banking institutions, to extend to South Africa the aid it needs to build its infrastructure in a meaningful way to meet the social and economic needs of the South African people in a gradual and orderly manner.
5. Years of apartheid has resulted in the exclusion of Blacks from the South Africa Judiciary and the limitation of Black participation in the Legal profession. We recommend that the suggestions set forth in Chapter VII of this report relating to the reform of the legal profession be seriously considered.

IX.

Post-Election South Africa: Some Reflections

In a country where poverty, illiteracy, and unemployment exceed 50 percent and where violence, both organized and random, is part of a historical legacy, questions about political and economic stability naturally arise. The Euphoria that resulted from the South African elections will temporarily overshadow questions about levels of expectation and anger that exist in a country that only recently removed the legal shackles of apartheid.

Notwithstanding this uneasiness, what does the new South African future look like? No doubt there are difficulties ahead. The work to be done is just beginning, and the dedication and commitment necessary for a secure transition is enormous. Nevertheless, three conditions exist that make possible long term and peaceful democratic government.

The first is a commitment to the rule of law. The transitional government in South Africa has established not only a successful transitional government and a successful election process but also a temporary constitution replete with democratic devices familiar to us in the United States. The constitutional structure is discussed immediately below.

The second condition that augurs well for the new South Africa lies in the sophistication of the political leaders. It would be difficult, if not impossible, to overestimate the contributions made by F.W. de Klerk and Nelson Mandela in what has transpired in this country. Clearly the voters have spoken overwhelmingly in favor of Nelson Mandela — and with good reason. His astute pragmatism enabled him to

negotiate for years with de Klerk and to offer accommodations to rival parties such as the Inkatha Freedom Party and the Freedom Front as his own sense of politics developed and deepened.

Similarly, de Klerk's sharp realism enabled him to perceive the reality that was the old South Africa and gave him the courage to make changes more significant than ever contemplated in that country. Even though wary of Mandela and tested by Buthelzei's brinksmanship, de Klerk was able to forge a compromise among the leading parties to withstand the tensions of the current election process.

The third condition that will aid the new South Africa is the existence of a market economy. Unlike Russia and Eastern Europe, which are trying to move from a centralized government-controlled economy to a free market, South Africa already has a free market established. Indeed, the Johannesburg Stock Exchange is one ready barometer for the success or lack thereof in the transition. To the extent that the country can increase its wealth, attract investment, increase its public debt, attract loans from international financial institutions, and have an orderly redistribution of wealth, that market must function smoothly and it need not be created from scratch.

These three conditions — the rule of law, the sophistication of the politicians, and a free market — may be necessary but are not sufficient conditions for a successful transition to the new South Africa. The sufficient condition will be the political will and the commitment of the people to a peaceful, democratic, and pluralistic government. This political commitment will take patience, hard work and years to evolve.

Lets hope the new South Africa will serve as an object lesson as our own country and others continue to wrestle with the complexities of pluralistic democracy.

South Africa now takes its place in the community of nations. Having completed the process of eradicating apartheid and setting the course for a representative democracy, South Africa has gained a deep well of respect in the international community. Indeed, South Africa stands to play a key role in Africa and in other parts of our world community. Although the problems at home are great, we encourage the new democratic South Africa to play an active role on the world stage in the promotion of peaceful change, respect for the rule of law, and the promotion of fundamental rights and freedoms.

APPENDICES

A.

ACCREDITATION OF ICJ AS AN INTERNATIONAL
OBSERVER ORGANISATION

B.

MAP OF NEW SOUTH AFRICA

C.

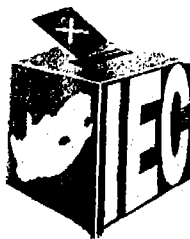
SAMPLE BALLOT

D.

DECISION ON PRISONERS ALLOWED TO VOTE

E.

CONSTITUTIONAL PRINCIPLES OF
NEW CONSTITUTION



INDEPENDENT ELECTORAL COMMISSION

A FREE AND FAIR ELECTION FOR ALL

41 Kruis Street, Johannesburg, South Africa • P.O. Box 1001, Isando, 1600
Tel: (011) 353-1002 • 928-1000 • Fax: (011) 928-1058

REGISTRATION NUMBER

I	0	0	3	6
---	---	---	---	---

ACCREDITATION FOR INTERNATIONAL OBSERVER ORGANISATIONS

Whereas I am satisfied that the INTERNATIONAL COMMISSION OF JURISTS (name of organisation)

can assure its observers will abide by the Code of Conduct for Observers, the Electoral Act, the Independent Electoral Commission Act and Regulations promulgated thereunder;

and that the INTERNATIONAL COMMISSION OF JURISTS (name of organisation)

has undertaken that its observers receive training approved by the Commission and submit a signed indemnity document;

and therefore declare the INTERNATIONAL COMMISSION OF JURISTS (name of organisation)

to be an accredited International Observer Organisation.

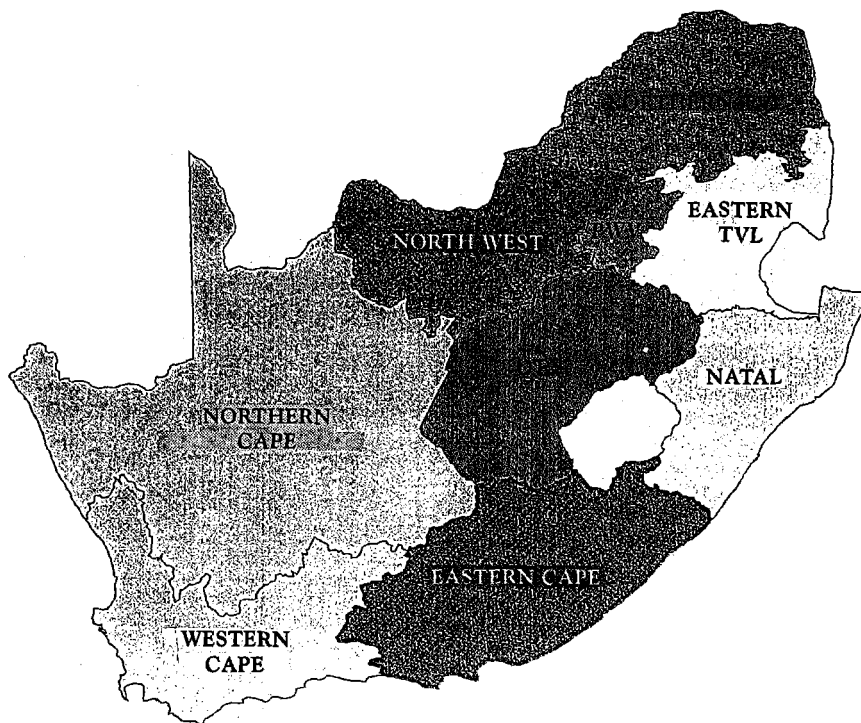
B.H. ...
BETER HARRIS

23/1/84

Accreditation: John D. Kruger (Chairperson), Adv. S.D. Moseneke (Vice Chairperson), Rev. F. Chikane, Dr. U.M. Linyondo, Mr. J.N. Nkomo
International Dr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane, Mr. J. Chikane

APPENDIX A

PROVINCES



APPENDIX B

RSA

1994



Make your mark next to the party you choose.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Place a mark next to the party you choose.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

Seta letshwao le gae go lebanale phatlhi yoo o o kgethang.

PAN AFRICANIST CONGRESS OF AZANIA		PAC		
SPORTS ORGANISATION FOR COLLECTIVE CONTRIBUTIONS AND EQUAL RIGHTS		SOCCER		
THE KEEP IT STRAIGHT AND SIMPLE PARTY		KISS		
VRYHEIDSFONT - FREEDOM FRONT		VF-FF		
WOMEN'S RIGHTS PEACE PARTY		WRPP		
WORKERS' LIST PARTY		WLP		
XIMOKO PROGRESSIVE PARTY		XPP		
AFRICA MUSLIM PARTY		AMP		
AFRICAN CHRISTIAN DEMOCRATIC PARTY		ACDP		
AFRICAN DEMOCRATIC MOVEMENT		ADM		
AFRICAN MODERATES CONGRESS PARTY		AMCP		
AFRICAN NATIONAL CONGRESS		ANC		
DEMOCRATIC PARTY - DEMOKRATIESE PARTY		DP		
DIKWANKWETLA PARTY OF SOUTH AFRICA		DPSA		
FEDERAL PARTY		FP		
LUSO - SOUTH AFRICAN PARTY		LUSAP		
MINORITY FRONT		MF		
NATIONAL PARTY - NASIONALE PARTY		NP		
INKATHA FREEDOM PARTY - IQEMBU LENKATHA YENKULULEKO		IFP		

APPENDIX C

BYLAE

Wysiging van artikel 16 van Wet 202 van 1993

1. Artikel 16 van die Kieswet, 1993, word hierby gewysig deur paragraaf (d) deur die volgende paragraaf te vervang:

“(d) ‘n vonnis van gevangenisstraf’ in ‘n gevangenis aangehou word na skuldigbevinding en vonnis sonder die keuse van ‘n boete [uitdien] ten opsigte van enige van die volgende [bepaalde] misdrywe [waarby geweld of oneerlikheid betrokke is] ongeag enige ander vonnis ten opsigte van ‘n misdryf nie hieronder vermeld nie wat saam met eersgenoemde vonnis uitgedien word:

- (i) Moord, [strafbare manslag] roof met verswarende omstandighede en verkragting [, onsedelike aanranding en kinderdiefstal, menseroof, aanranding met die opset om ernstige liggaamlike leed te berokken, roof, kwaadwillige saakbeskadiging en inbraak of betreding van enige perseel met die opset om ‘n misdryf te pleeg;
- (ii) Bedrog, korrupsie en omkoperij; of
- [(iii)] (ii) ‘n poging om ‘n misdryf bedoel in subparagraaf (i) [of (ii)] te pleeg.”.

SCHEDULE

Amendment of section 16 of Act 202 of 1993

1. Section 16 of the Electoral Act, 1993, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) [serving a sentence of imprisonment] detained in a prison after being convicted and sentenced without the option of a fine in respect of any of the following [specified] offences [involving violence or dishonesty] irrespective of any other sentence in respect of any offence not mentioned hereunder which is served concurrently with the first-mentioned sentence:

- (i) Murder, [culpable homicide] robbery with aggravating circumstances and rape [, indecent assault, childstealing, kidnapping, assault with intent to do grievous bodily harm, robbery, malicious injury to property and breaking or entering any premises with intent to commit an offence;
- (ii) fraud, corruption and bribery; or
- [(iii)] (ii) any attempt to commit any offence referred to in subparagraph (i) [or (ii)].”.

APPENDIX D

CONSTITUTIONAL PRINCIPLES

(As they appear in the Constitution of the
Republic of South Africa Bill 1993)

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South Africa citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

IV

the Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

VI

There shall be a separation of powers between the legislature,

executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

VII

The judiciary shall be appropriately qualified, independent and impartial and shall have the power of jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

VIII

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

X

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

XII

Collective rights of self determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of nondiscrimination and free association, be recognized and protected.

XIII

The institution, status and role of traditional leadership, according to indigenous law, shall be recognized and protected in the Constitution. Indigenous law, like common law, shall be recognized and applied by the courts, subject to the fundamental rights

contained in the Constitution and to legislation dealing specifically therewith.

XIV

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XV

Amendments to the Constitution shall require special procedures involving special majorities.

XVI

Government shall be structured at national, provincial and local levels.

XVII

At each level of government there shall be democratic representation. This principle shall be derogate from the provisions of Principle XIII.

XVIII

The powers, boundaries and functions of the national government and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

XIX

The powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well

as the power to perform functions for the other levels of government on an agency or delegation basis.

XX

Each level of government shall have the appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognizes the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.

XXI

The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
5. The determination of national economic policies, and the

power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

6. Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - (a) for the purposes of provincial planning and development and the rendering of services; and
 - (b) in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province.
7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.
8. The Constitution shall specify how powers which are not specifically allocated in the Constitutions to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXIII

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

XXIV

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive

powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

XXV

The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and development needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

Notwithstanding the provisions of Principle XII, the right of employers and employees to join and form employer organizations and trade unions and to engage in collective bargaining shall be recognized and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and Public Protector shall be provided for and safeguarded by the

Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.

XXX

1. There shall be an efficient, non-partisan, career-oriented public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.
2. Every member of the public service shall be entitled to a fair pension.

XXXI

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

XXXII

The Constitution shall provide that until 30 April, 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.

XXXIII

The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April, 1999.

MEMBERS OF THE INTERNATIONAL COMMISSION OF JURISTS

President

JOAQUIN RUIZ-GIMENEZ

President, Spanish Committee of UNICEF; Professor of Law, Madrid; former Ombudsman of Spain

Vice Presidents

ENOCH DUMBUTSHENA

LENNART GROLL

TAI-YOUNG LEE

CLAIRE L'HEUREUX-DUBÉ

Former Chief Justice of Zimbabwe

Judge, Stockholm Court of Appeal, Sweden

Director, Korean Legal Aid Centre for Family Relations

Supreme Court Judge, Canada

Members of Executive Committee

MICHAEL D. KIRBY (Chairman)

DALMO DE ABREU DALLARI

DESMOND FERNANDO

ASMA KHADER

KOFI KUMADO

FALI S. NARIMAN

CHRISTIAN TOMUSCHAT

President, NSW Court of Appeal, Australia

Professor of Law, São Paulo, Brazil

Barrister, Sri Lanka; President, International Bar Association

Advocate, Jordan

Senior Lecturer in Law, University of Ghana

Advocate; former Solicitor-General of India

Professor of International Law, University of Bonn, Germany;

Member, UN International Law Commission

Commission Members

ANDRES AGUILAR MAWDSLEY

MOHAMMED BEDJAOUI

ANTONIO CASSESE

SIR ROBIN COOKE, KBE

MARIE JOSE CRESPIN

DATO' PARAM CUMARASWAMY

DIEGO GARCIA-SAYAN

SIR WILLIAM GOODHART, QC

RAJSOOMER LALLAH

GLADYS V. LI, QC

NIALL MACDERMOT, CBE, QC

DANIEL HENRI MARCHAND

J.R.W.S. MAWALLA

FRANÇOIS-XAVIER MBOUYOM

FLORENCE N. MUMBA

DORAB PATEL

BERTRAND G. RAMCHARAN

HIPOLITO SOLARI YRIGOYEN

THEO C. VAN BOVEN

JOSE ZALAQUETT

Judge, International Court of Justice; former member, Inter-American Commission on Human Rights; Venezuela

Judge, International Court of Justice; former Algeria's Ambassador to the UN in New York

Professor of International Law, European University Institute; President, European Committee for Prevention of Torture; Italy

Judge; President, Court of Appeal, New Zealand

Member, Constitutional Council, Senegal

Advocate, Malaysia; former Chairman of Standing Committee on Human Rights, International Bar Association

Executive Director, Andean Commission of Jurists, Peru

Advocate, United Kingdom

Supreme Court Judge, Mauritius; member, UN Human Rights Committee

Deputy High Court Judge, Hong Kong

Former ICJ Secretary-General; former Minister of State for Planning and Land, United Kingdom

Professor of Social Law, France

Advocate of High Court, Tanzania

Advocate, Cameroon

Investigator-General, Zambia

Former Supreme Court Judge, Pakistan

UN Coordinator, Regional Political & Security Cooperation; Adjunct Professor, Columbia University School of International Affairs (New York); Guyana

Senator, Argentina; Chairman, Human Rights Committee of the Inter-Parliamentary Union

Dean, Faculty of Law, University of Limburg, Netherlands; member, UN Committee for Elimination of Racial Discrimination

Advocate; Professor of Law, Chile

HONORARY MEMBERS

ARTURO A. ALAFRIZ, Philippines

DUDLEY B. BONSAI, United States of America

WILLIAM J. BUTLER, United States of America

HAIM H. COHN, Israel

ALFREDO ETCHEBERRY, Chile

PER FEDERSPIEL, Denmark

W.J. GANSHOF VAN DER MEERSCH, Belgium

P. TELFORD GEORGES, Bahamas

JOHN P. HUMPHREY, Canada

HANS-HEINRICH JESCHECK, Germany

P.J.G. KAPTEYN, Netherlands

JEAN FLAVIEN LALIVE, Switzerland

RUDOLF MACHACEK, Austria

NORMAN S. MARSH, United Kingdom

KEBA MBAYE, Senegal

JOSE T. NABUCO, Brazil

Sir GUY POWLES, New Zealand

SHRIDATH S. RAMPHAL, Guyana

Lord SHAWCROSS, United Kingdom

EDWARD ST. JOHN, Australia

TUN MOHAMED SUFFIAN, Malaysia

MICHAEL A. TRIANTAFYLIDIS, Cyprus

SECRETARY-GENERAL

ADAMA DIENG

ABOUT THE AUTHORS

WILLIAM J. BUTLER, ESQ. is President of the American Association for the ICJ and past Chairman of the ICJ Executive Committee (1975-1990). He has led Human Rights Missions to South Korea, The Philippines, Iran, Uruguay, Nicaragua, Guatemala and Palau. He is the author of "The Decline of Democracy in the Philippines," "Human Rights in Iran," "Human Rights, United Kingdom Foreign Policy," "Guatemala, A New Beginning," and "Palau, A Challenge to the Rule of Law in Micronesia," and numerous articles on the implementation of Human Rights. Mr. Butler is a practicing lawyer in New York and a member of the Council on Foreign Relations.

PROFESSOR BERT B. LOCKWOOD, JR. is the Editor-in-Chief of the Human Rights Quarterly and Series Editor of the Pennsylvania Studies in Human Rights. He is Director of the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law. He serves on many Boards including the Human Rights Committee of the American Branch of the International Law Association, The Netherlands Institute for Human Rights and the Domestic Litigation Committee of the South African Project of the Lawyers Committee for Civil Rights Under Law. Professor Lockwood is now a Visiting Scholar at the University of Essex, Department of Law in Colchester, England.

PETER O.A. SOLBERT, ESQ. is a member of the Board of Directors of the American Association for the International Commission of Jurists. After graduating from Yale College and Harvard Law School, Mr. Solbert joined the New York law firm, Davis Polk and Wardwell, where he has been a member of the firm since 1957. From 1963-1965 he served as Deputy Assistant Secretary of Defense for International Security Affairs. Mr. Solbert is a practicing lawyer in New York and a member of the Council on Foreign Relations.

JOSEPH P. TOMAIN is the Dean and Nippert Professor of Law at the University of Cincinnati College of Law. He is the author of seven books and numerous articles in the field of governmental regulation. Dean Tomain serves in a number of civic organizations including the Steering Committee of the Black Lawyers Association/ Cincinnati Bar Association; Ohio Supreme Court Committee on Dispute Resolution; V.P. and Secretary, Board of Trustees, Volunteers for the Poor, Board of Trustees, Ohio Continuing Legal Education and the Student Loan Funding Corporation. Dean Tomain graduated from Notre Dame and the George Washington University National Law Center. Prior to entering into the teaching profession, he practiced law in New Jersey.

Published by

American Association for the International Commission of Jurists
777 United Nations Plaza New York, NY 10017