



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "*

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The Survey on the Rule of Law was launched in Newsletter No.8 and is based upon a definition and clarification of the concept of the Rule of Law as elaborated by the International Congress of Jurists which was held in New Delhi in January, 1959. Reference is made also to The Rule of Law in a free Society which is a report on the New Delhi Congress; it contains a detailed and extensive summary of the work and proceedings of that Congress. The basic idea of the Survey is to present a straightforward periodically revised "balance-sheet" on the Rule of Law in terms of institutions, practices and procedures of particular countries as evaluated against the Conclusions of Delhi (see The Rule of Law in a Free Society). Some of these Conclusions had of necessity to be general in character; peculiar features of individual countries could not always be considered and only detailed information from persons familiar with local conditions can provide the means whereby a balanced evaluation of the application of the Conclusions in national societies can be made. The impact of foreign institutions that can usefully be transplanted as an improvement in a particular legal structure should not be overlooked. The keen interest aroused by "Justice", the British Section of the Commission, in the Danish Parliamentary Commissioner, is an excellent illustration, and the suitability of this institution for Britain is now engaging the attention of that Section to the extent that a major study group has been organised on the question and financial support received from a foundation to assist the study group. The exchange of ideas and experience through the medium of comprehensive national Surveys carries, it is believed, tremendous possibilities for the stimulation of improvement and creative growth in the field of law. The questionnaire underlying the Survey, published in Newsletter No. 8, is lengthy and detailed. This has been considered necessary in order to facilitate the examination of the Rule of Law in each country. Such examination should be based upon the substance and practice of the law rather than merely the formal legislative framework. This Survey should not be confused with the earlier questionnaire on the Rule of Law, which provided the Commission with an excellent basis for the Working Paper at the New Delhi Congress. At the time the Commission was feeling its way towards an extensive definition of the Rule of Law. While the New Delhi Congress laid down in some detail certain desirable standards, a wider inquiry is now necessary in order to measure the operation of actual legal systems against those standards. It should be emphasized that the Commission is more concerned with the law in action than with comparative theories of law. The Survey attempts to cover those branches of law which are of the most direct relevance, and to deal with law and government in those branches as it is actually practiced. The constitutions of countries throughout the world are fairly readily accessible but do not provide a complete picture of the practical application of the law. The final replies to the Survey should be divided into three parts: a. a careful analysis, fully documented, with reference to legislation, cases, court decisions, dicta, etc. of the existing legal situation, answering and following the sequence of the questions in the Survey; b. a set of conclusions stating plainly and clearly the areas of civil liberties and justice which are strongly entrenched and may be considered "safe" at the moment; c. the demarcation of those civil liberties and areas which are weak or being threatened and which must therefore be carefully watched. A few suggestions might be made here with respect to the work requested by National Sections, affiliated associations and other friends of the Commission. The Survey is a sizeable undertaking and will require the cooperation of a number of specific legal experts as well as the ideas and general experience of other practicing lawyers, judges and teachers of law. It has proved useful to some Sections in replying to the Survey to organise committees, each taking up a specific section of the questionnaire. The committees can consist of four or five persons, each committee dealing with one section of the questions and producing a preliminary report on that particular section. Following the completion of the work of all the committees, the members thereof might meet en masse to discuss and complete the final reply to the Survey. It would thus be a

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representative report and the joint responsibility of all persons involved. As mentioned above, each committee should have at least one or two experts in the field of enquiry but should profit at the same time from the experience, training and views of other members; it is desirable that each committee be so constituted as to have in its composition various representatives of the legal profession, i. e. judges, practicing lawyers and teachers of law. The size of the report as such should not be a governing factor. The replies should be as complete and full as possible and contain as much detailed information as may be necessary to offer a clear and fully documented picture of the particular situation in each country. Although the Survey questionnaire was carefully prepared, particular points may have been omitted or inappropriately expressed and in this case a broader interpretation of the question will be more valuable than merely technically complete answers to inadequate questions. It may well be, also, that there are special reasons for what to an outsider may appear to be a puzzling or even objectionable feature of the legal system of a particular country. A few words of explanation in instances where it is felt that this is the case, would be most useful and welcome. In short, National Sections, affiliated associations and other groups should understand that the questionnaire is not intended as an all-embracing text and may wish to supplement it by further facts wherever it is felt that this would be useful. It is not necessary to repeat what has already been said in Newsletter No.8 (see pp. 1, 2 & 9) on the Survey. It is an ambitious undertaking which has great possibilities of influencing, on a world-wide scale, development towards the Rule of Law. This is its basic purpose and on these grounds the Commission feels confident in asking for cooperation for such an undertaking. As a regular publication it can become one of the best-known and respected features of the work of the Commission. It is hoped that this memorandum will be discussed with the respective executive boards at the earliest possible time, and that the Commission will be informed of any proposed action to be taken. As mentioned in the Commission's letter of December 1959 to National Sections and affiliated associations, it is planned to hold a World Congress in 1962 in Latin America. It is hoped that the replies to the Survey will provide some assistance in determining the substantive programme of the Congress. This would be greatly facilitated by the receipt of the replies to the Survey as early as possible in 1961.

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