

*FOR THE RULE
OF LAW*

***Bulletin
of the
International
Commission
of Jurists***

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THE ADMINISTRATION OF JUSTICE IN CYPRUS

As part of the political settlement of the Cyprus problem under the Zurich and London agreements in 1959, the new Republic of Cyprus was endowed with two Superior courts—a High Court of Justice and a Supreme Constitutional Court. The former was composed of two Greek¹ judges, one Turkish¹ judge and a neutral non-Cypriot President. The latter was composed of one Greek judge, one Turkish judge and a neutral non-Cypriot President. All the judges were to be appointed jointly by the President and Vice-President of the Republic. The provisions as to the establishment, composition and jurisdiction of these two courts were contained in entrenched clauses of the Constitution which could not in any way be amended whether by way of variation, addition or repeal (Constitution article 182 (1) *not* 182).

When the troubles broke out in Cyprus in December 1963, leading to the establishment of a United Nations Peace-Keeping Force on the island, the Supreme Constitutional Court had been unable to sit since May 1963, owing to the resignation of its neutral President. As a result of the troubles his successor, who was to have assumed office in January 1964, never took up his appointment. The President of the High Court resigned as from May 31, 1964. Having regard to the situation prevailing in Cyprus, successors were never appointed to either office: such appointments would, under the Constitution, have had to be made jointly by the President and Vice-President of the Republic, and the latter had ceased participating in the Government at the end of 1963. It was also impossible to find anyone willing to serve in the abnormal situation.

As a result of the troubles, difficulties were also encountered in the district courts, which are the courts of first instance in most matters in both civil and criminal cases. The Constitution provided, by an entrenched provision, that Greek cases were to be tried by Greek judges, Turkish cases by Turkish judges and mixed cases by

¹ For the sake of brevity, throughout the article "Greek" and "Turkish" are used to refer to Greek and Turkish Cypriots and do not include nationals of Greece and Turkey.

a mixed bench. Between December 21, 1963 and the beginning of June 1964, with a very few exceptions, no Turkish judge attended court, so that no Turkish or mixed cases, civil or criminal, could be proceeded with. In Nicosia, the District Court was in the Turkish sector and the Turkish judges continued to sit there for a short time to try purely Turkish cases, but the Greek judges and court personnel had no access to the Court building.

The reasons for the non-attendance of the Turkish judges appeared to be two-fold: fear for their personal security if they ventured into the Greek areas in which almost all the courts were situated, and pressure from the political leadership of their own community discouraging them from such a step. All links and all forms of collaboration between the two communities had ceased when the Turkish political leadership withdrew from participation in the Government at the end of 1963, and Turkish officials and civil servants ceased to carry out their duties.

In July 1964, after the Supreme Constitutional Court had been out of action for 14 months and 6 weeks after the High Court had been paralysed by the resignation of its President, the House of Representatives of the Republic of Cyprus—consisting only of its Greek members, the Turkish having withdrawn—enacted the Administration of Justice (Miscellaneous Provisions) Law. Its Preamble recites the reasons for such a step in the following terms:

WHEREAS recent events have rendered impossible the functioning of the Supreme Constitutional Court and of the High Court of Justice and the administration of justice in some other respects:

AND WHEREAS it is imperative that justice should continue to be administered unhampered by the situation created by such events and that the judicial power hitherto exercised by the Supreme Constitutional Court and by the High Court of Justice should continue to be exercised:

AND WHEREAS it has become necessary to make legislative provision in this respect until such time as the people of Cyprus may determine such matters.

This law established a Supreme Court to exercise the jurisdiction of the Supreme Constitutional Court and the High Court. The first judges of the Supreme Court are the judges of the two courts it replaced, with the senior judge, a Turk, as President.

The Law made one further important change: it abolished the requirement that a judge should be of the same community as the parties to a case before him, and that mixed cases should be tried by a mixed bench, and provided, by S 12 (2):

Any judge of a District Court may hear and determine any case falling within his jurisdiction irrespective of the community to which the parties to the proceedings belong.

The Turkish leaders immediately objected that the new law was unconstitutional, in that it attempted to change provisions in the Constitution that could not be amended in any way, and its constitutionality was challenged in November 1964 before the new Supreme Court in *Attorney-General of the Republic v. Mustafa Ibrahim and others*.

By the time this case came on for hearing, the Turkish judges had resumed their duties in the District Courts, and the two Turkish judges, of whom one, as senior member, was its President, were sitting with their three Greek brethren in the Supreme Court. The full Bench of the Supreme Court originally nominated a Bench of three judges—the 3 Greek judges—to hear the case, and when the constitutional issue was raised the matter was reconsidered by the full Bench with a view to its being heard by all five judges. However, the two Turkish judges concurred in affirming the original nomination of three judges, so that the question was in the result determined by the Greek judges alone. They unanimously upheld the validity of the law, invoking for the purpose the doctrine of necessity. It is not the purpose of this article to examine the correctness of this judgement. It is sufficient to state that the court found that the law of necessity was implied in the Constitution of Cyprus, and that the paralysis of the administration of justice, both civil and criminal, at first instance and on appeal, created a situation where Parliament was faced with the urgent necessity of making some temporary provision during the incapacity of the constitutionally established courts, which were not abolished by the law.

On September 28, 1964, the Turkish Vice-President of the Republic appealed to the Government to repeal the temporary law and bring the judicial system back into line with the constitutional provisions within a reasonable period, and stated that, from a sense of duty and goodwill, the Turkish judges would continue to serve until his appeal had been considered, but that if it did not meet with a positive response they would find themselves in an impossible position in view of the unconstitutionality of the temporary provisions, and might find it contrary to their oath, conscience and sense of justice to prolong the unconstitutional state of affairs indefinitely. Thereafter, the Turkish members

of the Supreme Court and District courts continued to perform their judicial functions under the new law until early June, 1966.

During the two years that the courts continued to function with the full participation and harmonious collaboration of both Greek and Turkish judges, the administration of justice continued nevertheless to be hampered by a number of difficulties arising out of the political situation.

These difficulties were most acute in Nicosia. The District Court there was situated in the Turkish Quarter, and after the outbreak of the troubles and imposition of the "green line" separating the two communities, no Greek had access to it. The result was that the administration of justice was brought almost to a standstill. The Minister of Justice therefore designated another building, a few yards on the Greek side of the "green line", with a view to facilitating attendance by both Greeks and Turks, and the District Court began to function there in September 1964. The old building thereupon ceased to be a courthouse.

The District Court of Nicosia has been sitting regularly since that date, but serious practical problems have been posed in a large number of cases because the Land Registry and the files and records relating to cases pending in December 1963 are in the old court building and the Turkish authorities have refused to release them or allow access to them. The resulting situation is described in the Report of the Secretary-General of the United Nations to the Security Council of March 11, 1965:

Ad hoc arrangements have had to be made by the Courts in the great majority of these cases and, as a result of the lack of the original records and case files, judges have proceeded to hear such cases on the basis of affidavits filed by counsel affirming certain matters of fact, and certifying the existence of various documents. Early in February the Minister of Justice handed to UNFICYP a list of records and files which had been asked for by counsel appearing in cases awaiting disposal by the Courts but which had so far not been transferred from the old Law Courts building. This list contained a total of 148 files in civil actions, adoption applications, maintenance applications, Rent Assessment Board applications, bankruptcy applications, and probate applications and wills. In the great majority of these cases the parties are exclusively Greek Cypriots and all of them are cases which had been pending at the time the inter-communal hostilities broke out in December 1963, some of them even dating back to 1961.

Even more serious is the fact that Turkish litigants and witnesses have been extremely reluctant to make any use of or to attend the courts since the start of the troubles. The result is that the work of

the courts has been almost entirely confined to those cases where the parties involved are Greek Cypriots. The situation is worst in Nicosia, where the Turks have made no use at all of the District Court since it was moved to its new building, but in the other towns of Cyprus the attendance of Turks at courts situated in the Greek sectors is small.

Two reasons are put forward for this refusal to use the courts. In the first place the Turks deny the constitutionality of the courts as constituted under the law of 1964. Secondly, they contend that it would not be safe for them to enter the Greek areas for the purpose of attending court. This argument is advanced primarily in relation to Nicosia, where relationships between the two communities have been particularly tense. It does not apply with the same force elsewhere, for over half the Turkish population live outside the four areas of the island that are under Turkish control. The Turkish reluctance to enter the Greek areas is based on two fears: that of a sudden incident leading to violent and immediate reprisals against Turks who happen to be there at the time, and fear of arrest for alleged past offences arising out of the troubles. To remove the fears, the United Nations Forces have offered to provide protection and escort whenever requested, and the Government has issued instructions to the police that Turkish counsel, parties and witnesses shall not be arrested for any past offences while proceeding to and from court or while in the court building without a judicial warrant. The Turkish leaders contend that they cannot be satisfied with such assurances in view of the fact that, in Nicosia, the new court adjoins a military barracks of the Cyprus Armed Forces and is opposite a barracks of the Cyprus Police Force.

In Nicosia, the Turks have requested that the old Law Courts building in their quarter be designated as an additional courthouse and that the Turkish judges be allowed to sit there one day a week or so, to hear civil cases between Turks only. The Government has not acceded to this request.

The result is that in Nicosia almost entirely, and to a large extent elsewhere, the Turks do not have access to courts of law for the settlement of their disputes, either with each other or with the Greeks, while the Greeks are unable to bring or continue proceedings against Turks living in the Turkish-controlled areas since it is impossible to serve documents upon them.

The situation is equally serious in regard to criminal matters. If a Turk is arrested in the Government-controlled areas, he is

of course brought before the courts, and a Turkish lawyer invariably attends court to defend him. However, the machinery of criminal justice no longer operates in the Turkish-controlled areas. The situation is described in the report of the Secretary-General of the United Nations to the Security Council of December 12, 1964:

Another serious drawback to the proper administration of justice in the present circumstances in the Island springs from the inability of the Government to exercise effective authority in certain limited areas inhabited entirely by Turkish Cypriots. Since the Cyprus police do not function in such areas, and since the Turkish Cypriot police personnel have not behind them the sanction of the proper legal organs of the State (such as the Law Courts, the Attorney-General's officers, prisons, etc.), *Turkish Cypriots who commit serious crimes against other Turkish Cypriots now do so with impunity.* There have been in the recent past several cases where Turkish Cypriots have committed serious crimes against fellow Turkish Cypriots where the machinery of the law has not been invoked because of the present conditions.

It appears that, in order to deal with the persons accused of criminal offences in the Turkish-controlled areas, special tribunals have been established before which they are brought. This is a disturbing but almost inevitable result of a situation as abnormal as that obtaining in Cyprus at the present time.

A final difficulty is placed in the way of the courts by the failure of the Turkish members of their staff—with few exceptions—to return to their duties. In spite of the resumption of their functions by the Turkish judges for a period of two years, the court officials have remained absent, and the courts have remained short-staffed.

The harmonious functioning of the courts, until the incidents of June, 1966, which are dealt with below, in the face of the problems with which they were faced is a remarkable testimony to the abilities and good sense of their judges. The administration of justice is the only field in which Greek and Turkish Cypriots have worked together since December 1963 and the manner in which they did so was generally acknowledged to be admirable. No complaint or suggestion of bias has ever been made against judges of either community, and in their refusal to make use of the courts the Turks have never sought to rely on the argument that members of their community ran any risk of receiving unfair or biased treatment from a Greek judge. They have based their case upon the rights granted to them by the Constitution and their determination to preserve the rights thus gained.

The objections of the Turks to the use of the courts are not therefore, based upon the fear that they will not obtain justice from

them as they are at present constituted. Their objections are of a political order, and the courts are being to some extent used as a weapon in the political struggle. The same appears to be true of the Greeks whose refusal to permit Turkish judges to sit in the Turkish quarter of Nicosia to try purely Turkish cases was based upon their determination to permit nothing that could be construed as a recognition of any form of separation of the two communities. The position can be summarized in the words of the Secretary-General of the United Nations in his report to the Security Council of June 10, 1966: "In the present situation, as part of the paralysing mistrust between them, the tendency exists in the Government and in the Turkish Cypriot leadership to see each small step on the road towards normality as an erosion of their political position".

It is against this background that the events of June 1966 must be viewed. On June 2, as a result of a series of bomb explosions in Greek areas, the Government sealed off the Turkish quarter of Nicosia, and among those prevented from crossing into the Greek quarter were the Turkish judges of the Supreme and District Courts. Although prompt intervention caused the ban on the judges to be lifted within about an hour and the judges performed their functions normally for the rest of that day, on June 3 the Turkish Cypriot leadership issued a strong protest in which it stated that the period mentioned in the Vice-President's appeal of September 28, 1964, during which the Turkish judges would co-operate pending the restoration of the constitutional judicial system, had come to an end, and that all Turkish judges would be free to discontinue attending their office if they wished. Since that date, no Turkish judge has attended court in Cyprus.

On June 17, 1966, the Turkish judges at a meeting recalled the Vice-President's appeal of September 28, 1964, and issued a statement to the effect that the incident of June 2 "constituted only a culminating factor in an already existing anomalous situation which any judge could not be expected to accept indefinitely," and that they felt unable, in the best interests of justice, to resume work under the prevailing circumstances. The President of the Supreme Court, who was the only Turkish judge not to sign the statement, tendered his resignation on the same date, with effect from the expiration of the leave due to him, which is due to expire in mid-September.

The position at the present time is thus very fluid. The Turkish judges, with the exception of the President, have not resigned.

No attempt has been made to dismiss them or to appoint other judges in their place. Unofficial sources suggest that attempts by the Turkish leadership to induce the Turkish judges to sit as such in the Turkish areas have met with little success. The present crisis arose shortly before the summer vacation was due to begin, and at the time of going to press the International Commission of Jurists can only express the hope that the breathing space afforded by this break in the court's activities will provide an opportunity for reflection and further attempts to break the deadlock.

It is most unfortunate, particularly when good sense prevailed sufficiently to allow the judges of the two communities to resume working together for a period of two years, and now that experience has shown that they can do so in an atmosphere unaffected by the political differences between their respective communities, that the administration of justice still has not been politically neutralized. Both communities are at present suffering from a position in which political attitudes prevent sensible arrangements from being made on a practical level. For an outsider, it is difficult to understand why the two communities cannot agree to remove the administration of justice from the realm of their political differences altogether and to make the concessions needed on both sides for a return to normal on the clear understanding that the situation thus arrived at was to be accorded no significance politically, and not to be used as an argument in support of their respective political stands. If this could be achieved, the result would be a considerable improvement in the position of the members of both communities and a further step would have been taken towards the normalization of life in Cyprus.

CONTINUED ABSENCE OF DEMOCRACY IN INDONESIA

The view has often been advanced that democracy with its representative institutions is unsuited to the countries of South-East Asia which have a political, social and cultural background so different from that of the West. Many proponents of this view also argue that the economic development of these countries calls for a more autocratic and sometimes even a dictatorial form of government. No better answer can perhaps be given to these arguments than to point to Indonesia, where economic conditions kept steadily deteriorating, notwithstanding the abandonment of representative government in that country in 1957, and its replacement by the virtual dictatorship of President Soekarno. The confused events that followed the attempted *coup d'état* of October 1, 1965 have certainly not improved the economic situation. In fact, it is not only far worse than in those South-East Asian countries that have chosen the path of democracy, but is indeed alarming and chaotic.

It is to be hoped, however, that the new administration may help to restore some degree of confidence in the economic future of Indonesia. A positive and speedy indication that the Rule of Law and democratic government are to be restored on a solid basis would do much to build up confidence in the country's future.

Government under the 1950 Constitution

A brief survey of political developments in Indonesia since the attainment of independence will show how the leaders of the Indonesian revolution appeared to make a good start by adopting a democratic constitution in 1950 and the stages by which constitutional democracy declined and was finally abandoned in that country.

In furtherance of the national struggle for independence Soekarno and Hatta, the leaders of the National Movement, and a group of youth leaders proclaimed the new Republic of Indonesia on August 17, 1945. Under its temporary Constitution

S karno became President and Hatta Vice-President. But the struggle for independence continued and it was only on August 1, 1949 that the Netherlands and the Republic agreed to a cease-fire. Under a new Constitution of that year, Dr. S karno remained President and a Cabinet of 16 persons with Dr. Hatta as Prime Minister was sworn in on December 20. Sovereignty was formally transferred to the new Government by the Netherlands a week later.

Dr. Hatta's Cabinet was entrusted with the preparation of a more comprehensive constitution which would also convert Indonesia from a federation of states to a unitary state. The new Constitution was drawn up without much delay. Adopted in August 1950, it continued to remain, at least in theory, the Constitution of Indonesia until its abrogation by President S karno in 1959.

The Constitution of 1950 declared that President S karno would be President of the new State. It provided for a unicameral Legislature and a parliamentary Cabinet. The Legislature was to consist of 236 members representing different areas and interests. Even this Constitution was intended to be temporary and therefore provided for a Constituent Assembly to be elected to draft a permanent constitution. The Constituent Assembly was to be elected by free and secret ballot and was to consist of one representative for every 150,000 citizens. There was, however, no specification regarding any time within which the elections were to be held.

In one respect the 1950 Constitution gave large powers to the Cabinet. It empowered the Government to make emergency laws without reference to Parliament which would be valid until such time as they were specifically countermanded by Parliament. Yet in other respects the Constitution was tilted in favour of Parliament. Parliament could compel the resignation of individual ministers and even of the entire Cabinet. The President had the right to dissolve the House of Representatives, but a presidential decree announcing dissolution should also order the election of a new House of Representatives within 30 days. Therefore, strictly, a dissolution seemed possible only when it was feasible to elect a new House within 30 days.

From 1950 to 1953 there was a succession of cabinets which made a serious effort to solve administrative and economic problems through the strengthening of law and order and through planned

economic development. Although these cabinets had some measure of success in implementing their policies, their failure to solve successfully the problems of the country was not due to lack of earnestness but rather to the absence of an efficient government in power for a period sufficiently long to realize its objectives. There were numerous public liberties afforded to the people under the 1950 Constitution, but forces were increasingly at work which kept removing the conditions under which their enjoyment was possible.

The cabinets of 1953 to 1957 were led by men who had less strong attachments to constitutional democracy than those in power in the earlier years. The attitude of Indonesian politicians towards constitutional democracy is reflected in their approach to the question of a general election which was the only method of ensuring that the Government was truly representative of the people. The earlier cabinets of 1950 to 1953 placed the question of elections in the forefront of their political programmes, but kept postponing arrangements for one on grounds of certain practical difficulties. But even when most of these practical difficulties were removed, the later cabinets of 1953 to 1957 kept postponing elections as long as they possibly could. There is no doubt that in doing so they were motivated largely by considerations of personal interest. Ultimately, in September 1955 the long-awaited General Election was held. It was in fact the one and only such election held in the country since independence. 37,785,299 votes were polled. The parties that emerged most successful at the election were: PNI (Indonesian National Party) (57 seats), Masjumi (Front of Muslim Organisations) (57 seats), Nahdatul Ulama (a traditionally oriented Muslim Party) (45 seats), PKI (Communist Party of Indonesia) (39 seats).

Being the first General Election held in the country, many village voters had no proper appreciation of their political rights. They exercised their votes in favour of a particular candidate sometimes through fear of consequences if they voted otherwise, sometimes because they were directed to do so by the village leaders and sometimes because of actual intimidation which was certainly widespread. But the election did demonstrate firstly, that the leading political parties were not as strong as they considered themselves to be, and secondly, that the PKI (Communist Party) was much stronger than had been imagined.

The attitude of the average voter towards the general election demonstrated that democracy could only be a mockery under

prevailing conditions in Indonesia. Instead of setting themselves to the task of increasing civic consciousness and educating the village voter, many politicians argued that it was not in the interest of the country to continue democratic institutions. This attitude was most important in preparing these men to accept an abandonment of constitutional democracy.

After the General Election, a coalition Government was formed with Ali Sastroamijoyo as Prime Minister. The new Government proved to be no stronger than any of the previous ones. Political antagonisms became increasingly personal and culminated in a Cabinet crisis in March-April 1957.

Martial Law and the Rise of the President's Personal Power

A series of attempted *coups d'état* and the increasing toughness of Communists and Regionalists made the political situation in 1956-57 quite tense. There was also a threat of an internal insurrection by army officers as well as mounting tension with the Netherlands over the future of West Irian (formerly Dutch New Guinea). Finally, in March 1957 President Soekarno proclaimed a state of martial law throughout the country.

Starting in 1957, President Soekarno gradually increased his executive powers up to a point where they became almost unlimited. He dissolved the Constituent Assembly in July 1959 when it failed to give a two-thirds majority to a government proposal to re-introduce the Constitution of 1945. Having done so, he reinstated the 1945 Constitution by Presidential Decree. That Constitution, which, as has already been pointed out, was a transient one, invested the Executive with broad, almost unlimited powers, made the Cabinet responsible to the President rather than to Parliament and divided legislative authority between the President and Parliament. Whatever power Parliament still possessed to act as a check on the President's unlimited powers vanished in March 1960 when the President, again by decree, dissolved the elected Parliament and replaced it some months later with an appointed "gotong rojong" (Mutual Help) Parliament. Elections, though promised, were never held since.

The arrest of Leading Personalities

On January 16, 1962, several leading political personalities were arrested by the military police, acting on the directions of President Soekarno. It would appear that the only reason for

their arrest was that they failed to see eye to eye with the President on political issues and had consequently fallen into disfavour. These personalities included: three former premiers, Sutan Sjahrir, the first Prime Minister of Indonesia from 1945 to 1947 and the leader of the Socialist Party until its dissolution by President S  karno in 1960; Sukoman Wirjosandjoj, Prime Minister from 1951 to 1952 and a leading member of the Masjumi party dissolved by the President in 1960; Muhammed R  m, first Deputy Prime Minister from 1956 to 1957 and a past President of the Islamic University in Medan; Subadio Satrosatomo, a prominent politician; Prawato Mangkusamoto, a former Defence Minister; Yunan Nasution, a former Secretary-General of the Masjumi Party; Anak Agung Gde Agung, Prime Minister in 1947 and a former Minister of Foreign Affairs and Ambassador to the United Nations; and Sultan Hamid II of West Borneo. The last two persons mentioned were among the four persons announced by President S  karno in December 1949 as founders of the Republic.

On March 14, 1962 Sir Leslie Munro, the then Secretary-General of the International Commission of Jurists, who was on a tour of South-East Asian countries for the purpose of observing the situation of the Rule of Law in those countries, met General Nasution, then Indonesian Minister of Defence, at Djakarta, who informed him that the apprehended men were not being held in prison but under house arrest and that their cases were being "investigated". Sir Leslie Munro urged President S  karno to act in accordance with the Rule of Law and to see that charges were promptly and publicly made against the arrested persons if there was a prima facie case against them and that they were brought to a speedy and public trial in accordance with judicial procedures. He further urged that, if there was no prima facie case against them, these persons should be released without delay as it was a denial of justice for them to be kept languishing in detention indefinitely.

As no steps were taken to frame charges against these persons or to bring them to trial, the Commission issued a press statement on August 17, 1962 in which it expressed serious concern over their fate.

The ICJ sends an Observer to Indonesia

In November 1962, the Commission sent Mr. C. Thiagalingam, Q.C., an eminent Ceylonese lawyer, as its Observer to Indonesia.

Mr. Thiagalingam spent about three weeks in that country, but found conditions there such that it was impossible to obtain adequate information on the conditions under which the political detainees were kept or on their prospects of trial.

As regards the general situation in Indonesia at the time of his visit, Mr. Thiagalingam came to the conclusion that the Rule of Law was absent in Indonesia. In his Report to the Commission dated January 15, 1963, he states:

What government institutions exist today and have existed for quite sometime in Indonesia—Madjelis Permusjawaratam Rakjat (House of Representatives for determining broad lines of State policy), Dewan Perwakilan Rakjat (the Legislative body), the Council of Ministers, the Supreme Advisory Council, the National Planning Council and the National Front—have no constitutional basis and are but creatures of the President. The President is concurrently the Chief Executive and Supreme Commander of the Armed Forces and has the style "Great Leader of the Indonesian Revolution". The President is also Prime Minister. He is also First Minister of Foreign Affairs and Home Affairs, of Defence and Security, of Finance and of all other branches of government machinery.

A proposal for holding general elections for the due constitution of the Madjelis Permusjawaratam Rakjat was before the Supreme Advisory Council on May 16/17 last year. The President, however, turned down such proposal with the plea that "at the present time it is urgent to bring about a maximum of mobilization of the national potential in a united way..."

Guided Democracy

The term "Guided Democracy", which President Soekarno had chosen to describe his form of government, would appear to suggest that it was a particular species of democracy. The "heart of the guiding" in a "Guided Democracy" President Soekarno had said, was deliberation, but a deliberation that was guided by the inner wisdom of perception. But he never clearly articulated what form guided democracy should assume and how it could be reconciled with his consistent opposition to political parties and majority rule. Democracy, as the term is commonly understood, is, indeed, always guided by those who prepare party programmes which are placed before the electorates. But where the Government is guided by an individual or group exercising arbitrary power without reference to the people, and where almost all democratic institutions have been thrown overboard, the term democracy can hardly be said to apply.

Referring to "Guided Democracy", Mr. Thiagalingam made the following observation in his Report:

In addressing my mind to what is meant by the State of Emergency in Indonesia and what is meant by Guided Democracy, I have advisedly quoted lengthy extracts from the President's spoken words. What I have seen in Indonesia and the extracts I have quoted make it abundantly clear to me that the 'State of War' decreed in Indonesia will be continued as long as the President insists on his leadership—"Guided Democracy". Guided Democracy is not a mare's nest or even the vibration of the President's right hand — its true meaning as also its true name is AUTOCRACY.

Holding the Balance of Power

Having placed his political opponents under preventive detention, President Soekarno succeeded in preserving his own autocratic rule till September 1965 by counter-balancing the Communists with their adversaries. In order to maintain the internal balance he evolved the "Nasakom" concept which meant co-operation between Communists, Nationalists and Muslims. However, the fact that he outlawed the strong Masjumi Party, a constituent of the Muslim movement, for complicity in the Sumatra rebellion of 1958 gave the Communist Party an advantage over the Muslims. By giving complete support to the "Confrontation" of Malaysia, the Communist Party strengthened its position further.

In February and March 1965, the President, acting under Communist pressure, banned several newspapers. Thereafter, under similar pressure, the Government expropriated foreign-owned rubber estates and oil companies, on the efficient running of which the country depended for considerable revenue.

The Abortive "Coup d'Etat" of September 30, 1965 and its Aftermath

On September 30, 1965, Colonel Untung, a battalion commander of the President's Palace Guard, led a *coup d'état* which was directed towards ousting President Soekarno and establishing a military government by communist military leaders working together with leaders of the Communist Party. Although the pretext for staging the *coup d'état* was to save the President from an imminent coup by a "Council of Generals", it became clear that it was inspired and encouraged by the Communist Party. But right-wing generals acting swiftly foiled

the coup and staged a successful counter-coup. Thereafter they took the opportunity to smash the PKI and its supporters. Colonel Untung was convicted of treason and sentenced to death by a military tribunal in March 1966. The whereabouts of Aidit, the Communist party leader, were unknown for quite some time until reliable reports confirmed that he had been shot dead when attempting to escape from a detention camp.

The attempted coup was characterized by extreme violence including the brutal murder of six right-wing generals. Much more violent was the wave of revenge by the Muslims against the Communists which broke out in many parts of the country. Widely differing reports have been received as to the number of people killed in the course of this outbreak. While it is impossible to give accurate figures, it is clear that this number is alarmingly great. The army only intervened after a calculated delay.

Reporting on the events that followed the September coup, Mr. Edward St. John, Q.C., who visited Indonesia in January 1966 as an Observer on behalf of the International Commission of Jurists, states:

In the months that followed the September coup and counter-coup a remorseless slaughter has continued in Sumatra and Eastern Java of PKI or alleged PKI supporters, their wives and children. In a speech made in Djakarta on the 15th January 1966, President Soekarno set the tally at 87,000 persons killed. But authoritative sources put the figure as high as 300,000 persons. After the years of communist propaganda and intimidation, the Moslems and the Army, or some units of it, by their action or their failure to act, have exacted a terrible revenge. In the nature of things Indonesia will not be the same again after this holocaust; it too will have effects which will last for generations.

The International Commission of Jurists has never compromised the principles it has enunciated on representative government and the Rule of Law and takes this opportunity to condemn once again all attempts at arbitrary rule, whether they proceed from the right or left, and to condemn such wholesale killings of people.

As a result of the Report he received while in Africa from Mr. St. John, the Secretary-General of the Commission cabled to the Secretary-General of the United Nations requesting him to use his good offices to secure the ending of the wide-spread slaughter of communist supporters in Indonesia.

The Political and Economic Situation as the ICJ Observer found it

The political and economic situation in Indonesia as the I.C.J. Observer, Mr. Edward St. John, Q.C., found it when he visited the country in January 1966 is well summarized in the following extracts from his Report:

The Rule of Law counts for nothing in all this—merely a Western aberration. There is a so-called "Parliament" which plays no significant role and a bloated executive which shares with the Army the real exercise of power. The "separation of powers" between the legislature, executive, and judiciary has long since been officially rejected. The president is both legislature and executive. The only "separation of powers" is between the President and the Army.

Judges have no independence. They are grossly underpaid, and by presidential decree the President has the right to intervene in any court case—a right which has in fact been exercised. This was provided by a law authorised in Djakarta on October 31, 1964 and signed on behalf of the President by Dr. Subandrio. It was provided by Section 19 that "When the great urgency of the Revolution, the Honour of the State and Nation or the interests of Society warrant it, the President can intervene in and interfere with Court matters." The Bench is frequently intimidated by the prosecution! It is hard for the Judge to resist the pressure of government desires.

The writ of habeas corpus, or its equivalent, is unknown. Many people have been arrested and held indefinitely without trial. There is no redress.

The Press is muzzled and would not dare report or protest against these things. Prior to the coup the Communists had acquired a stranglehold over press and radio and the official press agency. This hold has been broken. It is now possible to publish more objectively, but the Press still treads very quietly, although it manages to get a certain amount across to those who can read between the lines.

The legal profession is exceedingly weak. There are many law graduates but few can earn a living from the practice of law. In the whole of Djakarta, a city of some three million people, there are only some two or three hundred practising lawyers, of whom only some 30 or 40 practise full time. The profession is weaker than it was under the Dutch. There appear to be a multiplicity of causes for this—the poverty of the people, the inflation (which makes most civil litigation quite futile, for the costs are completely out of proportion to the amount in issue by the time the case comes on), the paucity of private commercial activity the preponderance of governmental power and other less tangible factors.

But side by side with the sporadic action against the PKI, there is observable a change of heart and changes of policy. It is easier to speak with certainty of a change than to say where it is tending. The current is, of course, anti-Communist, but anti-Communism is not a philosophy of life in itself. It would be wrong to think of it merely as a swing to the right. It is much more complex than that.

A country fed for so long on propaganda, anti-Western, anti-imperialist, anti-colonialist, with its windy talk of the "new emerging forces" and the "continuing revolution", does not quickly find its feet again. It has discovered the falsity of the Communists, but is still a long way from finding its balance.

One would like to think that the swing is towards commonsense, perhaps the scarcest commodity in post-revolution Indonesia. Soekarno, for all his strutting and posturing, has led his country to the brink of the precipice. Indonesia, so rich in natural resources, had been brought to the verge of national bankruptcy. Galloping inflation knows no bounds. Shortly prior to my arrival in Indonesia the salaries of Judges and civil servants had been multiplied by *five*, in order to catch up with the inflation, and were still grossly inadequate! They constitute a standing invitation to corruption. For £10 sterling one could be a millionaire in rupiahs at the black market rate. The demoralising effect of this rapid inflation cannot be exaggerated.

Most recent trends

Out of the confused situation that followed the events of September and October 1965, there has now emerged a sort of triumvirate which can be considered to be the effective power in the new regime, consisting of Lieutenant-General Suharto, the Sultan of Jogjakarta and Mr. Adam Malik. President Soekarno continues in office but his powers keep diminishing every day, notwithstanding his occasional reassertion that he is the supreme authority in the land.

In April 1966, General Nasution, Indonesia's senior soldier, who has chosen to keep himself in the background for the present, challenged the right of President Soekarno to hold the presidency for life on the basis that this was a clear deviation from the 1945 Constitution which stated that the tenure of office of the presidency was 5 years. The position appears to be that the new regime is using President Soekarno as the symbol of the head of State while progressively clipping his wings of power.

On February 15, 1966, the new regime announced the dissolution of the PKI which, with its 3 million members, was the largest communist party in the non-communist world and which President Soekarno had always been at pains to appease.

Although the political situation in Indonesia continues to be fluid, the new regime appears to be gradually consolidating its position. Having regard to the long period during which

Indonesia has been, completely outside the pale of the Rule of Law, a number of recent developments are heartening and give rise to the hope that the country may once again walk the path towards democracy and the Rule of Law.

Some of these developments are:

1. The move to convoke the People's Consultative Congress, a body which includes Parliament, representatives of the armed services and other groups with the ultimate object of preparing for a general election in the country.
2. The announcement by the Information Minister that newspapers were now free to criticize the government provided that it was "healthy criticism".
3. The overtures which the new regime is making with a view to the country being re-admitted as a member of the United Nations.
4. The abandonment of the purposeless policy of confrontation against Malaysia which was doing so much damage to the already shattered economy of Indonesia.
5. Last, but no least, is the decision to release political prisoners of the regime whose detention without trial was the subject matter of the press statement issued by the International Commission of Jurists on August 17, 1962, already referred to in this article. The prisoners to be released will include not only persons arrested on January 16, 1962, but certain political prisoners who had been detained without trial ever since the Sumatran and Celebes rebellions of 1958.

These are indeed encouraging signs. Although it is yet too early to form a clear view as to what the future of Indonesia will take, one hopes that "better elements"—to use the words of the British Ambassador to Jakarta, Sir Andrew Gilchrist—are increasingly gaining control in Indonesia and that these "better elements" will work towards the recognition and establishment of fundamental freedoms in a country where these freedoms were long conspicuous by their absence.

MALAWI SINCE INDEPENDENCE

Introduction

Malawi became an independent country on July 6, 1964, with Dr. Hastings Banda as Prime Minister and all the seats in Parliament—except three reserved for Europeans—held by members of his Malawi Congress Party. Unity, however, was not long preserved. Already in August Mr. Colin Cameron, the one European member of the Cabinet, resigned over the proposal to introduce preventive detention. In September, after disagreements within the 9-member Cabinet, three ministers were dismissed and three further members resigned in sympathy. Dr. Banda accused the dissentient members of conspiring against him and since then has adopted and persisted in a growingly virulent campaign against them and their supporters. The object of this article is to describe the increasingly repressive measure that have been taken in Malawi over the last two years, and the inroads which have been made upon the fundamental principles of the Rule of Law.

Restrictive Legislation

At the end of September 1964, the first of what were to be a series of Public Security Regulations issued under the Preservation of Public Security Ordinance were made. They gave the Prime Minister¹ power, "if he is satisfied that it is necessary for the preservation of public security" to restrict and control the residence and movement of persons, to prohibit, restrict and control the holding of assemblies, to prohibit publications which he considered prejudicial to public security and to regulate and control the production of publications. Even more alarming, especially in view of the fact that the regulations only require him to be "satisfied"—with no provision for an objective examination of the grounds upon which he acts—is the provision

¹ Under the Republican Constitution introduced on July 6, 1966, the office of Prime Minister was abolished and his powers vested in the President.

empowering the Prime Minister to "make such provision for and authorise the doing of such other things as appear to him to be strictly required by the exigencies of the situation in Malawi".

The making of these regulations was followed by the restriction to a four-mile radius from his home of Mr. Chipembere, the alleged leader of the ex-ministers.

In November 1964, the Constitution (Amendment) Act was passed, making provision for preventive detention "when such detention is reasonably required in the interests of defence, public safety and public order," and is authorised by law. Such authorization was contained in the Security Regulations of February 1965, described below.

A further amendment to the Constitution empowered the Prime Minister to dismiss any member of Parliament who ceases to represent the political party for which he was elected, a power which he exercised to deprive the six ex-ministers of their seats.

In December 1964, further security regulations empowered "any authorized officer and any person acting under the directions of an authorized officer", — authorized officers being officers of the police, the armed forces and, by legislation mentioned below, members of the Young Pioneers, the youth wing of the Malawi Congress Party — to carry out searches of premises, vehicles or individuals without a warrant and to confiscate anything they found. It was also made an offence to be found in possession of literature "likely to undermine public confidence in the Government."

Yet more stringent security regulations came into force in February 1965. They empower the Minister to make a detention order if he "considers it to be necessary for the preservation of public order," a phrase that seems to leave him a much wider scope than the words used in the constitutional amendment. Persons in respect of whom such orders are made can be arrested without warrant. Detention may be for an indefinite period, but the Minister must review each case at the end of every six months, and may suspend a detention order, subjecting the person against whom it is made to restrictions relating to his employment, residence, contacts with other persons, movement and possession of articles. The effect of a suspended detention order appears to be potentially very similar to the banning or house arrest orders frequently resorted to by the South African Government.

Perhaps the most serious provision of the regulations is that by which a person may be arrested and detained for a period of 28 days even without a detention order being made against him. Section 3(7) reads:

“ Any authorized officer may, without warrant, arrest any person in respect of whom he has reason to believe that there are grounds which would justify his detention under this regulation and any such person may be detained for a period not exceeding 28 days pending a decision whether a detention order should be made against him.”

The regulations authorize compulsory labour not only for detained persons but also, by a subsequent amendment, for others: Section 12A reads:

“ Where any authorized officer is satisfied that the exigencies of the situation so require, he may order any person to perform any such work or to render such services as the authorized officer may deem to be necessary.”

As a result of these provisions Malawi, on becoming a member of the International Labour Organisation, failed to accept in its own name the two forced labour conventions which had been accepted on its behalf by the colonial authorities, and stated that it would be unable to do so as long as the Emergency Regulations were in force.

Further provisions of the regulations make it an offence, punishable with a maximum of five years imprisonment or a £500 fine, to publish anything likely, *inter alia*, “ to undermine the authority of, or public confidence in the Government”, an offence punishable with a maximum of 7 years imprisonment to consort with or harbour persons acting in a manner prejudicial to public security, and an offence punishable with a maximum of 10 years imprisonment or a maximum fine of £500 to commit an offence relating to the possession of firearms.

The regulations also empower the Government to proclaim special areas in which any person or vehicle can be stopped and searched at any time by any member of the police or armed forces or an administrative officer, and empower any authorized officer to demand the production of information, articles, books and documents which he considers it necessary to obtain or examine for the preservation of public security, to issue orders for the

prohibition and control of the use of any vessel or vehicle, and, by a later addition, to order the destruction of any building which he reasonably suspects has been or will be used for the harbouring of persons acting in a manner prejudicial to the preservation of public security.

None of these powers is subject to any form of challenge or supervision and the discretion of the authorized officer in deciding when to exercise them appears to be absolute. The dangers inherent in such sweeping powers are obvious and need no elaboration.

The Young Pioneers Acts

The Young Pioneers are the youth wing of the Malawi Congress Party, and by a series of acts passed in 1965 they have been transformed into an armed force under the direct control of the President, who is their Commander-in-chief. The President may order that they be employed in support of the security forces, but their control—which was originally entrusted to the commanders of the security forces—now remains in his hands. While the Act provides that the Young Pioneers shall, when acting in support of the security forces, be subject to the disciplinary code of the police force, they receive their instructions from the President or a person appointed by him, and disciplinary proceedings against them are not entrusted to the body provided for by the Police Ordinance but to “such officers as the Prime Minister¹ shall from time to time determine.”

When acting in support of the security forces the Young Pioneers have “all the powers, duties and protection of a police officer acting in the execution of his duties”. A number of the extensive powers created under the security regulations have been outlined above.

The most disturbing feature in the position of the Young Pioneers was introduced by the Young Pioneers (Amendment) Act of December 1965, which inserts the following section into the principal Act:

“10 A.—(1) No police officer may effect the arrest of a Young Pioneer without prior consultation with the person for the time being commanding the Young Pioneers in the District concerned:

¹ See note on page 20.

Provided that nothing in this section shall apply to the arrest of a person who has committed or is about to commit an act prejudicial to the public safety or the security of the State.

(2) No person who has been lawfully arrested by a Young Pioneer in the exercise of the powers conferred upon him by this Act shall be released from custody on the order of a Police Officer without prior consultation with the person for the time being commanding the Young Pioneers in the District concerned."

This legislation creates what is in effect a private army under the direct and exclusive control of the President. Both before and after the enactment of the Acts, allegations were widespread, and confirmed from numerous sources, that the Young Pioneers were guilty of large-scale intimidation and violence. Their present powers and immunity from arrest in effect give them *carte blanche* to act as they please free from any form of control save that of the President who has shown by numerous public utterances that he is not too scrupulous about the methods to be used in defeating his political opponents. On December 19, 1964, at Lilongwe, he told people to arrest any strangers who appeared in their villages and report to the Congress party. They were not to be satisfied with police statements that there was no evidence to arrest strangers. "Investigate every strange face.... I do not want anyone to run away just because there is no evidence." On September 13, 1965, at Blantyre he urged people to be on the look-out for fugitives returning to Malawi and to arrest them without waiting for the police. "If they resist arrest, do something to them. I don't care what you do to them". He also called for the arrest of people harbouring fugitives and said "If he resists, do something to him—they are animals you know—no beating about the bush."

The resulting position in Malawi today is that people live in an atmosphere of fear and intimidation while Government supporters commit a wide range of offences from murder down, free from the risk of prosecution.

In addition, an unknown number of persons are held in detention camps. In February 1966, the Attorney-General when questioned put the number at not less than 500, while other lawyers estimated the total as between 1,000 and 1,500. The President has stated that some of them will be detained for life if necessary. No figures of the number of persons subject to restriction are available. On the occasion of the inauguration of

the Republic on July 6, 1966, 230 political prisoners were released, leaving an unknown number still in detention.

Other legislation

A number of other Acts and measures of the Malawi Government offend against the principles of the Rule of Law and can only be noted with concern.

The Penal Code (Amendment) Act, 1965, amends the law of treason and provides a mandatory death penalty for treason as newly defined. Passed on April 28, the Act was made retrospective to January 1, 1965, i.e. to before the date when an attack was made on the town of Fort Johnston by a band of men believed to be acting under the control of Mr. Chipembere.

In the autumn of 1965, Medson Silombela, alleged to be Chipembere's lieutenant, was tried on a charge of murder. In the course of the trial, the Prime Minister on two occasions publicly stated that Silombela was clearly guilty and "would swing" in public. He caused an amendment to be made to the Penal Code authorizing public executions. In February 1966, after his appeal had been dismissed, Silombela was hanged in the prison compound in the presence of about 400 people, in spite of assurances given privately by Dr. Banda that the hanging would not be in public. While it cannot be suggested that the verdict of guilty in this case was a wrong one, or that it was influenced by Dr. Banda's statements, it is clearly highly prejudicial to the independence of the judiciary as seen in the eyes of the population, and potentially dangerous to the position of judges in the future, if the Prime Minister of a country publicly condemns a man who is on trial before the verdict is pronounced; such conduct would be punishable as contempt of court in many common law countries.

The most recent Act calling for comment is the Forfeiture Act, 1966. Section 2 reads:

"If the Minister is satisfied that any person is, or has been, acting in a manner prejudicial to the safety or the economy of the State or subversive to the authority of the lawfully established Government, irrespective of whether that person be within or without Malawi, he may by Order declare such person to be subject to forfeiture."

A person subject to forfeiture is disabled from bringing proceedings in the courts to recover property or money, or to enforce judgements, and is incapable of transferring property or

making contracts relating to property. All his property vests in the Registrar-General, who, after paying the debts of the person subject to forfeiture and "paying such sums as he may deem fit, for the purpose of avoidance of hardship" to his dependants, has to transfer the remainder to the Government. A person may thus be subjected to forfeiture without having committed any offence, and without prior notification, on the subjective assessment of his conduct by appropriate Minister. Section 7 of the Act debars him from seeking any form of relief against forfeiture in the courts, and there is not even provision for an administrative appeal. The powers granted by this Act are clearly wide open to abuse, and could well be used as an instrument of intimidation.

In addition to the victim of a forfeiture order, other innocent persons may well suffer as a result of action taken under the Act: Section 7 provides:

"No suit, prosecution or other legal proceeding shall lie, or be instituted against any person or against the Government in respect of anything done or purported to be done under the provisions of this Act."

Therefore, if property is seized which does not in fact belong to the person subject to forfeiture, it appears that the true owner is debarred from challenging the seizure or from setting up his title in a court of law. There is no provision whatever for settling disputes as to ownership, and the Registrar General seems to be given a free hand.

Introduction of a Republic

On July 6, 1966 Malawi became a Republic, with Dr. Banda as the first President. The new Constitution provides for an executive president, to be elected every five years, at the same time as the National Assembly, by an electoral college consisting of officers of the Malawi Congress Party and its women's and youth leagues, Members of Parliament, chiefs and chairmen of district councils. Under the Republican Constitution, Malawi became a one-party State. Candidates for election to the National Assembly must be members of the Malawi Congress Party, though the President has power to nominate not less than three nor more than five members of Parliament to represent particular minority or other special interests in the country. Dr. Banda's attitude to the dissenting ex-ministers had already made it clear

that he is not prepared to tolerate any opposition whether organized or not, and whether within or outside the party, so that this step, while regrettable, is not surprising and is unlikely to have much effect on the realities of political life in Malawi in the immediate future.

Two further innovations in the new Constitution seem designed to consolidate the power of the executive and to whittle away the principles on which the independence constitution was based. Appointment of judges of the High Court, which was formerly entrusted to the Judicial Service Commission, is now the responsibility of the President, who has to consult the Judicial Service Commission but need not, apparently, accept their advice. Finally, the Bill of Rights, enforceable by legal proceedings, is abolished so that legislation restricting the fundamental rights of the citizen can now be introduced by simple Act of Parliament and the Government will not have to resort to constitutional amendment as it had to when preventive detention was introduced.

The history of Malawi during its two years as a constitutional monarchy is, as will be clear, hardly conducive to optimism as to the future of the new Republic. The International Commission of Jurists feels bound to record its concern at the alarming state of affairs in Malawi as evidenced by its recent past, and to express the hope that wiser and more moderate counsels may prevail in the future. The recent release of a number of political prisoners, mentioned above, is a first encouraging step, and it is to be hoped that it will be followed by further measures of liberalization.

CONTINUED REPRESSION IN SOUTH AFRICA

180-Day Detention

In January 1965 the South African Government suspended 90-day detention, under which suspected persons could be detained for interrogation for 90 days at a time. However, six months later, by the Criminal Procedure (Amendment) Act, 1965, it armed itself with what appears to be an even more alarming weapon: power to detain potential witnesses for 180 days. This provision is not, like 90 day detention, of a temporary nature limited to periods when extraordinary powers are considered necessary: it has taken its place as part of the permanent legislation of South Africa. Both the legal provisions and the manner in which they have been used have given rise to the gravest misgivings.

Section 7 (1) of the Act reads:

"Whenever in the opinion of the Attorney-General there is danger of tampering with or intimidation of any person likely to give material evidence for the State in any criminal proceedings" in respect of sedition, murder, arson, kidnapping, child-stealing, treason, aggravated robbery or housebreaking, an offence under the Suppression of Communism Act, or sabotage, "or that any such person may abscond, or whenever he deems it to be in the interests of such person or of the administration of justice, he may issue a warrant for the arrest and detention of such person".

Further subsections restrict the period of detention to a maximum of six months, provide that "no person, other than an officer of the state acting in the performance of his official duties" may see a detainee except with the consent of the Attorney-General or a person delegated by him, and then only subject to such conditions as may be laid down, and exclude the jurisdiction of the courts

- (a) to order the release of a detainee,
- (b) to examine the validity of the regulations which the Minister is empowered to make relating to the conditions of detention,

- (c) to reconsider the refusal of consent to visit a detainee or the conditions subject to which such consent is given.

This must be one of the most extraordinary powers that have ever been granted outside a period of emergency. It authorizes the detention of an innocent person against whom no allegations are made and no suspicion even exists; it authorizes detention in the absolute discretion of the Attorney-General; it denies the detainees access to a lawyer without special permission; and it precludes the courts from examining the validity of the detention even within the already very wide powers of the Act. It further authorizes the subjection of the detained witness to solitary confinement for a period of six months and, with the object, *inter alia*, of excluding "tampering with or intimidation" of any person, places him in a situation where he is in the almost uncontrolled power of the police who also have an interest in the evidence he may give.

Two cases under the 180-day law, as it has come to be called, illustrate the manner in which it is being used, and the procedure which the South African security forces are prepared to adopt to secure convictions in political cases.

The first detainee was Isaac Heymann, who was arrested early in September before regulations prescribing the conditions of detention were published. An application for habeas corpus was granted by the Supreme Court but the police immediately rearrested him on a charge under the Suppression of Communism Act. When the missing regulations were published the next day they dropped this charge and again detained him under the 180-day law; they failed to produce him in court as ordered, stating that he was now lawfully detained. This shocking procedure, which rightly received scathing criticism from the Bench, is not the only matter that calls for comment in connection with Mr. Heymann's detention. Although the law provides that a person may be detained if he is likely to give material evidence in criminal proceedings in relation to certain offences, not only was no indication given of the nature of the evidence he was likely to be able to give, but no information was provided even as to the criminal proceedings, the nature of the offence, or the identity of the accused in relation to which his evidence was to be given.

When Mr. Heymann was eventually called as a witness, in November 1965, he asked to be allowed to take legal advice

as to his obligation to answer questions, the possibility of self-incrimination and the consequences of his refusing to testify. He was refused such leave, and on his persisting in refusing to give evidence without consulting his legal adviser he was sentenced, first to eight days, and a week later when he again refused, to twelve months' imprisonment. The maximum penalty for refusing to give evidence was increased from eight days to twelve months by the Criminal Law Amendment Act, 1964. Not only was Mr. Heymann not allowed to take legal advice in relation to his position as a witness, but when he became, in effect, an accused under the latter law he had no opportunity to instruct counsel to defend him or even to address the court in mitigation of sentence: he had no choice but to be tried, convicted and sentenced without legal representation. This grossly unjust situation results directly from the fact that 180-day detainees are not allowed, as of right, access to a legal adviser.

Mr. Heymann's case illustrates the extremely delicate and dangerous situation in which a 180-day detainee may find himself. The fates of Mr. Bernard Gosschalk and Mr. Fred Carneson illustrate the nature of the detention witnesses undergo before they give evidence. M. Gosschalk was detained on January 27, 1966 and, as the police agreed, interrogated "because he had not previously made any statement". When his wife received permission to visit him she was so alarmed at his condition that she applied for, and was granted, a court order calling upon the head of the security police to show cause why he should not be restrained from exerting "any unlawful pressure on Gosschalk in an attempt to influence him to answer questions or to make a statement". While the police denied any undue pressure or prolonged questioning, medical evidence was given that Mr. Gosschalk was suffering from dizziness due to lack of exercise and no proper toilet facilities, and that he was fatigued.

Whatever the truth as to the methods used, there is no doubt that Mr. Gosschalk was interrogated in an attempt to extract a statement from him. The almost irresistible inference is that he was arrested for the purpose of extracting evidence from him rather than because it was known that he could give relevant evidence, and felt that he had to be taken into custody for one of the reasons specified in the Act.

This inference is to some extent strengthened by the case of Mr. Carneson, who, after a period as a 180 day detainee—in

respect of which he sought to complain about the methods of interrogation used against him—eventually appeared in court not as a witness but as an accused on charges under the Sabotage and Suppression of Communism Acts. It is a matter for speculation whether the evidence substantiating these charges emerged in the course of his interrogation or whether, if he had made a satisfactory statement under interrogation, he would have appeared as a witness against others and nothing would have been heard of the charges. Either supposition is disquieting.

Since the Government is under no obligation to publish particulars of 180-day detainees, it is not known for certain how many persons have been so detained. By February 1966 a total of 28 people were known to have been detained. Since then seven university graduates and students and a few other individuals are reported as having been detained. Some of the detainees have been released, usually after giving evidence.

Another provision of the same Act authorized the Attorney-General to prohibit the granting of bail for a maximum period of six months to a person remanded in custody for any of the offences in respect of which witnesses may also be detained, a power which he was not slow to use. Three persons arrested on August 13, 1965 were held under this provision until the end of October, when the charges against them, of which no specific details were made available, were withdrawn and they were released.

Trials in the Eastern Cape

Since 1963, former members of the banned African National Congress have been arrested in hundreds in the Eastern Cape, traditional stronghold of the party, and tried on charges arising out of their membership. These trials have taken place in regional magistrates courts, not, for the most part, in Port Elizabeth, where most of the accused live, but in remote villages. The object is stated to be to avoid clogging up the work of the city's courts, but the effects have been that this series of trials, apparently part of a systematic campaign to eliminate all political awareness in the province, has been almost unreported and unknown, and that the accused have had great difficulty in securing a proper defence.

The pattern of the trials is basically as follows. The accused, after arrest, often spend a considerable period in custody before

being tried. Five months is usual, and accused have spent periods of 13, 16 and 22 months in custody awaiting trial.

The charges normally relate to events alleged to have taken place several years ago, usually in the period 1960-1962. Since the actual charge is often formulated very generally, it becomes almost impossible for an accused, especially when in custody, to adduce rebutting evidence. For example, Benson Ndimba was charged with allowing a meeting of the ANC to be held at his home "in June or July 1962". His application for more particulars of the date was refused.

The trials are often held *in camera*, on the ground that prosecution witnesses must be protected from possible reprisals. When a witness was brought from Robben Island prison to give evidence for the defence, his evidence was also, on the application of the prosecution, heard in camera.

Regional magistrates' courts can impose a maximum sentence of three years' imprisonment on any one charge. This limitation is circumvented by basing a number of charges on a single set of facts. In one case, for example, 12 accused were found guilty of charges of (1) membership of ANC, (2) contributing and soliciting funds for ANC, (3) taking part in the activities of ANC and (4) allowing their premises to be used for ANC activities. They were sentenced to periods of imprisonment totalling 7 years; a thirteenth found guilty of only 3 of the charges received 4½ years.

Many persons convicted early in this series of trials have now completed or are about to complete their sentences. They are, however, in many cases, not released. Two devices have been adopted for bringing them to trial on fresh charges.

In the first place, as a person's sentence expires on one charge relating to his ANC membership, fresh charges that could—and under normal criminal practice should—have been dealt with together with the original charge are framed. The case of Ndimba has already been mentioned. He was originally convicted and sentenced to 2½ years' imprisonment arising out of his ANC membership in January 1964, having been detained in July 1963. In April 1965, he was convicted of contributing funds to the ANC and allowing an ANC meeting to be held at his house, and sentenced to a further 4½ years' imprisonment. The same fate met Mr. Dixon Fyani, sentenced in January 1964 to two years for membership of ANC, and in January

1965 to seven years in all for soliciting funds for ANC, furthering the aims of ANC and allowing ANC meetings to be held at his home. 162 similar retrials were held in the first months of 1966.

Retrospective Legislation

A further series of retrials has been held by resorting to retroactive legislation. In May 1963, by Section 5 of the General Law Amendment Act, 1963, a new section was inserted into the Suppression of Communism Act, 1950, making it an offence punishable with a minimum of five years' imprisonment to undergo military training outside South Africa which could be of use in furthering the aims of Communism or of an unlawful organisation. One example will be cited of the use to which this new section has been put. In the spring of 1963, a total of 36 Africans were charged with leaving South Africa without a passport, an offence carrying a maximum sentence of two years' imprisonment. Evidence was given that their object was to undergo military training and the maximum sentence was imposed.

Shortly before the expiry of their sentence the accused were charged under the new Act. Although the Act was only passed after they had been convicted under the then existing legislation, the new offence was made retrospective by the device of inserting the section creating it into an Act of 1950, so that it was deemed to operate from that date. All except three of the men thus accused were convicted and sentenced to terms of imprisonment varying between five and twelve years.

Banning orders and house arrest

Where it is not possible to prosecute a person whose sentence is expiring for a further offence, banning orders and house arrest under the Suppression of Communism Act, 1950, as amended, are often used to prevent him from resuming normal life and contact with other people, as in the cases of Dennis Brutus and George Peake. This fate may also await people who are acquitted on political charges, such as Mr. R. F. Prager and Mr. Hymie.

The most serious type of ban is house arrest, which in some cases is for 24 hours a day but more often is for 12 hours on weekdays, from 2 p.m. on Saturday until Monday morning and all day on public holidays. A person under house arrest may

not receive any visitor save a medical practitioner without leave of a magistrate. House arrest is normally for a period of five years. About 45 people have been subjected to house arrest, at least 12 for 24 hours a day. Persons under 12-hour house arrest usually have to report to the police, in some cases daily, in others weekly.

There are many other types of bans that may be imposed, and the number of specific bans to which an individual may be subjected varies considerably. It is usual to impose a whole series of bans which have the effect of cutting off the banned person from normal life and social contacts as well as political activity. The most serious are:

- (i) Prohibition of attendance at any public gathering, or at any social gathering. (Counsel has advised that two persons—the banned person and one other—may constitute a social gathering);
- (ii) Prohibition of teaching;
- (iii) Prohibition of entry into specific areas or premises (for example Bantu areas, factories, universities, trade union offices, law courts);
- (iv) Prohibition of communication with certain named persons or categories of persons (e.g. listed Communists);
- (v) Participating in the preparation of any publication;
- (vi) Prohibition of writing—even of novels or of material not intended for publication.

It is an offence to publish or report anything said or written by a banned person in South Africa, so that banning is an effective method of silencing critics of the government.

Banning orders are made by the Minister of Justice without previous notice and without giving the person concerned an opportunity to be heard. There is no appeal and no means of challenging them in the courts. Public protest is impossible as it is illegal to publish his statements. The grounds on which they are stated to be based are of the most general kind, for example that the Minister is "satisfied that you engage in activities which are furthering or are calculated to further the achievement of any of the objects of communism". The result is that a person may be condemned unheard to five years of twilight existence, cut off from normal communications with his fellow men, constantly aware of surveillance, and of the fact that if he

breaks any of the terms of his banning order he may find himself sentenced to a term of imprisonment, for breach of an order is a criminal offence.

In addition to the disastrous effects banning orders may have on a person's livelihood—for example on journalists, writers and teachers prohibited from writing or teaching, and on others for whom the bans make it incidentally impossible to carry on their job—the psychological effects are profound and in the long term are lastingly injurious.

By July 1966, 525 people had been banned, and it has become so commonplace that protests and comments within South Africa are minimal. And as those who might be expected to criticise are themselves banned or driven into exile, there will be still fewer voices left to be raised in protest.

The Defence and Aid Fund

Widespread protests were aroused by the banning of the Defence and Aid Fund in April 1966. These protests were based largely on the suspicion that the true purpose of the South African Government in banning the Fund was to prevent it from ensuring that defendants in political trials at all levels were legally represented.

It is not proposed to go into the past history of the Fund and its struggle with the authorities. The important thing now is to ensure that the money which is available, in South Africa and abroad, can be made available for the defence of those who wish to avail themselves of it. It is true that there is a system of legal aid in South Africa, but in practice it is not available in political cases, and in any event is far from comprehensive, so that the financial assistance hitherto provided through the Defence and Aid Fund will continue to be needed if political defendants are to be assured of legal representation. The South African Government's attitude to any new method that may be adopted to ensure the availability of funds for the defence of accused persons is likely to provide strong evidence of the genuineness or otherwise of their contention that it was not because the Defence and Aid Fund undertook this work that it was banned.

FREEDOM OF EXPRESSION— THE NEW SPANISH PRESS LAW

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

(Article 19, Universal Declaration of Human Rights)

INTRODUCTION

Freedom of expression is one of the fundamental requirements of a genuine State under the Rule of Law. Dialogue, discussion and public criticism play a paramount role in the life of a country. One of the most effective ways of obstructing the Rule of Law is the creation of strict press censorship, the banning of publications and attachment of the main media of expression.

The basic objective of a free press is to inform public opinion honestly and impartially of the events which, in the context of the world today, involve the average citizen in the problems of the community, acting both as a channel and a true spokesman of the different trends to which he is subject.

Unfortunately, in many parts of the world press freedom is either non-existent or so limited as to preclude real freedom of expression. In some countries, as in most of the communist states of Eastern Europe and in mainland China, the press is completely controlled by the Government; nothing can secure publication which is not in line with the policy of the rulers. Anyone who is critical of government policy can be accused of being a "deviationist" or of "sedition" or of "spreading false propaganda". This, of course, is a complete negation of freedom of expression. In other cases, paper is not made available or publishers and printers are not allowed to publish or print anything which has not received the imprimatur of the authorities; this also is a negation of freedom of expression.

In some of the communist states, there has been some slight nominal modification in the limitation of freedom of information,

in that foreign newspapers are permitted to enter the country for strictly limited purposes, e.g. scientific journals and a very limited number of foreign daily newspapers which can only be obtained in hotels reserved for foreign visitors. These concessions to liberalisation are so restricted as to be very nearly valueless. The foreign papers cannot reach the mass of the public and are printed in a foreign language.

The *crise de conscience* which is taking place in communist countries is to some extent exemplified by the recent Sinyavsky-Daniel trial in Moscow (see *Bulletin* No. 26, page 32) and by the present Mihajlov case in Yugoslavia. These cases may ultimately lead to a liberalisation in this area of the world, but at the moment it is not an overstatement to say that in communist states freedom of expression, in the sense we have defined it, is virtually non-existent.

In Rhodesia, Angola and Mozambique, press freedom is also oppressively limited. Censorship and prosecutions are frequently used. In South Africa, while papers are allowed to be critical of the Government's policies, real freedom of expression of opinion is rendered nugatory by means of banning orders and the 180 Detention Law.

It is in the light of this background that we have to examine the recently enacted Press Law in Spain. The fact that there is a new Press Law in Spain is in itself a great step forward and certainly distinguishes Spain favourably from the communist states of the world. The analysis of the new Spanish Press Law in this article is made in this context.

Article 12 of the *Fuero* (Charter) of the Spanish People¹ provides that "All Spaniards may express their ideas freely so long as they do not attack the fundamental principles of the State". In spite of this fundamental law, the exercise of freedom of expression in Spain was controlled until April 1966 by the Press Law of April 22, 1938, passed at the height of the civil war, during a state of emergency. Besides having become a juridical anachronism upon the promulgation of the *Fuero* of the Spanish people, the 1938 Press Law, with its extremely harsh restrictions and tight

¹ Law of July 17, 1945, considered as the Fundamental Law of the nation under Article 10 of the Law of July 26, 1947.

press censorship by the State, remained in force despite the fact that the emergency conditions which prompted it had already changed radically.

However, from 1962 certain censorship procedures were relaxed and rules dealing with the press were approved which were designed to provide a better institutional basis to the broad and varied field of information.

On July 30, 1962, the present Minister of Information and Tourism, his Excellency Manuel Fraga Iribarne, publicly announced his intention of submitting a draft press law to replace the 1938 Law¹. Three years were to pass before the new Press Law was approved by the Spanish Cortes.

There is no question that the new Press and Printing Law of March 18, 1966, represents a major step forward in the improvement of Spanish institutions. Moreover, in all fairness it must be said that its promulgation is due in great part to the strong demand of the population for the introduction of normal means of expressing public opinion.

Although it does represent a step forward over the former legislation, the new Press and Printing Law cannot by any means be considered as fully protecting true freedom of expression, or as providing an adequate guarantee and safeguard against the abuses by the authorities.

Analysis of the Main Provisions

Article 1, dealing with freedom of expression through printed matter, is clearly based on the *Fuero* of the Spanish People, Article 12 of which, cited above, established the right to the freedom of expression of ideas. In contrast with the former Law, the new Law is based on the principles established by the declaration of rights recognized by the Spanish State.

Article 2 lays down the limitations to freedom of expression and to the right to the dissemination of news, limitations determined by "respect for truth and morality; observance of the Law of the Principles of the National Movement and other Fundamental Laws; the requirements of national defence, the security of the State, and the maintenance of internal public order and external peace; the

¹ The strict control to which the press was subjected for 27 years still applies to radio, television, the theatre and the cinema. However, the Minister of Information has spoken of the preparation of new regulations in these fields.

respect due to institutions and persons in criticism of political and administrative action; the independence of the Courts and the safeguarding of the private sphere and of personal and family honour”.

It is reasonable to expect that no state would agree to grant unconditional freedom to the press, as the Minister of Information himself pointed out, and the press and other media of information are instruments having a public function. However, this article has been subjected to criticism because of its vague wording, because of its broad scope and because of the restrictions which are capable of nullifying the safeguards provided in the new Law itself. In dealing with problems of this nature the International Commission of Jurists pointed out that “where restrictions are imposed in the public interest, it is essential that the public interest be defined in legislation in detail and not under some vague catch-all phrase . . . It is also important to ensure that a government should not have unchecked power to suppress in the name of public interest whatever it considers should be suppressed. The public interest is sometimes identified with the interests of those in power.”¹

“The Administration cannot apply prior censorship or require voluntary consultation except in states of emergency and war as expressly provided for by law.” (Article 3). Thus, the key instrument which under the 1938 law was used to stifle all news considered undesirable by the government has disappeared. The present Law, faced with the choice between censorship and legal responsibility, has opted for the latter. It is with this clearly defined precept that it is hoped to close a black page in the history of public liberties in Spain.

Nonetheless Article 4 lays down a precept which is questionable—voluntary consultation: “The Administration *may* be consulted on the content of any printed matter by any person who may be responsible for its dissemination. Approval or silence from the Administration shall exonerate from responsibility to the Administration for the dissemination of the printed matter submitted for consultation.” This system of voluntary consultation could very well turn out to be a subtle method of imposing a “voluntary censorship”.

¹ “The Dynamic Aspects of the Rule of Law in the Modern Age—Report on the Proceedings of the South-East Asian and Pacific Conference of Jurists, Bangkok, Thailand, 1965”; Geneva, 1965, page 47.

This provision must be considered together with Article 39 of the Law on Responsibility: "The Director shall be responsible for any violations committed in the news medium under his direction . . ." Article 34 provides that: "There shall be a Director in charge of every periodical publication or news agency acting as a medium of information, who shall decide its orientation and choice of contents . . ." "The Director shall have the right of veto over the contents of all the original copy of the periodical, whether editorial, administrative or publicity." (Article 37).

The following are barred from acting as directors: "... persons who have been legally convicted three or more times for press offences . . . persons who have received sanctions more severe than public admonition three or more times from the Professional Disciplinary Body . . . persons who have been convicted three or more times within one year of serious breaches of the present law." Further, according to the Law on Responsibility, the Director's responsibility neither excludes nor eliminates the responsibility of other persons.

Depending on the seriousness of the violations, the Director-General of the Press or of Information, the Minister of Information and Tourism, and the Cabinet, may impose penalties for the administrative offences laid down in the Law, ranging from professional suspension lasting for from one day to six months to a fine of from 1,000 to 250,000 pesetas. Publishers or publishing houses may be punished by a fine of from 1,000 to 500,000 pesetas, suspension of the publication for from two to six months, depending on how often it appears, or suspension of the activities of the publishing house. (Article 69). Persons coming under such sanctions are entitled to apply for administrative review; once this means is exhausted they may appeal against these sanctions to the court dealing with administrative disputes. (Article 71).

One of the features of the present Press Law is the freedom to publish, that is to say to form or participate in publishing enterprises which are divided into periodical and journalistic publishers properly so called, news agencies and general publishers. However, in so far as foreign news is concerned this principle is limited, as a monopoly is granted to one national agency alone for the distribution of foreign news, thus fettering the free dissemination of news. "A concession may be granted to a national agency, on which shall be represented the public Entities and the news media, or which shall be jointly operated by the latter, *for the exclusive*

distribution without any discrimination of news coming from foreign agencies." (Article 49) Francisco Abella, a member of the Cortes, has described this as one of the most delicate aspects of the Law. The importance that was attached to this provision is evidenced by the words of the secretary of Information of the Ministry, Pio Cabanillas, in his statement to the Committee which held hearings on the Press Law: "The proposed agency has two objectives: to safeguard Spaniards from distorted news coming from abroad, and, furthermore, to try to place national news abroad." One cannot help wondering to what extent the granting of a monopoly to the national agency may not form a barrier between the Spanish reader and the outside world. Furthermore, restrictions still apply to foreign periodicals, since their circulation and sale in Spain are subject to the express authorization of the Ministry.¹

One further fundamental aspect of the Law is the free appointment of the Director by the publishers of a newspaper or review, without governmental intervention: "The Director shall be freely chosen by the publishing house among the persons fulfilling the requirements of this Law" (Article 40), requirements which are spelt out in Article 35: "A Director shall have Spanish nationality, enjoy the full exercise of civil and political rights, reside in the place of publication of the periodical or where the agency has its headquarters, and hold the title of Journalist inscribed in the Official Register." This last point—the obligation to hold the title of journalist in order to be named Director—was discussed at great length in the Cortes. The following provision was also the subject of controversy in the debates in the Cortes because of its unusual nature: "The position of Director or deputy Director is incompatible with the exercise of any public office or private activity which may restrict his freedom or independence in the performance of his duties." (Article 42) This is a novel provision in press laws. It could be praiseworthy but it is also open to abuse. What private activity might be regarded as limiting his freedom or independence? Political? Financial? The interpretation of this Article will be important.

A number of decrees issued on March 31, 1966, and orders issued on April 4, 1966, on various aspects of the Press and Printing Law, regulate its enforcement.

¹ These limitations are laid down in Decree 747, March 31, regulating the dissemination of foreign publications, and supplementing Article 55 of the Law.

First Effects of the Application of the New Press Law

Understandably, the Spanish press enthusiastically welcomed the start of the new era ushered in by the promulgation of the new Press and Printing Law. On the very day the Law came into force, two of the largest Spanish newspapers, the monarchist daily ABC and the Catholic daily Ya, published lengthy commentaries on it on their front pages. ABC announced that it would make full use of the possibilities afforded under the Law to exercise its independence. Ya, in particular, ventured further than other newspapers in its news reports, for example, on the student disturbances in Barcelona. Topics and comments which had not been mentioned in Spanish newspapers since the civil war began to appear in the Spanish press. The tension was obvious among journalists, directors and other members of the press, who were anxious to know how far they could go along the way opened up by the new Law without being subjected to the punishments which could still be imposed on them under the Law.

A fortnight after the new Law became effective the first incident occurred; its victim was *Juventud Obrera*, organ of the Catholic Young Workers: 40,000 copies of its May issue were destroyed. *Juventud Obrera*, which prior to the new Law was subject only to ecclesiastical censorship, was for the first time—as required by the new regulations—obliged to make a prior deposit of a certain number of copies in the offices of the Ministry of Information. The suppressed issue contained, among other critical articles, a commentary on the celebration of the First of May which apparently displeased the civil authorities. The Ministry of Information got the Archbishopric to allow the issue to be destroyed so as to avoid seizure and legal action against the Director.

Several days later, the sale of the French Catholic daily *La Croix*, of April 29, was banned in Spain for “containing so much false news about Spain that its circulation could in no way be authorized”. This was the first time since the new Law became effective that restrictive measures were taken against a foreign newspaper.

All copies of the May 7th issue of the magazine *Semana*, which contained an article about Prince Carlos Hugo of Bourbon-Parma and his wife Princess Irene of the Netherlands, were destroyed.

The June 3rd issue of the magazine *Mundo Social*, published by the Jesuits, was seized by the authorities before its distribution.

The seizure is believed to be due to an article defending the priests who demonstrated in Barcelona on May 11 of this year.

The seizure on Sunday, June 5, of No. 1368 of the weekly *Signo* (national organ of the Youth Section of Catholic Action) was provoked by an article entitled "Progressivism and Church", written by a priest, Father Victor Manuel Arbelos. The seizure order was issued by the Madrid Seventh Court upon a complaint lodged by the Director of Public Prosecutions. The seizure was carried out under Article 64 of the Law, which deals with "penal responsibility and prior governmental measures". The weekly was seized a half hour before it was due to be distributed.

In the second week of June judicial proceedings were taken against *La Voz del Trabajo*, organ of the Jesuits, because of an article on the Barcelona priests and the behaviour of the police on May 11 in their action against the demonstration organized by the priests. The issue was not seized but the prosecuting authority took the view that there was a *prima facie* case of criminal libel on the authorities.

All the copies of the special issue of the Carlist review *Montejurra*, printed in Pamplona, Navarra, and devoted to the traditional rally of the monarchist and traditionalist Carlist movement in the Montejurra Basilica in Navarra, were destroyed under the provisions of the new legislation.

It is significant that for almost three decades, during the existence of a strict censorship, the efforts to convince the Spanish people and the outside world of the unanimity of Spanish national opinion concerning the *res publica* failed to convince Spain that some liberalisation of the press was unessential. "The fiction of unanimity", as the *Vanguardia Española* of Barcelona put it, "in a live and alert country of 32 million inhabitants, has always appeared dangerous to us because of its hypocrisy".

One of the vices of censorship and repression of public expression is that they prevent the natural growth of responsible and evaluated criticism. Because of the feeling of frustration which is thereby bred, when the lid is taken off the trend may be towards exuberance. Now that the lid has been partially lifted, it is essential that journalists and writers should reassert themselves in a constructive sense while maintaining their complete independence of criticism.

Spain with its long cultural tradition and independence has much to contribute. Any step which is taken toward freeing it

from the shackles of censorship and arbitrary restrictions is to be welcomed and will help Spain. The Spanish temperament may be difficult but responsibility can only grow if there is an opportunity to exercise it. As Maritain put it, responsibility cannot develop where the regime regards itself as "the only adult among a regiment of children". It is to be hoped that the Spanish Government will not use its powers under the Press Law oppressively and will increasingly encourage free discussion and criticism—even of its own policies.

There seems no better way to close this study than with the very words of Francisco Abella, Chairman of the Commission which held hearings on the Press and Printing Law, in his speech to the Plenum of the Spanish Cortes on March 15, 1966: "A mere declaration of liberty is never enough; what is more important than its formulation is its essence, and to achieve this the cold text of the law does not suffice; what is needed is a constant firm dedication—free but voluntary—to the attainment of this purpose."

ICJ NEWS

SECRETARIAT

EXECUTIVE COMMITTEE

The Executive Committee of the ICJ met in Geneva on July 9 and 10, 1966. Its discussions were principally devoted to the preparation of the full meeting of the Commission which will be held in Geneva from September 30 to October 2, 1966, and to the organization of the forthcoming Conference of African Jurists.

CONFERENCE OF JURISTS OF FRENCH-SPEAKING AFRICA

This Conference, which is organized by the ICJ in collaboration with *Libre Justice*, the French National Section of the Commission, will be held, by courtesy of President Léopold Sedar Senghor and his Government, in Dakar (Senegal) from January 5 to 9, 1967.

It will be recalled that in the dawn of African independence, in January 1961, the ICJ organized the first large conference of African jurists. Since then, the independence movement has spread across the whole continent; the colonial system has almost entirely disappeared; new problems have arisen to face lawyers anxious to participate actively in the evolution of their country and of their continent towards progress, economic and social development, stability and unity. The time was thus ripe for the holding of a further African conference. Nonetheless, the linguistic difficulties, and even more the technical differences between the legal systems of the English-speaking and French-speaking countries, led the ICJ to decide to hold two successive conferences, one for French-speaking jurists and the second for their English-speaking colleagues; this solution will permit the participants to have deeper and more fruitful discussions at the practical level. The Dakar Conference will thus be limited to French-speaking African jurists. The subject of the Conference will be, "The function of law in the evolution of human communities."

MISSION TO CYPRUS

The Secretary-General of the ICJ, Mr Seán MacBride, visited Cyprus from July 27 to 31, 1966, where he discussed the situation in Cyprus with the Cypriot Government, in particular with the President of the Republic, Archbishop Makarios, and the Minister of Justice, Mrs Stella Soulioti; with the leaders of the Turkish Community, in particular the Vice-President of the Republic, Dr. Kutchuk; the Special Representative of the Secretary-General of the United Nations, Dr. Carlos Bernardes, and his legal adviser, M. Gorget; members of the Judiciary, in particular the President of the Supreme Court, Mr Justice Zekia, and the Acting President, Mr Justice Vassiliades; the Attorney-General, Mr G. Tornaritis; the President of the House of Representatives, Mr Glafkos Clerides; and a number of other leading personalities from the Bench, the Bar and the political world. These exchanges of view, which took place in an atmosphere of great courtesy and complete cordiality, were aimed at exploring the possibility of bringing about a return to normal in the administration of justice in Cyprus (as to which see the article on Cyprus at page 1 of this Bulletin).

INTERNATIONAL CO-OPERATION

NON-GOVERNMENTAL ORGANIZATIONS

The ICJ took an active part in the 10th Conference of International Non-Governmental Organizations (NGOs), which brought together some 120 delegates representing 75 organizations in Geneva from July 1 to 4, 1966. The discussions were principally devoted to two important topics: the ways and means of strengthening the position of NGOs in the United Nations framework, and the preparations for International Year for Human Rights.

The Conference elected the ICJ a member of the permanent Bureau of Non-Governmental Organizations, and its Executive Secretary, Dr. V. M. Kabes, was appointed Vice-President of the Bureau.

WORLD CAMPAIGN FOR HUMAN RIGHTS

The working group which met last May in Geneva on the initiative of the Secretary-General of the ICJ, for completely informal discussions, worked out a draft proposal setting out the broad lines of a programme to be proposed to the non-governmental organizations for the organization of the Campaign. The text of this proposal was submitted to the 10th Conference of NGOs. At the end of its discussions, the Conference adopted a formal resolution pledging its full support for the proposal for the launching of a World Campaign for Human Rights and envisaging the establishment of an *ad hoc* committee responsible for the co-ordination of the preparations for and contributions to International Year for Human Rights.

In pursuance of this resolution, the Bureau of the Conference called a meeting of interested NGOs on August 3. The participants, who represented about 40 organizations, decided to constitute themselves an *ad hoc* Committee for Human Rights Year, without prejudice to the subsequent inclusion of other organizations wishing to join them. Our Secretary-General, Mr Seán MacBride, was elected Chairman of this *ad hoc* Committee.

The Committee thereupon appointed a standing committee to undertake the work of organizing the Campaign. The Chairman of the *ad hoc* Committee and the former Chairmen and Vice-Chairmen of the Bureau of the Conference of NGOs were appointed to the standing committee, and empowered to co-opt further members as they considered necessary. This standing committee held its first working meeting in Geneva on August 10. It is to present its report on its activities to the *ad hoc* Committee, whose next meeting has been provisionally fixed for December 10, 1966—Human Rights Day—so that it shall coincide, as far as is possible, with the celebrations organized by the United Nations to commemorate the occasion.

UNITED NATIONS

The Secretary-General, Mr. Seán MacBride, represented the ICJ at the United Nations Seminar on human rights held in Budapest (Hungary) from June 14 to 27, 1966, on the theme, "Human Rights and Local Government".

He also regularly attended, together with the members of the legal staff, the meetings of the 41st session of the Economic and Social Council of the United Nations (ECOSOC), held in Geneva during July, 1966. The Executive

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Secretary addressed the ECOSOC Committee for Non-Governmental Organizations in support of the proposal for a High Commissioner for Human Rights and informed the Council of the resolution of the NGO Conference deciding on concerted action in support of International Year for Human Rights.

COUNCIL OF EUROPE

The Council of Europe summoned a meeting of non-governmental organizations in Strasbourg from May 4 to 6, 1966, which the Secretary-General attended. The object of this meeting was to examine the programme planned by the Council of Europe for International Year for Human Rights.

WORLD COUNCIL OF CHURCHES

The Secretary-General made an important written contribution on "The Rule of Law as the basis for a responsible society", to the world conference of the World Council of Churches, which was held in Geneva from July 12 to 26, 1966 on the subject, "The Church and Society". This Conference was principally devoted to the study of social questions and the search for means to achieve a world economic order and social justice, subjects which are very close to the principal concerns of the ICJ. Dr. Toth, a member of the legal staff, represented the Commission at the sessions of the Conference.

BRITISH COMMONWEALTH

At the beginning of June 1966, the Secretary-General had a meeting in London with the new Secretary-General of the British Commonwealth, Mr. Arnold Smith, the Attorney-General, Sir Elwyn Jones, the Solicitor-General, Sir Dingle Foot, the Legal Adviser to the Commonwealth Relations Office, Sir William Dale, the Chairman of the Commonwealth Committee of *Justice*, the British Section of the ICJ, and other leading members of *Justice*. The object of this meeting was to examine the possible formation of a legal division within the Commonwealth Secretariat and the possibility of establishing a Commonwealth Commission of Jurists.

INTERNATIONAL BAR ASSOCIATION

The Secretary-General and members of the legal staff attended the meetings of the Annual Conference of the International Bar Association which was held this year in Lausanne (Switzerland) from July 11 to 15, 1966.

NATIONAL SECTIONS

CEYLON

As a result of protests registered by the Ceylon Section of the ICJ, the government decided to improve the conditions under which 23 political prisoners, suspected of planning a coup d'état and held in solitary confinement since last March, were detained. They can now communicate with their legal advisers and receive visits from their families.

On June 1, 1966, the Section held a meeting to examine ways and means of putting into practice the resolutions of the Ceylon Colloquium on the Rule

of Law. A commission of inquiry was set up with the object of examining the economic and social aspects of current Ceylonese legislation in relation to the needs of the population. A permanent law reform committee has also been set up; it is empowered to appoint sub-committees for the purpose of examining specific questions.

UNITED KINGDOM

The Ninth Annual General Meeting of *Justice*, the British Section of the ICJ, was held in London on July 5, 1966. Lack of space forbids a summary of the impressive report of the year's activities published on this occasion, which provides a dynamic illustration of the liveliness of this Section.

All friends of the ICJ will be happy to hear that our respected colleague, Mr. Tom Sargent, Secretary of *Justice* since its foundation, has recently been distinguished with the award of the Order of the British Empire.

It is with satisfaction that we record the affiliation to *Justice* of the Law Society of Fiji.

AUSTRIA

On the occasion of its annual general meeting in May of this year the Austrian Commission of Jurists, the National Section of the ICJ, re-elected its President, Dr. Otto Lachmayer, its first Vice-president, Professor René Marcic, its second Vice-president, Dr. Walter Schuppich, and its Secretary-General, Dr. Rudolf Machacek.

Dr. Machacek has recently undertaken a particularly interesting series of exploratory visits in Czechoslovakia, Hungary and the German Democratic Republic.

GROWTH OF NATIONAL SECTIONS

Readers of the Bulletin will have noted with satisfaction the continuing expansion of the national sections of the ICJ and the increasing importance of their activities. In April 1965 the ICJ had national sections in the following countries: Argentina, Australia, Austria, Belgium, Burma, Brazil, Canada, Ceylon, Chile, Denmark, Ecuador, Finland, France, German Federal Republic, Ghana, Greece, India, Ireland, Israel, Italy, Malaysia, New Zealand, Nigeria, Norway, Netherlands, Peru, Philippines, Sweden, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Vietnam. There were also close links and regular co-operation with the Association of Iranian Jurists. Since then, national sections have been formed in Congo (Kinshasa), Kenya, Mexico and Pakistan, and a Central American Chapter has been founded, which co-ordinates the activities of supporters of the ICJ in Costa Rica, El Salvador, Guatemala, Nicaragua and Panama. National sections are also in process of formation in Japan and Uganda and others are projected in Guatemala, Nicaragua and Tanzania. In conclusion, active local sections have sprung up in the states of Australia, in New Guinea, Hong-Kong, India, and one is in process of formation in Rosario, Argentina. The total number of jurists who support the work of the Commission throughout the world now exceeds 47,000.

RECENT PUBLICATIONS OF THE INTERNATIONAL COMMISSION OF JURISTS

Journal of the International Commission of Jurists

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Bulletin of the International Commission of Jurists

Number 26 (June 1966): Ceylon Colloquium on the Rule of Law; Aspects of the Rule of Law; Americas; Iran; Uganda; U.S.S.R.; I.C.J. News.

SPECIAL STUDIES

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