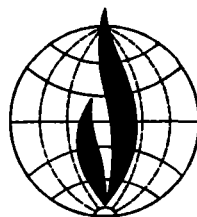


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Editor: Niall MacDermot

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ICJ Study on States of Emergency

The International Commission of Jurists has just published *States of Emergency – Their Impact on Human Rights*, being the result of its most extensive study to date. The 480-page publication contains a detailed examination of states of emergency in 20 countries (Argentina, Canada, Colombia, Czechoslovakia, German Democratic Republic, Hungary, Greece, Ghana, India, Malaysia, Northern Ireland, Peru, Poland, Syria, Thailand, Turkey, Uruguay, USSR, Yugoslavia and Zaire), together with a summary of the replies to two questionnaires sent to 158 governments. An analysis of these materials is made in a chapter of observations and conclusions, followed by a set of 44 recommendations for measures at both the national and international levels to ensure better respect for human rights during emergencies.

In an introduction Mr. Niall MacDermot, Secretary-General of the ICJ, outlines the origins of the study in the ICJ's concern over the link between states of emergency and situations of grave violations of human rights. The International Covenant on Civil and Political Rights recognises the right of governments in time of public emergency which threatens the life of the nation to derogate from many of its obligations under the Covenant 'to the extent strictly required by the exigencies of the situation'. There are similar provisions in the European and American Conventions on human rights.

Unfortunately, as Mr. MacDermot points out "there is a tendency for some governments to regard any challenge to their authority as a threat to "the life of the na-

tion". This is particularly true of regimes which do not provide any lawful means for the transfer of political power and which in consequence are inclined to regard any criticism of the government as an act subversive of public order.

When these regimes feel threatened they often declare a state of emergency or other state of exception, and use their emergency powers to suspend what remain of the basic human rights and the procedures for their enforcement. Having dismantled the legal machinery for the protection of the citizen, they frequently permit their security forces to abuse the 'non-derogable' rights, including the right to life and freedom from torture, or other cruel, inhuman or degrading treatment or punishment. There result such inhuman practices as anonymous arrests, secret detentions, disappearances, extra-judicial killings and systematic practices of torture."

The International Commission of Jurists therefore decided to undertake this study of states of emergency in the hope of achieving a better understanding of the nature and causes of the systematic abuses occurring under many states of exception and to suggest safeguards which could be taken at national and international level to help prevent such occurrences.

Work on the study began with the preparation of two questionnaires. One requested particulars of legislation, procedures and practices concerning states of emergency; the other related to the practice of administrative internment or, as it is called in Commonwealth countries, preventive detention, i.e. indefinite detention on

executive authority without charge or trial or any form of judicial determination. The reason for the second questionnaire was that most of the victims of the worst violations of human rights are persons who are detained by way of administrative internment under states of emergency. The questionnaires were sent to 158 governments, 34 of which replied.

A number of countries were then chosen for more detailed study based on papers invited from experts from the countries concerned.

There were asked to outline the existing constitutional and legislative provisions governing states of emergency, to describe the circumstances in which emergencies were declared, and for what purposes, the action taken under the state of emergency and the extent to which it complied with the pre-existing legislation, the abuses, if any, which occurred, and the circumstances under which the emergency was terminated or, if such was the case, continued in force after the circumstances which gave rise to the declaration had ceased to exist.

A final chapter knits together the observations and conclusions to be drawn from an analysis of the country studies and replies to the questionnaires. This chapter has four main headings: the effects of states of emergency on economic, social and cultural rights as well as civil and political rights; the right to due process and the rights of detained or imprisoned persons; safeguards in domestic law against abuse of emergency powers; and safeguards in international law against abuse of states of emergency. The study concludes with a list of 37 recommendations for implementation at national level and 7 recommendations for implementation at international level. These include the following:

- The constitution should clearly state and limit the effects of states of emer-

gencies on legal rights and on the powers of the branches of government. As a minimum the constitution should specify that the rights recognised as non-delegable in international law may not be affected by a state of emergency.

- The constitution should specify that no state of emergency may have legal force beyond a fixed period of time, which should not exceed 6 months. Every declaration of emergency should specify the duration of the emergency.
- The civilian judiciary should retain jurisdiction over trials of civilians charged with security offences.
- The recruitment, leadership, organisation and training of the armed forces and security authorities should be studied with a view to taking practical measures to reduce the risk of abuse of states of emergency.
- The following due process rights, as a minimum, should be respected in criminal proceedings during states of emergency:
 - the right to be informed promptly and in detail of the charges,
 - the right to have adequate time and facilities for the preparation of one's defence, including the right to communicate with counsel,
 - the right to a lawyer of one's choice,
 - the right of an indigent defendant to have free legal counsel when charged with a serious offence,
 - the right to be present at the trial,
 - the presumption of innocence,
 - the right not to be compelled to testify against oneself or to make a confession,
 - the right to an independent and im-

- partial tribunal,
 - the right to appeal,
 - the right to obtain the attendance and examination of defence witnesses,
 - the right not to be tried or punished again for an offence for which one has been finally convicted or acquitted,
 - the principle of non-retroactivity of penal laws.

 - When a state of emergency is terminated, the authority to detain administratively should cease automatically and administrative detainees should be released.

 - Regular visits to places of detention by independent authorities and by international bodies such as the International Committee of the Red Cross should be permitted.
- Universal ratification of the human rights treaties containing norms governing the protection of human rights under states of emergency should be encouraged, together with acceptance of the right of individual petition.

 - Effective education concerning applicable international norms and the mechanisms available for challenging their violation should be available, in particular to lawyers and human rights organisations, in countries where international norms are in force.

Those wishing to order a copy of *States of Emergency – Their Impact on Human Rights* will find an order form on the last page of this Review.

Human Rights in the World

Bangladesh

As stated in ICJ Review No. 23 (Dec. 1979) Bangladesh had at that time returned to democratic rule under President Ziaur Rahman. Unfortunately this was short lived. The country was again plunged into a crisis with the assassination of President Ziaur Rahman on May 30, 1981, in an attempted military coup led by Maj. Gen. Mohammed Abdul Manzur. The coup collapsed and Maj. Gen. Manzur was arrested while attempting to escape, and shot dead in mysterious circumstances.

Vice-President Abdus Sattar assumed the duties of acting President and imposed a state of emergency which was lifted in September. As stipulated in the Constitution, he called for a presidential election. In the election held on November 15, 1981, he was elected as President by an overwhelming majority.

Conflict in sharing of power between the armed forces and the civilian government led by President Sattar, led to another military coup on March 24, 1982. Following this bloodless coup Lt. Gen. Hossain Mohammed Ershad imposed martial law and assumed the powers of Chief Martial Law Administrator.

Gen. Ershad suspended the Constitution and the Parliament and dismissed the President and Vice-President. With the imposition of martial law all political activities, "direct or indirect", and all demonstrations were banned. Press censorship was imposed and criticism of the martial law regime was

forbidden. According to a clarification issued by the martial law authorities "political activities" covered organising, campaigning for and providing financial assistance to any political party, organising political demonstrations and propagation of any political opinion by a group of persons operating for that purpose.

A Special Martial Law Tribunal was established with jurisdiction over all Bangladesh, composed of an army brigadier as chairman, a naval and an air force officer, a district judge and the chief metropolitan magistrate for Dacca. Five Martial Law Courts also with jurisdiction over the whole country, and 23 Summary Martial Law Courts for different areas were established.

Martial Law Tribunals and Courts have the power to try any offence punishable under the martial law regulations and orders or any other law. The proceedings under the tribunal are held in camera. The Chairman of the tribunal may require any person participating in the proceedings to take an oath of secrecy not to disclose anything that has come to his knowledge in, or in connection with the trial. The procedure before the tribunal and the martial law courts is one of a summary trial. There are also changes in the customary rules as to the burden of proof. The accused cannot be defended by a lawyer, but may be helped and advised by a person approved by himself ("a friend of the accused"). The martial law courts provide for trial of an

accused person in absentia. There is no right of appeal and no court including the Supreme Court can question any order, verdict, sentence or trial procedure of martial law courts.

Under martial law regulations possession of firearms or ammunition without a valid licence is punishable by death or life imprisonment. In relation to corruption, the President and Vice-President, any member of Parliament or of a local authority or leader of a political party or trade union or any government employee, if convicted of acquiring property by corrupt means, can be sentenced to death, life imprisonment or imprisonment for up to 14 years. In addition all or part of his property is liable to be confiscated.

It is deplorable that the Martial Law Administration in Bangladesh has resorted to the use of martial law courts to deal with ordinary crimes of civilians. Such a court composed almost entirely of army personnel without legal qualifications, with no provision for appeal or review and with procedures that contravene established international norms for a fair trial, cannot be considered 'competent, independent and impartial', as required under the International Covenant on Civil and Political Rights.

Besides the establishment of these martial law courts, Gen. Ershad's administration has also sought to interfere in the functioning of the civilian courts. Under the martial law regulation the Chief Justice and any Judge of the Supreme Court can be removed by the Chief Martial Law Administrator without assigning any reasons. On the proclamation of martial law the Bar Council was dissolved and in its place a new Bar Council was created composed of nominees of the state appointed Attorney General and the Chief Justice. In the name of decentralising the Court system Gen. Ershad's administration created three new

High Court benches in the district towns of Comilla, Jessore and Rangpur. Without prior notice judges were transferred to these places. This was done under the pretext of providing greater access to the High Court. On the contrary the Supreme Court Bar Association has pointed out that more High Court benches were not necessary as only 1% of the cases reached the High Court. Moreover, accommodation for judges, lawyers, court rooms and even bar libraries did not exist in the three district towns. It is feared that the real intention behind the creation of three new High Court benches was to sap the strength of the judiciary. Maintaining that a reform of such a basic nature needed consultation with the bar, the Supreme Court Bar Association made repeated attempts to meet Gen. Ershad. Failing in their attempts to meet him, on October 10, 1982 the lawyers boycotted the Supreme Court and resolved to stay away until the administration agreed to a discussion. On October 13, a new resolution opposing the decentralisation of the court system was adopted. On October 17, the President of the Supreme Court Bar Association and 11 other lawyers were arrested and charged with violating martial law regulations. The Bar Association was coerced to withdraw its resolution and thereafter the arrested lawyers were released.

Gen. Ershad's administration, in order to stamp out all opposition, has resorted to large scale arrest and repression of students and workers. The changes made in the Industrial Relations Act prohibit strikes and trade unions are required to receive permission from the authorities even to conduct executive committee meetings. The permission is rarely if ever granted.

The isolation of Gen. Ershad's administration became apparent when country wide demonstrations for restoration of democracy took place in the beginning of this

year. The administration reacted to this by imposing a night curfew, closing down all educational institutions, and resorting to large scale arrests. Thirty political leaders belonging to the 14 party alliance formed to demand restoration of democracy were arrested. Prominent among those who were detained were Sheikh Hasina Wajed, daughter of the country's founding President Sheik Mujibur Rahman, and Kamal Hossain a former foreign minister. After a few days Gen. Ershad released the arrested leaders and called for a national dialogue. On April 1, he announced the lifting of a ban on indoor political meetings, thereby allowing the political parties to hold formal meetings to discuss the political situation and

enter into a dialogue with the martial law administration on the drafting of a new constitution.

Such a national dialogue is timely and essential for the country, in which 62% of the population are classified as absolutely poor and which is facing grave economic problems. It is to be hoped this dialogue will lead to the lifting of martial law, the abolition of the military courts, the release of political prisoners and a return to normalcy so as to create an atmosphere in which the political parties and interested professionals can tackle the urgent socio-economic problems of the country, a task which cannot be undertaken by the armed forces alone.

Latin America

Recent Advances in Human Rights in Bolivia and Colombia

Bolivia

In 1978 the situation of human rights in Bolivia appeared likely to improve when the military government was forced to make concessions in view of the pressures exercised by widespread protests, demonstrations and strikes. An amnesty was announced, exiles were allowed to return, and political parties and trade unions to become active again, and presidential and congressional elections were held. However, the elections in July 1978 were declared null and void by the National Electoral Court because of flagrant fraud bene-

fitting the armed forces' candidates. New elections took place in July 1979 and were won by the centre-left coalition in opposition, led by Dr. Hernan Siles Suazo¹. As the winning party did not obtain an absolute majority Congress was required, under art. 90 of the Constitution, to nominate the President of the Republic. As the different groups were unable to reach agreement, Congress nominated one of its members as Acting President for a year. There followed a new military coup, which did not succeed in consolidating its position because of a general protest strike which paralysed the country. The authors of the

1) One of the leaders of the nationalist revolution of 1952, and subsequently Minister and President of the Republic.

coup consequently authorised Congress to proceed to a new nomination. They did so, and the Presidency fell to Sra. Lidia Gueiler, who occupied that position for a year and constituted a transitional government².

In spite of attempts to intimidate her on the part of groups in the armed forces, President Lidia Gueiler strictly observed the pledge made on being sworn into office to restore political and civil rights and hold national elections in June 1980. On that occasion the Bolivian people, for the third time in succession, voted for a democratic system against the military regime, with the result that the candidate of the centre-left coalition, Dr. Siles Suazo, who had won the previous election, was again successful. Although he did not obtain an absolute majority as on the previous occasion, the political parties agreed to nominate him for President, and the Congress was ready to confirm his appointment. Nevertheless, 15 days before the appointed date, on July 17, 1980, yet another military coup took place and General Luis Garcia Meza took over the government and installed himself in the Presidency.

These coups were, of course, a savage mockery of political rights. The armed forces called elections on three consecutive occasions and then arrogated to themselves the right to disregard the will of the people, thus demonstrating that they regarded the choice of government and the prerogatives of power as matters within their own jurisdiction.

The July 1980 coup was one of the most violent and bloody that have taken place in Bolivia, which has known an interminable series of coups d'état ever since independence³. The armed forces unleashed

a merciless repression against all forms of opposition, leaving hundreds of dead, missing, wounded and prisoners in their wake. The rights of the people, recognised in the Constitution and Bolivian law, were trampled upon, and persecution of the press, lawyers, the church, trade unions and political and popular associations, and human rights organisations became a routine matter. The army attacked the mining districts – the nerve centre of the resistance to military rule – with tanks, aircraft and heavily armed troops, and the miners, who tried to withstand the attack with explosives and shot guns, were mown down. One particularly cruel case – by no means the only one – was that of the mining district of Caracoles which was invaded by "rangers", followed by paramilitary civilian formations, after a heavy attack by small aircraft, tanks and mortars. Once the situation was under control, they proceeded to kill, torture and loot, and to rape the women in the settlement.

The hardy and persistent struggle of the democratic groups, particularly of the workers who formed the nucleus of the clandestine unions which had been disbanded by the regime, as well as of the peasants, was successful in bringing about the political defeat and complete collapse of the military regime, whose prestige at that time, both nationally and internationally, had fallen to an unprecedentedly low level. Its loss of prestige was due both to the political repression and to the notorious public links between members of the government, including the President, General Garcia Meza, and the top military leadership, and the drug traffic, a criminal activity from which they were reaping huge profits⁴. The advances made by the people

2) The first woman President in Bolivia.

3) See *ICJ Review* No. 25, December 1980, page 2.

4) The illegal cocaine traffic was estimated at about 500 million dollars a year.

were also due to the active contribution of international solidarity and the publicising of the situation at the level of governments, the Organisation of American States, and the United Nations.

In view of this situation, another coup d'état forced General Garcia Meza to resign in 1982. A slow advance then began towards democracy, which cannot be ascribed to a sudden upsurge of democratic feeling in the armed forces but rather to an obvious weakening of the military regime through its own excesses and corruption, and the growing popular resistance. It was in that period that some decrees were passed re-establishing human rights, a political and trade union amnesty was granted in May 1982, and a dialogue was initiated between the military leaders and the political forces. The government announced that national elections would be held in April 1983, but this plan was not accepted by the opposition. The government thereupon – in an act with few historical precedents – reconvened the Congress (House of Deputies and Senate) which had been elected in June 1980 and had never begun to sit. The government did so through Legislative Decree 19.144 and Congress assumed its functions in October 1982. In accordance with the political Constitution, Congress nominated the President and Vice-President of the Republic, since, as was mentioned above, none of the candidates taking part in the elections of 1980 had won an absolute majority of the votes. On 6 October 1982, Dr. Hernan Siles Suazo was nominated for the Presidency and Dr. Jaime Paz Zamora for the Vice-Presidency, and both officially assumed office on 10 October 1982.

Since then, all the rights and freedoms that had been nullified for years have begun to be restored. The political and trade union organisations are recovering their rights, the security bodies responsible for

the murders, disappearances and torture are being dissolved, various military men who bear responsibility are being brought to trial, although the principal figures managed to flee the country and take refuge in a neighbouring State. Numerous members of the paramilitary organisations have also been tried, and found guilty of committing, either under the orders or with the connivance of the military authorities, such acts as the armed attack on the Central Obrera Boliviana on the day of the military coup on 17 July 1980, which culminated in the murder of a trade union member and a socialist political leader, the murder of 8 leaders of the Movimiento de Izquierda Revolucionaria (MIR) on 15 January 1981 in La Paz, and the assassination of a Catholic priest, Father Luis Espinal, director of a seminary. Many drug smugglers were also brought before the courts and condemned, and Klaus Barbie, the Nazi war criminal, was expelled from the country and sent to France, where he is to stand trial. In Bolivia, he had been involved in the drug traffic and was reported to have organised paramilitary groups engaged in the repression.

The government established a National Commission on Disappearances, with the task of establishing the whereabouts of hundreds of persons who had "disappeared". Shortly after it began its work, the Commission found a mass grave at the Central Cemetery in La Paz, where 14 corpses had been buried clandestinely, without the required official authorisation.

During the months that followed the establishment of the new government and the restoration of a democratic regime, the authorities came under heavy pressure from trade unions and political organisations that had suffered greatly under the repression, to apply "summary justice" to the persons responsible for the abuses. The government did not yield to the pressure, but insisted upon proper trials before the

ordinary courts with all the judicial guarantees recognised by the law and the constitution of Bolivia.

In this connection, the report prepared for the United Nations Commission on Human Rights by its Special Representative, Dr. Héctor Gros Espiell (doc. UN E/CN.4/1983/22, paragraph 106) states that the very credibility of the system of guarantees and protection for human rights, "... its present and future existence depend to a large degree on whether proven violations give rise to effective sanctions and whether the responsibilities deriving from acts of the type in question remain at the stage of words in limbo or are translated into deeds". Elsewhere in the report, the Special Representative points out that "The restoration of the constitutional system in October 1982 put an end to an era which, particularly at its start, was characterised by serious, massive and persistent violations of human rights" (paragraph 111).

The government of Bolivia has an immense task before it. The economy is in a deplorable situation and has become extremely dependent on other countries. Seventy percent of the foreign exchange comes from exports of tin, and is therefore subject to price fluctuations in the world market. Inflation has increased, the peso has been devalued and the government has serious difficulties in servicing the external debt. This is giving rise to social problems, which are compounded by deficiencies in education, health and social services. All this has roots that go back into the past, but the problems undoubtedly became more acute during the years of military dictatorship, when those responsible for governing the country were concerned with obtaining substantial financial gains for themselves and neglected the search for solutions to fundamental problems. These problems are creating, and will continue to create, political difficulties that will pose a

new challenge to the authorities. The International Commission of Jurists hopes that the process of reconstruction begun in October 1982 can be successfully concluded, in strict accordance with the principles of the rule of law and the aim of enabling all persons to achieve the full enjoyment of their civil and political rights as well as their economic, social and cultural rights.

Colombia

The other case worthy of mention is that of Colombia, where, although for different reasons, significant advances have also been made in respect for human rights and fundamental freedoms.

Following a government statement that public order had been re-established, the state of siege which had been in force for more than 30 years, was lifted by Decree No. 1674 of 9 June 1982. As a result the Security Statute of 1978, as well as other legislation passed by decree under the state of siege, ceased to have effect.

On March and May 1982, Presidential and parliamentary elections were held, and on 7 August Dr. Belisario Betancur assumed the Presidency. All political parties that wished to do so were able to present candidates and the elections were considered by both national and international observers to be free and democratic.

A law granting a limited amnesty for political offences had been passed in March 1981, but, owing to its limited effect, it did not achieve its object of persuading the guerrilla movements to surrender their arms. Later, by Decree 474 of 1982, another attempt was made by the government, through a revised amnesty decree, but this was again unsuccessful. Finally on 19 November 1982, the newly elected government succeeded in obtaining Parliament's approval of Law No. 35 granting a

general amnesty to everyone who had committed the political offences of rebellion, sedition or rioting before the date of the law. Also covered by the amnesty were common law offences linked with these, or committed with a view to perpetrating such political offences. The amnesty did not apply to persons who had committed acts of homicide, other than in combat, on defenceless persons or accompanied by acts of cruelty. By the same law, a rehabilitation programme of land distribution, housing, credits, education and health services was provided to re-settle those benefiting from the amnesty as well as people living in regions which had been devastated by the armed hostilities.

This amnesty law was accepted by most of the guerrilla groups, but some decided to continue their armed struggle. In particular, M-19, considered to be the main political organisation to have taken up arms against the government, has accepted the offered amnesty, which it incidentally had an opportunity to influence during talks held between its leaders and high-level government representatives. Moreover, according to information printed in the Colombian and international press⁵, leaders of the FACR (Fuerzas Armadas Revolucionarias de Colombia), a Marxist organisation which is engaged in armed struggle in the rural areas of Colombia, has stated that by the end of 1983 it will accept the amnesty, provided the measures announced by the government have shown themselves to be effective, and that the amnesty law is seen to work properly.

With regard to the administration of justice, another result of the lifting of the state of siege has been that the armed forces will no longer have the power to try civilians, a practice that was widely condemned by lawyers.

The responsibility for investigating crimes, including crimes of subversion, now rests with the civilian Attorney-General, the responsibility for ensuring the protection of human rights with the civilian Procurator General, and the responsibility for trying all offences of civilians with the much respected and independent civilian judiciary.

In this respect, the President of the Republic instructed the Procurator General of the Nation to investigate all aspects of the organisation, functioning and membership (or supporters) of the clandestine paramilitary group MAS (Death to Kidnappers), and to determine the criminal liability incurred by its members. This extreme right-wing organisation, connected with the so-called Colombian Mafia, began to be active in the last few years, on the pretext of responding to kidnappings by clandestine left-wing organisations and common law criminals, either for money, or as a way of settling accounts between groups fighting for control of the drug traffic. The MAS has been repeatedly accused, and has itself, in widely distributed fly sheets, claimed responsibility for a number of killings, including those of presumed members of subversive organisations, lawyers defending political prisoners, and advisers to trade unions and peasant communities. The MAS is also responsible for having threatened and drawn up lists of persons condemned to death. These included the name of a well-known Colombian figure, Dr. Alfredo Vasquez Carrizosa, former Minister of Foreign Affairs, and one of the most active defenders of human rights. There was also that of the writer, Gabriel Garcia Marquez, the recent Nobel Laureate in Literature. This action by President Betancur was warmly supported by broad sectors of Colombian society and was hailed as a posi-

5) *El Pais*, Madrid, 11 April 1983.

tive measure for peace by the 3rd National Forum for the Right to Life, Peace and Democracy, held at Bogota at the beginning of March 1983.

The investigations, undertaken with zeal and efficiency by the Office of the Procurator-General, led to the establishment of a list of persons suspected of being members of the MAS guilty of various crimes. On the list were the names of 59 active members of the armed forces. The findings on the investigations have been transmitted to the civilian courts which are now responsible for determining their guilt.

It is to be hoped that this progress made in human rights will continue and that the civilian government will succeed in freeing itself from every vestige of military supervision, in order to undertake the obviously immense task of dealing with the grave economic and social problems from which Co-

lombia has been suffering for many decades. It will be essential for it to remove, or at least initially to alleviate the serious imbalances and inequalities that exist in the economic, social and cultural fields, and, at the same time, to stamp out all traces of the discrimination that still subsists in certain areas of the country – although not with the backing of the law – against members of the indigenous communities. This will call for a joint effort on the part of all Colombians of good will, but it may be said that the first steps have already been taken with the pacification and restoration of the rule of law. Although this had not been abolished as in Bolivia, it had nevertheless been severely impaired by the protracted existence of the state of emergency and the growing military pressure on the government.

El Salvador

Assassination of Marianela García Villas

Marianela García Villas, who risked and lost her life in the cause of peace and justice for her people, was murdered in El Salvador on 13 March 1983. Thirty-four years old, she had a law degree and had been elected to parliament for the Christian Democratic Party. She left the party in 1980 when it agreed to collaborate with the military regime. She was the President and a founder of the Commission on Human Rights of El Salvador, and Vice-President of the International Federation of Human Rights, and had been honoured in various European countries. Over and

above these titles, however, she was a courageous and clear-sighted militant, who was deeply committed to the cause of human rights in her native country – El Salvador. At the beginning of 1980, she had had to flee the country because her life was in danger, following repeated threats she received from para-military right wing groups, which could not be ignored in view of the number of assassinations these groups had carried out.

In the last few years, Marianela travelled the world, denouncing, with the support of factual evidence, the crimes committed in

her country by the official forces of repression and by armed paramilitary groups, manned and led by high-ranking army officers. In the course of her task, she spoke at and gave evidence to the Inter-American Commission on Human Rights, the United Nations Commission on Human Rights and its Sub-Committee, the Parliamentary Assembly of the Council of Europe and the European Parliament, as well as at many meetings and conferences on various aspects of human rights, dealing in particular with El Salvador.

At the beginning of 1983 she decided, in full awareness of the tremendous risk she was running, to travel to her country in order to carry out a mission to collect information on the accusations made regarding the use of napalm and chemical weapons, such as white phosphorus, by government forces in aerial bombardments of the area of Suchitoto. Another aim of her mission was to investigate the observance of human rights in the areas controlled by the opposition guerrilla forces (FMLN-FDR). She was accompanied to El Salvador by a colleague on the Salvadoran Commission, Luz Maria Hernandez, a member of a religious order, who was on her way to another part of the country when Marianela was assassinated. With the information they had managed to gather, Marianela was planning to attend the Geneva meeting of the United Nations Commission on Human Rights.

But this was not to be. Marianela was killed by the Salvadoran army, and probably tortured before she died, while she was leading a group of peasants to a nearby refuge when their settlement was attacked by the army. More than 20 peasants were murdered together with Marianela.

The army accepted responsibility for these deaths, but presented the facts in a very different light, stating that she was killed when accompanying guerrillas who

were fired upon by the armed forces. It is impossible to credit this official version in view of the following factors: the Commission on Human Rights of El Salvador denies that their colleague Marianela, or for that matter any other member of the Commission, was active in a politico-military organization opposed to the government; not one of the dead peasants was armed; a mission sent to the country by the International Federation of Human Rights on 7 April confirmed the statement of the Archbishopric of San Salvador, to whom the body of Marianela was handed over, that both her legs were broken, there was a bullet wound in her right shoulder which had left the arm useless, and a number of serious injuries and fragments of stone in her head. The mission of inquiry was able to establish that twelve hours elapsed between the end of the military attack and the arrival of Marianela's body at the military hospital.

Six non-governmental international bodies (the Church Commission for International Affairs of the World Council of Churches, The International Commission of Jurists, the International Federation of Human Rights, the International League for the Rights and Freedom of Peoples, Pax Christi International and Pax Romana) submitted a request on 21 March 1983, to the Inter-American Commission on Human Rights asking it to undertake, as a matter of urgency, a full and detailed investigation of the circumstances of the deaths of Marianela and the peasants. An inquiry of this kind, carried out by a reputable and impartial body, will help justice to be done and will also help to establish clearly the responsibility for what, from all the indications, was a mass killing. Moreover, it will contribute to the cause of human rights in El Salvador.

In present circumstances, it is impossible to believe that the administration of justice

in El Salvador, which has been intimidated by the murder of judges and lawyers, can make an impartial and objective investigation. This is borne out by the result of the inquiries into the murders of Monsignor Oscar A. Romero, of the four North American Sisters of Charity, of two American land reform experts, and of thousands of poor Salvadorans who have paid with their lives for their legitimate desire for justice or simply because they were living in a war-torn area.

The Secretary-General of the ICJ, speaking in the United Nations Commission on Human Rights on 1 March 1983, gave the following example: "The latest report is of an assassination carried out by soldiers in Las Hojas a week ago today. They shot 18 villagers in cold blood because their farming cooperative had refused a local landowner's request to build a road through their land. They were denounced by the landowner as 'subversives'. A member of the government's Human Rights Commission, who was sent to investigate, said it would be difficult to punish any soldiers responsible. He added, 'Even I am afraid to be investigating this, though I have the authority of the Minister of Defence'."

During 1982, there were 5,000 political murders in El Salvador. Although not as many as in previous years, this is still an enormous figure, especially for such a small country (21,041 km²). The vast majority of the victims were non-combatant civilians.

A civil war is being waged in the country, and has already caused 43,000 deaths between October 1979 and December

1982. The official repression involves torture, the disappearance of prisoners, corpses left in streets and fields bearing obvious marks of brutality and torture (sometimes beheaded or castrated), the destruction of crops and whole villages, the seizure of the possessions and domestic animals of the peasants, and rape.

A Spanish professor, Pastor Ridruejo, appointed Special Representative of the United Nations Commission on Human Rights to investigate the situation in El Salvador, stated in his last report (E.CN 4/1983/20 of January 1983) with regard to the acts of violence that:

"the violations of human rights represented by attacks on the life, integrity, freedom and security of persons are mainly, although not exclusively, due to the members of the State apparatus and violent groups of the extreme right, while terrorist acts against public and private property are mainly due to guerrilla groups" (Para. 118).

It is clear that a climate of social peace is an indispensable prerequisite for solving the country's serious economic problems and, at least, alleviating the extreme poverty resulting from the profound inequality in the distribution of the national wealth. The only way of dealing with the current crisis that might create such a climate of social peace, would be for the government to enter into a frank dialogue with the political opposition forces, including those who are bearing arms. If this were done, real progress could be made in furthering the aims that inspired the life and work of Marianela García Villas.

Pakistan

An article in ICJ Review No. 23 (December 1979) concluded that "unless the regime keeps its promise to hold general elections, it is likely to have to resort to even more drastic measures to suppress popular agitation". This has been proved by the events of the last three years. The number of political prisoners, is now said to have grown to at least 5,000 as the martial law administration of General Zia ul Huq continues to legislate by martial law decrees enforced by martial law courts curbing basic freedoms.

Constitutional amendments introduced by President Zia on May 26, 1980, provided that no judgment of a military court could be challenged by a provincial High Court or by the Supreme Court and that persons could be detained indefinitely without trial and without charge.

This was followed by the promulgation of an interim Constitution on March 24, 1981, which is to remain in force as long as Pakistan remains under martial law. The glaring omissions in the interim constitution are any provisions relating to elections, the functioning of parliament or fundamental rights.

According to the interim Constitution, if and when political activity is permitted only those political parties registered with the Election Commissioner will be allowed to function. Further, the President may dissolve any party operating in a manner "prejudicial to the Islamic ideology or the sovereignty, integrity or security of Pakistan". Only three parties, which are all reported to be pro Islamic and supportive of the government, were allowed to register with the Election Commissioner. All other parties have been dissolved and their property confiscated. Sporadic arrests of opposition activists, and the prospect of lashes

or lengthy terms of imprisonment, discourage grassroots political organisers. In this way public political activity is effectively curbed and political expression is kept at a low level.

To give a representative image to his administration, Gen. Zia on December 24, 1981, created a 350-member Advisory Council known as the Majlis-e-Shoora. All members of the Council are appointed by the President. The Council, which has a purely advisory role, can only discuss and suggest legislation for possible acceptance. Leaders of the banned political parties refused to recognise the Council. The Movement of the Restoration of Democracy which is a coalition of nine political parties criticised the Council as an attempt by the President to "hoodwink the nation and the outside world". The Movement demanded direct parliamentary elections.

The judiciary is the other major institution that has been crippled by the martial law administration of Gen. Zia. The interim Constitution requires all superior court judges to take an oath to uphold the new constitutional order. This led to a wave of resignations among the superior court judges. Among the judges who declined to take the required oath of allegiance were the chief justice of Pakistan, four of the six supreme court judges and the chief justice of a state high court. Twelve high court judges were not invited to take the oath and they automatically lost their posts.

Reacting to a meeting organised by the Bar Associations calling for an end to martial law, Gen. Zia issued an order debarring members of the legal profession from political activity. In October 1982, the President and Secretary of the Karachi Bar Association were arrested for violating this order. As the Centre for the Independence

of Judges and Lawyers has commented, the members of the Bar Association were arrested for expressing their concern that the military government was becoming permanent, and that martial law decrees were eroding rights guaranteed by the Constitution and were having a profoundly negative effect on the rule of law in Pakistan.

In addition to the lawyers, workers, students and women seem to be the most affected by the policies of Gen. Zia's government. A large number of women and women's organisations in Pakistan have been expressing their concern that their rights and their equality before law has been threatened by the policies of the government. The government as part of its observance of Islamic values advocates observance of traditional Islamic conventions regarding woman's clothing. Women's hockey teams were prohibited from playing abroad or in front of men. Women if found guilty of extra-marital relations are punished with flogging. It was reported that on December 23, 1982 a mother of two children was given 20 lashes in Swat's central jail. In cases relating to extra-marital relations, only the woman is punished severely. At the beginning of this year the government proposed changes in the Evidence Act by which a woman's evidence would be defined as being worth half that of a man's. The evidence of two women would be required to establish matters proveable by the evidence of a man.

Major women's organisations including

the Pakistan Women Lawyers Association have formed themselves into a Women's Action Forum to oppose these changes and to safeguard the rights of women. In Lahore on 12 February they organised a peaceful procession to present a memorandum to the Chief Justice of the Lahore High Court. Their procession was charged by the police with batons and many women were badly beaten. Thirty-one women, mostly lawyers, lecturers and leaders of women's organisations, were arrested. The controversy is continuing and the protest of the women is gathering momentum.

In a country where women are already in an inferior status in terms of education, health and employment opportunities, it is deplorable that the government should further segregate them from normal social life and institutionalise such segregation and discrimination through law and religion.

Gen. Zia's Islamisation drive has also created a division between the Sunni Muslim majority and Shia minority. In March this year there were widespread riots between the two communities in Karachi. These riots indicate that Gen. Zia's determination to make Pakistan thoroughly Islamic is sowing discontent rather than binding together Pakistan's disparate regions, communities and classes. With the growing opposition to martial law and its severity, the country is being driven into further disunity and dissension. Only the holding of free elections, so that politics of consensus can emerge, will reverse this trend.

Philippines

On 17 January 1981 President Marcos announced that martial law, which has been in force since 1972 was lifted. To

mark the occasion 341 prisoners were released, of whom 159 had been held on charges of violating national security and

public order. More than 1,600 other prisoners were transferred from military to civilian custody. Termination of martial law and the limited release of political prisoners was welcomed by the human rights organisations in the Philippines, but these organisations have also expressed their concern that serious violations of human rights are continuing and the termination of martial law has not brought about substantial changes in the situation. Owing to the terms of the Presidential Order that lifted martial law, its termination was largely cosmetic.

The Presidential Order No. 2045 reads as follows: "... do hereby revoke... and proclaim the termination of the state of martial law throughout the Philippines, provided that the call of the armed forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion shall continue to be in force and effect, and provided that in the two autonomous regions in Mindanao, ... the suspension of the privilege of the writ of habeas corpus shall continue, and in all other places the suspension of the privilege of the writ shall also continue with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposals to commit such crimes, and for all other crimes and offences committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith". The effect of this order is to renew martial law in all but name, in particular since it enables the continuation of the worst feature of the martial law regime, namely arbitrary arrests by the armed forces and the denial of any judicial review by habeas corpus or other procedures. Moreover, on 9 March 1982 the government issued Letter of Instruction No. 1211 (LOI) which authorises the armed forces

and police officers to arrest persons suspected of rebellion or subversion and related crimes without a judicial or executive warrant, and later to validate these arrests by applying for a Presidential Commitment Order (PCO) which, if issued, authorises the continued detention of the arrested person until released by order of the President.

According to a resolution of the Free Legal Aid Group, a nation-wide lawyers organisation, "arrests without warrant and arrests on the authority of a Presidential Commitment Order have often been made without probable cause and have led to maltreatment, torture, involuntary disappearances and extra-legal executions; and... under the protection of Presidential Commitment Orders military authorities have delayed or refused to release detained persons despite orders from courts, including the Supreme Court, to release them after finding that there is no good reason to detain them or that they have served their sentences".

The so-called lifting of martial law has not increased press freedom. On 7 December 1982 army authorities arrested Jose Burgos, editor and publisher of an independent weekly 'We Forum' along with nine of his staff. They were charged with subversion and conspiracy to overthrow the government. The arrest of these journalists coincided with the arrest of a number of trade union leaders. The church which is an influential institution in the country, has also been under attack. According to the Task Force Detainees of the Philippines, an activist church group, the army has arrested more than 40 priests, nuns and lay workers in what the group calls a campaign of harassment and intimidation against the church.

The two autonomous regions of Mindanao referred to in the Presidential Order are a stronghold of rebel activities, as the

guerrilla forces receive considerable support from the civilian population due to the repression and abuses by the army. For example, at the end of 1981 the army launched a 'strategic hamlets programme' in order to destroy the mass support of the guerrillas. This involved relocating some 20,000 people from the allegedly rebel infested *barrios* (villages) in the municipality of San Vicente to fortified zones called *barrio* centres. This operation caused the death of over 30 children who were herded together in insanitary conditions.

In February 1982 the Integrated Bar of the Philippines sent a five man commission including a retired Chief Justice, Jose Reyes, to investigate the effect of hamletisation in San Vicente. In its report to the president the Commission stated that "the measures taken by the military are not justified, for prior and subsequent to the process of hamletting or grouping there were no encounters between the rebels and the armed forces of such a nature as to warrant wholesale evacuation of civilians from their farms". It also commented that "Martial law has been lifted throughout the nation, but even if the nation were at war, under the laws of war no forced transfer of civilians is allowed".

Amid mounting criticism the Defence Minister announced that the strategic hamlet programme would be stopped. Even after the official withdrawal of the programme, it is reported that villagers are required to sign oaths of allegiance to procure safe conduct passes and persons found without such passes are detained for investigation. Residents of each village are required to post outside their houses the names and number of persons staying in each house.

The Catholic Bishops of Philippines in their Pastoral Letter have said "what disturbs is the growing support for the dissidents because of poverty and military

abuses".

In this situation the judiciary could play an important role in checking the arbitrary actions of the executive. Unfortunately in a case decided on 20 April 1983 the Supreme Court of Philippines has taken a negative position on judicial review. The decision arose out of a habeas corpus petition in which the petitioners questioned their continued detention and challenged the method of detaining persons merely by a Presidential Commitment Order.

The majority opinion of the Court was that "the function of the Presidential Commitment Order is to validate... the detention of a person for any of the offences covered by Proclamation No. 2045 which continues in force the suspension of the privilege of the writ of habeas corpus... the grant of the power to suspend the said privilege provides the basis for continuing with perfect legality the detention as long as the invasion or rebellion has not been repelled or quelled, and the need therefore in the interest of public safety continues".

Comparing the position of detained persons with the plight of persons kidnapped by guerrillas, the Court went on to say it is "... all too well-known that when the rebel forces capture government troopers or kidnap private individuals, they do not accord to them any of the rights now being demanded by the herein petitioners, particularly to be set at liberty upon the filing of bail... captives of the rebels... may even be liquidated unceremoniously. What is then sought by the suspension of the privilege of the writ of habeas corpus is, among others, to put the government forces on equal fighting terms with the rebels". This is an astonishing argument to come from Supreme Court judges. Carried to its logical conclusion it would justify the extra-judicial killings by the armed forces.

The Court overruled an earlier Supreme Court judgment in the case of *Lansang vs*

Garcia, 42 SCRA 488 which had held permissible judicial review of a President's decision to suspend habeas corpus and concluded that "on the occasion of [a] grave emergency... the judiciary can, with becoming modesty, ill-afford to assume the authority to check or reverse or supplant the Presidential actions. On these occasions the President takes absolute command, for the very life of the nation and its government, which incidentally includes the Courts, is in grave peril. In so doing, the President is answerable only to his conscience, the people and to God. For their part, in giving him the supreme mandate as their President, the people can only trust and pray that, giving him their own loyalty with utmost patriotism, the President will not fail them".

In the recently published ICJ study on States of Emergency the conclusion is drawn that judicial review is of even greater importance during a state of exception than in normal times. "Judicial review during a state of emergency", it says, "is essential to the concept of a state of emergency as the substitution of an exceptional state

of law for the normal state of law, rather than as the substitution of the rule of law by lawless government. It is axiomatic that, for the protection of human rights, the greatest possible degree of judicial control should be striven for".

Judicial intervention by the Supreme Court could help to check the abuses committed by the police and armed forces, and thus lead to withdrawal of the support given by civilians to the armed guerrillas, as argued by the Bishops Conference. The statement of the Bishops also called for a clear authoritative definition of subversion rather than to leave it to the army to interpret. The Bishops asked for:

- the abolition of the Presidential Commitment Order, which has led to abuse by the military;
- the lifting of the order suspending the writ of habeas corpus in the two regions of the Southern Philippines;
- restoration of the right to bail;
- an end to protracted detention; and
- a greater government effort to end military abuses and harassment.

Quebec

The National Assembly of Quebec, meeting in an emergency session on 17 February 1983 approved Law No. 111, being "an Act to ensure the resumption of services in the schools and colleges in the public sector". This law was aimed at bringing to an end a strike of 85,000 teachers who refused to accept the salaries and conditions of work imposed by Law No. 105, approved on 11 December 1982. Law No. 105 laid down the condition of work for

320,000 employees in the public sector, including the teachers. Formerly, Law No. 70 of June 1982 had imposed a reduction in salary of nearly 20% for the first three months of 1983. The government contend that the strike of the teachers was illegal under the Labour Code of the Province of Quebec which prohibits strikes while a collective agreement is in force. The collective agreement with the teachers expired at the end of 1982. However, the government

relied on the text of Law No. 105 which amended and renewed unilaterally the previous collective agreement. Consequently the government claims that, in law, a collective agreement was in force by reason of Article 9 of Law No. 105, even though this "agreement" had not in fact been agreed between the government and the teachers union.

In any event, Law No. 111 which aimed at putting an end to the teachers' strike was strongly denounced, not only by trade unions, but also by the Quebec Commission on Human Rights, the League for Rights and Freedoms, the Bar of Quebec and the press. All of these considered that the law violated individual rights and freedoms contained in the Quebec Human Rights Charter. While this may be so, the legal position is that the National Assembly has power to derogate from the Human Rights Charter under Article 52 of the Charter. Even without this provision, it appears that the Provincial Charter is not part of the Constitution, and does not limit the sovereign power of the National Assembly of Quebec when legislating within the scope of its constitutional authority.

It is not so much the fact of derogation from the Charter which has given rise to these protests, but rather the content of the law. Law No. 111 places an obligation on the teachers who were on strike to return to work by 17 February 1983 at the latest and to work until 31 December 1985 without interruption, slow down or diminution in their normal work. It also imposed a duty on the teachers' unions to take all appropriate steps to lead the teachers to return to work. It envisages procedures for the replacement and dismissal of teachers who refuse to obey the law, and penal provisions affecting both the teachers and their unions to ensure their observance of it. In these criminal proceedings presumptions of guilt are imposed by Articles 17

and 18. In the protests made against the bill, great emphasis has been laid on this burden imposed on the defendant to prove his innocence. The question arises whether this is really a violation of accepted principles. It is not unusual in anglo-saxon criminal law in certain circumstances to make specific acts or omissions criminal if done without lawful excuse, as for example to be in possession of housebreaking instruments by night. Once the basic facts have been established the burden is on the accused to prove innocent intent. This applies in particular in cases where the accused is the only person to have the necessary means of knowledge. If a person stays away from work during an illegal strike, this might be due to an illness and it does not seem unreasonable to require him to show that this was the reason for his absence. The position, however, is very different in relation to Article 18, which creates a presumption that any union to which an illegal striker belongs has committed the offence of failing to take the appropriate steps to see that its members return to work. The burden is then placed on the association to prove that it has taken all appropriate steps to lead its members to return to work.

Another criticism made against law 111 is that it gives the government the power to decide whether members of a trade union are "complying with the law in sufficient numbers to ensure that services it deems adequate are provided in a school or college", and if not to impose sanctions upon the union (article 10).

The criticisms laid against Law No. 111 can be summarised as follows:

- violation of the right of association and collective bargaining;
- the imposition of forced labour;
- violation of the presumption of innocence;

— violation of the principle of the separation of powers between the executive and the judiciary.

Before the validity of these objections in Quebec law could be determined, the Supreme Court of the Province held in *Quebec v. Collier* that law 105 was invalid, as it legislated by reference to documents published only in French and not also in English as required under the Constitutional Law of 1867. The effect of this decision is that the strike was not illegal and law III

is of no effect. The position under international law will be examined when the complaints of the trade unions to the Committee of Freedom of Association of the ILO are considered, probably at the next meeting of the Committee. It should be noted that Canada has ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise. On the other hand, it has not ratified Convention No. 98 on the Right to Organise and to Collective Bargaining, or No. 151 on Labour Relations in the Public Service.

South Africa (Venda)

Venda is one of the so-called "independent" bantustans in South Africa, set up by the South African government in September 1979 and since then recognised by no other government. This puppet state has inherited not only the whole paraphernalia of South Africa's security laws, including indefinite detention without trial under the Terrorism Act but also South Africa's inhuman practices towards its detainees.* These practices have resulted in the deaths of over 50 prisoners in custody in South Africa, and on 12 November 1981 another was added to their number, this time in Venda.

On 26 October 1981 a bomb exploded at the police station of Sibasa, the principal town in Venda, killing two policemen. This was attributed by the Venda authorities to members of the African National Congress. In the succeeding three weeks the police arrested about 20 persons by way of reprisal.

Among them was Isaac Tshefhiwa Muofhe, a supporter of the Black Consciousness Movement in South Africa and a lay preacher of the Lutheran Evangelical Church, the leading church in Venda. Arrested without charge on 10 November he was not allowed to contact his wife or a lawyer. In perfect health at the time of his arrest, he died in the custody of the security police two days later. The post mortem examination revealed that he died as the result of severe and extensive bruising of his body, head and genitals, caused by the "extensive use of force", and of the internal bleeding which resulted from them.

The inquest before the Chief Magistrate of Venda, Mr. C.J.S.B. Stainer, to determine the cause of the death was not held until July 1982. The two security police officers who had custody of Muofhe were called as witnesses. They alleged that he had confes-

* In December 1982 the International Commission of Jurists published jointly with the Catholic Institute for International Relations and the Human Rights Forum of the British Council of Churches a 45 page pamphlet entitled "Torture in South Africa", containing a memorandum on security police abuses of political detainees, prepared by the Detainees' Parents Support Committee, and other documents testifying to torture practices. Copies are available from the ICJ at 5 Swiss francs plus postage.

sed under interrogation and been taken by them in a police vehicle to point out a particular location to them. They said he had tried to escape and that his injuries resulted from their restraining him and preventing his escape. The Chief Magistrate rejected this explanation, particularly when it was shown that the vehicle referred to was not in service on the day in question, and the evidence given by the police officers differed materially from statements they had previously made, and from each other. He found their explanation of the death "completely unconvincing" and concluded that Muofhe had died as a result of a criminal assault by the two officers, Captain Ramaligela and Detective Sergeant Mangaga.

On the basis of these findings, the Attorney-General of Venda launched criminal proceedings against the two police officers on a charge of murder. The trial took place in Venda Supreme Court in February 1983 before the Venda Chief Justice, a South African, Judge G.P. Van Rhyn. The prosecution case was based on the post-mortem evidence, on the admitted fact that the deceased had received his injuries while in the custody of the defendants, and on the lying testimony they had given at the inquest. However, at an early stage in the trial the Chief Justice ruled that the defendants' testimony on oath at the inquest would not be admitted at the trial.

This was ruled on the grounds that the police officers had not been warned before giving evidence at the inquest that their statements might be used in evidence against them subsequently. This ruling seems very artificial considering that the defendants were experienced police officers, were represented by counsel at the inquest and were told that they could refuse to give evidence. The ruling was, however, also applied to their cross-examination at the trial. There is no legal basis for this, as it is perfectly proper to cross-examine a de-

fendant concerning any contradictory statement made by him previously, whether or not he has received any warning. The effect of the judge's ruling was to throw a mantle of protection over the defendants, and to undermine the prosecution case.

The defendants then gave evidence which differed materially from the evidence they had given at the inquest, and the Judge concluded that the prosecution had failed to substantiate their case beyond reasonable doubt. The two police officers were acquitted and returned to active service.

This is the second case in which police officers have been charged following a death in custody. The first was a trial following the death of Joseph Mdluli in 1975, and there also the police officers were acquitted.

Shortly after Muofhe's death four Lutheran church pastors were arrested by the Venda security police. One, the Rev. A.M. Mahamba, was detained without charge for several months and then released. Two others, Rev. Ndanganeni Phaswana and Rev. Mbulaheni Phosiwa, were held incommunicado till early in 1982 and then charged together with another prisoner, John Revele, with murder and attempted murder in the Sibasa police station bomb attack. When brought before a magistrate's court on remand in February 1982 they both alleged that they had been tortured by the security police, one of them by electric shocks, and pointed out the injuries to their bodies. When brought to trial in June 1982 all charges against Rev. Phaswana were withdrawn and he was released. The murder charges and Terrorism Act charges against Rev. Phosiwa were withdrawn and he pleaded guilty to a lesser charge, not related to the attack on the police station, after being assured that he would not be sent to prison. He received a suspended sentence of two years imprisonment and was released.

Meanwhile, the fourth Lutheran pastor, the effective head of the church in Venda, Dean T.S. Farisani, who was arrested in November 1981, was kept in detention until the trial of the Rev. Phaswana and Phosiwa. On the collapse of that case he was released. He visited Europe and North America at the end of 1982 and gave an account of his treatment in detention.

From 1973 to 1975 the Rev. Farisani was President of the Black Peoples Convention, which founded the Black Consciousness Movement. He was detained for 3 months in 1977 for peaching that *apartheid* "is the policy of the devil", and was tortured at that time. Arrested again in November 1981, the security police sought to make him confess to participating in the police station bombing. He told them this was nonsense as he was attending a church council in Johannesburg at the time. In an attempt to intimidate him, the police produced an alleged "black terrorist" who alleged that Farisani was with him during the attack. The interrogators told him to write to his wife and church to say he had fled to Mozambique "because we want to murder you... You have to die. We can no longer tolerate you, but we have to exonerate ourselves". He refused to write the letter.

His physical torture began in January 1982. He described it as follows: "They made me lie on my back, raise my legs and they kicked me in my private parts. They banged my head against the wall, pulled off my hair and my beard, karate chops, judo kicks, all the combinations. I lost consciousness many times. There was blood all over and in the evening, when I regained consciousness, they asked me to scrub the blood on the floor and to use the same cloth to wipe the blood off my body. I was swollen. My head was swollen, and I was breathing through the ears because my eardrums were punctured. I had holes in my knees I could put my fingers in. They took

me to a more sophisticated torture station at Sibasa and told me that no man comes into this torture room and goes out alive unless he says and does what we want. Then they undressed me, covered my head in a canvas bag, poured water on the floor and over my head and connected an electric wire to my earlobes and to the back of my head. They poured a glue-like substance down my spinal chord and they set the electric current on. I fell into the water. It was terrible."

The torture lasted from 6.30 a.m. until the afternoon. Whenever Farisani said he would scream, the police would say "Hallelujah! Hallelujah! Praise the Lord!" Then the police told him: "Dean, you are a man of God. Call to your God. He is going to help you." "It was horrible," said Farisani. Farisani said he wanted to die. He finally wrote what they wanted. "I could not afford to be brave. I tried but failed. I was defeated. But I said, 'Okay, the next magistrate that will visit me I will tell him I have been tortured and forced to write a lot of nonsense', and he did so. As a result of the electric shocks he had a heart attack and was removed to hospital. A military doctor refused to treat him saying that he was dying and if he treated him he would have to answer many questions in court. Rev. Farisani was then driven 120 km to another hospital. Some days later he was taken back to his cell where he had another heart attack. He was then taken again to hospital where he remained until his release in June 1982.

During a visit to the Geneva Centre of the Lutheran World Federation on 31 January 1983, Dean Farisani explained the present situation in South Africa in these terms.

"I've met many people in Europe and perhaps there are also groups here that believe that apartheid is changing for the bet-

ter and I think this is because of lack of information about the dogma and doctrine of apartheid. If by apartheid people understand that blacks and whites don't play football together, or that they can't stay in the same hotel, then I think this is a wrong understanding of apartheid altogether. The dogma of apartheid has not changed. In actual fact I think P.W. Botha rather than being a revolutionary in the Afrikaans camp bringing about changes which his predecessors could not bring about, has only made apartheid more sophisticated and in this way has confused many people in the Western world. If we take into account that in the past few years more than five million people have been deprived of their South African citizenship, this will not give a picture that apartheid is changing, but that apartheid is going to its logical conclusion. I think you all know the statement by the Honorable Minister of Internal Affairs when he said, "we are looking forward that in the near future there will not be a single black citizen within what is called white South Africa." This to me does not make apartheid better; in the 1980's it makes it even worse. And with the latest improvisation of a new apartheid philosophy that pretends to bring the coloureds in and the Indians in, many more people are again being confused by this thing which in actual fact, as far as I see it, should be clear to all intents and purposes, that apartheid is becoming more devilish and more sophisticated. Instead of the white community standing over and against the black community, they are now trying to bring the coloured people into the game, to bring the Indian people into the game, further pushing away the aborigines of the country into the holy 13% of apartheid's land division. And it's a pity that many people think this is something good about Botha. People say coloureds and Indians are being brought into parliament and this is progress. One cabinet

minister even said in Britain, "let us give him a chance and see where his policies are leading to." I don't know where we are heading. Now in this part of South Africa called Vendlanland, we have had very, very difficult experiences in the past and I would already at this stage appeal to you to understand this riddle.

At the very beginning, I have to say Vendlanland and South Africa are to all practical purposes still one country, but for all political propaganda purposes they are two countries. In 1978 an election was conducted on the basis of whether the Venda people wanted independence or not. It is on record that over 80% of the people voted against the ruling party and against independence and the members of parliament of the opposition party who won the election were detained. When they were in detention the governing party had a session to elect a president and in this way he won the vote and became the president of Vendlanland and the Commissioner General. A white man from South Africa, I remember announced on the radio that P. Mphophuitwa has been elected the president of Venda and Venda has become a good example to the whole of Africa. People were appointed into the cabinet; until today they are cabinet ministers. Candidates who performed hopelessly in some instances getting only getting 2% of the vote are today members of parliament through fraud.

So the government we have as of now in Vendlanland, per se, has not been elected by the people. To put it in clearer terms, they have been rejected by the people and they must be very grateful to Pretoria that they are still in power. And the majority of the enlightened people who rejected the ruling party in Vendlanland are members of the Lutheran Church. I think this makes it clear how church and politics are involved in Vendlanland. Since 1978, because of this terrible oppression and intimidation, many

people in the opposition party, for safety's sake, after being detained twice or so, just

decided to cross the floor and join the ruling party. Only a few do remain."

Upper Volta

Upper Volta and Trade Union Rights

The situation concerning trade union rights in Upper Volta has deteriorated during recent years in a disturbing manner, notwithstanding that this country was considered a model in respect of labour rights. Until recently there was no restriction on the right to form unions, as was clearly shown by the existence of four separate trade union confederations. The right to strike was strictly respected, even for civil servants. No repression was practiced against workers who fully exercised their trade union rights, and the trade union officials carried out their duties without fear of persecution. This was all the more remarkable considering that it existed under the military government of Mr. Lamizana, which, in spite of having suspended the parliament in February 1974, continued to respect the rights of workers, to a greater extent than any other African country.

It was only after the overthrow of President Aboubakar Sangoulé Lamizana on 25 November 1980 that the situation began to deteriorate. The first measures of the Military Committee of Reform for National Progress formed around Colonel Saye Berbo were the suspension of the Constitution and of political parties, the dissolution of parliament and the prohibition of all political activity. (This constitution, which provided for a return to a democratic civilian régime, had been approved by an over-

whelming majority in a referendum in November 1977.) By the same decree, the Military Committee stated that Upper Volta would respect all its international obligations, while specifying that no interference in the internal or external affairs of the State would be tolerated.

Seeking to justify his *coup d'état*, Colonel Zerbo let it be understood that "the disintegration of institutions and authority... had tarnished the image of the State both on the internal and the external level". He referred in particular to the teachers' strike that began on 1 October 1980 and was said to have led to serious social and industrial disturbances during the first fortnight of November. It is true that on 4 and 5 November 1980, a general strike had been observed by the four principal trade union confederations of the country, but on 22 November the teachers' union announced the suspension of the strike after the government had agreed to meet their wage demands. It appears that there was no longer any danger of disturbance.

On 26 November 1980, the day following the *coup d'état*, the President of the Military Committee undertook in a proclamation to respect trade union rights, considering the unions as privileged social partners within the framework of the national reconstruction. Nevertheless, under the pretext of safeguarding the superior inter-

ests of the nation, the government issued an order on 1 November 1981 (No. 81/0041/CMRPN/PRES) which suppressed the right to strike. For protesting against this order, the Trade Union Confederation of Volta (CSV) was dissolved by an administrative order.

The situation went from bad to worse, in spite of the repeal of the former order and its replacement by another regulating the exercise of the right to strike (order No. 82/003/CMRPN/PRES of 14 January 1982).

As a member of the ILO since 1960, Upper Volta has ratified, among others, Convention No. 87 on Freedom of Association and Protection of the Right to Organise, as well as Convention No. 98 on the Right to Organise and to Bargain Collectively. By complaints dated 27 and 29 April and 13 May 1982, the situation was referred to the ILO Committee on Freedom of Association by the World Federation of Labour, the International Union of Postal, Telegraph and Telephone Employees and the Trade Union Confederation of Upper Volta. These different trade union organisations complained primarily that the government of Upper Volta had dissolved the CSV by administrative means and had arrested its Secretary-General, Mr. Soumane Touré. They also complained of the dismissal and institution of legal proceedings against 154 trade unionists for having participated in a three-day protest strike in April 1982 against a law which they considered too restrictive with regard to the exercise of the right to strike.

In reply to these allegations, the government indicated that certain trade unionists had attempted to plunge the country in a serious crisis by distributing their leaflets everywhere, by attacking violently the régime in the course of trade union meetings and by calling for a general mobilisation of strikes of unlimited duration. In order to

remedy this situation, it had been obliged, for reasons of State, to take various measures to improve the economic situation, including the suppression of the right to strike. Moreover, this measure had been repealed and replaced by an order regulating the exercise of the right to strike. According to the government, on the pretext of denouncing this order, the trade unionists had called for wild-cat strikes in flagrant violation of the laws in force. This strike call had been acted upon by certain employees in the public sector, in particular employees of the post office and telecommunications. The government confirmed that the persons concerned had been suspended for illegal striking, in accordance with the order of 14 January 1982. As to the allegations concerning the dismissal of and legal proceedings against 154 workers, the government merely stated that these measures had been taken in full conformity with the provisions of the order of 14 January 1982.

In the course of the 221st session meeting in Geneva on 16 to 19 November 1982, the Committee on Freedom of Association examined the complaints brought against the government of Upper Volta and its replies. The Committee came to the following provisional conclusions. It noted with concern that the CSV had been dissolved by administrative order, in violation of Article 4 of Convention No. 87; recalled that the arrest of trade unionists for the simple fact of having exercised their trade union rights was contrary to the provisions of trade union freedom; recalled that, apart from the dismissals, the persons concerned had received terms of imprisonment, and that the imposition of severe sanctions for taking strike action could only prejudice the development of good labour relations; and invited the government to amend its restrictive legislation on strikes to bring it into conformity with the principles of trade

union freedom.

These conclusions were arrived at one week after the overthrow of Colonel Saye Zerbo. In a letter which reached the ILO on 21 January 1983, the Minister of Labour of the present régime declared that the advent of the Council of Salvation of the People (CSP) on 7 November 1982 had opened up new prospects with respect to trade union rights. Thus, on 23 December 1982, the decree dissolving the trade union confederation had been repealed by the CSP. Moreover, all the workers affected by the arbitrary and repressive measures under the preceding government had been rehabilitated by the decree of 7 November 1982, and Mr. Soumane Touré, Secretary-General of the CSV, had been freed on 8 November. As to the 154 strikers who had been prosecuted, apart from benefitting from reinstatement, they had a right of appeal.

At its 222nd session meeting in Geneva on 1 to 4 March 1983, the Committee on Freedom of Association noted with satisfaction the information communicated by the present government on the improvement of the trade union situation. With regard to the assurances given by the government concerning the proposed amendments to the Order of 14 January 1982, the Committee expressed the firm hope that the amendments in question would bring the legislation into conformity with the principles of trade union freedom.

If it is evident that the trade union situation in Upper Volta is far from being the worst in Africa, it is nevertheless regrettable that trade union freedom received a serious setback under the régime of Saye Zerbo. It is to be hoped that the present government will restore Upper Volta to its former position in the field of trade union rights.

Zimbabwe

For over one year very disturbing reports have come from a variety of sources in Zimbabwe of grave violations of human rights. This is so, notwithstanding that the country is still operating under its democratic independence constitution, with a multi-party parliamentary democracy, where basic freedoms are guaranteed by law and enforced by an independent and impressive judiciary*.

Unfortunately the emergency laws of

the previous illegal regime are still in force, including the power to use administrative or preventive detention. It is alleged that the justification for this is the failure to lay down their arms on the part of some former members of ZIPRA, the military liberation movement of ZANU, Joshua Nkomo's party which draws most of its support from the Ndebele people in Matabeleland. Most of the former ZAPU soldiers were integrated into the new national army, but others

* In August 1982 the Prime Minister, Robert Mugabe, stated in an interview that the government wanted to introduce one-party rule during the life of the next parliament, following the elections due in 1985. He indicated, however, that this would not be done unless there was a general consensus in favour of it.

refused to be and maintained caches of arms and used them at times for attacks against white farmers and for terrorising the local population.

Most of the allegations made against the government arise out of its reaction, and at times clearly excessive reaction, to this military threat and to serious violations of law and order, which included the kidnapping of foreign tourists, an extremely damaging sabotage attack on an air force base and widespread killings and robberies. The following is a brief summary of the principal incidents and developments.

In February 1982, following the discovery of a cache of arms on a farm belonging to a member of ZANU, Mr Joshua Nkomo was dismissed from the coalition government. This was followed by the desertion from the army of nearly 1,000 former ZIPRA guerrillas, many of whom terrorised large parts of Matabeleland in armed bands. It should be stated, however, that this violence was denounced by Mr Nkomo, and other members of his party remained in the government.

In March 1982 two former commanders of the ZIPRA army, Lookout Masuku and Dumiso Dabengwa were arrested and detained. They were not allowed to see any lawyers until the Supreme Court ruled in an important decision in June that the constitutional right of persons in custody to visits by their lawyers applied equally to persons held in administrative detention.

On 22 April 1982 a 21 year old army officer, Lieutenant-Colonel Mhlanga, died in custody. He had deserted from his unit and was being detained as a suspected dissident in Chikurubi maximum security prison. He died of a brain haemorrhage and it has been alleged that his body showed signs of physical assault.

In July 1982 a remarkable order was made by the Minister of Justice under Emergency Powers Regulations forbidding

publication of the judgment in a civil action brought by a white opposition member of parliament, Mr Wally Stutsford, against members of the security service for assaulting and torturing him. He had been arrested in December 1981 on suspicion of plotting to overthrow the government and was later released without any charge being brought against him. In consequence of the Minister's order the judgment was given in camera, and the public was left to draw its own conclusions about the findings of the court.

When challenged in Parliament the Minister of Justice explained that the "interests of security are paramount". It may be asked what security interests were at stake. If the allegations were well-founded it was surely in the national interest that this should at least be made public. Unfortunately such offenders are not able to be brought to justice as retrospective legislation has been passed indemnifying the security forces from prosecution in cases where they believed their action was warranted in preserving state security. It is more than regrettable that a democratic country should follow the example of the worst military dictatorships, such as that in Chile, by granting amnesties of this kind. Nothing is more calculated to lead to the systematic practice of torture by interrogators than the knowledge that if they do so they will be protected from punishment or publicity. As the security forces are answerable directly to the Prime Minister, ministerial responsibility in this matter lies with him and not the Minister of the Interior, who is responsible for the police, or the Minister of Justice, whose responsibility is the administration of justice.

On 25 July 1982 a raid was made on the Thornhill air base near Gweru. A series of explosions destroyed 13 air force planes, including four Hawk fighters costing ten million dollars each which had been deliv-

ered only the week before. The next day ten foreign tourists were kidnapped between Bulawayo and Victoria Falls. After four were released, their captors threatened to kill the other six if a number of political prisoners including Lookout Masuku and Dumiso Dabengwa, were not released. Nkomo called for the release of the tourists, which was later secured.

Within the next few days eleven people were arrested on suspicion of implication in the raid on the air base, including Air Vice Marshall Hugh Slatter, Air Commodore Philip Pike, Wing Commander Peter Briscoe and three other whites from the air base. They were denied access to their lawyers until they appeared at the magistrates court. The lawyers acting for them made a public statement on 20 September that the three above named officers had been tortured before signing statements on the sabotage operation at their air base. The lawyers refused to give details but information was given by someone else to the press, supported by a medical report, alleging that they were hooded and tortured over several days by electric shocks. They were subsequently charged with treason and were due to be brought to trial at the time of writing. Their lawyers were arrested on 11 December 1982. On 14 February 1983 they were charged with contempt of court for their statements to the press alleging torture.

On 2 August 1982 the Chief Justice of Zimbabwe, Mr John Fieldsend, had an hour's meeting with the Prime Minister to discuss the matter of the arrest and subsequent re-arrest of two young farmers, Noel and Alan York, in spite of orders of the Supreme Court for their release. They had been acquitted in January 1982 on charges of illegal possession of arms. Their subsequent arrest and re-arrest had been ordered by the Home Affairs Minister, Herbert Ushewokunze. In the face of the expected

resignation of several judges, the Prime Minister ordered the farmers' release.

In spite of this, when two former white intelligence officers were acquitted in February 1983, of charges of spying for South Africa and illegal possession of arms, they were promptly re-arrested and detained under preventive detention as "enemies of the state", according to the Minister of State for Security, Mr Emmerson Manangagwa, who said they would be released only when they no longer represented a grave security risk.

Equally when Lookout Masuku and Dumiso Dabengwa and their five co-defendants were brought to trial in February, March and April 1983 on charges of treason and illegal possession of arms, one, Dumiso Dabengwa, was found guilty on the arms charge and sentenced to three years imprisonment. The other six, who were acquitted on all charges and released, were promptly re-arrested under the preventive detention laws. An official commented that the convicted defendant might well be released from custody before those who had been acquitted.

In commenting upon the case the Minister of Home Affairs, Mr Ushewokunze is reported to have said that the white judge, Judge Hilary Squires, and some of his colleagues on the bench were rooted in the glories of pre-independence, white ruled Rhodesia, and could "mildly be accused of being legally offensive to the core and of using double standards". The ICJ observer, Mr Julius Sakala, a Zambian barrister and a Vice-President of the Inter-African Union of Lawyers, considered that the trial had been conducted very properly by the judge.

On 22 March 1983 the Minister for Home Affairs also criticised a decision of the Supreme Court in reversing a conviction under the Precious Stones Trade Act, a decision which had led to press criticism

of the police. In a lengthy public statement the Minister said

"The Supreme Court failed to take account of the relevant law in this matter. My officers have discussed the matter with the acting Chief Justice and he admits that he and his brothers and the two advocates were not aware of RGN 798A of 1965 where by "the finance, commerce and industry of Rhodesia" were declared to be an essential service.

However, the acting Chief Justice is not prepared to make a public statement on the matter and adopts the attitude that the judgment reflects the law. Moreover, the acting Chief Justice has indicated that he considers RGN 798A to be ultra vires the Emergency Powers Act.

To put the matter bluntly, even though the Supreme Court has given a judgment without proper consideration of the law, the judges are not prepared publicly to admit the mistake and thus correct the adverse publicity afforded the police force.

Put another way, the judges are saying "... it does not matter if the public are told that the police force is acting outside the law when they are within the law, but it does matter that the public should not be told that the Supreme Court judges do not know the law..." Frankly, I am disgusted with this attitude..."

The Minister's wish to defend his police officers is commendable, but his comments beg the question whether the Regulation 798A was, as the Acting Chief Justice maintains, ultra vires the Act. It is also surprising that the Ministry of Home Affairs had not, through the counsel for the prosecution, brought the regulation to the attention of the Court on the hearing of the ap-

peal. Perhaps the most unfortunate aspect of the Minister's statement is his failure to appreciate the damage done to the administration of justice by such an outburst on the part of a senior Minister. There are other ways in which he could have taken the matter up.

These cases took place against a background of a continuing deterioration in the respect for human rights. Apart from the kidnapping of tourists and the raid on the air force base, some 100 people had been killed and numerous robberies had been committed by armed marauders in 1982. The government determined to round up these bands, composed mostly of the former ZAPU deserters operating in Matabeleland. In January 1983 the Fifth Brigade, trained in South Korea, began these operations. Soon afterwards reports from rural missions, schools and hospitals indicated that over 1,000 people, mostly unarmed civilians, were killed and many more tortured and beaten by the army in January and February. A correspondent of *Newsweek* was ordered to leave the country on 19 February for reporting that the Shona speaking Fifth Brigade had killed 500 people in the first three weeks, deepening the tribal animosities between them and the Ndebele population. Eye-witnesses and survivors gave accounts of families being forced into burning huts and shot if they tried to escape, of women being beaten and stabbed in the private parts, and school teachers being beaten and shot dead in front of their students.

The government blamed the killings on ZAPU supporters in Matabeleland, but victims and witnesses of incidents often said they could identify Fifth Brigade troops because of their red berets and the fact that few could speak Ndebele. Fearing that he was about to be arrested, Mr Nkomo fled the country. Mr Bruce Longhurst, a well-known lawyer, who had been acting

for Mr Nkomo, was held for questioning for four days following Mr Nkomo's flight.

At least five independent reports by church groups and relief workers were sent to the government detailing the killings, rapes and beatings by the 5,000-man Fifth Brigade. Bishop Desmond Tutu, General Secretary of the South African Council of Churches, urged Mr Robert Mugabe on 22 March to appoint a judicial commission to inquire into the allegations. On 26 March the Catholic Commission for Justice and Peace, which had fearlessly described and denounced human rights violations under the previous regime, said it was clear that human rights in the affected areas were "being severely violated and that men, women and children are being killed and injured without just cause". The Zimbabwe Bishops Conference stated on 26 March that they were "convinced by uncontroversial evidence that many wanton atrocities

and brutalities have been and still are being perpetrated".

Notwithstanding that on 5 April 1983 the Prime Minister, Mr Robert Mugabe, publicly attacked churchmen and non-governmental organisations for their allegations of military brutality in Matabeleland and pledged more vigorous action against the rebels, it is believed that he gave orders for the atrocities to cease. Since then the reports of atrocities have decreased considerably though continuing sporadically.

In conclusion, it may be said that while it is an undeniable fact that the newly independent Zimbabwe is facing a serious security situation, it is to be hoped that the government will not fall into the error of thinking that such situations can be effectively brought under control by brutality by the security forces and by undermining the rule of law and respect for an independent judiciary.

COMMENTARIES

UN Commission on Human Rights

This year's session, the 39th, welcomed Mr. Kurt Herndl, successor to Mr. Theo Van Boven, as Director of the (re-named) Centre for Human Rights. In addressing the Commission on the first day, Mr. Herndl undertook to do all he could to continue the tradition of dedicated commitment set by his predecessors. He renewed Mr. Van Boven's suggestion for regional officers to promote human rights and to cooperate with various UN agencies in promoting knowledge and observance of the Covenants.

Occupied Arab Territories and the Right to Self-Determination

These two agenda items were discussed first. Speakers recalled the Lebanon war and the massacres at Sabra and Shatila. The Secretary-General of the International Commission of Jurists invited the Israeli delegate to clarify the legal basis for the presence of its forces in Lebanon. Of the three resolutions concerning Israel, two under the item "Occupied Arab Territories" were similar to last year's resolutions. The third, under the item "Right to Self-Determination", expressed grave concern that no just solution to the problem of Palestine had been achieved and that this problem therefore continued to aggravate the Middle East conflict, as had been tragically illustrated by the Israeli invasion of Lebanon. The resolution further condemned "in the strongest terms the large-scale massacre

of Palestinian civilians in the Sabra and Shatila refugee camps for which the responsibility of the Israeli government had been established", and declared that the massacre was "an act of genocide".

In addition to the resolution condemning Israel, there were resolutions concerning Kampuchea, Afghanistan, the Western Sahara, Namibia and East Timor under the item of the right to self-determination.

South Africa and Apartheid

The Commission passed several resolutions relating to human rights in South Africa, Namibia, the Convention on the Crime of Apartheid and Racism and Racial Discrimination. One of these expressed indignation at the scale and variety of human rights violations in South Africa, in particular the alarming increase in the number of death sentences passed and executed, the torture of political activists during interrogation, and the ill-treatment and deaths of detainees in custody.

Economic, Social and Cultural Rights

On this subject, the Commission decided to add a new sub-topic on the Right of Popular Participation. The mandate of the Working Group of Governmental Experts on the Right to Development was renewed. In the debate on the right to development,

the Secretary-General of the ICJ summarised the Conclusions and Recommendations of the ICJ seminar on "Rural Development and Human Rights in South Asia". He urged that they showed the vital importance of including in the formulation of the right to development a clear statement that, at the national level, the right included the right of individuals and communities, in particular the right of the poor, to organise themselves in order to protect and further their interests. It was not sufficient for the poor to participate in formulating development policies; they must also participate meaningfully in the application and monitoring of those policies. To do so, they must have access to all relevant information. Such points were crucial and should find their place in the formulation of the right to development.

The resolution on the right of popular participation considered participation an important factor not only in the development process but also in the realisation of the full range of human rights, civil and political as well as economic, social and cultural. The resolution requests the UN Secretary-General to undertake a comprehensive analytical study on "the right to popular participation in its various forms as an important factor in the full realisation of all human rights".

On the Status of the Covenants the Commission considered a proposal to establish a Protocol to the Covenant on Civil and Political Rights concerning the abolition of the death penalty but reached no decision upon it. This year's resolution on this item stressed in particular the obligations of a State party availing itself of the right of derogation from the provisions of the Covenant on Civil and Political Rights in a time of public emergency to inform the other States parties immediately of the

provisions from which it has derogated and of the reasons by which it was actuated.

Missing and Disappeared Persons

The report of the Working Group on Disappearances¹, showed that the group has received reports of some 2,340 disappearances since last year, of which 1,733 were transmitted to the Governments of 11 countries. Of these, 400 were transmitted on the authority of the Chairman as requiring immediate action. The report states that immediate transmission proved helpful in a number of cases, but the older cases continue to create difficulties. There is no lack of dialogue but there is a lack of results. The Group has not yet made any specific findings on particular cases, but this year has commented that disappearances are made possible by failure to respect and observe the Rule of Law. The Group recommended that where disappearances occur the Commission should "encourage such enquiries as have been set up by some governments to solve specific cases which have occurred and commend and support any reorganisation of domestic procedures, such as has been devised by other governments which enable rapid response to be provided to any citizen's allegation that a disappearance has taken place".

A separate resolution was passed concerning detainees held by Israel as a result of the invasion of Lebanon by Israel. It called upon all parties to the conflict to secure for the International Committee of the Red Cross all available information on missing and disappeared persons in the wake of the invasion. The Commission decided to postpone to the 40th session consideration of the Sub-Commission's draft resolution requesting the General Assembly to invite

1) E/CN.4/1983/14.

the International Law Commission to take into account involuntary disappearances when elaborating the draft code of offences against the peace and security of mankind.

The Sub-Commission

At its meeting in 1982, the Sub-Commission had discussed some far-reaching proposals, including proposals to change its status and name. During the debate on the Report of the Sub-Commission² most speakers emphasized that the Sub-Commission was a subsidiary body of the Commission and the idea that it might become a parallel body to the Commission reporting directly to the ECOSOC received no support. One member (United Kingdom) hoped that the Sub-Commission would not spend any more of its scarce time on the rather academic question of nomenclature. According to him, its independent expert character was more important than its title or formal position in the hierarchy of the United Nations. The Sub-Commission should not search for new parents while its real parents were alive. Supporting this position, another member (USSR) said that the ECOSOC had not expressed any interest in adopting such a capricious and strong-willed child. Another member (Brazil) was of the opinion that the Sub-Commission took decisions too hastily. There was need for it to be kept informed of the views expressed in the Commission concerning its work, he said. He suggested that the Chairman of the Sub-Commission or his designate be invited to attend the Commission's sessions on a regular basis. A resolution adopted without vote on the subject of the Sub-Commission's status stated that it is inappropriate for the Sub-Commission to take decisions affecting its status, rôle

and competence. The resolution invited the Sub-Commission to consider and make recommendations to the Commission as to how the work of the two bodies might best be harmonized within existing terms of reference. The Sub-Commission was invited to be present through its Chairman or another designated member at the consideration of its report during the 40th session of the Commission.

The Commission approved without a vote a Sub-Commission resolution on the establishment of a voluntary fund to enable representatives of indigenous populations to participate in the work of the Working Group on Indigenous Populations. It also adopted by consensus Sub-Commission resolutions to update the study on the question of the prevention and punishment of the crime of genocide, to publicize widely the report on slavery, and on the status of the individual in contemporary international law. The Commission postponed a decision on the Sub-Commission's proposal to arrange for one or more members of the Sub-Commission to visit any country on which the Commission receives reliably attested allegations of a gross and consistent pattern of violations. It sent back to the Sub-Commission for further review a Sub-Commission resolution concerning the effects of gross violations of human rights on international peace and security.

In a separate resolution, the Commission recommended to ECOSOC that when a member of the Sub-Commission is elected another expert of the same nationality should be elected simultaneously as his alternate. This will help to reinforce the independent and expert character of the Sub-Commission.

The proposed terms of reference for a High Commissioner for Human Rights submitted by the Sub-Commission (cf. ICJ

2) E/CN.4/Sub.2/1982/43.

Review No. 29, p. 19) was discussed at length. The view was widely expressed that the Sub-Commission should seek to formulate proposals which would receive consensus support, with some members stressing that consensus should not act as a veto on proposals having wide support. There was also an objection in particular by representatives of socialist countries to the High Commissioner being able to adjudicate on matters in dispute. In its resolution the Commission invited the Sub-Commission to reconsider and resubmit its proposals in the light of comments made in the debate.

Chile

The resolution on Chile reiterated the Commission's grave concern at the persistence of serious and systematic violations of human rights. Particular concern was expressed at the disruption of the traditional democratic legal order and its institutions and the institutionalization of the state of emergency. The Commission called upon the Chilean authorities to respect the right of Chileans to live in their country, to enter and leave it freely without restriction or subjugation to any condition and to put an end to the practice of 'relegation' (confinement with forced residence) and of forced exile of persons engaged in the defence of human rights.

Gross Violations

On this item, 26 written statements were submitted and 25 oral statements were made by NGO representatives.

The Chairman announced before the public discussion on gross violations that situations relating to Afghanistan, Argen-

tina, German Democratic Republic, Haiti, Indonesia (in relation to East Timor), Paraguay, Turkey and Uruguay were under consideration under the confidential procedure of ECOSOC resolution 1503. This practice of announcing the names of the countries under consideration started in 1978. Paraguay and Uruguay have been under consideration continuously since at least 1978. Indonesia was considered between 1978 and 1981 and has now reappeared for consideration with regard to East Timor. Argentina has been under consideration since 1980; Afghanistan, German Democratic Republic and Haiti since 1981. Turkey is the only new case.

Such a prolonged, confidential dialogue with governments concerned does not appear to be in accordance with ECOSOC resolution 1503 which requires the Commission to determine whether the situation requires thorough study or an investigation by an ad hoc committee. In practice, governments which offer to cooperate with the Commission avoid condemnation in a comprehensive report even though they continue to violate human rights. In the view of many, the present practice under the confidential procedure operates to protect rather than to expose countries responsible for systematic and gross violations of human rights.

Bolivia

In his report to the Commission³, the Special Envoy, Dr. Hector Gros Espiell concluded that the situation of human rights in Bolivia has improved notably. The Commission accordingly decided to conclude the consideration of Bolivia, noting with satisfaction the determination of the Constitutional Government of Bolivia to take the

3) E/CN.4/1983/22.

necessary measures to ensure a thorough investigation of all past violations of human rights with a view to establishing responsibility through due process of law.

Poland

On the basis of the request made last year by the Commission, the Secretary-General had entrusted Under-Secretary-General, Mr. Hugo Gobbi, to study the human rights situation in Poland. In his report⁴ Mr. Gobbi stated that since he was not able to make an on-the-spot study of the situation, his report was limited to an analysis of the application of relevant international instruments ratified by Poland. He concluded that a number of positive steps had been taken by the government of Poland, such as the adoption of special regulations during the period of suspension of martial law that eliminated most of the 'rigours of life' under martial law. He hoped that further measures for normalisation would be taken in order to satisfy the requirements established by international instruments ratified by Poland.

In reaction to the report, the Polish Commission member protested that last year's resolution of the Commission on Poland was illegal and an interference in the domestic affairs of Poland. According to him the four essential criteria needed for the Commission to consider human rights questions concerning Member States do not exist in the case of Poland; the four criteria he listed were:

- that a given situation represents "a gross, mass and flagrant violation of human rights and fundamental freedoms",
- that such a situation represents "a consistent pattern" of the violations con-

cerned,

- that the situation "endangers international peace and security", and
- that consideration of a situation concerned be "without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international Covenants and Conventions on the protection of human rights and fundamental freedoms".

Interesting though the argument of the Polish representative was, it cannot be fully supported. As pointed out by another Commission member (the Netherlands), the legislative basis of the Commission's competence to study a particular situation was set forth in ECOSOC resolution 1235. This authorises the Commission "to make a thorough study of situations revealing a consistent pattern of violations of human rights". It was entirely up to the Commission to decide when a situation required such a thorough study, he said, and if the Commission decided to commence such a study it could never be said to act "ultra vires" or illegally to interfere in the internal affairs of a state.

Before the voting on the Polish resolution, Mozambique and Nicaragua both moved motions to defer consideration of the resolution until next year. Both motions were defeated. The resolution, which was adopted by 19 votes to 14 with 10 abstentions, deplored the attitude of the Polish authorities in not cooperating with the Commission. It also called upon the Polish authorities to realise fully and without further delay their stated intention to terminate restrictive measures imposed on the exercise of human rights. The Commission requested the Secretary-General or a

4) E/CN.4/1983/18.

person designated by him to up-date and complete the 'thorough study' of the human rights situation in Poland.

Iran

The Commission expressed its profound concern at the continuing grave violations of human rights as reflected in the report of the Secretary-General⁵. Of particular concern was evidence of summary and arbitrary executions, torture, detention without trial, religious intolerance and persecution, and the lack of an independent judiciary and other recognised safeguards for a fair trial. It requested the Secretary-General or his representative to continue direct contacts with the Government of Iran and to submit a report to the next session.

El Salvador

After examining the report of its Special Representative, Mr. Jose A. Pastor Ridruejo⁶, the Commission expressed its "deepest concern" that human rights violations "of the most serious nature" continued in El Salvador. It voiced alarm at recent reports of bombings and indiscriminate rocket attacks on urban areas in El Salvador, which are not military targets. It regretted that the Government had not responded to suggestions to initiate, through available channels, contacts to negotiate peaceful settlement with all representative political forces in that country and to seek an end to all acts of violence in order to end the loss of lives and suffering of the people of El Salvador. The mandate of the Special Representative was extended for another year.

5) E/CN.4/1983/19.

6) E/CN.4/1983/20.

Guatemala

The Commission expressed its disappointment that a Special Rapporteur of the Commission has not been in a position to make a thorough study of the human rights situation in Guatemala. It reiterated profound concern at the continuing reports of massive violations of human rights. Violence against non-combatants, wide-spread repression, killing and massive displacement of rural and indigenous people were especially deplored. The Chairman of the Commission was asked to appoint as soon as possible a Special Rapporteur to make a thorough study of the human rights situation in Guatemala. Later, the Chairman of the Commission announced the appointment of Viscount Colville of Culross (United Kingdom) as Special Rapporteur on Guatemala. The appointment, he said, had been acceptable both to Viscount Colville and the government of Guatemala.

Advisory Services

Under this item, resolutions concerning Uganda and Equatorial Guinea were passed. In relation to Uganda, the Commission requested the Secretary-General to continue his contacts with the government in order to provide appropriate assistance so that the government of Uganda could take measures to guarantee the continued enjoyment of human rights.

Regarding Equatorial Guinea, the ICJ had submitted a statement (E/CN.4/1983/NGO/4) pointing out that the new Constitution had been drafted by a Commission designated by a Supreme Military Council without any participation by representatives of the people or of political, trade

union, social or community based organisations, contrary to the recommendations of the Special Rapporteur. After analysing the provisions of the constitution, the statement concluded that they 'lend weight to the claim of the opposition that the true aims of the government are to keep themselves in power indefinitely and to institutionalise a system which gives them full control over the political life of the nation'. The Commission encouraged the government to cooperate in implementing the plan of action prepared by the Secretary-General, at the request of the government, and decided to reconsider the matter at its next session.

Human Rights and Mass Exoduses

Presenting his report to the Commission⁷, the Special Rapporteur, Prince Sadruddin Aga Khan, said "we are only beginning to realise the full scope of the phenomenon of mass exodus, the roots of which lie in a multiplicity of economic, political, social and other related factors. During the last decade, we have witnessed population movement of unprecedented levels... whether those affected by such displacements are called refugees, displaced persons, economic migrants or expellees does not change the basic fact that large-scale human suffering may be involved".

The resolution on this subject acknowledged that the recommendations in the Rapporteur's study could 'possibly contribute' to the prevention of further mass movements of populations and to the mitigation of their consequences. It invited the Secretary-General to propose, on the basis of his consideration of the recommendations of the Special Rapporteur, effective

international cooperative arrangements to address and alleviate those root causes of mass movements of populations related to violations or suppression of human rights.

Summary and Arbitrary Executions

Subsequent to the decision taken by the Commission last year, Mr. Amos Wako, a Kenyan lawyer, was appointed Special Rapporteur on summary and arbitrary executions. In his first report to the Commission⁸ he stated that at least two million people had been arbitrarily executed in 37 countries over the past 15 years. In his conclusion, he stated:

- "Summary or arbitrary executions have occurred in all social, economic and ideological systems in nearly all parts of the globe. All classes of people, rich and poor, peasants, urban workers, professional classes, religious groups and ethnic minorities and majorities, have been affected... A factor common to all these victims is that they were in opposition or were perceived or imagined to have been in opposition either to those who wielded political or economic power in the state or government or were perceived to be in opposition to certain aspects of their political and economic policies."
- "There is a close relationship between summary or arbitrary executions and violations of other human rights and in particular the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest or detention, freedom of thought, conscience and religion; the right to hold

7) E/CN.4/1983/33.

8) E/CN.4/1983/16.

opinions without interference and the right not to be discriminated against on the grounds of race, colour, sex, language, religion or social origin."

The Commission's resolution deplored the increasing number of summary or arbitrary executions, including extra-legal executions which continue in various parts of the world. The mandate of the Special Rapporteur, Mr. Amos Wako, is to be continued for another year.

Communications Relating to the Status of Women

Pursuant to the request made by ECOSOC to the Commission to submit its views on the handling of Communications relating to the status of women, the Commission decided to submit the following views for consideration:

- "Efforts should be made to encourage coordination between the various organs of the United Nations which are in receipt of communications, and to avoid unnecessary duplication";
- "The Commission on Human Rights should continue to receive and deal with all communications concerning all viola-

tions of human rights. For its part, the Commission on the status of women, in implementing its mandate, could, on the basis of those communications which specifically affect the status of women, submit recommendations to the Council on those issues relating to the rights of women".

In separate decisions, the Commission approved the continuation next year of Working Groups on a draft convention on the rights of the child, a draft convention on torture, and a draft declaration on the rights of members of national, ethnic, religious and linguistic minorities. The Working Group on Torture had this year reached agreement on a number of outstanding points, leaving for final consideration next year the two outstanding matters on which agreement has not yet been reached, namely universal jurisdiction and the measures for implementation.

The Commission also decided to delete from its agenda the item "Communications concerning human rights" and henceforth to consider bi-annually the item "Human rights and scientific and technological developments" as from its 40th session, and the item "The role of youth in the promotion and protection of human rights including the conscientious objection to military service" as from its 41st session.

Human Rights Committee

As of December 31, 1982, 72 countries had ratified the Covenant on Civil and Political Rights. Of these 28 had ratified the Optional Protocol and 14 had recognised the competence of the Committee to consider inter-state communications.

The frequency with which the provisions of the Covenant are cited in UN and other documents concerned with human rights suggests that the Covenant is on the way to becoming a part of 'customary' international law. Its provisions are being used to judge the conduct of countries that are not states parties to the Covenant. As this process continues, the general comments of the Committee and its decisions under the Optional Protocol will assume even greater importance.

General Comments of the Committee

Article 40, paragraph 4, of the Covenant requires the Committee to transmit to the states parties its reports with such 'general comments' as it considers appropriate. In its first set of general comments the Committee set out guidelines for the states parties reports and noted that the states parties' obligations under the Covenant are not limited to respect for human rights in national legislation but include positive obligations to ensure that all sectors of the population enjoy the rights provided by the Covenant.

In its annual report¹ covering its 14th, 15th and 16th sessions the Committee reported on its consideration of the reports of Japan, the Netherlands, Morocco, Jor-

dan, Rwanda, Guyana, Uruguay and Iran. Many of the questions put to the representatives of the states parties by the members of the Committee reflected the Committee's concern that too much emphasis was being placed on legislation and national constitutions, and not enough on compliance with and implementation of the Covenant. The Committee expressed the view that changes in legislation are not sufficient because they do not necessarily bring about changes in practice. It also noted that difficulties in implementation were to be expected.

The general comments adopted during the 16th session contain a discussion of some of the specific obligations imposed on states parties under Articles 6 (the right to life), 7 (prohibition of torture, cruel, inhuman or degrading treatment or punishment), 9 (the right to liberty and security of the person) and 10 (treatment of persons deprived of their liberty).

Of particular interest were the Committee's comments on the right to life. These reiterated that this is the supreme right and is not to be narrowly interpreted. Protection of the "inherent right to life" requires states to adopt "positive measures". Elaborating on this, the Committee said it would be desirable for states parties "to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics".

There was some discussion about the propriety of including these recommendations, since they refer to rights which may be covered by the International Covenant on Economic, Social and Cultural Rights.

1) General Assembly Official Records, 37th session, Supplement No. 40 (A/37/40).

The Committee, it may be thought, did well in recognising that matters seemingly within the protection of the Economic Covenant should not be excluded when considering the scope of civil and political rights.

Several other comments were made on the meaning and scope of Article 6. The Committee expressed its concern over the practice of 'disappearances', and stated that it was the obligation of states parties to establish effective facilities and procedures to investigate cases of missing and disappeared persons. In particular, it was the duty of a state to prevent the arbitrary killing of persons by its security forces. States parties were also reminded of their obligation to prevent war, and of the connection between Article 6 and Article 20 which states that the laws of a state party shall prohibit propaganda for war or incitement to violence. The Committee expressed the view that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life and should as such be reported to the Committee. Recognising that abolition may be in stages, it commented that the progress towards abolition was, however, "quite inadequate".

Also of importance was the Committee's discussion concerning the prohibition of torture or cruel, inhuman or degrading treatment or punishment. The Committee said it is not sufficient for states parties to prohibit or criminalise such treatment or punishment. It is their obligation to ensure effective protection through some machinery of control. The Committee set out recommendations it considered to be mandatory, such as effective investigation by competent authorities when there are com-

plaints of ill-treatment. It also recommended safeguards for detainees, such as provisions against incommunicado detention and "provisions making confessions or other evidence obtained through torture or other treatment contrary to Article 7 inadmissible in court"². States parties have a duty to give protection against such treatment even when committed by persons acting outside or without any official authority. Furthermore, the application of Article 7 extends to institutions other than prisons, such as pupils and patients in educational and medical institutions, and the prohibitions in Article 7 apply to medical or scientific experimentation without the free consent of the person concerned. For all persons deprived of their liberty the prohibitions of Article 7 are supplemented by the positive obligation in Article 10(1) that persons subjected to detention be treated with humanity and respect for the inherent dignity of the human person.

With respect to Article 9 (liberty and security of the person), the Committee noted that the guarantees of this article had been narrowly interpreted by the states parties in their reports. Its provisions are not limited to prisons. Paragraph 1 "is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc". In addition the guarantee in paragraph 4 of court review of the detention applies to all deprivations of liberty. The Committee expressed its concern about delays in bringing arrested persons before a competent court and the length of detention pending trial. Referring to the practice of administrative (or "preventive") detention in some states parties

2) Other recommendations relating to Article 7 are set out in paragraph 1 of General Comments 7(16) at p. 94 of the report. The general comments were also published separately in UN document CCPR/C/21/Add 1.

the Committee stated that if used, it is also covered by Article 9.

The Committee's comments regarding Article 10 (treatment of persons deprived of liberty) concentrated on the need for more information from states parties to show how the rights guaranteed by the article were being implemented and protected. The Committee outlined the type of information that should be contained in future reports. As with Article 9, the Committee noted that the scope of the article is broader than had been indicated in the reports, and its provisions apply to all institutions in which persons are detained, not only prisons.

The Committee's Role Regarding States of Emergency

During several of the past few sessions, the members of the Committee have debated the proper role of the Committee when states parties give notice under Article 4 of a declaration of a state of emergency and resulting derogations of the rights protected by the Covenant. Some members would like the Committee to adopt rules that allow it to request a report immediately upon receiving notice under Article 4. Such a report would have to contain a description of the circumstances having led to the declaration, the provisions from which the state party was derogating and the effect of the state of emergency on the observance of human rights in the country. Other members of the Committee question its authority to require such reports, and take the position that any step by the Committee in this direction would be too great an interference in the internal affairs of a country.

Also of concern is the lack of adherence to Article 4's notice requirement. Few states have given notice of a declaration of

emergency and those states that have, have not included all the information required by Article 4.

States of emergency can have dire consequences for the rule of law in a country, and it is important that the Committee should receive a full report on the circumstances said to justify the derogations, the precise measures taken, their effects on the enjoyment of human rights, and the prospects for a return to full respect for the state's obligations under the Covenant. It may be suggested that the UN Centre for Human Rights might assist the Committee by drawing its attention to any reports available on the situation in these states and to any indication that the obligation to give notice of a state of emergency is being disregarded.

Decisions under the Optional Protocol

The Committee concluded 13 cases under the Optional Protocol during the 14th, 15th and 16th sessions by adopting its 'views'. The annual report contains one decision regarding admissibility (R26/121, *A.M. v. Denmark*). Seven other cases concerned Uruguay and three concerned Colombia. The Uruguayan complaints involved allegations of torture, kidnapping, denial of the right to a fair trial, denial of access to a lawyer, denial of the right to appeal against a conviction, delays pending trial, lengthy periods of incommunicado detention, denial of a passport and denial of the right to participate in the political life of the nation.

Uruguay continued to give curt replies to the Committee's requests for comments on the complaints, and in several cases denied the Committee's competence to hear the complaints. In one case, R. 7/30, *Eduardo Bleier v. Uruguay*, despite signed

statements by several witnesses that they had seen the victim in custody, Uruguay denied knowledge of his whereabouts and stated that there was a warrant outstanding for his arrest and that he had not been taken into custody.

Uruguay's lack of cooperation with respect to complaints brought under the Optional Protocol was discussed during the presentation of its report under Article 40. The representative for the state party indicated that Uruguay would be more cooperative in the future.

Each of the decisions involving Colombia concerned some aspect of that country's security laws. In R.11/45, *Pedro Pablo Camargo v. Colombia*, the Committee concluded that the right to life was not adequately protected by the law of Colombia, owing to Decree No. 0070³ which exonerated members of the police force from liability for acts committed in the course of certain operations. In R.15/64, *Consuelo Salgar de Montejo v. Colombia*, the Committee reiterated the views expressed in the *Landinelli* case (see ICJ Review No. 28, p. 46) that a state party could not derogate from its obligations under the Covenant without giving a sufficiently detailed account of the relevant facts to show that a state of emergency threatening the life of the nation exists, and that the article in question was derogated from in accordance with Article 4.

The Committee was called on to interpret the reservation made by many members of the Council of Europe to the effect that they interpret Article 5(2a) to mean that a communication is inadmissible if it is being examined or has been examined under another international procedure of investigation or settlement. The alleged victim in R.26/121, *A.M. vs Denmark*, had submitted the matter to the European

Commission of Human Rights which declared it inadmissible as manifestly ill-founded. The Committee concluded that in the light of the reservation made by Denmark and the proceedings before the European Commission it was not competent to consider the communication. Mr. Bernhard Graefrath submitted an individual opinion, in which he concurred with the decision but disagreed with the reasons given by the Committee. He stated that the reservation should not be interpreted to exclude from consideration cases which were found to be inadmissible as being manifestly ill-founded under the European Convention. The conditions for admissibility under the two instruments are different. In his view, applications which have been declared inadmissible have not been "considered" in such a way that the Human Rights Committee is precluded from considering them.

Compliance with the Committee's Requests, Recommendations and Decisions

Members of the Committee as well as some observers have been concerned about the Committee's inability to gain compliance with its requests for further information, its recommendations during the reporting procedure, and its decisions under the Optional Protocol. At the moment compliance depends on the good faith of the parties. Some, like Jordan, have cooperated with the Committee, have supplied additional information and have spoken frankly about the problems being faced in their country. Others, such as Chile and Uruguay, have not cooperated fully. Uruguay has been delinquent in supplying information requested under the Optional Protocol. Chile appears to have decided to

3) This decree has since lapsed with the termination of martial law.

ignore the Committee's request during its 6th session for supplemental information (impliedly to be supplied to the Committee within a reasonable time), and has merely stated that it will supply the information in its next periodic report which is not due until at least 1984.

The Committee has indicated in its decision on periodicity⁴ that states parties which supply additional information and send a representative to discuss it with the Committee may benefit by the date for submission of its next periodic report being deferred.

It is clearly important that other methods of gaining compliance with the Committee's requests, recommendations and decisions should be developed. At present there is no procedure for determining whether a state party has complied with recommendations made during consideration of its report, or with decisions given under the Optional Protocol. Perhaps the Centre for Human Rights of the UN Secretariat could assist in attaining these objectives, since Article 36 of the Covenant

states that the Secretary-General of the United Nations is to provide the necessary staff and facilities for 'the effective performance of the functions of the Committee'.

In addition the Committee might consider further means of obtaining compliance, such as drawing attention to non-compliance in its reports to the states parties, and including in its reports to the General Assembly remarks on the compliance it has obtained.

The importance of giving publicity to the work of the Committee has been discussed by its members and was discussed by its Chairman at this year's session of the Commission on Human Rights. The Committee has asked for its work to be reproduced in annual bound volumes with accompanying digests. The request has been under consideration by the General Assembly and a cost analysis is being made. Regular reports of the Committee's work are essential for effective utilisation by individuals of the Optional Protocol and for the development of international human rights law.

4) Annex IV to the Report, at p. 92.

The European Social Charter

Among more than a 100 treaties concluded within the Council of Europe, the two which are considered the most important in the field of the protection of human rights are the European Convention on Human Rights (ECHR) for civil and political rights, and the European Social Charter for economic and social rights.

It is very revealing of the different nature of these groups of rights that the ECHR was signed in 1950, that is to say, only one year after the creation of the Council of Europe, whereas the elaboration of the Social Charter lasted nearly ten years (1953–1961). Indeed, if the promotion and application of civil and political rights depends above all on the political will of states, the achievement of social rights is linked with the structure and socio-economic conditions in each state. Consequently, during the preparation of the ECHR, such differences appeared between the negotiators concerning the formulation, the content and scope to be given to social rights, that it was finally decided to concentrate on the first group of fundamental rights. Nevertheless, from this moment on it was always intended to complete the ECHR by another instrument dealing with the economic and social field, as is clearly apparent from the preamble to the Convention¹.

It is also interesting to note that while the 21 members of the Council of Europe have all ratified the ECHR, only 13 of them have ratified the Social Charter² over 20 years in spite of its very flexible ratifica-

tion procedure (see below).

During the preparatory stage there were two opposing tendencies: one represented by the parliamentary assembly for the elaboration of an instrument with strong enforcement procedures, proclaiming immediately applicable rights whose enforcement would be entrusted to a European organ with considerable powers; the other, represented by a Committee of Experts appointed by the Committee of Ministers, the supreme body of the Council of Europe, proposed a less ambitious instrument, even contemplating in the extreme case a simple declaration of intent. The solution finally adopted thus represented a compromise between these two tendencies, with a predominance of the more restrictive "governmental" concept. This explains why the provisions of the Charter appear rather modest, but it may be said from the outset that this weakness has not prevented the Charter having positive results, thanks principally to the system devised for its implementation.

The Rights Protected by the Charter

The principal rights protected by the Charter are:

1. Rights relating to work (right to work, right to just conditions of work, right to safety and health in work, right to fair remuneration, arts. 1–4).

1) "... resolved... to take the first steps to ensure the collective enforcement of certain rights proclaimed in the Universal Declaration..."

2) Austria, Cyprus, Denmark, Federal Republic of Germany, France, Ireland, Iceland, Italy, Norway, Sweden, United Kingdom, and recently, the Netherlands and Spain.

2. Trade union rights (the right to form unions, the right to collective bargaining and the right to strike, arts. 5 and 6).
3. Rights aimed at the protection of workers (minimum age for admission to work, and protection of women and young persons, the right to protection of health, the right to social security, and to medical and social assistance, etc., arts. 7 and 8).
4. The right to vocational guidance and training (arts. 9 and 10), as well as the right of the physically or mentally disabled to vocational training, rehabilitation and social resettlement (art. 15).
5. The right of migrant workers to equal remuneration, trade union rights and accommodation, as well as the right for themselves and their families to protection and social assistance (art. 19).

In order that the considerable differences in national legislation should not constitute an obstacle to ratification, the procedure is very flexible: in order to ratify the Charter, a state must accept at least ten articles (out of 19) or 45 numbered paragraphs. Among these ten articles, five must be chosen from the seven specified in Article 20 and considered as the "kernel" of the Charter³. The vague formulation of the greater part of the provisions of the Charter is striking: what, indeed, are *just* conditions of work and *fair* remuneration (art. 2 and 4), *reasonable* hours of work

(art. 2, para. 1), a *decent* standard of living (art. 4, para. 1), and *appropriate* allowances (art. 7, para. 5) etc.? In these circumstances, the procedure for implementation of the Charter and the case law relating to its interpretation assume great importance. They alone are able to define the scope of the rights proclaimed in the Charter and the obligations for the contracting parties which flow from them.

The System of Implementation of the Charter

If the quasi-judicial system of implementation of the ECHR is suitable for the kind of individual rights which it recognises, it is apparent that it is ill-adapted to secure social rights. Consequently, it is an administrative system of implementation which has been adopted for the Charter, in no way inferior to judicial control. Each of these systems has its advantages and disadvantages, but the essential difference lies in the fact that in order to activate the system of the ECHR, a *complaint* must be made by a State or an individual alleging violation of the Convention by a State authority, whereas the implementation bodies of the Charter do not depend upon a complaint; they can act on their own initiative. On the other hand, the conditions under which a complaint can be filed under the ECHR are such⁴ that the procedure can

3) Art. 1 (Right to Work), Art. 5 (Right to Organise), Art. 6 (Right to Collective Bargaining), Art. 12 (Right to Social Security), Art. 13 (Right to Social and Medical Assistance), Art. 16 (Right of the Family to Social, Legal and Economic Protection), Art. 19 (The Right of Migrant Workers and their Families to Protection and Assistance).

4) There must have been a violation of a right protected by the Convention, a State authority must have been responsible for the violation, and the victim must have exhausted all national remedies and, in the case of an individual complaint, the State concerned should recognise the right of individual petition (art. 25 of the Convention). The complaint of the victim is then examined by the European Commission of Human Rights which pronounces on its admissibility. If admissible, the Commission then makes a finding upon the facts and subsequently submits the case either to the European Court of Human Rights or to the Committee of Ministers.

last for five or six years or more before the European Court of Human Rights reaches a decision. Thus, the system of implementation of the ECHR encourages individual initiatives, but it may happen that national laws continue to have provisions which are contrary to the European Convention, if no-one wishes or has the courage to institute a complaint under the Convention. This situation cannot arise with the periodic administrative control of the Charter. Every two years the contracting parties have to present a detailed report of the state of their social legislation on the basis of questionnaires adopted by the Committee of Ministers. The extent to which national legislation conforms with the obligations flowing from the Charter is the subject of an extremely thorough examination.

There are four supervisory bodies:

1. *The Committee of Independent Experts* composed of seven members appointed by the Committee of Ministers in their personal capacity. The committee is responsible for studying the bi-annual reports sent by the contracting parties. Its observations upon them are published in the form of 'Conclusions' in which the conformity of the national legislation and practices with the provisions of the Charter is examined article by article and State by State. These Conclusions constitute the only real check on the application of the Charter and they are quite independent of the other procedures.
2. *The Sub-Committee of the Governmental Social Committee*. Composed of representatives of the contracting parties, it is a technical body of the Committee of Ministers, for whom it prepares a report after taking into account the Conclusions. Its role should be to advise the Committee of Ministers, but till now the governmental experts confine themselves

to a commentary.

3. *The Parliamentary Assembly*, which has a consultative rôle in this procedure. It transmits to the Council of Ministers its observations on the Conclusions, in the form of an Opinion.
4. *The Committee of Ministers*. As the Supreme Organ of the Council of Europe, it can address recommendations to the contracting parties (art. 29) on the basis of available information (Conclusions of the independent experts, report of the governmental experts, the opinion of the assembly). In practice it has never made use of this power of recommendation, and merely transmits the whole documentation to the contracting parties, inviting them to take them into account.

Nevertheless, the Charter does produce results. Thus an instrument with an unambitious content and with vaguely formulated provisions, thanks to a system of implementation well-adapted to the nature of the rights to be protected, does achieve considerable results, even if it does no more than make findings. Among the reasons for its effectiveness are the quality of the work of the independent experts and the publicity which is ensured for their Conclusions during their examination by the Assembly. In this connection, it should be remembered that the parliamentarians at Strasbourg are also members of their national parliaments and thus can stimulate the parliaments of their own countries to a greater conformity with their international obligations.

By the very fact of its existence, the Social Charter represents a programme for the States, and the work of the implementation bodies helps the national parliaments better to grasp the meaning and scope of its provisions. In this connection, the collection of 'case law' regularly draws atten-

tion to the interpretations given to each article by the different implementation bodies and is extremely useful.

Together with, in particular, the ILO Conventions and the rulings of the European Communities on social rights, the Charter exercises a pressure on govern-

ments. Even if governments do not admit that they have changed their legislation because of international pressure, it does contribute to the evolution of positive law according to criteria inspired by international instruments⁵.

5) Among the examples cited in the Conclusions of the Committee of Independent Experts, in their 7th report, Strasbourg 1981:

- in *Ireland* the Employment Equality Act, 1977, prohibited all discrimination in employment.
- in *Austria*, a law of 1979 ensured to men and women equal remuneration for equal work.
- in *Cyprus*, article 59 of the law on the civil service was repealed and civil servants were given the right to belong to trade unions other than those composed exclusively of civil servants.
- in the *United Kingdom*, the Social Security Act, 1980, enables women to receive the family income supplement like men.
- in *France*, the government has declared its intention to amend certain articles of the disciplinary code of the Merchant Navy which were considered contrary to Article 1, paragraph 2 of the Charter (prohibition of forced labour, etc.).

Expulsions in Africa

During the month of February 1983 Nigeria expelled over a million foreigners, far the greater part being Ghanaians. The government was widely criticised for this, particularly for the way in which it was done. All foreigners whose presence was illegal, in the sense that they had entered without formal permission, were ordered to leave the country within 14 days or face arrest. The resulting sudden unorganised mass exodus caused great hardship to those who were expelled, and great difficulties for the governments of the countries to which they were so suddenly returned.

This is far from being the first mass expulsion in Africa. Other examples are the expulsion of Asians from Uganda and of foreign workers from Zaire and Equatorial Guinea, to name but three. And the practice has not been confined to Africa. At one point Stalin ordered the expulsion of all foreigners from the USSR within 14 days, including those who were lawfully in the country. Since World War II economic recessions in Europe have seen the large-scale return from the industrialised countries of foreign migrant workers.

Nigeria has taken its stand upon its right to expel foreigners whose entry into the country was illegal. This right is unchallengeable, but it raises a number of questions such as how it came about that there was such an immense number of unauthorised foreign immigrants, and the requirements of law and humanity with regard to their return to their own countries. The government cannot have been unaware of their presence, but had taken no action either to prevent or to regularise the influx. The immense majority came, of course, to seek

work during the economic boom in Nigeria which followed on the exploitation of its wealth, and by their labour they contributed considerably to the country's economic expansion.

When the Nigerian economy was hit by recession following the dramatic reduction of oil prices on the international market, a large proportion of the immigrant workers became unemployed and a burden rather than a benefit to the community, some of them even turning to crime to meet their needs.

As has already been said, this problem is not a new one for Africa and has been under discussion for many years between African governments. In 1978, the Council of Ministers of the Organisation of African Unity (OAU) by its Resolution (CM/Res. 645(XXXI)) recommended that the Member States of the organisation prepare an African Convention on the movement of persons and their reception. The Council of Ministers, appealed to Member States of the organisation, without prejudice to their sovereignty, to adopt humanitarian measures with a view to ensuring respect for their human dignity and human rights in case of expulsion, and to establish a system of just and equitable compensation. Moreover, the African Charter of Human and People Rights, adopted unanimously by the Member States of the OAU in Nairobi in June 1981, provides in article 12, paragraph 5 that "The mass expulsion* of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups." This provision assumes greater importance from the fact that the arbitrary expulsion

* In the french text the expression used is 'expulsion collective'.

of nationals of any Member State of the organisation constitutes a serious threat to inter-African cooperation.

When the justifications for mass expulsions in Africa are examined, it will be found that they are based on the need to preserve 'public order'. This is the constant explanation invoked when the real reason is that the economy of the country is in severe recession and they are no longer wanted. As was said in ICJ Review No. 3¹ "foreign workers have found themselves, at times when they are no longer essential to the economy, returned to their own countries of origin like unwanted goods". This is not to deny, of course, that massive unemployment among migrant workers can also create problems of public order.

The other principal reason invoked is the fact that the expelled foreigners were in an irregular situation in relation to the laws and regulations concerning entry and residence. Assuming that this is the position, it would not justify a sudden mass expulsion. As has been seen the African Charter of Human and Peoples Rights, even though it has not yet come into force, has by its universal adoption established the principle that expulsions should not be aimed globally at national, racial, ethnic or religious groups. An examination of expulsions in Africa will show that they are usually aimed at national groups. The reasons given for the expulsions are not always the same. In 1969 Ghana expelled foreigners, estimated at at least a million, giving as the reason that non-nationals were involved in criminal organisations. In 1971 Zaire expelled thousands of foreigners, justifying it on the grounds that non-citizens were engaged in illegal diamond traffic causing the state to lose 25% of its revenues

from the diamond trade. In 1978 Gabon expelled thousands of citizens of Benin, for reasons related to the 'attacks' by President Kerekou against President Bongo, accompanied by threats and insults alleged to have been broadcast by Radio Benin². The recent expulsions from Nigeria were justified on grounds of public order, it being said that the presence of foreigners in an irregular situation constitutes a threat to the security of the state.

A common feature of these sudden expulsions has been the severe hardship and at times ill-treatment caused to those expelled, and the indiscriminate application of the orders for expulsion. In the case of Zaire, well-established business men were dispossessed of their property, and simple workers who had married Zaire citizens were not allowed to bring their wives with them on returning to their own country. Others were even beaten to death by Zaire soldiers³. According to a press statement by the Permanent Representative of Benin to the United Nations, Patrice Houngavou, on the occasion of the expulsions from Gabon a number of Benin nationals were killed and at least 4,000 others were herded into a school premises, which served as a concentration camp. The description of the hardship caused to those recently expelled from Nigeria calls for a reconsideration of the human rights principles governing the expulsion of foreigners in Africa.

In a recent symposium on human rights in Africa, Professor Iba Der Thiam recalled the principles of liberty, fraternity and solidarity, and the respect for each human being, which governed traditional African Societies. Freedom of movement for everyone and the right freely to leave and return were recognised. The foreigner was protect-

1) ICJ Review No. 3, p. 1.

2) African Contemporary Recorder, 1978, p. B 597.

3) *Ibid*, 1971, p. B 526.

ed as to his property, his health and his person, even to the point that his right to be buried in case of unforeseen death was ensured by traditional customs⁴.

Today the protection of foreign nationals is expressly guaranteed in most of the Cooperation Agreements, in treaties, in some national constitutions and most recently in the regional African Charter. As Professor Lauterpacht has said, the individual as such, whatever his nationality, has become a subject of international law and sees his rights and privileges protected by international provisions having the force of law⁵.

Why are provisions for the protection of foreigners not better respected by African governments? One reason seems to be the absence of any measures taken to protect them by their own governments towards the host state. As was made clear in the case of the Mavrommatis concessions in Palestine it is an elementary principle of international law that authorises a State to protect its nationals injured by acts contrary to international law committed by another State who has been unable to obtain satisfaction by ordinary process⁶.

It is to be noted that greater protection against expulsion and return ('refoulement') is afforded to foreigners who enter a country as refugees than is granted to those who enter with at least the tacit consent of the host country in order to seek employment. As has already been said, far the greater part of the migrants in Africa are migrant workers, whose presence as such is well-

known to the host countries and accepted in practice, as long as there is work for them. In these circumstances it is hardly realistic to consider and treat them as clandestine illegal immigrants. The recent expulsions from Nigeria throw light on the true situation, when one reads that many Nigerian factories had to close down as a result of the expulsions and that thousands of Ghanaians have since been allowed to return to Nigeria.

It should be recalled that ILO Convention No. 143: Migrant Workers (Supplement Provisions), 1975, deals not only with lawful migrants but also contains minimum standards for the protection of illegal migrant workers, and Recommendation No. 151 recommends minimum standards in case of expulsions.

Article 1 of ILO Convention 143 provides that each Member State shall respect the basic human rights of all migrant workers, including those in an irregular situation. The Convention does not specify which rights are referred to, but as J.H. Lasserre - Bigorry has commented, one may assume that the application of the rule of law and all that flows from it forms part of these 'basic human rights'⁷.

The minimum standards in case of expulsion envisage a right of appeal against an order for expulsion. The procedures for appeal, whether administrative or legal, should be laid down in national legislation. Recommendation 151 recommends that exercise of the right of appeal should stay the execution of the expulsion order, save for

4) *Les Droits de l'Homme dans les traditions culturelles des sociétés sénégalaises*, Professor Iba Der Thiam, A paper to a symposium of the African Institute of Human Rights, Dakar, October 1982, pp. 3 and 15.

5) H. Lauterpacht, *International Law and Human Rights*, London, Stevens, 1968, p. 4.

6) Case of the Mavrommatis concessions in Palestine, Permanent International Court of Justice, Series A, No. 2, p. 12.

7) J.H. Lasserre - Bigorry, *Réglementations internationales concernant les migrations clandestines, in Les travailleurs étrangers et le droit international*, Société française de droit international, p. 137.

duly substantiated requirements of national security or public order. It is unfortunate that this is only a recommendation and not a binding obligation.

In his treatise on public international law Professor Rousseau has drawn attention to the mechanisms of diplomatic protection which were often used in the 19th century, as well as numerous arbitrations at that time, arising from the first modern international disputes relating to governmental policy towards foreigners⁸. In analysing these arbitrations, Politis deduced, as one of the applications of the general theory of violations of rights, that "to be lawful, recourse to freedom of expulsion should be well-founded, be in response to a real need and be free from any unnecessary severity."⁹ Already at that time he emphasised the need for a legal basis for the powers of the police towards foreigners, on the ground that "it is an incredible paradox that a foreigner should have the right to enter a country, to take up residence, to work and establish himself, and that he has no protection against an arbitrary measure of expulsion".¹⁰

To return to the question of collective expulsions, they have, in the words of Charles Rousseau, given rise to certain legal reservations, and are certainly internationally reprehensible when they take place under conditions of flagrant inhumanity¹¹. They are also condemned under the Africa Charter of Human Rights (art. 12) as well as by the Inter-American Convention (art. 22(9)) and the Fourth Protocol to the European Convention (art. 4). A distinction should be drawn between mass expulsions and collective expulsions. The collective character dis-

appears when the expulsion order follows a fair and objective examination of the particular situation of each of the foreigners who comprise the group. In deprecating collective expulsions, one seeks to compel States to weigh up the merits of an expulsion in the circumstances of each individual case.

It is clear that the right of African States to invoke and assess the requirements of public security when expelling foreigners is not called into question. Rather what is called for is a recognition of the urgent need to humanise the exercise of this power. Nothing would justify arbitrary and inhuman conduct in a continent which still seeks to achieve a real unity. It is, moreover, to be regretted that the 1978 resolution of Council of Ministers of the OAU, which envisaged a meeting of experts on the question of expulsions in Africa has not been followed up. Perhaps such a meeting would result in the elaboration of principles for procedural safeguards. The Geneva Rules of the Institute of International Law constitute a not unimportant basis. Rule 19 proposes that "expulsions, whether individual or extraordinary, should be brought as soon as possible to the knowledge of the governments of the citizens concerned". Such a provision is to be found, for example, in the Franco-Senegalese convention on residence of 29 March 1974¹², article 8 of which provides that: "When one of the Contracting Parties proposes to proceed to the expulsion of a national of the other Party whose behaviour threatens the public order, public security or public morals, that Party will give prior notice to the other Party."

8) C. Rousseau, *Traité de Droit international public*, vol. 3, p. 20.

9) Politis, le problème des limitations de souveraineté et la théorie de l'abus de droit dans les rapports internationaux, R.C.A.D.I., 1925, vol. 1, p. 103.

10) *Ibid*, note 9, pp. 101-102.

11) C. Rousseau, *Ibid*, note 8, p. 21.

12) Journal officiel de la République Française, 30 Nov. 1976, p. 6267.

REPORT OF A MISSION

Human Rights in Suriname

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I. Introduction

From 25 February through 4 March 1983 Prof. Griffiths and Prof. Bossuyt were sent as observers on behalf of the ICJ on a mission concerning the human rights situation in Suriname.

Prior to the present mission the ICJ had expressed to the government of Suriname its concern about the events of 8–9 December 1982, when 15 prominent opposition figures met their death while in the custody of the army. Most of them were members of a recently formed Suriname Association for Democracy, which had, in an open letter to Col. Bouterse, Chairman of the Military Council, called for a constructive dialogue with a view to a return to constitutional rule, parliamentary elections and the Rule of Law.

The purpose of the ICJ mission was to enquire into the present situation concerning the rule of law and the system of justice, including legal guarantees for ensuring the fair trial of suspects with an independent judiciary and legal profession.

Professor Griffiths had previously undertaken a mission to Suriname on behalf of the ICJ in 1981. A report of this earlier mission was published in *ICJ Newsletter* No. 8 (January/March 1981). In February of 1981 the most serious human rights problems in Suriname, according to Grif-

fiths' report, concerned illegal arrests and detentions and the mistreatment of detainees, infringement of freedom of the press by means of lawless intimidation, and a number of aspects of the procedure before a Special Tribunal created to try corruption cases. Griffiths concluded that although the immediate situation at the time of his mission was relatively favourable by comparison with the foregoing year, there was nevertheless ground for serious concern. He commented that

"given the absence of any legal protection against such abuses – as evidenced, among other things, by the absence of any significant sanctions, civil, criminal or otherwise, against those notoriously guilty of such abuses in the recent past – everyone knows that he has only the present delicate political balance to thank for the relative security he now enjoys.

An atmosphere of insecurity hangs over the country, an atmosphere of defencelessness which is itself a human rights problem of very serious dimensions. Only the government can do anything about this, by putting an end to official and semi-official anarchy, and hence to the stifling atmosphere which it fosters, and by making clear that a permanent end has come to violence

and lawlessness, and that those involved, whatever their rank, will be made to suffer the legal consequences."

II. Background Information Concerning Suriname

Suriname is situated on the northeast coast of South America. A former Dutch colony, it received its independence in 1975. Suriname has a typically Caribbean population and culture, deriving from a former plantation economy which required the importation of its labour supply – first in the form of African slaves, later of Hindustani and Javanese contract labourers. These, together with the descendants of European and Jewish planters, farmers, soldiers and administrators (all of whom intermarried, or at least interbred, with the local population), and also Chinese and Lebanese merchants, American Indians, and Bush Negroes (descendants of escaped slaves), and others, go to make up an extraordinarily kaleidoscopic and relatively well-integrated population of about half a million, of whom almost a third have emigrated to the Netherlands in recent years.¹

On 25 November 1975 Suriname became independent as a multi-party Republic with an elected parliament and an independent judiciary. On 25 February 1980 the constitutionally established government was set aside in an almost blood-free coup d'état carried out by a small group of non-commissioned officers. Some weeks after the coup a new civilian government was appointed by the military authorities. Since that time, despite several promises of

elections and a return to constitutional democratic rule, final political authority in Suriname has been in the hands of a small group of mostly military figures.²

III. Developments Between the First and Second ICJ Missions

The immediate occasion for the second mission was an upward spiral of apparent governmental lawlessness and violence, culminating in the deaths while in military custody of 15 leading opposition figures, and followed by the unilateral decisions of the Dutch and other governments to suspend or freeze their development assistance programmes until adequate assurances of respect for human rights are given by the Suriname authorities.

The relevant events can be summarised as follows:

Shortly after the first ICJ mission, Sgt-Major Sital and Sgt Mijns, who had been sentenced on 11 December 1980 to two years imprisonment for their part in an alleged plot, and Sgt Joenram, who had received a one year sentence, were released from prison.

After having attempted a coup without success on 15 March 1981, Sgt W. Hawker†, who had been a participant in the successful coup of 25 February 1980, was sentenced to 4 years imprisonment.

In his book "Terreur op uitkijk" ("Terror on the look-out") published in October 1981 Bram Behr†, a journalist, described how a peasant family was terrorised by the Military Police. After having been shot three times, one member of that family,

1) For the social and political history of Suriname see R. van Lier, *Samenleving in een Grensgebied* (197), and E. Dew, *The Difficult Flowering of Suriname* (1978).

2) Further information concerning the period between the coup d'état of 25 February 1980 and the first ICJ mission can be found in the report of the earlier mission.

† Since died a violent death.

Deta Mahes†, was killed by Sgt Lachman, who was later sentenced for misconduct by a military tribunal.

On 4 February 1982 President Chin A Sen resigned at the request of the Military Authority, composed of the military commanders D. Bouterse, R. Horb† and H. Fernandes†. Fernandes, who was due to become Minister of the Army at the end of the month, died in an helicopter accident on 28 March 1982.

On 12 March 1982, Lieutenant S. Rambocus† freed Sgt. Major W. Hawker from prison and attempted a coup which failed. A heavily wounded Hawker was removed from hospital, taken to military headquarters at Fort Zeelandia, forced to make a declaration on television, and summarily executed. On 18 March Military Commander D. Bouterse announced that a state of war had been declared with retroactive effect to 11 March, pursuant to which the army had conducted a field court martial and carried out a death penalty.

More than 50 people were arrested in connection with the Hawker/Rambocus coup-attempt, several of whom were severely beaten. Prof. I. Oemrawsingh†, a prominent member of one of the two major political parties before the coup of 25 February 1980, was allegedly implicated in the coup-attempt. On 15 March 1982 his dead body was found near the border with Guyana. Section on his body indicated that his blood contained traces of an insecticide. The official cause of his death is suicide.

On 30 March 1982 the Military Commander D. Bouterse announced a decree providing for the rights and duties of the people of Suriname, and on 31 March 1982 a new government was formed with H. Neyhorst as Prime Minister.

Two military officers who allegedly had previous knowledge of the attempted coup by Rambocus and Hawker were released by the judicial authorities. They were rearrest-

ed upon instructions of Military Commander D. Bouterse shortly thereafter (30 July 1982). After strong protests by the judiciary and others, they were again released on 9 August, and on 21 August 1982 they were found guilty and sentenced to 5 months imprisonment.

The trial of Lieutenant Rambocus started on 13 October 1982. J. Baboeram†, E. Hoost† and H. Riedewald† acted as lawyers for the defence. On 3 December 1982 Lieutenant Rambocus was sentenced to 12 years imprisonment.

At the end of October 1982 there was increasing pressure from social organisations calling for elections and a return to democratic government. C. Daal†, the leader of the main trade union ("Moederbond"), was very active in this movement. On 28 October 1982 he was arrested but quickly released when several services went on strike in protest against his arrest. On 31 October 1982, Daal presided over a mass meeting of 15,000 persons, while a mass meeting called by Military Commander D. Bouterse attracted only 1,500 persons.

At about the same time strikes were held at the University. According to government circles, those actions were politically coordinated by Dr. F. Leckie†, Dean of the Faculty of Social and Economic Sciences.

On 2 November 1982 the Bar Association presided over by K. Gonçalves†, wrote a letter to the "Policy Centre" (the highest political body of the régime). This letter called for a return to constitutional, democratic rule and was publicly endorsed by various important groups, such as the leading religious groups, the Business Association, the Association of Suriname Manufacturers and the Association of Medical Practitioners.

The latter part of 1982 saw increasingly severe criticism of the government and demands for a return to democratic rule in

the press and on the radio.

In a television address on 15 November 1982 Military Commander Bouterse reviewed the state of the nation after the events which had taken place at the end of October and the first half of November 1982. In that address he stated that his approach during the past few years had been based on four main foundations: consultation, participation, supervision and accountability. Military Commander Bouterse added that organisations wishing to qualify for consultation and participation would first have to meet the requirements formulated by him with regard to "democracy at the basis". He concluded that, drawing from the multitude of information and the deep insight accumulated during dialogues with the people during the past few years, the main lines of his policy would be further worked out and published by the end of March 1983 at the latest.

On 17 November 1982 an "Association for Democracy" was established as a non-political organisation formed by 13 organisations which endorsed the generally accepted principles of a modern democratic society governed by the Rule of Law. The Association consisted of the Committee of Christian Religions, the Hindu Religious Community Sanatan Dharm, the Hindu Religious Community Aryans, the Madjlies Muslimin Suriname, the Suriname Islamic Association, the Suriname Muslim Association, the Suriname Business Association, the Association of Suriname Manufacturers, the Suriname Bar Association, the Association of Medical Practitioners in Suriname, the Association of Managers and Chief Editors of the Press, the Central Organisation of Farmers Unions and the National Suriname Womens Council. By letter of 2 December 1982 the Suriname Lawyers' Association also joined the Association for Democracy.

On 23 November 1982 the Association

adopted an open letter addressed to Military Commander Bouterse. The Association rejected the totalitarian concept according to which the views of the leaders are decisive and only those who loyally support the main lines of those views are allowed to participate in their further elaboration and execution. The Association called for the military to withdraw from active politics and to concentrate on their essential duties as a stabilising factor in the public interest, maintaining a strictly neutral position.

The Association considered that it would be impossible to convince the Suriname population otherwise, in the light of its maturity, its cultural and historical background, its political traditions and its concern for politics. The Association predicted that, considering the fact that the views expressed by Military Commander Bouterse on 15 November 1982 were rejected by the large majority of the population, he would in the last resort be led to adopt a policy of repression unheard of in Suriname.

Early in the morning of 8 December 1982 14 persons were arrested and taken to the military headquarters at Fort Zeelandia. These consisted of four journalists (Bram Behr†, Leslie Rahman†, Jozef Slagveer† and Frank Wijngaarde†), four lawyers (John Baboeram†, Kenneth Gonçaves†, Eddy Hoost† and Harold Riedewald†), two university teachers (Gerard Leckie† and Suchrin Oemrawsingh†), two businessmen (André Kamperveen† and Somradj Sohansing†) and two trade union leaders (Cyrill Daal† and Fred Derby). Two army officers (Soerindre Rambocus† and Jiwansingh Sheombar†) were taken from prison to Fort Zeelandia. During the same night a number of buildings were set on fire by the army: the ABC radio station (Creole) owned by André Kamperveen, the Lionarons press office where the newspaper "De Vrije Stem" ("The Free Voice") was printed, and the building of the "Moe-

derbond", the largest trade union in Suriname. Somewhat later the Radika radio station (Hindustani) was also on fire. The fire department received orders not to put out the fires.

In the morning of 9 December 1982 the corpses of 15 of the abovementioned persons – only Fred Derby survived – were delivered to the mortuary of the "Academisch Ziekenhuis" (University Hospital). The evening of that same day Military Commander Bouterse appeared on television and announced that a number of the arrested had been killed while trying to escape during their transportation from Fort Zeelandia to another military base. On the same day the government of Prime Minister Neyhorst resigned.

On 9 and 10 December 1982 hundreds of people, including medical doctors, saw the corpses in the mortuary. Nearly every corpse showed signs of severe mistreatment. The corpses without exception showed signs of large numbers of bullet wounds in the chest, abdomen, the face or the limbs. The wounds clearly indicated that the victims had been shot from the front. The injuries, as further described in a report of 14 February 1983 by the Netherlands Lawyers Committee for Human Rights (the Netherlands section of the ICJ) lead to the conclusion that the 15 victims were severely tortured and intentionally killed.³ To date there has been neither an autopsy nor any other official investigation of these deaths.

On 30 January 1983 15 persons, including Major R. Horb† and two ministers in the caretaker Neyhorst cabinet, were arrested in connection with an alleged conspiracy against Military Commander Bouterse. On 4 February 1983 Horb was found

strangled in his cell. The official explanation to date is suicide.

IV. The Conduct of the Mission

The mission was arranged in consultation with the then Minister of Foreign Affairs, Harvey Naarendorp, at whose suggestion the ICJ observers arrived on Friday 25 February 1983, on which date a new government was expected to be installed. The ICJ had supplied the Suriname authorities in advance with a list of categories of persons with whom the observers would want to speak, including political and military figures, church leaders, representatives of the bar, the judiciary, the press, professional, social and economic organisations and embassies.

Unfortunately, the formation of the new government did not take place until Monday 28 February 1983 and Naarendorp was no longer a member of it. As a result, when the mission arrived on 25 February 1983 (the third anniversary of the coup of Military Commander Bouterse), the Suriname authorities were apparently quite unprepared for the mission, and on top of this were in the middle of a change of government. In those circumstances it was very difficult for the ICJ observers to establish contact with high government officials.

On Tuesday 1 March 1983, the ICJ observers had a long interview with Mrs. Y. Baal and Mr. E. Brunings, of the governing board of the University, who introduced themselves as representatives of Military Commander Bouterse, assigned by him the responsibility of receiving the ICJ mission on his behalf and coordinating the programme of the observers. They told the ICJ

3) The Dutch government submitted the NJCM report to the UN Commission on Human Rights (UN Doc. E/CN.4/1983/55).

observers that Military Commander Bouterse, who was said to be extremely busy with the installation of the new government and the preparation of his imminent departure the same week to attend the non-aligned summit in New Delhi, would be unable to receive them, but had invited them to come back to meet him at a later date.

On Wednesday 2 March 1983 the observers were received by the new Deputy Prime Minister, Winston Caldeira, representing the Prime Minister and Minister of Foreign Affairs, Erroll Alibux. Caldeira informed the ICJ observers that until the new government had formulated its programme, which was scheduled for 15 April 1983, representatives of the government would not be prepared to discuss the situation in Suriname with foreign observers. As a result of this decision, previously scheduled meetings with other high government officials, including, in particular, representatives of the Ministry of Justice, were cancelled. The ICJ observers were, however, informed by Caldeira that the government had decided to invite the ICJ to send observers for a follow-up mission at a later date, and that a formal confirmation of this invitation would be sent to the ICJ shortly.

Despite these circumstances, the ICJ observers were able to interview a number of well-informed persons in Paramaribo. Several of these interviews were arranged for them by the two representatives of Military Commander Bouterse. The observers had interviews in private with, among others, representatives of the judiciary, the press and religious groups and with the former Minister of Foreign Affairs, Mr. Naarendorp. Their contacts with other prominent members of the Suriname community were, however, limited, due partly to the fact that many of these persons were not at the moment in Suriname. Moreover, spokesmen for the Bar Association and the Asso-

ciation of Suriname Jurists told the representatives of Military Commander Bouterse that they were unwilling to receive the ICJ observers before their organisations' positions had been determined in a general membership meeting.

In these circumstances, the observers were not able to discuss the situation with all of those whom, as the ICJ had notified the Suriname authorities in advance, they had hoped to meet in order to obtain a full picture. However, on the basis of the discussions which they were able to have, as well as other information available to them, the observers were able to make a number of observations concerning the human rights situation in Suriname.

Prior to their departure from Suriname, the ICJ observers, who were returning to Europe separately, prepared a draft press release to be used by both of them in answering questions by reporters on their return. While this draft press release dealt largely with the conduct of the mission itself, it did also contain some preliminary observations of a more substantive nature. Before their departure, the observers made this draft press release available to a representative of the Suriname News Agency at her request.

At the Zanderij airport in Suriname Prof. Bossuyt, who departed a few hours after Prof. Griffiths, had a further conversation with the two representatives of Military Commander Bouterse, who objected to the substantive nature of some observations in the draft press release. Prof. Bossuyt agreed not to issue those observations to the press before consulting with Prof. Griffiths and the ICJ in Geneva. Upon his arrival at Schipol airport (Amsterdam), Prof. Bossuyt was met by an ICJ representative who informed him that a press conference had been arranged, but that in accordance with ICJ standard procedures, no substantive conclusions should be stated

until the mission had reported to the ICJ. Accordingly, Prof. Bossuyt confined his remarks to the press to giving an account of the conduct of the mission. Prof. Griffiths did the same, following his return to Europe a few days later.

At the request of the ICJ the observers prepared an interim report which was issued as an ICJ press release on 21 March 1983. The substantive observations of this interim report are reproduced below.

V. The Observations of the Mission

On the basis of information acquired in Suriname, as well as other information available to the ICJ, the mission made the following observations. In the opinion of the ICJ, these observations should constitute the starting-point of the proposed follow-up mission.

The present situation in Suriname raises a number of serious questions concerning respect for internationally accepted standards, as formulated in the International Covenant on Civil and Political Rights, to which Suriname is a party. In most respects, the human rights situation in Suriname appears to have deteriorated dramatically since the previous ICJ mission in February, 1981. For example:

– *Freedom of the press (art. 19)*. In 1981 a variety of newspapers appeared regularly, although they were subject to arbitrary harassment and intimidation by the military authorities. All papers but one have now been (extra-legally) suppressed; the lone remaining newspaper is subject to total censorship and amounts to little more than a press outlet for the state. All non-official radio stations were closed by the military in December and two of them were destroyed; one (in a

remote part of the country) has recently been allowed to resume broadcasting.

- *Freedom of association (art. 21 and 22)*. Activities of political parties remain prohibited, although this prohibition seems to be less strict with regard to parties represented in the present government. Trade union freedom has been seriously undermined by the arrest of some trade union leaders, the subsequent death of the leader of the largest trade union, and the destruction by the army of this union's headquarters, with the result that a number of other union officials have left the country.
- *Freedom from arbitrary arrest (art. 9)*. A persistent pattern of arbitrary arrest was a cause for concern in 1981; this pattern has continued and reached a culmination in the arrest of 15 prominent opposition figures in the night of 8–9 December 1982. The regularity of these arrests appears to be highly questionable in a number of respects, and three months later no official statement has yet been given of the alleged facts and circumstances justifying the arrests.
- *The right to protection of life and bodily integrity (art. 6 and 7)*. The pattern of mistreatment of detained persons, noted in 1981, has continued, and there have been a number of well-established incidents over the past year. The deaths and apparent torture of the 15 persons arrested in the night of 8–9 December 1982 is the most extreme and gruesome instance to date but is unfortunately not an isolated incident.
- *The right of recourse to effective legal remedies (art. 2)*. The major human rights infringements referred to above have generally been wholly extra-legal

and without any form of process. Most of them have been carried out by military authorities. So far as is known, no sanctions have been administered to those responsible for the illegal acts involved, nor in most cases does there appear to have been any normal police and prosecutorial investigation. Civil remedies have not been pursued, apparently in the conviction that to do so would be futile and dangerous. Lawyers have declined to accept cases in which the state or military authorities are involved out of fear of the personal consequences for themselves. Indeed, three of the four lawyers arrested and killed in December had recently acted as defence counsel in trials before a military court of those, civilians as well as military personnel, allegedly involved in a coup attempt. The ICJ observers were informed that the bar now refuse to represent defendants in cases before military tribunals.

An exception to this picture is the abolition of the Special Tribunal to deal with corruption practices, which was one of the recommendations of the 1981 ICJ mission.

The common element which unites the various particular sorts of human rights problems in Suriname is that governmental – in particular, military – authorities do not seem to be subject in their acts to the Rule of Law. Most important human rights infringements are also incompatible with Suriname law as it stands, but no legal steps have been taken to prevent or to remedy them. The ICJ report of 1981 expressed serious concern in this regard, and noted the climate of fear and uncertainty which was manifest in all levels of the population. The lack of respect for or subjection to law in the highest governmental and military circles has grown more extreme and blatant, and the climate of fear and

uncertainty has dramatically worsened.

The events of 8–9 December 1982, in which four buildings (two radio stations, a press, and the headquarters of the largest union) were destroyed and 15 prominent persons were arrested and killed, is the most extreme example of the process of deterioration described. Even persons who describe themselves as closely involved in the “revolutionary process” in Suriname stated to the ICJ observers that they do not know what evidence there may be that the 15 persons were connected with a conspiracy to overthrow the government by violent means, nor what the circumstances were under which the 15 met their death. The official version of the events of 8–9 December 1982, according to which the 15 persons were shot during an escape attempt, is inconsistent with the wounds observed by many persons when the corpses lay in the mortuary. The judicial investigation required in such a case of violent death has not taken place.

The ICJ observers understood from many persons, including several who describe themselves as closely involved in the “revolutionary process”, that there is a widely-felt need for an enquiry into the events of 8–9 December 1982 and the surrounding circumstances.

VI. Events Subsequent to the Mission's Report of 21 March

On 1 May 1983 the government presented its programme. In a document of over 50 pages, the general question of human rights is not mentioned. Nor are the events of 8–9 December or any of the other circumstances set out in part III above. No measures are proposed to improve the situation. No investigation of any kind into the events of 8–9 December and the surrounding circumstances is proposed. No re-

ference is made to international concern on these matters: the suspension of aid is attributed to a "wilful refusal... to accept the reality of an authentic Surinamese development".

The government statement promises a "renewal of the political and governmental order" and, while rejecting the "fruitless and decadent parliamentary system", of the period before the coup of 25 February 1980, looks forward to institutions through which the population can experience "real influence and real control upon the political process". Two institutions are proposed to be created before the end of 1984. A National Democratic Congress, composed of "democratically selected" representatives of "mass-organisations and functional groups", will serve as a "forum of patriots" to "publicly advise the government". A Central Council of State, consisting of high government and military officials, members of the National Democratic Congress, and district commissioners, will be empowered to "sanction" the government's annual "action programme" and budget.

The government statement recognises the importance of "genuinely national (not manipulated by hostile foreign interests) honest and objective information and communication media" to the process of "accelerated democratisation" which is to take place. In the only apparent reference to the events covered in part III of this report, the government statement observes that in the light of "the gross misuse that only a few months ago was made of the media for aggression directed against the people", a carefully prepared media-code will need to be developed. The commission appointed to do this will also advise concerning the uses to which "existing temporarily unused facilities" could be put.

The ICJ has not received the promised invitation for a follow-up mission. The ILO, whose mission to Suriname to investigate

the situation of the trade unions there was accepted by the Suriname authorities, has not been able to carry out its mission due to postponements requested by the Suriname government.

So far as is known, there has been no further investigation within Suriname of the events of 8-9 December and the surrounding circumstances, nor are there any plans to carry out an impartial investigation which could enjoy local and international confidence.

VII. The Suspension of Development Assistance to Suriname

During their visit to Suriname the ICJ observers questioned practically all those they met concerning the suspension of development aid to Suriname as reaction to apparent gross violations of human rights. In view of the great importance of the Netherlands development cooperation programme with Suriname, special attention has to be given to this particular relationship, though the following observations apply *mutatis mutandis* to other such relationships.

As early as 10 December 1982 the Netherlands government had in a Note addressed to the Military Authority of Suriname announced its decision to suspend its development cooperation programme. The Netherlands government invoked the principle that development cooperation should not be allowed to provide support for repressive regimes nor lead to complicity in grave violations of human rights. In its Reply of the same date the Military Authority of Suriname expressed its surprise that the Netherlands Note ignored the official explanation that had been given and assumed that this explanation did not correspond to the facts.

In a more elaborate Note of 16 December the Netherlands government expressed the opinion that the circumstances prevailing in Suriname differ fundamentally from the circumstances existing at the moment of the agreements concluded between the Netherlands and Suriname. The Netherlands government considered that the contracting parties could not at that time have foreseen this change in circumstances, while the circumstances prevailing at that time were an essential condition for the conclusion of those agreements. In a reply dated 17 December 1982 the Military Authority of Suriname stated that the purpose of the development cooperation treaty was to accelerate the social-economic development of Suriname. The reply emphasized that Suriname is still a developing country and that its social-economic situation has not fundamentally changed.

As far as this international legal dispute between the Netherlands and Suriname is concerned, the ICJ observers would recommend to both the Netherlands and Suriname that they submit to the International Court of Justice the question whether the alleged violations by Suriname of its obligations under the International Covenant on Civil and Political Rights, to which both the Netherlands and Suriname are parties, constitute a fundamental change of circumstances which may be invoked as a ground for suspending the operation of the Convention of 25 November 1975 between the Kingdom of the Netherlands and the Republic of Suriname concerning development cooperation.

As far as the opportuneness of the suspension is concerned, the ICJ observers spoke to several persons in Suriname, not sympathetic to the present regime, who certainly understand the reasons for that suspension but at the same time wonder whether this decision has so far been sufficiently adapted to the requirements of the

situation. It is evident to such persons that the Netherlands development cooperation programme with Suriname could not continue after the events of 8-9 December 1982 in the same manner and to the same extent as before. The risk that much of the assistance given would be diverted by the present regime from its intended destination is considered too great. While assistance should certainly not be given to a regime which gravely violates fundamental human rights when an important effect of that assistance would be to support the regime or strengthen its oppressive character, it would be over-reacting permanently to cancel development projects which directly benefit people in need and which cannot be misused by the regime in power. What is needed is a thorough re-examination and a reorientation of the development cooperation programme.

The ICJ observers believe, moreover, that this view corresponds with the carefully considered approach adopted by the Netherlands government in its Memorandum on Human Rights and Foreign Policy presented to the Lower House of the States General of the Kingdom of the Netherlands on 3 May 1979. In that Memorandum the Netherlands government rejected "the idea that aid should be used to reward countries which respect human rights and conversely withheld to punish countries which disregard those rights. Aid should relate to the needs of the people and not to the conduct of governments."

VIII. Conclusions

In conversations with the ICJ observers, persons closely associated with the Suriname government stated generally that the events of 8-9 December 1982 are very regrettable and have produced a shock which makes it evident to everybody that

such events must not occur again. Obviously such a consensus, even if it exists, does not guarantee that such events will not recur.

The ICJ observers realise that viewed against the background of events elsewhere in the world, the killing of 15 persons may seem to be only a "minor incident". However, it is their conviction that the events of 8-9 December 1982 in Paramaribo are neither "minor", nor an "incident".

In evaluating the gravity of the events, one has to take into account:

- the peaceful social and political tradition of Suriname society prior to the coup of 1980;
- the number of victims in relation to the small size of the population of Suriname (about 350,000); for example, ten percent of the membership of the Bar, including its president, were killed;
- the careful selection of the persons killed, who included many leading figures in the growing movement for a return to democracy;
- the brutal illtreatment of the victims;
- the inexcusable absence of any official investigation.

The chain of events since 1980 demon-

strates an escalation in the military authorities' disregard of the Rule of Law, which is set aside whenever they consider it necessary for the consolidation of their position.

The latest reports concerning the events of 8-9 December incriminate personally the highest authorities of the Republic. The killings, it is alleged, were premeditated and carefully planned murders carried out on the instructions and including personal participation of the highest military and civilian authorities. At this stage, the ICJ observers are not in a position to confirm or to deny such allegations. However, they will only gain credence so long as no independent and impartial enquiry is ordered which would reveal the true facts of the events.

The ICJ observers consider an impartial investigation an essential precondition of the restoration of the Rule of Law in Suriname. Until such an enquiry is undertaken, those personally responsible for the events will be strengthened in the conviction that their position is above the law and that, whenever they consider it necessary, they may indulge in the gravest violations of human rights (including torture and murder) without risk. While this situation remains, no one in Suriname can feel safe and human rights in Suriname will be permanently in great danger.

BOOK REVIEW

The International Law of Human Rights, Paul Sieghart, Oxford University Press,

1983, 569 pp; £ 45 hardback

This book by Paul Sieghart is at once a codification of human rights in international law, a useful work of reference, and a handbook for practising lawyers. It sets out the rights protected by the various universal and regional international instruments, including the African Charter of Human and Peoples Rights, and the procedures established for their defence. It deals with economic, social and cultural rights as well as civil and political rights.

After a historical introduction in which the concept of human rights is examined, in particular since the decisive turning point of the proclamation in 1948 of the Universal Declaration, there is a short account of the origin and content of all the main international human rights instruments. This first part outlines the general content of the code of international human rights. There follows in Part II an exposition, with commentary, of the articles of general application and the obligations flowing from them for States are examined. Part III is devoted to the rights and

freedoms guaranteed. It is admirably structured and each right is examined as follows: the formulation it has received in each instrument is first stated, followed by a brief commentary, a historical note, and a selection of the relevant international case law. This presentation enables the reader not only to find quickly the definition of the right in each instrument, but also to see how these definitions converge and are related, so that the spirit and intent of each of these rights emerges.

It is, however, the last part, Part IV, which will be of the greatest use to the practitioner, as it gives a very full account of the procedures for application, enforcement and supervision in each instrument.

Accordingly, combining as it does a theoretical analysis of the content and scope at present given to the various human rights with an exposition of the practice as it has developed, it makes a real contribution to the understanding and application of international human rights.

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States of Emergency – Their Impact on Human Rights

A comparative study by the International Commission of Jurists, 1983.

Available in english (ISBN 92 9031 019 X), Swiss Francs 40 or US\$ 19.50, plus postage.

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Rural Development and Human Rights in South East Asia

Report of a Seminar in Penang, December 1981.

*Published jointly by the ICJ and the Consumers' Association of Penang (CAP)
(ISBN 92 9037 017 3).*

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Ways in which human rights of the rural poor can be adversely affected by processes of maldevelopment are illustrated with a wealth of detail in this report. The 12 working papers on such topics as land reform, participation in decision-making, the role and status of women and social and legal services are reproduced in full along with the important conclusions and recommendations of the seminar.

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Human Rights in Islam

Report of a seminar in Kuwait, Geneva, 1982, 95 pp.

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The purpose of this seminar was to provide a forum for distinguished moslem lawyers and scholars from Indonesia to Senegal to discuss subjects of critical importance to them. It was organised jointly with the University of Kuwait and the Union of Arab Lawyers. The Conclusions and Recommendations cover such subjects as economic rights, the right to work, trade union rights, education, rights of minorities, freedom of opinion, thought, expression and assembly, legal protection of human rights and women's rights and status. Also included are the opening addresses, a key-note speech by Mr. A.K. Brohi and a summary of the working papers.

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Civilian Administration in the Occupied West Bank

*by Jonathan Kuttab and Raja Shehadeh. An analysis of Israeli Military Government Order No. 947, 44 pp. Published by Law in the Service of Man, West Bank affiliate of the ICJ.
Swiss Francs 8, plus postage.*

This study examines the implications of the establishment of a civilian administrator to govern the affairs of the Palestinian population and Israeli settlers in the West Bank. Questions of international law and the bearing of this action on the course of negotiations over the West Bank's future are discussed.

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